

Date December 21, 2009

APPROVAL OF THE GROUNDS AND FLEUR DRIVE MEDIANS MAINTENANCE ALLIANCE AGREEMENT BETWEEN THE CITY OF DES MOINES AND THE BOARD OF WATER WORKS TRUSTEES OF THE CITY OF DES MOINES AND ACCEPTANCE OF FLEUR DRIVE MEDIAN PLANTERS

WHEREAS, the Board of Water Works Trustees of the City of Des Moines, Iowa (“Water Works”) makes a portion of its grounds available to the public as a park known as Water Works Park, which is adjacent to Fleur Drive; and

WHEREAS, the City of Des Moines has responsibility for repair and maintenance of streets within the City including Fleur Drive and also owns, operates and maintains the Meredith Multi-Use Recreational Trail, the Bill Riley Multi-Use Recreational Trail and its extension to the southeast corner of Gray’s Lake Park, the Walnut Creek Trail, and the extension of the Great Western Trail that terminates in the southern terminus at George Flagg Parkway, a portion of which are located within Water Works property; and

WHEREAS, the Water Works and the City each have maintenance capabilities and facilities which can be shared to support their respective needs on a mutually beneficial basis in the public interest; and

WHEREAS, on July 24, 2000, by Roll Call No. 00-3259, the City Council entered into a 28E Agreement with Water Works providing that the Des Moines Park and Recreation Department staff and Water Works staff share grounds maintenance and beautification responsibilities for a portion of Fleur Drive, Gray’s Lake Park, Carney Park, the Bill Riley Trail and Water Works Park (“the Grounds Maintenance Alliance Agreement”); and

WHEREAS, on April 5, 2004, by Roll Call No. 04-722, the City Council approved a First Amendment to the Grounds Maintenance Alliance Agreement in which the City assumed responsibility for services formerly provided by Water Works under said Agreement for Gray’s Lake Park; and

WHEREAS, on July 14, 2003, by Roll Call No. 03-1618, the City Council approved the Fleur Drive Gateway Scenic Beautification Project Agreement between the City, IDOT and Water Works in which IDOT allocated grant funds for development of Fleur Drive, including construction of planters in the median; and

WHEREAS, on March 18, 2002, by Roll Call No. 02-763, the City Council authorized the City Manager to work with the Mayor’s Landscape Taskforce and the Ruan Center Corporation to prepare plans for Fleur Drive improvements; and

WHEREAS, Water Works has utilized IDOT grant funds and private donations to construct, or aid in the construction of, fifteen median planters in Fleur Drive right-of-way from the Martin Luther King bridge on the north to Army Post Road on the south, as shown on the attached Exhibit 1, (“the Planters”); and

Date December 21, 2009

WHEREAS, Water Works desires that the completed planters be accepted by the City; and

WHEREAS, the original 28-E Grounds Maintenance Alliance Agreement expired on June 30, 2007, and the Water Works and the City now desire to enter into a new agreement to continue to provide for cooperative services and materials for a portion of Fleur Drive, the planters in the medians of Fleur Drive, the City trails within Water Works property and Water Works Park; and

WHEREAS, a new Grounds and Fleur Drive Medians Maintenance Alliance Agreement has been created between the City and the Water Works, a copy of which is on file in the City Clerk's Office, which includes mutual services for the City Trails and Fleur Drive median planters for an initial term from January 1, 2010 to December 31, 2014, with one year renewals unless written notice is otherwise given by either party; and

WHEREAS, it is in the best interests of the City to enter into this new Grounds and Fleur Drive Medians Maintenance Alliance Agreement and to accept the planters to further enhance the beautification of the City in a manner which makes efficient use of public resources.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Des Moines, Iowa, that the Grounds and Fleur Drive Medians Maintenance Alliance Agreement Between the City of Des Moines and the Board of Water Works Trustees of the City of Des Moines, a copy of which is on file with the City Clerk's Office, 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 authorized and directed to attest to his signature.

BE IT FURTHER RESOLVED THAT the City hereby accepts ownership of the Fleur Drive median planter improvements shown in the attached Exhibit 1.

(Council Communication No. 09-~~879~~) 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				
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

**GROUND AND FLEUR MEDIANS MAINTENANCE ALLIANCE AGREEMENT
BETWEEN CITY OF DES MOINES AND THE
BOARD OF WATER WORKS TRUSTEES OF
THE CITY OF DES MOINES**

This Agreement by and between the City of Des Moines, Iowa ("City") and the Board of Water Works Trustees of the City of Des Moines, Iowa ("Water Works") effective as of the date set forth below:

RECITALS:

- A. City is an Iowa municipality and Water Works is a municipal water utility established and operating in the City of Des Moines, Iowa pursuant to Chapter 388 of the Iowa Code; and
- B. Water Works makes a portion of its grounds ("Water Works Property") available to the public as a park known as Water Works Park, which is adjacent to Fleur Drive; and
- C. City has responsibility for repair and maintenance of streets within the City including Fleur Drive and also owns and operates and maintains parks, public spaces and recreational facilities within the City, including: (i) the Meredith Multi-Use Recreational Trail; (ii) the Bill Riley Multi-Use Recreational Trail; (iii) the asphalt trail from the Meredith Trail at the southeast corner of Gray's Lake Park along the abandoned UPRR right-of-way to SW 30th Street, then north along SW 30th Street across George Flagg Parkway into Water Works Park to the Great Western and Bill Riley trailhead; (iv) the Walnut Creek Trail that terminates in its eastern terminus at the Bill Riley Trail; and (v) the extension of the Great Western Trail that terminates in its southern terminus at George Flagg Parkway, a portion of which are located within Water Works Property as shown in the attached Exhibit A ("the City Trails"); and
- D. City and Water Works each have maintenance capabilities and facilities which can be shared to support their respective needs on a mutually beneficial basis in the public interest; and
- E. City and Water works desire to share grounds maintenance and beautification services for a portion of Fleur Drive, the planters in the Fleur Drive medians, the City Trails, and Water Works Park, in order to improve the working relationship between the two entities, and to provide a positive public image of the Fleur Drive corridor from the Martin Luther King Parkway Bridge over the Raccoon River south to Army Post Road; and
- F. City and Water Works entered into a Chapter 28E Agreement dated July 24, 2000, with a stated term ending on June 30, 2007, which is on file with the Iowa Secretary of State and recorded in the records of the Polk County Recorder at Book 8607 and Pages 301-306,

which was amended pursuant to a First Amendment dated April 4, 2004, which is on file with the Iowa Secretary of State and recorded in the records of the Polk County Recorder at Book 10492 and Pages 694-697 ("the 2000 Agreement"); and

- G. City and Water Works desire to enter into a new Agreement to provide for the below described cooperative services and materials.

NOW THEREFORE, in consideration of the mutual services hereby provided, the City and Water Works hereby agree as follows:

1. Property Ownership.

No joint property shall be acquired, held or disposed of hereunder. Each party shall at all times hold and own its respective properties, before and after termination. Nothing in this Agreement is intended to change the status of Water Works' ownership of the pedestrian/trail bridge over the Raccoon River or any other property within Water Works Park. Nothing in this Agreement is intended to change the status of the City's ownership of the City Trails within Water Works Property. Each party shall be solely authorized to supervise, direct, and manage their own activities and the activities of their respective employees and agents hereunder. Each party shall retain sole responsibility and liability for its own acts and omissions hereunder and for the acts and omissions of their respective employees and agents hereunder, and each party waive subrogation against the other for all claims, suits, damages, and demands which are covered by any insurance, including but not limited to property, casualty and workers compensation insurance.

2. Water Works Services.

Water Works shall provide the following:

- (a) Fleur Drive medians (including planters) from MLK Parkway/Fleur Drive Interchange south to Army Post Road:
- Plant, water, and maintain flower, plant and tree displays.
 - All planting plans require the approval of the City Park and Recreation Director. No significant changes will be made to the plantings in the perennial beds without a review process that includes input from the original donor.
 - Provide mowing of all turf areas.
 - Mowing, including the City right-of-way along Fleur Drive north of Bell Avenue, except for Gray's Lake Park.
 - Provide litter and debris removal.
 - Apply fertilizer to turf and flower beds.
 - Provide weed control for both turf and concrete surface.
 - Provide pruning of plant materials.
 - Provide pest control for all trees and plants.

- Plant and maintain flower and plant displays under and adjacent to the MLK Parkway/Fleur Drive interchange, in compliance with the 2002 Chapter 28E Agreement By and Between the City of Des Moines, Iowa and the Board of Water Works Trustees of The City of Des Moines, Iowa related to the construction of the MLK, Jr. Parkway project.
 - Cooperate with the City in providing the documentation required for acceptance by the City of Fleur Drive median planters not previously accepted by the City.
- (b) City Trails within Water Works Park and other Water Works Property:
- Provide mowing of all turf areas.
 - Mowing to include the City right-of-way.
 - Provide litter and debris removal, except as set forth below for the Meredith Trail.
 - Provide weed control for paved surfaces.
 - Trim dangerous or low hanging limbs and remove damaged or dead trees, bushes, and brush as such conditions arise.
 - Provide sweeping, snow and ice removal, except as set for the below for the Meredith Trail.
 - Trail erosion control.
 - Trail maintenance, and grading for proper drainage, exclusive of asphalt maintenance and replacement.
 - Provide at least bi-annual inspections of the pedestrian/trail bridge over Raccoon River within Water Works Park by a structural engineer licensed to practice in the State of Iowa.
 - Maintenance as required of pedestrian/trail bridge over Raccoon River within Water Works Park and reconstruction as bridge inspections determine that reconstruction is needed to ensure the public's safety, including design. Water Works and the City will jointly agree to the design of any reconstructed bridge. It is anticipated that grant funds will be available to provide partial reconstruction funding. Water Works will cooperate in grant applications filed by the City by providing the required grant share funds. Water Works will be responsible for the funding of such reconstruction to the extent that it is not covered by grant funds.
 - Provide security support.
 - Keep City Trails open at all times every day in conformance with the City's trail hours except when weather related conditions or emergencies create reasonable safety concerns that require the trails to be temporarily closed.
 - Provide access to the City, including its contractors, to conduct trail asphalt maintenance and replacement.
 - Subject to Water Works Board regular procedure, promptly begin the process to grant perpetual easements (no cost) to the City for all City Trails constructed on Water Works Property, but in no event more than 120 days following receipt of such easement documents from the City.

