



Roll Call Number

20-1128

Agenda Item Number

44

Date July 13, 2020

APPROVAL OF AMENDMENT TO ROBERT D. RAY ASIAN GARDEN MAINTENANCE
AND REPAIR AGREEMENT BETWEEN THE CITY OF DES MOINES AND THE DES
MOINES RIVER FRONT DEVELOPMENT AUTHORITY

WHEREAS, on August 29, 2011, by Roll Call No. 11-1527, the City Council approved the Robert D. Ray Asian Garden Maintenance and Repair Agreement By and Between the City of Des Moines and Des Moines River Front Development Authority pursuant to which the Riverfront Development Authority (RDA) is responsible for the maintenance and repair, including the costs thereof, for the Robert D. Ray Asian Garden, excluding major capital repairs; and

WHEREAS, the RDA desires to make improvements at its sole cost to the Robert D. Ray Asian Garden, consisting of removing the lower water feature and redesigning the upper water feature, extending the pedestrian walkways, additional lighting, additional landscaping and gardens and replacing current landscaping, rehabilitating the pagoda and hardscape, repair of current signage and additional signage, as described herein and as shown in the attached Council Communication (Improvements); and

WHEREAS, Section II.A.9 of the Agreement requires that the RDA shall not make any improvements, additions or modifications to existing improvements without the approval of the City; and

WHEREAS, the construction of the Improvements will require that the area of the Robert D. Ray Asian Garden be expanded; and

WHEREAS, City staff and the RDA have negotiated an Amendment to Robert D. Ray Asian Garden Maintenance and Repair Agreement, a copy of which is on file in the City Clerk's Office; and

WHEREAS, it is in the best interest of the City to approve and enter into said Amendment.



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NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Des Moines, Iowa that the Amendment to Robert D. Ray Asian Garden Maintenance and Repair Agreement By and Between the City of Des Moines and Des Moines River Front Development Authority, a copy of which is on file in the City Clerk's Office, be and is hereby approved and the Mayor is authorized and directed to sign said Amendment on behalf of the City and the City Clerk is hereby directed to attest to said signature.

Moved by Gatto to adopt.

(Council Communication No. 20-319)

APPROVED AS TO FORM.

Ann DiDonato
Assistant City Attorney

Table with 5 columns: COUNCIL ACTION, YEAS, NAYS, PASS, ABSENT. Rows include COWNIE, BOESEN, GATTO, GRAY, MANDELBAUM, VOSS, WESTERGAARD, and TOTAL.

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.

J. M. Franklin Cownie Mayor

P. Kay Cmelik City Clerk

AMENDMENT TO
ROBERT D. RAY ASIAN GARDEN MAINTENANCE AND REPAIR AGREEMENT
BY AND BETWEEN
THE CITY OF DES MOINES, IOWA
AND
DES MOINES RIVER FRONT DEVELOPMENT AUTHORITY

THIS AMENDMENT, made and entered into this 13th day of July, 2020, by and between the City of Des Moines, Iowa ("CITY"), whose address for the purpose of this Agreement is Park and Recreation Department, 1551 Martin Luther King Jr. Parkway, Des Moines, Iowa 50317, and the Des Moines River Front Development Authority, ("RDA"), an Iowa non-profit corporation whose address for the purpose of this Agreement is c/o Principal Life Insurance Company, 711 High Street, Des Moines, Iowa 50392, to that Robert D. Ray Asian Garden Maintenance and Repair Agreement By and Between the CITY and RDA, dated August 29, 2011 ("Agreement").

WHEREAS, on August 29, 2011, by Roll Call No. 11-1527, the City Council approved the Agreement pursuant to which the RDA is responsible for the maintenance and repair and maintenance and repair costs for the Robert D. Ray Asian Garden, subject to the terms of the Agreement; and

WHEREAS, the RDA desires to make improvements at its sole cost to the Robert D. Ray Asian Garden, consisting of removing the lower water feature and redesigning the upper water feature, extending the pedestrian walkways, additional lighting, additional landscaping and gardens and replacing current landscaping, rehabilitating the pagoda and hardscape, repair of current signage and additional signage, as described herein and as shown in **Exhibit A**, (the "Improvements"); and

WHEREAS, Section II.A.9 of the Agreement requires that the RDA shall not make any improvements, additions or modifications to existing improvements without the approval of the CITY; and

WHEREAS, the CITY desires that the RDA construct the Improvements described herein; and

WHEREAS, the construction of the Improvements will require that the area of the that Robert D. Ray Asian Garden be expanded, as shown in **Exhibit B**.

NOW THEREFORE, for and in consideration of the mutual undertakings of the parties hereto, it is agreed as follows:

I. ASIAN GARDEN EXPANDED AREA

Exhibit B shall define and describe the expanded area of the Robert D. Ray Asian Garden and Exhibit A shall define and describe all improvements thereon, including the Improvements to be constructed under this Amendment, and shall replace Exhibit A of the Agreement. Exhibits A and B, attached hereto, are hereby made a part of this Agreement by this reference.

II. RDA RESPONSIBILITIES FOR FUNDING, DESIGN AND CONSTRUCTION OF THE IMPROVEMENTS

A. FUNDING.

RDA shall provide for the payment of all costs and expenses associated with the construction of the Improvements as shown on and described in **Exhibit A**, including, but not limited to, design, site preparation, construction and landscaping.

B. PLANS AND SPECIFICATIONS.

RDA shall submit all plans and specifications for the Improvements (the "Plans and Specifications") to the CITY for approval prior to construction, said approval to include the individual approval of the Parks and Recreation Director and City Engineer of the CITY, as well as the following approvals required for the construction of a CITY facility: City Council, Plan and Zoning Commission, Parks and Recreation Board, Urban Design Review Board, Building and Permit Department, and Access Advisory Board. The Parks and Recreation Director, or his designee, shall review and approve for consistency with Plans and Specifications and final selections of finish materials, hardware, equipment, and furnishings, as well as textures, styles, and designs for building materials, and landscaping, prior to installation. The project shall be completed in strict adherence to the Plans and Specifications as approved by the CITY; any deviations from the Plans and Specifications or substitutions of materials, construction methods, or equipment shall be permitted only with the prior written approval of the CITY's Parks and Recreation Director and City Engineer.

C. CONSTRUCTION OF IMPROVEMENTS.

RDA shall commence construction of the Improvements by no later than September 1, 2020, and shall complete construction, including landscaping, by no later than September 1, 2021. In the undertaking of the design, construction and payment of all costs associated with the Improvements, the responsibilities of the RDA shall be:

1. Preparation of Plans and Specifications.
2. The hiring of all contractors and/or suppliers.
3. The scheduling and supervision of all work.
4. The payment of all fees, costs, charges and expenses associated with all work in any way connected to the Improvements, including without limitation the payment of all required permit fees.

5. Receiving review and approval of the following boards and commissions: Plan and Zoning Commission, Parks and Recreation Board, Urban Design Review Board, and Access Advisory Board and all required federal and state regulatory agencies.

6. Execute and comply with and require all contractors to execute and comply with a private contract for construction of the Improvements on the form provided by the CITY Engineering Department under the provisions of Des Moines Municipal Code Section 94-321 (the "Private Contract"), including insurance requirements, pursuant to **Attachment 1** to this Agreement. RDA shall be responsible for normal, customary and usual permit and inspection fees and charges as necessary for a private construction contract.

7. The RDA agrees that all construction will be in compliance with the American with Disabilities Act (ADA) and implementing regulations and guidelines.

E. COOPERATION WITH ARMY CORPS OF ENGINEERS.

RDA will confer with, actively work with, and provide all necessary information to, except that within the control of the CITY, the Army Corps of Engineers (the "ACOE") and obtain all necessary ACOE and other state and federal regulatory approvals for the design and construction work for the Improvements. The parties further acknowledge that, since the CITY is the owner of the property on which the Asian Gardens is located, and that the Improvements will be constructed on CITY property, and that the CITY will be the owner of the Improvements pursuant to the terms of this Agreement, all official determinations by the ACOE related to CITY property, the Asian Garden and the Improvements require the approval of the CITY. The CITY shall cooperate with and assist RDA in obtaining any necessary approvals by ACOE and other regulatory authorities, provided the CITY shall not be required to prepare plans and hydraulic modeling.

F. MAINTENANCE OF IMPROVEMENTS

RDA is responsible for the maintenance and repair and maintenance and repair costs for the Improvements and the expanded area of the Asian Garden, pursuant to the terms of the Agreement.

III. CITY RESPONSIBILITIES

ACCEPTANCE OF IMPROVEMENTS.

The CITY agrees to accept ownership of the Improvements constructed under this Amendment. Acceptance of ownership of the Improvements shall be subject to the verification of the City Engineer of the CITY that the project has been completed in compliance with the Plans and Specifications approved by the CITY. Such acceptance shall occur by resolution of the City Council.

Except as modified above, all other terms of the Agreement shall remain in effect and shall apply to the Improvements.

IN WITNESS WHEREOF, the parties to this AMENDMENT have hereunto set their hands on this day and year as first above written.

CITY OF DES MOINES

By: T. M. Franklin Cownie
T. M. Franklin Cownie, Mayor

DES MOINES RIVER FRONT DEVELOPMENT AUTHORITY

By: Karen E. Shaff
Karen E. Shaff, President

APPROVED AS TO FORM:

Ann DiDonato
Ann DiDonato, Assistant City Attorney

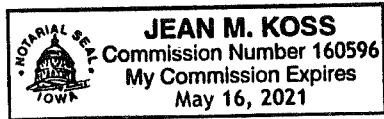
ATTEST:

P. Kay Cmelik
P. Kay Cmelik, City Clerk

STATE OF IOWA)
) ss:
COUNTY OF POLK)

On this 29th day of June, 2020, before me, the undersigned, a Notary Public in and for the State of Iowa, personally appeared, to me, KAREN E. SHAFF, personally known, who being by me duly sworn, did say that she is the President of the DES MOINES RIVER FRONT DEVELOPMENT AUTHORITY, that the seal affixed to the foregoing instrument is the seal of the corporation; that the instrument was signed and sealed on behalf of the corporation, by authority of its Board of Directors; and that KAREN E. ~~SCHAFF~~ ^{SHAFF} acknowledged the execution of the instrument to be the voluntary act and deed of the corporation, by it and by him/her voluntarily executed.

Jean M. Koss
Notary Public in the State of Iowa



STATE OF IOWA)
) ss:
COUNTY OF POLK)

On this 13th day of July, 2020, before me, the undersigned, a Notary Public, personally appeared T. M. FRANKLIN COWNIE and P. KAY CMELIK, to be 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 adopted under Roll Call 20-1128, Agenda Item 421, dated July 13, 2020, and that T. M. FRANKLIN COWNIE and P. KAY CMELIK acknowledged the execution of the instrument to be the voluntary act and deed of the municipal corporation, by it voluntarily executed.

Rachel Mariko Brown
Notary Public in the State of Iowa

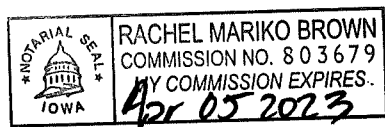
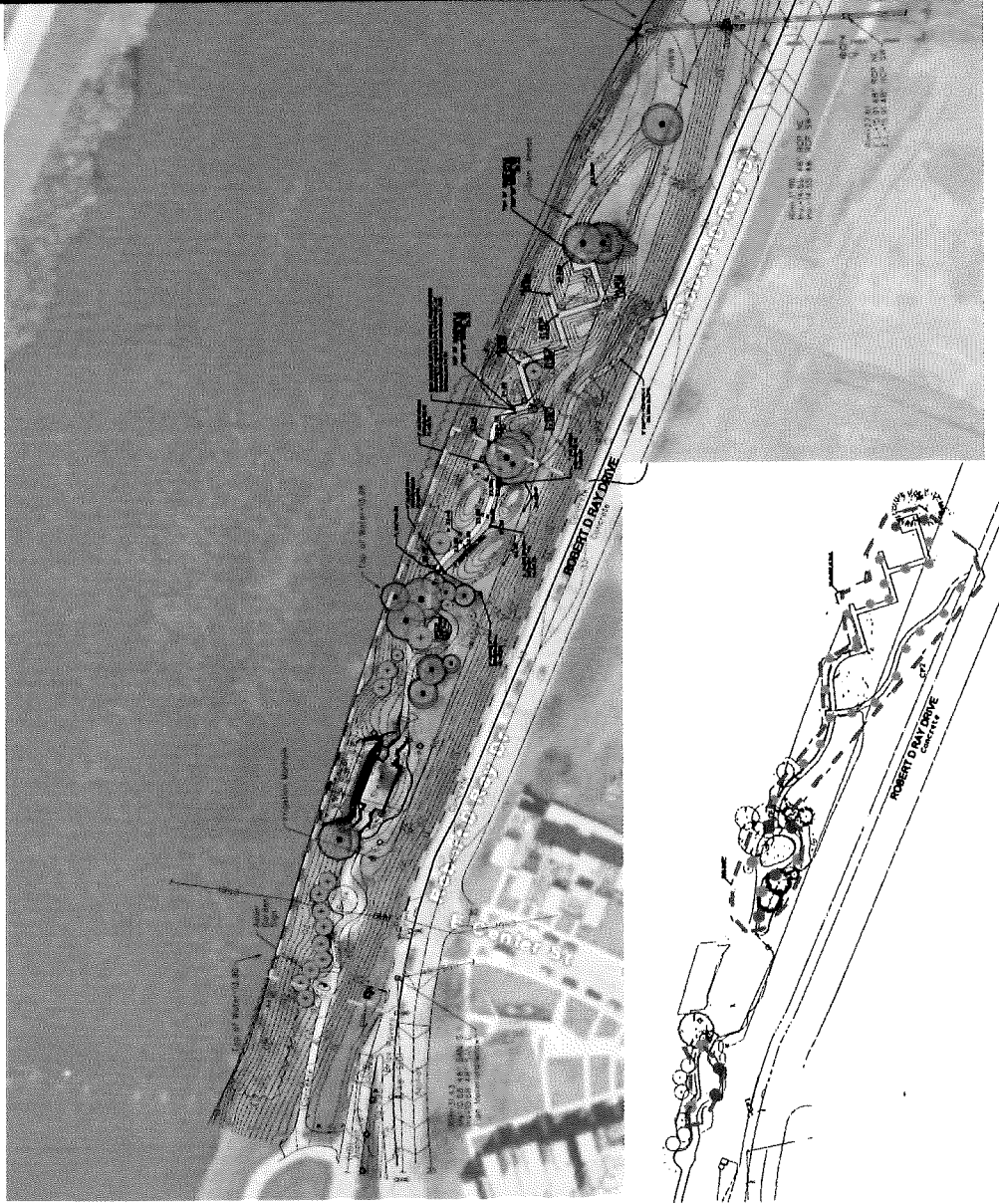


EXHIBIT A

EXHIBIT A: Robert D. Ray Asian Garden Construction Improvements

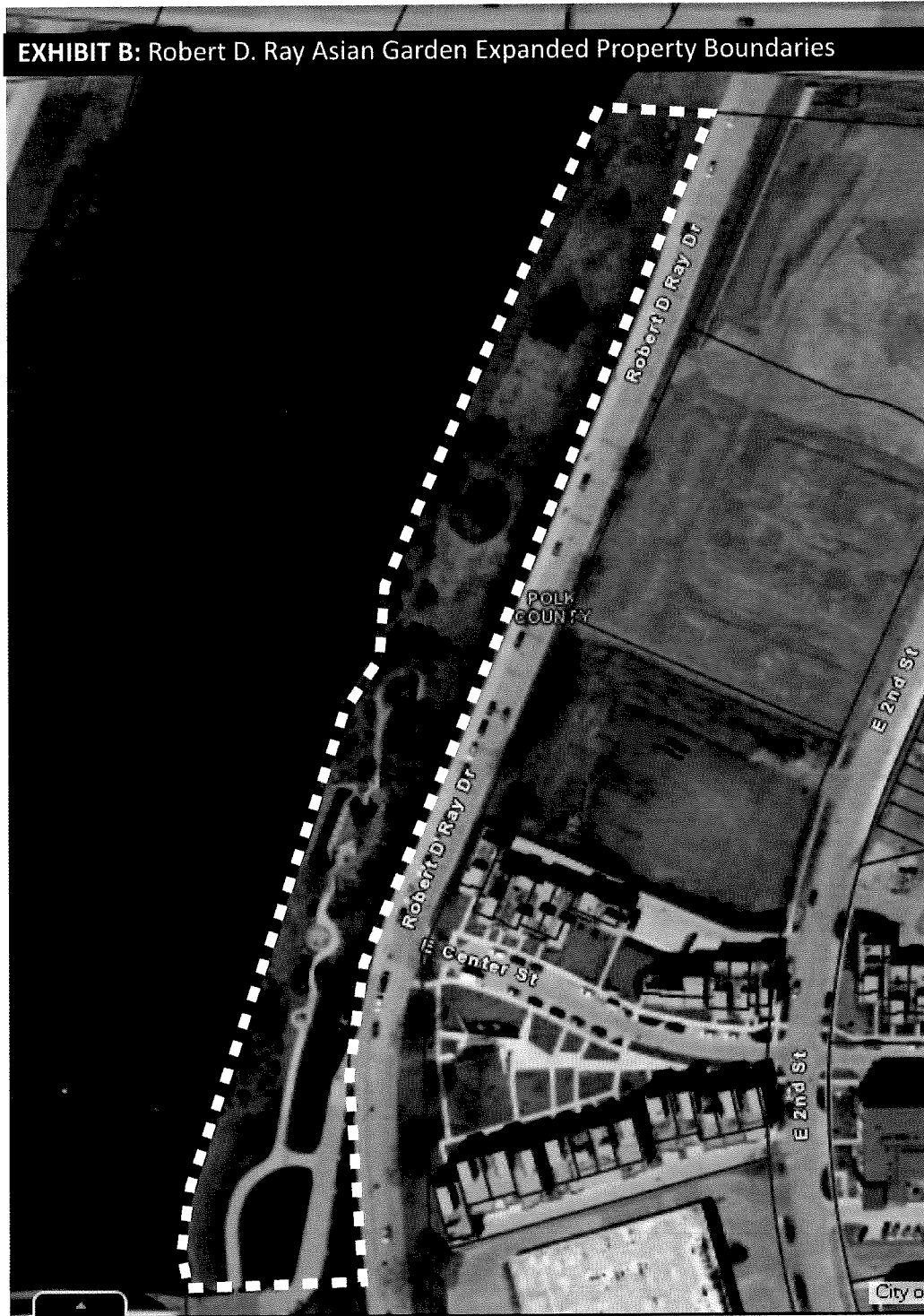


LEGEND

- Construction Limits
 Lighting Circuit
 New Boardwalk
- + New Plantings
 P2 Lighting
 New Gravel Path
 Original Boundary
- Existing Plantings
 P3 Lighting
 New Concrete Path



EXHIBIT B



ATTACHMENT 1
Link to Private Construction Contract with Insurance Requirements

Private Construction Contract

Private Construction Contract Instructions

Private Construction Bond

Insurance