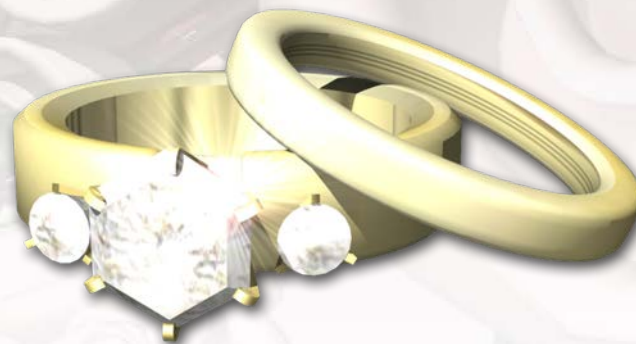


Contracts & 28E Agreements



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CONTRACTS

Contract: (Noun) An agreement with specific terms between two or more persons or entities in which there is a promise to do something in return for a valuable benefit known as consideration.

Complex area of law: UCC 2 - Sales & 9 – Secured Trans, Real Estate, Insurance, Banking, Construction, Employment....



CONTRACTS



"Agreement"

"Memorandum of Understanding"

"Bill of Sale", "Bond"

"Guarantee", "Warranty"

"Stipulation", "Settlement"

"Mutual Promise", "Covenant"

"Lease", "Warranty Deed"

Employee Handbook, Bargaining Unit Agreement, Insurance, Etc.

CONTRACTS

Any document regardless of its title that contains....

- 1. An offer**
- 2. An acceptance of the offer**
- 3. A meeting of the minds**
- 4. Valuable Consideration**
- 5. A promise to perform**
- 6. A time or event when performance must be made**
- 7. Terms for performance**
- 8. Performance**



CONTRACTS

"OFFER"

***The act or an instance of presenting something to another person or entity for acceptance.**

*** A display of willingness to enter into a contract on specified terms made in a way a reasonable person would believe if accepted would create a binding contract**



CONTRACTS

“ACCEPTANCE”

- * An express act or implication from conduct to an offer so that a contract is formed**
- * If acceptance modifies the original offer, it operates as a counter offer – not acceptance.**
- * Conditional Acceptance, Implied Acceptance, Silence?**



CONTRACTS

“MEETING OF THE MINDS”

- * Mutual assent by both parties to certain terms and the creation of a contract**
- * The contract terms must be sufficiently definite to determine the duty of each party and conditions for performance**



CONTRACTS

“Valuable Consideration”

- * Something of Value**
- * Cash \$\$\$**
- * Property**
- * Agree to do something of value**
- * Forbearance or Estoppel**
- * Agree not to do something**
- * A return promise**
- * Cannot be something illegal**



CONTRACTS

“PROMISE TO PERFORM” & “TIME FOR PERFORMANCE”

- *Express a promise: What is to be performed or what the party is agreeing not to do.**
- *Provide a time or event to complete what is being promised.**



CONTRACTS

“PERFORMANCE”

- * The successful completion of a contractual duty.**
- * Acts consistent with the intention to fulfill an obligation**



CONTRACTS

ORAL CONTRACTS?

Statute of Frauds

1677 English Statute – Certain contracts unless in writing and signed by each party are unenforceable.



CONTRACTS

STATUTE OF FRAUDS:

1. Sale or transfer of Real Estate
2. Performance later than 1 Year
3. Sale of Goods value > \$500.00
4. Executor & Decedent's Debt
5. Contract in consideration of Marriage (Prenuptial Contract)



CONTRACTS

ORAL CONTRACTS?

“Hand Shake” deals....

*** Absolutely occur everyday.**

When there is a dispute over duties, performance, time to perform, they are difficult to enforce – meeting of minds....

*** Fiduciary duty on behalf of the County. Reduce hand shake deals to writing. Preserve writings evidencing intent.**



CONTRACTS

EXAMINING CONTRACTS & AGREEMENTS

My Tips:

- 1. Who are the parties?**
- 2. What is the deal & does the document say what you want?
Are there emails other writings
preceding the contract?**
- 3. What is the risk? \$5 or \$5M**



CONTRACTS

EXAMINING CONTRACTS & AGREEMENTS

My Tips Cont'd:

4. Performance: When?
5. Forum: Iowa or elsewhere?
6. Termination Clause: How soon can you get out if the deal goes sideways or upside down?
7. Have you reviewed it with your County Attorney?





