

**Date** December 20, 2021

DIRECTING CITY MANAGER TO NEGOTIATE AMENDMENT OF 28E AGREEMENT FOR CONSTRUCTION AND FUNDING OF FLEUR DRIVE UNDERPASS BETWEEN DES MOINES WATER WORKS, DES MOINES WATER WORKS PARK FOUNDATION (FOUNDATION) AND CITY OF DES MOINES REGARDING AMOUNT OF FOUNDATION FUNDING THEREUNDER

WHEREAS, Gray's Lake Park is owned by the City and Water Works Park is under the management, control, and operation of the Board of Water Works Trustees of the City of Des Moines ("Water Works"); and

WHEREAS, the City, Water Works and the Des Moines Water Works Parks Foundation ("Foundation") desired to undertake the design and construction of an underpass and adjacent entrance areas under Fleur Drive, including the underpass façade in Gray's Lake Park and to provide for a connection between the Kruidenier Trail and the underpass at Gray's Lake Park ("the Underpass Project"), which cost \$3,105,212.29 and which has been completed and paid for from funds of the City; and

WHEREAS, on April 23, 2018, by Roll Call No. 18-0724, the City Council approved a 28E Agreement between Water Works, the Foundation and the City regarding construction of the Underpass Project in which the Foundation agreed to pay all costs associated with the Underpass Project and to provide the City with \$100,000 annually for three (3) years for maintenance costs of the Underpass ("the 28E Agreement"); and

WHEREAS, the 28E Agreement further provides that, upon acceptance of the Underpass Project improvements, and subject to City Council approval and the City's Policy for Naming of Streets, Facilities and Park Land, the Underpass shall be designated "The Ruan Connector"; and

WHEREAS, the City has received \$1,400,000 from the Foundation to date and the Foundation has advised that it does not have sufficient funds to provide the full amount remaining owed to the City under the 28E Agreement of \$1,980,212.29, comprised of \$1,680,212.29 for design and construction and \$300,000 for a Maintenance Fund; and

WHEREAS, under the 28E Agreement the City's contribution to the project was \$25,000, and the City intends to increase its contribution to the project in consideration of past federal funding allocation of \$573,090 was awarded to the original Fleur Trail Connector in 2005, which was not constructed, and the Iowa Department of Transportation subsequently moved \$451,532.76 in funding to the American Discovery Trail – Segment 4 that provided a trail connection under Fleur Drive on former railroad right-of-way; and

WHEREAS, in cooperation with Water Works and obligations regarding City trails within Water Works Park included in the 28E Agreement between the City and Water Works approved by City Council on December 19, 2016 by Roll Call 16-2191, the City Council expects the

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Foundation and Water Works to initiate fundraising for replacement of the Bill Riley Trail bridge over the Raccoon River; and

WHEREAS, in light of the private funds received to date by the Foundation and the previous federal funding allocation that went to a different project received by the city, the City intends to forgive \$540,000 of the outstanding balance of the Foundation’s funding obligations under the 28E Agreement, subject to appropriate terms and conditions to be provided in a 28E amendment for review and approval by the City Council at a later date.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Des Moines, Iowa that the City Manager is hereby directed to negotiate with Des Moines Water Works and Des Moines Water Works Foundation to revise the terms of the 28E Agreement Between the City of Des Moines and the Board of the Water Works Trustees of the City of Des Moines, Iowa and Des Moines Water Works Park Foundation for Construction and Funding of the Fleur Drive Trail Underpass Project, to decrease the funds to be provided by the Foundation as described above and to return such amendment to Council for review and approval.

BE IT FURTHER RESOLVED that the payment of \$1,140,212.29 plus the \$100,000 annual contribution to the maintenance fund that was due upon project acceptance by the City from the Des Moines Water Works Foundation is required to be provided to the City prior to or at the time of the City Council’s consideration of such above described amendment to the 28E Agreement.

BE IT FURTHER RESOLVED that the Foundation’s obligation to provide \$300,000 to the City for a Maintenance Fund shall continue under the 28E Agreement.

(Council Communication No. 21- **533** )

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

APPROVED AS TO FORM:

Ann DiDonato  
Ann DiDonato, Assistant City Attorney

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE				
BOESEN				
GATTO				
GRAY				
MANDELBAUM				
VOSS				
WESTERGAARD				
TOTAL				

MOTION CARRIED APPROVED

\_\_\_\_\_  
Mayor

**CERTIFICATE**

I, P. Kay Cmelik, 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