



DES MOINES WATER WORKS  
Board of Water Works Trustees

Agenda Item No. III-B  
Meeting Date: January 23, 2018  
Chairperson's Signature  Yes  No

**AGENDA ITEM FORM**

**SUBJECT: Request Authorization to Execute 28E Agreement between Des Moines Water Works and the Des Moines Water Works Park Foundation for Construction of Phase I Park Improvements**

**SUMMARY:**

- The Des Moines Water Works Park Foundation (DMWWPF) was formed to raise funds and facilitate implementation of the Water Works Park Master Plan.
- The Water Works Park Master Plan Report was received and filed by the Board in January of 2014.
- Des Moines Water Works (DMWW) entered into a Design-Construction Professional Services Agreement for Phase I Park Improvements, executed November 3, 2017, funded by DMWWPF.
- Design of the Phase I Park Improvements is complete and in final review.
- The engineer's final cost estimate for design and construction of the facilities in this agreement are estimated at \$6,770,956 which includes an 8% contingency.
- DMWWPF, DMWW staff, and their respective attorneys are all in favor of this Chapter 28E Agreement.
- This agreement was approved by the DMWWPF at their January 12, 2018, meeting.
- This agreement also includes cost sharing of water main installation for a new 16" water main to be included in the bid documents for Phase I Park Improvements.

**FISCAL IMPACT:**

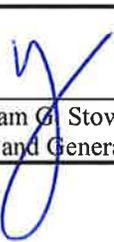
The DMWWPF will reimburse DMWW for all contractor construction costs and all of DMWW's direct costs related to construction of these improvements except for DMWW's portion of the 16" water main estimated to be \$117,250. DMWW's portion of water main will be expended from the 2018 Water Main Replacement Budget. Reimbursement is to be made monthly in accordance with provisions within this agreement.

**RECOMMENDED ACTION:**

Approve the 28E Agreement between Des Moines Water Works and the Des Moines Water Works Park Foundation for Construction of Phase I Park Improvements.

**BOARD REQUIRED ACTION:**

Motion to approve and authorize the Chairperson to execute the 28E Agreement between Des Moines Water Works and the Des Moines Water Works Park Foundation for Construction of Phase I Park Improvements.

	 Danny J. Klopfer, P.E. (date) <u>1/17/18</u> Engineering Services Manager	 <u>1-18-18</u> William G. Stowe (date) CEO and General Manager
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Attachments: 28E Agreement with all exhibits and attachments, Site Map

**28E AGREEMENT FOR CONSTRUCTION OF  
PHASE I PARK IMPROVEMENTS  
BETWEEN  
THE BOARD OF WATER WORKS TRUSTEES OF  
THE CITY OF DES MOINES, IOWA  
AND  
THE DES MOINES WATER WORKS PARK FOUNDATION**

This 28E Agreement is made by and between the Board of Water Works Trustees of the City of Des Moines, Iowa (“DMWW”) and the Des Moines Water Works Park Foundation (“Foundation”) effective as of the date set forth below:

**RECITALS:**

- A. DMWW is a municipal water utility established and operating in the City of Des Moines, Iowa pursuant to Chapter 388 of the Iowa Code; and
- B. Foundation is an Iowa nonprofit corporation organized and existing under Chapter 504, Code of Iowa, that is recognized as exempt from tax under Section 501(c)(3) of the Internal Revenue Code; and
- C. DMWW makes a portion of its grounds (“Water Works Park Property”) available to the public as a park known as “Water Works Park” in the City of Des Moines; and
- D. Foundation has been established to support the implementation of DMWW’s Water Works Park Master Plan (“Master Plan”); and
- E. An Operating Agreement was established between DMWW and Foundation on October 27, 2015, outlining the respective roles and responsibilities of the parties in working together to execute the Master Plan (the “Operating Agreement”); and
- F. Foundation, in conjunction with DMWW, has developed and proposed the first phase of elements to be constructed within the Park, as outlined in the Operating Agreement, to be constructed on a portion of Water Works Park Property during the 2018 construction season including: (i) amphitheater; (ii) great lawn; (iii) celebration lawn; (iv) meander; (v) play area (collectively the “Phase I Park Improvements”) as shown in the “Site Plan”, Exhibit A attached hereto, with estimated costs as outlined in “Estimated Costs”, Exhibit B attached hereto; and
- G. DMWW has, with the approval and funding provided by Foundation, entered into a design and services agreement with RDG Planning & Design (“RDG”), for the Phase I Park Improvements, based on a preliminary schematic design established through the collaborate efforts of DMWW and Foundation with community support and input; and

