

**Resolution No. 15-0320**

**A RESOLUTION APPROVING A 28E AGREEMENT FOR THE METRO HOME IMPROVEMENT PROGRAM AND AUTHROIZING THE MAYOR TO SIGN THE SAME**

**WHEREAS**, the City Council of the City of Windsor Heights finds a significant public benefit provided by the Metro Home Improvement Program (MHIP); and

**WHEREAS**, the City desires to remain a member of “The Authority” which consists of ten (10) member cities of the MHIP; and

**WHEREAS**, Windsor Heights citizens have utilized the matching grant fund program to make necessary owner-occupied housing rehabilitation improvements, which may not otherwise have been made.

**NOW THEREFORE, BE IT RESOLVED**, by the City Council of the City of Windsor Heights State of Iowa, that the attached Exhibit #1 - 28E Agreement is hereby approved with the understanding the City is obligated and has budgeted for 1/10 of the administrative costs and the Mayor is hereby authorized to sign the 28E Agreement.

Passed and Approved this 2nd day of March, 2015

\_\_\_\_\_  
Diana Willits, Mayor

Attest: \_\_\_\_\_  
Brett Klein, City Administrator

# EXHIBIT #1

Prepared by: Clyde E. Evans, Community Development, P.O. Box 65320, West Des Moines, IA 50265 515-273-0770

When Recorded, Return to: City Clerk, City of West Des Moines, P.O. Box 65320, West Des Moines, IA 50265

## 28E AGREEMENT

THIS AGREEMENT made and entered into the 1st day of April, 2015, by and between the CITY OF ALTOONA (hereinafter referred to as “Altoona”), the CITY OF ANKENY (hereinafter referred to as “Ankeny”), the CITY OF BONDURANT (hereinafter referred to as “Bondurant”), the CITY OF GRIMES (hereinafter referred to as “Grimes”), the CITY OF JOHNSTON (hereinafter referred to as “Johnston”), the CITY OF PLEASANT HILL (hereinafter referred to as “Pleasant Hill”), the CITY OF POLK CITY (hereinafter referred to as “Polk City”), the CITY OF URBANDALE (hereinafter referred to as “Urbandale”), the CITY OF WEST DES MOINES (hereinafter referred to as “West Des Moines”), and the CITY OF WINDSOR HEIGHTS (hereinafter referred to as “Windsor Heights”): The above-named cities will be referred to individually as an “Authority Member” and collectively referred to as “Authority Members”. This Agreement shall replace the previously filed 28E Agreement, which was made on February 12, 2007, and filed with the Polk County recorder on April 19, 2007 (Book 12154, Page 45).

WHEREAS, the cities of Altoona, Ankeny, Bondurant, Grimes, Johnston, Pleasant Hill, Polk City, Urbandale, West Des Moines, and Windsor Heights are municipal corporations organized and existing under the laws of the State of Iowa and are public agencies as defined by Iowa Code Chapter 28E; and

WHEREAS, each city is willing to share certain costs for the operation of a Metro Home Improvement Program for housing rehabilitation within their respective communities (hereinafter referred to as “Metro Home Improvement Program”); and

WHEREAS, public agencies may enter into an agreement for joint and cooperative action pursuant to Iowa Code Chapter 28E; and

WHEREAS, all cities find that joint and cooperative action will be to their mutual advantage; and

WHEREAS, all cities believe that an agreement pursuant to Chapter 28E of the Iowa Code should be entered into with regard to the Metro Home Improvement Program, which agreement will be to their mutual advantage.

NOW, THEREFORE, in consideration of the premises and the mutual covenants and agreements hereinafter contained, it is hereby agreed by and between Altoona, Ankeny, Bondurant, Grimes, Johnston, Pleasant Hill, Polk City, Urbandale, West Des Moines, and Windsor Heights that:

**1. DEFINITIONS:**

- A. **PROGRAM:** For the purposes of this Agreement, the term “Program” shall mean creation of office facilities for and operation of the Metro Home Improvement Program.
- B. **SERVICE AREA:** For the purpose of this Agreement, the term “Service Area” shall mean the geographical area within the Authority Members’ combined corporate limits within Polk County as they exist on the effective date of this Agreement and as they may change in the future, as well as the geographical area of new Authority Members that may join the Agreement in the future.
- C. **COORDINATING AGENCY:** For purposes of this Agreement, the term “Coordinating Agency” shall mean West Des Moines.

