

COUNCIL COMMUNICATION

 CITY OF DES MOINES OFFICE OF THE CITY MANAGER	Number:	23-116	Meeting:	March 6, 2023
	Agenda Item:	38	Roll Call:	23-0313
	Submitted by:	Scott E. Sanders, City Manager		

AGENDA HEADING:

Approving First Amendment to 28E Agreement for Construction and Funding of Fleur Drive Underpass between Des Moines Water Works (DMWW), Des Moines Water Works Park Foundation (Foundation), and City of Des Moines regarding amount of foundation funding thereunder.

SYNOPSIS:

Recommend First Amendment to the 28E Agreement with Board of Water Works Trustees and the Foundation for construction and funding of the Fleur Drive underpass to establish the repayment structure the Foundation will follow, including the City forgiving a portion of the funding owed by the Foundation once an aggregate amount of \$1,440,212.29 has been paid to the City.

FISCAL IMPACT:

Amount: Current impact is \$1,980,212.29. Amount to be repaid over 29 years is \$1,440,212.29 with \$540,000 to be forgiven in accordance with the terms of the First Amendment.

Funding Source: 2021-2022 Operating Budget, page 83, Finance Department, Local Option Sales and Service Tax (LOSST) - Neighborhood Improvements, Park Enhancements.

ADDITIONAL INFORMATION:

- On April 23, 2018, by Roll Call No. 18-0724, the City Council approved the 28E Agreement between DMWW, the Foundation and the City which outlines responsibilities for design, construction and funding of the Fleur Drive Trail Underpass, designated as “The Ruan Connector” on September 13, 2021, by Roll Call No. 21-1402. In this agreement, parties acknowledged approved costs up to \$3,500,000 would be paid by the Foundation for the project.
- On September 13, 2021, by Roll Call No. 21-1401, City Council accepted the completed construction of the Ruan Connector and approved final payment to the contractor, Cramer and Associates, Inc. Per the current 28E Agreement, the City had requested payment from the Foundation for the funding owed, totaling \$3,105,212.29, plus the first \$100,000 due annually for three (3) years for maintenance costs.
- To date the City has received \$1,400,000 from the Foundation and the Foundation has advised the City that it does not have sufficient funds to provide the full amount owed to the City under

the 28E Agreement. The City contributed \$25,000 to the project, leaving a remaining balance due to the City of \$1,680,212.29 for design and construction and \$300,000 for maintenance unpaid by the Foundation.

- On December 20, 2021, by Roll Call No. 21-1938, City Council directed the City Manager to negotiate an amendment of the 28E Agreement that would include the following:
 - Forgive \$540,000 currently owed to the City in consideration of a past federal funding allocation.
 - Acknowledgement of the increased City contribution resulting in a reduced amount owed to the City from the Foundation to be \$1,140,212.29, plus \$100,000 annually for three (3) years for maintenance costs for a total of \$1,440,212.29.
 - State the City Council expectation that the Foundation and DMWW will initiate fundraising for replacement of the Bill Riley Trail Bridge over the Raccoon River to satisfy the obligations as outlined and agreed to in the separate 28E Agreement between the City and DMWW approved by City Council on December 19, 2016, by Roll Call No. 16-2191, regarding City trails within DMWW Park. This is not included in the proposed first amendment.
 - Include stipulations that fundraising by the Foundation is on-going. The Foundation is agreeing to act in good faith in implementation of the amendment.
 - Resolve the sound issues. This is progressing outside of the proposed first amendment.
- In summary, the first amendment obligates the Foundation to pay the City \$1,980,212.29 without interest in annual installments commencing on the first day of the month following the effective date of the first amendment and continuing on each successive one (1) year anniversary in an amount equal to the lesser of: (a) \$50,000; and (b) the remaining unpaid balance. When the Foundation has paid an aggregate amount of \$1,440,212.29 on or prior to the 29th annual payment date, the City will forgive the remaining \$540,000 balance.

PREVIOUS COUNCIL ACTION(S):

Date: December 20, 2021

Roll Call Number: [21-1938](#)

Action: [Directing](#) City Manager to negotiate an amendment of the 28E Agreement for construction and funding of Fleur Drive Underpass between Des Moines Water Works and Des Moines Water Works Park Foundation and City of Des Moines regarding amount of foundation funding thereafter. ([Council Communication No. 21-553](#)) Moved by Mandelbaum to adopt; with the stipulations that fundraising is ongoing, the City's commitment is up to \$540,000, and to resolve the sound issues. Motion Carried 7-0.

BOARD/COMMISSION ACTION(S):

Board: Parks and Recreation

Date: March 27, 2018

Resolution Number: 18-023

Action: Motion by Potter to approve proposal for a passageway between Gray's Lake Park and Water Works Park. Second by Boggus. Motion carried 13-0. Two absent, Woodard and Avant.

ANTICIPATED ACTIONS AND FUTURE COMMITMENTS: NONE

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