

Date October 8, 2018

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

WHEREAS, on March 7, 2016 by Roll Call 16-0415 the Des Moines City Council approved a 28E agreement with governmental agencies represented on the Metropolitan Advisory Council (MAC) to supply funding in support of Homeland Security services to be provided by the City of Des Moines in conjunction with Polk County as defined in the 28E agreement; and

WHEREAS, the Homeland Security services provide public safety assistance to member communities for natural and manmade disasters, potential terrorist activity, evidence collection, crime scene analysis, as well as threats from weapons of mass destruction; and

WHEREAS, the represented governmental agencies desire to continue the agreement through June 30, 2023 with annual funding of a designated amount per entity as agreed to by the City of Des Moines and members of the Homeland Security MAC;

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Des Moines, Iowa, that the Intergovernmental 28E Agreement on file in the Office of the City Clerk between the cities of Des Moines, Altoona, Bondurant, Carlisle, Grimes, Norwalk, Pleasant Hill, Polk City, Johnston, Mitchellville, West Des Moines and Windsor Heights along with the county of Polk in Iowa for funding in support of the Homeland Security services provided 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 with the City Clerk directed to attest to his signature.

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

(Council Communication No. 18-505)

★ Roll Call Number

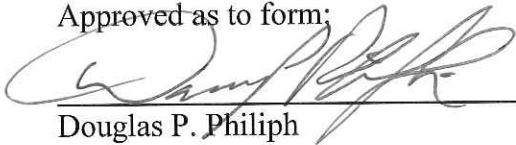
Agenda Item Number

38

Date October 8, 2018

Moved by _____ to adopt

Approved as to form:



Douglas P. Philip
Assistant City Attorney

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE				
BOSEN				
COLEMAN				
GATTO				
GRAY				
MANDELBAUM				
WESTERGAARD				
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, BONDURANT, CARLISLE, GRIMES, NORWALK, PLEASANT
HILL, POLK CITY, JOHNSTON, MITCHELLVILLE, WEST DES MOINES
WINDSOR HEIGHTS AND THE COUNTY OF POLK
FOR THE PARTIAL FUNDING 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, Bondurant, Carlisle, Grimes, Norwalk, Pleasant Hill, Polk City, Johnston, Mitchellville, West Des Moines, Windsor Heights and the County of Polk (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 maintain 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 (Special Tactics and Response) Unit which provides a Type II Weapons of Mass Destruction (WMD) and Chemical, Biological, Radiological, Nuclear, and Explosive (CBRNE) Tactical Response Team¹; and
- Des Moines Bomb Squad providing Type I bomb mitigation response²; and
- Des Moines Police Department will also provide full-time personnel trained in the collection and preservation of evidence located in hazardous (CBRNE) environments for contaminated crime scene processing; and

¹ Typed Resource Definitions: Law Enforcement and Security Resources; SWAT/Tactical Teams. FEMA 508-6 (July 2007). U.S. Department of Homeland Security.

² Typed Resource Definitions: Law Enforcement and Security Resources; Bomb Squad/Explosives Team. FEMA 508-6 (July 2007). U.S. Department of Homeland Security.

- The Des Moines Police Department has other capabilities not specified nor guaranteed under this agreement, such as; Incident Command support; High risk tactical warrant service; Crisis Negotiation; Dive Team, Planning & Training; Tactical Surveillance; Criminal Polygraph Exams, Intelligence and Investigative Support; etc. These capabilities may be requested but are at the discretion of the Des Moines Police Department and dependent on availability of personnel at time of request.

WHEREAS; the Parties desire to provide the necessary funding to maintain the capabilities of the Des Moines WMD/CBRNE Tactical Response Team and the Des Moines Bomb Squad 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 a commander and full time Des Moines Police Officers and a part-time Polk County Sheriff's Deputy. 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 comprised of a commander and Des Moines Police Officers trained as Bomb Technicians and Des Moines Explosive Detection K9 teams. Bomb Technicians 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. Des Moines Police Department: Full-time Des Moines Police personnel trained in the collection and preservation of evidence found in hazardous (CBRNE) 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 which may necessitate the 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 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.³
- 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

³ All responding and supporting agencies are expected to operate under the guiding principles of the National Incident Management System (NIMS) and the Incident Command System (ICS).

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.** The City of Des Moines and Polk County have committed annual funding in fiscal years 2019 through 2023 to maintain the enhanced capabilities of Homeland Security Services for the metropolitan area. Funding is needed from the other Parties in each fiscal year to maintain the enhanced capabilities of the Homeland Security Services response to a minimally acceptable level for the Parties herein.

- A. To maintain 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 2019 through 2023. The amounts listed in Exhibit A shall remain fixed for the duration of this agreement and are not subject to adjustment without majority approval of the parties of this agreement.
- 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 will be provided at the beginning of each fiscal year as outlined in Section V of this agreement.
- C. Each Party may voluntarily contribute a qualified peace officer(s) to serve and train with the Metro STAR Team. Contribution of team member(s) will not preclude any Parties annual fee payment set forth in Exhibit “A”.

V. **Reporting.**

- A. The City of Des Moines will provide an annual report on Homeland Security Services to each Party 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 calendar year and goals and objectives for the next calendar year,
 2. Individual and team training over the calendar year (courses, location, number of personnel trained, hours of training),
 3. Training exercises performed during the calendar year,
 4. Response dates and a synopsis of the event responded to,
 5. Equipment received or retired during the calendar year, and
 6. Budget showing expenditures made during the calendar year and proposed expenditures for the next calendar 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.

VI. **Employee relationship.**

- A. 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.
- B. If a Party desires to have an employee assigned as part of the Homeland Security Services, a separate Memorandum Of Understanding (MOU) would need to be executed, to define the responsibilities of the involved Parties.

- 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, Bondurant, Carlisle, Grimes, Johnston, Norwalk, Pleasant Hill, Polk City, 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 is a political subdivision of the State of Iowa and is a public agency 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 Office of the Secretary of State as required under Section 28E.8, Code of Iowa.

G. The duration of this Agreement shall extend for a term beginning July 1, 2018 and ending on June 30, 2023. 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 and Warren Counties.

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

EXHIBIT A
FY 2019 through FY 2023

Cities	Annual Fee	5 Year Commitment
Altoona	\$ 17,598	\$ 87,990
Ankeny	\$ 49,940	\$ 249,700
Bondurant	\$ 4,026	\$ 20,130
Carlisle	\$ 4,567	\$ 22,835
Clive	\$ 25,372	\$ 126,860
DeSoto	\$ 1,843	\$ 9,215
Grimes	\$ 11,677	\$ 58,385
Indianola	\$ 17,685	\$ 88,425
Johnston	\$ 23,937	\$ 119,685
Mitchellville	\$ 3,011	\$ 15,055
Norwalk	\$ 11,511	\$ 57,555
Pleasant Hill	\$ 11,642	\$ 58,210
Polk City	\$ 4,102	\$ 20,510
Urbandale	\$ 54,070	\$ 270,350
Waukee	\$ 14,041	\$ 70,205
West Des Moines	\$ 81,243	\$ 406,215
Windsor Heights	\$ 6,440	\$ 32,200