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Date..... June 4, 2007

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31

APPROVAL OF THE 28E AGREEMENT WITH NEIGHBORHOOD FINANCE CORPORATION, POLK COUNTY, IOWA, AND CITY OF DES MOINES

WHEREAS, a central part of the Neighborhood Revitalization Program was the creation of the Neighborhood Finance Corporation (NFC) which provides the necessary housing finance programs to implement a variety of city neighborhood revitalization programs; and

WHEREAS, on November 5, 1990 by Roll Call 90-4932 the City Council of the City of Des Moines approved a 28E Intergovernmental Agreement with Polk County, Iowa and the NFC, governing the use of the Four Million Dollars (\$4,000,000) in public funds contributed to the NFC; and

WHEREAS, the duration of that Agreement was extended through June 30, 1996 by Amendment III and through June 30, 1997, by Amendment IV; and

WHEREAS, a five-year 28E Agreement which extended the cooperative effort among the NFC, Polk County and the City of Des Moines for the period of July 1, 1997 through July 1, 2002 was approved by the City Council of the City of Des Moines on June 23, 1997, by Roll Call No. 97-2246; and

WHEREAS, a five-year 28E Agreement which extended the cooperative effort among the NFC, Polk County and the City of Des Moines for the period of July 1, 2002 to June 30 2007 was approved on July 8, 2002 by Roll Call No. 02-1768; and

WHEREAS, a new three-year 28E Agreement which will extend the cooperative effort among the NFC, Polk County, and the City of Des Moines for the period of July 1, 2007 to June 30, 2010 has now been prepared and is attached hereto as Exhibit A;

★ Roll Call Number

Agenda Item Number

31

Date June 4, 2007

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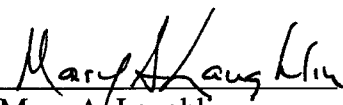
NOW THEREFORE, BE IT RESOLVED, by the City Council of the City of Des Moines, Iowa, that the attached new 28E Agreement with NFC and Polk County is hereby approved, and the Mayor is authorized to execute the Agreement and the City Clerk to attest to his signature.

BE IT FURTHER RESOLVED that the City Clerk upon receipt of the executed Agreement from Polk County, Iowa and the NFC is directed to file the Agreement with the Secretary of State and in the Office of the Recorder of Polk County.

(Council Communication No. 07- 316)

MOVED by _____ to adopt.

FORM APPROVED:


 Mary A. Laughlin
 Assistant City Attorney

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

RESOLUTION

MOVED by Brownell SECONDED by Mauro

that the following Resolution be adopted:

WHEREAS, Polk County originally entered into a 28E Agreement with the City of Des Moines and Neighborhood Finance Corporation (NFC) on November 5, 1990 in order to address housing and neighborhood revitalization issues within the City of Des Moines; and,

WHEREAS, these entities have since entered into amended or substituted 28E Agreements that shall expire on June 30, 2007; and,

WHEREAS, it is the desire of the Polk County Board of Supervisors to enter into an amended and substituted 28E Agreement with the City of Des Moines and NFC for the express purpose of funding neighborhood housing revitalization programs which will aid designated neighborhoods and low and moderate income areas in Des Moines; and,

NOW, THEREFORE, BE IT RESOLVED that the Polk County Board of Supervisors hereby approves and authorizes the Chair to sign the attached 28E Agreement between the City of Des Moines, Polk County and Neighborhood Finance Corporation.

POLK COUNTY BOARD OF SUPERVISORS

Tom Hockensmith

Chairperson

SUBMITTED BY:

Sue Elliott

Sue Elliott
Project Manager

Fiscal Impact: None.

