

Date December 18, 2006

APPROVING COMPLETION AND ACCEPTANCE OF THE BRENTON SKATING PLAZA, SUBJECT TO RECEIPT OF ACCEPTABLE DOCUMENTATION; AND AUTHORIZATION TO AMEND THE TEMPORARY AGREEMENT FOR JOINT OPERATION OF THE BRENTON SKATING PLAZA.

WHEREAS, on March 28, 2005, under Roll Call No. 05-662, the City Council approved an agreement between Principal Life Insurance Company (J. Barry Griswell, Chairman and CEO, 711 High, Des Moines, Iowa) (Principal) and the City of Des Moines (City) for the funding, design and construction of a public ice skating rink and water feature plaza on City owned property in the area bounded by the Armory Building, East Grand Avenue, the levy wall and Robert D. Ray Drive to be known as the Brenton Skating Plaza. In accordance with the Agreement, upon acceptance of the improvements by the City Council, the City shall be the owner of the improvements; and

WHEREAS, Principal entered into an agreement with The Hansen Construction Co., Inc. (Craig W. Hansen, President, 5665 Greendale Road, Suite A, Johnston, Iowa) (Hansen) for construction of the improvements and during the time of construction the improvements are under the control of Hansen; and

WHEREAS, the improvements were not completed by November 21, 2006; however, the construction was completed to the extent that the facility was eligible for a Temporary Certificate of Occupancy issued by the Des Moines Permit & Development Center. The City intended that the Brenton Skating Plaza ice rink be open to the public during the winter skating season from November through March; and Des Moines River Front Development Authority (Mary O’Keefe, President, 711 High, Des Moines, Iowa) (RDA), Hansen, and Principal desired that the Brenton Skating Plaza be open for public skating by November 21, 2006. In order to open the Brenton Skating Plaza for public skating by November 21, 2006, the four parties executed a Temporary Agreement for Joint Operation of Brenton Skating Plaza, which was approved by the City Council on November 17, 2006, under Roll Call No. 06-2258; and

WHEREAS, said Agreement between Principal and the City for construction and funding of Ice Skating and Fountain pursuant to Roll Call No. 05-662, dated March 28, 2005, stated that the City shall by resolution of the City Council accept ownership and control of the project improvements upon completion of the improvements provided that Principal submit certain documentation to the City Engineer as detailed in the City Engineer’s Certification of Completion; and

Date December 18, 2006

WHEREAS, as of December 14, 2006, Principal has not provided all of the required documentation, as referenced in the City Engineer’s Certification of Completion. The City Engineer cannot recommend acceptance of the project in accordance with the Agreement approved by the City Council until all documentation is received. However, Principal has assured staff that the following documents will be provided as soon as possible and the City Engineer recommends acknowledging the completion and the acceptance of the construction of said Brenton Skating Plaza improvements subject to receipt of the following documents as further discussed in the Certification of Completion:

1. Unconditional Certificate of Occupancy issued by the Des Moines Permit & Development Center. The Unconditional Certificate of Occupancy cannot be issued until handrail is constructed on the east and west sides of the stage. This handrail is being designed and fabricated.
2. Certification by an Iowa licensed engineer or architect that the project improvements were completed and constructed in substantial conformance with the plans and specifications, design documents, and contract documents.
3. Certification and documentation from Principal that Hansen and all subcontractors and suppliers for design and construction of the project improvements have been paid in full.

WHEREAS, the Temporary Agreement for Joint Operation of Brenton Skating Plaza between the City, RDA, Hansen, and Principal, which was approved by the City Council on November 17, 2006, under Roll Call No. 06-2258, will expire on December 31, 2006. Paragraph 8 of the Temporary Agreement for Joint Operation of Brenton Skating Plaza states:

8. This agreement shall terminate upon the earliest to occur of (i) formal acceptance of the Improvements by the City Council of Des Moines, or (ii) December 31, 2006.

If Principal does not provide the documents referenced above acceptable to Engineering and Legal Department Staff before December 31, 2006, the City Engineer recommends that the City Council authorize the Engineering Department Staff to negotiate, and the Mayor to sign, an amendment to the Temporary Agreement for Joint Operation of the Brenton Skating Plaza that would allow the ice skating rink to remain open.

NOW, THEREFORE, BE RESOLVED BY THE CITY COUNCIL OF THE CITY OF DES MOINES, IOWA: That the City Engineer will concur with the certification by Principal’s Iowa licensed engineer or architect that the Brenton Skating Plaza project improvements were completed and constructed by The Hansen Construction Co., Inc. under its agreement with Principal Life Insurance Company in substantial conformance with the plans and specifications, design documents, and contract documents upon receipt of the following documents from Principal:

1. Unconditional Certificate of Occupancy issued by the Des Moines Permit & Development Center. The Unconditional Certificate of Occupancy cannot be issued until

.....
Date December 18, 2006

- handrail is constructed on the east and west sides of the stage. This handrail is being designed and fabricated.
2. Certification by an Iowa licensed engineer or architect that the project improvements were completed and constructed in substantial conformance with the plans and specifications, design documents, and contract documents.
 3. Certification and documentation from Principal that Hansen and all subcontractors and suppliers for design and construction of the project improvements have been paid in full.
- as referenced in the Certification of Completion. Such certification and documents must be acceptable to Engineering and Legal Department Staff.

