



Date September 13, 2021

**APPROVING 28E AGREEMENT BETWEEN CENTRAL IOWA WATER TRAILS, LLC AND CITY OF DES MOINES FOR THE OPERATION AND MAINTENANCE OF THE CITY OF DES MOINES REGIONAL WATER TRAIL ACCESS POINTS AND DOWNTOWN WATER TRAIL LOCATIONS**

WHEREAS, Central Iowa Water Trails, LLC (CIWT) is an Iowa limited liability company that desires to implement a recreational and dam safety plan for 150 miles of water trails throughout Central Iowa (“Central Iowa Water Trails System”); and

WHEREAS, the following seven proposed improvements (“Water Trail Improvements”) are regional access points located within the corporate city limits of the City of Des Moines, Iowa, as described in the 2018 MPO/ISG Phase I Regional Engineering Studies for Des Moines River, Raccoon River, and Fourmile + Mud Creek:

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; and

WHEREAS, there are three dam modification sites located in Des Moines, including Center Street, Fleur Drive and Scott Avenue, as presented in 2018 Downtown Des Moines Water Trails Engineering Study; and

WHEREAS, the improvement of public amenities and public spaces requires the City and CIWT to coordinate planning, construction, operation and maintenance for landside and in-water improvements, and CIWT and City desire to into a 28E Agreement regarding the operation and maintenance of the Water Trail Improvements, including the funding thereof; and

WHEREAS, on May 24, 2021 by Roll Call No. 21-0802, the City Council authorized notification to CIWT of the City’s intent to participate in the Central Iowa Water Trails System, subject to agreement terms being finalized, and referred the issue to the City Manager to address the cost cap issue in the 28E Agreement and review the operational revenue assumptions; and

WHEREAS, the outstanding items previously noted in the draft 28E Agreement have been resolved and are further described in the attached Council Communication and the proposed 28E Agreement on file in the office of the City Clerk; and



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WHEREAS, as stated in the 28E Agreement, annual contributions from participating communities are required for the support of the operating budget of CIWT, with participating communities to provide up to 70% of the funding and CIWT to provide through private contributions the remaining 30%, and the City's annual contribution is \$141,876 for FY2022 and subject to annual calculation thereafter based on the number and type of access points, drainage area and population, with an annual cap of the lesser of \$185,000.00 or 16% of the CIWT budget 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 specified improvements; and

WHEREAS, additional terms of the 28E Agreement include duration of said Agreement until December 31, 2050, subject to earlier termination options; the requirement that the City perform routine maintenance of landside improvements owned and/or under the control and management of the City; indemnification and insurance requirements of CIWT, and of the City to indemnify CIWT for the City's responsibilities regarding funding and maintenance of landside improvements; and conditions to allow the City Manager to approve assignment by CIWT to third parties of CIWT's rights and obligations under the Agreement; and

WHEREAS, Iowa Code Chapter 28E allows any public agency in Iowa, including municipalities, to enter into agreements with public or private agencies for joint or cooperative action with respect to any power, privilege or authority exercised or capable of being exercised by the public agency.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Des Moines, Iowa, that the above described 28E Agreement Between the Central Iowa Water Trails, LLC and City of Des Moines for the Operation and Maintenance of the City of Des Moines Regional Water Trail Access Points and Downtown Water Trail Locations, in form on file with the City Clerk, is hereby approved; the Mayor is authorized and directed to sign on behalf of the City; and the City Clerk is directed to attest to his signature and file the executed 28E Agreement with the Secretary of State.

BE IT FURTHER RESOLVED that the City Manager or his designee is authorized and directed to jointly administer the terms of the 28E Agreement with the Central Iowa Water Trails, LLC or designee.

BE IT FURTHER RESOLVED that the City Manager is authorized as described within the 28E Agreement to authorize the use of the City's intellectual property, and has authority to 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 subject to the City Manager's determination of appropriateness regarding the best interests of the City.



**Roll Call Number**

Agenda Item Number

50A

Date September 13, 2021

BE IT FURTHER RESOLVED that the City Manager, on behalf of the City, is authorized to provide written consent, including appropriate terms, for the total or partial assignment of CIWT's responsibilities and liabilities under the 28E Agreement, in accordance with the conditions of the 28E Agreement and subject to the approval as to form by the Legal Department.

BE IT FURTHER RESOLVED that the City Manager or his designee is authorized and directed to approve payment of the City's annual contribution to CIWT as described in the 28E Agreement and the Finance Department is authorized to make such payment.

(City Council Communication Number 21-398 attached)

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

FORM APPROVED: /s/ Ann DiDonato (by GKF)  
Ann DiDonato  
Assistant City Attorney

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE				
BOESEN				
GATTO				
GRAY				
MANDELBAUM				
VOSS				
WESTERGAARD				
TOTAL				
MOTION CARRIED		APPROVED		

**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.

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
City Clerk