



Roll Call Number

Agenda Item Number

65

Date September 9, 2019

APPROVAL OF 28E AGREEMENT BETWEEN THE CITY OF DES MOINES AND THE DES MOINES INDEPENDENT COMMUNITY SCHOOL DISTRICT TO PROVIDE FUELING, MAINTENANCE AND REPAIR SERVICES FOR SCHOOL DISTRICT VEHICLES AND EQUIPMENT

WHEREAS, the Des Moines Independent Community School District ("School District") has the need to fuel, maintain and repair its vehicle and equipment fleet and the City has the ability to provide fueling, maintenance and repair services to the School District at its fueling and maintenance facilities with no interruption to the fueling and maintenance of City vehicles; and

WHEREAS, it is in the best interests of the City and the School District for the City to provide fueling, maintenance and repair services to the School District in accordance with the terms and conditions of the 28E Agreement between the City and School District on file in the Office of the City Clerk.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Des Moines, Iowa, that the 28E Agreement between the City and School District providing fueling, maintenance and repair services on file in the Office of the City Clerk is hereby approved and the Mayor is hereby authorized and directed to execute the 28E Agreement on behalf of the City and the City Clerk is directed to attest to the Mayor's signature and file the executed 28E Agreement with the Secretary of State.

BE IT FURTHER RESOLVED that the City Manager or his designee is authorized and directed to jointly administer the terms of the 28E Agreement with the School District Superintendent or designee.

(Council Communication No. 19- 393 Attached)

APPROVED AS TO FORM: Moved by \_\_\_\_\_ to adopt.

Lawrence R. McDowell
Deputy City Attorney

G:\APPDATA\LEGAL\LAWYERS\LRMRC\DM School District - Shared Fueling Agreement - 8-5-19.docx

Table with 5 columns: COUNCIL ACTION, YEAS, NAYS, PASS, ABSENT. Rows include COWNIE, BOESEN, COLEMAN, GATTO, GRAY, MANDELBAUM, WESTERGAARD, and TOTAL. Includes MOTION CARRIED and APPROVED status.

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.

Mayor

City Clerk



65

## 28E AGREEMENT

**THIS 28E AGREEMENT** (this "Agreement") made and entered into this 13<sup>th</sup> day of August 2019, by and between the City of Des Moines, Iowa (the "City") and the Des Moines Independent Community School District (the "School District").

**WHEREAS**, the School District is a School corporation organized and existing under the laws of the State of Iowa and is a public agency as defined in Iowa Code Chapter 28E; and

**WHEREAS**, the City is a municipal corporation organized and existing under the laws of the State of Iowa and is a public agency as defined by Iowa Code Chapter 28E; and

**WHEREAS**, the School District owns a vehicle and equipment fleet (the "Fleet") which it needs to fuel; and

**WHEREAS**, the School District's Fleet is also in need of regular maintenance and repairs services; and

**WHEREAS**, the City operates a fuel storage and dispensing facility located at 113 S.E. 5<sup>th</sup> Street, Des Moines, Iowa (the "Fuel Facility") and has the capability to store, manage, and dispense fuel for the Fleet with no interruption to the fueling of City vehicles; and

**WHEREAS**, the City has the facilities and capability to perform repair and maintenance services on the Fleet; and

**WHEREAS**, a public agency may enter into an agreement with another public agency for joint and cooperative action pursuant to Iowa Code Chapter 28E; and

**WHEREAS**, the School District and City find such joint or cooperative action with respect to the fueling, maintenance, and repair of the School District's Fleet will be to their mutual advantage, and School District and City believe an agreement pursuant to Iowa Code Chapter 28E should be entered into for this purpose.

**NOW, THEREFORE**, the parties agree as follows:

- 1. Term.** The term of this Agreement shall commence on the date of this Agreement and shall continue unless and until terminated in accordance with Section 6 of this Agreement. This Agreement shall be promptly filed with the Secretary of State in accordance with Iowa code Section 28E.8.
- 2. Governance.** No separate legal or administrative entity or joint board shall be created by this Agreement. The School District Superintendent or designee and the City Manager or designee shall be designated as the joint administrators of the Agreement for purposes of Iowa Code Chapter 28E.



