

 <p style="text-align: center;">Council Communication Office of the City Manager</p>	Date:	October 22, 2012
	Agenda Item No.	26
	Roll Call No.	<u>12-1625</u>
	Communication No.	<u>12-554</u>
	Submitted by:	John F. Tekippe, Fire Chief

AGENDA HEADING:

Amending the City of Des Moines 28E Agreements for Hazardous Materials response for participating counties regarding available occupational injury coverage and waiver of subrogation.

SYNOPSIS:

Recommend amending the City of Des Moines’ 28E Agreements for Hazardous Materials response for participating counties to indicate the City shall secure occupational injury coverage that is reasonably available, set the formulas for allocating potential uninsured losses, and waiving subrogation against participating counties if losses exceed the City’s self-insured retention and is paid by the City’s Excess Workers Compensation Insurance.

FISCAL IMPACT: NONE

ADDITIONAL INFORMATION:

In December of 1995, the City entered into a series of 28E Agreements with surrounding Counties (Boone, Dallas, Madison, Marshall, Polk, Story, Warren) for the purpose of the City providing Hazard Materials (HazMat) Mutual Aid response to those Counties. In return for the City responding to calls for HazMat services, the Agreement transferred the risk and its associated liability to the participating counties, including the cost of any occupational injury incurred by City personnel responding to a call for service.

The Agreements also specified that the City was to purchase insurance or other available coverage for the purpose of providing the financial resources for the participating counties to assume such risk and liability. The Agreements specified that the participating counties would pay for the premiums or costs of the purchased coverage on an equally proportional basis. The Agreements also specified that the City would purchase \$450,000 per incident of insurance to cover the cost of occupational injury. This amount was equal to the self-insured retention associated with the City’s Excess Workers Compensation Insurance policy at the time.

As of the City’s July 1, 2010 insurance renewal, the City was informed by its Excess Workers Compensation Insurance carrier that due to recent losses, the City’s self-insured retention was being increased. The City’s self-insured retention has increased at each of the subsequent July 1 renewals and is now \$1,000,000 per incident. While the City has identified and purchased insurance coverage to continue to protect the participating counties for this contractual obligation, it is necessary to amend the 28E Agreements to reflect the new insurance conditions.

Therefore, the City's Legal Department and Risk Management Office prepared amendments for each of the participating counties. The amendments deleted the fixed amount of \$450,000 for occupational injury coverage and replaced it with the following wording: "Equal to self-insured retention to extent coverage is reasonably available". The City further included a formula suggested by the City Manager's Office for allocating the cost of any loss that is not insured with 20% being paid by the participating county and 80% by the City. The allocation percentage was based on an estimate that twenty percent of all HazMat aid responses are outside of Polk County.

The exception to this allocation formula is the amendment related to the Polk County 28E Agreement. Because Polk County's funding of Haz Mat services far exceeds that of the other participating counties, the allocation formula related to uninsured losses is the City paying the first \$200,000 per incident and Polk County paying 50% of any per incident loss exceeding \$200,000. However, the City's portion of the total uninsured loss per incident shall not exceed 50% of the total loss, including the initial \$200,000.

Finally, the City also included that the City will waive subrogation against any participating county if any loss pertaining to any incident exceeds the City's self-insured retention and is paid by the City's Excess Workers Compensation Insurance.

PREVIOUS COUNCIL ACTION(S):

Date: June 25, 2012

Roll Call Number: [12-0992](#)

Action: [Annual](#) insurance renewal with Jester Insurance Services, Inc. for July 1, 2012 – Property and Casualty Insurance. ([Council Communication No. 12-330](#)). Moved by Hensley to adopt. Motion Carried 7-0.

Date: May 28, 1996

Roll Call Number: 96-2005

Action: Intergovernmental 28E Agreement with Madison County, for Hazardous Materials Response Services. (Council Communication No. 96-217). Moved by Phillips to adopt. Motion Carried 7-0.

Date: May 20, 1996

Roll Call Number: 96-1857

Action: Intergovernmental 28E Agreement with Dallas County, for hazardous Materials Response Services. (Council Communication No. 96-203). Moved by Vlassis to adopt. Motion Carried 7-0.

BOARD/COMMISSION ACTION(S): NONE

ANTICIPATED ACTIONS AND FUTURE COMMITMENTS: NONE

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