

February 12, 2007

Date

APPROVAL OF INTERGOVERNMENTAL 28E AGREEMENT WITH GOVERNMENT ENTITIES REPRESENTED ON THE METROPOLITAN ADVISORY COUNCIL FOR THE FUNDING AND IMPLEMENTATION OF HOMELAND SECURITY SERVICES WITHIN THE METROPOLITAN AREA

WHEREAS, the metropolitan area consisting of the cities and counties represented on the Metropolitan Advisory Council will be best served in a joint cooperative effort of implementation of the Iowa Homeland Security Strategy and other major incident response capabilities; and

WHEREAS, the City of Des Moines and Polk County, to support the mission of the Iowa Homeland Security and Emergency Management have devoted significant resources and assets toward the provision of homeland security services and programs; and

WHEREAS, to provide for the safety and security of residents throughout the metropolitan area from the threats of weapons of mass destruction, potential terrorist activity and natural disasters, the cities and counties represented on the Metropolitan Advisory Council desire to expand the resources and assets available to the City of Des Moines to enable the City of Des Moines to provide homeland security services including major incident response throughout the metropolitan area; and

WHEREAS, the City of Des Moines in conjunction with Polk County has implemented homeland security services and by execution of the Chapter 28E Agreement on file in the Office of the City Clerk, the cities and counties represented on the Metropolitan Advisory Council shall provide the necessary funding to expand the capabilities of the Des Moines WMD/CBRNE Tactical Response Team, the Des Moines Bomb Squad and the Des Moines Region 5 Fusion Center supported by the Des Moines Police Identification Section capability to serve all the respective jurisdictions within the metropolitan area.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Des Moines, Iowa, that the Chapter 28E Agreement on file in the Office of the City Clerk between the cities of Des Moines, Altoona, Ankeny, Bondurant, Carlisle, Clive, DeSoto, Grimes, Indianola, Johnston, Mitchellville, Norwalk, Pleasant Hill, Polk City, Urbandale, Waukee, West Des Moines and Windsor Heights and the counties of Polk, Dallas and Warren for the funding and implementation of homeland security services within the metropolitan area is hereby approved and the Mayor is hereby authorized and directed to execute the 28E Agreement on behalf of the City of Des Moines and the City Clerk is directed to attest to his signature.

★ Roll Call Number

Agenda Item Number

77

February 12, 2007

Date

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BE IT FURTHER RESOLVED that the City Clerk is directed to assemble the signature pages of the 28E Agreement and append same to copies of the 28E Agreement, and to file the 28E Agreement with the Secretary of State and to record it with the Offices of the Recorder of Polk, Dallas and Warren counties.

BE IT FURTHER RESOLVED that the Chief of Police shall administer the performance of the 28E Agreement in conjunction with the Polk County Sheriff.

Moved by _____ to adopt.

APPROVED AS TO FORM:

Lawrence R. McDowell
Deputy City Attorney

(Council Communication No. 07-068)

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COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE				
COLEMAN				
HENSLEY				
KIERNAN				
MAHAFFEY				
MEYER				
VLASSIS				
TOTAL				

MOTION CARRIED

APPROVED

Mayor

CERTIFICATE

I, DIANE RAUH, City Clerk of said City hereby certify that at a meeting of the City Council of said City of Des Moines, held on the above date, among other proceedings the above was adopted.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal the day and year first above written.

City Clerk

CHAPTER 28E AGREEMENT
BY AND BETWEEN THE CITIES OF
DES MOINES, ALTOONA, ANKENY, BONDURANT, CARLISLE, CLIVE, DESOTO,
GRIMES, INDIANOLA, JOHNSTON, MITCHELLVILLE, NORWALK,
PLEASANT HILL, POLK CITY, URBANDALE, WAUKEE, WEST DES MOINES AND
WINDSOR HEIGHTS AND THE COUNTIES OF POLK, DALLAS AND WARREN
FOR THE FUNDING AND IMPLEMENTATION OF
HOMELAND SECURITY SERVICES WITHIN THE METROPOLITAN AREA

WHEREAS, this Agreement is made and entered into by and between the cities of Des Moines, Altoona, Ankeny, Bondurant, Carlisle, Clive, DeSoto, Grimes, Indianola, Johnston, Mitchellville, Norwalk, Pleasant Hill, Polk City, Urbandale, Waukee, West Des Moines and Windsor Heights and the Counties of Polk, Dallas and Warren (hereinafter jointly referred to as the "Parties").

