

November 20, 2006

Date.....

APPROVAL OF JOINT PUBLIC SERVICE 28E AGREEMENT FOR SHARED PURCHASE AND USE OF A BEACH CLEANER

WHEREAS, under Chapter 28E of the 2005 Code of Iowa, the Polk County Conservation Board, the West Des Moines City Council and the Des Moines City Council, as public agencies, may enter into an agreement to cooperate in such a way as to provide joint services and facilities, and to cooperate in other ways to mutual advantage; and

WHEREAS, the Park and Recreation Departments for the City of Des Moines and West Des Moines and the Polk County Conservation Board have developed a "Joint Public Service 28E Agreement For The Shared Purchase and Use of a Beach Cleaner", a copy of which is on file in the City Clerk's Office; and

WHEREAS, under such proposed 28E Agreement, the cities of Des Moines and West Des Moines shall each be responsible to provide \$5,640.00 and the Polk County Conservation Board shall be responsible to provide \$2,2820.00 for the purchase of a beach cleaner, the three parties shall use such beach cleaner pursuant to an agreed upon schedule and shall jointly maintain the beach cleaner; and

WHEREAS, the 28E Agreement was approved by the West Des Moines City Council on November 6, 2006 and by Polk County Conservation Board on November 8, 2006; and

WHEREAS, the City Council finds that this proposed 28E Agreement is mutually beneficial to each party.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Des Moines, Iowa, that the above described Joint Public Service 28E Agreement For The Shared Purchase and Use of a Beach Cleaner by and between the City of Des Moines, the City of West Des Moines, and the Polk County Conservation Board is hereby approved and the Mayor is authorized and directed to sign such 28E Agreement.

(Council Communication No. 06- 741)

Moved by _____ to adopt.

APPROVED AS TO FORM:

Ann DiDonato
Ann DiDonato, Assistant City Attorney

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE				
COLEMAN				
HENSLEY				
KIERNAN				
MAHAFFEY				
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

**JOINT PUBLIC SERVICE 28E AGREEMENT
FOR THE SHARED PURCHASE AND USE OF
A BEACH CLEANER**

Between

**CITY OF DES MOINES ,IOWA,
CITY OF WEST DES MOINES, IOWA, and the
POLK COUNTY CONSERVATION BOARD**

THIS AGREEMENT is made and entered into this _____ day of _____, 2006 by and between the City of Des Moines, Iowa (hereinafter referred to as “Des Moines”) the City of West Des Moines, Iowa (hereinafter referred to as “West Des Moines”) (collectively as “the Cities”), and the Polk County Conservation Board (hereinafter referred to as “the Conservation Board”).

1. This Agreement is entered into pursuant to the Provisions of Chapter 28E, Code of Iowa (2005).

2. The term of this Agreement shall become effective upon acceptance by all parties and shall remain in effect until terminated by one or more of the parties.

3. The purpose of this Agreement is to establish the terms and conditions of the relationship between the City of Des Moines, Iowa, the City of West Ds Moines, Iowa, and the Polk County Conservation Board for the sharing of the purchase, use and maintenance of a beach Cleaner. This sharing of the Beach Cleaner shall be considered mutually beneficial to each party.

4. No separate legal or administrative entity is created by this Agreement.

5. The parties agree to purchase a Cherrington Model 740 Beach Cleaner, or a comparable beach cleaner as agreed to by all of the parties (hereinafter referred to as “the Beach Cleaner”), in the performance of this Agreement. The parties agree that the cost of the Beach Cleaner shall not exceed \$14,100.00. The parties agree to share the cost of the Beach Cleaner as follows:

Des Moines	40%	(\$5,640.00)
West Des Moines	40%	(\$5,640.00)
Conservation Board	20%	(\$2,820.00)

Upon termination of this Agreement, or upon mutual agreement of the parties, the Beach Cleaner will be sold by a public process, or disposed of at the least cost to the parties, and the proceeds from such sale, or cost of such disposal, shall be shared by the parties in the same percentage as sharing in the cost of the Beach Cleaner.