- H. Foundation has secured the necessary pledges to fund construction of the Phase I Park Improvements; and
- I. DMWW and Foundation have established a tentative schedule for the development of final design, permitting, approval and construction of the Phase I Park Improvements; and
- J. DMWW and Foundation have entered into a separate 28E Agreement for operation & maintenance of Phase I Park Improvements (the “O&M 28E Agreement”) and to enter into a three-way 28E Agreement with the City of Des Moines to develop a passageway (the “Passageway”) connecting Water Works Park to Gray’s Lake Park (the “Passageway 28E Agreement”). All such agreements shall construed together.

**NOW THEREFORE**, in consideration of the mutual undertakings hereby provided, DMWW and Foundation hereby agree as follows:

**Article I - Joint Exercise of Powers Under Chapter 28E of the Code of Iowa**

1. Purpose. Pursuant to Chapter 28E, Code of Iowa (2017), the parties agree that the purpose of this Agreement is to establish the terms and conditions of the relationship between DMWW and Foundation for the construction and funding of the improvements as identified and described in the Site Plan, Exhibit A attached hereto, and the Cost Estimate, Exhibit B attached hereto, and referred to herein as the Phase I Park Improvements.
2. 28E Finding. DMWW hereby certifies that the Phase I Park Improvements reflect appropriate regional planning in conformity with Section 28E.18, Code of Iowa (2017)
3. Effective Date. Pursuant to Section 28E.5 of the Code of Iowa (2017), the parties agree that this Agreement shall be effective after its approval by the respective governing bodies of DMWW and Foundation, and upon execution by the parties and its filing with the Iowa Secretary of State (“Effective Date”).
4. No Entity. No separate entity is created hereby.
5. Designated Administrator. The parties hereby agree that CEO and General Manager of DMWW shall be designated as the sole administrator of this Agreement as provided by Section 28E.6 of the Code of Iowa (the “Administrator”).
6. Administration. All bids for, and contracts for construction of, the Phase I Park Improvements shall be undertaken solely by DMWW under the direction of the Board of Trustees as provided by law for public improvements and shall be administered by the Administrator either

directly or by delegation to the staff of DMWW. The Administrator shall consult with Foundation as needed for the proper administration of this Agreement in a manner consistent with the Operating Agreement.

## **Article II – Ownership and Responsibilities**

1. **Property Ownership.** DMWW shall at all times hold, own, and exclusively control the Water Works Park Property and all of the Phase I Park Improvements, both during construction and after completion thereof. No joint property shall be acquired, held or disposed of hereunder. Except as otherwise explicitly provided herein, each party shall at all times hold and own its respective properties.

2. **Individual Responsibility.** Each party shall be solely authorized to supervise, direct, and manage its own activities and the activities of its respective employees and/or agents hereunder. Each party shall retain sole responsibility and liability for its own acts and omissions hereunder and for the acts and omissions of its respective employees and/or agents hereunder. Each party waives subrogation against the other for all claims, suits, damages, and demands which are covered by any insurance, including but not limited to property, casualty, and workers compensation insurance. Each party will notify its insurer(s) of this subrogation waiver.

3. **Maintenance, Repair, and Operational Responsibilities.** DMWW shall have sole responsibility and authority for maintenance, repair, and operation of the Water Works Park Property and the Phase I Park Improvements, except as otherwise provided in the O&M 28E Agreement and the Passageway 28E Agreement.

4. **DMWW Board Representation on Foundation Board.** The Foundation's bylaws will provide that the DMWW may designate as many as two (2) members of the Foundation Board of Directors, to serve at the pleasure of the DMWW.

