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Date January 23, 2017

AMENDED AND SUBSTITUTED POLICE SERVICES AGREEMENT BETWEEN THE CITY OF DES MOINES AND THE DES MOINES SKYWALK ASSOCIATION

WHEREAS, the Des Moines Police Department and the Des Moines Skywalk Association desire to amend the agreement to for police services in the skywalk; and

WHEREAS, the agreement amends and replaces all prior agreements for providing police services in the skywalk, removes outdated references and reflects the current staffing level and;

WHEREAS, the Skywalk Association agrees to pay the City of Des Moines for one-half of the annualized salary for a top step senior police officer and the one-half annualized benefits estimated for the said top step senior police officer;

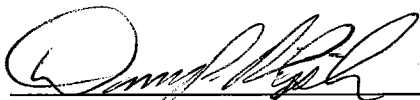
WHEREAS, modifications can be made only by the mutual written consent of all parties;

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Des Moines, Iowa, that the police services agreement for skywalk security between the City and the Des Moines Skywalk Association, on file in the Office of the City Clerk is hereby approved and the Mayor is hereby authorized and directed to execute such Agreement on behalf of the City and the City Clerk is hereby authorized and directed to attest to his signature.

(Council Communication No. 17-024)

Moved by _____ to adopt

Approved as to form:



Douglas P. Philip, Assistant City Attorney

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE				
COLEMAN				
GATTO				
GRAY				
HENSLEY				
MOORE				
WESTERGAARD				
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

AMENDED AND SUBSTITUTED POLICE SERVICES AGREEMENT BETWEEN THE
CITY OF DES MOINES AND THE DES MOINES SKYWALK ASSOCIATION

This Agreement is made and entered into this _____ day of _____, 2017, by and between THE CITY OF DES MOINES, IOWA, an Iowa municipal corporation, hereinafter referred to as the "CITY", and the DES MOINES SKYWALK ASSOCIATION, a non-profit corporation under Chapter 504, Code of Iowa, hereinafter referred to as the "ASSOCIATION."

RECITALS OF FACT

- A. The membership of the ASSOCIATION is comprised of owners of real estate and businesses with direct or indirect access to the Skywalk System. The CITY, the ASSOCIATION, and Polk County Iowa have entered into an Amended Skywalk Security and Surveillance Chapter 28E Agreement dated the 16th day of December, 1996 and filed with the Polk County Recorder on January 28, 1997 at book 7565 pp. 471-495. Under the terms of the 28E Agreement the ASSOCIATION "intends to provide, for the benefit of the public and its members, a security and surveillance program in the City Skywalk System which may include, without limitation, on-duty uniformed security personnel, police officers of the City, and installation of remote control visual equipment and monitoring stations." Section 1 of the 28E Agreement states in part that "the City and DMSA [Des Moines Skywalk Association] will enter into a separate contract regarding provision of, and payment for, such on-duty police officers."
- B. The CITY, through its Police Department, has offered its on-duty police officers for security and surveillance in the Skywalk System and is willing to train additional officers as are required to provide the level of service herein contemplated.

TERMS OF AGREEMENT

In consideration of the mutual promises and covenants contained herein, the parties agree as follows:

1. Description of Services.

The ASSOCIATION and the CITY will work together to determine the security and surveillance services to be provided by police officers of the Des Moines Police Department, which services shall be consistent with good police practices. The specifications of such services as are, from time to time, adopted and amended will be detailed in a Standard Operating Procedures Manual promulgated jointly by the ASSOCIATION and the Police Department.

2. Number of Officers.

The number of full-time, on-duty police officers required by the ASSOCIATION to provide security and surveillance in the present Skywalk System on the basis of one officer 8 hours per day, 5 days per week, is estimated to be one officer. As the hours of operation of the

Skywalk System change, as the Skywalk System expands, and with experience gained over time by the ASSOCIATION and the Police Department, the number of full-time, on-duty police officers required under this Agreement may be changed by mutual agreement and may be a fractional equivalent representing less than full-time service. The compensation for any change in numbers of officers will be reflected in the monthly billing statement.

3. Selection of Officers.

The police protection services under this Agreement can and will be provided by Des Moines Police Officers selected by the CITY such that the customary level of police protection of the City outside the Skywalk System is fully maintained. If the parties agree that more officers are required than the one presently contemplated, the CITY will promptly, upon written notice from the ASSOCIATION, begin training such additional officers as may be required.

4. Compensation.

The ASSOCIATION will pay the CITY for police officers services provided under this Agreement one-half of the amount determined as follows:

- a) An annualized salary for a top salary step senior police officer.
- b) An annualized benefit estimate for the said top salary step senior police officer.
- c) The resulting product shall be multiplied by the number of officers employed per section 2 of this agreement and then divided by 12 to determine the monthly payment.

Salary and benefits information, including dates when effective will be provided to the ASSOCIATION and attached to his Agreement as Attachment A and when adopted by the City Council of Des Moines from time to time in keeping with applicable collective bargaining agreements. Attachment A will be updated annually or more frequently to coincide with then applicable collective bargaining agreements.

In no event shall the amount to be paid by the ASSOCIATION to the CITY in any one fiscal year of the CITY exceed by fifteen percent (15%) the amount that would have been owing by the ASSOCIATION to the CITY in the immediately preceding fiscal year had the same level of police services as is contemplated for the current fiscal year been provided in the immediately preceding fiscal year, unless this restriction is waived in writing by the ASSOCIATION.

5. Administration.

The ASSOCIATION will administer the overall security and surveillance program in the Skywalk System. The obligations of the Police Department within that program shall be governed by the Standard Operating Procedures Manual. The Police Department shall have exclusive control over the choice of police officers assigned to the Skywalk System and over matters which are ordinary and necessary to their employment as police officers of the CITY and which are ordinary and necessary to coordinate and fulfill their duties under the security and surveillance requirements of the Standard Operating Procedures Manual. It is understood and agreed that, while the primary responsibility of said police officers will be to provide police

protection within the Skywalk System, the Police Department in its sole discretion shall have the right to reassign such officers elsewhere within the city on a temporary basis in extraordinary circumstances, including but not limited to, riots, crimes in progress, or other extraordinary situations in which the Police Department would normally require the assistance of other officers who have another primary assignment or when it is recalling off-duty officers to supplement its normal on-duty force.

6. Default.

Neither party shall be considered in default on its obligations unless the other party has given it written notice of such violation and it has not cured the violation within fourteen days of its receipt of such notice; provided, such party shall not be considered in default if the nature of its violation is such that it cannot reasonably be cured within said fourteen days, so long as within said fourteen days such party has begun and diligently pursues to completion appropriate action to cure the violation.

7. Term.

This Agreement shall be coterminous with the Chapter 28E Agreement referenced above in Recitals of Fact part A of this Agreement, and any extensions, substitutions, amendments, or renewals thereof; provided, however, that an incoming City Manager shall have the option to terminate this Agreement by providing written notice to the CITY and the ASSOCIATION on or before March 31st immediately following the beginning of such new City Manager's term of office, whereupon such termination shall be effective as of the end of June 30th immediately following such notice.

8. Liability.

The CITY shall be liable for any injuries or damages to the public, private persons, or property arising out of the actions of its police officers while working in the Skywalk System to the same extent that it is liable for the actions of its on-duty police officers generally. The CITY shall indemnify and hold harmless the ASSOCIATION, its officers, directors and members, from and against any such liability, including the cost of defense.

9. Modifications.

This Agreement can be modified only by the mutual written consent of all parties.

10. Notices.

Any notice permitted or required by this Agreement will be effective when presented in writing personally or deposited in the United States mail, postage prepaid, by registered mail, return receipt requested, to the other parties at the address specified below or as changed in accordance with this paragraph:

To the ASSOCIATION:

President
Des Moines Skywalk Association
c/o Dawn O'Connor, Registered Agent
1739 Everwood Ct SW
Altoona, IA 50009

To the CITY:

Planning and Budget Director
Des Moines Police Department
25 E. 1st Street
Des Moines, IA 50309

11. Previous Agreements.

This Agreement amends and replaces all prior agreements on the matters agreed to herein.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed, in two counterparts, each of which shall constitute one in the same instrument.

CITY OF DES MOINES, IOWA

By: _____
T.M. Franklin Cownie, Mayor

ATTEST:

Diane Rauh, City Clerk

STATE OF IOWA)
) ss:
COUNTY OF POLK)

On this _____ day of _____, 2017, before me, the undersigned, a Notary Public, personally appeared T.M. Franklin Cownie and Diane Rauh, to me personally known, who, being by me duly sworn, did state 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 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 and Roll Call No. _____ adopted by the City Council

on the ____ day of _____, 2017, 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 voluntarily executed.

Notary Public in the State of Iowa

DES MOINES SKYWALK ASSOCIATION

By: _____
Krista Capp, President

ATTEST:

Kate Miller, Secretary

STATE OF IOWA)
) ss:
COUNTY OF POLK)

On this ____ day of _____, 2017, before me, the undersigned, a Notary Public, personally appeared Krista Capp and Kate Miller, to me personally known, who, being by me duly sworn, did state that they are the President and Secretary, respectively, of the Des Moines Skywalk Association; said corporation has no seal; that the instrument was signed on behalf of said corporation by the authority of its Board of Directors; and that Krista Capp and Kate Miller acknowledged the execution of the instrument to be the voluntary act and deed of said corporation, by it and by them voluntarily executed.

Notary Public in the State of Iowa

**Attachment A
SKYWALK SECURITY
FY 2017**

	FY 2017
FY 2017 Salary: 1 Senior Police Officer (Step 9)	\$76,870.00
MFPRSI Retirement: 24.87%	\$19,117.57
Medicare: 1.45%	\$1,114.62
Insurance: \$15,022 annually	\$15,022.00
Longevity: 3%	\$2,306.10
TOTAL SALARY/BENEFITS (one officer)	\$114,430
50% of projected cost assessed to the Skywalk Association	\$57,215.14
Per month Skywalk charge:	\$4,767.93

Monthly invoice amount through June 30, 2017	\$4,768.00
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Attachment A
SKYWALK SECURITY
FY 2018

	FY 2018
FY 2018 Salary: 1 Senior Police Officer (Step 9)	\$79,154.00
MFPRSI Retirement: 25.68%	\$20,326.75
Deferred Compensation: 2.5%	\$1,978.85
Medicare: 1.45%	\$1,147.73
Insurance: \$16,000 annually	\$16,000.00
Longevity: 3%	\$2,374.62
TOTAL SALARY/BENEFITS (one officer)	\$120,982
50% of projected cost assessed to the Skywalk Association	\$60,490.98
Per month Skywalk charge:	\$5,040.91

Monthly Invoice Amount - July 1, 2017 to June 30, 2018	\$5,041.00
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