



Date September 13, 2021

APPROVING AGREEMENT REGARDING BUILD GRANT TO THE DES MOINES AREA METROPOLITAN PLANNING ORGANIZATION BETWEEN THE CITY OF DES MOINES, THE DES MOINES AREA METROPOLITAN PLANNING ORGANIZATION, CENTRAL IOWA WATER TRAILS, LLC AND POLK COUNTY CONSERVATION, AND RECEIVING AND FILING PROJECT PLANS AND SPECIFICATIONS

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

WHEREAS, the Des Moines Area Metropolitan Planning Organization (MPO) applied for and was awarded a federal Better Utilizing Investments to Leverage Development Transportation Discretionary Grants Program grant (BUILD Grant) in an amount not to exceed \$25,000,000 for the first phase of a multi-phased project that will modify a low-head dam at Scott Avenue to help facilitate a water recreational trail, and enhance access points at Prospect Park, Birdland Marina and Harriet Street along the Des Moines River within the City of Des Moines (“Project”); and

WHEREAS, the BUILD Grant Agreement is between the United States Department of Transportation (USDOT), Iowa Department of Transportation (IDOT), as the recipient, and the MPO, as the first-tier recipient; and

WHEREAS, the MPO has worked with the CIWT on the development and design of the Project; and

WHEREAS, following the BUILD Grant award, City staff have been included in design coordination with CIWT and its consultants for all proposed water trail improvement sites, with the exception of the Des Moines River, located on City owned or leased property; and

WHEREAS, Project construction is estimated to cost approximately \$40 million, with up to 80%, not to exceed \$25 million, of the construction cost being funded by the BUILD Grant, \$550,000 of IDOT Surface Transportation Block Grant funds, and remaining funding from CIWT through donations and local contributions; and

WHEREAS, the City and CIWT have entered into a 28E Agreement on September 13, 2021 by Roll Call 21-_____ that addresses the governance, operation, maintenance of the Project improvements located on City-owned or leased property; and

WHEREAS, CIWT and MPO have provided Project construction plans and specifications for review by City staff, which plans and specifications are recommended for approval subject to



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resolution of outstanding comments as set forth in the City Engineer communication attached hereto; and

WHEREAS, the CIWT's planned water recreation at Scott Avenue necessitates changes to fishing areas on the Scott Avenue Bridge that are being further considered and reviewed with the Iowa Department of Natural Resources; and

WHEREAS, the City, MPO, CIWT and Polk County Conservation (PCC) have negotiated an Agreement Regarding USDOT BUILD Grant to the Des Moines Area Metropolitan Planning Organization ("BUILD Grant Agreement"), in form on file in the office of the City Clerk, which Agreement provides the terms for the BUILD Grant implementation to be undertaken by MPO, project design and construction to be undertaken by CIWT and MPO respectively, operations to be undertaken by CIWT, maintenance to be undertaken by CIWT through separate contract with PCC for a 20-year period, City financial contribution, and other project obligations of all parties; and

WHEREAS, among other terms, the BUILD Grant Agreement includes:

- Contract duration through Council acceptance of the Project improvements located on City-owned or leased property, subject to earlier termination options;
- Conditions to allow the City Manager to approve assignment by CIWT to third parties of CIWT's rights and obligations under said Agreement;
- Grant of access to City property and infrastructure to MPO, its contractor and subcontractor, Polk County, PCC, CIWT, and their respective contractors and consultants, and state and federal agencies for construction of the Project on City-owned and leased property and modifications to City infrastructure, City project construction (levee), construction of project improvements consistent with the City-approved plans and specifications, and for maintenance and operation of the water trail improvements, subject to lease terms for City-leased property at Prospect Park;
- City funding contribution as a portion of the non-federal match for the BUILD Grant totaling \$6,000,000 over fiscal years 2022-2026, subject to City Council budget approvals, construction deadlines, and compliance with Iowa Code Chapters 26 and 573 and the BUILD Grant Agreement, and City funding of stormwater box repair at the Scott Avenue Dam being completed during Project construction;
- City ownership of the Project improvements located or constructed landside on City-owned or controlled property, excluding those within the Des Moines River, power/controls for in-water improvements, and specified signage, and modifications or attachments to the Scott Avenue Dam;
- City ability to remove, dispose of, complete construction of, or retain and use the Project improvements in the event of termination of the Agreement;



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- Indemnification provided by CIWT and MPO to the City, and provided by the City to CIWT for the City’s responsibilities regarding funding and maintenance of landside improvements;
- Copyright licenses for design and design documents, and design warranty and indemnification, to be provided from CIWT design consultants to the City; and
- Insurance and indemnification requirements and copyright license to construction documents to be provided from MPO construction contractor to the City.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Des Moines, Iowa, that the above described Agreement Regarding USDOT BUILD Grant to the Des Moines Area Metropolitan Planning Organization between the City of Des Moines, the Des Moines Area Metropolitan Planning Organization, Central Iowa Water Trails, LLC, and Polk County Conservation, in form on file in the office of the City Clerk, is hereby approved; the Mayor is authorized and directed to sign said Agreement on behalf of the City; and the City Clerk is directed to attest to his signature.

BE IT FURTHER RESOLVED that the plans and specifications, in form on file in the office of the City Engineer, are hereby received and filed, and the City Engineer is authorized to review said plans and specifications, and all non-substantive revisions thereto, and to consider approval of said plans and specifications for the above-described Project, subject to resolution of outstanding comments provided by City staff, and further directed to return substantive revisions to City Council to receive and file prior to City Engineer approval.

BE IT FURTHER RESOLVED that the City will never have been deemed to approve or consent to any plans and specifications that degrade or harm any Des Moines Metropolitan Wastewater Reclamation Authority or City improvements or facilities, or that reduce the quality of the final improvements. The City will never be deemed to approve or consent to a waiver of any provisions of the plans and specifications or to have consented or authorized the use of defective workmanship or materials.

BE IT FURTHER RESOLVED that the City Manager or his designee is directed to return to City Council with appropriate ordinance(s) and rules for consideration to regulate fishing at Scott Avenue in accordance with Iowa Department of Natural Resources requirements.

BE IT FURTHER RESOLVED that the City Manager or his designee is authorized and directed to administer the terms of the Agreement, and monitor compliance therewith by the City and other parties thereto, on behalf of the City of Des Moines.

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



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CIWT's responsibilities and liabilities under the BUILD Grant Agreement, in accordance with the conditions of the BUILD Grant Agreement and subject to the approval as to form by the Legal Department.

BE IT FURTHER RESOLVED that the City Manager is directed to submit final Project improvements to the City Council for acceptance following construction and in accordance with the terms of the BUILD Grant Agreement, subject to payment in full by MPO of tree mitigation costs prior to such submission to Council.

(City Council Communication Number 21-399 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				

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.

MOTION CARRIED APPROVED

Mayor

City Clerk