CHAPTER 28E

INTERGOVERNMENTAL AGREEMENTS

28E AGREEMENTS

Code of Iowa Chapter 28E

28E.1 "...to permit state and local governments in Iowa to make efficient use of their powers by enabling them to provide joint services and facilities with other agencies and to cooperate in other ways of mutual advantage."



28E AGREEMENTS

28E.4 Agreements with other Agencies

Any public agency of this state may enter into an agreement with one or more public or private agencies for joint or cooperative action pursuant to the provisions of this chapter, including the creation of a separate entity to carry out the purpose of the agreement.



28E AGREEMENTS



28E.4 Agreements with other Agencies

Appropriate action by ordinance, resolution or otherwise pursuant to law of the governing bodies involved shall be necessary before any such agreement may enter into force.

28E AGREEMENTS

28E.5 Specifications:

Any such agreement shall specify the following:

- 1. Its duration.**
- 2. The precise organization, composition and nature of any separate legal or administrative entity created thereby together with the powers delegated thereto, provided such entity may be legally created. However, if the agreement establishes a separate legal or administrative entity, the entity shall, when investing funds, comply with the provisions of sections 12B.10 and 12B.10A through 12B.10C and other applicable law.**



28E AGREEMENTS

28E.6 Additional Provisions

1. If the agreement does not establish a separate legal entity to conduct the joint or cooperative undertaking, the agreement shall also include:

a. Provision for an administrator or a joint board responsible for administering the joint or cooperative undertaking. In the case of a joint board, public agencies party to the agreement shall be represented.

b. The manner of acquiring, holding, and disposing of real and personal property used in the joint or cooperative undertaking.



28E AGREEMENTS

28E.6 Additional Provisions

2. The joint board specified in the agreement shall be a governmental body for purposes of chapter 21 and the entity created shall be a government body for purposes of chapter 22 unless the entity created or agreement includes public agencies from more than one state. (Subject to Open Meetings & Records)

3. a. A summary of the proceedings of each regular, adjourned, or special meeting of the joint board of the entity created in the agreement, including the schedule of bills allowed, shall be published after adjournment of the meeting in one newspaper of general circulation within the geographic area served by the joint board of the entity created in the agreement. The summary of the proceedings shall include the date, time, and place the meeting was held, the members present, and the actions taken at the meeting. (Subject to Publication)



28E AGREEMENTS

28E.6 Additional Provisions

3. The joint board of the entity created in the agreement shall furnish the summary of the proceedings to be submitted for publication to the newspaper within twenty days following adjournment of the meeting. The publication of the schedule of bills allowed shall include a list of all salaries paid for services performed, showing the name of the person or firm performing the service and the amount paid. The publication of the schedule of bills allowed may consolidate amounts paid to the same claimant if the purpose of the individual bills is the same. However, the names and gross salaries of persons regularly employed by the entity created in the agreement shall only be published annually.



28E AGREEMENTS

28E.6 Additional Provisions

3(b). An entity created which had a cash balance, including investments, of less than one hundred thousand dollars at the end of the previous fiscal year and which had total expenditures of less than one hundred thousand dollars during the prior fiscal year is not required to publish as required in paragraph "a". However, such an entity shall file without charge, in an electronic format, the information described in paragraph "a" with the office of the county recorder in the most populous county served by the entity. The county recorder shall make the information submitted available to the public, which information shall also include access to a copy of the agreement creating the entity.



28E AGREEMENTS

28E.7 Obligations not excused

No agreement made pursuant to this chapter shall relieve any public agency of any obligation or responsibility imposed upon it by law except that to the extent of actual and timely performance thereof by a joint board or other legal or administrative entity created by an agreement made hereunder, said performance may be offered in satisfaction of the obligation or responsibility.

***Can create 28E to fulfill statutory or contractual obligation – does not excuse duties until performance.**



28E AGREEMENTS

28E.8 Filing with Secretary of State

- 1. Must be filed in an electronic format with the secretary of state**
- 2. Any amendment, modification, or notice of termination of an agreement shall be filed with the secretary of state.**
- 3. Initial report shall be made to the secretary of state including the name of the entity created, the board members of the joint board created, whether the entity is exempt from the publication requirements, a valid electronic mail address, etc.**
- 4. Biennial report shall be filed in odd numbered years**



28E AGREEMENTS

28E.11 Aid to 28E Entity

Any public agency entering into an agreement pursuant to this chapter may appropriate funds and may sell, lease, give, or otherwise supply the administrative joint board or other legal or administrative entity created to operate the joint or cooperative undertaking by providing such personnel or services therefor as may be within its legal power to furnish.