BE IT FURTHER RESOLVED: That, upon the receipt of the above described documents acceptable to Engineering and Legal Department Staff, the City Engineer will recommend to the City Council the Brenton Skating Plaza improvements be acknowledged as complete and be accepted by the City of Des Moines. The City Engineer is hereby directed to notify the City Manager, City Clerk, and City Risk Manager of the date when the required documents submitted by Principal have been accepted by Engineering and Legal Department Staff, so that the Brenton Skating Plaza improvements may be officially accepted by the City of Des Moines.

BE IT FURTHER RESOLVED: That the City Council hereby acknowledges completion of and accepts construction of the Brenton Skating Plaza improvements effective upon the date that the City Engineer provides such written notice to the City Manager, City Clerk, and City Risk Manager.

BE IT FURTHER RESOLVED: That if Principal does not provide the documents listed above acceptable to Engineering and Legal Department Staff before December 31, 2006, the Engineering Department Staff is hereby authorized to negotiate as discussed in the City Engineer's Certification of Completion, and the Mayor is authorized to sign, an amendment to the Temporary Agreement for Joint Operation of the Brenton Skating Plaza, subject to Legal Department approval as to form, that would allow the ice skating rink to remain open.

Activity ID 14-2005-045

★ Roll Call Number

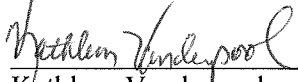
Agenda Item Number

8

Date December 18, 2006

Moved by _____ to adopt.

FORM APPROVED:


 Kathleen Vanderpool
 Deputy City Attorney

Funding Source: No Cost to the City of Des Moines; all costs are to be paid by Principal Life Insurance Company

DCS

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE				
COLEMAN				
HENSLEY				
KIERNAN				
MAHAFFEY				
VLASSIS				
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

December 18, 2006

CERTIFICATION OF COMPLETION

AGENDA HEADING:

Approving completion and acceptance of the Brenton Skating Plaza, subject to receipt of acceptable documentation; and authorization to amend the Temporary Agreement for Joint Operation of the Brenton Skating Plaza.

SYNOPSIS:

Approve the Jurisdictional Engineer's Certification of Completion, acknowledging the completion and acceptance of construction of said improvement, which certification is subject to the receipt of the documents referenced below acceptable to Engineering and Legal Department Staff. If Principal does not provide said documents before the December 31, 2006 expiration of the Temporary Agreement for Joint Operation of Brenton Skating Plaza, approved by the City Council on November 17, 2006, under Roll Call No. 06-2258, Staff recommends that the City Council authorize Engineering and Legal Department Staff to negotiate, and the Mayor to sign, an amendment to the Temporary Agreement for Joint Operation of the Brenton Skating Plaza which modifies the termination provision of the Agreement to state that the Agreement shall terminate upon receipt of the documents acceptable to Engineering and Legal Department Staff referenced the City Engineer's Certification of Completion.

FISCAL IMPACT:

Amount: \$4,123,649.78 per the schedule of values between The Hansen Construction Co., Inc. and Principal Life Insurance Company.

Funding Source: No Cost to the City of Des Moines; all costs are to be paid by Principal Life Insurance Company

CERTIFICATION OF COMPLETION:

Principal Life Insurance Company (J. Barry Griswell, Chairman and CEO, 711 High, Des Moines, Iowa) (Principal) and the City of Des Moines (City) entered into an Agreement for Construction and Funding of Ice Skating and Fountain pursuant to Roll Call No. 05-662, dated March 28, 2005 for the purpose of design and construction of a public ice skating rink and water feature plaza on City owned property in the area bounded by the Armory Building, East Grand Avenue, the levy



ENGINEERING DEPARTMENT
CITY HALL
400 ROBERT D. RAY DRIVE
DES MOINES, IOWA 50309 --1891
(515) 283-4920
FAX (515) 283-4112

ALL-AMERICA CITY
1949, 1976, 1981
2003

wall and Robert D. Ray Drive to be known as the Brenton Skating Plaza. In accordance with the Agreement, upon acceptance of the Improvements by the City Council, the City shall be the owner of the Improvements.

Principal entered into an agreement with The Hansen Construction Co., Inc. (Craig W. Hansen, President, 5665 Greendale Road, Suite A, Johnston, Iowa) (Hansen) for construction of the Improvements and during the time of construction the Improvements are under the control of Hansen until the Improvements have been accepted by Principal.

The River Front Development Authority (Mary O'Keefe, President, 711 High, Des Moines, Iowa) (RDA) and the City entered into a Concession Agreement for the Management, Operation and Maintenance of the Brenton Skating Plaza pursuant to Roll Call No. 06-1929, dated September 25, 2006, for the purpose of the initial operation and management of the Brenton Skating Plaza as an ice skating rink open to the public for the benefit of the citizens of the metropolitan area of Des Moines upon its acceptance by the City Council pursuant to the Agreement.