## 2. MANAGEMENT COMMITTEE:

- A. **POWERS.** The Agreement shall be administered by the Management Committee, which, except where this Agreement delegates or reserves powers to one or all cities, or to an Authority Member, shall make the managerial decisions necessary to accomplish the purposes of this Agreement. In addition to powers thus implied, the Management Committee shall by means of the budget procedures provided in paragraph B below, recommend to each Council the initial levels of staffing and equipping of the Program and future staffing, equipment and budget. The Management Committee shall establish written policies pertaining to the operational procedures of the Program. The City of West Des Moines shall be responsible for daily operational decisions.
- B. **BUDGET.** Except for the initial year of operation, annually, at least 120 days prior to date City budgets are required to be filed with the County Auditor, the Coordinating Agency shall deliver to the City Manager/City Administrator of each Member for their review and approval a proposed Budget for the next fiscal year which shall be subject to the approval of the respective Authority Member City Councils. In the event the proposed Budget is not approved by all Authority Member City Councils, the Authority Budget for the current year, adjusted for inflation (Consumer Price Index for the U.S. average for all Midwest urban consumers) shall remain in effect until approval of the new Budget is given by all Authority Members' councils. The Budget may be amended with the approval of all Authority Members' councils.
- C. **COMPOSITION.** The Management Committee shall consist of one (1) representative from each Authority Member. Each Authority Member may designate alternate representative(s) to serve in the absence of management

Committee members.

- D. **MEETINGS.** The Management Committee shall meet at least once each calendar year and at such other times as it deems necessary. A special meeting may be called by the Coordinating Agency or any three (3) representatives of the Committee. At any meeting, each representative shall have one (1) vote. A quorum shall consist of a number equal to fifty percent (50%) of the total Management Committee's voting representatives plus one (1). Except as otherwise provided herein, decisions of the Management Committee shall be made by a majority vote of the Committee representatives present constituting a quorum. Minutes of all meetings shall be taken by the Coordinating Agency who shall cause all minutes to be forwarded to the representative of Authority Member. Because the Management Committee and the Sub-Committees thereof are created by Authority Member City Councils, and make budget and other recommendations, the Management Committee and Sub-Committees thereof shall be deemed to constitute governmental bodies subject to the open meetings and open records law of Iowa, to wit: Chapters 21 and 22, Code of Iowa.
- E. **PROFESSIONAL SERVICES:** The Management Committee shall have authority within the appropriate budget to engage legal and other professional services as may be necessary.
- F. **SUB-COMMITTEES:** The Management Committee may establish any sub-committees it feels are necessary to operate the Program.

3. **COORDINATING AGENCY:** West Des Moines shall be the Coordinating Agency for the Program and hereby consents to such designation. Authority Members agree that:

- A. The Coordinating Agency shall act as the contracting authority for the Management Committee and will advertise for and hold the letting of all bids

required of this Project.

- B. Subject to review by the Management Committee, the Coordinating Agency shall employ under its Civil Service Rules and Procedures all regular and probationary employees needed for the operation of the Program to carry out the purposes of this Agreement.
- C. The Coordinating Agency shall manage all personnel pursuant to its employee and administrative policies and procedures, union contracts, civil service, city ordinances and other applicable laws.
- D. The Coordinating Agency shall have custody of and maintain all books and records of the Project on behalf of the individual Authority Members. Authority Members shall have the right, at any time upon reasonable notice, to review and inspect the books and records of the Project. The books and records of the Project shall be deemed to be the books and records of Authority Members individually with undivided ownership interests in proportion to their respective contributions to the Authority Budget plus original documented contributed capital, and neither the Authority nor the Coordinating Agency shall be deemed to possess an ownership interest by virtue of custody or the obligation to maintain said books and records.
- E. Pursuant to policies and procedures adopted by the Management Committee and the Authority's adopted budget, the Coordinating Agency shall, through its accounts payable system, pay all bills of the Authority.

#### **4. PROGRAM COSTS:**

- A. **OPERATING COSTS:** Annual operating costs shall include but not be limited to personnel, office equipment and supplies, computer and software, conferences

and training, travel and meeting expenses, financial audits, and such other costs as may be determined by the Management Committee.