FY06 #

*as to form
Candy Morgan
Tom*

ROLL CALL FOR ALLOWANCE		
MAY 22 '07		
E.J. Giovannetti	<input checked="" type="checkbox"/> Yea	<input type="checkbox"/> Nay
Robert Brownell	<input checked="" type="checkbox"/> Yea	<input type="checkbox"/> Nay
Angela Connolly	<input checked="" type="checkbox"/> Yea	<input type="checkbox"/> Nay
John F. Mauro	<input checked="" type="checkbox"/> Yea	<input type="checkbox"/> Nay
Tom Hockensmith	<input checked="" type="checkbox"/> Yea	<input type="checkbox"/> Nay
Yea	4	Nay 1
Above tabulation made by <i>BS</i>		
ALLOWED BY ABOVE NOTE OF BOARD		
<i>Tom Hockensmith</i>		
CHAIRPERSON		

#24

POLK COUNTY BOARD OF SUPERVISORS

Tuesday Agenda Memorandum

Item Type & Title: Resolution approving 28E Agreement between the City of Des Moines, Polk County and the Neighborhood Finance Corporation.

Agenda Date: May 22, 2007

Contact Individual: Sue Elliott
 Project Manager
 Board of Supervisors
 286-3128

Background: Polk County originally entered into a 28E Agreement with the City of Des Moines and Neighborhood Finance Corporation (NFC) on November 1990 in order to address housing and neighborhood revitalization issues within the City of Des Moines. These entities have since entered into amended or substituted 28E Agreements that shall expire on June 30, 2007. It is the desire of the Board of Supervisors to enter into an amended and substituted 28E agreement with the City of Des Moines and NFC for the purpose of funding neighborhood housing revitalization programs which will aid designated neighborhoods and low and moderate income areas within the City of Des Moines.

Action Impact: Approval of this resolution authorizes the Chair to enter into a 28E agreement with the City of Des Moines and the Neighborhood Finance Corporation to address housing and neighborhood revitalization issues within the City of Des Moines.

Fiscal Note:

Fiscal Year	New Budget Item? (Y/N)	# of New Position(s) Required	Anticipated Expense	Anticipated Revenue	Budget Amendment Required? (Y/N)	If Amendment is Required,	
						Expense Account Code	Revenue Account Code
06/07							
07/08	N		\$1,000,000				
08/09			\$1,000,000				
09/10			\$1,000,000				

Additional Fiscal Note Information (optional):

**AMENDED AND SUBSTITUTED 28E AGREEMENT
BY AND AMONG NEIGHBORHOOD FINANCE CORPORATION,
CITY OF DES MOINES AND POLK COUNTY**

THIS AMENDED AND SUBSTITUTED 28E AGREEMENT ("AGREEMENT") BY AND AMONG NEIGHBORHOOD FINANCE CORPORATION, CITY OF DES MOINES AND POLK COUNTY ("Agreement") is made and entered into this 22ND day of MAY _____, 2007 by and among the City of Des Moines, Iowa, a municipal corporation (hereinafter referred to as "City"), Polk County, Iowa (hereinafter referred to as "County"), and the Neighborhood Finance Corporation (hereinafter referred to as "NFC") under and in accordance with Iowa Code Chapter 28E.

WHEREAS, the City of Des Moines is a municipal corporation established under the laws of the State of Iowa; and

WHEREAS, Polk County is a county government established under the laws of the State of Iowa; and

WHEREAS, Neighborhood Finance Corporation is a nonprofit corporation subject to the Revised Iowa Nonprofit Corporation Act, Iowa Code Chapter 504; and

WHEREAS, neighborhood residents, City government, County government, and the private sector in Des Moines and Polk County, Iowa, have and are working together as part of a continued commitment to address the housing and neighborhood revitalization needs of Des Moines and Polk County, Iowa; and

WHEREAS, as part of said joint effort, the NFC was incorporated on May 4, 1990, for the primary purpose of promoting and assisting neighborhood revitalization in Des Moines and Polk County, Iowa, by acting as a conduit for the flow of capital and information pursuant to strategies and programs jointly developed by neighborhood residents, the City, the County, and the NFC; and