The Improvements were not completed by November 21, 2006; however, the construction was completed to the extent that the facility was eligible for a Temporary Certificate of Occupancy issued by the Des Moines Permit & Development Center. The City intended that the Brenton Skating Plaza ice rink be open to the public during the winter skating season from November through March; and RDA, Hansen, and Principal desired that the Brenton Skating Plaza be open for public skating by November 21, 2006. In order to open the Brenton Skating Plaza for public skating by November 21, 2006, the four parties executed a Temporary Agreement for Joint Operation of Brenton Skating Plaza, which was approved by the City Council on November 17, 2006, under Roll Call No. 06-2258.

Said Agreement between Principal and the City for construction and funding of Ice Skating and Fountain pursuant to Roll Call No. 05-662, dated March 28, 2005, stated that the City shall by resolution of the City Council accept ownership and control of the project improvements provided that Principal shall:

1. Procure from its construction observation consultant and provide to the City Engineer a certification by an Iowa licensed engineer or architect that the project improvements were completed and constructed in substantial conformance with the plans and specifications, design documents, and contract documents; and recommend final acceptance of the project by the City.
2. Procure from its construction contractor, The Hansen Construction Co., Inc., and submit to the City a Maintenance Bond satisfactory the City Legal Department.
3. Provide certification and documentation to the City Engineer that its contractor and all subcontractors and suppliers for design and construction of the project improvements have been paid in full.

As of December 14, 2006, all of the required documentation has not been provided; however, I have received the following documents:

1. Maintenance Bond from Hansen that is satisfactory to the City Legal Department.
2. Certification and documentation from Hansen that all its subcontractors and suppliers for construction of the project improvements have been paid in full to date less retainage.

I have not received the following required documents as of December 14, 2006; however, I have been assured by Principal that the documents will be provided as soon as possible:

1. Unconditional Certificate of Occupancy issued by the Des Moines Permit & Development Center. The Unconditional Certificate of Occupancy cannot be issued until handrail is constructed on the east and west sides of the stage. This handrail is being designed and fabricated.
2. Certification by an Iowa licensed engineer or architect that the project improvements were completed and constructed in substantial conformance with the plans and specifications, design documents, and contract documents.
3. Certification and documentation from Principal that Hansen and all subcontractors and suppliers for design and construction of the project improvements have been paid in full.

Upon receipt the above referenced documents acceptable to Engineering and Legal Department Staff, I will concur with the certification by Principal's Iowa licensed engineer or architect that the Brenton Skating Plaza project improvements were completed and constructed by The Hansen Construction Co., Inc. under its agreement with Principal Life Insurance Company in substantial conformance with the plans and specifications, design documents, and contract documents; and I will recommend that the Brenton Skating Plaza project improvements be accepted by the City Council.

The Temporary Agreement for Joint Operation of Brenton Skating Plaza between the City, RDA, Hansen, and Principal, which was approved by the City Council on November 17, 2006, under Roll Call No. 06-2258, will expire on December 31, 2006. Paragraph 8 of the Temporary Agreement for Joint Operation of Brenton Skating Plaza states:

8. This agreement shall terminate upon the earliest to occur of (i) formal acceptance of the Improvements by the City Council of Des Moines, or (ii) December 31, 2006.

If Principal does not provide the documents referenced above acceptable to Engineering and Legal Department Staff before December 31, 2006, I would recommend that the City Council authorize the Engineering Department Staff to negotiate, and the Mayor to sign, an amendment to the Temporary Agreement for Joint Operation of the Brenton Skating Plaza that would allow the ice skating rink to remain open. The amendment would include modifying Paragraph 8 to the following or similar language:

8. This agreement shall terminate upon receipt of the documents, acceptable to Engineering and Legal Department Staff, referenced in the City Engineer's Certificate of Occupancy, which was approved by the City Council on December 18, 2006.

PREVIOUS COUNCIL ACTION(S):

Date: November 17, 2006

Roll Call Number: 06-2258

Action: Approving execution of the Temporary Agreement for Joint Operation of the Brenton Skating Plaza with Principal Insurance Company, Des Moines River Front Development Authority and The Hansen Construction Co. Inc. (Council Communication No. 06-745) Moved by Vlassis to adopt. Motion Carried 6-0.

Date: September 25, 2006

Roll Call Number: 06-1928

Action: Agreement for the Management, Operation and Maintenance of the Brenton Skating Plaza with The Brenton Foundation and the naming of the plaza. Moved by Coleman to adopt. Motion Carried 6-0.

Date: September 25, 2006


Roll Call Number: 06-1929

Action: Concession Agreement for the Skating Plaza. (Council Communication No. 06-606). Moved by Coleman to adopt. Motion Carried 6-0.

Date: March 28, 2005

Roll Call Number: 05-662

Action: Approving Agreement with Principal Life Insurance Company for construction and funding of Ice Skating and Fountain Plaza. (Council Communication No. 05-172). Moved by Hensley to adopt. Motion Carried 6-1.
Pass: Brooks


Jeb E. Brewer, P.E.
Des Moines City Engineer