

## 28E AGREEMENT

THIS AGREEMENT made and entered into this \_\_\_\_\_ day of October, 2019, by and between CITY OF ANKENY, IOWA (hereinafter referred to as “City”), and POLK COUNTY, IOWA (hereinafter referred to as “County”).

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

WHEREAS, County is an Iowa governmental entity organized and existing under the laws of the State of Iowa and is a public agency as defined in Iowa Code Chapter 28E;

WHEREAS, City and County find that joint and cooperative action will be to their mutual advantage and will promote the health and welfare of the City’s citizens;

WHEREAS, City owns land and will be constructing improvements thereon to be operated and used by County as a Community Center, and the City will continue to own the land and improvements thereon subject to the terms of this Agreement; and

WHEREAS, County is willing to operate and use the land and improvements as a Community Center subject to the terms of this Agreement; and

WHEREAS, City and County believe that an Agreement pursuant to Chapter 28E of the Iowa Code should be entered into with regard to the development and use of such land and improvements, which Agreement will be to their mutual advantage.

NOW, THEREFORE, City and County agree as follows;

1. Grant. City grants to County the right to use and operate the following described real property and the improvements to be constructed thereon as a Community Center under the terms of this Agreement:

See attached Exhibit “A”

(“Facility”) provided that such use shall be in accordance with the terms of this Agreement.

2. Terms of Agreement. The duration of this Agreement shall be for an initial term of fifty (50) years (“Initial Term”) commencing with the date of filing of this Agreement with the Iowa Secretary of State, in accordance with Iowa Code Section 28E.8, or upon the County’s use or operation of the facility, whichever occurs first. At the end of the Initial Term of this Agreement, at the option of County and with approval of City, it may elect to renew this Agreement for an additional ten (10) year period (“First Renewal Term”) under the same terms and conditions set forth in this Agreement. At the end of the First Renewal Term, at the option of the County, and

with the approval of City, it may elect to renew this Agreement for an additional ten (10) year period under the same terms and conditions as set forth in this Agreement.

3. Parking. The County shall have use of the parking facilities now present or hereafter constructed upon the land for the parking of vehicles of its employees and invitees.
4. Planning and Construction of the Facility. City, at its sole cost and expense, shall plan and construct the Facility substantially consistent with the Development Plan attached hereto as Exhibit "B", the final construction of which will be subject to available resources but shall include a building of no less than 10,100 square feet with an interior walking track, parking and amenities. City shall plan, design and develop specifications for the construction of the Facility. The contract of construction shall be entered and administered by City, and the City shall manage the construction. County shall be entitled to attend and participate in all construction meetings with the contractors and/or architect.

The plan of construction shall take the following factors into consideration with each factor given equal consideration:

- A. The plan shall be approved by the State Fire Marshal and any other agency required by law for approval. City shall obtain such needed approval.
  - B. The Facility shall be constructed so as to have a useful life of no less than 50 years.
  - C. City will retain an architectural firm to plan and design the Facility to be constructed. Both parties shall have the right to participate with the architect and other planners in the development of the plan or any revisions to it. City shall have ultimate authority to approve the final plan in consultation with County.
5. Approved Project Budget and Project Completion.
    - A. The Project Budget shall be approved by both parties and, upon approval, form a part of this Agreement ("Approved Project Budget"). The Approved Project Budget may be revised upon approval of City and County.
    - B. The Approved Project Budget will include construction costs, non-affixed equipment, furniture or other items such as professional fees (e.g., architectural fees, engineering fees), and the cost of surveys, environmental study fees, soil investigations and fees, and all other tests and development fees. The Approved Project Budget also will include equipment, furniture or other items to be permanently affixed to a building or that, when attached, become so related to particular real estate that an interest in them arises under real estate law.

- C. City shall be responsible for payment of all amounts to be expended to plan and construct the Facility and shall hold County harmless therefrom.
  - D. City shall be the named owner in any contract or contracts to construct and furnish the Facility.
  - E. City shall be responsible for furnishing the Facility with non-fixed equipment and furnishings.
6. Contribution. County agrees to pay the City the sum of Three Million Five Hundred Thousand Dollars (\$3,500,000.00) for construction of the Facility and in consideration for the exclusive and irrevocable right to use it as a Community Center to provide senior services Monday through Friday from 8:00 a.m. to 5:00 p.m., except holidays. City shall contribute the balance of the project costs.
7. Operating Relationship.
- A. During the days and hours set out in Paragraph 6, County shall operate the Facility as a community senior center consistent with County's metropolitan area facilities in accordance with its mission, including daily meals, health screenings, exercise opportunities, arts and crafts, games and other senior-oriented services.
  - B. County shall establish the scheduling, supervision, recording and reporting for program activities in the Facility, subject to the maintenance and janitorial duties stated in Paragraph 8. The general supervision of County shall extend to the care and prevention of abuse of the physical plant.
  - C. Adjustments or changes to the schedule may be made from time to time by County staff upon coordination with City staff.
  - D. City shall have the exclusive right to occupy and operate the walking track and any upstairs space in the Facility.
8. City Maintenance.
- A. City shall be responsible for all operating costs of the Facility. The operating costs shall include:
    - a. Maintenance in good working order of all plumbing, toilet facilities, and other fixtures and equipment installed for the general supply of hot and cold running water, air conditioning and electricity.
    - b. Janitorial and custodial services for the Facility, including but not limited to the cleaning of floors and removal of garbage; except that

County shall be responsible for the cleanup of tabletops related to its activities.

