

ITEM #: 8  
DATE: 11/06/08

## COUNCIL ACTION FORM

**SUBJECT: 2008 SEVERE WEATHER RELIEF PROGRAM INTERGOVERNMENTAL AGREEMENT IN CONJUNCTION WITH THE 2008 JUMPSTART IOWA FLOOD PROGRAM**

### **BACKGROUND:**

In September 2008, Governor Chet Culver announced the creation of the Jumpstart Iowa flood relief program. As part of the state's flood recovery efforts, this new housing and business assistance plan is intended to help bridge the gap between the immediate needs of Iowans and the first installment of federal Community Development Block Grant Funding devoted to storm relief (see attached program details). "Jumpstart Iowa" is being administered through the Iowa Finance Authority (IFA), while the Jumpstart Iowa Federal program will be administered through the Iowa Department of Economic Development (IDED).

Under the Jumpstart Iowa program, the Iowa Finance Authority (IFA) is allocating grant funds to local government participants through certain Councils of Governments (COG's) and a few large cities. These agencies, in turn, will loan the funds to eligible residents under the conditions specified for the following reasons:

- To assist residents in purchasing homes generally comparable to those they lived in prior to the occurrence of the natural disasters of 2008;
- To assist residents with the cost of repairing or rehabilitating disaster-affected homes; and
- To assist residents in making mortgage payments and paying for other eligible property carrying costs while they await a property acquisition of their disaster-affected homes.

The North Iowa Area Council of Governments (NIACOG), Region 6 Planning Commission (Region 6), and MIDAS Council of Governments (MIDAS) have been designated to administer the Jumpstart Iowa funds for Hardin, Marshall, Poweshiek, Tama, Jasper, Story and Polk Counties, and for the cities of Ames and West Des Moines. However, within these COG's, the Region 6 Planning Commission out of Marshalltown will directly serve Jasper, Polk and Story Counties and the City of Ames. In order for Region 6 to be able to assist eligible housing or business applicants within the city limits of Ames, the attached Memorandum of Agreement (MOA) Understanding to operate within our jurisdiction must be signed.

Important aspects of the proposed MOA include the following:

- The duration of the agreement is for two years, through September 30, 2010;
- Any party may terminate the entirety of its participation by giving 60 days written

- notice;
- Region 6 would be providing the staffing services for processing residential and business applications.

Staff has identified concerns with two sections of the proposed MOA:

1. Item III of the agreement (Indemnification and Insurance) states that the participating parties will indemnify and hold harmless the North Iowa Area Council of Governments from any liabilities, losses, damages, suits, application decisions, judgments, counsel fees, and costs arising out of the activities carried out by the entities involved and signers of this agreement in regards to activities as identified under Section B;
2. Home and business inspections would be the responsibility of Region 6, and provision would need to be made to insure that the City's building, zoning and floodplain management regulations were followed by individual grant recipients.

It is understandable that NIACOG would include the indemnification provision to limit its liability as it services this state program for eighteen counties. However, this provision forces Ames to share in the responsibility for any problems that arise under administration of this program, even including mistakes made by NIACOG itself. To lend historical perspective to this dilemma, Ames and other central Iowa cities and counties were members of the Central Iowa Regional Association of Local Governments (CIRALG) up until the early 1980's. After federal funds were misappropriated by CIRALG, that COG was disbanded and the remaining member governments had to repay the federal government.

Staff discussed these concerns with the NIACOG Director, who indicated that NIACOG is unwilling to remove this section. He indicated that Polk County and other former CIRALG members had expressed the same concerns, but that they ultimately had approved the entire agreement.

Staff and the NIACOG Director also discussed concern that the City's building, zoning, floodplain, and other applicable ordinances be followed by individual residents and businesses who receive Jumpstart funding. Under the terms of the proposed agreement, NIACOG has agreed to involve the City's Inspection Division in all preliminary and final inspections of applicants' properties. That step should adequately address this concern.

NIACOG reports that Region 6 has already inspected two residential properties in Ames and has had an inquiry from one business. Thus, the scale of service provided within our community under the Jumpstart Iowa program seems to be quite modest.

It is likely that IDED will use this same method for administering the Federal Jumpstart funding that will soon come to the state. Thus, it is appropriate that staff immediately begin to negotiate an amendment to this agreement insuring that the program will be administered in full accordance with the applicable federal regulations.

**ALTERNATIVES:**

1. The City Council can authorize the Mayor to sign the attached Memorandum of Agreement as written.
2. The City Council can choose to disapprove the proposed Memorandum of Agreement.

**MANAGER'S RECOMMENDED ACTION:**

This situation presents a dilemma for the City. On the one hand, the Council of Governments that administers the Jumpstart Iowa flood recovery program insists that the City indemnify and hold it harmless from the consequences of actions it might potentially take. Given central Iowa's experience with CIRALG, this clearly exposes the City to risk. On the other hand, signing this intergovernmental agreement appears to be the only way our citizens and businesses can access this state flood damage assistance.

