

**BUSINESS OF THE CITY COUNCIL
WINDSOR HEIGHTS, IOWA
AGENDA STATEMENT**

Item No. _____
For Meeting of 06/01/2009

ITEM TITLE: Discussion and Consideration of Resolution Approving a 28E Agreement for the purchase and operations of a joint training facility by the cities of Clive, Urbandale and Windsor Heights

CONTACT PERSON: Chris Cross, Fire Chief
Marketa George Oliver, City Administrator


SUMMARY EXPLANATION

Attached for your consideration is a 28E agreement for the Purchase and Operations of a Joint Training Facility by the Cities of Clive, Urbandale, and Windsor Heights.

Highlights of the agreement are:

Lead Agency	Urbandale
Location of Facility	Urbandale Fire Station 42, 3927 121 st Street, Urbandale
Purchase and Construction Costs (estimated)	\$630,000
Cost Splits (for purchase, construction, and ongoing maintenance)	Clive 30% (\$189,000 for initial purchase and construction) Urbandale 60% (\$378,000 for initial purchase and construction) Windsor Heights 10% (\$63,000 for initial purchase and construction)
Use by Others	Clive, Urbandale, and Windsor Heights Police Departments – No cost Other Fire Departments – A per hour charge will be established annually for other departments to use the facility. In addition, a staff person from Clive, Urbandale, or WHTS will need to be on scene and that expense will be charged to the using department. Any department and their individual personnel using the facility will be required to sign an indemnification agreement.
Length of Agreement	Initially a 10-year agreement. No withdrawal allowed in first 5 years. Withdrawal allowed in years 6-9 with partial reimbursement of initial cost. Agreement can be extended beyond year 10.

Funding for this project is programmed in the Windsor Heights Capital Improvement Plan.

<input checked="" type="checkbox"/> Resolution _____ Ordinance _____ Contract _____ <input checked="" type="checkbox"/> Other (Specify) _____ 28E _____
Funding Source _____ Capital fund _____
APPROVED FOR SUBMITTAL _____  City Administrator

STAFF RECOMMENDATION: Pass resolution authorizing the execution of the 28E agreement on a roll call vote.

COUNCIL ACTION:

RESOLUTION NO. 09-0601/

RESOLUTION APPROVING A 28E AGREEMENT FOR THE PURCHASE AND OPERATIONS OF A JOINT TRAINING FACILITY BY THE CITIES OF CLIVE, URBANDALE AND WINDSOR HEIGHTS

WHEREAS, the City of Windsor Heights wishes to continue to offer superior services to its residential and commercial residents; and

WHEREAS, the Fire Department is commitment to providing the best possible level of services; and

WHEREAS, the Fire Department members are continually training, and

WHEREAS, in order to enhance training opportunities, the City wishes to join with two other area communities to purchase and operate a joint training facility.

THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF WINDSOR HEIGHTS, IOWA that in order to maximize the training opportunities for the Windsor Heights Fire Department, the City of Windsor Heights hereby adopts the 28E agreement for the purchase and operations of a joint training facility by the cities of Clive, Urbandale and Windsor Heights and authorizes the Mayor and City Administrator to execute the documents necessary to enter into this agreement.

Jerry Sullivan, Mayor

ATTEST:

Marketa George Oliver, City Administrator

**INTERGOVERNMENTAL AGREEMENT
FOR THE PURCHASE AND OPERATIONS OF A JOINT TRAINING FACILITY BY
THE CITIES OF CLIVE,
URBANDALE AND WINDSOR HEIGHTS**

THIS INTERGOVERNMENTAL AGREEMENT ("Agreement") is entered into this ____ day of _____, 2009, by and between the CITY OF CLIVE, IOWA, a municipal corporation ("Clive"), the CITY OF URBANDALE, IOWA, a municipal corporation ("Urbandale"), and the CITY OF WINDSOR HEIGHTS, IOWA, a municipal corporation ("Windsor Heights") (Clive, Urbandale and Windsor Heights are referred to herein individually as a "City" or jointly as the "Cities"), pursuant to Chapter 28E of the Iowa Code.

WHEREAS, each City has personnel certified in the instruction of firefighting, hazardous materials emergency response, and emergency medical techniques, and equipment required for the proper training and instruction of personnel.

WHEREAS, in order to most efficiently and cost effectively conduct training and instruction of the Cities' fire and emergency medical personnel, the Cities desire to jointly purchase and operate a training facility.

