

# **Des Moines Area Metropolitan Planning Organization**

## **28E Agreement**

### **SEVENTH Amended and Substituted**

September 20, 2018

# Des Moines Area MPO 28E Agreement (Seventh Amended and Substituted)

The Des Moines Area MPO has prepared this document with partial funding from the United States Department of Transportation Federal Highway Administration and the Federal Transit Administration, and in part through local matching funds provided by the Des Moines Area MPO member governments. These contents are the responsibility of the Des Moines Area MPO. The United States Government and its agencies assume no liability for the contents of this report or for the use of its contents. This document was approved as of September 20, 2018. **The Des Moines Area MPO filed this 28E Agreement with the Iowa Secretary of State on January 9, 2019.**

**SEVENTH AMENDED AND SUBSTITUTED  
AGREEMENT ESTABLISHING  
THE  
DES MOINES AREA METROPOLITAN PLANNING ORGANIZATION**

**ARTICLE I - ESTABLISHMENT**

The Des Moines Area Metropolitan Planning Organization (hereinafter referred to as "the MPO") is hereby established and created as a voluntary organization of certain county and city governments in the Metropolitan Planning Area, as set forth on Exhibit A, attached hereto and incorporated herein by this reference (hereinafter referred to as the "Metropolitan Planning Area"). The Metropolitan Planning Area includes the Des Moines Urbanized Area as defined by the U.S. Bureau of the Census (hereinafter referred to as the "Des Moines Urbanized Area").

**ARTICLE II - ORGANIZATION, PURPOSE AND POWERS**

The MPO is organized as a separate legal entity pursuant to the provisions of Chapter 28E, Code of Iowa, 2018, as amended, with the powers and purposes to carry out transportation planning activities for the metropolitan area and other activities as described in this Agreement. The purpose of the Seventh Amended and Substituted Agreement is to make revisions to the previous Amended and Substituted Agreement that became effective on February 16, 2011, which replaced the previously existing agreement that became effective on August 11, 2010, which replaced the previously existing agreement that became effective on October 21, 2005, which replaced the previously existing agreement that became effective on September 7, 2005, which replaced the previously existing agreement that became effective on August 20, 2001, which replaced the previously existing agreement that became effective on February 26, 1998, which replaced the previously existing agreement that became effective on September 21, 1993, which replaced the previously existing agreement that became effective on May 19, 1993, which replaced the previously existing agreement that became effective on July 1, 1983 and to authorize the MPO to continue, pursuant hereto, to serve as a designated metropolitan planning organization, pursuant to Part 450 of Title 23 of the Code of Federal Regulations, and any amendment or successor section thereto; and to enable the MPO to carry out a transportation planning process as outlined therein.

The MPO is also authorized, upon designation by the State of Iowa, to review and comment on federal transportation, planning, or construction grants for which member governments have applied, and to determine their consistency with adopted area wide transportation plans. Except as otherwise hereinafter provided, the powers of the MPO shall be exercised by the member governments representatives or, where appropriate, alternate representatives, acting by and through the MPO in accordance herewith.

The MPO is also authorized to carry out such other activities fostering collaboration between and among its member governments and other agencies, entities, and persons, public, quasi-public, and private, that involve information gathering and dissemination, planning, and consensus building deemed beneficial to the community that is in the MPO planning area. This authority includes the power to enter into separate 28E Agreements and may involve acting as sponsor, lead agency, and/or fiscal agent for such endeavors.

### **ARTICLE III - MEMBERSHIP - VOTING REPRESENTATION**

1. Membership - Except as restricted by section 4 of this Article, to become a member of the MPO, a governmental entity must: (a.) be located wholly or partially within the Metropolitan Planning Area; (b.) adopt this Seventh Amended and Substituted Agreement perpetuating the MPO by resolution of its governing body; and (c.) have a population of at least 3000 as shown by the most recent federal census or official intercensal estimate. All current voting MPO members as of the date of this 28E Agreement shall retain their voting membership in the MPO, regardless of whether or not they meet the requirements of Article III, Section 1. The foregoing to the contrary notwithstanding, the Des Moines Area Regional Transit Authority (“DART”) shall be a member pursuant to the terms of this agreement. To retain membership in the MPO, each member government/agency must comply with all requirements of this Seventh Amended and Substituted Agreement.
  