6. The parties agree that all costs associated with any damage or repair arising from the use of the Beach Cleaner, including parts replacement, and routine maintenance shall be shared by the parties in the same percentage as sharing in the cost of the Beach Cleaner, except that all costs associated with any damage or repair to the Beach Cleaner caused by a party's

equipment operator, and not due to normal wear and tear, will be the responsibility of that party to provide for its repair.

West Des Moines shall be responsible for providing for routine maintenance.

7. The parties agree to the following schedule of use of the Beach Cleaner:

West Des Moines	April – October	2 times per month
Des Moines	April – October	2 times per month
Conservation Board	May – September	1 time per month

West Des Moines will use the Beach Cleaner during the first and third week of each assigned month. Des Moines will use the Beach Cleaner during the second and fourth week of each assigned month. The Conservation Board will use the Beach Cleaner during the third week of each month. On the third week of each month the Conservation Board will use the Beach Cleaner Sunday, Monday, and Tuesday, and West Des Moines will use the Beach Cleaner Wednesday, Thursday, and Friday.

Each party is responsible for picking up the Beach Cleaner from the location where it was previously used. After each use during the scheduled months, the parties agree to store the Beach Cleaner in a secure and safe manner and so that the other parties have convenient access to it.

From November through March, the Beach Cleaner shall be stored by West Des Moines in the climate controlled maintenance building at 1421 Maple Street, West Des Moines.

8. It is agreed that the party using the Beach Cleaner will operate the Beach Cleaner with its own personnel. During the utilization of the Beach Cleaner, the equipment operator will remain at all times the employee of the party using the Beach Cleaner. Employees of each party shall remain the employees of their respective party while performing under this Agreement. Nothing in this Agreement shall be deemed to enhance or diminish those rights an employee may already have by virtue of collective bargaining agreement or rights afforded by civil service statutes pursuant to the Iowa Code. The parties agree that the operators of the Beach Cleaner shall be eligible to operate the equipment according to the manufacturer standards and generally accepted standards of safe conduct.

9. The City of Des Moines Park and Recreation Director, the City of West Des Moines Park and Recreation Director, and the Director of the Polk County Conservation Board shall administer performance of this Agreement. The party requesting use of the Beach Cleaner shall provide at least 48 hours advance notice to the party which is currently using or storing the beach Cleaner, to include at least one week day, prior to the anticipated use of the Beach Cleaner.

10. Any party may terminate this Agreement by sending written notice of termination, specifying the reasons for termination, at least ninety (90) days prior to the effective date of termination. Notice shall be sent to the governing body of the other parties at their principal place of doing business by registered mail. The termination of this Agreement shall not relieve any party to this Agreement of any obligations or liability arising during the term of this

Agreement.

11. In the event of a breach by Des Moines, West Des Moines, or the Conservation Board of this Agreement, that breach shall not be considered to affect any remaining terms or conditions of this Agreement. If any terms or conditions of this Agreement are held to be invalid or illegal, those remaining terms or conditions shall not be construed to be affected.


12. The parties agree to indemnify and hold the others harmless and to obtain and maintain in continuous effect during the term of this Agreement the insurance coverages as set forth in Attachment A. The parties agree that any occupational injury sustained by the equipment operator while the equipment is on loan to the requesting party shall remain the responsibility of the employee's employer.

13. This is the entire Agreement between the parties and it may be amended only upon the agreement of all parties and only in writing.

14. The parties shall approve the Agreement by resolution or motion of their respective Board or Council, which shall authorize the execution of the Agreement. It will then be filed in the Office of the Iowa Secretary of State and recorded with the Recorder of Polk County, by Polk County, in accordance with Chapter 28E of the Code of Iowa. The Agreement shall become effective when recorded and filed in the Polk County Recorder's Office and the Iowa Secretary of State and shall remain in effect unless terminated as provided herein.

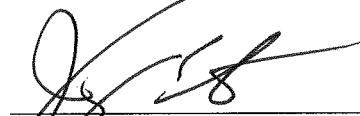
IN WITNESS THEREOF, Des Moines, West Des Moines, and the Conservation Board have caused this Agreement to be executed in four (4) separate counterparts, each of which shall be considered an original.