Given the limited number of cases involved within our City and the fact that Region 6, rather than NIACOG, will actually be working within our community, it appears that the benefits to our citizens outweighs the liability risk involved. Therefore, it is the recommendation of the City Manager that the City Council approve Alternative #1, authorizing the Mayor to sign the Memorandum of Agreement as written.

**MEMORANDUM OF AGREEMENT**  
**2008 SEVERE WEATHER RELIEF PROGRAM**  
**AGREEMENT OF COOPERATION**

WHEREAS it is in the mutual best interests of the North Iowa Area Council of Governments (NIACOG), Region 6 Planning Commission (Region 6), MIDAS Council of Governments (MIDAS), Boone, Jasper, Polk and Story counties, and the Cities of Ames and West Des Moines (hereinafter referred to as "COGs") all in Iowa, to coordinate their abilities to facilitate relief to businesses and housing damaged by severe weather included in the disaster declaration FEMA-1763-DR and to share resources available through various sources of funding; and

WHEREAS, it is necessary and desirable to stipulate the scope of participating between the entities involved and signers of this agreement; and

WHEREAS, the above named COGs desire to enter into this Agreement for purposes of facilitating the relief to business and housing damaged due to declared disaster and to share resources available through various sources of funding.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, the parties signatory stipulate and agree as follows:

I. GENERAL PROVISIONS

- A. The COGs hereto will create a cooperative relationship for the purpose of facilitating the relief to business and housing damaged by severe weather.
- B. The purposes of this agreement between the parties are:
  - 1. To serve as a communicative and coordinating body to plan, foster, implement, and monitor relief activities to businesses and housing damaged by severe weather among the body membership, for the mutual advantage of the membership; and,
  - 2. NIACOG will serve as a conduit for private, local, state and federal funding which may be available for any of the purposes set forth herein and any activities reasonable incidental thereto; and,
  - 3. To complete any and all acts necessary and appropriate actions under Iowa Law to effectuate the purposes set forth herein.

C. It is anticipated that additional amendments or agreements will be required to supplement this agreement.

D. The delivery of activities identified in "B" above shall be governed by the policy and procedures of the respective COG involved and the procedures, regulations and administrative rules of the agency supplying programs or funds.

1. In the event funding becomes available for the relief to business and housing damaged by severe weather, the membership representatives may enter into a sub-recipient agreement with the North Iowa Area Council of Governments for the purpose of acting as the administrator of the funds.
2. The COGs may acquire personal and real property through duly authorized action of its governing board; and disposition of any such property with a value in excess of \$25,000.00 may be only upon the affirmative written ballot vote of two thirds of the COG.

## II. MISCELLANEOUS PROVISIONS

A. The duration of this Agreement is twenty-four months beginning on September 29, 2008 and ending on the 30th day of September 2010. This Agreement may be renewed by the parties, but only by affirmative, written renewal signed by all parties to any such renewal.

B. A party to this Agreement may terminate the entirety of its participation in this Agreement by giving 60 days written notice to the board of directors, and by contemporaneously providing a copy of said written notice to each of the parties hereto. The exit of one or more parties to this agreement does not nullify this agreement, which will remain in effect as long as two or more signatories to the agreement remain.

C. NIACOG, Region 6 and MIDAS will provide the staffing services for their member cities and counties. Region 6 will service Jasper, Polk and Story Counties. MIDAS will service Boone County. NIACOG will be the responsible party for the general administration of the program. Each COG will provide the technical assistance staff required for the rehabilitation/repair administration of the Jumpstart program. No separate legal entity is created under this agreement.

D. In the event that any provision of this Agreement is found to be void or voidable by operation of statute, order of court, or otherwise, all other provisions of this Agreement in whole or part shall remain in full force and effect and shall be unaffected thereby.

E. Parties to this Agreement shall not assign its rights and obligations hereunder without the prior written authorization of the other COGs. This Agreement shall be governed by the laws of the State of Iowa. In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof. The

terms and conditions of this Agreement may be amended only by written instrument executed by all parties.

F. All requests for reimbursement to NIACOG shall be signed by the executive director or authorized official of the respective COG. The NIAOG shall submit timely, prudent, and accurate reimbursement requests to the State of Iowa for funds so as to ensure the interest charged on any lines of credit is minimized as much as possible.

G. The participating COGs hereto sign this Agreement by authority of the Executive Director or by of a resolution duly adopted by the respective board of directors or city councils.

### III. INDEMNIFICATION AND INSURANCE

A. During the life of the agreement the participating party will indemnify and hold harmless the North Iowa Area Council of Governments from any liabilities, losses, damages, suits, application decisions, judgments, counsel fees, and costs arising out of the activities carried out by the entities involved and signers of this agreement in regards to the activities as identified under Section B.

