



Roll Call Number

Agenda Item Number

11

Date May 23, 2022

RESOLUTION APPROVING AGREEMENT WITH KADING PROPERTIES, LLC,
FOR THE PROVISION OF PUBLIC SANITARY SEWER SERVICE TO PROPERTY
OUTSIDE THE CITY OF DES MOINES AT 5570 NE 23RD AVENUE

WHEREAS, the City of Des Moines has received a request from Kading Properties, L.L.C., represented by Carrie Woerdeman, Director of Development, to obtain sewer service to the property it owns at 5570 NE 23rd Avenue in Delaware Township from the public sewer system operated by the City of Des Moines; and,

WHEREAS, Delaware Township is unable to provide sewer service to this property; and,

WHEREAS, the City Manager recommends that such sewer service be provided pursuant to City Code §118-204, upon the terms and conditions set forth in the *Agreement and Covenant Regarding Sewer Service Outside Des Moines City Limits* with Kading Properties, LLC, which is on file and available for inspection in the office of the City Clerk.

NOW THEREFORE, BE IT RESOLVED, by the City Council of the City of Des Moines, Iowa, as follows:

1. The proposed *Agreement and Covenant Regarding Sewer Service Outside Des Moines City Limits* which allows the provision of City sewer service to the property at 5570 NE 23rd Avenue is hereby approved. The Mayor is hereby authorized and directed to sign the agreement on behalf of the City of Des Moines, and the City Clerk is hereby authorized and directed to attest to the Mayor's signature on such document.
2. Upon execution of the Agreement as provided above, the City Clerk is hereby further authorized and directed to forward the Agreement to the Legal Department for release to and recording by Kading Properties, LLC.

Moved by _____ to adopt. Second by _____.

FORM APPROVED:

/s/ Gary D. Goudelock Jr.
Gary D. Goudelock Jr.
Assistant City Attorney

 **Roll Call Number**

Agenda Item Number

11

Date May 23, 2022

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE				
BOESEN				
GATTO				
MANDELBAUM				
SHEUMAKER				
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

Prepared by: Gary D. Goudelock Jr., Assistant City Attorney, 400 Robert D. Ray Drive, Des Moines, IA 50309 Phone: 515-283-4543
Return Address: City Clerk - City Hall, 400 Robert D. Ray Drive, Des Moines, IA 50309
Taxpayer: No change
Grantor's Name: Kading Properties, L.L.C.
Grantee's Name: City of Des Moines, Iowa
Legal Description: See below on this page.

**AGREEMENT AND COVENANT
REGARDING SEWER SERVICE
OUTSIDE DES MOINES CITY LIMITS**

THIS AGREEMENT, made and entered into this _____ day of _____, 2022, by and between **Kading Properties, L.L.C.**, an Iowa limited liability company (hereinafter referred to as "Applicant") and the **City of Des Moines, Iowa**, (hereinafter referred to as the "City") with respect to property locally known as 5570 NE 23rd Avenue, Des Moines, Polk County, Iowa, and more specifically described as follows (hereinafter referred to as the "Property"):

See Exhibit A

WITNESSETH:

WHEREAS, the City maintains and operates a sanitary sewer system for the collection and treatment of sewage and has a sewer line located on the west side of NE 56th Street, adjoining the Property; and,

WHEREAS, the Applicant wishes to connect an existing residential dwelling to the sanitary sewer system; and,

WHEREAS, the sewer usage by the Applicant's proposed use of the Property can be accommodated by the City's sanitary sewer system and the adjoining sewer line; and

WHEREAS, the City has indicated that in the public interest it is willing to permit the use of its sanitary sewer facilities by areas outside the corporate limits, upon payment of just and equitable sewer charges; and

WHEREAS, the extension of sanitary sewer service to the proposed facilities on the Property would protect the public health and safety.

NOW, THEREFORE, the Applicant is hereby granted the privilege of servicing through City sanitary sewers the Property described above for the fee(s) herein determined for the use herein stated, and under the conditions hereinafter set out.

