



Roll Call Number

21-1456

Agenda Item Number

7

Date October 4, 2021

AUTHORIZATION TO APPROVE AND AUTHORIZE ADDENDUM TO IOWA DEPARTMENT OF TRANSPORTATION (IDOT) AGREEMENT 2020-R-014 FOR A REVITALIZE IOWA’S SOUND ECONOMY (RISE) PROJECT AND RELATED AGREEMENT BETWEEN THE CITY OF DES MOINES AND DES MOINES AIRPORT AUTHORITY FOR THE COWLES DRIVE RECONSTRUCTION PROGRAM (PHASES 2 AND 3) AT THE DES MOINES INTERNATIONAL AIRPORT

WHEREAS, the City Council of Des Moines, Iowa agreed to assist the Des Moines Airport Authority in obtaining a grant to support the Authority’s Cowles Drive Reconstruction – Phase 1 Project (“Phase 1 Project”) by acting as applicant for an Iowa Department of Transportation (“IDOT”) Revitalize Iowa’s Sound Economy (“RISE”) grant; and

WHEREAS, the Phase 1 Project included the relocation of the main terminal entrance onto Cowles Drive from Fleur Drive to the south, which would allow both entry and exit lanes to be controlled by one reconfigured traffic signal. A dedicated right turn lane was constructed from southbound Fleur Drive onto Cowles Drive and included site grading, pavement, and utilities; and

WHEREAS, on January 27, 2020, by Roll Call No. 20-0131, the City Council endorsed the Cowles Drive Reconstruction Project and approved an application for a RISE grant and on April 14, 2020, the IDOT approved the application for a RISE grant pursuant to Transportation Order No. PPM-2020-63) and awarded \$4,862,344 to the Des Moines Airport Authority for Phase 1 of the Cowles Drive Reconstruction Program; and

WHEREAS, on July 13, 2020, by Resolution No. 20-1087 the City Council authorized entering into an Iowa Department of Transportation Agreement for a Revitalize Iowa’s Sound Economy Program (RISE) Project, as Sponsor, with the Authority as Recipient and on June 9, 2020, by Resolution No. A20-074 the Authority authorized entering into the Iowa Department of Transportation Agreement for a Revitalize Iowa’s Sound Economy Program Project; and

WHEREAS, on August 3, 2020, the Authority and the City entered into an Agreement Regarding the Iowa Department of Transportation RISE Grant to the Des Moines Airport Authority regarding Cowles Drive – Phase 1; and

WHEREAS, the City Council of Des Moines, Iowa agreed to assist the Authority in obtaining a grant to support the Authority’s roadway portion of the Cowles Drive Reconstruction – Phase 2 & 3 Project (hereinafter “Phase 2/3 Project”) by acting as applicant for an IDOT RISE grant on January 25, 2021, by Roll Call Number 21-0070, by the City Council endorsing the Phase 2/3 Project and approved submission of an application for an IDOT RISE grant; and

WHEREAS, on June 8, 2021, the IDOT approved the Addendum to the RISE grant pursuant to Transportation Commission Order No. PPM-2021-91 and the IDOT awarded \$4,862,344 to the Des Moines Airport Authority for Phases 2 and 3 of the Cowles Drive Reconstruction Program; and



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WHEREAS, pursuant to the Iowa Department of Transportation Agreement for a RISE Project and Addendum, the City is the Sponsor and is deemed the party making the application for funds for the project and the Authority is the Recipient and shall be the lead organization for carrying out and complying with its provisions.

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

1. The attached addendum to Iowa Department of Transportation Agreement 2020-R-014 for a Revitalize Iowa's Sound Economy Program (RISE) Project is hereby approved and the Mayor is authorized and directed to execute the agreement.
2. The attached Agreement between the City and Authority is hereby approved, and the Mayor is authorized and directed to execute the agreement.
3. The Des Moines Airport Authority will assume responsibility for the roadway identified in the RISE application and will be responsible for adequately maintaining such roadway.
4. The City Manager or his designees are hereby authorized and directed to administer the Agreements on behalf of the City and to monitor compliance with the terms and conditions of the Agreement.

Council Letter Number 21-415 attached)
Gatto

Moved by _____ to adopt.

FORM APPROVED: s/Kathleen Vanderpool

Kathleen Vanderpool
Deputy City Attorney

SLN
PW

Funding Source: Airport Authority

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE	✓			
BOESEN	✓			
GATTO	✓			
GRAY	✓			
MANDELBAUM	✓			
VOSS	✓			
WESTERGAARD	✓			
TOTAL	7			
MOTION CARRIED		APPROVED		
<i>J. M. Franklin Cownie</i> Mayor				

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.