NOW, THEREFORE, the parties hereto agree as follows:

1. Joint Purchase of Training Facility. The Cities agree to contribute funds to construct and operate a training facility (the "Training Facility") to be used for the training and instruction of the staff of the Clive Fire Department, Urbandale Fire Department, and the Windsor Heights Fire Department (referred to herein as the "Fire Departments"). The Training Facility's style, design and operations shall be mutually agreed upon by the Fire Chiefs of the Cities. This Agreement shall not create a separate legal or administrative entity. The Fire Chiefs of the Cities shall be designated as the administrators of this Agreement.

2. Lead Agency/Ownership of Training Facility. Urbandale shall serve as the lead agency for the project, including the bidding, construction and purchasing process for the Training Facility. Urbandale shall own and insure the building. In consideration for the contributions to the construction costs and to the maintenance and operation of the Training Facility, Clive and Windsor Heights (both Fire Departments and Police Departments) shall have the rights to use the Training Facility as set forth in this Agreement.

3. Location of Training Facility. The Training Facility shall be purchased and constructed at the Urbandale Fire Department, Station 42 located at 3927, 121st Street, Urbandale, IA 50323.

4. Purchase and Construction of Training Facility. For planning purposes, the estimated cost of the Training Facility and construction are \$630,000. Each City agrees to split the cost of the Training Facility:

Percentage of Cost:

Clive 30%

Urbandale 60%

Windsor Heights 10%

The Cities agree that the plans and the final construction cost estimates for the Training Facility shall be approved by all Cities before construction of the Training Facility shall begin. Urbandale shall bill Clive and Windsor Heights for their proportionate share of the construction costs as Urbandale receives the invoices for such costs, and Clive and Windsor Heights agree to pay Urbandale for such constructions costs within forty-five (45) days following the receipt of the invoice from Urbandale.

5. Cost of Maintenance, Repairs and Operations. The Cities will annually (no later than June 1 of each year) approve a budget for the maintenance, repair and operation costs for the Training Facility. Maintenance expenses, operating expenses and the cost of routine repairs to the Training Facility will be paid by Urbandale, and Urbandale will annually submit an accounting of the expenditures to the other two Cities for reimbursement based on the percentage contained in Item 4. Each City is responsible for the cost of operations when they use the Training Facility.

If damage to the Training Facility may be due to abuse, a panel consisting of the Fire Chief and City Manager from each City and from a city renting the Training Facility, if applicable, will convene to determine if the damage is caused by abuse. Each City Manager and each Fire Chief has one vote in determining if abuse caused the damage. A majority vote rules and the cost to repair damage caused by abuse will be the responsibility of the City or city renting the Training Facility identified as having caused the damage. Payment will be made to Urbandale within thirty (30) days of receipt of the invoice for repairs.

Any maintenance or repair cost not included in the budget, not found to be caused by abuse and in excess of \$1,000 shall be approved by the Cities' Fire Chiefs prior to incurring the cost.

6. Use of Training Facility by Others. If the Fire Chiefs of the Cities agree, an employee of a city that is not a party to this Agreement may be permitted to participate in a joint training program, provided that:

- i. such employee executes a release, in a form to be approved by the Cities, providing that the employee shall hold the Cities harmless from Damages, as defined in Section 9,
- ii. the city employing such employee executes an indemnification agreement in favor of the Cities, in a form to be approved by the Cities and containing provisions comparable to Section 9 herein, and
- iii. a fee in an amount to be determined by the Fire Chiefs of the Cities shall be paid to Urbandale, which fee shall be applied to offset the costs set forth in Section 5 above.

Use of the Training Facility by fire or police departments of cities that are not a party to this Agreement may be permitted and shall be governed by the following rules:

- a. The primary contact for scheduling and administering such use shall be the Urbandale Fire Department Training Officer.
- b. A City representative who is familiar with the safety and operations of the Training Facility must be present.
- c. Each employee of another city that is not party to this agreement shall execute a release, in a form to be approved by the Cities, providing that the employee shall hold the Cities harmless from Damages, as defined in Section 9,
- d. The city using the Training Facility shall execute an indemnification agreement in favor of the Cities, in a form to be approved by the Cities and containing provisions comparable to Section 9 herein,
- e. The cost of Training Facility rental will to be paid by the renting city and shall be fixed on a fiscal year basis.
- f. The cost of Training Facility rental will include a per hour fee to be paid to participating agency representative.
- g. Any income generated from rental or use fees will be paid to Urbandale and applied to offset the costs set forth in Section 5 above. An accounting of all funds received shall be provided to the other Cities on an annual basis.

The Police Departments of each City shall have access to the Training Facility at no additional cost and shall be subject to the rules and operating procedures identified herein.

