

DES MOINES CITY COUNCIL MEETING

November 17, 2006

11:00 A.M.

1. ROLL CALL:
2. APPROVING AGENDA, AS PRESENTED AND/OR, AS AMENDED:
3. Approving execution of the Temporary Agreement for Joint Operation of the Brenton Skating Plaza with Principal Insurance Company, Des Moines River Front Development Authority and The Hansen Construction Co. Inc.

(Council Communication No. 06-745)

MOTION TO ADJOURN AT _____ P.M.

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All-America City
1949 1976 1981 2003

Date November 17, 2006

APPROVING AND AUTHORIZING THE EXECUTION OF THE TEMPORARY
AGREEMENT FOR JOINT OPERATION OF BRENTON SKATING PLAZA

BE IT IS HEREBY RESOLVED BY THE CITY COUNCIL OF THE CITY OF DES MOINES,
IOWA:

1. That the Temporary Agreement for Joint Operation of Brenton Skating Plaza between the City of Des Moines, Principal Life Insurance Company (J. Barry Griswell, Chairman and CEO, 711 High, Des Moines, Iowa), Des Moines River Front Development Authority (Mary O'Keefe, President, 711 High, Des Moines, Iowa) and The Hansen Construction Co., Inc., (Craig W. Hansen, President, 5665 Greendale Road, Suite A, Johnston, Iowa) to allow the Brenton Skating Plaza ice rink facilities to be opened for public skating November 17, 2006, subject to receipt of a Temporary Certificate of Occupancy, a copy of said agreement is on file in the office of the City Clerk, be and is hereby approved as to form and content.
2. That the Mayor and City Clerk are hereby authorized and directed to execute and attest, respectively, said Temporary Agreement for and on behalf of the City of Des Moines, Iowa.

(Council Letter Number 06-745 attached)

Moved by _____ to adopt.

FORM APPROVED: Kathleen Vanderpool
Kathleen Vanderpool
Deputy City Attorney

SEB

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE				
COLEMAN				
HENSLEY				
KIERNAN				
MAHAFFEY				
VLASSIS				
TOTAL				
MOTION CARRIED	APPROVED			

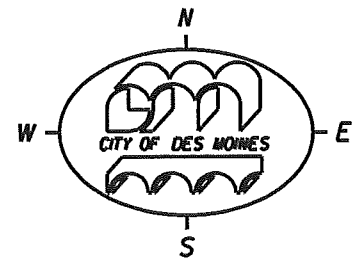
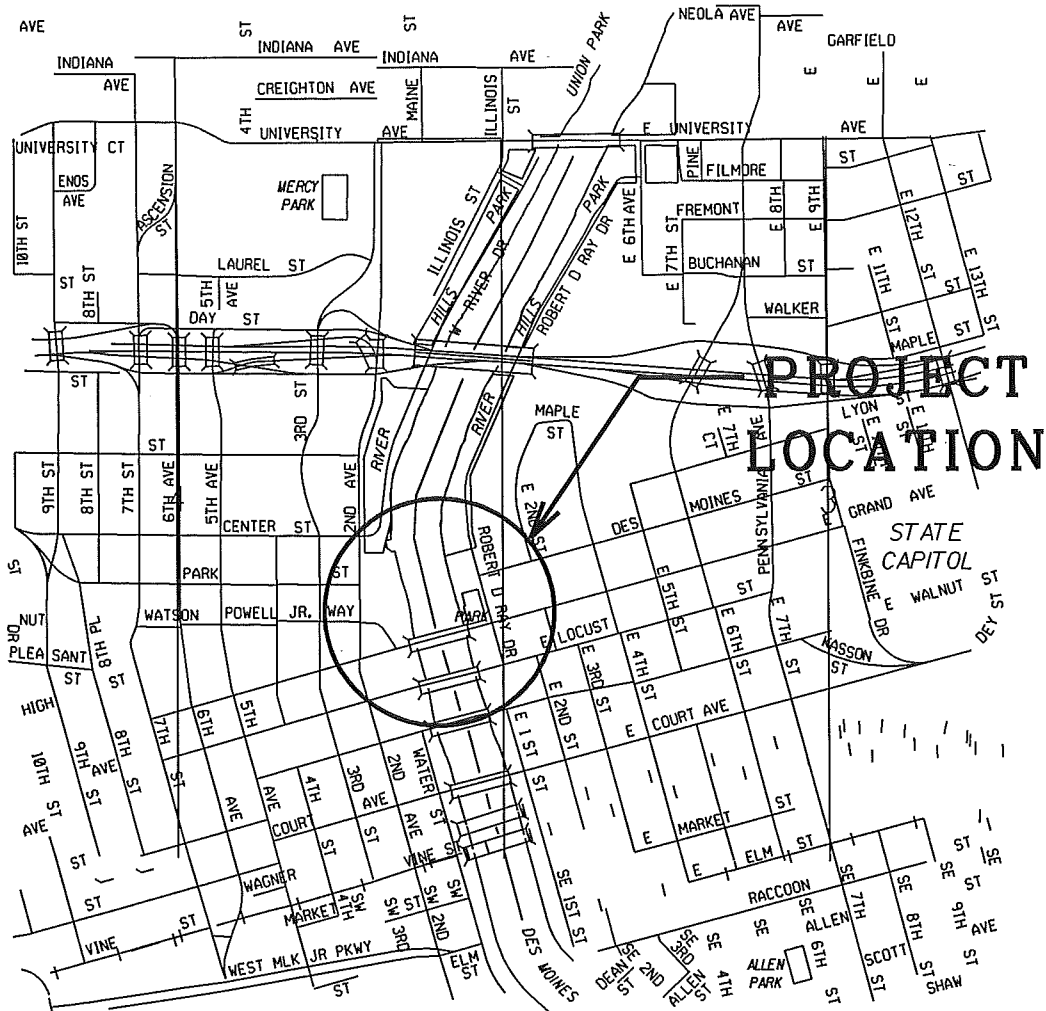
CERTIFICATE

I, DIANE RAUH, City Clerk of said City hereby certify that at a meeting of the City Council of said City of Des Moines, held on the above date, among other proceedings the above was adopted.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal the day and year first above written.

Mayor

City Clerk



BRENTON SKATING PLAZA



Council Communication

Office of the City Manager

Date

November 17, 2006

Agenda Item No. 3
Roll Call No. 06-
Communication No. 06-745
Submitted by: **Jeb E. Brewer, P.E.,**
City Engineer

AGENDA HEADING:

Approving and authorizing the execution of the Temporary Agreement for Joint Operation of Brenton Skating Plaza.

SYNOPSIS:

Recommend approval of the Temporary Agreement for Joint Operation of Brenton Skating Plaza between the City of Des Moines, Principal Life Insurance Company (J. Barry Griswell, Chairman and CEO, 711 High, Des Moines, Iowa), Des Moines River Front Development Authority (Mary O'Keefe, President, 711 High, Des Moines, Iowa) and The Hansen Construction Co., Inc. (Craig W. Hansen, President, 5665 Greendale Road, Suite A, Johnston, Iowa) to allow the Brenton Skating Plaza facilities to be opened for public skating.

FISCAL IMPACT: NONE

ADDITIONAL INFORMATION:

Principal Life Insurance Company (Principal) and the City of Des Moines entered into an Agreement for Construction and Funding of Ice Skating and Fountain pursuant to Roll Call No. 05-662, dated March 28, 2005, for the purpose of design and construction of a public ice skating rink and water feature plaza on City-owned property in the area bounded by the Armory Building, East Grand Avenue, the levy wall and Robert D. Ray Drive to be known as the Brenton Skating Plaza. In accordance with the Agreement, upon acceptance of the Improvements by the City Council, the City shall be the owner of the Improvements.

Principal entered into an agreement with The Hansen Construction Co., Inc. (Hansen) for construction of the Improvements and during the time of construction, the Improvements are under the control of Hansen until the Improvements have been accepted by Principal.

The River Front Development Authority (RDA) and the City entered into a Concession Agreement for the Management, Operation and Maintenance of the Brenton Skating Plaza pursuant to Roll Call No. 06-1929, dated September 25, 2006, for the purpose of the initial operation and management of the Brenton Skating Plaza as an ice skating rink open to the public upon its acceptance by the City Council pursuant to the Agreement.

The Improvements will not be completed by November 17, 2006; however, the construction has been completed to the extent that the facility is eligible for a Temporary Certificate of Occupancy issued by the Des Moines Permit & Development Center. The City intends that the Brenton Skating Plaza be open to the public during the winter skating season from November through March. RDA, Hansen, and Principal desire that the Brenton Skating Plaza be open for public skating by November 17, 2006.

In order to open the Brenton Skating Plaza for public skating by November 17, 2006, an Agreement has been executed by the four parties, which includes the following:

1. Hansen authorizes the joint use of the Improvements by the City and RDA, pursuant to the Concession Agreement, and Principal for the purpose of operating a skating plaza open to the public during the period of November 17, 2006 until acceptance by Principal of the Improvements, subject to a Temporary Certificate of Occupancy being in effect for the facility. This authorization is also subject to Hansen retaining access to complete construction of the Improvements during normal business hours.
2. Principal authorizes the joint use of the Improvements by the City and RDA pursuant to the Concession Agreement for the purpose of operating a skating plaza open to the public during the period of November 17, 2006 until acceptance by the City of the Improvements, subject to a Temporary Certificate of Occupancy being in effect.
3. The City authorizes use by RDA, pursuant to the Concession Agreement for the purpose of operating a skating plaza open to the public during the period of November 17, 2006 until acceptance by the CITY of the Improvements, subject to a Temporary Certificate of Occupancy being in effect.
4. The Brenton Skating Plaza shall operate as a City park and recreation facility during the period of this Agreement prior to its acceptance by the City Council pursuant to the Agreement.

PREVIOUS COUNCIL ACTION(S):

Date: November 6, 2006

Roll Call Number: 06-2230

Action: Agreement between Des Moines Riverfront Development Authority (RDA) and Rink Management Services Corporation (RMS) for operation of Brenton Skating Plaza. (Council Communication No. 06-710) Moved by Coleman to adopt. Motion Carried 6-0.

Date: September 25, 2006

Roll Call Number: 06-1928

Action: Agreement for the Management, Operation, and Maintenance of the Brenton Skating Plaza with The Brenton Foundation and the naming of the plaza. Moved by Coleman to adopt. Motion Carried 6-0.

Date: September 25, 2006

Roll Call Number: 06-1929

Action: Concession Agreement for the Skating Plaza. (Council Communication No. 06-606) Moved by Coleman to adopt. Motion Carried 6-0.

Date: March 28, 2005

Roll Call Number: 05-662

Action: Approving Agreement with Principal Life Insurance Company for construction and funding of Ice Skating and Fountain Plaza. (Council Communication No. 05-172) Moved by Hensley to adopt.
Motion Carried 6-1. Pass: Brooks

BOARD/COMMISSION ACTION(S): NONE

ANTICIPATED ACTIONS AND FUTURE COMMITMENTS:

Normal Council action on acceptance of the private construction project improvements.

TEMPORARY AGREEMENT FOR JOINT OPERATION OF BRENTON SKATING
PLAZA

THIS TEMPORARY AGREEMENT FOR JOINT OPERATION OF BRENTON SKATING PLAZA (the "Agreement") is entered into as of the ____ day of November, 2006, by and between the City of Des Moines, Iowa (the "CITY"), the Des Moines River Front Development Authority, an Iowa non-profit corporation, (the "RDA"), Principal Life Insurance Company, an Iowa corporation ("Principal"), and Hansen Construction Co., Inc., an Iowa corporation ("Hansen").

WHEREAS, Principal and the City entered into an Agreement for Construction and Funding of Ice Skating and Fountain Plaza pursuant to Roll Call No. 05-662, dated March 28, 2005 (the "Plaza Agreement"), for the purpose of design and construction of a public ice skating rink and water feature plaza on City-owned property in the area bounded by the Armory Building, East Grand Avenue, the levy wall and Robert D. Ray Drive (the "Improvements"), hereinafter known as the Brenton Skating Plaza; and

WHEREAS, upon acceptance of the Improvements by the City Council as stated in the Agreement, the CITY shall be the owner of the Improvements; and

WHEREAS, the Improvements are not yet completed or ready to be accepted by the City Council in accordance with the Plaza Agreement; and

WHEREAS, Principal entered into an agreement with Hansen for the purpose of construction of the Improvements dated February 15, 2005 (the "Construction Agreement"); and

WHEREAS, during the time of construction the Improvements are under the control of Hansen until the Improvements have been accepted by Principal pursuant to the Construction Agreement; and

WHEREAS, the RDA and the City entered into a Concession Agreement for the Management, Operation and Maintenance of the Brenton Skating Plaza pursuant to Roll Call No. 06-1929, dated September 25, 2006, for the purpose of the operation and management of the Brenton Skating Plaza as an ice skating rink open to the public for the benefit of the citizens of the metropolitan area of Des Moines upon its acceptance by the City Council pursuant to the Agreement; and

WHEREAS, the Improvements will not be completed by November 17, 2006; however, the construction has been completed to the extent that the facility is eligible for a Temporary Certificate of Occupancy issued by the Des Moines Permit and Development Center; and

WHEREAS, the CITY intends that the Brenton Skating Plaza ice rink be open to the public during the winter skating season from November through March; and

WHEREAS, the CITY, RDA and Principal desire that the Brenton Skating Plaza be open for public skating beginning on or about November 17, 2006.

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. Hansen hereby authorizes the joint use of the Improvements by the CITY and RDA, pursuant to the Concession Agreement, and by Principal, for the purpose of operating the Brenton Skating Plaza open to the public during the period of November 17, 2006 until acceptance by Principal of the Improvements, such operation to be subject to a Temporary Certificate of Occupancy being in effect for the facility. This authorization is also subject to Hansen retaining access to complete construction of the Improvements during normal business hours. Hansen shall secure each individual work

area within the Skating Plaza so as to prevent access by the general public during Hansen's work to complete punch list items. Hansen hereby acknowledges that execution of this Agreement does not constitute an acceptance of the Brenton Skating Plaza as complete nor does it constitute a waiver of any condition requiring further completion or attention by Hansen.

2. Principal hereby authorizes the joint use of the Improvements by the CITY and RDA pursuant to the Concession Agreement for the purpose of operating the Brenton Skating Plaza open to the public during the period of November 17, 2006 until acceptance by the CITY of the Improvements in accordance with the Plaza Agreement, such operation to be subject to a Temporary Certificate of Occupancy being in effect.

3. The CITY hereby authorizes RDA, pursuant to the Concession Agreement, for the purpose of operating the Brenton Skating Plaza open to the public during the period of November 17, 2006 until acceptance by the CITY of the Improvements, such operation to be subject to a Temporary Certificate of Occupancy being in effect.

4. The action by the CITY in agreeing to this temporary joint operation shall not be deemed an acceptance of the Improvements in accordance with the requirements of the Plaza Agreement. Principal agrees that nothing herein alters any of its obligations to the CITY under the Plaza Agreement, including but not limited to constructing and completing the Improvements in accordance with the plans and specifications and full payment of all contractors, subcontractors and suppliers and providing certification and documentation satisfactory to the CITY that they have been paid in full.

5. Nothing herein releases Principal, its design consultant, or Hansen from design defects or damages which are caused by defective work or failure to comply with the Contract documents.

6. All parties agree that the indemnification and insurance provisions included in each agreement cited in this Agreement shall extend accordingly to and during the term of this Agreement. Notwithstanding the foregoing, the parties acknowledge that the indemnity and insurance obligations of Hansen relate solely to the construction and completion of the facility in accordance with its contract with Principal and do not extend to the operation and use of the facility.

7. The Brenton Skating Plaza shall operate as a CITY park and recreation facility during the period of this Agreement prior to its acceptance of the Improvements by the City Council pursuant to the Plaza Agreement.

8. This Agreement shall terminate upon the earliest to occur of (i) formal acceptance of the Improvements by the City Council of Des Moines, or (ii) December 31, 2006.

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed by their respective authorized officers.

CITY OF DES MOINES, IOWA

THE HANSEN CONSTRUCTION
CO., INC.

T.M. Franklin Cownie, Mayor

Michael R. Carroll, Vice President

DES MOINES RIVER FRONT
DEVELOPMENT AUTHORITY

PRINCIPAL LIFE
INSURANCE COMPANY

Mary O'Keefe, President

Mary O'Keefe, Chief Marketing Officer
and Senior Vice, President

ATTEST:

ATTEST:

Secretary

Secretary

APPROVED AS TO FORM:

ATTEST:

Ann DiDonato, Assistant City Attorney

Diane Rauh, City Clerk

State of Iowa)
) ss:
County of Polk)

On this _____ day of _____, 2006, before me, a notary public, personally appeared MICHAEL R. CARROLL of HANSEN CONSTRUCTION CO., INC., personally known, who being by me duly sworn did say that he is the VICE PRESIDENT of THE HANSEN CONSTRUCTION CO., INC., an Iowa corporation, and that the foregoing instrument was signed on behalf of said corporation by authority of its board of directors, and he acknowledged the execution of the said instrument to be the voluntary act and deed of said corporation, by it voluntarily executed.

Notary Public in the State of Iowa

State of Iowa)
) ss:
County of Polk)

On this _____ day of _____, 2006 before me, the undersigned, a Notary Public in and for the State of Iowa, personally appeared T. M. FRANKLIN COWNIE and DIANE RAUH, to me personally known, and, who, being by me duly sworn, did say that they are Mayor and City Clerk, respectively of the CITY OF DES MOINES, IOWA; that the seal affixed to the foregoing instrument is the corporate seal of the corporation, and that the instrument was signed and sealed on behalf of the corporation, by authority of its City Council, as contained in the Resolution adopted by the City Council, under Roll Call No. 06-_____ of the City Council on the _____ day of _____, 2006, and that T. M. FRANKLIN COWNIE and DIANE RAUH acknowledged the execution of the instrument to be their voluntary act and deed and the voluntary act and deed of the corporation by it voluntarily executed.

Notary Public in the State of Iowa

State of Iowa)
) ss:
County of Polk)

On this _____ day of _____, 2006, before me, a notary public, personally appeared MARY O'KEEFE, to me personally known, who being by me duly sworn did say that she is the President of DES MOINES RIVER FRONT DEVELOPMENT AUTHORITY, an Iowa nonprofit corporation, and that the foregoing instrument was signed on behalf of said corporation by authority of its board of directors, and she acknowledged the execution of the said instrument to be the voluntary act and deed of said corporation, by it voluntarily executed.

Notary Public in the State of Iowa

State of Iowa)
) ss:
County of Polk)

On this _____ day of _____, 2006, before me, a notary public, personally appeared MARY O'KEEFE, to me personally known, who being by me duly sworn did say that she is the CHIEF MARKETING OFFICER AND SENIOR VICE PRESIDENT of The Principal Life Insurance Company, an Iowa corporation, and that the foregoing instrument was signed on behalf of said corporation by authority of its board of directors, and he acknowledged the execution of the said instrument to be the voluntary act and deed of said corporation, by it voluntarily executed.

Notary Public in the State of Iowa