***Meeting space, IT support, \$\$\$, Clerical support, etc.**



28E AGREEMENTS



28E Other Provisions:

- * Bonds**
- * Mass Transit**
- * Shared Use of Facilities**
- * County/City Unified Law Enforcement
(District, Taxation, Budget, Commission)**
- * Emergency Services Mutual Aid**
- * Community Cluster**
- * Regional Metro Service Area**
- * Joint County, City, Fire, School Buildings**

28E AGREEMENTS

Examples:

<http://sos.iowa.gov/28E>

- * Multi-County Landfill
- * Shared Assistant County Attorney
- * County City Unified Law Enforcement District
- * Shared County Engineer
- * Fire & Emergency Management Protection
- * Drug Task Force
- * Shared Mental Health Services Coordinator
- * Economic Development
- * Land Development for City/School Use



28E AGREEMENTS

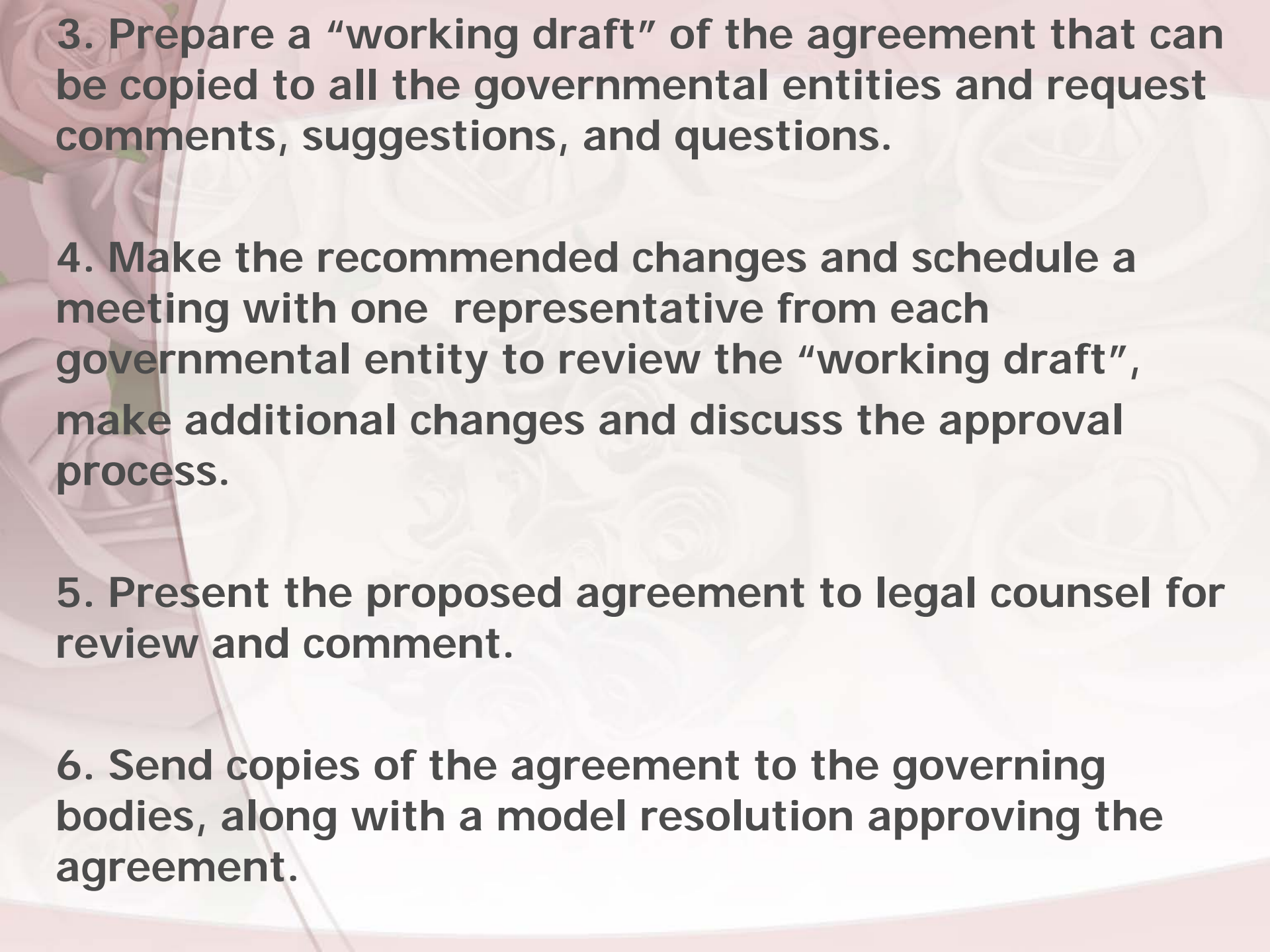


- * City/School Park Use**
- * City/County Sanitary Sewer**
- * County/City Library Services**
- * County/County/City Telecomm**
- * School Districts Shared Superintendents**
- * School Districts Shared Special Programs**
- * County/City Ambulance Services**
- * County/City Fire Services**
- * Employment Appeal Board & Iowa
Workforce Development & IDIA**
- * IDOT & IDNR Park Road Contruction**
- * Hazmat Response**
- * Shared Police Protection**
- * Public Transportation**

28E AGREEMENT CHECKLISTS

The preparation of a cooperative agreement for any governmental service merits a comprehensive review process. The following is a step by step process that may be utilized in the preparation of a 28E written agreement or any cooperative agreement. It is recommended the most current version of Chapter 28E of the Code of Iowa be reviewed prior to preparing a written agreement.

- 1. Clearly define the governmental service or cooperative effort to be undertaken.**
- 2. Identify the governmental entities that will participate in the cooperative arrangement.**



3. Prepare a “working draft” of the agreement that can be copied to all the governmental entities and request comments, suggestions, and questions.

4. Make the recommended changes and schedule a meeting with one representative from each governmental entity to review the “working draft”, make additional changes and discuss the approval process.

5. Present the proposed agreement to legal counsel for review and comment.

6. Send copies of the agreement to the governing bodies, along with a model resolution approving the agreement.

The background of the slide features a soft-focus image of several pink roses. The roses are in various stages of bloom, with delicate petals visible. The lighting is gentle, creating a romantic and elegant atmosphere. The roses are scattered across the frame, with some in the foreground and others slightly blurred in the background.