WEST DES MOINES, IOWA



Eugene T. Meyer, Mayor

ATTEST:



Jody E. Smith, City Clerk

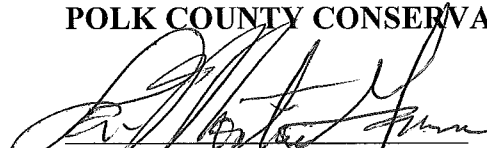
CITY OF DES MOINES, IOWA

T. M. Franklin Cownie, Mayor

ATTEST:


Diane Rauh, City Clerk

POLK COUNTY CONSERVATION BOARD



La-Montie Gause, Chairman

ATTEST:



Cynthia L. Lenz, Adm. Supervisor
Patricia Boddy

Approved As To Form:

Richard J. Scieszinski
Richard Scieszinski, West Des Moines City Attorney

Ann DiDonato
Ann DiDonato, Des Moines Assistant City Attorney

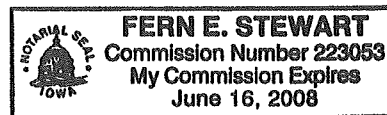
David Hibbard, Polk County Assistant County Attorney

STATE OF IOWA)
) ss:
COUNTY OF POLK)

Loretta J. Sieman

On this 6th day of November 2006, before me, a Notary Public in and for said County, personally appeared EUGENE T. MEYER and JODY E. SMITH to me personally known, and who being duly sworn, did say that they are the Mayor and City Clerk, respectively of the City of West Des Moines, Iowa, a Municipal Corporation, created and existing under the laws of the State of Iowa, and that the seal affixed to the foregoing instrument is the seal of said Municipal Corporation, and that said instrument was signed and sealed on behalf of said Municipal Corporation by authority and resolution of its City Council, as contained in the Resolution adopted under Roll Call No. 06- 439, and said Mayor and City Clerk acknowledged said instrument to be the free act and deed of said Municipal Corporation by it voluntarily executed.

Fern E Stewart
Notary Public for Iowa



STATE OF IOWA)
) ss:
COUNTY OF POLK)

On this _____ day of _____, 2006, before me, a Notary Public in and for said County, personally appeared T. M. FRANKLIN COWNIE and DIANE RAUH to me personally known, and who being duly sworn, did say that they are the Mayor and City Clerk, respectively of the City of Des Moines, Iowa, a Municipal Corporation, created and existing under the laws of the State of Iowa, and that the seal affixed to the foregoing instrument is the seal of said Municipal Corporation, and that said instrument was signed and sealed on behalf of said Municipal Corporation by authority and resolution of its City Council, as contained in the Resolution adopted under Roll Call No. 06- _____, and said Mayor and City Clerk acknowledged said instrument to be the free act and deed of said Municipal Corporation by it voluntarily executed.

Notary Public for Iowa

STATE OF IOWA)
) ss:
COUNTY OF POLK)

On this 8th day of November, 2006, before me, a Notary Public in and for the State of Iowa, personally appeared ~~WAYNE GRAHAM~~ and Patricia Boddy, to me personally known, and who being by me duly sworn, did say that they are the Chairman of the Polk County Conservation Board and the Director, respectively, that the instrument was signed by the authority of the Polk County Conservation Board under Resolution No. 11-8-06 246 of the Polk County Conservation Board on the 8th day of November, 2006 and PCCB Chairman and Director, acknowledged the execution of the instrument to be their voluntary act and deed and the voluntary act and deed of the County Conservation Board, by it and by them voluntarily executed.

Cynthia L. Long
Notary Public for Iowa

La-Montie Cause

12-28-06

ATTACHMENT A

STANDARD INSURANCE AND INDEMNIFICATION REQUIREMENTS

1. GENERAL

The City of West Des Moines, Iowa, the City of Des Moines, Iowa and the Polk County Conservation Board shall each purchase and maintain insurance to protect itself throughout the duration of this Agreement. The City of West Des Moines, Iowa, the City of Des Moines, Iowa and the Polk County Conservation Board may use a self-insurance/excess insurance program for meeting the insurance requirements below. Insurance shall be provided by an insurance company(ies), "admitted" and "nonadmitted" to do business in the State of Iowa, having no less than an A.M. Best Rating of "B+". All policies shall be written on a per occurrence basis, not a claims-made basis. The City of West Des Moines, Iowa, the City of Des Moines, Iowa and the Polk County Conservation Board shall submit Certificates of Insurance or Letters of Self-insurance/Excess Insurance to one another confirming coverage prior to Agreement execution or commencement of work and/or services included in this Agreement.