1. Description. The Applicant's use of the Property shall for purposes of this Agreement be limited to a residential single-family residence, or similar uses expected to place no greater load on the City sewer system.

2. Connection Fee. The Applicant has deposited with the City the sewer connection fee required by Section 118-204 of the Municipal Code of the City of Des Moines (the "Municipal Code"). Upon approval and execution of this Agreement by the City, that deposit shall be released to the City.

3. Fee Schedule. The Applicant shall pay a charge for sewer service under this Agreement equal to twice the schedule of rates applicable to those properties located within the corporate limits of the City of Des Moines, Iowa, based upon water usage on the Property as measured by a Des Moines Water Works water meter.

4. Time of Payment. Sewer service charges shall be billed to Applicant monthly, and Applicant shall pay said charges within the time periods provided by the Municipal Code as amended from time to time. Applicant shall comply with and be subject to all provisions of the Municipal Code regarding the billing and collection of sewer charges generally applicable throughout the City of Des Moines.

5. Modification of Charge. The City reserves the right to modify the annual service charge for transportation and treatment of wastes discharged to the sewer from time to time as conditions warrant, provided such charges are generally applicable throughout the City of Des Moines.

6. Construction. All sewer connections shall be constructed and maintained in accordance with the plumbing provisions of the Municipal Code. A plumbing permit shall be obtained prior to the physical connection to the sewer. The Applicant shall comply with the Municipal Code provisions relating to street excavations and the restoration of street right-of-way.

7. Restrictions/Inspections. All provisions of the Municipal Code concerning sanitary sewer usage shall apply with full force and effect to the Applicant's use of City sanitary sewers as herein provided. It is further agreed that the following City of Des Moines requirements shall be strictly adhered to:

- (a) Applicant shall make no change in the plumbing system upon the Property or the connection to the City sewer line except as described herein without the prior written approval of the City and amendment to this Agreement.
- (b) Applicant shall allow the City's authorized representatives access to the Property at all reasonable hours, for the purpose of examining and inspecting said premises and verifying compliance with the provisions of this Agreement.
- (c) No portion of the Property shall be used as a Food Service Establishment unless such use is served by an approved grease interceptor, which is installed, operated and maintained in conformance with the applicable regulations in the Des Moines City Code regarding the discharge of fat, oil and grease into a building sewer connected to the public sanitary sewer system. "Food Service Establishment" means an operation or enterprise that stores, prepares, packages, serves, vends, or otherwise provides food for human consumption. Such facilities may include, but are not limited to, those that process meat or other food ingredients as an intermediate step or for final human consumption, food service operations in a summer camp, residential substance abuse treatment facility, halfway house, correctional facility, school, restaurant, commercial kitchen, caterer, church, hotel, bars, hospital, prison, care institution or similar facility.

8. Term of Agreement and Termination of Agreement. A. The City agrees that this Agreement shall remain in full force and effect so long as and under the same conditions that sewer service is provided to residents of the City of Des Moines. The Applicant shall have and retain the right to terminate at will. In the event the Applicant terminates the Agreement, the Applicant agrees the City is authorized to terminate sewer service to this Property, and further agrees to disconnect any connection from the Property to the City's sewer infrastructure, and agrees to relinquish all claim to charges paid or prepaid for this service.

B. Violation of the terms of this Agreement by the Applicant shall constitute grounds for the City's termination of this Agreement. Such termination shall be effective upon six (6) month's written notice of termination to the Applicant.

C. The parties further agree that this Agreement shall terminate in the event the Property is annexed to the City of Des Moines. The termination shall be effective upon the effective date of such annexation.