P. Kay Cmelik

City Clerk

**Addendum to
Iowa Department of Transportation
Agreement 2020-R-014 for a
Revitalize Iowa's Sound Economy Program (RISE) Project**

SPONSOR: City of Des Moines
RECIPIENT: Des Moines Airport Authority
PROJECT NO: RM-1945(854)—9D-77 and additional
project numbers added to Paragraph 3
IOWA DOT AGREEMENT NO.: 2020-R-014
ADDENDUM NUMBER: 2020-R-014-1

This is an addendum to the agreement between, City of Des Moines, Iowa (hereinafter referred to as Sponsor); Des Moines Airport Authority (hereinafter referred to as Recipient); and the Iowa Department of Transportation (hereinafter referred to as the DOT). The Sponsor and Recipient submitted an application to the DOT for funding through the Revitalize Iowa's Sound Economy (RISE) fund under Iowa Code Chapter 315 (2003), and the application was approved by Transportation Commission Order No. PPM-2020-63 on April 14, 2020.

Whereas the Sponsor, Recipient and the DOT previously entered into Agreement No. 2020-R-014 for the above referenced project.

Subsequent to the execution of Agreement No. 2020-R-014 it was determined that additional roadway improvements were desired to provide improved access to the Des Moines International Airport. The Sponsor and Recipient requested that the project description associated with Agreement No. 2020-R-014 be revised to include these additional roadway improvements and additional funds be awarded for these additional improvements. It is the intent of all parties that the Sponsor is deemed the party making the application for funds for the project pursuant to Iowa Code section 315.5. The Recipient is responsible for all other obligations. The Recipient will commit to completing the entirety of the roadway improvements presented to the Iowa Transportation Commission as associated with Agreement No. 2020-R-014, as shown in Revised Exhibit A attached hereto. Previously executed Agreement No. 2020-R-014 shall remain in effect except as amended herein.

Now, therefore, it is agreed as follows:

1. The Recipient requested to amend the eligible project scope for Agreement No. 2020-R-014. The amendment was approved by Transportation Commission Order No. PPM-2021-91 on June 8, 2021.
2. The effective date of Agreement No. 2020-R-014 remains April 14, 2020.
3. Exhibit A of Agreement No. 2020-R-014 is stricken and replaced with "Revised Exhibit A" attached hereto and by this reference incorporated into this agreement addendum.

4. Exhibit D of Agreement No. 2020-R-014 is stricken and replaced with “Revised Exhibit D” attached hereto and by this reference incorporated into this agreement addendum.
5. Paragraph 3 of Agreement No. 2020-R-014 is stricken and replaced with the following:

The Recipient shall be responsible for the development and completion of the following described projects to provide improved access to the expanded Des Moines International Airport terminal for airport purposes:

RM-1945(854)--9D-77: Assist in roadway improvements to relocate the main Des Moines International Airport commercial terminal entrance onto Cowles Drive including turn lanes on Fleur Drive located on the southwest side of town. See Revised Exhibit A.

RM-1945(861)--9D-77: Provide additional roadway improvements for the future terminal main entrance. See Exhibit A-1.

Recipient shall be responsible for meeting all requirements in all exhibits incorporated into this agreement. Sponsor shall not be obligated to begin or complete the project or remedy any breach of this Agreement by Recipient.

6. Paragraph 4 of Agreement No. 2020-R-014 is stricken and replaced with the following:

Eligible project costs for the project scope associated with each individual project number described in Section 3 of this agreement, listed above, which are incurred after the effective date of this agreement shall be paid as follows:

RM-1945(854)--9D-77:	
RISE Funds (City):	\$1,456,002
Recipient Local Contribution:	\$1,456,001
Project Total:	\$2,912,003

RM-1945(861)--9D-77:	
RISE Funds (City):	\$4,862,344
Recipient Local Contribution:	\$4,862,344
Project Total:	\$9,724,688

Advanced eligibility to incur costs prior to a funding commitment by the Transportation Commission was granted for preliminary design in accordance with Administrative Rule 761-163.9(315). This approval was approved as of December 20, 2019 for RM-1945(854)--9D-77 and December 8, 2020 for RM-1945(861)--9D-77.

7. Paragraph 6 of Agreement No. 2020-R-014 is stricken and replaced with the following:

The portion of total project costs paid by RISE grant shall not exceed the amounts stated in Section 4 of this agreement for each project scope associated with each project number identified in Section 3 of this agreement or 50 percent of the total cost of the eligible items for each individual project scope, whichever is the smaller amount. Any cost overruns for each project scope associated with each project number shall be paid solely by the applicant.

