



Roll Call Number

21-1566

Agenda Item Number

29

Date October 18, 2021

APPROVAL OF AGREEMENT WITH DES MOINES WATER WORKS
REGARDING FLASH BOARDS ON THE DES MOINES RIVER NEAR THE CENTER
STREET DAM AND AUTHORIZING CITY MANAGER TO PERMIT FLASH BOARDS TO
REMAIN IN PLACE FOR UP TO FOUR ADDITIONAL ANNUAL PERIODS

WHEREAS, the Parks and Recreation Department installs and removes flashboards on the Des Moines River near the Center Street Dam in order to help regulate the height of the River to increase the safety of recreational boating; and

WHEREAS, Des Moines Water Works desires that the flashboards at the Center Street Dam remain in place from October 31, 2021 through August 31, 2022, in order to help ensure an ample supply of raw water available at the Des Moines River Intake and Pumping Facility upstream of the Center Street Dam; and

WHEREAS, the City's normal procedure is to remove the flashboards at the Center Street Dam during the Winter season in order to prevent damage to the flashboards and related pins but is willing to cooperate with Water Works' request to leave the flashboards in place; and

WHEREAS, Water Works has agreed to reimburse the City for the costs of materials and labor to repair or replace such flashboards and related pins resulting from leaving the flashboards in place during the Winter season; and

WHEREAS, Parks and Recreation Department staff and Water Works have agreed to an Agreement regarding the flashboards to remain in place for the period of October 31, 2021 through August 31, 2022, a copy of which is on file in the City Clerk's Office.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Des Moines, Iowa that the Agreement Between the City of Des Moines and The Board of Water Works Trustees of the City of Des Moines, Iowa, For Center Street Dam Operations and Flashboard Repairs, a copy of which is on file with the City Clerk's Office, is hereby approved and the Mayor is authorized and directed to sign the Agreement on behalf of the City and the City Clerk is authorized and directed to attest to his signature.

BE IT FURTHER RESOLVED that the City Manager, or his designee, may authorize and execute up to four annual renewals of such Agreement to allow such flashboards to remain in place during annual Winter periods until August 31, 2026.



Roll Call Number

21-151dp

Agenda Item Number

29

Date October 18, 2021

(Council Communication No. 21- **430**)

Moved by Boesen to adopt.

APPROVED AS TO FORM:

/s/ Ann DiDonato
Ann DiDonato
Assistant City Attorney

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE	✓			
BOESEN	✓			
GATTO	✓			
GRAY	✓			
MANDELBAUM	✓			
VOSS	✓			
WESTERGAARD	✓			
TOTAL	7			

MOTION CARRIED APPROVED
J. M. Frankhu Cownie
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.

P. Kay Cmelik

City Clerk

AGREEMENT
Between
the City of Des Moines and
The Board of Water Works Trustees of the City of Des Moines, Iowa
For Center Street Dam Operations and Flashboard Repairs

THIS AGREEMENT made and entered into this 18th day of October, 2021 by and between The City of Des Moines, Iowa, (hereinafter “CITY”) and the Board of Water Works Trustees of the City of Des Moines, Iowa (hereinafter “WATER WORKS”).

WHEREAS, CITY is a municipal corporation of the State of Iowa and WATER WORKS is a municipal water utility established and operating in the City pursuant to Chapter 388 of the Iowa Code; and

WHEREAS, WATER WORKS desires that the flashboards at the Center street Dam remain up during the 2021-2022 Winter season in order to help ensure an ample supply of raw water available at the Des Moines River Intake and Pumping Facility upstream of the Center Street Dam; and

WHEREAS, the CITY’s normal procedure is to remove the flashboards at the Center Street Dam during the Winter season in order to prevent damage to the flashboards and related pins but is willing to cooperate with WATER WORKS’ request to leave the flashboards in place, subject to the terms of this Agreement and to take whatever action is needed to comply with any regulatory authority or that is in the interest of public safety and welfare; and

WHEREAS, the proposed water trail project near Center Street Dam may affect future flashboard placement and CITY’s ability to grant WATER WORKS’ request to leave the flashboards in place; and

WHEREAS, WATER WORKS has agreed to reimburse the CITY for the costs of materials and labor to repair or replace such flashboards and related pins resulting from leaving the flashboards in place during the Winter season.

NOW, THEREFORE, the CITY and WATER WORKS do hereby agree as follows:

A. CITY RESPONSIBILITIES

1. The CITY shall use reasonable efforts to keep the flashboards currently located on the Des Moines River at the Center Street Dam in place and in operation from October 31, 2021 through August 31, 2022.
2. If requested in writing by WATER WORKS as provided in this Agreement and approved by the City Manager, or his designee, in writing, such flashboards in place on the Des Moines River from October 31, 2021 through August 31, 2022, may

remain in place during the same period, or a lesser period as specified by WATER WORKS in its written request, for up to four annual renewals upon the same terms as set forth in this Agreement. The CITY agrees that the approval of the City Manager will not be unreasonably withheld.