## **Article III – Design, Bidding, and Construction of Phase I Park Improvements**

1. **General Intent.** The scope of the Phase I Park Improvements shall be as set forth in Exhibit A. The total estimated costs of the Phase I Park Improvements are set forth in Exhibit B. All construction, design, and any necessary easement acquisition costs for the Phase I Park Improvements shall be funded by Foundation in accordance with the terms and subject to the limitations of this Agreement, but all Phase I Park Improvements shall be owned by DMWW.

2. **RDG Design.** To assure proper design and construction coordination, the design of the Phase I Park Improvements will be accomplished by RDG in accordance with the agreement between DMWW and RDG executed on November 3, 2017.

3. Design Completion. Upon completion of the design of the Phase I Park Improvements, DMWW shall submit the final design documents, including the final plans and specifications for construction, and engineering cost estimate as prepared by RDG to Foundation to review and approve prior to advertising for bids.

5. Contract Documents. Subject to the prior execution and filing of the O&M 28E Agreement, the Passageway 28E Agreement, the prior approval of the final plans and specifications for construction, and the final engineering cost estimate by both DMWW and Foundation, DMWW shall undertake the construction of the Phase I Park Improvements by means of one or more contracts for public improvement in accordance with applicable law and in accordance with DMWW's regular contracting procedures.

DMWW shall be responsible for the final design of the Phase I Park Improvements in conformity with DMWW's current standard specifications and for obtaining all required easements, permits, permissions and other things required for the proper construction of such projects. Such design may provide for such number of separate contracts as DMWW shall determine in its sole discretion shall best provide for the efficient construction of the Phase I Park Improvements, and shall include detailed Plans and Specifications and an engineering cost estimate for each separate project. Such Plans and Specifications may provide for DMWW to procure and supply materials or equipment to the contractor. If, at any time, the total of the engineering cost estimates for all projects is expected to exceed the total cost as shown in Exhibit B, then DMWW shall consult with and obtain the written consent of the Foundation before proceeding further to advertise for bids and let contracts.

6. Contract Administration. DMWW shall contract, in its sole name, for the construction of the Phase I Park Improvements as provided by law for public improvements, including a public bidding process in accordance with law. DMWW agrees to notify Foundation of the bid opening date for all work for which DMWW will take bids in connection with the Phase I Park Improvements. Foundation may designate a representative to attend such bid openings. If costs set forth in the bids for any contract are such that the expected contract price exceeds the engineer's cost estimate for the project by more than fifteen percent (15%), then DMWW shall give notice to Foundation of such fact, and DMWW shall not proceed to award a contract unless Foundation and DMWW both give approval to proceed at the bid price. Failure by Foundation to respond to DMWW's notice within ten (10) business days of its date shall be construed as approval to proceed.

DMWW shall be solely responsible for execution of the underlying contracts, and for contract administration, supervision and inspection with the assistance of RDG. DMWW shall not, however, be liable to Foundation for the breach of any contract by any third party. Notwithstanding the foregoing, DMWW shall use commercially reasonable efforts to ensure that the Phase I Park Improvements are constructed in materially in accordance with the terms of such contracts and shall promptly notify Foundation of any breach of any such contract.

If and when requests by a contractor for change orders exceed the original contract price by an amount in excess of \$10,000, DMWW shall give notice to Foundation of such fact, and DMWW shall not proceed to issue change orders for any excess amount unless Foundation and DMWW both give written approval of the change orders. Failure by Foundation to respond to DMWW's notice within five (5) business days of its date shall be construed as approval to issue the change order.

Upon a request by a contractor for final acceptance of improvements for the Phase I Park Improvements and for final payment, DMWW agrees to forward the contractor's request for final acceptance and for final payment, together with all supporting detail, to Foundation. DMWW will thereafter conduct a final inspection of such improvements and develop a punch list of items for completion, if any, and will not accept such improvements as complete, or authorize final payment of any contractor, without affording qualified personnel designated by Foundation the opportunity to participate in such inspection and to comment and offer suggestions regarding the punch list of items for completion. In the event that Foundation objects to the acceptance of such improvements or to final payment to the contractor, Foundation shall notify DMWW of its specific objections in writing not more than fifteen (15) business days after receipt of the final payment request, or, if later, five (5) business days after the completion of the final inspection and development of the punch list for completion. If the objections cannot be resolved within thirty (30) business days thereafter, a final decision shall be rendered by the Administrator, subject to review by the DMWW Board of Trustees.