2. INSURANCE REQUIREMENTS

A. WORKER'S COMPENSATION & EMPLOYER'S LIABILITY INSURANCE: The City of West Des Moines, Iowa, the City of Des Moines, Iowa and the Polk County Conservation Board shall procure and maintain during the life of this Agreement, Worker's Compensation Insurance, including *Employer's Liability Coverage*, in accordance with all applicable statutes of the State of Iowa. The coverage limits shall include \$500,000 each accident for Bodily Injury by Accident, \$500,000 each accident for Bodily Injury by Disease, and \$500,000 policy limit for Bodily Injury by Disease.

This requirement is waived if, under the law as stated in Chapter 85 of the Code of Iowa, any of the above is not required to carry such coverage or has been approved by the State of Iowa's Insurance Commissioner's Office to self-insure this coverage.

B. COMMERCIAL GENERAL LIABILITY INSURANCE: The City of West Des Moines, Iowa, the City of Des Moines, Iowa and the Polk County Conservation Board shall procure and maintain during the life of this Agreement, Commercial General Liability insurance on a per occurrence basis with limits of liability not less than \$1,000,000 per occurrence and \$2,000,000 aggregate combined single limit, Personal Injury, Bodily Injury and Property Damage. Coverage shall include the following extensions: (a) Contractual Liability, (b) Premises and Operations, (c) Products and Completed Operations, (d) Independent Contractors Coverage, (e) Personal and Advertising Injury and (f) deletion of Explosion, Collapse and Underground (XCU), where applicable.

Coverage shall be no less comprehensive and no more restrictive than the coverage provided by a standard form Commercial General Liability Policy (ISO CG 0001, Ed 07/98 with standard exclusions "a" through "o" or any subsequent ISO equivalent or a non-ISO equivalent form).

C. AUTOMOBILE LIABILITY INSURANCE: The City of West Des Moines, Iowa, the City of Des Moines, Iowa and the Polk County Conservation Board shall procure and maintain during the life of this Agreement, Automobile Liability Insurance with limits of liability of not less than \$1,000,000 per occurrence combined single limit including Bodily Injury and Property Damage. Coverage shall include all owned vehicles, all non-owned vehicles, and all hired vehicles.

D. UMBRELLA/EXCESS INSURANCE: The General Liability and Automobile Liability Insurance requirements above may be satisfied with a combination of primary and Umbrella/Excess Insurance. The Umbrella/Excess Insurance shall also be written on a per occurrence basis.

E. SUBCONTRACTORS: The City of West Des Moines, Iowa, the City of Des Moines, Iowa and the Polk County Conservation Board shall require that any of its agents and subcontractors who perform work and/or services pursuant to the provisions of this Agreement meet the same insurance requirements as are required of the Party. The option of self-insurance is not extended to subcontractors.

H. PROOF OF INSURANCE: Each Party shall provide to all other Parties to this Agreement either a Certificate(s) of Insurance utilizing the latest version of the ACORD form or a Letter of Self-insurance/Excess Insurance evidencing all required insurance coverage as provided in A through D. The Certificate(s) of Insurance or Letter of Self-Insurance shall specify under "Description of Operations/ Locations/ Vehicle/Special Items": The title of the Agreement.

3. WAIVER OF SUBROGATION

A. WAIVER OF SUBROGATION: To the extent permitted by law, the City of West Des Moines, Iowa, the City of Des Moines, Iowa and the Polk County Conservation Board hereby release one another, their respective elected and appointed officials, its agents, employees and volunteers and other working on their behalf, from and against any and all liability or responsibility to each other or anyone claiming through or under the others by way of subrogation or otherwise, for any loss or damage to property caused by fire or any other casualty and for any loss due to occupational injury. This provision shall be applicable and in full force and effect only with respect to loss or damage occurring during the time of this Agreement. The policies of insurance of each shall contain a clause or endorsement to the effect that such release shall not adversely affect or impair such policies or prejudice the right of each to recover thereunder.