- c. All utilities including but not limited to gas, sewer, water, electricity, heat, air conditioning, telephone, television, telecommunications and replacement of light bulbs.
- d. All insurance premiums for fire or casualty insurance specified in this Agreement.
- e. Repair, replace and maintain in good working order all furniture, furnishing and equipment used in the Facility.
- f. Snow removal and maintenance of the sidewalks and parking lot; lawn care and landscaping maintenance will be provided by City.

9. Representation and Covenants of County.

- A. County acknowledges that City anticipates issuing one or more series of tax-exempt qualified 501(c)(3) bonds ("City Bonds") to finance the construction of the Facility. County reasonably expects and covenants that no use will be made of the Facility which will cause any of the City bonds to be classified as arbitrage bonds within the meaning of Section 148(a) and (b) of the Internal Revenue Code of 1986 (the "Internal Revenue Code"), and that throughout the term of the Agreement, County will comply with the requirements of the Internal Revenue Code and regulations issued thereunder.

To the best knowledge and belief of County, there are no facts or circumstances that would materially change the foregoing statements or the conclusion that it is not expected that the proceeds of the City Bonds will be used in a manner that would cause the City Bonds to be arbitrage bonds. County will bring to City's attention any change in facts that could impact the tax status of the City Bonds.

- B. For the life of the Agreement, County covenants to not allow any user to use or occupy the Facility for any purposes which would cause interest on the City Bonds to be includable in gross income under Section 103 of the Code. County covenants that it will not permit any natural person, firm, joint venture, association, partnership, business trust, corporation, public body, agency or political subdivision thereof or any other similar entity ("Person") to use the Facility if such Person is not:
  - a. A "governmental person" as defined in Treasury Regulation 1.141-1, or

- b. An organization described in Section 501(c)(3) of the Code which is exempt from taxation under Section 501(a) of the Code (a “Tax Exempt Organization”), in either case in such manner or to such extent as could adversely affect the exemption from federal income tax of interest on the City Bonds.

10. Right to Alter and Improve. County shall have the right to make changes or alterations to the interior of the Facility, subject to the following conditions:

- A. No change or alteration which might impair the structural soundness or diminish the value of the building shall be made.
- B. No change or alteration in excess of \$25,000 shall be made without the prior written consent of City.
- C. Any improvement to the building or to any part thereof and any replacement of fixtures shall become the absolute property of City upon termination of this Agreement without payment of any kind.
- D. The cost of any approved alteration or improvement shall be at County’s expense unless otherwise agreed by the parties.
- E. The City shall have the right to alter or improve the building.

11. Fire or Casualty Insurance. If all or any part of the Facility is damaged or destroyed by fire or other casualty, City shall repair and rebuild the structure with reasonable diligence. All insurance proceeds received by City pursuant to the provisions of this Agreement shall be payable to City and shall be held in trust and applied by City to the payment of such restoration, as such restoration progresses.

If there is a substantial interference with the County operation, from fire or casualty damage, requiring the County to temporarily close operations, the term of this agreement shall be tolled for the duration of the restoration. If the interference is not such as to cause County to cease operations entirely within the building, the term of the Agreement shall be tolled for an equitably apportioned period related to the duration of the restoration work and the extent to which there is interference with County operations.

12. Fire or Other Casualty Loss. City shall insure the Facility premises as follows:

- A. For loss or damage by fire and such other risks as may be included in the broadest form of extended coverage insurance from time to time available in amounts sufficient to prevent City or the County from becoming a co-insurer within the terms of the applicable policies, and in any event, not less than 100% of the full insurable value.

- B. For loss or damage from leakage of sprinkler systems in the Facility in an amount not less than 10 percent of the full insurable value of the Facility.
- C. For loss or damage by explosion of steam boilers, pressure vessels, or similar apparatus in the Facility in such limits with respect to any one accident as may be reasonable desired by City from time to time.

The term “full insurable value” shall mean the actual replacement cost, excluding foundation and excavation costs. All such insurance shall be obtained from issuers of recognized responsibility licensed to do business in the State of Iowa. All policies shall name City and County as the insured, as their respective interests may appear. Each party shall be furnished with a copy of each policy specified under this Agreement. To the extent obtainable, all policies shall contain an agreement by the insurer that such policies shall not be canceled except upon thirty (30) days prior written notice to each party.