WHEREAS, the Neighborhood Finance Corporation has assisted over 2,600 units of housing with over \$144 million of loans and grants in the years since its incorporation; and

WHEREAS, the County and the City have issued essential purpose general obligation bonds pursuant to their authority under Sections 331.442 and 384.25 respectively of the Code of Iowa for the

purpose of funding neighborhood revitalization and housing programs administered by the NFC and referenced herein; and

WHEREAS, the parties originally entered into a 28E agreement on November 5, 1990 and have since that time entered into other amended and substituted 28E agreements so that a 28E agreement has been in effect among the parties at all times since November 5, 1990, with the 28E agreement immediately preceding this Agreement having a term commencing July 1, 2002 and ending June 30, 2007; and

WHEREAS, the parties desire to continue to work together to address housing and neighborhood revitalization issues; and

WHEREAS, no legal or administrative entity is being created by this Agreement.

NOW, THEREFORE, the parties hereto, in consideration of the mutual covenants herein, agree as follows:

1. That upon the execution of this Agreement, the County shall continue to pay annually at least One Million dollars per each fiscal year during the term of this Agreement (as defined at Section 16) from the proceeds of its general obligation bonds, or other government source funds (hereinafter called government source monies) to the NFC for the express purpose of funding neighborhood housing revitalization programs which will aid designated neighborhoods and low and moderate income areas in the City.

2. That the County may from time to time contribute additional government source funding to the Neighborhood Finance Corporation.

3. That upon execution of this Agreement, the City shall continue to pay annually at least One Million dollars per each fiscal year during the term of this Agreement (as defined at Section 16) from the proceeds of its general obligation bonds, or other government source funds (hereinafter called government source monies) to the NFC for the express purpose of funding neighborhood housing revitalization programs which will aid designated neighborhoods and low and moderate income areas in the City.

4. That the City may from time to time contribute additional government source funding to the Neighborhood Finance Corporation.

5. That the NFC covenants that it will use its best efforts to take no action to cause bonds issued by either the City or the County to be classified as Private Activity bonds under Section 141 of the Internal Revenue Code and regulations issued thereunder.

6. That the NFC further covenants as follows:

a. If the City or the County determines to issue tax exempt bonds and if the NFC determines that the appropriate Tax Exemption Certificate does not impair the NFC's ability to support the programs referred to in paragraph 9 herein, then the NFC will conform its operations and policies with respect to government source monies to the use limitations contained in any Tax Exemption Certificate issued with respect to bonds issued by the City or County so long as any of the bonds remain outstanding.

b. It will also abide by any advice of Amendment to the City or County Tax Exemption Certificate as communicated from time to time by either the Corporation Counsel of the City with respect to the City or the County Attorney with respect to the County as may be necessary to maintain the tax exempt status of the bonds.

c. It will maintain accurate records of all the monies received from the City and/or the County including the types, amounts, and yields of all investments of unexpended government source monies and earnings thereon to permit the City and/or the County, if necessary, to confirm ultimate use and to calculate the yields and earnings thereon.

d. It will permit access to all investment information required or requested by the City or County.

7. That NFC shall place all government source monies contributed by the City and the County to the NFC, and all income or interest earned thereon, in segregated accounts. The NFC further agrees that all of the NFC's investments of government source monies shall be consistent with the NFC's Investment Policy as adopted on September 18, 1997 and as amended on February 17, 2000 and January

18, 2001. Any further amendments to the current NFC Investment Policy must be communicated by the NFC to the City and County.

8. That NFC agrees that all actions taken by the NFC related in any way to the government source monies contributed by the City and County to NFC shall be consistent with the NFC's conflict of interest policies to ensure that no NFC employee, volunteer, officer or director (or any of their family members or persons in relationships similar to family) receives any improper personal gain or benefit with respect to any agreement or activity funded in whole or in part with government source monies contributed by the City and the County to the NFC. Any amendments to the current NFC conflict of interest policies must be communicated by the NFC to the City and County.

