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.....
Date September 25, 2006

APPROVAL OF BRENTON SKATING PLAZA NAMING AGREEMENT

WHEREAS, Principal Life Insurance Company and the City 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 (“the 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 Skating Plaza; and

WHEREAS, The Brenton Foundation, an Iowa non-profit corporation (“the Foundation”) has agreed to donate \$500,000 to the Des Moines Riverfront Development Authority as a charitable gift toward the construction of the Skating Plaza; and

WHEREAS, the Foundation desires that the City agree to certain specified conditions associated with such gift, including that the Skating Plaza be named “Brenton Skating Plaza”, that the Plaza will be maintained, subject to appropriations of the City Council, and that the ice skating rink shall be operated for no less than eighteen (18) consecutive weeks per skating season, subject to downtime for maintenance, weather, public safety and welfare and mechanical operations; and

WHEREAS, the term of such proposed agreement is for twenty five (25) years; and

WHEREAS, a Naming Agreement incorporating these terms has been negotiated by City staff and The Brenton Foundation, a copy of which is on file in the City Clerk’s office; and

WHEREAS, The Brenton Foundation has executed such Naming Agreement; and

WHEREAS, the City desires to cooperate with The Brenton Foundation by accepting such charitable gift and it is in the best interests of the City to enter into this Naming Agreement to further enhance recreational opportunities for the citizens of Des Moines.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Des Moines, Iowa, that the Brenton Skating Plaza Naming Agreement by and between the City of Des Moines and The Brenton Foundation, which is on file in the City Clerk’s office and by this reference made a part hereof, be and the same is hereby approved, and the Mayor is hereby authorized and directed to sign said Agreement on behalf of the City and the City Clerk is hereby directed to attest to said signature.

★ Roll Call Number

Agenda Item Number

57

Date September 25, 2006

(Council Communication Number 06 - 606)

Moved by _____ to adopt.

Approved as to Form:

Ann DiDonato
Ann DiDonato
Assistant City Attorney

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

MOTION CARRIED APPROVED

Mayor

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.

City Clerk

BRENTON SKATING PLAZA
NAMING AGREEMENT

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THIS BRENTON SKATING PLAZA NAMING AGREEMENT is entered into as of the ____ day of _____, 2006, by and between the City of Des Moines, Iowa (the "CITY"), and THE BRENTON FOUNDATION, an Iowa non-profit corporation located at 400 Locust Street, Suite 200, Des Moines, Iowa 50309 (the "FOUNDATION"); and

WHEREAS, Principal Life Insurance Company and the City entered into an Agreement for Construction and Funding of Ice Skating and Fountain pursuant to Roll Call No. 05-662, dated March 28, 2005 (the "Agreement"), for the purpose of design and construction of a public ice skating rink (the "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, hereinafter known as the Plaza and more specifically described in Exhibit A attached hereto; and

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

WHEREAS, the FOUNDATION has agreed to donate \$500,000 to the Des Moines Riverfront Development Authority ("RDA") as a gift toward the construction of the Plaza and the FOUNDATION desires that the CITY agree to certain specified conditions associated with such gift.

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

A. Length of Agreement.

The length of this Agreement shall be for twenty-five (25) years from the date of execution.

B. Naming of Plaza and Other Conditions of Gift.

1. Upon the FOUNDATION's payment of \$500,000 to the RDA for design and construction of the Plaza, the Plaza shall be designated the "Brenton Skating Plaza". The FOUNDATION shall have the right to withdraw the use of the BRENTON name at any time in its sole discretion, but until such time no other name, other than the City of Des Moines, shall be associated with the Plaza. The intent of this Agreement is that the basic design of the Brenton Skating Plaza will not change, but if a change is necessitated for the purposes of public safety, security, to enhance the use of the facility, or if significant repair or replacement of the Skating Rink or any of the structures is required, the CITY has the right to make these changes. In the case of such changes, the CITY will provide the FOUNDATION with a chance to comment.

2. The CITY shall not be responsible for the costs for naming signage at the Plaza. CITY and the FOUNDATION agree that the FOUNDATION is hereby authorized to designate the appropriate placement of signage designating the Plaza as "Brenton Skating Plaza" located within the Plaza on the Plaza provided that such signage is placed in accordance with all applicable ordinances pertaining to the Plaza. With the exception of directional and emergency signage and signage which is attached to a structure and does not face the Plaza or which is related to on-site concessions, only temporary signage such as banners, may be placed within the perimeter of the Plaza to identify the occurrence of an event being held on the Plaza. For purposes hereof, "temporary signage" shall mean signage posted no earlier than twenty-four (24) hours before the commencement of an event and removed within twenty-four (24) hours following the completion of the event, but in no event to exceed a total of five (5) days. All signage shall be tasteful in its appearance and comply with standards of decency for the neighborhood and the Plaza. Any extension of the time restrictions set forth herein shall be subject to the approval of the Foundation.