3. **Purpose.** The purpose of this Agreement is to facilitate the joint exercise of the parties' respective powers to fuel, maintain, and repair the School District's Fleet, subject to the terms and conditions set forth herein.
4. **Financing.**
  - a. **Facility Cost.** The City shall be responsible for all costs and expenses associated with the operation, maintenance, and repair of its Fuel Facility and vehicle repair facility and equipment.
  - b. **Fuel Cost & Fee.** The School District shall be responsible for reimbursing the City the actual cost paid by the City for the fuel used to fuel School District vehicles at the City's Fuel Facility or alternative City fueling sites ("Fuel Cost"). The School District shall also pay to the City an additional ten cents (\$.10) for each gallon of fuel dispensed to the School District Fleet as reimbursement of the City's operating and administrative expenses for fuel storage, management, and dispensing (the "Fueling Fee"). The Fueling Fee may be increased no more than once per fiscal year at the discretion of the City to reflect a change in the overall operating and administrative costs to the City. The City will provide twenty-(20) day's prior written notice to the School District of any increase to the Fueling Fee.
  - c. **Maintenance & Repair Services Fees:** The School District shall pay the City for vehicle maintenance and repair services performed by the City in accordance with an agreed upon schedule of fees (the "Service Fee Schedule"). The initial Service Fee Schedule for the remainder of fiscal year 2019-20 is set out in Attachment B. On or before April 1 of each year, the City shall present the School District with a new proposed Service Fee Schedule for maintenance and repair services for the next fiscal year to go into effect on July 1. On or before June 1 of each year, the School District shall confirm to the City in writing its acceptance of the new Service Fee Schedule or its intent to discontinue Fleet maintenance and repair services with the City. Any Service Fee Schedule accepted by the School District shall remain in effect for the entire fiscal year (July 1 to June 30 of the next calendar year) without adjustment.
  - d. **Invoicing:** The City shall invoice the School District monthly for the fuel services and the vehicle maintenance and repair services.
    - i. Each invoice shall include a line item showing the Fuel Cost and Fueling Fee charged for that month.
    - ii. Each invoice shall include a line item showing all charges for issuance or replacement of fuel keys to School District personnel.
    - iii. Each invoice shall include a line item showing the total service fees owed for maintenance and repair services.
    - iv. Each invoice shall include a line item showing the monthly allocation of the garage liability insurance premium in accordance with Section 8 – Insurance.
    - v. Attached to each invoice shall be an itemized invoice for each repair or maintenance service performed which shows, at a minimum:



1. The Vehicle Number.
  2. The Odometer & hour meter reading at the time of service.
  3. A statement of work or repair service performed.
  4. The cost of parts and materials consumed in the maintenance or repair service.
  5. The number of hours required to perform the maintenance or repair service.
  6. The next maintenance date or mileage reading the vehicle should be serviced at.
- e. **Payment.** The School District shall pay by electronic funds transfer to the City the total amount set forth in the City invoice within fifteen (15) business days of receipt of such invoice.
- f. **Electronic Fueling Records.** Concurrently with the issuance of the monthly invoice, the City will provide to the School District an electronic record of each fueling event of the School District Fleet for the invoiced month.
5. **Ongoing Responsibilities of the Parties.** The parties shall have the following ongoing rights and responsibilities:
- a. **Maintenance of Fuel Facility.** The City shall operate, maintain and repair the Fuel Facility.
  - b. **Access to Fuel Facility.** The City shall permit the School District access to the Fuel Facility for the purpose of fueling the School District Fleet for the exclusive use of the School District. The City shall provide the School District with keys, codes, or access cards sufficient to allow authorized School District personnel access to the Fuel Facility for such purpose. The School District shall provide the City with a current list of Fleet vehicles and equipment that will use the School District's fuel and provide all other vehicle and equipment information requested by the City. The City will then issue a fuel key for each School District Fleet vehicle or equipment item that will track dispensing of the School District's fuel. The School District shall be responsible for the costs to issue the fuel keys as well as the costs to replace any lost or damaged fuel keys. The School District may access the Fuel Facility 24 hours a day, 7 days a week, so long as such access does not prohibit the City's use, operation and maintenance of the Fuel Facility. In the event the Fuel Facility is unavailable at any time for provision of the City fuel services, the City at its discretion may provide such services to the School District at alternative City fueling sites. The School District shall maintain sufficient records to demonstrate that all fuel was used exclusively for authorized School District purposes and the School District shall provide such records to the City upon request.