9. That NFC agrees to expend these government source monies to support housing financing programs developed by NFC in cooperation with the City of Des Moines Neighborhood Revitalization Program including but not limited to:

a. Housing programs that use government source monies to provide principal or interest reduction payments that reduce the cost of:

1. Rehabilitation financing for owner-occupied, single-family structures;
2. Acquisition and rehabilitation financing for owner-occupied, single-family structures;
3. New construction financing for sale to low-to-moderate-income owner occupants or for sale to residents in designated or chartered neighborhoods that are low-to-moderate income areas.
4. Rehabilitation financing of existing investor-owned multi-family property for rent to low-to-moderate income occupants or for rent to residents in designated or chartered neighborhoods that are low-to-moderate income areas;
5. Acquisition and rehabilitation financing of "problem" single-family properties for occupancy by low-to-moderate-income owners pursuant to lease and/or lease-to-purchase

arrangements or for occupancy by residents in designated or chartered neighborhoods that are low-to-moderate income areas; and

6. Acquisition and rehabilitation financing of existing absentee-owned multi-family property for rent to low-to-moderate-income occupants or for rent to residents in designated or chartered neighborhoods that are low-to-moderate income areas.

b. The establishment of a loan guarantee fund or funds with flexible underwriting standards to support housing programs in which NFC is providing a loan at a greater risk than would be provided under normal underwriting standards.

10. That NFC covenants that:

a. No less than seventy-five percent (75%) of the government source monies shall be used to fund NFC housing programs which assist projects in designated neighborhoods consistent with neighborhood plans approved by the Des Moines City Council and the Polk County Board of Supervisors.

b. No more than twenty-five percent (25%) of the government source monies shall be used outside these designated neighborhoods and then only in conjunction with housing programs approved by the NFC Board of Directors and reviewed and approved by the City Council and Polk County Board of Supervisors.

c. NFC will submit NFC's annual budget, as well as all amendments thereto, to the City and the County within 30 days after adoption by the NFC's Board of Directors.

d. NFC will submit NFC's annual audited financial report, which will include an audit in accordance with OMB Circular A-133 when applicable, along with any additional audit communications addressed to NFC's management or NFC's Board of Directors, to the City and the County within 30-days after their issuance by the NFC's auditing firm.

e. NFC will submit quarterly reports of the NFC's programs and activities funded using government source monies paid to the NFC by the City and County pursuant to this Agreement to the City and County within forty-five (45) days following the end of each three month period ending on March 31, June 30, September 30 and December 31 of each year during the term of this Agreement.

f. NFC will submit, upon request, such evidence of NFC's management and other policies, procedures and practices to the City and the County as the City and County may reasonably request from time to time in order to document that the NFC's management and other policies, procedures and practices comply with protocols established by the City and the County for entities entering into 28E agreements with the City and the County.

g. All documents and information to be submitted by the NFC to the County pursuant to this Agreement will be submitted by the NFC to the attention of the County Board of Supervisors. All documents and information to be submitted by the NFC to the City pursuant to this Agreement will be submitted to the City Manager's Office.

11. That the City and County agree that NFC may, at its option, use interest earned on the government source monies to supplement NFC operating costs and expenses, provided that interest used for such purpose shall be paid back to the appropriate government account as NFC cash flow allows.

12. That the NFC covenants that no recoveries of government source monies shall be used for the payment of administrative or operating expenses of the corporation unless approved by the City Council and the Polk County Board of Supervisors.

13. That should any part of any provision contained in this agreement be rendered or declared invalid by reason of any existing or subsequently enacted legislation or by any decree of a court of competent jurisdiction, the remaining provisions shall nevertheless remain in full force and effect to the maximum extent permitted by law.

14. That this agreement may be terminated in part or in whole by mutual consent of the parties and that any and all government source monies which have not been expended by the date of such termination shall not be returned by the NFC to the City or the County, but shall remain in trust for use for the purposes of this Agreement upon designation of a qualified nonprofit administrator of programs created hereunder acceptable to all parties.

