

April 6, 2015

To: Mayor Bemrich and City Council
From: David Fierke, City Manager
Subject: Approval of 28E Agreement
Fort Dodge Correctional Facility



ACTION: For Vote – Monday, April 13, 2015

Brief History

The City of Fort Dodge is excited to engage in a new partnership with the Fort Dodge Correctional Facility. This council action will provide work through public service opportunities for offenders to our streetscape program.

Analysis of Issue

This is an Agreement between the Iowa Department of Corrections and the City of Fort Dodge. The purpose of the Agreement is for the Fort Dodge Correctional Facility (FDCF) to provide the labor for the medians along the 5th Avenue South Corridor, Round-Bout and 32nd Street medians.

This opportunity will provide a service to our beautification efforts that our budgets do not allow. This Agreement also is part of an offender program that allows for educational or vocational training outside of the correctional institutions; a win-win for all.

Budget Impact

None – all supervision will be provided by FDCF staff.

Strategic Plan Impact

Strategy B.1.1.4

Implement and enforce ordinances that include the following:

- Use of sidewalks and public spaces for entertainment
- Facility and property maintenance and appearance
- Designation and maintenance and appearance of green spaces

Comprehensive Plan Impact

Policy D.7.1

The city shall participate and support on-going intergovernmental sharing of information and services.

Subcommittee or commission Review/Recommendation

NA

Staff Conclusions/Recommendations

Adopt the 28E Agreement.

Alternatives

Not approve the 28E Agreement and designate city dollars for streetscape maintenance.

Implementation and Accountability

This program starts this Spring.

Signed



Lori Branderhorst
Director
Parks, Recreation and Forestry

Approved



David R. Fierke
City Manager

**AGREEMENT BETWEEN
THE IOWA DEPARTMENT OF CORRECTIONS AND THE CITY OF FORT DODGE,
AS PROVIDED BY CHAPTER 28E, CODE OF IOWA (2013)**

On this day of , 2015, this Agreement is made and entered into by and between the Iowa Department of Corrections (Corrections), and the City (Agency), as a cooperative effort to provide work through public service for offenders.

Corrections and the Agency agree as follows:

SECTION 1. PARTIES

1.1 The Iowa Department of Corrections is established by Chapter 904 of the Code of Iowa. It is a public agency, and the director has the authority to enter into this Agreement under section 904.703 of the Code.

1.2 The City is another department or agency of the State of Iowa, a political subdivision of the State of Iowa or is responsible for a public or charitable facility. Fort Dodge City Council and their representatives has the authority to enter into this Agreement.

SECTION 2. PURPOSE The purpose of this Agreement is to provide work through public service opportunities for offenders.

2.1 This Agreement is part of a work program in which offenders of state correctional institutions provide products or services to other departments or agencies of the state or to political subdivisions of the state.

or **2.1** This Agreement is part of a *trustworthy* offender work program in which offenders of state correctional institutions work at work centers outside the state correctional institutions or work in construction or maintenance at public or charitable facilities or for other agencies of state, county or local government.

or **2.1** This Agreement is with a county board of supervisors or county conservation board to provide offender services for environmental maintenance, including, but not limited to, brush and weed cutting, tree planting or erosion control.

or **2.1** This Agreement is part of an offender work program allowing for educational or vocational training outside of the state correctional institutions.

2.2 The Agency shall identify public service work opportunities appropriate for offenders. The Agency shall routinely, and as timely as possible, advise Corrections of the availability of these opportunities, including the nature of the work, the number of offenders that can be used, the hours of work, the approximate total number of hours the task or project will require, the

name of the Agency supervisor of the work, and any special conditions or requirements.

- 2.3 Corrections shall provide individuals under its supervision to perform work for the Agency. Corrections does not guarantee or warrant the availability of offenders to perform the work, or their individual skills, abilities or fitness for the tasks or projects assigned.

SECTION 3. GENERAL CONDITIONS

- 3.1 **Duration and Termination.** This agreement shall remain in force until terminated by either Corrections or the Agency. Following thirty (30) days written notice, either party may terminate the Agreement. If funds sufficient to allow either party to meet its obligations under this Agreement are not appropriated, allocated or authorized, or either party's legal authority is withdrawn or duties substantially modified relating to this Agreement, this Agreement shall terminate thirty (30) days after giving written notice of such lack of funding or change in law.
- 3.2 **Coordination.** Corrections and the Agency shall maintain necessary communications to coordinate labor needs, provide ongoing updates of how individual offenders are performing, evaluate overall effectiveness of the program, and any problems associated with the implementation of this Agreement. If any of the primary staff responsible for the implementation of the agreement change, written notice of the change shall be provided within 30 days.