- 13. Liability Insurance. Both County and City shall carry liability insurance for protection of County and City from any liability arising out of any accident or other occurrence causing any injury and/or damage to any person or property upon the premises due directly or indirectly to the use or occupancy thereof by the insured, or any person claiming through or under the insured. Liability policies shall have limits of not less than \$1,000,000 bodily injury person, \$1,000,000 for each occurrence, \$2,000,000 general aggregate, \$1,000,000 for property damage and \$5,000,000 excess liability umbrella. Such policies shall cover the premises, shall be issued by insurance companies and in forms satisfactory to the insured, and shall provide for at least thirty (30) days’ written notice to the other party.
- 14. Waiver of Subrogation Rights. Each of the parties hereby releases the other from any claim for recovery for any loss or damage to any of its property or for any liability which is insured under valid and collectible insurance policies to the extent of any recovery collectible under such insurance. It is further agreed that this waiver applies only when permitted by the applicable policy of insurance.
- 15. Non-Assignment of Interest Under this Agreement. County shall not assign its interests under this Agreement without the prior written consent of City in each instance.
- 16. Indemnification. To the extent authorized by law, City and County shall defend, indemnify and hold harmless the other party from any and all claims, demands, causes of action, suits, settlements, and any other claimed damages, to include reasonable attorney fees, investigative costs, suit fees and other costs associated therewith, arising out of implementation of this Agreement.
- 17. Joint Obligation. The obligations of City and County under this Agreement are several obligations and are not joint obligations.

18. Termination Prior to Expiration of Term. This Agreement may be terminated prior to the expiration of its terms as follows:

- A. By mutual agreement of the parties;
- B. By either party for breach of any of terms of this Agreement. Termination shall be accomplished by giving written notice to the breaching party specifying the breach and stating that the Agreement will be terminated if the breach is not cured within sixty (60) days. Failure to cure the breach within sixty (60) days of receipt of this notice shall result in automatic termination of this Agreement, unless in the case of a non-monetary breach, the party is making a good-faith best effort to cure the breach.
- C. In the event of termination, both parties shall be relieved of all further obligations or duties beyond the date of termination, but neither Party shall be relieved of its duties and obligations under this Agreement through the date of termination.
- D. As of the date of termination, sole possession of the premises shall be returned to City and County shall vacate the premises.

19. Binding Effect. The terms and conditions of this Agreement shall extend to and be binding upon the successors in interest of the respective parties hereto.

20. Entire Agreement – Amendment. This Agreement contains the entire understanding between the parties and cannot be changed or terminated orally but only by an agreement in writing signed by both parties.

21. Severability. If any provision of this Agreement shall be declared invalid or unenforceable, the remainder of the Agreement shall continue in full force and effect.

22. Governing Law. This Agreement shall be governed and construed in accordance with the laws of the State of Iowa.

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

*Signature Pages to Follow*

**City of Ankeny, Iowa**

By: \_\_\_\_\_  
Gary Lorenz, Mayor

By: \_\_\_\_\_  
Denise Hoy, City Clerk

**STATE OF IOWA, COUNTY OF POLK, ss:**

On the \_\_\_\_ day of \_\_\_\_\_, 2019, before me, the undersigned, a Notary Public in and for the State of Iowa, personally appeared Gary Lorenz and Denise Hoy, to me personally known, who, being by me duly sworn, did say that they are the Mayor and City Clerk of the City of Ankeny, Iowa, a municipal corporation; that the seal affixed to the above and foregoing instrument is the corporate seal of said municipal corporation, and that said instrument was signed and authorized in the Resolution adopted by the City Council of Ankeny, Iowa, on the \_\_\_\_ day of \_\_\_\_\_, 2019, and the said Gary Lorenz and Denise Hoy acknowledged the execution of said instrument to be their voluntary act and deed and the voluntary act and deed of said municipal corporation, by it and by them voluntarily executed.

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

**Polk County, Iowa**

By: \_\_\_\_\_  
Chairman of Polk County Board of Supervisors

By: \_\_\_\_\_  
Jamie Fitzgerald, County Auditor

**STATE OF IOWA, POLK COUNTY, ss:**

On this \_\_\_\_ day of \_\_\_\_\_, 2019, before me the undersigned, a Notary Public in and for said State, personally appeared \_\_\_\_\_ and Jamie Fitzgerald, to me personally known, who being by me duly sworn, did say that they are the Chairperson of the Polk County Board of Supervisors and the County Auditor, executing the within and foregoing instrument; that the said instrument was signed on behalf of the Polk County Board of Supervisors by the authority of the Board; and that \_\_\_\_\_ and Jamie Fitzgerald, as such officers acknowledged the execution of the foregoing instrument to be the voluntary act and deed of the Polk County Board of Supervisors, by it and by them voluntarily executed.

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



**Exhibit “A”**

**Legal Description**

-Except the West 1<sup>st</sup> Street ROW – The W 725 feet of the S  $\frac{1}{2}$  of the SE  $\frac{1}{4}$  lying S and W of Relocated NW Ash Drive and NE of the Railroad ROW - Section 14-80-24 within the City of Ankeny, Polk County Iowa.

**Exhibit “B”**  
**Development Plan**





SITE PLAN 5: SOUTH OF HAWKEYE PARK SITE  
ANKENY SENIOR CENTER  
CITY OF ANKENY, IA

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DATE	09-16-2019	SCALE	---
	EDR	FIELD BOOK	---
	MMC	REVISION	---

PROJECT NO.  
4185991

SHEET NO.  
C105