

Date September 12, 2022

RESOLUTION APPROVING FIRST AMENDMENT TO 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

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 (USDOT 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 were 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, the City and CIWT have entered into a 28E Agreement on September 13, 2021 by Roll Call 21-1445 that addresses the governance, operation, maintenance of the Project improvements located on City-owned or leased property; and

WHEREAS, on September 13, 2021, by Roll Call No. 21-1446, the City further entered into an Agreement Regarding USDOT BUILD Grant to the Des Moines Area Metropolitan Planning Organization (“BUILD Grant Agreement”) by and between the City, CIWT, MPO, and Polk County Conservation (PCC), addressing 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, following approval of said Agreements, the Project was unsuccessfully bid twice which led to amendment of the USDOT BUILD Grant Agreement that provides an updated construction estimate of approximately \$48 million for Phase 1 of the Project that includes Scott Avenue Dam (In-



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Water), Scott Avenue Dam (Uplands) and Harriet Street Access, with up to 80%, not to exceed \$25 million, of the construction cost being funded by the BUILD Grant for the Scott Avenue Dam (In-Water) portion of the Project only; \$550,000 of Surface Transportation Block Grant funds; remaining funding from CIWT through donations and local contributions; to delay commencement and completion dates for all portions of the Project; and

WHEREAS, the BUILD Grant Agreement must now be amended to address said proposed changes, including clarifying timing of access allowed to City property, modifications to the funding schedule and Project completion requirements for payment to be made by the City to CIWT, explanation of tree mitigation requirements, and providing for potential use of multiple construction contracts by the MPO for the Project and phases thereof, all as further described in the accompanying Council Communication; and

WHEREAS, the City Manager's Office has negotiated terms of a First Amendment to the BUILD Grant Agreement, on file in the office of the City Clerk, to revise said Agreement as described above.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Des Moines, Iowa, that:

1. The First Amendment to the BUILD Grant Agreement by and between the City, CIWT, MPO, and PCC, is hereby approved, and the Mayor is authorized and directed to execute said Amendment on behalf of the City of Des Moines and the City Clerk to attest to his signature.
2. The City Manager is hereby authorized and directed to administer the BUILD Grant Agreement on behalf of the City and to monitor compliance by the other parties thereto with the terms and conditions of the Agreement, as amended. The City Manager is further directed to forward to City Council all matters and documents that require further City Council review and approval in accordance with the BUILD Grant Agreement, as amended.

(Council Communication No. 22-392)

MOVED BY _____ TO ADOPT.

SECOND BY _____.

APPROVED AS TO FORM:

/s/ Glenna K. Frank

Glenna K. Frank, Assistant City Attorney

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE				
BOESEN				
GATTO				
SHEUMAKER				
MANDELBAUM				
VOSS				
WESTERGAARD				
TOTAL				

MOTION CARRIED

APPROVED

Mayor

CERTIFICATE

I, Laura Baumgartner, 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.

City Clerk