WITNESSETH:

WHEREAS, the metropolitan area consisting of the Parties hereto represented on the Metropolitan Advisory Council will be best served in a joint cooperative effort of implementation of the Iowa Homeland Security Strategy and other major incident response capabilities; and

WHEREAS, the City of Des Moines and Polk County, to support the mission of the Iowa Homeland Security and Emergency Management have devoted significant resources and assets toward the provision of homeland security services and programs; and

WHEREAS, upon recommendation of the Metropolitan Advisory Council Homeland Security Subcommittee to provide for the safety and security of residents throughout the metropolitan area from the threats of weapons of mass destruction, potential terrorist activity and natural disasters, all the Parties hereto desire to expand the resources and assets available to the City of Des Moines to enable the City of Des Moines to provide homeland security services including major incident response throughout the metropolitan area that will serve the respective jurisdictions of each Party hereto; and

WHEREAS, the City of Des Moines in conjunction with Polk County has implemented the following homeland security services:

- Metro Star Tactical Unit which provides a Weapons of Mass Destruction (WMD) and Chemical, Biological, Radiological, Nuclear, and Explosive (CBRNE) Tactical Response Team; and
- Des Moines Bomb Squad providing Type II bomb mitigation response; and
- Des Moines Region 5 Fusion Center for Intelligence collection, analysis, dissemination, networking capability, and contaminated crime scene processing capability; and

- Des Moines Police Identification Section providing full-time personnel trained in the collection and preservation of evidence located in hazardous environments; and

WHEREAS; the Parties desire to provide the necessary funding to expand the capabilities of the Des Moines WMD/CBRNE Tactical Response Team, the Des Moines Bomb Squad and the Des Moines Region 5 Fusion Center supported by the Des Moines Police Identification Section capability to serve all the respective jurisdictions within the metropolitan area that are a Party hereto; and

NOW, THEREFORE, the Parties do hereby agree as follows:

- I. **Purpose.** Pursuant to Chapter 28E of the 2005 Code of Iowa, the Parties do hereby agree that the purpose of this Agreement is to jointly exercise their respective powers to fund and implement enhanced Homeland Security Services to serve all the respective jurisdictions within the metropolitan area that are a Party hereto.
- II. **Homeland Security Services.** All Parties may, in accordance with the procedures set forth in Article III, utilize on an as needed basis the following Homeland Security Services:
 - A. **WMD/CBRNE Tactical Response Team (Metro STAR Unit):** This team is comprised of full time Des Moines Police Officers and full time Polk County Sheriffs Deputies. Team members are all technician-level HazMat trained tactical operators. This allows the team to successfully work in Chemical, Biological, Radiological, Nuclear, and Explosive (CBRNE) environments. Along with the normal operations of a tactical unit, team members are trained to neutralize active threats, and to provide assistance in support of HazMat Units and Bomb Squads operating in and around “hot zones” of potential CBRNE exposures. Team members provide a safe scene for those that will ultimately mitigate and control the exposure to CBRNE environments. This team also has the capabilities of conducting proactive investigation into CBRNE threats providing preliminary CBRNE monitoring levels to determine the presence of a potential CBRNE substance.
 - B. **Des Moines Bomb Squad:** This team is compromised of a commander and Des Moines Police Officers trained as Bomb Technicians and Des Moines/Polk County Explosive Detection K9 teams. Team members are all technician-level HazMat trained. The team will mitigate explosives hazards and are trained in the mitigation of Weapons of Mass Destruction (WMD) dispersal devices. The team is also trained in the collection of hazardous evidence and post-blast investigations.

- C. Region 5 Fusion Center Services: Des Moines Police Officers and a Polk County Deputy staff this intelligence service. This center is one of 6 regional fusion centers in Iowa. Each regional fusion center is interconnected with the other regional centers and the Iowa Department of Public Safety's Intelligence Bureau. Fusion Center officers meet regularly with the members of the FBI's Joint Terrorism Task Force, U.S. Attorney's Office, Mid West Gang Investigators, Iowa Homeland Security and are establishing private sector partners.
- D. Des Moines Identification Section: Full-time Des Moines Police personnel trained in the collection and preservation of evidence found in hazardous environments.