7. Circulate the approved agreement among all the entities for the appropriate signatures.

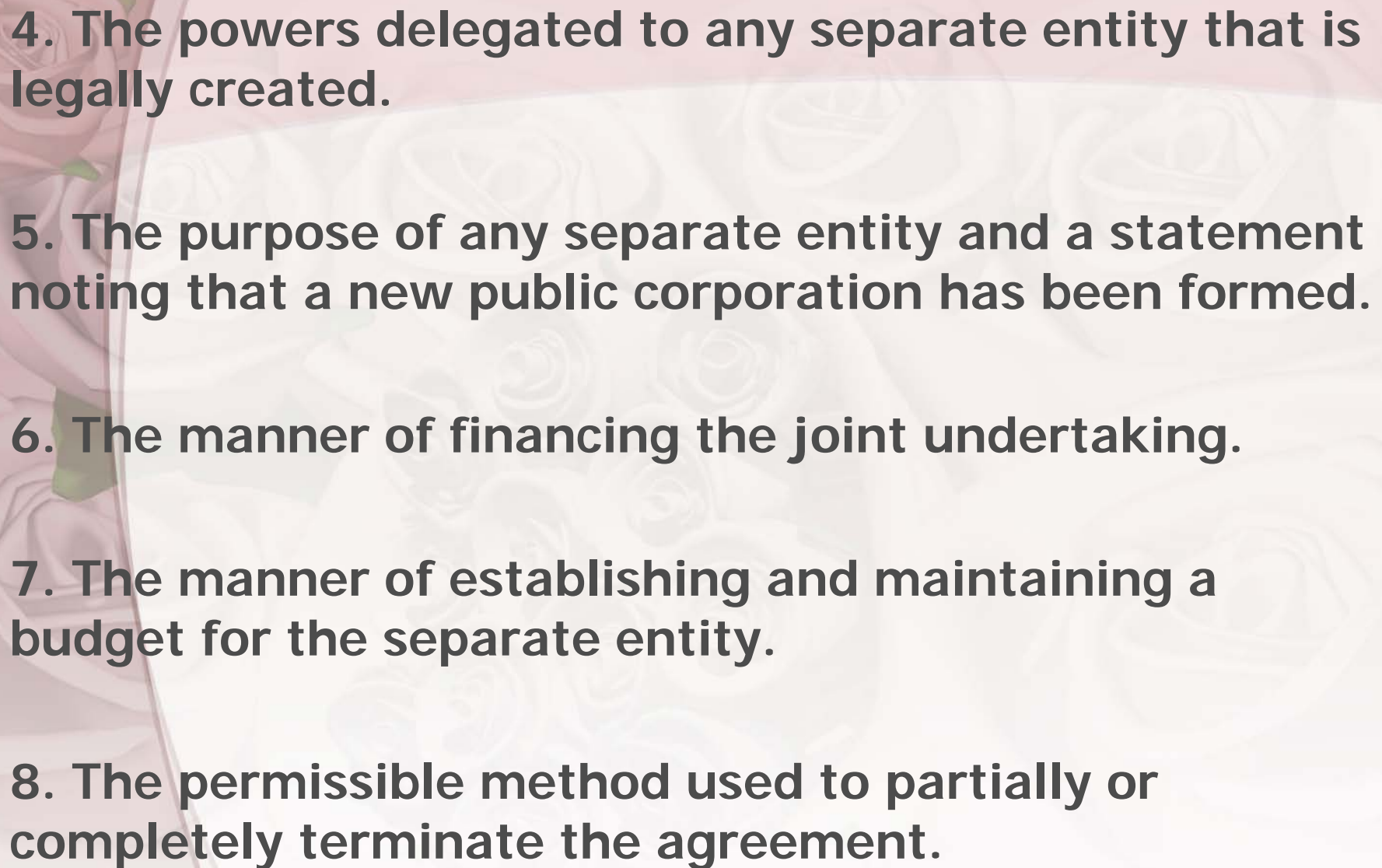
8. File a copy with the Secretary of State at the Capital Building in Des Moines.

9. Provide one originally signed copy to all the entities that are parties to the agreement.

B. CONTENT REQUIREMENTS OF 28E AGREEMENTS PER CODE OF IOWA

The contents of the written agreement will vary depending upon the services provided, the entities involved, and the nature of the agreement. The following is a listing of the required sections of a written agreement, as authorized by Chapter 28E of the Code of Iowa:

- 1. A title that identifies the entities and the nature of the agreement.**
- 2. The duration of the agreement.**
- 3. The precise organization, composition, and nature of any separate entity created.**

- 
- 4. The powers delegated to any separate entity that is legally created.**
 - 5. The purpose of any separate entity and a statement noting that a new public corporation has been formed.**
 - 6. The manner of financing the joint undertaking.**
 - 7. The manner of establishing and maintaining a budget for the separate entity.**
 - 8. The permissible method used to partially or completely terminate the agreement.**

9. The permissible method to be employed to dispose of property in the event of a termination.

10. Adequate space for the signatures of the authorized officials of the entities and the date of signing of the agreement.

11. A model resolution for use by the governing bodies that summarizes the intent of the agreement, the approval of the agreement, and the authorization for the appropriate officials to sign the agreement.

12. The effective date of the agreement.

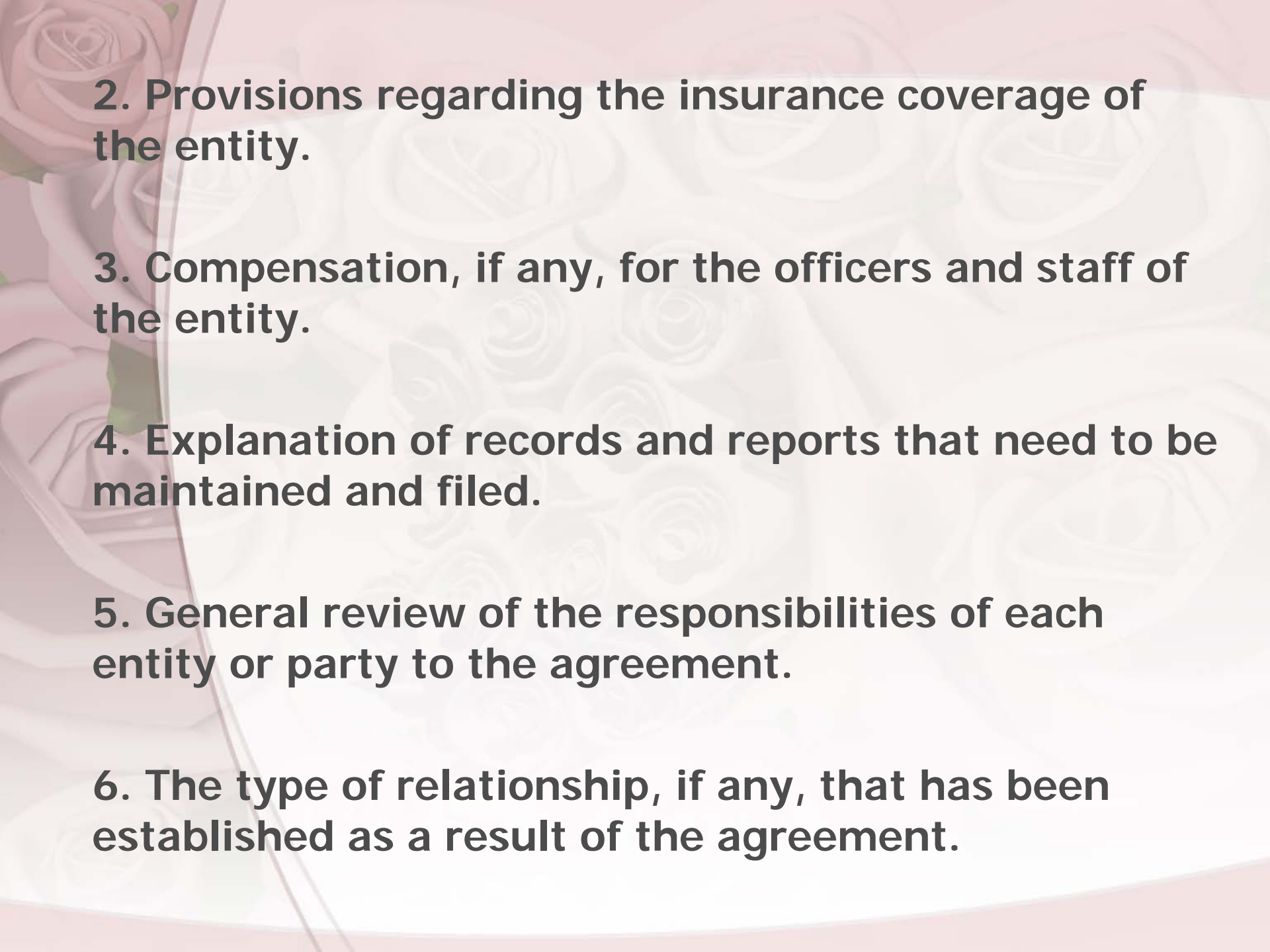
13. Provision for an administrator of a joint powers board responsible for administering the undertaking.

14. The manner of acquiring, holding and disposing of real and personal property used in the cooperative venture.

C. ADDITIONAL PROVISIONS SUGGESTED FOR 28E AGREEMENTS

In addition, there are other provisions that may be included in written agreements for governmental services sharing arrangements. These provisions are not necessarily required by the Code of Iowa, but they are recommended and should be considered.

1. Detailed explanation of the financial plan of the entity.



2. Provisions regarding the insurance coverage of the entity.

3. Compensation, if any, for the officers and staff of the entity.

4. Explanation of records and reports that need to be maintained and filed.

5. General review of the responsibilities of each entity or party to the agreement.

6. The type of relationship, if any, that has been established as a result of the agreement.



Credit for the Checklist goes to:

**Snyder & Associates
Cedar Rapids, Iowa**

And have made it available at:

**[http://www.extension.iastate.edu/communities/sites/
www.extension.iastate.edu/files/communities/6%20
Preparation%20of%2028E.pdf](http://www.extension.iastate.edu/communities/sites/www.extension.iastate.edu/files/communities/6%20Preparation%20of%2028E.pdf)**

CONTRACTS OR 28E'S

CLOSING THOUGHTS...

- * In the beginning of a deal everyone is very excited, just like a "first date."**
- * In reality contracts and 28E agreements need to be durable enough to outlast any honeymoon, and,**
- * You need to take into consideration the possibility of divorce.....**





CONGRATS!

Good luck in your future relationships!