3. The CITY reserves the right to remove or not to repair or reinstall such flashboards where, in the discretion of the City, such removal or failure to reinstall or repair the flashboards is needed to comply with any applicable federal, state or local law or regulation or order of a regulatory authority, or where in the interest of public safety and welfare.
4. The CITY reserves the right to remove or not to repair or install such flashboards in the event that WATER WORKS does not reimburse the CITY as provided in section B of this Agreement.

B. WATER WORKS RESPONSIBILITIES

1. WATER WORKS shall reimburse the CITY for the CITY's costs associated with the replacement or repair of such flashboards and related pins, including all labor and materials, resulting from leaving the flashboards in place until August 31, 2022, and any annual renewals thereof, if any. The need for such repair or replacement shall be at the reasonably exercised discretion of the CITY. Such reimbursement of costs shall be delivered to the CITY within 10 days of delivery of written request for payment.
2. In the event that WATER WORKS requests that such flashboards remain in place on the Des Moines River during the winters of 2022, 2023, 2024 and 2025 during the term of this Agreement, WATER WORKS shall make such written request to the City Manager by no later than September 1 of the corresponding year. Any such annual renewal of the flashboards remaining in place during a winter shall be upon the same terms as set forth in this Agreement with the additional requirement to coordinate flashboard placement with proposed water trail construction. Such coordination may prevent the CITY from granting WATER WORKS request for the flashboards in place during the winter.
3. For purposes of this Agreement, the term "winter" refers to the period from October 31 to August 31 of the following year, or a shorter period if requested by WATER WORKS. For the avoidance of doubt, the winter of 2022 begins on October 31, 2022 and ends on August 31, 2023, and WATER WORKS would need to request that the flashboards remain in place no later than September 1, 2022 for the winter of 2022. The decision by WATER WORKS to not request that the flashboards be installed for a particular winter does not waive the right of WATER WORKS to request installation of the flashboards during a future winter during the term of this Agreement.
4. If WATER WORKS makes a timely request under this Agreement to leave the

flashboards installed during the winter, the CITY will ensure that all regulatory approvals are obtained for leaving such flashboards installed during the winter.

C. TERM.

The effective date of this Agreement is October 31, 2021, and this Agreement shall remain in effect until August 31, 2026.

D. MISCELLANEOUS.

1. Mailing of Notices.

Except as otherwise specified, all notices and other communications required or permitted under this Agreement shall be given in writing and mailed by U.S. Mail, addressed as follows:

If to the CITY:

City of Des Moines
City Hall
400 Robert D. Ray Drive
Des Moines, IA 50311
Attention: City Engineer
If to the WATER WORKS:
Ted Corrigan, General Manager
2201 George Flagg Parkway
Des Moines, IA 50321

All notices shall be deemed given on the day of mailing.

2. Force Majeure.


In the event of forced delay in the performance by either party or obligations under this Agreement due to Acts of God or of the public enemy, strikes, lockouts, unusual delay in transportation, unavailability of materials, fire, floods, epidemics, adverse weather conditions, riots, insurrection, war, unavoidable casualties, or Judicial or governmental action, other than action by the CITY, the time for performance of such obligations and for the satisfaction of the conditions precedent shall be extended for the period of the forced delays.

3. Assignment

The rights and liabilities of the parties under this Agreement may not be assigned without the prior written consent of the other party.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their proper officers, duly authorized therefore.

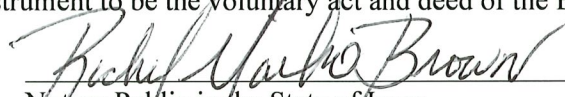
BOARD OF WATER WORKS TRUSTEES OF THE CITY OF DES MOINES, IOWA



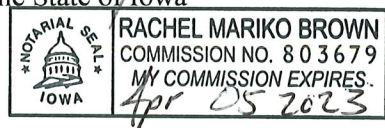
Ted Corrigan, CEO and General Manager

STATE OF IOWA)
) ss:
COUNTY OF POLK)

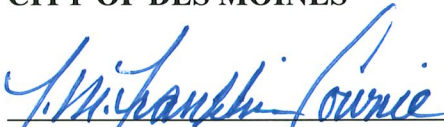
On this 14th day of October, 2021, before me, the undersigned, a Notary Public in and for the State of Iowa, personally appeared Ted Corrigan, to me personally known, who being by me duly sworn, did say that they are the CEO and General Manager and CEO of the Board of Water Works Trustees that such entity has no seal and that the instrument was signed on behalf of the Board of Water Works Trustees of the City of Des Moines, Iowa, by authority of its Board, on the 14th day of October, 2021, and that Ted Corrigan, acknowledged the execution of the instrument to be the voluntary act and deed of the Board, by it and by the voluntarily executed.



Notary Public in the State of Iowa



CITY OF DES MOINES



T. M. Franklin Cownie, Mayor

ATTEST: 

P. Kay Cmelik, City Clerk

STATE OF IOWA)
) ss:
COUNTY OF POLK)

On this day of 18th October, 2021, before me, the undersigned, a Notary Public, personally appeared T. M. Franklin Cownie and P. Kay Cmelik to me personally know, 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 No. 21-1566 dated October 18th, 2021, 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.

Lyndzy Murtha
Notary Public in the State of Iowa

APPROVED AS TO FORM:

Ann DiDonato
Ann DiDonato, Assistant City Attorney