7. Construction Management & Administration. Construction management to be provided by DMWW shall include but not be limited to the following:

- (a) Requiring the contractor to obtain, and to maintain in continuous effect, the insurance coverages described in accepted project specifications, and the performance, maintenance, and payment bond as specified in the contract documents.
- (b) Providing expertise, inspection, and review of all aspects of construction in accordance with the contract between DMWW and RDG.
- (c) Processing of all payments for all permits, fees, costs, charges, and expenses associated with the construction of the Phase I Park Improvements.
- (d) Reviewing and approving contractor requests for progress payments, withholding therefrom retainage in accordance with Iowa Code requirements.
- (e) Providing Foundation with the opportunity to inspect all aspects of work impacting the Phase I Park Improvements.

- (f) Reviewing contractor requests for change orders and time extensions to determine appropriateness and providing to Foundation those change orders for review and approval.
- (g) Processing contractor requests for change orders and time extensions and making change order payments to contractors in accordance with payment methods previously set forth.
- (h) Maintaining all project documents and records for a three (3) year retention period from the date of final payment for inspection and auditing by any authorized governmental agency, and providing copies of project documents to Foundation upon its request.
- (i) Processing claims made by subcontractors and material suppliers pursuant to Chapter 573 of the Iowa Code, and administering the retainage fund in accordance therewith.

8. Responsibilities of Foundation during Construction. Foundation is not authorized to and shall not direct or instruct DMWW's contractor. Promptly after obtaining knowledge of the same, Foundation will advise DMWW in writing of any issues or concerns with construction of the Phase I Park Improvements so that DMWW may notify the contractor as to the issues. In the event that Foundation or its agents visit the construction site for any reason, they will comply with all applicable laws, regulations, and rules regarding safety in connection with any visit to the construction site, including but not limited to Occupational Safety and Health Administration (OSHA) and the requirements of the DMWW contractor and shall not otherwise interfere with construction of the project.

9. Related Water Main Project. In order to accommodate the Phase I Park Improvements, DMWW will cap out its existing 16-inch water main in Fleur Drive and construct a new 16-inch water main in place of the originally contemplated 8-inch water main needed to supply water to the new facilities being constructed under this Agreement. The estimated cost of the 1,325 foot 16-inch water main with two (2) fire hydrant and 2-inch water service from the water main to the meter setting is \$233,750, whereas the cost of water facilities to accommodate the Phase I Park Improvements is \$116,500. Based upon these cost estimates, Foundation will be responsible for 49.8% of the cost of the new 1,325 foot 16-inch water main, two (2) fire hydrant, and 2-inch water service from water main to stop box and DMWW shall cover the remaining 50.2% of the cost; provided, however, in no circumstance shall the obligation of the Foundation to pay costs under this paragraph 8 exceed \$200,000, without prior written of the Foundation.

## Article IV – Funding and Payments

1. General. Funding hereunder shall be provided by the regular sources of revenue and financing of the parties as required for each party to meet its obligations hereunder. DMWW's funding shall be included in its annual budget. Foundation's funding shall include revenues from its fundraising activities.

2. Expenses. Except as otherwise explicitly provided herein as to reimbursement of DMWW by Foundation, each party shall be solely responsible for funding its own operations and activities hereunder.

3. Cost of Construction. Subject to and in accordance with the terms of this Agreement, Foundation is solely responsible for and shall pay to DMWW the "Actual Costs" of the Phase I Park Improvements, including all DMWW recommended and Foundation approved change orders. The "Actual Costs" of the Phase I Park Improvements shall be the sum of: (i) all contractor progress and final payments made by DMWW under the contracts for the projects that comprise the Phase I Park Improvements and (ii) "DMWW Direct Costs" for the Phase I Park Improvements. "DMWW Direct Costs" shall mean the full cost of design, materials, equipment, and labor, including reasonable benefits and overhead, directly provided by DMWW as reflected in DMWW's final accounting.