15. That this Agreement shall in all respects be construed in accordance with and governed by all applicable laws and regulations of the Federal and State government.

16. The term of this Agreement shall be for the three year period from July 1, 2007 through June 30, 2010.

17. That this Agreement constitutes the entire agreement among the parties and supersedes any and all prior agreements among them relating to the subject matter hereof and may not be amended except in writing signed by the parties and recorded as set out below.

18. That this Agreement shall be in full force and effect upon the happening of all of the following:

a. Its execution by the parties to this Agreement after acceptance and approval by the Des Moines City Council and the Board of Supervisors of Polk County.

b. An executed counterpart or photocopy of this Agreement is filed with the Secretary of State.

c. An executed counterpart of this Agreement being recorded in the office of the Recorder of Polk County.

IN WITNESS WHEREOF, the parties have executed this Agreement on the JUN day of MAY, 2007.

NEIGHBORHOOD FINANCE CORPORATION

By: Lanny J Benishek

Print Name: Lanny J. Benishek

Print Title: President

ATTEST:

Janice L. Corey
Secretary

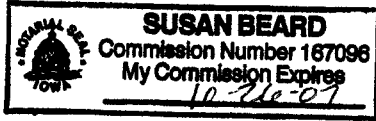
STATE OF IOWA:)

) ss:

COUNTY OF POLK)

On this JUN day of MAY, 2007, before me, a Notary Public in and for the State of Iowa, personally appeared Lanny J Benishek and Janice L Corey, to me personally known, who, being by me duly sworn, did say that

they are the President and Secretary, respectively, of the Neighborhood Finance Corporation, the corporation executing the within and foregoing instrument; that the seal affixed to the foregoing instrument is the seal of the corporation (or no seal has been procured by the corporation); that the instrument was signed (and sealed) on behalf of the corporation by authority of its Board of Directors; and that Larry J Benishuk and Janice Coney acknowledge the execution of the instrument to be the voluntary act and deed of the corporation, by it and by them voluntarily executed.



Susan Beard

Notary Public for the State of Iowa

CITY OF DES MOINES, IOWA

By: _____

T. M. Franklin Cownie, Mayor

ATTEST:

Diane Rauh, City Clerk

STATE OF IOWA:)
) ss:
COUNTY OF POLK)

On this _____ day of _____, 2007, before me, the undersigned, a Notary Public, personally appeared T. M. Franklin Cownie and Diane Rauh, to me personally known, who, being by me duly sworn, did state that they are the Mayor and City Clerk, respectively, of the City of Des Moines, Iowa; that the seal affixed to the foregoing instrument is the 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 the Resolution adopted by the City Council under Roll Call No. _____ on the _____ day of _____, 2007, and that Frank Cownie and Diane Rauh acknowledged the execution of the instrument to be the voluntary act and deed of the municipal corporation, by it voluntarily executed.

Notary Public in the State of Iowa

POLK COUNTY, IOWA

By: Tom Hockensmith
Tom Hockensmith, Chairman, Board of Supervisors

ATTEST:

Jamie Fitzgerald

Jamie Fitzgerald, Auditor, Polk County

STATE OF IOWA:)
) ss:
COUNTY OF POLK)

On this 22ND day of MAY, 2007, before me, the undersigned, a Notary Public, personally appeared Tom Hockensmith and Jamie Fitzgerald, to me personally known, who, being by me duly sworn, did state that they are the Chairman of the Board of Supervisors and the Auditor, respectively, of the Polk County, Iowa; that the seal affixed to the foregoing instrument is the seal of the corporation, and that the instrument was signed and sealed on behalf of the County by authority of its Board of Supervisors; and that Tom Hockensmith and Jamie Fitzgerald, acknowledged the execution of the instrument to be the voluntary act and deed of the municipal corporation, by it voluntarily executed.



Rebecca Dewey

Notary Public in the State of Iowa