III. Service/Command Procedures. The protocol for utilization of the Homeland Security Services identified in this Agreement will be as follows:

- A. Upon occurrence of an incident requiring use of any of the Homeland Security Services, a Party's Incident Commander as defined below may request such Homeland Security Services by calling the Polk County Communications Center 286-3333, the Des Moines Dispatch Center at 283-4811 or such other phone numbers as the City of Des Moines or Polk County may designate in writing and forward to the Parties. The request shall relay the information necessary for the appropriate personnel to determine what Homeland Security Services in terms of personnel and equipment are needed to respond, which may include multiple or all Homeland Security Services available. The determinations on the appropriate Homeland Security Services personnel and equipment to be sent to a requesting Party shall be made at the discretion of the City of Des Moines using its established protocols. The City of Des Moines shall be held harmless by the requesting Party from liability in connection with its final decision on type and amount of equipment and number of personnel to be provided to the requesting Party.
- B. The responding Homeland Security Services personnel will have a team leader(s) who will report to the Incident Commander and coordinate activities between the requesting Party's personnel and the personnel providing the Homeland Security Services. The team leader(s) will assist the Incident Commander in reaching the objectives required by the circumstances at the scene. The Incident Commander, or his/her designee, shall have the power to issue reasonable orders and directives consistent with meeting the objectives. The team leader(s) will then act on those orders and directives as long as they are safe and within the capabilities of the responding Homeland Security Services team. The team leader(s) will provide technical advice when appropriate, but will not be expected to assume command of the scene.

- C. When the Incident Commander and the team leader(s) agree that the objectives requiring Homeland Security Services response have been met the Homeland Security Services response teams will be released from the scene.
- D. The Homeland Security Services response teams will participate and share information in all post-incident debriefings held by the requesting Party.
- E. The term “Incident Commander” as used in this Agreement means the manager of an incident, no matter the size or complexity, or the number of agencies involved in the response. The “Incident Commander” is usually the first or senior, public safety or first-responder to arrive on scene. As additional responders arrive, command may transfer on the basis of who has primary authority for overall control of the incident. The “Incident Commander” is responsible for ensuring a coordinated effort and to ensure an effective response and the efficient, safe use of resources including:

- Establishing command and the Incident Command Post.
- Protecting life and property.
- Controlling personnel and equipment resources.
- Maintaining accountability for responders and public safety, as well as for task accomplishments.
- Assessing Incident Priorities.
- Determining Operational Objectives.
- Developing and Implementing the Incident Action Plan.
- Coordinating overall emergency activities.
- Coordinating the activities of outside agencies.
- Authorizing the release of information to the media.

IV. **Funding Contributions.** In addition to the current funding of Homeland Security Services, the City of Des Moines has committed \$1,000,000 of annual funding and Polk County has committed \$113,117 of annual funding in fiscal years 2007-08, 2008-09 and 2009-10 for enhanced capabilities of Homeland Security Services for the metropolitan area. Four Hundred Thousand (\$400,000) in additional money is needed from the other Parties in each fiscal year to sustain the enhanced capabilities of the Homeland Security Services response to a minimally acceptable level for the Parties herein.

- A. In order to sustain the enhanced capabilities of the Homeland Security Services, each Party to this Agreement will annually pay the respective amount for such Party as set forth in Exhibit “A” in fiscal years 2007-08, 2008-09 and 2009-10.

B. Each Party shall pay its respective annual amount set forth in Exhibit "A" to the City of Des Moines on or before July 31 of each fiscal year and such monies shall be used exclusively for necessary personnel, overtime, training, equipment, equipment maintenance and vehicle operating costs of providing the enhanced Homeland Security Services. The budget for enhanced capabilities of Homeland Security Services in fiscal year 2006-07 is set forth in Exhibit "B".

C. The City of Des Moines shall be paid a total annual amount of at least Four Hundred Thousand Dollars (\$400,000) from the other Parties (exclusive of Polk County) for enhanced capabilities of Homeland Security Services. In the event any political subdivision referenced as a party in the initial paragraph fails to sign this Agreement, such entity shall be deleted as a party hereto and Exhibit "A" shall be revised using the original formula to reflect the adjusted annual respective amount to be paid by each remaining Party required for full payment of the \$400,000 total annual amount to the City of Des Moines. In the event a political subdivision becomes an additional party by amendment to this Agreement, Exhibit "A" shall be revised using the original formula to reflect the adjusted annual respective amount to be paid by each Party commencing in the next fiscal year required for full payment of the \$400,000 total annual amount to the City of Des Moines.

V. **Annual Report.**

A. The City of Des Moines will provide an annual report on Homeland Security Services to each Party no later than August 1 of each year. This report will provide information to keep the Parties to this Agreement informed of the status and activities of the Homeland Security response teams and will include:

1. Accomplishments achieved during the fiscal year and goals and objectives for the next fiscal year,
2. Individual and team training over the fiscal year (courses, location, number of personnel trained, hours of training),
3. Training exercises performed during the fiscal year,
4. Response dates and a synopsis of the event responded to,
5. Equipment received or retired during the fiscal year, and
6. Budget showing expenditures made during the fiscal year and proposed expenditures for the next fiscal year.