7. Scheduling of Training Facility Use. On an annual basis (prior to July 1 of each fiscal year), days Monday thru Saturday will be divided according to a rotating first choice and the Fire Chiefs will decide upon the schedule. The number of days guaranteed to a City is based generally on the contribution/percentage cost splits set forth in Section 4:

- a. Clive = 2 days
- b. Urbandale = 4 days
- c. Windsor Heights = 1 day

The first choice will rotate alphabetically, starting fiscal year 09/10 with Clive.

Any City may yield their guaranteed dates to another City on a first requested, first served basis. Cities may yield any portion of their time on a given day; i.e. City 1 may yield the Training Facility on their scheduled day to City 2 for a 9 a.m. drill when City 1 only plans on using the Training Facility for a drill at 7 p.m.

By mutual written agreement of the Cities' Fire Chiefs, this scheduling may be altered without amendment of the 28E.

8. Employees. Each City shall compensate its employees who participate in the joint training while at this Training Facility, whether such employees are instructors or participants, in accordance with each City's policies and procedures. The employees of each City

participating in training at this Training Facility, whether an instructor or a participant, shall remain employees of that City and shall not be considered employees of the other two (2) Cities that are parties to this Agreement. Each employee shall be considered to be acting under the lawful orders of his or her respective Fire Chief during training programs at the Training Facility.

9. Liability/Indemnification. Each City shall indemnify, defend and hold harmless the other two (2) Cities that are parties to this Agreement, their officers, agents and employees, from and against any and all private party claims, suits, actions, debts, damages, costs, charges and expenses, including court costs and attorney's fees, and against all liability for property damage to private property and injuries to private persons, including death resulting therefrom, directly or indirectly, as a result or consequence of any act, omission, fault or negligence of that City, its officers, agents or employees (collectively, "Damages"). Each City waives all claims against the other two (2) Cities that are parties to this Agreement for compensation for personal injury or death to its personnel or for damage to its property occurring as a consequence of its participation and performance of the activities of the training contemplated by this Agreement. Further, each City shall indemnify, save, defend and hold harmless the other two (2) Cities that are parties to this Agreement, including their officers, agents and employees, against any and all claims, suits and actions, including court costs and attorney's fees, brought by the officers, agents and employees of the City, occurring as a consequence of the participation and performance of the activities and training contemplated by this Agreement.

10. Term and Termination. This Agreement shall be effective upon its execution by all the Cities, and shall remain in effect until July 1, 2019, unless earlier terminated as set forth herein or upon the agreement of the parties.

The Cities agree that no City may terminate its participation in the Agreement before July 1, 2014. If a termination is effective on or after July 1, 2014, any City may terminate its use of the Training Facility and terminate its participation in this Agreement by providing the other Cities with written notice not less than eighteen months (18) prior to the effective date of the termination. However, the Cities agree that Section 9 herein shall survive the termination of this Agreement with respect to any activities undertaken during the term of this Agreement. Upon the written agreement of the parties, the term of this Agreement may be extended.

Should Clive or Windsor Heights request termination of their participation in this Agreement on or after July 1, 2014, the remaining Cities shall pay to the terminating City a return of its initial contribution to the construction of the Training Facility in accordance with the following terms:

- a. During years six (6) through ten (10), the only amount that can be returned is the undepreciated portion of the initial capital investment by each City.
- b. No City may receive more than 50% of the initial investment and no return can be made after year ten (10). No interest shall be paid on the original investment.
- c. The capital investment made by each City shall be depreciated by 10% per year.
- d. The amount returned shall be paid prorata by the remaining Cities.

If this Agreement is terminated on or after July 1, 2014 by Urbandale, Urbandale shall pay to Clive and Windsor Heights fifty percent (50%) of each City's initial investment. The amount to be recovered that can be recovered on or after year ten (10) shall be 0.

The remaining Cities shall be entitled to the use of the Training Facility in accordance with their revised percentage of the initial capital investment.

11. Notice. Any notice or demand desired or required to be given hereunder shall be in writing and deemed given when personally delivered or when deposited in the United States mail, postage prepaid, sent certified or registered, and addressed as follows:

a. If to Clive, to:

City of Clive
City Hall
1900 N.W. 114th Street
Clive, Iowa 50325
Attention: City Manager

b. If to Urbandale, to:

City of Urbandale
City Hall
3315 70th Street
Urbandale, Iowa 50322
Attention: City Manager

c. If to Windsor Heights, to:

City of Windsor Heights
City Hall
1133 66th Street
Windsor Heights, Iowa 50311
Attention: City Administrator

or to such other address or person as hereafter shall be designated in writing by the applicable party.