9. Annexation. The parties hereby acknowledge that the Property is located within an unincorporated area of Polk County. As part of the consideration given by Applicant in support of this Agreement, at the request of the City of Des Moines, the Applicant shall support the annexation of the Property to the City of Des Moines, and specifically agrees to waive any future objection to annexation of the Property by the City. Upon request by City, the Applicant shall sign a consent to the annexation of the property and waiver of any objection to such annexation. If Applicant does not sign a consent to annexation of the Property when requested by City, or if Applicant takes any affirmative action to oppose the City's annexation of the Property, such event shall constitute a material breach of this Agreement and good and sufficient cause for City to terminate this Agreement and to terminate sewer service to the Property.

10. Indemnification. The Applicant shall defend, indemnify and hold harmless the City from any loss, liability or damage resulting from the connection to the City sewer system herein agreed to, or the Applicant's use thereof.

11. Successors in Interest. This Agreement shall be binding upon and inure to the benefit of the respective parties hereto, their heirs, successors, and assigns.

12. Covenant Running with the Land. This Agreement shall be recorded in the office of the Polk County Recorder by City at Applicant's expense. This Agreement shall be a covenant running with the land comprising the Property described herein, and shall be binding upon the Applicant, its successors, and assigns.

13. Warranty of Title. Applicant does hereby covenant with the City that Applicant holds said real estate described in this Easement by Title in Fee Simple; that Grantor has good and lawful authority to convey the same; and said Grantor covenants to warrant and defend the said premises against the lawful claims of all persons whomsoever.

14. Severance. If any section, subsection, sentence, clause, or phrase of this Agreement is for any reason held to be unconstitutional or void, such decision shall not affect the validity of the remaining portions of this Agreement.

15. Representatives Not Individually Liable. No member, official, or employee of City shall be personally liable in the event of any default or breach by either party under this Agreement, or for any amount which may become due or on any obligations under the terms of this Agreement.

16. Interpretation of Agreement

A. *Documents to be Considered Together.* The approved Application and any approved changes or modifications thereto shall be incorporated into this Agreement effective as of the date of such approvals.

B. *Choice of Laws.* This Agreement shall be construed in accordance with the laws of the State of Iowa.

C. *Timing.* Time is of the essence in the performance of this Agreement.

D. *Non-working Days.* In the event the last date for performing any act required by this Agreement falls upon a weekend day or holiday, then the time for performing such act shall be extended to the next following working day.

E. *Counterparts.* This Agreement may be executed in multiple counterparts, each of which shall constitute one and the same instrument.

F. *Construction.* Headings are included for convenience only and are not intended to be part of, or to affect the meaning or interpretation of, this Agreement. All section references, unless otherwise clearly indicated, are to sections in this Agreement. Words and phrases shall be construed as in the singular or plural number, and as masculine, feminine, or neuter gender,

according to context. This Agreement is not to be construed more strictly against a party hereto merely because it may have been drafted or prepared by such party or its counsel, this Agreement being the product of negotiation.

17. Waiver of Jury Trial. City and Applicant each hereby irrevocably waives all right to trial by jury in any action, proceeding or counterclaim arising out of or relating to this Agreement or any instrument or document delivered hereunder.

18. Forum Selection Clause. Any legal action or proceeding with respect to this Agreement or the services provided hereunder must be brought and determined in the Iowa District Court in and for Polk County (and may not be brought or determined in any other forum or jurisdiction), and each party hereto submits with regard to any action or proceeding for itself and in respect of its property, generally and unconditionally, to the sole and exclusive jurisdiction of the aforesaid courts. This is a mandatory forum selection clause.

19. Notices. A notice, demand, or other communication under this Agreement by either party to the other shall be sufficiently given or delivered if it is dispatched by registered or certified mail, postage prepaid, return receipt requested; delivered personally; or sent by overnight courier service, as follows:

(a) in the case of Applicant, addressed to:

Kading Properties LLC
c/o Carrie Woerdeman
7008 Madison Avenue
Urbandale, IA 50322

(b) in the case of City, addressed to:

Attn: City Manager
c/o Office of Economic Development
City of Des Moines
400 Robert D. Ray Drive
Des Moines, Iowa, 50309,

or to such other address, Department, or individual as either may, from time to time, designate in writing and forward to the other as provided in this article.