- B. **GRANT FUNDS:** Any grant funds received for the Program shall be jointly shared by all communities. Each Authority Member will contribute annually to the match funds required for the grant. The match funds will be a one to one match with grant funds from the Polk County Housing Trust Fund. An Authority Member may decide to contribute semi-annually to the match funds and will thus receive semi-annual grant funds. During each year this Agreement is in place, each Authority Member will contribute one tenth (1/10) of the cost to administer the program. It is anticipated that all Authority Members will expend an equal allocation of grant funds and contribute a corresponding equal share to cover program costs. Semi-annually during the pendency of this Agreement, the Program Administrator will prepare a percentage comparison of the grant funds allocated to each of the Authority Members. If such analysis determines that any Authority Member is not utilizing its full share of grant funds; that Member may then elect to relinquish a portion of their funds to any of the other members per the direction of the Management Committee. In turn, that Member's cost assessment will be reduced and the receiving Members cost assessment will be increased by a percentage equal to the amount transferred.
- C. **INSPECTION COSTS:** Any cost incurred by any City in the preparation of work write-ups and inspection of work performed shall be the cost of each respective City.

**5. DIVISION OF ANNUAL OPERATING COSTS:** Each party to the Agreement shall annually budget for operating costs. Each City will remit payment to West Des Moines on an annual basis its share of annual operating costs; each cities' share being equal to the total

operating cost divided by ten (10). Any difference between actual and budgeted expenditures shall be an adjustment to the following year's payment of costs on a pro-rata basis based on the percentage of actual dwelling units assisted in each City.

6. **INDEMNIFICATION:** Each party agrees to indemnify and to hold the other parties, their elected officers, agents, employees and successors and assigns, harmless from and against all claims, demands, actions and/or causes of actions, judgments, settlements, or other costs, including reasonable attorney's fees, which the other party, its successors and assigns, may incur or sustain a) by reason of the indemnifying party's breach of this Agreement or failure to legally or timely meet the responsibilities imposed herein (including, but not limited to, any fiscal obligations herein), or b) by reason of the torts of the indemnifying party. This Agreement shall not extend the liability of any Authority Member and each Authority Member and the Management Committee are authorized to insure any and all liabilities which may be incurred as a result of this Agreement or operations under it and where appropriate to accept insurance in lieu of other indemnification. West Des Moines' indemnification obligation shall not extend to actions by its personnel taken in its capacity as Coordinating Agency for or on behalf of the Authority rather than for on or behalf of West Des Moines. All actions by West Des Moines personnel in the performance of its functions as Coordinating Agency shall be the responsibility of Authority Members collectively.

7. **AGREEMENT – METHOD OF APPROVAL:** The parties hereto approve this Agreement by Resolution, which Resolution shall authorize the respective Mayors to execute this Agreement.

8. **AGREEMENT – FILING WITH SECRETARY OF STATE:** When this Agreement has been approved by the parties hereto, this Agreement shall be electronically filed with the Secretary of the State of Iowa in accordance with the provisions of Iowa Code Section 28E.8.

**9. AGREEMENT – EFFECTIVE DATE:** This Agreement shall become effective on April 1, 2015.

**10. AGREEMENT – SUBJECT TO GRANT FUNDING:** The terms of this Agreement are predicated and conditioned upon the ability of the City of West Des Moines to obtain grant funding for the Program. Should this method of financing be unavailable or unacceptable, the City of West Des Moines may so notify the Cities of Altoona, Ankeny, Bondurant, Grimes, Johnston, Pleasant Hill, Polk City, Urbandale, and Windsor Heights and this Agreement shall be null and void.

**11. DURATION AND TERMINATION:** This Agreement shall be effective from the date herein provided until terminated as herein provided. An Authority Member wishing to terminate participation must give one-year advanced notice to all other members not later than December 31<sup>st</sup> of any given year. Otherwise, this Agreement shall continue until terminated by mutual agreement of the Authority Members.

**12. NOTICES:** Any notice under this Agreement shall be in writing and shall be deemed to be given when deposited in the United States Post Office.