2. Representation
  - a. The representative or representatives of each member government who shall serve on the MPO shall be a member or members of its governing body or other person or persons appointed in the manner approved by such governing body. Alternate representatives may be similarly appointed on a temporary or permanent basis, as a member government shall determine. In case a member government has more than one representative, alternate representatives for that member government shall be entitled to vote in the absence of any representative of that member government. The DART representative to the MPO, and any alternate, will be someone other than the designated representative or alternate of any other member government.
  
  - b. Each member government shall be entitled to one representative on the MPO, plus one or more additional representatives based on the member government's population within the Metropolitan Planning Area as follows: One additional representative for each 50,000 population as shown by the most recent census or official intercensal estimate. DART will be entitled to one representative or alternate and one vote at meetings of the MPO Policy Committee.

The foregoing to the contrary notwithstanding, the representation for each county member shall be based upon the portion of the population of its unincorporated area within the Metropolitan Planning Area and the population of incorporated areas within the Metropolitan Planning Area that is not otherwise represented on the MPO.

- c. Each representative shall serve at the pleasure of the governing body by which that representative was approved.
- d. The Iowa Department of Transportation, the Federal Highway Administration, the Federal Transit Administration, the Heart of Iowa Regional Transit Agency, and the Des Moines International Airport may serve as non-voting, advisory members of the MPO, and may be represented by their respective designees.
- e. Counties and incorporated areas wholly or partially within the Metropolitan Planning Area which are not eligible for full membership will be entitled to Associate Membership with one non-voting, advisory representative appointed by that governmental entity upon payment of an associate membership fee as established from time-to-time by the MPO.

3. Voting

- a. A quorum of the MPO shall be required for the conduct of its business. A quorum shall consist of a majority of the total number of persons who have been appointed as representatives of member governments.
- b. In the ordinary conduct of the MPO's business, each representative will have one vote; and the majority vote of those representatives present and voting shall decide such matters.
- c. At any time, on any question before the MPO, other than review and comment on federal transportation grants, the project selection process for including projects in the Transportation Improvement Program (TIP), or the Unified Planning Work Program (UPWP) and the annual UPWP budget, a minimum of any two member governments represented at a meeting may request a weighted vote. DART cannot be one of the member governments requesting a weighted vote.

Under the weighted vote method, issues will be decided by assigning to each member government for which a representative is present and voting a number equal to the population within the Metropolitan Planning Area, by the most recent

federal census or official intercensal estimate, for that member government, except that county member governments are only entitled to vote a number equal to the population residing within the unincorporated portion of the county located within the Metropolitan Planning Area. Under the weighted vote method, DART will have one vote. Under the weighted vote method, an issue must receive three-fourths of the total votes cast in order to be adopted.

4. Withdrawal and Readmission

- a. Withdrawal - A member government may withdraw from membership on the MPO when its governing body requests such withdrawal by resolution, sent by certified mail, return receipt requested, to the MPO. Any such withdrawal shall become effective on the date which is the later of the following: (1) the date specified in the resolution, or (2) upon receipt of the resolution by the MPO. As provided in Article IV hereof, a member government shall be deemed to have withdrawn upon nonpayment of assessment within thirty (30) days after notice thereof is sent by certified mail, return receipt requested, to the Mayor or Chair of the Board of Supervisors and the City Clerk or County Auditor of the member government involved. In the event of withdrawal, such government shall not be relieved of its obligation to pay its share of the expenses of the MPO for the MPO fiscal year in which such withdrawal occurs.
- b. Readmission - Any member government which has withdrawn or has been deemed to have withdrawn from the MPO may apply for readmission. The MPO shall establish a readmission fee for any applicant. The minimum readmission fee shall not be less than twenty-five (25) percent of the assessment for which the applicant would have been obligated had it been a member of the MPO during the prior MPO fiscal year. The maximum readmission fee shall not exceed two hundred (200) percent of the assessments for which the applicant would have been obligated during its non-membership period.

**ARTICLE IV - BUDGET AND ASSESSMENT SCHEDULE**

The MPO shall approve an annual budget and assessment schedule. The assessment for each member government shall be based on the ratio of each member government's population within the Metropolitan Planning Area, as shown by the most recent federal census or official intercensal estimate. For this purpose, a county member's population shall be the population of its unincorporated area within the Metropolitan Planning Area and the population of incorporated areas within the Metropolitan Planning Area that are not otherwise represented on the MPO. DART will not be charged any assessment.