3. The CITY shall make all reasonable efforts to ensure that all media information, maps, travel guides, and similar publications reference the Plaza as the "Brenton Skating Plaza".

4. The CITY shall maintain the Plaza in good repair and perform maintenance at the Plaza during the term of this Agreement, which shall include the items listed in Exhibit B attached hereto. The CITY's maintenance services and funding support shall be determined by appropriations as approved by the City Council of the CITY for annual operating and capital improvement budgets, subject to any appropriation of the funds by the City Council. It is expected that the major infrastructure will last for the term of this Agreement. If a major reconstruction of the facility is needed before the end of this Agreement, the FOUNDATION acknowledges that the CITY may require additional private financial support. Notwithstanding the foregoing, it is the intent of the CITY to participate in the assurance that this facility will be in operation for at least 25 years.

5. The CITY intends to operate the ice skating facility during the winter skating season, approximately November – March. Subject to the ability of the ice-making equipment to produce ice, the CITY agrees that the ice skating rink shall operate for a consecutive period of no less than eighteen (18) weeks, subject to downtime due to maintenance, weather, matters of public safety and welfare, and mechanical operations.

6. The CITY shall use best efforts to insure that events conducted on the Plaza shall be conducted in a manner that does not disparage the FOUNDATION and that such uses are consistent with accepted standards of decency.

C. Notices.

Any notice required or permitted to be given under this Agreement shall be in writing and shall be deemed to be an adequate and sufficient notice if given in writing and service is made either by (i) personal delivery, in which case the service shall be deemed received the date of such personal delivery, (ii) nationally recognized overnight air courier service, next day delivery, prepaid, in which case the notice shall be deemed to have been received one (1) business day following delivery to such nationally recognized overnight air courier service, or (iii) at the time of being sent by facsimile if delivery thereof is confirmed by sender's receipt of a transmission report, generated by sender's facsimile machine, which confirms that the facsimile was successfully transmitted in its entirety and provided the facsimile was forwarded prior to 5:00 p.m. Central Time, and to the following addresses or facsimile numbers:

If to the Foundation:

The Brenton Foundation
1400 Windover Road
Des Moines, Iowa 50315

If to the CITY:

Park and Recreation Director
City of Des Moines, Iowa
3226 University Avenue
Des Moines, Iowa 50311

with a copy to:

Legal Department
City of Des Moines, Iowa
400 Robert D. Ray Drive
Des Moines, Iowa 50309-1891
Facsimile: (515) 237-1643

Each party may by written notice to the other specify a different address for subsequent notice purposes. Notice shall be deemed effective on the date of actual receipt or three days after the date of mailing, whichever is earlier.

D. Indemnification.

Upon acceptance of ownership of the Plaza by the City Council of the City, the CITY shall accept liability for the Plaza to the same extent as with other CITY owned park and recreational facilities in accordance with Iowa law and shall hold the FOUNDATION harmless with respect to any such liability, except for liability arising from the design of the Plaza and Skating Rink.

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

CITY OF DES MOINES, IOWA

THE BRENTON FOUNDATION

T.M. Franklin Cownie, Mayor

Junius C. Brenton, Director

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 JUNIUS C. BRENTON of THE BRENTON FOUNDATION, to me personally known, who being by me duly sworn did say that he is a DIRECTOR of THE BRENTON FOUNDATION, 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.

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

EXHIBIT A

Definition of Plaza

The Plaza is that area bordered by Robert D. Ray Drive right of way on the East, the Armory Building on the north, the Army Corps of Engineers flood wall on the west, Grand Avenue right of way on the South, and excluding the multi-use recreational trail and the walkway entry into the Armory Building. and the area between the walkway and the Armory Building.

EXHIBIT B

Maintenance at Brenton Skating Rink

Repair of concession
equipment
Replacing exterior
bulbs/fixtures
Replacing interior
bulbs/fixtures
Repair and sharpen
rental skates
Repair boilers/ water
heaters
Unplug drains
Repair/paint railings
Cleaning interior of
pavillions
Repair sound system
Repair of phone/data
lines
Trash removal
Landscaping/plantings
Repair electrical
system
Tree care