Primary staff personnel responsible for the Agency and their telephone numbers are:

Lori Branderhorst	515.570.1748 cell/515.576.7237 office
Kevin Lunn	515.302.4994 cell/515.576.7237 office

Primary contact staff for Corrections is:

Don Halligan	515-574-4716
Dru Saathoff	515-574-4713

- 3.3 **Workers not displaced.** An offender shall not work in a public service project if the work of that offender would replace a person employed by the Agency, which employee is performing the work of the public service project at the time the offender is being considered for work in the project.
- 3.4 **Background checks.**

- A. The Agency shall not hire anyone who may have contact with offenders who has:
 - 1. Engaged in sexual abuse in a prison, jail, lockup, community confinement facility, juvenile facility, or other institution;
 - 2. Been convicted of engaging or attempting to engage in sexual activity in the community facilitated by force, overt or implied threats of force, or coercion, or if the victim did not consent or was unable to consent or refuse; or
 - 3. Been civilly or administratively adjudicated of engaging or attempting to engage in sexual activity in the community facilitated by force, overt or implied threats of force, or coercion, or if the victim did not consent or was unable to consent or refuse. **(PREA 115.17(a)(1-3))**
- B. The Agency shall consider any incidents of sexual harassment in determining whether to hire anyone who may have contact with offenders. **(PREA 115.17(b))**
- C. The Agency shall perform a criminal background records check before hiring any person who may have contact with offenders. Background checks on all current employees who have contact with offenders shall be conducted every five years or the Agency shall have in place a system for otherwise capturing such information. **(PREA 115.17(d)(e))**

3.5 Service attributes. Public service opportunities shall have as a primary purpose the development of attitudes, skills, and habit patterns which are conducive to offender rehabilitation.

3.6 Annual review. Corrections and the Agency shall annually review the feasibility, effectiveness, and impact of the public service agreements.

3.7 Tort liability. Offenders performing public services pursuant to this Agreement are employees of the State of Iowa for purposes of the Iowa Tort Claims Act, Iowa Code chapter 669.

3.8 Workers' compensation. An offender suffering an injury arising out of and in the course of performing the offender's public service under this Agreement is considered an "offender" under Iowa Code section 85.59 and "workers' compensation" benefits shall be determined and paid in accordance with that provision.

3.9 Insurance. If the Agency is not an agency or department of the State of Iowa or a political subdivision of the State of Iowa, the Agency shall

maintain in effect, at its expense, insurance covering its work, and shall submit to Corrections certificates of insurance for general liability, workers' compensation, automobile liability, property damage or other insurance coverage applicable to the public service work or project. These coverages shall be in amounts of not less than two-million dollars (\$2,000,000) aggregate and each occurrence, for each applicable coverage. For construction or maintenance projects at public or charitable facilities the State of Iowa and the Iowa Department of Corrections shall be additional named insureds under the applicable policies, which shall be shown on the certificates of insurance filed with Corrections.

3.10 No offender rights under Agreement. Offenders are not parties to this Agreement, nor third-party beneficiaries of this Agreement. Nothing in this Agreement is intended to create or support any right, interest, claim, or cause of action, either in tort or contract, which can be asserted by an offender or anyone on behalf of or through an offender.

3.11 No separate legal entity. This Agreement does not establish a separate legal entity to conduct this cooperative undertaking. The administration of this Agreement shall be the joint responsibility of the parties as further defined by its terms. Any real or personal property used in this cooperative undertaking shall be acquired, held and disposed of by the party which originally obtains or purchases the property.

3.12 Amendments. This Agreement may be amended in writing from time to time by the mutual consent of the parties.

SECTION 4. OFFENDER SELECTION/TRAINING/EQUIPMENT/WORK CONDITIONS

- 4.1** Corrections shall identify offenders for assignments to public service with the Agency and shall classify the offenders for assignments.
- 4.2** Corrections shall provide an orientation to the offenders concerning participation in the public service program.
- 4.3** The Agency may decline or terminate the assignment of an offender to a public service task or project at any time.
- 4.4** The Agency shall provide and document safety training necessary to recognize and avoid unsafe conditions and safely and properly perform a particular task or service. Documentation shall be detailed and specific to each task or service the offender will be performing and shall be provided to DOC upon request.

