

Date November 9, 2009

APPROVING ASSIGNMENT AND ASSUMPTION OF  
CLAIMS AGREEMENT BETWEEN THE CITY OF DES MOINES AND  
ELDER CORPORATION FOR DAMAGE TO COWNIE SOCCER FIELDS

WHEREAS, on June 8, 2009 by Roll Call No. 09-1042, the City of Des Moines, Iowa entered into a contract with Elder Corporation as general contractor for a public improvement project, Cownie Soccer Fields Improvements - Phase 3, at the James W. Cownie Soccer Park ("Soccer Park"), located at SE 22<sup>nd</sup> Street and Hartford Avenue in Des Moines and owned by the City; and

WHEREAS, on or around October 7, 2009, it was discovered that certain fields within the Soccer Park had been trespassed upon by horses kept at 3111 Hartford Avenue, Des Moines (Property Owner: Park Avenue Farms L.C.), and that significant damage had been caused by such trespass to the Soccer Park and fields therein; and

WHEREAS, the Parks Department needed the damage fixed quickly so that the fields would be available for soccer games next year, and if the damage was not repaired and new sod laid before winter, the fields would have been unavailable for play next year; and

WHEREAS, on October 26, 2009, by Resolution No. 09-1905 the City Council approved Change Order No. 2 between the City of Des Moines and Elder Corporation for additional work on the Cownie Soccer Fields Improvements - Phase 3 in an amount not to exceed \$90,420 so that the work could proceed quickly so that the fields will be available for soccer games next year; and

WHEREAS, in consideration of Change Order No. 2, the Legal Department has prepared an Assignment and Assumption of Claims Agreement between the City and Elder by which Elder assigns all of its right and interest in and to any and all claims, demands, suits, damages, losses or causes of action that may be asserted or claimed against or recovered from any and all parties arising out of or relating to the trespass on the Soccer Park by the horses to the City; and

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NOW THEREFORE, BE IT RESOLVED by the City Council of the City of Des Moines, Iowa that the Assignment and Assumption of Claims is hereby approved and the Mayor is authorized and directed to execute the Assignment and Assumption of Claims and the City Clerk is hereby authorized and directed to attest to his signature.

Moved by \_\_\_\_\_ to adopt.

FORM APPROVED: *Kathleen Vanderpool*  
 Kathleen Vanderpool  
 Deputy City Attorney

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