

June 28, 2010

Date

WHEREAS, the Metro Waste Authority (hereinafter "the MWA") and the Cities of West Des Moines, Urbandale, Johnston, Clive, Windsor Heights, Waukee, Grimes, Des Moines and Pleasant Hill (hereinafter referred to collectively as "the Cities" or individually as "City"), all municipal corporations, entered into a 28E Agreement for the Lease Purchase of a Metropolitan Salt Storage Facility on Metro Waste Authority Property (hereinafter the "28E Agreement") to establish the terms and condition for the lease purchase of a Metropolitan Salt Storage Facility on property owned by MWA which 28E Agreement was filed with the Secretary of State on September 5, 2008; and

WHEREAS, pursuant to that 28E Agreement, the Cities agreed to lease purchase from the MWA a Metropolitan Salt Storage Facility and the MWA agreed to finance and construct a Metropolitan Salt Storage Facility; and

WHEREAS, the Cities are not purchasing the Leased Premises under the 28E Agreement; and

WHEREAS, two separate buildings were constructed under the 28E Agreement, one 10,000 ton capacity storage building to be owned exclusively by the City of Des Moines, Iowa and one 12,000 ton capacity storage building to be owned by the other cities, or Shared Building Cities under the 28E Agreement; and

WHEREAS, the 28E Agreement calls for each City to pay its proportionate share of the Lease Purchase Fee in five annual installments; and

WHEREAS, the City of Des Moines desires to pay the sum of \$357,500.00 to pay down its Lease Purchase Fee on the Salt Storage Facility, which does not affect or change the obligations of the other cities under the 28E agreement; and

WHEREAS, the 28E Agreement does not provide for such prepayment, but does not prohibit such payment; and

WHEREAS, the MWA has indicated by passage of a resolution, willingness to accept such payment of \$357,500.00, revise Exhibit "C" to the 28E Lease Purchase Agreement, which sets forth the amount of each city's Lease Payment Fee to reflect the prepayment by the City of Des Moines; and

WHEREAS, the MWA, by resolution, has directed the MWA Director to sign a revised Exhibit "C" to reflect the City of Des Moines payment and revised annual payment and send to the West Des Moines Public Works Superintendent for signature to then be sent to all the cities for inclusion into the 28E Agreement; and

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WHEREAS, on April 21, 2001 the City of Des Moines, Iowa ("City") and 300 East Locust, L.P. ("Developer") entered into an Urban Renewal Development Agreement ("Development Agreement") concerning the development of certain real property ("Property") located at 300 East Locust Street, Des Moines, Iowa, more particularly described as:

Lots 7, 8, 9 and 10, Block 8, East Fort Des Moines, an Official Plat, now included in and forming a part of the City of Des Moines, Polk County, Iowa.

WHEREAS, on July 31, 2002, in order to secure a no-interest loan to Developer in the principal amount of \$742,739.00, Developer granted the City a Mortgage on the Property which was recorded at Book 9257, Pages 411-418 in the Official Records of Polk County, Iowa ("Mortgage"); and

WHEREAS, by agreement dated May 8, 2006, and recorded in the Official Records of Polk County, Iowa at Book 11888, Page 707, Metro Waste Authority, 300 East Locust Street, Des Moines, Iowa 50309 ("MWA") assumed all obligations of Developer to the City set forth in the Development Agreement and the City approved conveyance of the Property from Developer to MWA and MWA's assumption of Developer's obligations pursuant to a resolution of the City Council dated May 8, 2006 contained in Roll Call No. 06-900; and

WHEREAS, the MWA has indicated its desire to prepay in full that mortgage to the City of Des Moines using the proceeds of the prepayment by the City of Des Moines on the Salt Storage Facility; and

WHEREAS, the City of Des Moines desires to accept the prepayment from MWA.

NOW THEREFORE, BE IT RESOLVED BY THE CITY OF DES MOINES, IOWA:

1. That it authorizes and directs the Finance Director to make a prepayment of \$357,500.00 to the MWA to be credited to the City of Des Moines' Lease Payment Fee for the 10,000 ton salt storage building, and MWA has passed the attached resolution agreeing to the following:
 - A. MWA agrees to accept such prepayment on the 10,000 ton salt storage building being leased purchased by the City of Des Moines and agreeing to credit such payment against the City of Des Moines' Lease Payment Fee under the 28E Agreement; and
 - B. Authorized and directed use of said proceeds from that payment by the City of Des Moines to prepay the mortgage on 300 East Locust; and

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- C. Directed the MWA Director to sign and issue to the other cities in the 28E Agreement, the attached revised Exhibit "C" to the 28E Agreement and to secure the signature of the West Des Moines Public Works Superintendent, which is attached and made a part of this roll call, reflecting a revised Lease Payment Fee for the City of Des Moines as a result of the prepayment of \$357,500.00.
2. That upon full payment of the mortgage on 300 East Locust by MWA the City hereby agrees to accept such prepayment from MWA; and
 3. That upon payment of the mortgage in full by the MWA to the City of Des Moines, Iowa the Mayor and City Clerk are hereby authorized and directed to execute a release and satisfaction of the mortgage and further authorizes and directs the City Clerk to provide such release and satisfaction to MWA for filing with the Polk County Recorder.

Moved by Hensley to adopt.

APPROVED AS TO FORM:

(Council Communication No. 10-369)

Kathleen Vanderpool
Kathleen Vanderpool
Deputy City Attorney

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE	✓			
COLEMAN	✓			
GRIESS	✓			
HENSLEY	✓			
MAHAFFEY	✓			
MEYER	✓			
MOORE	✓			
TOTAL	7			

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.

MOTION CARRIED 7 APPROVED
T. M. Franklin Cownie
Mayor

Diane Rauh
City Clerk