All annual assessments are due and payable on July 1 of each year. Any member government which fails to pay any assessment, in full, within 30 days (or such other period of time as may be requested by the member government and approved by the MPO) after the due date shall become delinquent for non-payment of the assessment. No representatives of that member government shall thereafter be allowed to vote on any matter coming before the MPO until the delinquency is cured.

The MPO is authorized from time-to-time to approve amendments to the budget and corresponding special assessment schedule. Any such special assessment schedule shall be based on the same ratio among member governments as regular assessments. The resolution adopting any such amendments and special assessment schedule shall establish applicable payment deadlines and delinquency dates.

Written notice of delinquency shall be sent by certified mail, return receipt requested, to the Mayor or Chair of the Board of Supervisors and City Clerk or County Auditor of the member government involved. Upon non-payment of the full assessment within 30 days of receipt of the delinquency notice, that member government will be deemed to have withdrawn its membership on the MPO.

## **ARTICLE V - OPERATIONAL MATTERS**

1. In the conduct of its business, the MPO may cooperate with, contract with, and accept and expend funds from federal, state, and local agencies, public or semi-public entities, private individuals, profit and non-profit corporations, and any other legally recognized association or entity.
2. The MPO may appoint such advisors or create such technical or advisory committees as it deems desirable.
  - a. There shall be established a Transportation Technical Committee, composed of technical representatives appointed by the member governments and such other individuals appointed by the Chair of the MPO. No member government may have more technical representatives than it has representatives on the MPO, up to a maximum of three. The Iowa Department of Transportation, the Federal Highway Administration, and the Federal Transit Administration may serve as non-voting, advisory members of the Transportation Technical Committee. The Transportation Technical Committee shall review and develop recommendations on all matters referred to it by the MPO, and it may adopt such rules or procedures for its operation as are not inconsistent with this Agreement. Unless directed otherwise by the MPO Policy Committee, the Transportation Technical

Committee will report its findings and recommendations to the MPO Executive Committee.

- b. A member of the Transportation Technical Committee may not serve as a representative or alternate of a member government on the MPO.
3. The MPO shall approve such transportation plans, reports or recommendations as are required by the federal and state governments as prerequisites for eligibility for federal or state transportation grants. In addition, the MPO shall prepare annually a UPWP that details planning activities to be conducted, the responsibilities for conducting those activities, and the proposed budget for those activities.
4. The MPO may make such arrangements as it deems necessary to secure administrative, staff and planning services, including contracting with any member government or any other public or private entity. Such services shall be included in the annual UPWP of the MPO.
5. The officers of the MPO shall be a Chair, Vice Chair, and Secretary/Treasurer, each of whom shall be elected annually from the members of the Executive Committee. Elected officers shall have such duties as are customary to their respective offices.
6. The MPO's Executive Committee shall be constituted by representatives chosen from designated member governments. Designated member governments and their number of representatives shall include the following: one representative from each member community that exceeds a population of 50,000 (Des Moines shall receive two representatives), one representative from Polk County, and two representatives each from three subareas (Northwest area, Southwest area, and East area) that represent communities under 50,000 in population. Identification of the communities in each of the subareas identified above are attached hereto as Exhibit B. The immediate past Chair of the Executive Committee shall remain on the Executive Committee so long as that person remains their community's primary representative and shall count as one of the Executive Committee representatives from the afore-mentioned designated member governments. All members of the Executive Committee, at the time of appointment to the Executive Committee, shall be holders of a federal, state, or local government elective office, EXCEPT that one person on the Executive Committee may be other than a holder of a government elective office. All Executive Committee members must be a community's primary representative at the time of their appointment to the Executive Committee. The Executive Committee shall exercise only such powers as may be delegated by the MPO as set forth in the Bylaws of the Des Moines Area Metropolitan Planning Organization. Executive Committee recommendations shall be reported to the full Policy Committee. The Executive Committee shall only act with a quorum of at least one-half of its members



plus one additional member. The Executive Committee shall conduct its meetings in accordance with Chapter 21, Code of Iowa (2018), the Iowa Open Meetings Act.

7. The MPO may adopt Bylaws and other rules or operational procedures which are not inconsistent with this Seventh Amended and Substituted Agreement.