- 4.5** The Agency shall train all their employees who have contact with offenders on their responsibilities under Corrections' policies regarding prevention, detection, and response to sexual violence. The level and type of training provided shall be based on the services provided and level of contact with offenders. All employees who have contact with offenders shall be notified of Corrections' zero-tolerance policy regarding sexual violence and how to report such incidents. The Agency shall maintain documentation confirming that all employees understand the training they have received. **(PREA 115.32(a)(b)(c))**
- 4.6** The Agency shall provide all tools, equipment, clothing, materials, supplies or other items, including personal protective equipment, safety equipment or clothing, necessary for the task or service to be performed.
- 4.7** The Agency shall comply with all local, state, and federal laws and regulations concerning the public service project, including OSHA health and safety standards. The Agency shall be responsible for all permits, fees, inspections or other regulatory approvals necessary for the project.
- 4.8** If an injury, accident or other incident occurs while an offender is under the supervision of the Agency, the Agency shall notify the DOC immediately. The DOC and Agency shall complete and submit any and all reports or notices that may be required.

The Agency shall provide a First Report of Injury to the DOC on the day the injury occurs. The Agency shall include offender injuries on their OSHA 300 log when those injuries meet recordable criteria.

SECTION 5. OFFENDER SUPERVISION AND SECURITY.

- 5.1** The Agency shall provide direct supervision for all offenders assigned to the Agency for public service under this Agreement. The level of supervision to be provided, including the identity of the supervisor(s) and the ratio of supervisors to offenders, shall be discussed and agreed to by Corrections prior to offenders beginning the task or project. Corrections may reject the participation of an Agency supervisor in the public service program.
- 5.2** The Agency shall prevent any offender access to secured areas, security equipment, weapons, keys, personnel records, client records, or any other materials that could be considered contraband or confidential.

- 5.3** The Agency shall not allow any offender to operate a motor vehicle or access to any keys to operate a motor vehicle unless there is prior written approval from Corrections.
- 5.4** Corrections shall provide orientation for Agency staff who will supervise or have contact with offenders.
- 5.5** The Agency shall report to Corrections any offender whose performance is not satisfactory, is in violation of any work rules, or should otherwise be removed from the public service program.
- 5.6** In addition to any and all applicable work rules of the Agency, the Agency shall enforce any work rules supplied in advance by Corrections. These work rules, which may apply to Agency employees as well as offenders (*i.e., Agency employees cannot provide gifts or money to offenders; Agency employees cannot fraternize with offenders*) should not disrupt the Agency's ability to conduct its operations or accomplish the task or project.
- 5.7** Representatives of Corrections shall have access to the work site for security purposes, and for monitoring and assessing the public service program, the offenders assigned, or fulfilling any obligation under this Agreement.
- 5.8** The Agency shall maintain records concerning the hours worked by the offender, and shall make those records available to Corrections. The Agency shall cooperate with Corrections in completing any offender reviews to monitor the behavior and progress of the offender.
- 5.9** Corrections shall manage and be responsible for the removal and reclassification or reassignment of offenders who fail to meet the expectations of the public service program.

SECTION 6. OFFENDER ALLOWANCES/HOUSING/MEALS/TRANSPORTATION

- 6.1** The Agency shall pay Corrections for offender service provided under this Agreement at the following rates:
 - A. \$6.00 per day when DOC transports and provides meals to offenders.
 - B. \$5 per day when DOC provides meals and Agency transports the offenders.
 - C. \$4 per day when Agency provides meals and transports the offenders.
 - D. Offender hours worked exceeding 8 hrs/day will be reimbursed at the rate of \$.50 per hour.

- E. Wages of supervising staff will be reimbursed at a predetermined rate. The Agency shall remit this payment to Corrections on a monthly basis.
- 6.2** As necessary, Corrections will provide offender meals, but the Agency shall provide storage facilities and space for all meals and breaks.
- 6.3** Housing and maintenance for the offender shall be provided at the Fort Dodge Correctional facility and the cost of the housing and maintenance shall be paid by Corrections or the Agency. [If the offender(s) are housed and maintained in the state correctional institution, there will be no additional charge or cost for housing and maintenance paid by the Agency]
- 6.4** Corrections or the Agency shall provide transportation of the offender(s) to and from the work site.
- 6.5** The Agency shall provide any transportation necessary for the completion of a particular task or project. Further, the Agency shall be responsible for any emergency transportation, including ambulance or other medical transportation, occasioned by the offender's work for the Agency.

SECTION 7. FILING

- 7.1** This Agreement shall be filed by Corrections with the Iowa Secretary of State.

Department of Corrections

_____, **Director (for contracts over \$50,000.00)**

_____, **Warden/Superintendent**

City of Fort Dodge [Agency]

 _____, **Lori Branderhorst, Director**

_____, **Matt Bemrich, Mayor**