The City of Des Moines will also provide this report to the Polk County Emergency Management Commission, the Polk County Chiefs' and Sheriff's Association, and the Fire Chiefs' Association.

B. Each Party may appoint one of its public safety employees and one of its administrative officials to an advisory committee. This advisory committee will meet once per year to review the annual report and provide comments to

the Des Moines Police Department. Any comments or suggestions are not binding on the Des Moines Police Department, but will serve to give input on any aspect of the purposes and fulfillment of this Agreement.

- VI. Employee relationship.** Employees of any Party acting pursuant to this Agreement shall be considered as acting under the lawful orders and instructions pertaining to their employment status with such Party. Under no circumstances are employees of one Party to be considered employees of any other Party. This Agreement does not create an employment relationship nor shall it be construed to create any employment relationship between Homeland Security Services personnel and the Party requesting such services.
- VII. Liability.** Each Party waives all claims against the other Parties for compensation for any property loss or damage and/or personal injury or death to its personnel as a consequence of the performance of this Agreement. Each Party shall bear the liability and/or costs of damage to its equipment and facilities, and the compensation of its employees, including injury or death to its personnel, occurring as a consequence of the performance of this Agreement.

Each Party to this Agreement shall be liable for the actions of its own employees to the extent allowed under Iowa Code Chapter 670.

Nothing in this Agreement shall prevent or limit any Party to this Agreement from recovering or attempting to recover costs of services rendered to a third party where such recovery of costs is provided for by law.

The Parties to this Agreement do not waive any defenses, immunities or other limitations applicable to a respective Party and nothing herein shall be so construed. Each Party to this Agreement reserves the right to fully defend all claims arising from loss of or damage to private property and/or death of or injury to private persons who are not parties to this Agreement including, but not limited to asserting defenses or immunities available under applicable law.

This Article shall survive the termination of this Agreement where necessary to protect each Party to this Agreement.

VIII. Iowa Code Chapter 28E Requirements.

- A. The cities of Des Moines, Altoona, Ankeny, Bondurant, Carlisle, Clive, DeSoto, Grimes, Indianola, Johnston, Mitchellville, Norwalk, Pleasant Hill, Polk City, Urbandale, Waukee, West Des Moines, and Windsor Heights are municipal corporations and political subdivisions of the State of Iowa and are public agencies as defined by Iowa Code Chapter 28E.

- B. Polk County, Warren County and Dallas County are political subdivisions of the State of Iowa and are public agencies as defined by Iowa Code Chapter 28E.
- C. No separate legal or administrative entity is established by this Agreement.
- D. No real or personal property will be jointly acquired, held or disposed of in the performance of this Agreement. All equipment purchased in conjunction with the provision of Homeland Security Services shall be owned by the City of Des Moines or Polk County. Upon termination of this Agreement all such equipment and other personal property owned by the City of Des Moines or Polk County shall remain with such entities.
- E. The Des Moines Chief of Police and Polk County Sheriff shall administer the performance of this Agreement.
- F. This Agreement shall be in full force and effect upon the following:
 - 1. Its approval and execution by the respective City Councils and Boards of Supervisors of the Parties hereto; and
 - 2. Filing of this Agreement with the Iowa Secretary of State and its recording in the Offices of the Polk County Recorder, Warren County Recorder and the Dallas County Recorder as required under Section 28E.8, Code of Iowa.
- G. The duration of this Agreement shall extend for a term ending on June 30, 2010. This Agreement may not be terminated prior to such termination date, in whole or in part, except upon mutual agreement of all the Parties.

IX. General Provisions.

- A. If any section, provision or part of this Agreement shall be found invalid or unconstitutional, such finding shall not affect the validity of the Agreement as a whole or any section, provision or part thereof not found to be invalid or unconstitutional.
- B. The Agreement represents the entire agreement between the Parties. If upon annual review of this Agreement by the Parties a determination is made that this Agreement should be revised, any subsequent change or modification to this Agreement shall be mutually agreed to by the Parties in the form of a duly approved and executed addendum to this Agreement.
- C. Each Party approving this Agreement shall execute the separate signature page provided for it, and the Parties hereto authorize the City Clerk of the City of Des Moines to assemble the signature pages and append same to

copies of this Agreement, to file this Agreement with the Secretary of State and to record it with the Offices of the Recorder of Polk, Dallas and Warren Counties.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed.