

Date..... March 26, 2012

**APPROVAL OF EXTENSION OF CHAPTER 28E AGREEMENT BETWEEN  
NEIGHBORHOOD DEVELOPMENT CORPORATION AND CITY OF DES MOINES**

WHEREAS, a central purpose of the Neighborhood Revitalization Program was the creation of the Neighborhood Development Corporation (NDC) which provides the necessary redevelopment programs to implement a variety of neighborhood commercial revitalization programs; and

WHEREAS, NDC is a non-profit corporation established under the Iowa Non-Profit Corporation Act, Code of Iowa Chapter 504A to plan, coordinate and implement public and private redevelopment efforts within low and moderate income census tracts in the City of Des Moines and elsewhere in Polk County, Iowa; and

WHEREAS on August 17, 1998 by Roll Call 98-2910 the City Council approved an Intergovernmental Agreement pursuant to Code of Iowa Chapter 28E with NDC and Polk County to provide funding for the NDC's redevelopment efforts in low and moderate income census tracts; and

WHEREAS, on December 16, 2002 the City Council was advised that Polk County chose to enter into a separate 28E agreement with the NDC for a two-year period; and

WHEREAS, on December 16, 2002 by Roll Call 02-2978 the City Council entered into a revised Intergovernmental 28E Agreement with NDC to commit \$1,000,000 annually to extend the period through September 30, 2007; and

WHEREAS, on December 17, 2007 by Roll Call No. 07-2422 the City Council approved a new five-year 28E Agreement which extended the cooperative effort between the NDC and the City of Des Moines for the period from December 1, 2007 to November 30, 2012; and

WHEREAS, NDC and the City of Des Moines wish to extend their 28E Agreement for another five-year period to and including November 30, 2017, while keeping the substantive terms of the Agreement, attached hereto as Exhibit A, the same; and

WHEREAS, the Agreement provides, inter alia, that the City shall contribute \$1,000,000 annually to NDC for the term of the Agreement to be used for redevelopment efforts within areas designated by the United States Department of Housing and Urban Development as low and moderate income census areas within Des Moines;

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NOW THEREFORE, BE IT RESOLVED, by the City Council of the City of Des Moines, Iowa, that the attached Extension of the 28E Agreement with NDC 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:

1. Upon receipt of the executed Agreement from the NDC, the City Clerk is directed to file executed counterparts of the Agreement with the Secretary of State and with the Office of the Polk County Recorder.
2. Upon final review and determination by the City Legal and Community Development Departments that all requirements contained in the Agreement are satisfied, the Community Development Director is authorized to execute on behalf of the City any other document necessary to implement and fund the Agreement.

(Council Communication No. 12- **146** )

MOVED by \_\_\_\_\_ to adopt.

FORM APPROVED:

  
 Michael F. Kelley  
 Assistant City Attorney

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE				
COLEMAN				
GRIESS				
HENSLEY				
MAHAFFEY				
MEYER				
MOORE				
TOTAL				

**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.

MOTION CARRIED APPROVED

\_\_\_\_\_  
 Mayor

\_\_\_\_\_  
 City Clerk

Date \_\_\_\_\_

Agenda Item 49

Roll Call # \_\_\_\_\_

**EXTENSION OF  
28E AGREEMENT BETWEEN  
NEIGHBORHOOD DEVELOPMENT CORPORATION  
AND THE CITY OF DES MOINES, IOWA**

THIS 28E AGREEMENT ("Agreement") is made and entered into as of the 16 day of MARCH, 2012 by and between the City of Des Moines, Iowa, a municipal corporation (hereinafter referred to as "City") and Neighborhood Development Corporation, 210 Des Moines Street, Des Moines, Iowa 50309 (hereinafter referred to as "NDC") under and in accordance with Chapter 28E, Code of Iowa, 2011.

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

WHEREAS, NDC is a non-profit corporation established under the Iowa Non-Profit Corporation Act, Chapter 504A of the Iowa Code; and

WHEREAS, the NDC was incorporated on February 17, 1999 to plan, coordinate and implement public and private redevelopment efforts within Chartered and Designated neighborhoods as approved by the City of Des Moines City Council in the City of Des Moines, Iowa; and

WHEREAS, this Agreement shall extend a 28E Agreement executed by the parties on December 17, 2007 by the parties; 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. The City shall contribute \$1,000,000.00 annually for the five-year term of this Agreement exclusively for the actual project costs of redevelopment efforts within areas designated by the Des Moines City Council as Chartered and Designated Neighborhoods in Des Moines.

NDC specifically agrees that a minimum of 80% of all annual Government source funding must be obligated pursuant to valid contracts, before additional Government source funds may be contributed.

2. NDC may expend from the City's annual contribution an amount not to exceed \$100,000 for NDC operating expenses.
3. During the term of this Agreement NDC may expend an amount not to exceed \$250,000 from the City's contribution to pay consultants for studies and plans which will advance NDC's efforts to redevelop property in Chartered and Designated Neighborhoods in Des Moines.

4. NDC covenants that it will use its best efforts to take no action to cause any general obligation bonds issued by the City for the purpose of funding the NDC's activities to be classified as Private Activity Bonds under Section 141 of the Internal Revenue Code and regulations issued thereunder.
5. NDC further covenants as follows:
  - a. If the City determines to contribute proceeds of tax exempt bonds to NDC, NDC shall determine if the appropriate Tax Exemption Certificate is not such as to impair NDC's ability to support the programs referred in paragraph 6 herein. If the NDC accepts the contribution of bond proceeds, it will conform its operations and policies with respect to government source monies to the use limitations contained in the Tax Exemption Certificate issued with respect to such bonds for so long as any of the bonds remain outstanding.
  - b. It will also abide by any advice of Amendment to the City Tax Exemption Certificate as communicated from time to time by the City Attorney of the City with respect to the City, as may be necessary to maintain the tax exempt status of the bonds.
  - c. It will maintain accurate records of the monies received from the City including the types, amounts and yields of all investments of unexpended government source monies and earnings thereon in order to permit the City, 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.
6. NDC shall place all government source monies contributed by the City to the NDC in segregated accounts. The NDC further agrees that all of the NDC's investments of government source monies shall be consistent with the NDC's Investment Policy. Any further amendments to the current NDC Investment Policy must be communicated by the NDC to the City.
7. NDC agrees to implement redevelopment projects designed to assist in the creation of housing and small business and employment opportunities in Chartered and Designated Neighborhoods. Such activities may include, without limitation, the following:
  - a. The acquisition of commercial and residential properties for future development consistent with government-approved development plans.
  - b. The purchasing, leasing or selling of real property located in Chartered and Designated Neighborhoods in the City of Des Moines, Iowa.

- c. Participating in or sponsoring real estate development projects.
- d. Entering into lawful contracts and agreements for the redevelopment of commercial and residential properties.
- e. Entering into other cooperative efforts with public and private entities to support governmental unit revitalization and redevelopment efforts.
- f. It is anticipated that NDC will obtain other financing to support the above efforts, above and beyond those government source monies contributed by the City for its operating budget, including without limitation the following sources:

- Commercial banks.
- Equity funds.
- County funds.
- Other City funds.
- Revenue bonds.
- Polk County Housing Trust Fund.
- Private funds.
- Neighborhood Finance Corporation loan funds.
- State grants.
- Tax increment financing.
- Income generated from commercial property.

- 8. The City agrees that NDC may use both the principal and interest earned on the government source monies contributed to the NDC by the City pursuant to this Agreement to fund redevelopment programs only developed by the NDC.
- 9. NDC agrees that all actions taken by the NDC related in any way to the government source monies contributed by the City to NDC shall be consistent with the NDC's Procurement Policy in order to ensure that no NDC employee, volunteer, officer, director, Board Member (or any of their family members) 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 to the NDC. Any amendments to the current NDC Procurement Policy must be communicated by the NDC to the City.
- 10. NDC will submit NDC's annual budget, as well as all amendments thereto, and an annual work plan to the City within 30 days after adoption by the NDC's Board of Directors.
- 11. NDC will submit NDC'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 NDC's management or NDC's

Board of Directors, to the City within thirty (30) days after its issuance by the NDC's auditing firm.

