


COUNCIL COMMUNICATION

	Number:	21-398	Meeting:	September 13, 2021
	Agenda Item:	50 A	Roll Call:	21-1445
	Submitted by:	Pamela S. Cooksey, P.E., Assistant City Manager, Steven L. Naber, P.E., City Engineer, Benjamin R. Page, Park & Recreation Director, Jonathan A. Gano, P.E., Public Works Director		

AGENDA HEADING:

Approving 28E Agreement between Central Iowa Water Trails, LLC (CIWT) and City of Des Moines for the Operation and Maintenance of the Regional Water Trail Access Points and Downtown Water Trail Locations

SYNOPSIS:

Recommend approval and authorization to execute the 28E Agreement between CIWT and the City of Des Moines for the Operation and Maintenance of the Regional Water Trail Access Points and Downtown Water Trail Locations.

FISCAL IMPACT:

Amount: \$141,876 calculated annual contribution based on weighted access points (subject to change after Fiscal Year {FY}2022).

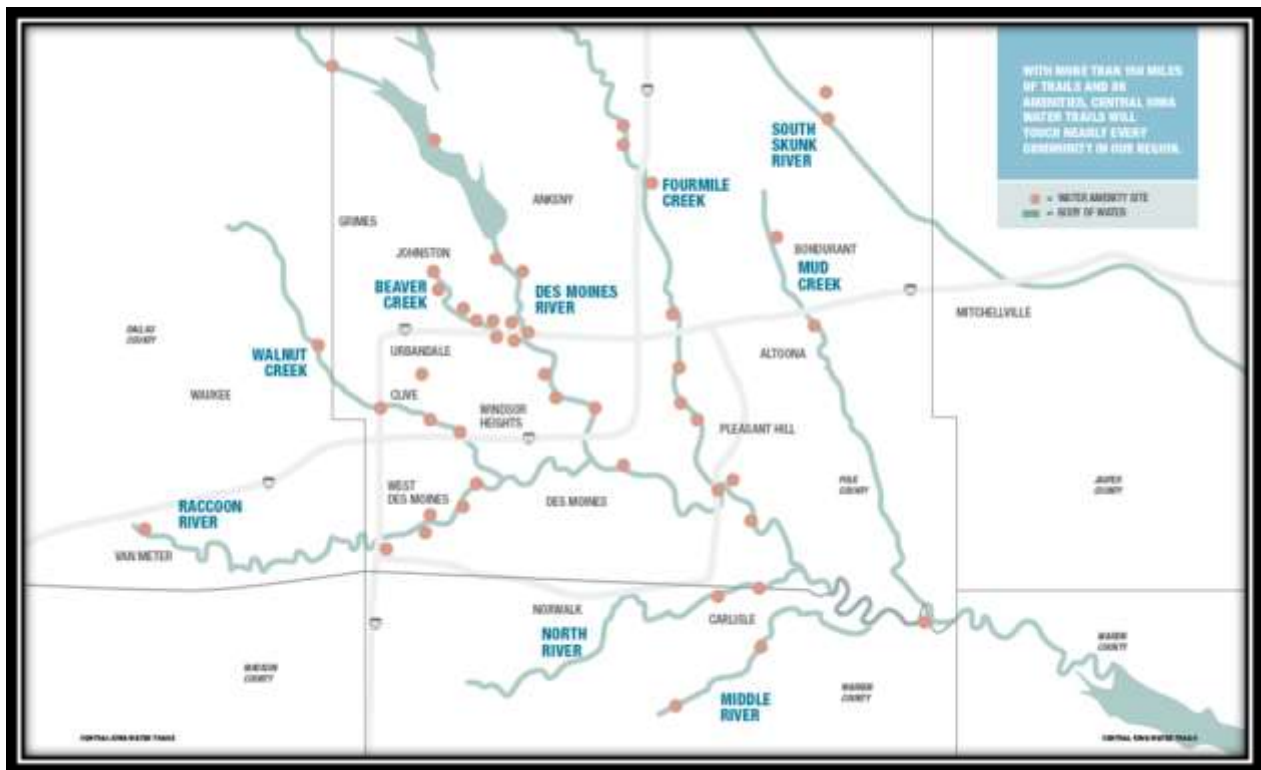
Funding Source: To be included in FY 2022 Amended Operating Budget, Park and Recreation Department, Water Trails, PK200239.