4. Estimates and Actual Costs. The total estimated cost of the Phase I Park Improvements set forth in Exhibit B attached hereto is an estimate only and is not guaranteed by DMWW. The Actual Costs incurred shall be paid by Foundation in accordance with the terms of this Agreement.

5. Documentation. DMWW shall provide documentation to Foundation on the request of Foundation evidencing contract award amounts, contractor progress reports, and DMWW Direct Costs as construction and project work progresses and is completed.

6. Payments. Upon award and execution of the first contract for construction of the Phase I Park Improvements, Foundation shall provide DMWW with \$1,000,000 to establish a construction fund within DMWW ("Working Capital Fund"). The Working Capital Fund will be solely utilized to pay the costs associated with project construction under the contracts as awarded, including progress payments to contractors in the ordinary course. If the Working Capital Fund cannot be so used or is not used prior to the termination of this Agreement, the remaining balance of the Working Capital Fund shall be returned to Foundation. Foundation will replenish the Working Capital Fund to a balance of \$1,000,000 throughout the construction process as necessary to fund construction in accordance with the terms of the contracts entered into and administered in accordance with the terms of this Agreement. Such replenishment shall be made within five (5) business days of the later of: (a) the written request of DMWW for replenishment, which shall not occur more than one time each thirty (30) days; or (b) the satisfaction of reasonable requests for supporting materials made by Foundation within five (5) business days of written request of DMWW for replenishment. After final acceptance of the last of the Phase I Park Improvements by

DMWW and Foundation in accordance with the terms of this Agreement, and final payment to the contractors for all such improvements, DMWW will provide to Foundation a full accounting of project costs, including documentation evidencing DMWW's payments to contractors and DMWW Direct Costs. Such amount shall be satisfied out of the fund held by DMWW and any remaining balance shall be returned to Foundation. Foundation shall pay DMWW for any shortfall within thirty (30) days of receipt of the full accounting; provided, however, that Foundation shall have no obligation to pay any amount incurred by DMWW in violation of the terms of this Agreement.

7. Cost of Related Water Main Project. In addition to the payments provided by Article IV, Section 6, Foundation shall pay DMWW 49.8% of the Actual Costs of the Related Water Main Project. DMWW shall invoice Foundation for such costs as incurred and Foundation shall pay such invoices within thirty (30) days of receipt.

8. Programming, Operations and Maintenance. Upon completion of the Phase I Park Improvements, the parties and the City of Des Moines shall be collectively responsible for maintenance of the improvements as set forth in the O&M 28E Agreement and the Passageway 28E Agreement.

#### **Article V – Term, Termination, and Default**

1. Term. This Agreement shall commence on the Effective Date and, unless terminated as provided herein, shall remain in effect through the completion of construction of the Phase I Park Improvements, or until such time as both parties have discharged all of their respective obligations under this Agreement, whichever occurs later. No termination shall affect the rights of the parties as established prior to termination. Within ten (10) business days of the termination of this Agreement and after establishing reasonable reserves for the payment of expenses incurred prior to termination under and in accordance with the terms of this Agreement, amounts remaining in Working Capital Fund shall be returned to Foundation.

2. Declaration of Default and Notice. In the event that either party determines that the other has defaulted in the performance of its obligations hereunder, the aggrieved party may declare that default has occurred and give notice thereof to the defaulting party. Notice of default shall be in writing, shall specify the nature of the default and the provision of the Agreement involved, and shall specify what action is required of the defaulting party to correct the default. The defaulting party shall have thirty (30) days from the date of its receipt of the notice of default to correct the default, if at the end of said 30-day period, the default has not, in the reasonable opinion of the aggrieved party, been corrected, that party may thereupon pursue its remedies as provided in Article V, Section 3 hereof.

3. Remedies Upon Default. In the event of default by one party in its performance of any material provision of this Agreement, the other party may, at its option, after declaring default and giving notice thereof as above provided, terminate this Agreement or seek specific performance of its provisions. The party seeking termination of this Agreement due to default in

performance by the other party shall also be entitled to seek damages for such default. Each party shall, in addition, have all remedies available at law or in equity.