#### **ARTICLE VI - TERMINATION**

The MPO may be terminated upon an affirmative vote of not less than three-fourths (3/4) of the representatives present at any regular meeting, or at a special meeting called for such purpose, which vote must be ratified by resolution of the governing bodies of not less than three-fourths (3/4) of the member governments.

In the event of termination, all assets of the MPO shall be distributed to and all liabilities of the MPO shall be assumed by those governments which are members at the time of such termination, based upon the ratio of each member government's population within the Metropolitan Planning Area to the total population of the Metropolitan Planning Area, as shown by the most recent federal census or official intercensal estimate, with the population of each county member based upon the portion of the population of its unincorporated area within the Metropolitan Planning Area and the population of incorporated areas within the Metropolitan Planning Area that are not otherwise represented on the MPO. There will be deducted from the distribution of assets to any member government that is delinquent in the payment of dues or assessments, the amounts of such delinquency. The foregoing to the contrary notwithstanding, DART will not succeed to any assets or liabilities of the dissolved MPO.

#### **ARTICLE VII - AMENDMENTS**

The terms and provisions of this Seventh Amended and Substituted Agreement may be amended by a majority vote of the representatives on the MPO at any regular or special meeting called for such purpose and approved by resolution of the governing bodies of three-fourths (3/4) of the member governments, including DART.

