

★ Roll Call Number

Agenda Item Number

50

Date May 18, 2009

**APPROVAL OF A SECOND AMENDMENT TO THE 28E AGREEMENT BETWEEN
KIWANIS RIVERVIEW NATURE ISLAND, INC. AND THE CITY OF DES MOINES**

WHEREAS, the City of Des Moines is the owner of Kiwanis Riverview Nature Island, also known as Riverview Park, and the residence in McHenry Park at 1012 Oak Park Avenue, adjoining Kiwanis Riverview Nature Island; and

WHEREAS, on August 3, 1992, by Roll Call No. 92-3035, the City and the Kiwanis Riverview Nature Island, Inc. ("KNI") entered into a 28E Agreement for the purpose of furthering the development, maintenance, and management of Riverview Park; and

WHEREAS, on June 4, 2003, by Roll Call No. 03-1241, the City Council approved a new 28E Agreement with KNI for the maintenance of the Kiwanis Riverview Nature Island and to allow use and control of the house, garage, and storage shed at 1012 Oak Park Avenue by KNI, Inc. for a term of three years ("the 28E Agreement"); and

WHEREAS, on May 22, 2006, by Roll Call 06-1020, the City Council approved an extension of the term of the 28E Agreement for an additional three year term; and

WHEREAS, the City Park and Recreation Department and KNI desire to extend the 28E Agreement for an additional eighteen months in order to provide sufficient time for development of a plan for the Island and to review the responsibilities and duties for planning, designing, developing, and maintaining and improving the various facilities at Kiwanis Riverview Nature Island; and

WHEREAS, the City Council determines that it is in the best interests of the City to extend the term of the 28E Agreement for an additional eighteen months.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Des Moines, Iowa, that the Second Amendment to the Kiwanis Riverview Nature Island 28E Agreement between the City of Des Moines and Kiwanis Nature Island, Inc., a copy of which is on file with the City Clerk's Office, is hereby approved and the Mayor Pro Tem is authorized and directed to sign said Second Amendment on behalf of the City and the Chief Deputy City Clerk is hereby authorized and directed to attest to his signature.

(Council Communication No. 09- **307**)

APPROVED AS TO FORM:

Moved by _____ to adopt.

Ann DiDonato

Ann DiDonato, Assistant City Attorney

| COUNCIL ACTION | YEAS | NAYS | PASS | ABSENT |
|----------------|----------|------|------|--------|
| COWNIE | | | | |
| COLEMAN | | | | |
| HENSLEY | | | | |
| KIERNAN | | | | |
| MAHAFFEY | | | | |
| MEYER | | | | |
| 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

SECOND AMENDMENT TO
KIWANIS RIVERVIEW NATURE ISLAND
28E AGREEMENT

This Amendment is made and entered into this _____ day of MAY, 2009, to that Kiwanis Riverview Nature Island 28E Agreement dated June 4, 2003 by and between the City of Des Moines, hereinafter called "City," whose address for the purpose of this Agreement is City Properties Administrator, 3226 University Avenue, Des Moines, Iowa 50311, and Kiwanis Riverview Nature Island Inc., hereinafter called "Kiwanis," whose address for the purpose of this Agreement is 1111 Ninth Street, Suite 180, Des Moines, Iowa 50314, hereinafter "28E Agreement" (Book 9896, Page 263).

WHEREAS, the City of Des Moines is the owner of certain real property, shown in Exhibit A locally known as Kiwanis Nature Island (aka Riverview Park), and the residence in McHenry Park adjoining the Kiwanis Nature Island locally known as 1012 Oak Park Avenue, Des Moines, Iowa (the "Oak Park Property"), (both properties together hereinafter the "Subject Properties").

WHEREAS, on June 6, 2003 by Roll Call No. 03-1241, the City and the Kiwanis entered into the 28E Agreement for the maintenance of the Subject Properties and the lease of the Oak Park Property; and

WHEREAS, on May 22, 2006, by Roll Call No.06-1020, the City and the Kiwanis entered into an Amendment to the 28E Agreement to extend the term of the 28E Agreement until June 1, 2009 (Book 11697, Page 540-542); and

WHEREAS, the City has determined that it is in the best interest of the City to extend the 28E Agreement for another eighteen (18) months and the Kiwanis have agreed to an eighteen (18) month extension.

NOW THEREFORE, in consideration of the mutual covenants, promises, and agreements hereinafter set forth, the parties agree as follows:

1. The term of the 28E Agreement shall extend until December 31, 2010.
2. All other terms of the 28E Agreement shall remain in effect.
3. This Second Amendment shall become effective upon its execution and filing with the Secretary of State as required in section 28E.8 Code of Iowa (2009).

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by the duly authorized offices as of the date first written above.

KIWANIS RIVERVIEW NATURE ISLAND INC.

CITY OF DES MOINES, IOWA

By: *Edward W. Linebach III*
Edward W. Linebach III, President

By: _____
Tom Vlassis, Mayor Pro Tem

Approved as to Form:
Ned P. Miller
Ned P. Miller, Attorney for Kiwanis
Riverview Naure Island Inc.

Attest:

Diane Rauh, City Clerk

Approved as to Form:
Ann DiDonato
Ann DiDonato, Assistant City Attorney

STATE OF IOWA)
) ss:
COUNTY OF POLK)

On this ____ day of _____, 2009, before me, the undersigned, a Notary Public in and for the State of Iowa, personally appeared Tom Vlassis and Laura Baumgartner, to me personally known, and, who, being by me duly sworn, dud say that they are the Mayor Pro Tem and Chief Deputy City Clerk, respectively, of said Municipal Corporation; that said instrument was signed and sealed on behalf of said City of Des Moines, a Municipal Corporation by authority of the City Council; and that the said Tom Vlassis and Diane Rauh as such Mayor Pro Tem and Chief Deputy City Clerk acknowledge the execution of said instrument to be the voluntary act and deed of said municipal corporation by it and by them voluntarily executed.

Notary Public in the State of Iowa

My commission expires: _____

State of Iowa)
) ss:
County of Polk)

On this 11th day of May, 2009, before me, a notary public, personally appeared Edward W. Linebach III, to me personally known, who being by me duly sworn did say that he is the President of Kiwanis Riverview Nature Island Inc., an Iowa non-profit 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.

Donna R. Stiegel

Notary Public in the State of Iowa

My commission expires: 1-18-2011

