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**Date** March 6, 2023

**APPROVING FIRST AMENDMENT TO 28E AGREEMENT FOR CONSTRUCTION AND FUNDING OF FLEUR DRIVE UNDERPASS BETWEEN DES MOINES WATER WORKS, DES MOINES WATER WORKS PARK FOUNDATION, AND CITY OF DES MOINES REGARDING AMOUNT OF FOUNDATION FUNDING THEREUNDER**

**WHEREAS**, Gray’s Lake Park is owned by the City and Water Works Park is under the management, control, and operation of the Board of Water Works Trustees of the City of Des Moines (“Water Works”); and

**WHEREAS**, the City, Water Works and the Des Moines Water Works Parks Foundation (“Foundation”) desired to undertake the design and construction of an underpass and adjacent entrance areas under Fleur Drive, including the underpass façade in Gray’s Lake Park and to provide for a connection between the Kruidenier Trail and the underpass at Gray’s Lake Park (“the Underpass Project”), which cost \$3,105,212.29 and which has been completed and paid for from funds of the City; and

**WHEREAS**, on April 23, 2018, by Roll Call No. 18-0724, the City Council approved a 28E Agreement between Water Works, the Foundation and the City regarding construction of the Underpass Project in which the Foundation agreed to pay all costs up to \$3,500,000.00 associated with the Underpass Project and to provide the City with \$100,000.00 annually for three (3) years for maintenance costs of the Underpass (“the 28E Agreement”); and

**WHEREAS**, the 28E Agreement further provides that, upon acceptance of the Underpass Project improvements, and subject to City Council approval and the City’s Policy for Naming of Streets, Facilities and Park Land, the Underpass shall be designated “The Ruan Connector”; and

**WHEREAS**, the City requested payment from the Foundation of \$3,105,212.29 plus the first \$100,000.00 due annually for maintenance costs, as owed to the City pursuant to the 28E Agreement, and has received \$1,400,000.00 from the Foundation to date, and the Foundation has advised that it does not have sufficient funds to provide the full amount remaining owed to the City under the 28E Agreement of \$1,980,212.29, comprised of \$1,680,212.29 for design and construction and \$300,000 for a Maintenance Fund; and

**WHEREAS**, on December 20, 2021, by Roll Call No. 21-1938, the City Council directed the City Manager to negotiate an amendment of the 28E Agreement to address certain issues including forgiveness of a portion of the amount currently owed to the City by the Foundation; and

**WHEREAS**, the City Manager, Water Works, and the Foundation have negotiated said First Amendment to the 28E Agreement, in form on file in the office of the City Clerk and as previously approved by Water Works’ and the Foundation’s respective Boards, which First Amendment confirms Water Works’ obligation to be solely responsible for all maintenance and costs within Water Works Park and maintenance for facade and structural elements of the project, and requires the Foundation to pay the City \$1,980,212.29 in annual installments, without interest, in a minimum amount of \$50,000.00 annually and with forgiveness of the outstanding balance of \$540,000.00 to occur at such time that the Foundation has paid the aggregate amount of \$1,440,212.29 and otherwise remains in compliance with the 28E Agreement, and which Amendment further provides that the



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parties shall act in good faith in connection with the implementation of the 28E Agreement.

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Des Moines, Iowa, that the First Amendment to the 28E Agreement between the City of Des Moines, Iowa, the Board of Water Works Trustees of the City of Des Moines, Iowa, and Des Moines Water Works Park Foundation for Construction and Funding of the Fleur Drive Trail Underpass Project, is hereby approved; the Mayor and City Clerk are directed to execute and attest to execution of, respectively, said First Amendment, and the City Clerk is directed to file said First Amendment with the Iowa Secretary of State; and the City Manager and his designee(s) are directed and authorized to administer and monitor the 28E Agreement as amended on behalf of the City.

(Council Communication No. 23- 116 )

Moved by \_\_\_\_\_ to adopt.

Second by \_\_\_\_\_.

APPROVED AS TO FORM:

/s/ Glenna K. Frank  
Glenna K. Frank  
Assistant City Attorney

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE				
BOESEN				
GATTO				
MANDELBAUM				
SHEUMAKER				
VOSS				
WESTERGAARD				
<b>TOTAL</b>				

MOTION CARRIED

APPROVED

**CERTIFICATE**

I, Laura Baumgartner, 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