- c. **Ordering of Fuel.** The City shall order and pay for all fuel dispensed from the Fuel Facility.
  - d. **Security and Emergency Notification.** The City is ultimately responsible for the maintenance and security of the Fuel Facility. However, in the event of an emergency at the Fuel Facility while School District's authorized personnel are present, the School District shall notify the City by phone at (515) 283-4950 or other personal contact. Emergencies include, but are not limited to, leaks, inoperative or damaged equipment, spills of one or more gallons of fuel, security breaches, the presence of any person or persons not authorized to be at the Fuel Facility, or fires. The School District shall be responsible for the costs incurred by the City for cleanup and repair of damages to the extent caused by the School District.
  - e. **Maintenance and Repair Services.** The City shall perform all inspections, maintenance, and repairs requested by the School District on and to the Fleet vehicles designated by the School District for the public purposes of the School District. The repairs set out in Attachment A ("Minor Repairs – Blanket Approval") may be performed by the City without the requirement of any request, additional communication or approval from the School District. The City and School District agree to jointly formulate written operating procedures for the maintenance and repair services to School District Fleet vehicles. The City will apply the same work standards to the School District's Fleet vehicles as the City applies to similar work done on its own vehicles. The City shall instruct its personnel to act diligently to complete all repair work in a timely fashion. The City represents and warrants that all work on School District Fleet vehicles will be performed by competent mechanics.
6. **Termination.** This Agreement may be terminated at any time by either party upon delivery of written notice to the other party of its intent to terminate this Agreement. Said termination shall occur thirty (30) days after delivery of such notice of termination. The School District agrees to compensate the City for all costs for City services provided to the School District and for related costs and expenses incurred by the City under this Agreement to the effective date of such termination.
7. **Indemnification.** Except to the extent such claims, demands, suits, damages or losses are covered by insurance purchased in accordance with Section 8 below, or to the extent they arise out of the City's gross negligence or willful misconduct, and to the fullest extent permitted by law, the School District agrees to defend, pay on behalf of, indemnify, and hold harmless the City against any and all claims, demands, suits, damages or losses, together with any and all outlay and expense connected therewith including, but not limited to, attorneys' fees and court costs that may be asserted or claimed against, recovered from or suffered by the City by reason of any injury or loss including, but not limited to, personal injury, bodily injury including death, property damage including loss of use thereof, and economic damages that arise out of or are in any way connected or associated with maintenance, repair or fueling services provided under this Agreement.



## **7. Indemnification.**

The School District hereby authorizes appropriate City employees to operate School District vehicles on streets, highways or elsewhere for the purpose of testing and/or inspecting said vehicles in determining necessary repairs or completeness of said repairs. The School District agrees to hold the City harmless for damages caused to School District property during said tests and/or inspections, except to the extent caused by the City's negligence. For third-party claims arising from the negligent use of School District vehicles by City employees, to the fullest extent permitted by law, the City agrees to defend, pay on behalf of, and indemnify the School District against any and all claims, demands, suits, damages or losses, together with any and all outlay and expense connected therewith.

The School District will hold the City harmless for any damage to School District's vehicles while in City custody, except to the extent caused by the City's sole negligence. Further, the School District will hold the City harmless for any loss of, or damage to, personal property left in School District vehicles while in City custody.

The School District expressly assumes responsibility for any and all damage caused to City property arising out of the School District's activities on, or use of, City property.

Neither the City nor School District shall be liable to the other for lost profits, loss of use or for any indirect, incidental, consequential, special, punitive or exemplary damages in connection with services provided under this Agreement.

The School District expressly assumes responsibility for the payment or reimbursement of any and all federal or state taxes as may be determined to be owed by the appropriate taxing authority with respect to any fueling, maintenance or repair sales or services provided to the School District's Fleet.

- 8. Insurance.** The City shall purchase and maintain, at School District expense, Garage Liability insurance with per occurrence and aggregate coverage levels mutually agreed to by the City and School District. Said insurance will include appropriate endorsements so that it applies to liability arising from improper or faulty repairs performed by City personnel on School District vehicles. The annual cost of insurance shall be prorated monthly and allocated to the School District as part of City's monthly invoice. If the City performs maintenance and repair work for any entity other than the City and School District, the cost allocation to the School District will be adjusted based on City charges to the School District as a percentage of total charged work covered under the policy. The City shall promptly notify the School District of any changes to the annual costs for insurance purchased under this Section. Additionally, the City shall consult with the School District to obtain mutual agreement on any changes to coverage levels for insurance purchased under this Section. Costs for deductible payments will be considered expenses of the City and will not be allocated to the School District.



9. **Warranty.** The only warranty on parts and products sold in conjunction with repairs performed by the City, or fuel provided by the City, are those of the manufacturer or supplier of said parts, products or fuel. No other warranty, express or implied, is made or intended by the City including the warranty of merchantability or fitness for a particular purpose. The City's standard labor rate applies to any work performed in replacing parts or products warranted under this section. To the extent costs of labor for rework are included in said warranty, the City will attempt to recover costs under said warranty.
10. **Waiver of Subrogation.** To the fullest extent permitted by law, both the City and School District hereby mutually release the other party from and against any and all liability or responsibility to the contra-party or anyone claiming through or under the contra-party by way of subrogation or otherwise for any loss without regard to the fault of said party or the type of loss involved including 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, and as it relates to circumstances arising from this Agreement. Each party's policies of insurance shall contain either a policy provision or endorsement affirming the above stated release in favor of the contra-party, including its elected and appointed officials, agents, employees and volunteers, and others working on its behalf.
11. **Notices and Invoices.** All notices which the parties are authorized or required to give one another pursuant to this Agreement, and all invoices, shall be in writing and may be personally delivered, sent by ordinary mail or electronic medium to the addresses hereafter provided. Mailed notices or invoices shall be deemed to be received by the party to whom directed when they are postmarked. If notice or invoice is given by electronic medium, such notice or invoice shall be deemed to be delivered and received when the electronic medium is transmitted, provided the person whose e-mail address is used is still in a listed job position on the date transmitted. Such notices and invoices shall be delivered or mailed to the following persons at the addresses or e-mail addresses listed:

**Notices to the City:**

Brian Bennett  
Fleet Manager  
212 SE Raccoon St.  
Des Moines, Ia. 50309  
[bbennett@dmgov.org](mailto:bbennett@dmgov.org)

**Notices to the School District:**

Jamie Wilkerson  
Director of Facility Management  
1917 Dean Avenue  
Des Moines, IA 50316  
[james.wilkerson@dmschools.org](mailto:james.wilkerson@dmschools.org)  
Please send copy of invoice to  
[SMO-DMPSPayables@live.dmps.k12.ia.us](mailto:SMO-DMPSPayables@live.dmps.k12.ia.us)



**12. Intent of Agreement, Validity of Terms.** It is the intent of the parties that there are no sales of fuel or services under this Agreement. If any section, provision or part of this Agreement shall be found to be invalid, such finding shall not affect the validity of the Agreement as a whole or any other section, provision or part thereof not found to be invalid.

**13. Entire Agreement.** This Agreement represents the entire Agreement between the parties. Any subsequent change or modification to the terms of this Agreement shall be in the form of a duly executed amendment to this Agreement. This Agreement supersedes and terminates the agreement for shared fueling services between the parties dated December 14, 2010

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first-above written.

CITY OF DES MOINES, IOWA

ATTEST:

\_\_\_\_\_  
Mayor

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

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Deputy City Attorney





STATE OF IOWA        )  
                                  ) ss:  
COUNTY OF POLK     )

On this \_\_\_\_ day of \_\_\_\_\_, 2019, before me, the undersigned, a Notary Public, personally appeared Frank Cownie and \_\_\_\_\_(City Clerk) , 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 Roll Call No. \_\_\_\_\_ on the \_\_\_\_ day of \_\_\_\_\_, 2019, and that they acknowledged the execution of the instrument to be the voluntary act and deed of the municipal corporation, by it voluntarily executed.

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



*[Handwritten signature]*

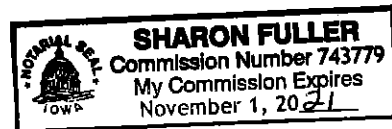
Des Moines Independent Community School District Board President

STATE OF IOWA       )  
                                  ) ss:  
COUNTY OF POLK    )

On this 13 day of August, 2019, before me, the undersigned, a Notary Public, personally appeared Cindy Elsbernd, to me personally known, who, being by me duly sworn, did state that they are the Chairperson, for the Des Moines Independent Community School District that the seal affixed to the foregoing instrument is the seal of the public school district, and that the instrument was signed and sealed on behalf of the district, by authority of its Board at their meeting held on the 13 day of August 2019, and that they acknowledged the execution of the instrument to be the voluntary act and deed of a public school district, by it voluntarily executed.

*[Handwritten signature: Sharon Fuller]*

Notary Public for the State of Iowa





**Attachment A**  
**Minor Repairs – Blanket Approval**

The School District approves the following repairs when needed, as determined by City personnel, without any additional communication or approvals between the School District or City:

1. Replacing bulbs, fuses, fusible links
2. Water pump, alternator, power steering, air pump, air conditioning, auxiliary and serpentine belts.
3. Radiator caps, power steering reservoir caps, gas tank filler neck caps, oil filter caps, windshield washer caps, and brake fluid reservoir caps
4. Door handles, window cranks, and other easily replaced control handles, levers and knobs
5. Brake cylinder bleeders and caps
6. Radiator and heater hose, vacuum hose, air hose, fuel hose, thermostat replacements including replacement and tightening of clamps as necessary
7. Windshield wiper arms and blades
8. Air filters, PCV filters, gas filters, fuel filters, transmission filters and carbon canister filters
9. Replacing brake and clutch pedal pads
10. Replacing glass portion of side mirrors.



**Attachment B  
Service Fee Schedule  
FY19-20**

**Labor Rate:**

FY20 Mechanic Labor Rate

\$95.00 / Hour

**Parts:**

Mark up over cost

20 %

01580291-1\10390-000  
Revision V3 8.9.19