- A. Notices to Altoona shall be addressed: City Administrator, City of Altoona, 407 8<sup>th</sup> Street SE, Altoona, IA 50009
- B. Notices to Ankeny shall be addressed: City Manager, City of Ankeny, 410 W. 1<sup>st</sup> Street, Ankeny, IA 50023
- C. Notices to Bondurant shall be addressed: City Administrator, City of Bondurant, P.O. Box 37, Bondurant, IA 50035
- D. Notices to Grimes shall be addressed: City Administrator, City of Grimes, 101 N. E. Harvey Street, Grimes, IA 50111
- E. Notices to Johnston shall be addressed: City Administrator, City of Johnston, P.O. Box 410, Johnston, IA 50131-0410

- F. Notices to Pleasant Hill shall be addressed: City Manager, City of Pleasant Hill, 5160 Maple Drive, Suite A, Pleasant Hill, IA 50327
- G. Notices to Polk City shall be addressed: City Administrator, City of Polk City, P.O. Box 426, Polk City, Iowa 50226
- H. Notices to Urbandale shall be addressed: City Manager, City of Urbandale, 3600 86<sup>th</sup> Street, Urbandale, Iowa 50322
- I. Notices to West Des Moines shall be addressed: City Manager, City of West Des Moines, P.O. Box 65320, West Des Moines, IA 50265
- J. Notices to Windsor Heights shall be addressed: City Administrator, City of Windsor Heights, 1145 66<sup>th</sup> Street, Suite 1, Windsor Heights, IA 50324
- K. If during the term of this Agreement any City shall change the address of its City Hall or seat of municipal government, it shall notify the others of said new address and the new address shall be by mutual agreement substituted for the address herein provided.

13. **ARBITRATION:** Should the parties be unable to agree upon the allocation of costs among them, or should any other dispute arise concerning the interpretation or operation of this Agreement which the parties are unable to resolve, then any such dispute shall be submitted to an arbitrator mutually agreeable to the parties; or, in the absence of such agreement, to an arbitrator chosen by the Chief Judge of the Fifth Judicial District of the State of Iowa. In either event, the determination of such arbitrator as to the dispute submitted to the arbitrator shall be final.

14. **SIGNATURE PAGES:** Each Participating Community approving this Agreement shall execute the separate signature page provided for it, and the parties hereto authorize the City Clerk of the City of West Des Moines to assemble the signature pages and append same to copies of this Agreement, and to electronically file the Agreement with the Secretary of State.

IN WITNESS WHEREOF, the parties have caused this instrument to be executed by their respective officers, pursuant to full authority granted and given as of the day and year first above written.

CITY OF ALTOONA

By: \_\_\_\_\_  
Mayor

STATE OF IOWA            )  
  )ss:  
COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2015, before me, the undersigned, a Notary Public in and for said County and State, personally appeared \_\_\_\_\_ to me personally known, who, being by me duly sworn, did state that they are the Mayor of the City of Altoona, respectively, of said City; that no seal has been procured by the said City; that said instrument was signed on behalf of said City by authority of its City Council; and that the said \_\_\_\_\_ as such officer acknowledge the execution of said instrument to be the voluntary act and deed of said City, by it and by them voluntarily executed.

\_\_\_\_\_  
Notary Public

Commission Expires:

CITY OF ANKENY

By: \_\_\_\_\_  
Mayor

STATE OF IOWA            )  
  )ss:  
COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2015, before me, the undersigned, a Notary Public in and for said County and State, personally appeared \_\_\_\_\_ to me personally known, who, being by me duly sworn, did state that they are the Mayor of the City of Ankeny, respectively, of said City; that no seal has been procured by the said City; that said instrument was signed on behalf of said City by authority of its City Council; and that the said \_\_\_\_\_ as such officer acknowledge the execution of said instrument to be the voluntary act and deed of said City, by it and by them voluntarily executed.

\_\_\_\_\_  
Notary Public

Commission Expires:

CITY OF BONDURANT

By: \_\_\_\_\_  
Mayor

STATE OF IOWA                    )  
  )ss:  
COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2015, before me, the undersigned, a Notary Public in and for said County and State, personally appeared \_\_\_\_\_ to me personally known, who, being by me duly sworn, did state that they are the Mayor of the City of Bondurant, respectively, of said City; that no seal has been procured by the said City; that said instrument was signed on behalf of said City by authority of its City Council; and that the said \_\_\_\_\_ as such officer acknowledge the execution of said instrument to be the voluntary act and deed of said City, by it and by them voluntarily executed.

\_\_\_\_\_  
Notary Public

Commission Expires:

CITY OF GRIMES

By: \_\_\_\_\_  
Mayor

STATE OF IOWA            )  
  )ss:  
COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2015, before me, the undersigned, a Notary Public in and for said County and State, personally appeared \_\_\_\_\_ to me personally known, who, being by me duly sworn, did state that they are the Mayor of the City of Grimes, respectively, of said City; that no seal has been procured by the said City; that said instrument was signed on behalf of said City by authority of its City Council; and that the said \_\_\_\_\_ as such officer acknowledge the execution of said instrument to be the voluntary act and deed of said City, by it and by them voluntarily executed.

