

★ Roll Call Number

13-1161

Agenda Item Number

64

Date July 15, 2013

**RESOLUTION APPROVING A CHAPTER 28E AGREEMENT BY AND BETWEEN THE DES MOINES METROPOLITAN WASTEWATER RECLAMATION AUTHORITY (WRA) AND THE CITY OF DES MOINES, IOWA FOR THE DESIGN AND CONSTRUCTION OF THE EASTER LAKE SPINE TRAIL AS PART OF THE WRA SOUTHERN TIER INTERCEPTOR, PHASE 10, SEGMENT 15-16 PROJECT**

**WHEREAS**, the WRA and the City of Des Moines (herein "Des Moines") agree that it is of mutual benefit to each entity to provide for the joint design of the WRA Southern Tier Interceptor, Phase 10, Segment 15-16 Project and the Des Moines Easter Lake Spine Trail recreational trail located between E. Payton Avenue and Pine Avenue in Des Moines, which design will be undertaken by Veenstra & Kimm, Inc. pursuant to an amendment to the Agreement for Professional Services for the WRA Southern Tier Interceptor Phase 10, Segments 15-17, and to provide for the payment of the costs for said projects; and

**WHEREAS**, Des Moines planned to undertake the construction of the Easter Lake Spine Trail recreational trail located between E. Payton Avenue and Pine Avenue in Des Moines, and has proposed that the WRA jointly construct the City Trail concurrent with construction of the WRA Interceptor Sewer as part of the WRA Southern Tier Interceptor, Phase 10, Segment 15-16 Project; and

**WHEREAS**, the WRA and Des Moines have negotiated the terms of a Chapter 28E Agreement, providing for the joint design and construction of the WRA Southern Tier Interceptor, Phase 10, Segment 15-16 Project and of Des Moines' Easter Lake Spine Trail within the location stated above; and

**WHEREAS**, the negotiated agreement provides that Des Moines shall reimburse the WRA for actual costs for design, construction, construction administration, and change orders associated with the Easter Lake Spine Trail, and that Des Moines shall reimburse the WRA for an agreed-upon lump sum amount of the City's share of the Project grading cost based upon the WRA project consultant's estimate, and the WRA shall incur the design, construction, construction administration and change order costs for the WRA Southern Tier Interceptor, Phase 10, Segment 15-16 Project, and that each party shall assume ownership of its respective project improvements upon final acceptance of the WRA Southern Tier Interceptor, Phase 10, Segment 15-16 Project by the WRA Board; and

**WHEREAS**, the negotiated agreement further provides that Des Moines may reject the bid selected by the WRA as the lowest responsive and responsible bid for the Project construction contract, in which event the WRA may proceed to construct the WRA Project without constructing the City Trail, except for grading thereof at Des Moines' cost; and

**WHEREAS**, the negotiated agreement further provides that Des Moines will grant to the WRA the temporary construction easement and permanent sanitary sewer easement required for the WRA improvements, and that Des Moines will indemnify and defend the WRA in relation to encroachments within the City-owned easement areas related to the City and WRA projects and removal of said encroachments; and

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WHEREAS, the WRA Board is expected to consider approval of the proposed 28E Agreement at its July Board Meeting on July 16, 2013.

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

1. That the Chapter 28E Agreement by and between the Des Moines Metropolitan Wastewater Reclamation Authority and the City of Des Moines, Iowa, for the Design and Construction of the Easter Lake Spine Trail as Part of the WRA Southern Tier Interceptor, Phase 10, Segment 15-16 Project, is approved, subject to approval of said Agreement by the WRA Board; the Mayor is authorized to execute the Agreement; the City Clerk is directed to attest to the Mayor's signature and to record the Agreement with the Secretary of State; and the Finance Department is authorized to make any and all payments as required by the Agreement and amendments thereto.

2. That the Parks and Recreation Department Director and City Engineer and/or their respective designees are directed and authorized to administer the terms of the Agreement and any amendments thereto; that the Mayor is authorized and directed to execute the Addendum to the Agreement relating to Grading Cost Allocation, in substantially the form of Attachment 4 to the Agreement, upon approval as to form by the Legal Department, and the City Clerk is directed to attest to the Mayor's signature; and that the City Manager is authorized and directed to approve and execute other minor and unsubstantial amendments to the Agreement following approval as to form by the Legal Department, and to return substantial amendments to the City Council for consideration.

(Council Communication No. 13-379)

Moved by Meyer to defer for two weeks.

FORM APPROVED:

Glenna K. Frank  
Glenna K. Frank, Assistant 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.

T. M. Franklin  
Mayor

Diane Rauh  
City Clerk