12. Miscellaneous. This Agreement constitutes the entire agreement between the parties hereto pertaining to the subject matter hereof and supersedes all negotiations, preliminary agreements and all prior and contemporaneous discussions, agreements and understandings of the parties in connection with the subject matter hereof. No amendment, change or modification of any of the terms, provisions or conditions of this Agreement shall be effective unless made in writing and signed or initialed by all parties. Waiver of any provision of this Agreement shall not be deemed a waiver of future compliance therewith and such provision shall remain in full force and effect. In the event any provision of this Agreement is held invalid, illegal or

unenforceable, in whole or in part, the remaining provisions of this Agreement shall not be affected thereby and shall continue to be valid and enforceable. This Agreement shall be governed by and construed in accordance with the laws of the State of Iowa. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective legal representatives, heirs, successors and permitted assigns. Nothing in this Agreement, express or implied, is intended to confer upon any party, other than the parties hereto (and their respective heirs, legal representatives, successors and permitted assigns), any rights, remedies, obligations or liabilities under or by reason of this Agreement. In addition to any other remedies available at law or in equity to the parties hereto with respect to a breach hereof, the parties hereto each reserve the right to enforce this Agreement by specific performance. The titles or captions of paragraphs in this Agreement are provided for convenience of reference only, and shall not be considered a part hereof for purposes of interpreting or applying this Agreement and such title or captions do not define, limit, extend, explain or describe the scope or extent of this Agreement or any of its terms or conditions. Words and phrases herein shall be construed as in the singular or plural number, and as masculine, feminine or neuter gender, according to the context. Each of the parties hereto hereby irrevocably waives all right to trial by jury in any action, proceeding or counterclaim arising out of or relating to this Agreement.

13. Filing/Recording of Agreement. After execution by the parties, this Agreement shall be filed with the Iowa Secretary of State in accordance with the provisions of Iowa Code § 28E.8. The Agreement shall then be recorded in the offices of the Polk County Recorder and Dallas County Recorder in accordance with Iowa Code § 28E.8.

(REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK; SIGNATURE PAGE FOLLOWS.)

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

CITY OF CLIVE, IOWA

By: _____
Les Aasheim, Mayor

ATTEST:

Pamela L. Blessman, City Clerk

CITY OF URBANDALE, IOWA

By: _____
Robert D. Andeweg, Mayor

ATTEST:

Debra Mains, City Clerk

CITY OF WINDSOR HEIGHTS, IOWA

By: _____
Jerry Sullivan, Mayor

ATTEST:

Marketa Oliver, City Administrator/Clerk

STATE OF IOWA)
) ss:
COUNTY OF POLK)

On this ___ day of _____, 2009, before me, _____, a Notary Public in and for the State of Iowa, personally appeared Les Aasheim and Pamela L. Blessman, to me personally known, and, who being by me duly sworn, did say that they are the Mayor and City Clerk, respectively, of the City of Clive, Iowa; that the seal affixed to the foregoing instrument is the corporate 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 Resolution No. _____ adopted by the City Council on the ___ day of _____, 2009, and that Les Aasheim and Pamela L. Blessman acknowledged the execution of said instrument to be their voluntary act and deed and the voluntarily act and deed of the corporation, by it voluntarily executed.

Notary Public in and for the
State of Iowa
My commission expires:_____

STATE OF IOWA)
) ss:
COUNTY OF POLK)

On this ___ day of _____, 2009, before me, _____, a Notary Public in and for the State of Iowa, personally appeared Robert D. Andeweg and Debra Mains, to me personally known, and, who being by me duly sworn, did say that they are the Mayor and City Clerk, respectively, of the City of Urbandale, Iowa; that the seal affixed to the foregoing instrument is the corporate 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 Resolution No. _____ adopted by the City Council on the ___ day of _____, 2009, and that Robert D. Andeweg and Debra Mains acknowledged the execution of said instrument to be their voluntary act and deed and the voluntarily act and deed of the corporation, by it voluntarily executed.

Notary Public in and for the
State of Iowa

My commission expires:_____

STATE OF IOWA)
) ss:
COUNTY OF POLK)

On this ___ day of _____, 2009, before me, _____, a Notary Public in and for the State of Iowa, personally appeared Jerry Sullivan and Marketa Oliver, to me personally known, and, who being by me duly sworn, did say that they are the Mayor and City Manager, respectively, of the City of Windsor Heights, Iowa; that the seal affixed to the foregoing instrument is the corporate 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 Resolution No. _____ adopted by the City Council on the ___ day of _____, 2009, and that Jerry Sullivan and Marketa Oliver acknowledged the execution of said instrument to be their voluntary act and deed and the voluntarily act and deed of the corporation, by it voluntarily executed.

Notary Public in and for the
State of Iowa
My commission expires:_____