12. NDC will submit to the City quarterly reports of the NDC's programs and activities funded using government source monies paid to NDC by the City pursuant to this Agreement 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.
13. NDC will submit, upon request, such evidence of NDC's management and other policies, procedures, and practices to the City as the City may reasonably request from time to time in order to document that the NDC's management and other policies, procedures and practices comply with the management protocol established by the City dated May 28, 2007 for entities entering into 28E agreements with the City. A copy of this protocol is attached hereto as Exhibit A and is incorporated herein by this reference as if set out in full.
14. All documents and information to be submitted by the NDC to the City pursuant to this Agreement shall be submitted to the City Manager's Office.
15. 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.
16. This Agreement may be terminated upon written notice from the City to NDC postmarked on or before July 1 of each succeeding year during the term of this Agreement, such termination to take effect on the following January 1. Any and all government source monies which have not been expended by the date of such termination shall not be returned by the NDC to the City, but shall remain in trust for use for the purposes of this Agreement upon designation of a qualified non-profit administrator of programs created hereunder.
17. This Agreement shall in all respects be construed in accordance with and governed by all applicable laws and regulations of the Federal and Iowa governments.
18. Subject to the provisions contained in paragraph 16, the duration of this Agreement shall be from the date this agreement is executed by the parties and is accepted and approved by the Des Moines City Council, through November 30, 2017, unless extended for a term certain by all parties.
19. That this Agreement constitutes the entire agreement between the parties and supersedes any and all prior agreements between 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.

20. 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.
- 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 \_\_\_\_ day of \_\_\_\_\_, 2012.


CITY OF DES MOINES, IOWA

ATTEST:

\_\_\_\_\_  
T.M. Franklin Cownie  
Mayor

\_\_\_\_\_  
Diane Rauh  
City Clerk

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Michael F. Kelley  
Assistant City Attorney

STATE OF IOWA    )  
                                  ) ss:  
COUNTY OF POLK    )

On this \_\_\_\_ day of \_\_\_\_\_, 2012, before me, the undersigned, a Notary Public in the State of Iowa, personally appeared T.M. FRANKLIN COWNIE and DIANE RAUH to me personally known, and who, being by me duly sworn did state that they are the Mayor and City Clerk, respectively, of City of Des Moines, Iowa, a municipal corporation; that the seal affixed to the foregoing instrument is the corporate seal of the corporation; that the instrument was signed on behalf of City of Des Moines, Iowa, by authority of its City Council, as contained in the Resolution adopted by City Council under Roll Call No. 12-\_\_\_\_\_ of City Council on the \_\_\_\_ day of \_\_\_\_\_, 2012, and that T.M. FRANKLIN COWNIE and DIANE RAUH acknowledged the execution of the instrument to be the voluntary act and deed of City of Des Moines, Iowa, by it and by them voluntarily executed.

\_\_\_\_\_  
Notary Public in and for the State of Iowa

NEIGHBORHOOD DEVELOPMENT

ATTEST:

CORPORATION

Matt  
\_\_\_\_\_  
President

Chris  
\_\_\_\_\_  
Secretary

STATE OF IOWA )  
                          ) ss:  
COUNTY OF POLK )

On this 16<sup>th</sup> day of March, 2012 before me, the undersigned, a Notary Public in and for the State of Iowa, personally appeared Matt Anderson and Chris Johansen to me personally known, who, being by me duly sworn, did say that they are the President and Secretary of Neighborhood Development Corporation, the corporation executing the within and foregoing instrument, that (no seal has been procured by the) (the seal affixed thereto is the seal of the) corporation; that the instrument was signed (and sealed) on behalf of the corporation by authority of its Board of Directors; and that Matt Anderson and Chris Johansen acknowledged the execution of the instrument to be the voluntary act and deed of the corporation, by it and by them voluntarily executed.

Abbey Gilroy  
\_\_\_\_\_  
Notary Public in and for the State of Iowa