B. In the event of any proceeding, litigation or suit against participating parties by any regulatory agency or in the event of any court action or other proceeding challenging any material prepared by any participating parties, NIACOG shall assist in the preparation of the defense of such action or proceeding and cooperate with participating parties and participating parties' attorneys, to the extent possible.

### IV. ADMINISTRATION

Any and all program administration related to businesses and housing assistances damaged by severe weather included in the disaster declaration FEMA-1763-DR and all transactions involving the expenditure of any of the grant funds within the scope of the JUMPSTART Program or succeeding disaster relief from federal or other funds will be carried out under a separate contract and not covered by this Agreement.

Participating parties will comply with all the special conditions and general conditions of Grant Contract IFA 09-09 and will comply with any amendments to said contract. The contract is made part of this MOA.

This Agreement may be signed in counterparts.

The effective date of this agreement shall be September 29, 2008.

IN WITNESS WHEREOF, the parties hereto have executed this MEMORANDUM OF AGREEMENT as of the date first above written.

PARTY TO THIS AGREEMENT:

Region 6 Planning Commission  
Marshalltown, Iowa

By: \_\_\_\_\_  
Executive Director

\_\_\_\_\_  
Date:

ATTEST:  
  
\_\_\_\_\_

North Iowa Area Council of Governments  
Mason City, Iowa

By: \_\_\_\_\_  
Executive Director

Date: \_\_\_\_\_

ATTEST:  
  
\_\_\_\_\_

PARTY TO THIS AGREEMENT:

MIDAS Council of Governments  
Fort Dodge, Iowa

By: \_\_\_\_\_  
Executive Director

\_\_\_\_\_  
Date:

ATTEST:  
  
\_\_\_\_\_

North Iowa Area Council of Governments  
Mason City, Iowa

By: \_\_\_\_\_  
Executive Director

Date: \_\_\_\_\_

ATTEST:  
  
\_\_\_\_\_



PARTY TO THIS AGREEMENT:

Boone County Board of Supervisors  
Boone, Iowa

By: \_\_\_\_\_  
Chair, Board of Supervisors

\_\_\_\_\_  
Date:

ATTEST:  
  
\_\_\_\_\_

North Iowa Area Council of Governments  
Mason City, Iowa

By: \_\_\_\_\_  
Executive Director

Date: \_\_\_\_\_

ATTEST:  
  
\_\_\_\_\_

PARTY TO THIS AGREEMENT:

Jasper County Board of Supervisors  
Newton, Iowa

By: \_\_\_\_\_  
Chair, Board of Supervisors

\_\_\_\_\_  
Date:

ATTEST:  
  
\_\_\_\_\_

North Iowa Area Council of Governments  
Mason City, Iowa

By: \_\_\_\_\_  
Executive Director

Date: \_\_\_\_\_

ATTEST:  
  
\_\_\_\_\_

PARTY TO THIS AGREEMENT:

Polk County Board of Supervisors  
Des Moines, Iowa

By: \_\_\_\_\_  
Chair, Board of Supervisors

\_\_\_\_\_  
Date:

ATTEST:  
  
\_\_\_\_\_

North Iowa Area Council of Governments  
Mason City, Iowa

By: \_\_\_\_\_  
Executive Director

Date: \_\_\_\_\_

ATTEST:  
  
\_\_\_\_\_

PARTY TO THIS AGREEMENT:

Story County Board of Supervisors,  
Nevada, Iowa

By: \_\_\_\_\_  
Chair, Board of Supervisors

\_\_\_\_\_  
Date:

ATTEST:  
  
\_\_\_\_\_

North Iowa Area Council of Governments  
Mason City, Iowa

By: \_\_\_\_\_  
Executive Director

Date: \_\_\_\_\_

ATTEST:  
  
\_\_\_\_\_

PARTY TO THIS AGREEMENT:

City of Ames  
Ames, Iowa

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

\_\_\_\_\_  
Date:


ATTEST:  
  
\_\_\_\_\_

North Iowa Area Council of Governments  
Mason City, Iowa

By: \_\_\_\_\_  
Executive Director

Date: \_\_\_\_\_

ATTEST:  
  
\_\_\_\_\_

APPROVED AS TO FORM  
BY   
**DOUGLAS R. MAREK**  
CITY ATTORNEY

PARTY TO THIS AGREEMENT:

City of West Des Moines  
West Des Moines, Iowa

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

\_\_\_\_\_  
Date:

ATTEST:  
  
\_\_\_\_\_

North Iowa Area Council of Governments  
Mason City, Iowa

By: \_\_\_\_\_  
Executive Director

Date: \_\_\_\_\_

ATTEST:  
  
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