ADDITIONAL INFORMATION:

- The water trail locations in Des Moines include:
 - Des Moines River Improvements - river access improvements at River Place, Prospect Park, Birdland Marina, and Harriet Street.
 - Raccoon River Improvements - river access improvements at 63rd Street.
 - Fourmile Creek - river access improvements at Sargent Park and Fourmile Community Recreation Center.
 - Three (3) dam mitigation sites - located in Des Moines including Center Street, Fleur Drive and Scott Avenue, as presented in 2018 Downtown Des Moines Water Trails Engineering Study.
- The River Place and Fourmile Community Recreation Center access sites are owned and to be operated and maintained by Polk County and Polk County Conservation.

- Annual contributions are for the support of the operating budget of the non-profit entity responsible for operation of the water trail improvements and recreation in accordance with the terms of the 28E Agreement between the City and CIWT. Public jurisdictions provide for 70% of the funding and private contributions provide the remaining 30%. The operating budget includes costs for the insurance, legal, staff, marketing, development services, government affairs, water safety and maintenance.
- The jurisdictional funding formula to support the operating budget is based on three (3) weighted factors:
 1. Population (50%)
 2. Drainage area (25%)
 3. Access points (25%) - Access points are further considered, as follows:
 - Navigable waters: Des Moines & Raccoon Rivers =1
 - Not as large, but still navigable: Beaver Creek, North, Middle and Skunk Rivers = .75
 - Non-navigable waters: Four Mile, Mud & Walnut Creeks = .5
- CIWT has set the first year (FY2022) as a guaranteed commitment. Future annual contributions will be based on the funding formula but the amount will change depending on the number of participating jurisdictions. The 28E Agreement caps the City of Des Moines annual contribution at \$185,000 or 16% of the annual operating budget, whichever is less, and subject to the City's ability to withhold annual funding in the event that CIWT fails to reimburse City for maintenance costs related to the downtown projects described below.
- The annual contributions do not support the downtown projects or maintenance. The downtown locations are defined as: Birdland Marina, Harriet Street, Center Street, Fleur Drive and Scott Avenue. The downtown costs will ultimately be supported by the revenues received by CIWT, as estimated in CIWT's pro forma. Until revenues are in place, the endowment and reserves will be used to support the downtown project costs. The City of Des Moines will perform the landside maintenance at all sites on City-owned or leased property. Cost for maintaining the downtown locations will be tracked by the City and reimbursed by CIWT annually. As noted above, the City will withhold annual contribution to CIWT in the event that the City's maintenance costs are not reimbursed as stated in this paragraph and in the 28E Agreement.
- CIWT is responsible for operation and maintenance of in-water improvements, including the controls and power for mechanical items, excluding docks and walkways providing access to the waterway, and including safety, course directional, and decorative and artistic signage relating to the water trails.
- The City's standard indemnification has been modified in this 28E Agreement to indemnify CIWT for the City's responsibilities regarding funding and maintenance of landside improvements.

- This City Council action includes authorizing the City Manager to: (1) jointly administer the terms of the 28E Agreement; (2) authorize the use of the City's intellectual property, and negotiate and execute a written license for use of the City's trail signage logos and design and/or derivations thereof for water trails signage, subject to approval as to form by the City Legal Department; and (3) consent to assignment of CIWT's interest or rights under the 28E Agreement subject to approval as to form by the City Legal Department.
- CIWT intends to assign all assets, responsibilities and liabilities of CIWT, including all agreements in which the City of Des Moines is a party, to the Iowa non-profit corporation Iowa Confluence Water Trails d/b/a/ ICON. Said assignment will be subject to prior written consent of the City Manager in accordance with the 28E Agreement and this resolution.



PREVIOUS COUNCIL ACTION(S):

Date: May 24, 2021

Roll Call Number: [21-0802](#)

Action: Items related to the Central Iowa Water Trails: Phase I Dam Mitigation and User Access Project:

- (A) [Authorizing](#) notification regarding City participation in the Central Iowa Water Trails System, subject to agreement terms being finalized. ([Council Communication No. 21-235](#)) Moved by Mandelbaum to adopt. Refer to the City Manager to address the cost cap issue in the 28E and review the operational revenue assumptions. Motion Carried 7-0.

BOARD/COMMISSION ACTION(S): NONE

ANTICIPATED ACTIONS AND FUTURE COMMITMENTS:

Future actions will include design and construction of water trail improvements, agreements for concessions and naming and donor recognition.

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