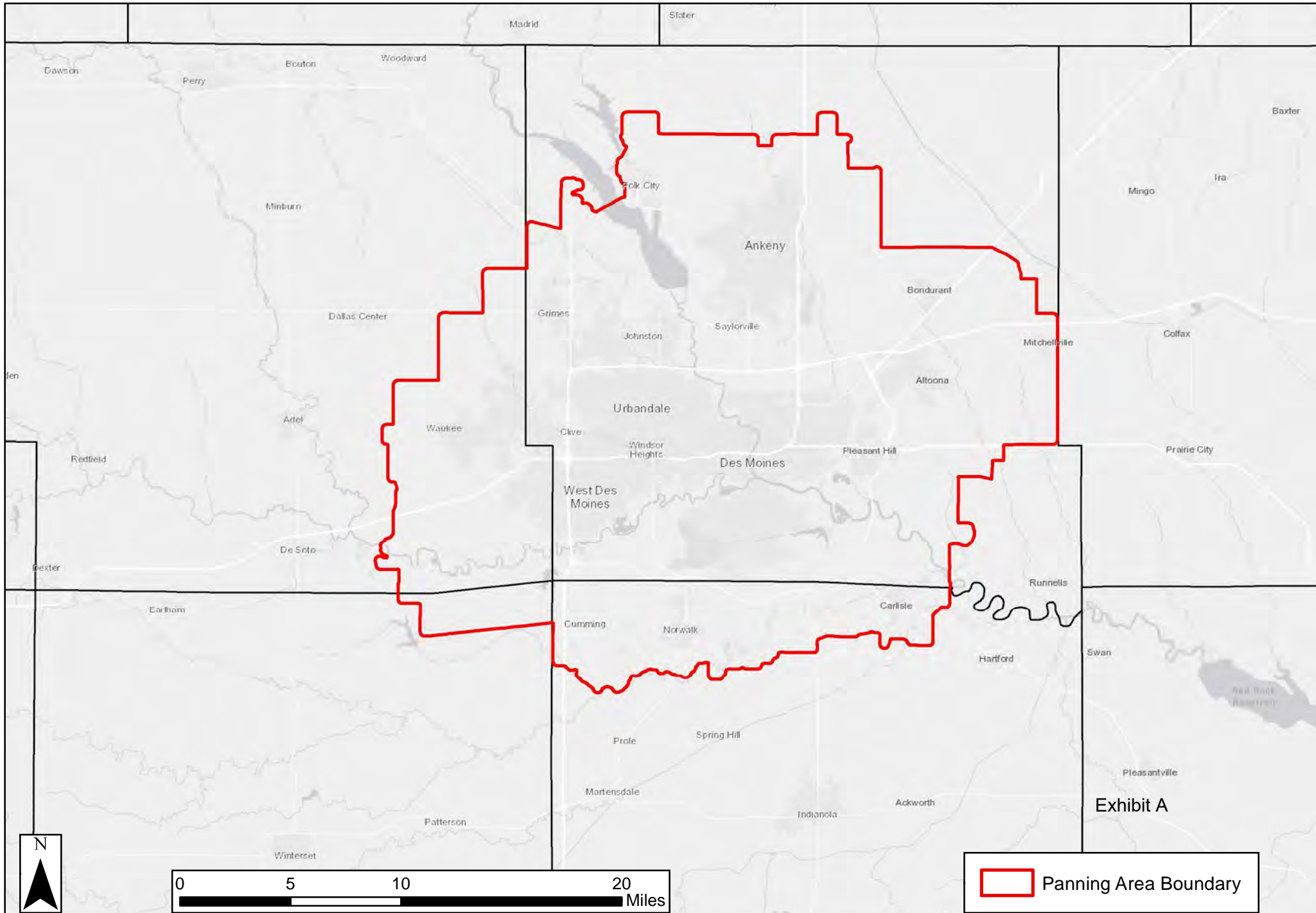
#### **ARTICLE VIII - SEPARABILITY**

If any one or more of the provisions of this Agreement is declared unconstitutional or otherwise illegal, the validity of the remainder hereof shall not be affected thereby. If the unconstitutionality or illegality is due to the scope or breadth of the provision then the same shall be deemed valid to the extent that it is constitutional and legal, and a Court of competent jurisdiction shall be empowered to reform this Agreement in order to achieve that result.

## **ARTICLE IX - EFFECTIVE DATE AND DURATION**

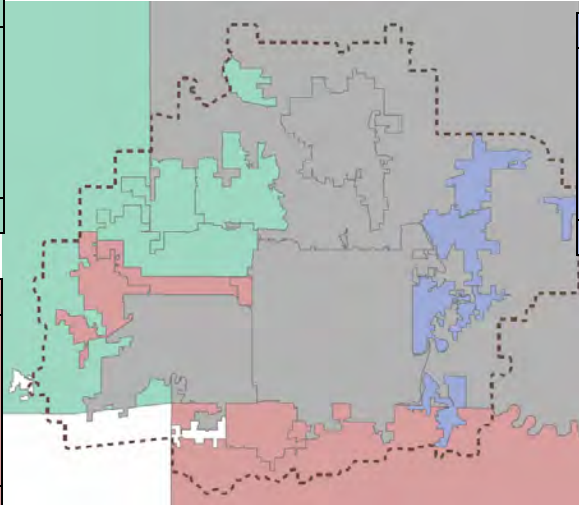
1. This Seventh Amended and Substituted Agreement shall not be effective until such time as it shall have been approved by at least three-fourths (3/4) of the following governmental entities: Dallas County, DART, Polk County, Warren County, the City of Altoona, the City of Ankeny, the City of Bondurant, the City of Carlisle, the City of Clive, the City of Des Moines, the City of Grimes, the City of Johnston, the City of Mitchellville, the City of Norwalk, the City of Pleasant Hill, the City of Polk City, the City of Urbandale, the City of Waukee, the City of West Des Moines, and the City of Windsor Heights; and shall have been thereafter filed and recorded as provided by law.
2. It is the intention of this Seventh Amended and Substituted Agreement that the MPO be a perpetual organization made up of the original parties hereto and any eligible parties which may later adopt this Seventh Amended and Substituted Agreement.
3. This Seventh Amended and Substituted Agreement may be simultaneously executed in several counterparts, each of which shall be deemed an original and all of which shall constitute but one and the same instrument.

# Des Moines Area MPO Planning Area Boundary



**MPO Executive Committee Representation  
(as of 2018)**

<b>Northwest (2 Rep)</b>	
Dallas Co.	2,172
Grimes	11,909
Johnston	21,114
Polk City	4,428
Urbandale	43,018
<b>Total</b>	<b>82,641</b>



<b>East (2 Rep)</b>	
Altoona	17,938
Bondurant	5,796
Carlisle	4,249
Mitchellville	2,405
Pleasant Hill	9,750
<b>Total</b>	<b>40,138</b>

<b>Southwest (2 Rep)</b>	
Clive	17,546
Norwalk	10,590
Warren County	4,137
Waukee	19,284
Windsor Heights	4,983
<b>Total</b>	<b>56,540</b>

Committee Size = 11

- *Over 50,000 representatives: 4 (Des Moines x 2; Ankeny x 1, West Des Moines x 1)*
- *Polk County representative x 1*
- *Northwest community under 50,000 x 2*
- *Southwest community under 50,000 x 2*
- *East community under 50,000 x 2*
- *Officers chosen from among the Executive Committee members*