## **Article VI – General Provisions**

1. **Liability; Indemnification.** Each party (“Indemnifying Party”), to the fullest extent permitted by law, hereby agrees to indemnify, defend, pay on behalf of, and hold harmless the other party, and its elected officials, its appointed officials, agents, employees and volunteers, and others working on behalf of such party ( “Indemnities”), against any and all claims, demands, suits, damages or losses, together with any and all outlay and expense connected therewith including, but not limited to, attorneys’ fees and court costs, that may be asserted or claimed against, recovered from or suffered by the Indemnities by reason of any injury or loss arising out of any wrongful act or omission of the Indemnifying Party, including, but not limited to, bodily injury or death, property damage, including loss of use thereof, and economic damages that arise out of or are in any way connected to this Agreement. No party shall have any right of indemnity for damages or claims proximately cause by its own negligent or intentionally wrongful acts. Each party’s agreements and obligations as set forth in this Paragraph are applicable for the duration of and following expiration or termination of this Agreement, regardless of the manner of termination, and notwithstanding other provisions of this Agreement.

2. **Insurance.** Each party shall procure and maintain its own insurance. DMWW shall require all contractors and subcontractors to have and maintain bonds and insurance as set forth in applicable contract documents.

3. **Non-Discrimination.** The parties shall comply with all applicable laws and regulations regarding equal employment opportunity and non-discrimination in access to public facilities and shall not discriminate against any person because of their race, color, creed, religion, sex, age, national origin, disability, sexual orientation, gender identity, or any other basis protected by law.

4. **Notices and Invoices.** All notices, invoices and reimbursement requests which the parties are authorized or required to give one another pursuant to this Agreement shall be in writing and may be personally delivered or sent by ordinary mail to the addresses hereafter provided. Mailed notices and invoices shall be deemed to be received by the party to whom directed when they are postmarked. Such notices and invoices shall be delivered or mailed to the following persons at the addresses listed:

DMWW:  
CEO & General Manager  
Des Moines DMWW  
2201 George Flagg Parkway  
Des Moines, IA 50321

Foundation:  
Executive Director  
Des Moines Water Works Park Foundation  
2201 George Flagg Parkway  
Des Moines, IA 50321

5. Interpretation. If any section, provision or part of this Agreement shall be found to be invalid or unconstitutional, such finding shall not affect the validity of the Agreement as a whole or any section, provision or part thereof not found to be invalid or unconstitutional. Upon any such finding because of scope or breadth, a court of competent jurisdiction in Polk County, Iowa, shall be empowered to reform the provision in order to achieve as nearly as possible the original intent and purpose with a legally permissible scope and breadth.

6. Entire Agreement. This Agreement and the other 28E Agreements referred to herein supersede all oral or written proposals and communications related to this Agreement between the parties. Each party acknowledges that such party has not been induced to enter this Agreement by any representations or statements oral or written, not contained in this Agreement. This Agreement may only be amended by a written instrument signed by authorized representatives of both parties.

7. Governing Law. This Agreement shall be construed, both as to validity and performance, and shall be enforced in accordance with, and governed by, the laws of the State of Iowa.

8. No Partnership, Joint Venture or Joint Authority. Nothing in this Agreement shall be construed as creating or constituting the relationship of partnership, joint venture of any kind or an agent/principal relationship between the parties hereto. No party, unless otherwise specifically provided for herein, has the authority to enter into any agreement or create an obligation or liability on behalf of, in the name of, or binding upon, the other party to this Agreement.

9. Force Majeure. Neither party shall be liable for any failure to perform any or all of the provisions of this Agreement if and to the extent that performance has been delayed or prevented by reason of any cause beyond the reasonable control of such party. The expression "cause beyond the reasonable control" shall be deemed to include, but not be limited to: acts, regulations, laws, or restraints imposed by any governmental body; wars, hostilities, sabotage, riots, or commotions; acts of God; or fires, frost, storms, or lightning.

10. No Waiver. No waiver of any breach of any one of the agreements, terms, conditions or covenants of this Agreement by any party shall be deemed to imply or constitute a waiver of any other agreement, term, condition, or covenant of this Agreement. The failure of any party to insist on strict performance of any agreement, term, condition, or covenant, herein set forth, shall not constitute or be construed as a waiver of the rights thereafter to enforce any other default of such agreement, term, condition, or covenant.

11. No Assignment. This Agreement shall not be sold, assigned, transferred or conveyed in any respect by either party without prior written approval of the other party. This Agreement shall remain binding upon the successors of the parties.

12. Headings. Headings herein are for convenience of reference only and shall in no way affect interpretation of the Agreement.

13. Partial Invalidity. If any provision or provisions of this Agreement shall be held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby. See Article VI, Section 5 regarding potential reformation.

14. Counterparts and No Conflict. This Agreement may be executed in multiple counterparts, each of which so executed shall be deemed to be an original. By Such execution each party represents that it has satisfied all legal requirements to authorize such execution, and that the terms hereof do not irreconcilably conflict with any statute or other contractual obligations of such party.

15. Receipt of Copy. Each of the parties to this Agreement acknowledges receipt of a fully executed copy of this Agreement and all attachments thereto.

**IN WITNESS THEREOF**, the parties have caused this Agreement to be executed in counterparts, each of which shall be considered an original.

**[SIGNATURE PAGES TO FOLLOW]**

DES MOINES WATER WORKS  
PARK FOUNDATION

By: \_\_\_\_\_  
Kate Byus, Board Chairperson

ATTEST:

\_\_\_\_\_  
Sam Carrell, Executive Director

STATE OF IOWA            )  
                                  ) SS:  
COUNTY OF POLK        )

This record was acknowledged before me on \_\_\_\_\_, by  
Kate Byus and Sam Carrell as Board Chairperson and Executive Director, respectively, of Des  
Moines Water Works Park Foundation.

\_\_\_\_\_  
Notary Public in and for the State of Iowa

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

By: \_\_\_\_\_  
Susan R. Huppert, Board Chairperson

ATTEST:

\_\_\_\_\_  
William G. Stowe, CEO and General Manager

STATE OF IOWA    )  
                          )        SS:  
COUNTY OF POLK )

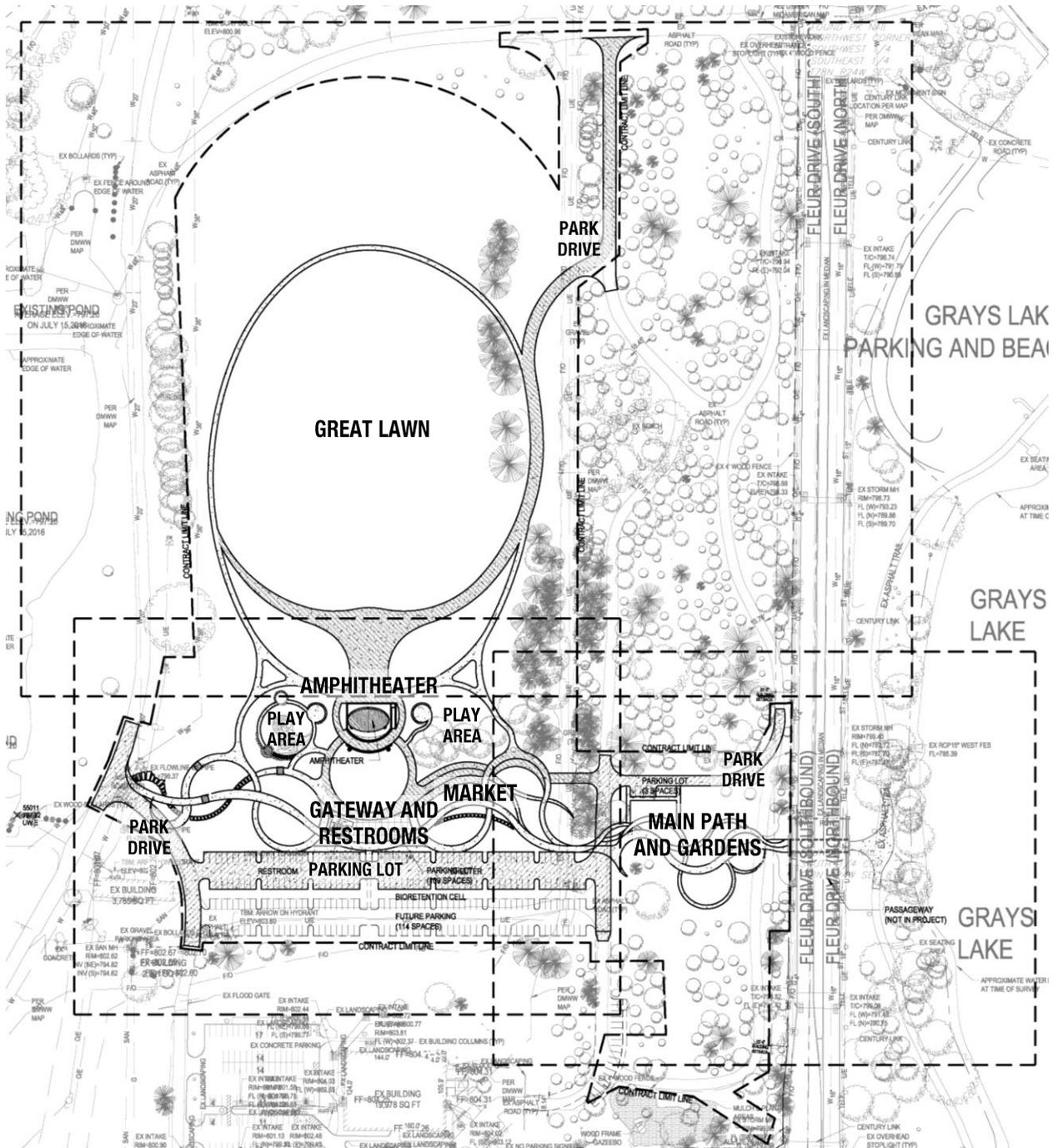
On this \_\_\_\_\_ day of \_\_\_\_\_, 2018, before me, a Notary Public in and for the State of Iowa, personally appeared Susan R. Huppert and William G. Stowe, to me personally known, and, who being by me duly sworn, did say that they are the Board Chairperson and the Chief Executive Officer and General Manager of the BOARD OF WATER WORKS TRUSTEES OF THE CITY OF DES MOINES, IOWA, that no seal has been procured by the entity; that the attached instrument was signed on behalf of the said entity by authority of its Board as contained in the resolution adopted by the Board on the \_\_\_\_ day of \_\_\_\_\_, 2018, and that Susan R. Huppert and William G. Stowe acknowledged the execution of the instrument to be the voluntary act and deed of the BOARD OF WATER WORKS TRUSTEES OF THE CITY OF DES MOINES, IOWA, by it and by them voluntarily executed.

\_\_\_\_\_  
Notary Public in and for the State of Iowa

site plan

**Water Works Park Phase 1 Improvements**

Approved site plan as per Des Moines Water Works Foundation Board of Directors Meeting on November 10, 2017.



## construction cost estimate

### Water Works Park Phase 1 Improvements

*Approved construction cost estimate as per Des Moines Water Works Park Foundation Technical Committee Meeting on January 9, 2018.*

<b>P A R K</b>		
<b>2) MAIN PATH AND GARDENS</b>		\$ 996,161
<b>3) AMPHITHEATER</b>		\$ 1,870,136
<b>4) GREAT LAWN</b>		\$ 838,042
<b>5a) PLAY AREAS - Site Development</b>		\$ 264,868
<b>5b) PLAY AREAS - West Zone</b>		not included
<b>5a) PLAY AREAS - East Zone</b>		not included
<b>6) MARKET</b>		\$ 77,449
<b>7) GATEWAY AND RESTROOMS</b>		\$ 1,113,966
<b>8) PARK DRIVES</b>		\$ 403,470
<b>9) PARKING LOT</b>		\$ 588,813
<b>10) DMWWPF cost share of watermain relocation</b>		\$ 116,500
<b>SUBTOTAL</b>		<b>\$ 6,269,404</b>
<b>CONSTRUCTION CONTINGENCY</b>	8%	\$ 501,552
<b>TOTAL 2018 Dollars</b>		<b>\$ 6,770,956</b>



site plan

**Water Works Park Phase 1 Improvements**

Approved site plan as per Des Moines Water Works Foundation Board of Directors Meeting on November 10, 2017.