\_\_\_\_\_  
Notary Public

Commission Expires:

CITY OF JOHNSTON

By: \_\_\_\_\_  
Mayor

STATE OF IOWA            )  
  )ss:  
COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2015, before me, the undersigned, a Notary Public in and for said County and State, personally appeared \_\_\_\_\_ to me personally known, who, being by me duly sworn, did state that they are the Mayor of the City of Johnston, respectively, of said City; that no seal has been procured by the said City; that said instrument was signed on behalf of said City by authority of its City Council; and that the said \_\_\_\_\_ as such officer acknowledge the execution of said instrument to be the voluntary act and deed of said City, by it and by them voluntarily executed.

\_\_\_\_\_  
Notary Public

Commission Expires:

CITY OF PLEASANT HILL

By: \_\_\_\_\_  
Mayor

STATE OF IOWA                    )  
  )ss:  
COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2015, before me, the undersigned, a Notary Public in and for said County and State, personally appeared \_\_\_\_\_ to me personally known, who, being by me duly sworn, did state that they are the Mayor of the City of Pleasant Hill, respectively, of said City; that no seal has been procured by the said City; that said instrument was signed on behalf of said City by authority of its City Council; and that the said \_\_\_\_\_ as such officer acknowledge the execution of said instrument to be the voluntary act and deed of said City, by it and by them voluntarily executed.

\_\_\_\_\_  
Notary Public

Commission Expires:

CITY OF POLK CITY

By: \_\_\_\_\_  
Mayor

STATE OF IOWA            )  
  )ss:  
COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2015, before me, the undersigned, a Notary Public in and for said County and State, personally appeared \_\_\_\_\_ to me personally known, who, being by me duly sworn, did state that they are the Mayor of the City of Polk City, respectively, of said City; that no seal has been procured by the said City; that said instrument was signed on behalf of said City by authority of its City Council; and that the said \_\_\_\_\_ as such officer acknowledge the execution of said instrument to be the voluntary act and deed of said City, by it and by them voluntarily executed.

\_\_\_\_\_  
Notary Public

Commission Expires:

CITY OF URBANDALE

By: \_\_\_\_\_  
Mayor

STATE OF IOWA            )  
  )ss:  
COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2015, before me, the undersigned, a Notary Public in and for said County and State, personally appeared \_\_\_\_\_ to me personally known, who, being by me duly sworn, did state that they are the Mayor of the City of Urbandale, respectively, of said City; that no seal has been procured by the said City; that said instrument was signed on behalf of said City by authority of its City Council; and that the said \_\_\_\_\_ as such officer acknowledge the execution of said instrument to be the voluntary act and deed of said City, by it and by them voluntarily executed.

\_\_\_\_\_  
Notary Public

Commission Expires:

CITY OF WEST DES MOINES

By: \_\_\_\_\_  
Mayor

STATE OF IOWA            )  
  )ss:  
COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2015, before me, the undersigned, a Notary Public in and for said County and State, personally appeared \_\_\_\_\_ to me personally known, who, being by me duly sworn, did state that they are the Mayor of the City of West Des Moines, respectively, of said City; that no seal has been procured by the said City; that said instrument was signed on behalf of said City by authority of its City Council; and that the said \_\_\_\_\_ as such officer acknowledge the execution of said instrument to be the voluntary act and deed of said City, by it and by them voluntarily executed.

\_\_\_\_\_  
Notary Public

Commission Expires:

CITY OF WINDSOR HEIGHTS

By: \_\_\_\_\_  
Mayor

STATE OF IOWA                    )  
  )ss:  
COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2015, before me, the undersigned, a Notary Public in and for said County and State, personally appeared \_\_\_\_\_ to me personally known, who, being by me duly sworn, did state that they are the Mayor of the City of Windsor Heights, respectively, of said City; that no seal has been procured by the said City; that said instrument was signed on behalf of said City by authority of its City Council; and that the said \_\_\_\_\_ as such officer acknowledge the execution of said instrument to be the voluntary act and deed of said City, by it and by them voluntarily executed.

\_\_\_\_\_  
Notary Public

Commission Expires: