

Date May 5, 2008

**APPROVING CHAPTER 28E INTERGOVERNMENTAL AGREEMENT
BY AND BETWEEN THE CITY OF DES MOINES, IOWA, AND THE POLK COUNTY
CONSERVATION BOARD FOR WETLANDS MITIGATION**

WHEREAS, on April 20, 1998, by Roll Call No. 98-1212, the City Council approved the Preliminary Terms of Agreement with Eastgate Plaza, LLC for redevelopment of Eastgate Shopping Center at the northeast corner of E. 14th Street and E. Euclid Avenue (“Redevelopment Project”); and

WHEREAS, on June 22, 1998, by Roll Call No. 98-2078, the City Council approved an agreement requiring the City to construct the Euclid Avenue Detention Basin on and adjacent to the redevelopment property, and requiring compliance with wetlands mitigation resulting from the construction project; and

WHEREAS, within the construction limits of the Euclid Avenue Detention Basin, and additional stormwater utility projects, are wetland areas which have been or will be drained and filled for construction of said improvements, and thereby effectively eliminated as a wetlands area; and

WHEREAS, on June 21, 1999, by Roll Call No. 99-1908, the City Council approved and accepted the offer to purchase 84.9 acres of land in the vicinity of U.S. Highway 65 and the Skunk River to replace existing wetlands for the Redevelopment Project and for additional stormwater utility projects; and

WHEREAS, the City has currently obtained Section 404 permits from the U.S. Army Corps of Engineers (“COE”), which also meet Section 401 State water quality certification requirements, for wetlands mitigation projects to mitigate for the loss of wetlands for construction of the Stormwater Improvements and the City will have to obtain additional Section 404 permits from the COE for additional wetlands mitigation projects; and

WHEREAS, the City and the Polk County Conservation Board have negotiated the terms of a Chapter 28E Intergovernmental Agreement for the Joint Exercise of Powers to Acquire, Develop, and Maintain Wetlands Areas as Part of a Wetlands Mitigation Project, which Agreement is attached hereto and made a part hereof, and pursuant to which the City is to develop the above-mentioned 84.9 acres of land as a wetlands area, and convey said land to the County for maintenance as wetlands areas at the close of the COE monitoring period, in consideration for which the County is to maintain said area as wetlands in compliance with the requirements of the COE 404 permit and other applicable State and Federal laws and regulations; and

WHEREAS, on April 9, 2008, the Polk County Conservation Board authorized and directed the Board Chair to execute said Chapter 28E Agreement for and on behalf of the Board.

★ Roll Call Number

Agenda Item Number

52

Wetlands Mitigation – 28E Agreement

Date May 5, 2008

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Des Moines, Iowa that:

1. The Chapter 28E Intergovernmental Agreement with Polk County Conservation Board for joint development of a wetlands project to mitigate the loss of wetlands eliminated by the Euclid Avenue Detention Basin and additional City projects, be and is hereby approved as to form and content.
2. The Mayor and City Clerk are hereby authorized and directed to execute and attest, respectively, said Chapter 28E Agreement for and on behalf of the City of Des Moines.
3. The City Clerk is further authorized and directed to deliver the executed Agreement to the Real Estate Division Manager, who is authorized and directed to file the Agreement with the Secretary of State and record the Agreement with the Polk County Recorder.
4. The Engineering Department is authorized and directed to proceed with Polk County Conservation Board and the COE on the design and development of the wetlands mitigation project subject to COE and Iowa Department of Natural Resources permitting requirements and review.

Moved by _____ to adopt.

(Council Communication No. 08-257)

APPROVED AS TO FORM:

Glenna K. Frank

Glenna K. Frank
Assistant City Attorney

PSW

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE				
COLEMAN				
KIERNAN				
HENSLEY				
MAHAFFEY				
MEYER				
VLASSIS				
TOTAL				

CERTIFICATE

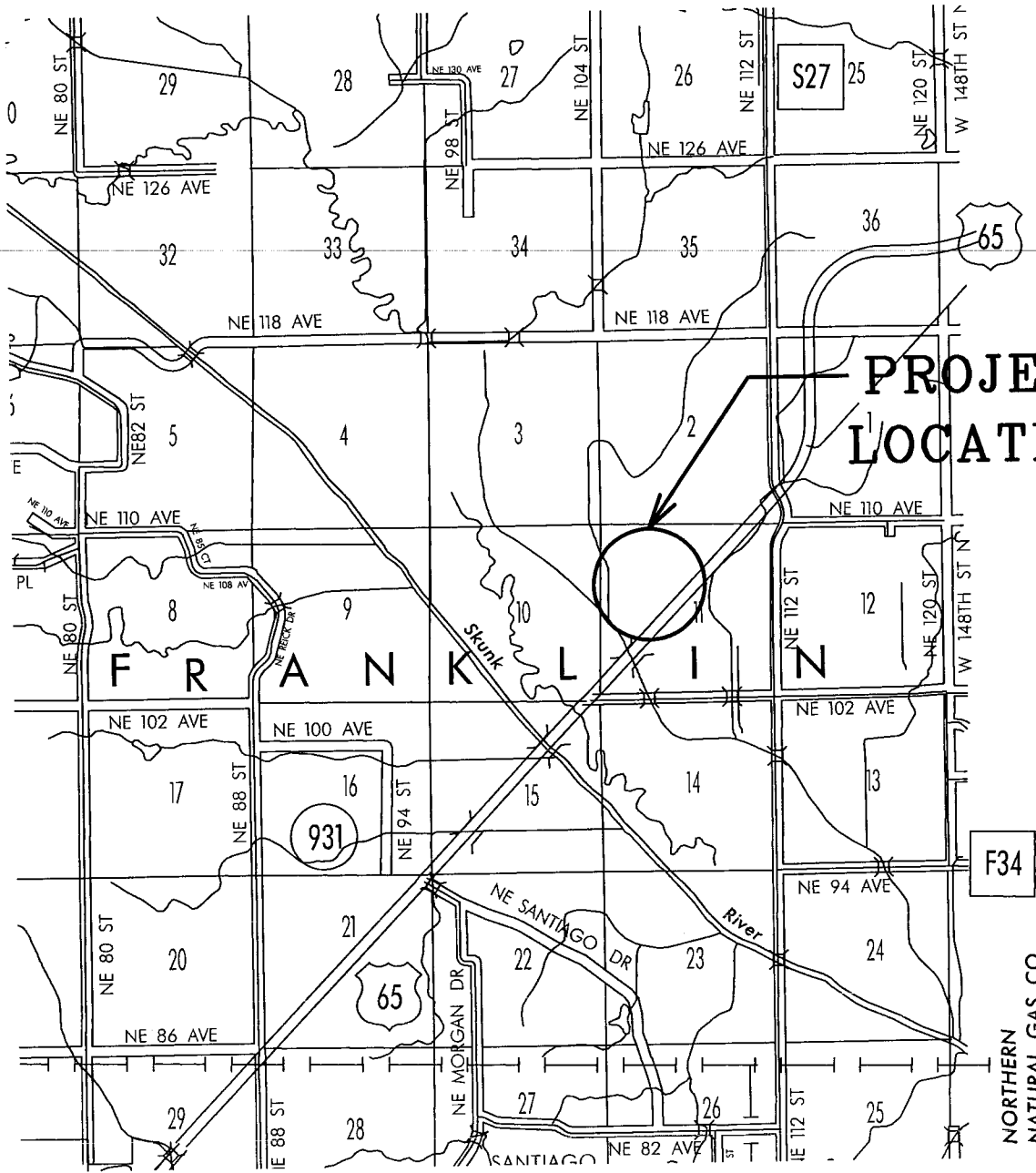
I, DIANE RAUH, City Clerk of said City hereby certify that at a meeting of the City Council of said City of Des Moines, held on the above date, among other proceedings the above was adopted.

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

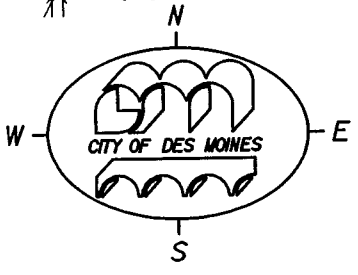
MOTION CARRIED APPROVED

Mayor

City Clerk



**PROJECT
LOCATION**



WETLAND MITIGATION

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**CHAPTER 28E INTERGOVERNMENTAL AGREEMENT
BY AND BETWEEN THE CITY OF DES MOINES, IOWA,
AND THE POLK COUNTY CONSERVATION BOARD,
PROVIDING FOR THE JOINT EXERCISE OF POWERS TO
ACQUIRE, DEVELOP, AND MAINTAIN A WETLANDS AREA
AS PART OF A WETLANDS MITIGATION PROJECT**

THIS AGREEMENT is entered into by and between the City of Des Moines, Iowa (hereafter referred to as “the CITY”), and the Polk County Conservation Board (hereafter referred to as “the COUNTY”), all in accordance with Sections 28E.12 and 306A.7 of the 2007 Code of Iowa, and Chapter 761 of the Iowa Administrative Code.

WITNESSETH:

WHEREAS, on April 20, 1998, by Roll Call No. 98-1212, the City Council approved the Preliminary Terms of Agreement with Eastgate Plaza, LLC (“Redeveloper”) for redevelopment of Eastgate Shopping Center at the northeast corner of E. 14th Street and E. Euclid Avenue (“Redevelopment Project”); and

WHEREAS, on June 22, 1998, by Roll Call No. 98-2078, the City and the Redeveloper entered into an Agreement (“Original Agreement”) which required the City to construct a Stormwater Detention Basin and related Stormwater Improvements (collectively “Stormwater Improvements”) on and adjacent to the redevelopment property; and

WHEREAS, on February 1, 1999, by Roll Call No. 99-340, the City Council approved the First Amendment to the Original Agreement requiring the Redeveloper to commit no less than \$300,000 to wetlands mitigation on the Project Property, which financial obligation the Redeveloper has satisfied; and

WHEREAS, within the construction limits of the Stormwater Improvements and Redevelopment Project Property were wetland areas of approximately 10.7 acres in size, which wetland areas were drained and filled for stormwater improvement and redevelopment purposes, and thereby effectively eliminated as a wetlands area; and

WHEREAS, the CITY has constructed and will continue to construct additional Stormwater Improvements as needed for new development and redevelopment purposes in the future; and

WHEREAS, within the construction limits of the additional Stormwater Improvements have been and will be wetland areas that have been or will be drained and filled for construction of said CITY projects and thereby effectively eliminated as wetlands areas; and

WHEREAS, the CITY has obtained, and upon future necessity will obtain, Section 404 permits from the U.S. Army Corps of Engineers (“COE”), which also meets Section 401 State water quality certification requirements, to mitigate for the loss of wetlands for construction of the Stormwater Improvements and Redevelopment Project; and

WHEREAS, the CITY is mitigating the loss of said wetlands areas by acquiring and developing wetlands areas of sizes which comply with the mitigation ratios in the COE Section 404 permits, and by providing for the maintenance of said areas as wetlands during the establishment periods of not less than five (5) years respectively, or until the wetlands mitigation projects have been accepted and approved by the COE; and

WHEREAS, the COUNTY is presently developing the Chichaqua Wildlife Area, including the creation of substantial areas of wetlands, and is engaged in the acquisition of land in Sections 10 and 11 of Township 80 North, Range 22 West in the vicinity of U.S. Highway 65 and the Skunk River; and

WHEREAS, on June 21, 1999, by Roll Call No. 99-1908, the City Council approved and accepted the offer to purchase 84.9 acres of land in the vicinity of U.S. Highway 65 and the Skunk River to replace existing wetlands for the Redevelopment Project and for additional Stormwater Utility projects; and

WHEREAS, the CITY and the COUNTY have negotiated the terms of this Chapter 28E Agreement, pursuant to which the CITY will develop land adjacent to the Chichaqua Wildlife Area as wetlands areas to mitigate for the Redevelopment Project and various other City Stormwater projects, and dedicate said lands to the COUNTY upon the close of the final five-year maintenance period and acceptance of the final project by the COE for maintenance and continued use as wetlands, in consideration for which the COUNTY is to maintain said areas as wetlands in compliance with the requirements of the COE 404 permits and other applicable State and Federal laws and regulations, all as more particularly hereafter provided.

NOW, THEREFORE, THE CITY AND THE COUNTY DO HEREBY AGREE AS FOLLOWS:

**PART I – JOINT EXERCISE OF POWERS UNDER
CHAPTER 28E OF THE CODE OF IOWA**

1. Purpose. Pursuant to Chapter 28E of the 2007 Code of Iowa, the parties do hereby agree that the purpose of this Agreement is to jointly exercise their respective powers to acquire and develop property as wetlands areas, and to thereafter maintain said areas as wetlands areas.

2. Duration of Agreement. The parties agree that this Agreement shall be effective upon its approval and execution by both parties and its recording with the Secretary of State and the Polk County Recorder's Office, and that this Agreement shall remain in effect for so long as the replacement wetlands areas are required to be operated and maintained by the parties pursuant to applicable State and Federal laws and COE requirements, or until this Agreement is terminated as hereafter provided.

3. Administration of Agreement. The parties hereby agree that the Des Moines City Manager shall be designated as the administrator for purposes of this Agreement as

provided by Section 28E.6 of the Code of Iowa, subject to the limitations and restrictions hereafter provided.

**PART II – DESIGN, DEVELOPMENT AND CONSTRUCTION OF
REPLACEMENT WETLANDS PROPERTY BY THE CITY**

1. Design Undertaking and Requirements. The CITY agrees to undertake lead responsibility to coordinate the design of the wetlands mitigation projects. Such design shall be undertaken by a design consultant selected by the CITY and paid by the CITY, or as a joint CITY/COUNTY effort, utilizing in-house design staff of the CITY and the COUNTY. The wetlands mitigation projects shall be designed to meet U.S. Army COE Section 404 Clean Water Act permit requirements and to meet the Section 401 State water quality certification requirements of the Iowa Department of Natural Resources (“IDNR”).

2. Coordination of Design Between Parties. The CITY further agrees to coordinate the design of the wetlands mitigation projects to include elements that will make the completed projects consistent and compatible with the COUNTY’s Chichaqua Wildlife Area Wetlands Master Plan, to the extent possible within COE Section 404 requirements. The CITY and the COUNTY agree that during the design phase for each respective mitigation project, both parties shall cause their respective conservation and engineering department staff to work together to delineate the existing soils which will support appropriate wetlands plantings and/or to design the project to create the appropriate environment for the wetlands plant species that are required for mitigation. The COUNTY agrees that, during the design phase for each respective project, it will provide any existing mapping, master site plan or survey information which the CITY or its design consultant may find useful for project design.

3. Completion of Design. The CITY agrees that upon completion of the design of each wetlands mitigation project, it will present the design thereof to the COUNTY for its concurrence, which concurrence shall be evidenced by a letter from its director.

4. Procurement of Construction Contract. Upon the COUNTY’s concurrence in the design of each wetlands mitigation project, the CITY agrees to immediately undertake the procurement of a contract for the construction of the respective project, in conformance with the requirements of the competitive bidding law for cities, Chapter 26 of the 2007 Code of Iowa. The CITY agrees to procure the construction of all elements necessary to satisfy the U.S. Army COE Section 404 Clean Water Act permit requirements and to satisfy the Section 401 State water quality certification requirements of the Iowa DNR, including but not limited to the following project elements:

- A. All necessary excavation;
- B. Water control structures and related piping;
- C. The emplacement of soils necessary to support appropriate wetlands plantings and/or to create the appropriate environment for the wetlands plant species that are required for mitigation;

- D. The planting of the desired wetland mitigation plant species; and
- E. The planting of the desired buffer strip.

5. Construction Administration. The CITY agrees to provide construction administration services for all wetlands mitigation projects, which shall include the following:

- A. Require the contractor(s) to obtain, and to maintain in continuous effect, the insurance coverages and the performance, maintenance and payment bond as specified in the contract documents;
- B. Provide qualified personnel to observe the progress of construction at appropriate stages to determine if the work is proceeding on schedule and being performed in accordance with the design documents and related contract documents;
- C. Perform compaction tests and test materials provided or emplaced by contractor(s) to determine compliance with the design documents and related contract documents;
- D. Review contractor requests for progress payments to determine the appropriateness thereof;
- E. Process contractor progress payments, and make progress payments to contractors, withholding therefrom the required 5% retainage pursuant to Chapters 26 and 573 of the Iowa Code;
- F. Process claims made by subcontractors and material suppliers pursuant to Chapters 26 and 573 of the Iowa Code, and administer the retainage fund in accordance therewith; and
- G. Upon contractor request for final payment, conduct a final inspection and develop a punch list of item for completion, if any.

6. Final Inspection/Punch List. When the contractor(s) requests final payment for each respective wetlands mitigation project, the CITY shall arrange for a final inspection and shall inform the COUNTY in writing of the date and time thereof. The COUNTY agrees to provide a qualified representative to attend and participate in such final inspections. The CITY's engineering department shall be solely responsible for developing the punch list of work items for completion and shall in its sole discretion determine when such items have been completed. Upon determination that construction of each wetlands mitigation project has been completed, the Engineering Department shall so notify the COUNTY in writing, therein indicating when its recommendation to accept each respective project as complete and the contractor's request for final payment will be presented to the City Council for approval. The COUNTY shall have seven days after receipt of said notice within which to file a written

objection with the CITY as to the Engineering Department's recommendation to accept each respective project and make final payment.

7. Completion of Project and Acceptance by the COUNTY. Upon completion of the monitoring period required by the COE and acceptance by the COE of each respective wetlands mitigation project, the COUNTY shall be obligated to accept the specified replacement wetlands property for operation and maintenance as hereafter provided in Part III hereof. In the event that the COUNTY objects to acceptance of a respective project as complete, the COUNTY shall notify the CITY of its objection in writing not less than 15 days after receipt of notification as provided in Paragraph 6 above, therein identifying the nature of its objection. If the objection cannot be resolved within 60 days thereafter, either party may cause the matter to be submitted to binding arbitration as provided in Part III hereof.

8. CITY Access to Project Property. The COUNTY agrees to grant the CITY, its officers, employees, and agents, including its wetlands mitigation project construction contractor(s), access to each wetlands mitigation project site from the date of this agreement to the COUNTY until the COE releases the CITY of its permanent requirement that the CITY maintain said areas as replacement wetlands property, in order to complete major repairs or reconstruction during said agreement period.

**PART III – MANAGEMENT, OPERATION AND MAINTENANCE
OF REPLACEMENT WETLANDS PROPERTY BY THE COUNTY**

1. Management, Operation and Maintenance. Upon acceptance by the City Council of a wetlands mitigation project as complete, completion of the monitoring period required by the COE, and acceptance by the COE of the respective project, the COUNTY agrees to undertake its obligation to manage, operate, and maintain the replacement wetlands property as hereafter provided.

2. Management Requirements. In meeting its obligation to manage, operate and maintain the replacement wetlands property, the COUNTY agrees that it will undertake and perform the following actions with respect to the replacement wetlands property:

- A. Monitor the replacement wetlands property as necessary and appropriate under prevailing climatological conditions to determine if sufficient water and nutrients are present for the establishment and continued growth and vitality of the wetlands plantings emplaced thereon as part of each respective wetlands mitigation project, and to determine the existence of disease or infestation therein;
- B. Operate the water control structures and related piping as necessary and appropriate under prevailing climatological conditions to assure that sufficient water is present for the establishment and continued growth and vitality of the wetlands plantings emplaced thereon as part of each respective wetlands mitigation project;

- C. Provide supplemental nutrients to foster growth and/or chemicals to suppress disease or infestation to assure the establishment and continued growth and vitality of the wetlands plantings emplaced thereon as part of each respective wetlands mitigation project;
- D. Repair any portion of said wetlands damaged by erosion or flooding, including the re-emplacment of soils lost on account thereof, as necessary to properly support the establishment and growth of the wetlands plantings emplaced thereon as part of each respective wetlands mitigation project;
- E. Replant with the specified section 404 wetland mitigation plant species in any portion of each respective replacement wetlands property where such plantings die or are destroyed by disease, infestation, erosion, flooding, or other cause;
- F. Will try to acquire any additional land or easements that may be needed to allow for flooding that will result from each respective wetlands mitigation project;
- G. Comply with all Section 404 permit requirements imposed by the COE, and all COE directives issued in connection therewith, with respect to the management, operation, and maintenance of each respective replacement wetlands property; and
- H. Maintain any portion of the site reserved for future wetland mitigation in an agricultural condition, until such time as the design and construction phases of the future wetlands mitigation projects are complete and the COUNTY accepts said future projects from the CITY, as described above in Part II, Paragraph 7.

3. Management Costs. The COUNTY further agrees to pay any drainage district fees which are hereafter assessed against the replacement wetlands property.

4. Public Access to Project Property. The COUNTY agrees to limit public access to the wetland mitigation projects and replacement wetlands property to recreational uses that are (1) compatible with the natural resources of the area and (2) non-destructive and sustainable. Such permitted compatible public uses include wildlife observation; hiking; picnicking; fishing; hunting and trapping during season, with a permit and only when no construction is occurring on the site; and general nature studies (i.e. botany, zoology, etc.). Public uses that are specifically prohibited include all forms of mechanized recreation, the use of horses, any activity that pursues or harasses wildlife except during legal hunting seasons, hunting or trapping during off-seasons or while construction is occurring on site or on adjoining City-project sites, and the use of vehicles outside of designated roadways with exception made only for individuals covered under the federal Americans with Disabilities Act (ADA). Any public access other than the permitted compatible public uses listed above must be approved by both the CITY and the COUNTY prior to said access.

5. Dedication of Wetlands Area. At the close of the final five-year maintenance period under the Section 404 permits, and upon final acceptance of the final

wetlands mitigation project by the COE, and in consideration of One Dollar (\$1.00) and the COUNTY's satisfactory performance of its undertakings pursuant to this Agreement, the CITY agrees to grant to the COUNTY a fee title interest in and to the replacement wetlands property. The warranty deed conveying such fee title interest to the COUNTY shall include a provision for a reversionary interest for the CITY, conditioned upon the COUNTY's faithful performance of its obligation to manage, operate, and maintain the replacement wetlands property in perpetuity as a wetlands pursuant to applicable State and Federal laws and regulations, or until such time as the CITY and/or COUNTY is relieved of that obligation by change in law or regulation with respect to wetlands areas, and the CITY consents by written instrument to relieve the COUNTY from that obligation.

PART IV – GENERAL PROVISIONS

1. Dispute Resolution – Arbitration. The parties hereby agree:

A. The CITY and the COUNTY agree that any disputes arising between them with regard to the interpretation or application of this Agreement, or with regard to the COUNTY's compliance with Section 404 permit requirements or COE directives, may be submitted to arbitration at the request of either party. Any request for arbitration from one party to the other must be in the form of a written notice requesting arbitration. Such notice shall identify each disputed matter to be submitted to arbitration. In the absence of agreement by the parties to the contrary, the question or questions to be arbitrated shall be those specified in the notice requesting arbitration.

B. If the parties agree, there may be one arbitrator; otherwise, there shall be three, one named in writing by each party to this Agreement and the third chosen by the two arbitrators first chosen. The party requesting arbitration shall choose an arbitrator within ten (10) days following its demand. Its failure to do so shall be deemed a waiver of its request for arbitration. The other party shall name its arbitrator within ten (10) days following the receipt of notice of the naming of the requesting party's arbitrator. Should it fail to do so, or should the arbitrators named by or on behalf of the parties fail to agree on a third arbitrator, then, in either event, application shall be made to the President of the Polk County Bar Association by the party requesting arbitration to name such arbitrator. Should either party refuse or neglect to supply the arbitrators with any papers or information demanded in writing by the arbitrators, the arbitrators are empowered by both parties to proceed ex parte.

C. No one shall be qualified to act as an arbitrator if service in such role would create a conflict of interest. Each arbitrator selected shall be qualified by experience and knowledge of the matter to be submitted to arbitration.

D. If there be one arbitrator, the award shall be binding; if three, the award of any two shall be binding; and the award may be impeached only for fraud or mistake. Such award shall be a condition precedent to any right of legal action.

E. The costs of arbitration shall be shared equally by the parties.

F. The award of the arbitrators shall be in writing and it shall not be open to objection on account of the form of the proceeding or the award.

2. Declaration of Default and Notice. In the event that either party determines that the other has defaulted in the performance of its obligations hereunder, the aggrieved party may declare that default has occurred and give notice thereof to the defaulting party. Notice of default shall be given in writing, shall specify the nature of the default and the provision of the Agreement involved, and shall specify what action is required of the defaulting party to correct the default. The defaulting party shall have thirty (30) days from the date of its receipt of the notice of default to correct the default. If at the end of said thirty (30) day period the default has not, in the opinion of the aggrieved party, been corrected, that party may thereupon pursue its remedies as provided in Section 3 hereof.

3. Remedies Upon Default. In the event of default by one party in the performance of any material provision of this Agreement, the other party may, at its option, after declaring default and giving notice thereof, terminate this Agreement or seek specific performance of its provisions. The provisions of Paragraph 1 of Part IV hereof to the contrary notwithstanding, a claim of default in the performance of a material provision of this Agreement made in a notice of default shall not be subject to arbitration, and the party making the declaration of default may pursue its remedies without resort to arbitration. A party seeking termination of this Agreement due to a default in performance by the other party shall also be entitled to seek damages for such default.

- 4. Termination. The parties hereby agree:
 - A. That either party may terminate this Agreement by giving notice of termination as hereafter provided; and
 - B. That at least twelve (12) months written notice of termination must be given the other party.

Upon said termination of this Agreement, the COUNTY shall be relieved of its obligation to manage, operate, and maintain the replacement wetlands property as hereinabove provided in Part III of this Agreement, and the CITY shall be entitled to take possession and control of the replacement wetlands property and shall thereafter assume responsibility for the operation of the property as a wetlands under applicable State and Federal law, regulation, and/or permit.

5. Indemnification and Hold Harmless for Design and Construction of the Wetlands Mitigation Projects. As permitted by the Iowa Constitution and the Iowa Code, the CITY shall defend, indemnify and hold harmless the COUNTY, its officers, agents, and employees from and against any and all claims, debts, damages, suits or judgments of whatever nature, including litigation costs and attorney fees, which they may incur or which may be asserted against them or imposed upon them for any manner of property damage or bodily injury, including death at any time resulting therefrom, proximately caused by the acts or omissions of the CITY or its contractor(s) and occurring during the construction and monitoring phases of the wetlands

mitigation projects, which shall commence when the CITY's contractor(s) begins work on each project and shall terminate upon acceptance of each project by the COUNTY. This Paragraph shall not shift any liability to the CITY for injury or damage proximately caused by the acts or omissions of the COUNTY, its officers, agents, or employees in their management, operation or maintenance of those portions of the Chichaqua Wildlife Area adjacent to the wetlands mitigation projects' construction boundaries.

In the event the projects are designed as joint undertakings of CITY and COUNTY design staff, the parties agree that they shall bear their respective shares of such liability without expectation of defense, indemnity, or hold harmless by the other party.

The CITY further agrees that under its construction contract(s) for the wetlands mitigation projects, its contractor(s) will be required to defend, indemnify and hold harmless the COUNTY, its officers, agents and employees from claims and causes of action for negligent injury to persons or property from acts or omissions during the following:

- A. In constructing project improvements, including defects or deficiencies in project improvements, and
- B. In maintaining project barricades and construction detours, whether within or outside of project construction boundaries.

The CITY's contractor(s) will further be required to carry general liability insurance, satisfactory in form and amount to the COUNTY. The CITY further agrees to cause its contractor(s) to name the COUNTY as an additional insured under said policies of insurance.

6. Indemnification and Hold Harmless for Management, Operation and Maintenance of Replacement Wetlands Property. After acceptance of the projects by the CITY, and upon the COUNTY's assumption of the management, operation and maintenance responsibilities for the replacement wetlands property, as provided in Part III hereof, and as permitted by the Iowa Constitution and the Iowa Code, the COUNTY shall defend, indemnify and hold harmless the CITY, its officers, agents, and employees from and against any and all claims, debts, damages, suits or judgments of whatever nature, including litigation costs and attorney fees, which they may incur or which may be asserted against or imposed upon them, for any manner of property damage or bodily injury, including death resulting at any time therefrom, proximately caused by the management, operation or maintenance of the replacement wetlands property.

7. Notice. Notices of other communications between or among the parties hereto shall be sent to the following officials and addresses:

If to the COUNTY:
Director
Polk County Conservation Board
Jester Park
Granger, Iowa 50109

If to the CITY:

City Engineer
City of Des Moines City Hall
400 Robert D. Ray Drive
Des Moines, IA 50309

8. Severability. If any section, provision or part of this Agreement shall be found to be invalid or unconstitutional, such judgment shall not affect the validity of the Agreement as a whole or any section, provision or part thereof not found to be invalid or unconstitutional.

9. Execution. This Agreement may be executed in three counterparts, each of which so executed shall be deemed to be an original.

10. Entire Agreement. This Agreement, as set forth in Parts I through IV hereof inclusive, represents the entire agreement between the CITY and the COUNTY.

11. Change/Modification of Agreement. Any change or modification to the terms of this Agreement shall be in the form of an Addendum to this Agreement, duly approved and executed by both parties.

{Signature Pages to Follow}

SIGNED ON THIS _____ DAY OF _____, 2008.

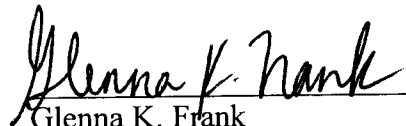
CITY OF DES MOINES, IOWA

T.M. Franklin Cownie
Mayor

ATTEST:

Diane Rauh
City Clerk

APPROVED AS TO FORM:



Glenna K. Frank
Assistant City Attorney


State of IOWA)
) ss.
County of POLK)

On this ____ day of _____, 20____, before me, 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 the 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 under Roll Call No. _____, Agenda Item _____, dated _____, and that T.M. Franklin Cownie and Diane Rauh acknowledged the execution of the instrument to be the voluntary act and deed of the municipal corporation, by it and by them voluntarily executed.

Notary Public in the State of Iowa

SIGNED ON THIS 10th DAY OF April, 2008.

POLK COUNTY CONSERVATION BOARD

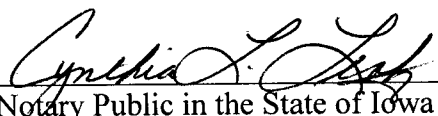

Patricia Boddy, PCC Director

ATTEST:



State of IOWA)
) ss.
County of POLK)

On this 10th day of April, 2008, before me, a Notary Public in and for the State of Iowa personally appeared Pat Boddy, to me personally known, and, who, being by me duly sworn, did say that she is the Director of Polk County Conservation, and the instrument was signed and sealed on behalf of and pursuant to authorization by the Board, as the voluntary act and deed of the Polk County Conservation Board, by it and by her voluntarily executed.


Notary Public in the State of Iowa

12-28-09