20. Amendment. No amendment of this Agreement is binding unless set forth in a writing, duly signed by the parties hereto.

(REMAINDER OF PAGE INTENTIONALLY LEFT BLANK
SIGNATURE PAGE(S) FOLLOW(S))

"CITY"

CITY OF DES MOINES, IOWA

ATTEST:

By: _____
P. Kay Cmelik, City Clerk

By: _____
T.M. Franklin Cownie, Mayor

APPROVED AS TO FORM:

Gary D. Goudelock Jr, Assistant City Attorney

STATE OF IOWA)
) ss:
COUNTY OF POLK)

On this ___ day of _____, 2022, before me, the undersigned, a Notary Public in the State of Iowa, personally appeared T.M. FRANKLIN COWNIE and P. Kay Cmelik, to me personally known, and who, being by me duly sworn did state that they are the Mayor and City Clerk, respectively, of City of Des Moines, Iowa, a municipal corporation; that the seal affixed to the foregoing instrument is the corporate seal of the corporation; that the instrument was signed on behalf of the City of Des Moines, Iowa, by authority of its City Council, as contained in the Resolution adopted by the City Council under Roll Call No. 22-_____ of the City Council on the ___ day of _____, 2022, and that T.M. FRANKLIN COWNIE and P. KAY CMELIK acknowledged the execution of the instrument to be the voluntary act and deed of City of Des Moines, Iowa, by it and by them voluntarily executed.

Notary Public in the State of Iowa
My commission expires: _____

EXHIBIT A

Property

The West 6.13 acres, less 2.09 acres road, Lot 5 of Josiah F. Oglevie Estate, Section 27, Township 79 North, Range 23 West of the 5th P.M., Polk County, Iowa, except:

A part of Lot 5 in Josiah F. Oglevie Estate, an official plat, lying in the Southeast 1/4 of the Southeast 1/4 of Section 27, Township 79 North, Range 23 West of the 5th P.M., Polk County, Iowa, and described as follows: Commencing at the Southeast corner of said Section 27; thence North 00°00'04" West along the East line of said Section 27, a distance of 215.80 feet; thence South 89°59'56" West, 50.30 feet to a point on the West Right-of-Way line of NE 56th Street and the Point of Beginning; thence continue South 89°59'56" West, 19.70 feet; thence North 00°00'04" West, 90.00 feet; thence North 89°59'56" East, 19.58 feet to a point on the West Right-of-Way line of NE 56th Street; thence South 00°04'49" East along said West Right-of-Way line, 90.00 feet to the Point of Beginning and containing 0.04 Acres (1,768 S.F.).

And except:

A part of Lot 5 in Josiah F. Oglevie Estate, an official plat, lying in the Southeast 1/4 of the Southeast 1/4 of Section 27, Township 79 North, Range 23 West of the 5th P.M., Polk County, Iowa, and described as follows: Commencing at the Southeast corner of said Section 27; thence North 00°00'04" West along the East line of said Section 27, a distance of 215.80 feet; thence South 89°59'56" West, 50.30 feet to a point on the West Right-of-Way line of NE 56th Street; thence North 00°04'49" West along said West Right-of-Way line, 115.00 feet to the Point of Beginning; thence South 89°59'56" West, 19.54 feet; thence North 00°00'04" West, 74.34 feet; thence North 53°12'52" West, 51.09 feet; thence North 36°47'08" East, 30.01 feet; thence North 89°59'56" East, 5.95 feet; thence North 00°00'04" West, 21.04 feet; thence North 89°59'56" East, 25.00 feet; thence North 00°00'04" West, 130.00 feet; thence North 89°59'56" East, 11.16 feet to a point on the West Right-of-Way line of NE 56th Street; thence South 00°04'49" East along said West right-of-Way line, 280.01 feet to the Point of Beginning and containing 0.14 Acres (6,129 S.F.).