3. City Services.

City shall provide the following:

(a) City Trails:

- Pay for and provide for installation of trail signage.
- Asphalt maintenance and replacement as deemed necessary by the City to ensure safety of the user public.
- Water Works and the City will jointly agree to the design of the reconstructed bridge. City will apply for appropriate grants for the bridge reconstruction.
- Provide proposed trail easement documents or information for all City Trails constructed on Water Works Property to Water Works within 120 days following the approval of this Agreement.

(b) Meredith Trail - Fleur Segment on Water Works Property - grounds trail maintenance consisting of:

- Provide litter and debris removal, sweeping, snow and ice removal.
- Maintain and replace light fixtures and poles, emergency telephones, and provide and maintain signage.

(c) Fleur Drive Median Planters:

- Provide all plants and flowers (including bulbs), subject to the City's Park and Recreation Department Director's approval of Water Works' annual planting plan or a Water Works' replacement/emergency needs planting plan. Provide fertilizer and other chemicals.
- Provide annual flowers for memorial fountain, gazebo, and main office flower displays in Water Works Park.
- Upon receipt of the as-built plans, engineer/architect certification, and lien waivers, as deemed appropriate by the City, accept ownership of median planters.
- Upon acceptance by the City Council, maintain, repair and replace concrete structures portion of median planters.

4. Term and Termination

This Agreement shall exist for an initial term from January 1, 2010 to December 31, 2014. This Agreement shall renew, on and after December 31, 2014 for successive one year terms, each commencing on January 1, without any further action by City or Water Works, unless either City or Water Works shall notify the other in writing of non-renewal not later than the preceding March 1.

5. Financing

Each party shall be solely responsible for funding its own operations hereunder. No financial billings between City and Water Works are anticipated. All such funding shall be separately included within the respective regular budgets of City and Water Works. All funding shall be provided by City and Water Works' regular sources of revenue and financing.

6. Notices.

All notices which the parties are authorized or required to give to one another pursuant to this Agreement shall be in writing and may be personally delivered or sent by ordinary mail to the address hereafter provided. Mailed notices shall be deemed to be received by the party to whom directed when they are postmarked. Such notices shall be delivered or mailed to the following persons at the addresses listed:

Notices to the City:

City Manager
City of Des Moines, Iowa
400 Robert D. Ray Drive
Des Moines, IA 50309-1891

Notices to the Water Works:

CEO & General Manager
Des Moines Water Works
2201 George Flagg Parkway
Des Moines, IA 50321

7. 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 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 30 days from the date of its receipt of the notice of default to correct the default, if at the end of said 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 paragraph 8 hereof.

8. Remedies Upon Default.

In the event of default by one party in its 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 party seeking termination of this Agreement due to default in performance by the other party shall also be entitled to seek damages for such default.

CITY OF DES MOINES, IOWA

By: _____
T. M. Franklin Cownie, Mayor

APPROVED AS TO FORM:

Ann DiDonato
Ann DiDonato, Assistant City Attorney

ATTEST:

Diane Rauh, City Clerk

BOARD OF WATER WORKS TRUSTEES
OF THE CITY OF DES MOINES, IOWA

By: Robert G. Riley Jr.
Robert G. Riley Jr., Board Chairperson

ATTEST:

Randall R. Beavers
Randall R. Beavers, CEO and General Manager


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 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 City, and that the instrument was signed and sealed on behalf of the City, by authority of its City Council, as contained in the Resolution adopted by the City Council, under Roll Call No. 09-_____ of the City Council on the _____ day of _____, 2009, 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 and for the State of Iowa

STATE OF IOWA)
) SS:
COUNTY OF POLK)

On this 15th day of December, 2009, before me, a Notary Public in and for the State of Iowa, personally appeared Robert G. Riley Jr. and Randall R. Beavers, to me personally known, and, who being by me duly sworn, did say that they are the Board Chairperson and the CEO & General Manager of the BOARD OF WATER WORKS TRUSTEES OF THE CITY OF DES MOINES, IOWA, that no seal has been procured by the entity; that the attached instrument was signed on behalf of the said entity by authority of its Board as contained in the resolution adopted by the Board on the 15th day of December, 2009, and that Robert G. Riley Jr. and Randall R. Beavers acknowledged the execution of the instrument to be the voluntary act and deed of the BOARD OF WATER WORKS TRUSTEES OF THE CITY OF DES MOINES, IOWA, by it and by them voluntarily executed.


Notary Public in and for the State of Iowa

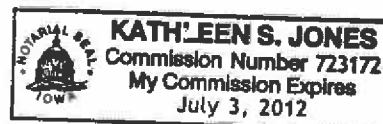


Exhibit A -- City of Des Moines Trails in Water Works Property