8. Exhibit A-1 is attached hereto and by this reference is incorporated into this agreement.
9. This addendum is not assignable without the prior written consent of the DOT.
10. If any part of this addendum is found to be void and unenforceable, the remaining provisions of this addendum shall remain in effect.
11. It is the intent of both parties that no third party beneficiaries be created by this addendum.
12. This addendum shall be executed and delivered in two or more copies, each of which so executed and delivered shall be deemed to be an original and shall constitute but one and the same addendum.
13. This addendum, as well as the unaffected provisions of previously executed Agreement No. 2020-R-014 referenced herein, constitute the entire agreement between the DOT and the Recipient concerning this project. Representations made before the signing of this addendum are not binding, and neither party has relied upon conflicting representations in entering into this addendum. Any change or alteration to the terms of this addendum shall be made in the form of a subsequent addendum. The addendum shall become effective only upon written approval of the DOT and the Recipient.

IN WITNESS WHEREOF, each of the parties hereto has executed Addendum No. 2020-R-014-1 as of the date shown opposite its signature below.

CITY OF DES MOINES, IOWA

By: T.M. Franklin Gornie Date 10/4, 2021
Title: Mayor

CERTIFICATION:

I, T.M. Franklin Gornie, certify that I am the Clerk of the city, and that
(Name of City Clerk)
P. Kay Cmelik, who signed said Agreement for and on behalf of
(Name of Mayor/Signer Above)

the city was duly authorized to execute the same by virtue of a formal resolution duly passed and adopted by the city, on the 4th day of October, 2021.

Signed: P. Kay Cmelik
City Clerk of City of Des Moines, Iowa.

Recipient: DES MOINES AIRPORT AUTHORITY

By: Kenneth J. Foley Date 08/23/2021
Title: Executive Director

CERTIFICATION:

IOWA DEPARTMENT OF TRANSPORTATION
Planning, Programming and Modal Division
800 Lincoln Way, Ames, Iowa 50010

By: _____ Date _____, 20____
Craig Markley
Director, Systems Planning Bureau

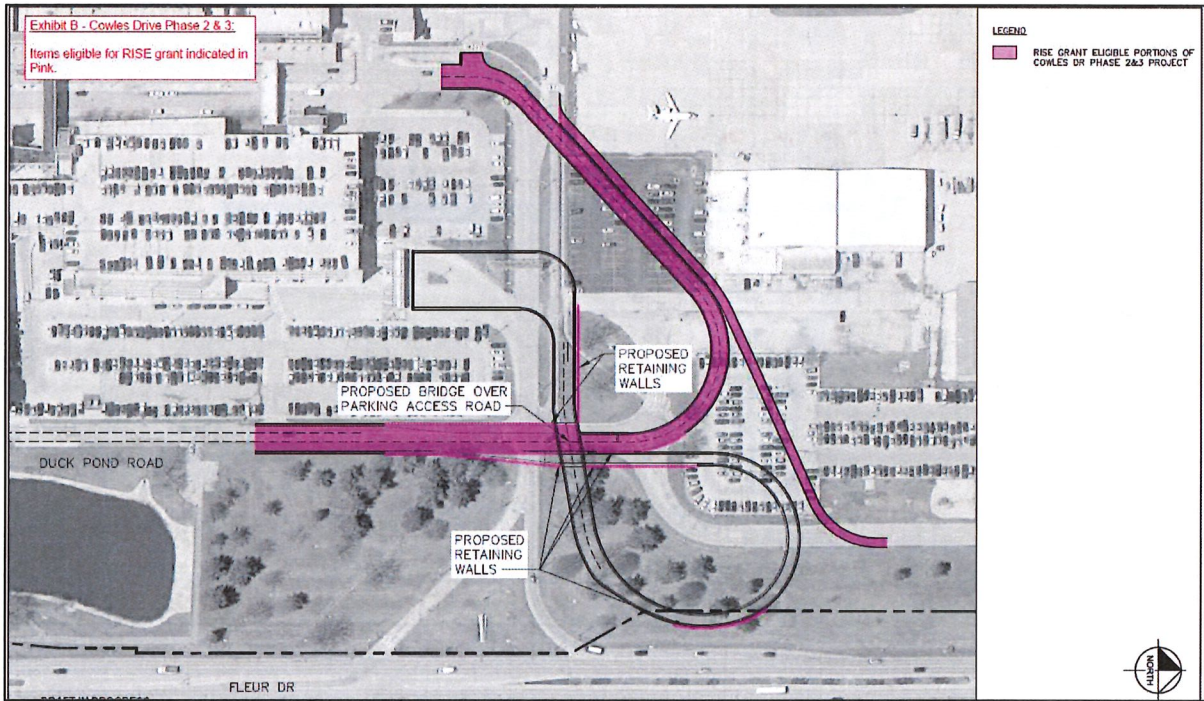
Revised Exhibit A

Project Development Map RM-1945(854)--9D-77:



Exhibit A-1

Project Development Map RM-1945(861)--9D-77:



Revised Exhibit D

Project Implementation Schedule:

RM-1945(854)--9D-77

Commission Approval Date: April 14, 2020

Construction: July 2020

Project Completion: May 2021

RM-1945(861)--9D-77

Commission Approval Date: June 8, 2021

Construction: April 2022

Project Completion: December 2022

Agreement 2020-R-2014 Closeout: Estimated Fall 2030

**AGREEMENT REGARDING IOWA DEPARTMENT OF TRANSPORTATION RISE
GRANT TO THE DES MOINES AIRPORT AUTHORITY**

Between

The City of Des Moines and the Des Moines Airport Authority

Cowles Drive – Phase 2 & 3

PREAMBLE

THIS AGREEMENT (hereinafter "Agreement") is made and entered into, effective on the date herein provided, by and between the City of Des Moines, Iowa, a municipal corporation organized and existing under the laws of the State of Iowa (hereinafter "CITY"); and the Des Moines Airport Authority, an aviation authority created pursuant to Iowa Code Chapter 330A (hereinafter "AUTHORITY").

WHEREAS, the City Council of Des Moines, Iowa agreed to assist the Des Moines Airport Authority in obtaining a grant to support the AUTHORITY'S Cowles Drive Reconstruction – Phase 1 Project ("Phase 1 Project") by acting as applicant for an Iowa Department of Transportation ("IDOT") Revitalize Iowa's Sound Economy ("RISE") grant; and

WHEREAS, the Phase 1 Project included the relocation of the main terminal entrance onto Cowles Drive from Fleur Drive to the south, which would allow both entry and exit lanes to be controlled by one reconfigured traffic signal. A dedicated right turn lane was constructed from southbound Fleur Drive onto Cowles Drive and included site grading, pavement, and utilities; and

WHEREAS, on January 27, 2020, by Roll Call No. 20-0131, the City Council endorsed the Cowles Drive Reconstruction Project and approved an application for an Iowa Department of Transportation ("IDOT") RISE grant and on April 14, 2020, the IDOT approved the application for a RISE grant pursuant to Transportation Order No. PPM-2020-63; and

WHEREAS, on July 13, 2020, by Resolution No. 20-1087 the City Council authorized entering into an Iowa Department of Transportation Agreement for a Revitalize Iowa's Sound Economy Program (RISE) Project, as Sponsor, with the AUTHORITY as Recipient; and

WHEREAS, on June 9, 2020, by Resolution No. A20-074 the AUTHORITY authorized entering into the Iowa Department of Transportation Agreement for a Revitalize Iowa's Sound Economy Program (RISE) Project; and

WHEREAS, on August 3, 2020, the AUTHORITY and the CITY entered into an Agreement Regarding the Iowa Department of Transportation RISE Grant to the Des Moines Airport Authority regarding Cowles Drive – Phase 1; and

WHEREAS, the City Council of Des Moines, Iowa has agreed to assist the AUTHORITY in obtaining a grant to support the AUTHORITY'S roadway portion of the Cowles Drive Reconstruction – Phase 2 & 3 Project (hereinafter "Phase 2/3 Project") by acting as applicant for an Iowa Department of Transportation ("IDOT") Revitalize Iowa's Sound Economy ("RISE") grant and on January 25, 2021, by Roll Call Number 21-0070, the City Council endorsed the Phase 2/3 Project and approved submission of an application for an IDOT RISE grant; and

WHEREAS, the Phase 2/3 Project is to provide additional roadway improvements for the future terminal main entrance as shown on Exhibit A-1 of Attachment 1 and includes the construction of a multi-lane one-way roadway and loop ramp to access parking that goes under Duck Pond road and enters the proposed parking garage, as well as transitions to provide access to the future and current airport terminal. The Project will include reconstruction of portions of Cowles Drive and Duck Pond Road to provide improved access to a future proposed new air terminal. Specific construction improvements as part of this work will include site grading, excavation, pavement, removal and reconstruction, pavement markings, curb and gutter, bridge and culvert underpass, retaining walls, sanitary and water utility removal/relocation, storm sewer installation, sidewalks, traffic control signage; and

WHEREAS, on June 8, 2021, the IDOT approved the Addendum to the RISE grant pursuant to Transportation Commission Order No. PPM-2021-91; and

WHEREAS, the IDOT, the CITY, and the AUTHORITY are prepared to enter into an Addendum to the Iowa Department of Transportation Agreement 2020-R-014 for a Revitalize Iowa's Sound Economy Program (RISE) Project for the Phase 2/3 Project, a copy of which is attached hereto as Attachment 1, and by this reference made a part of this Agreement (hereinafter "Addendum"); and

WHEREAS, the Phase 2/3 Project is estimated to cost \$11,455,625 with 50% of the eligible project cost being funded by RISE funds and the remaining project costs to be funded by the AUTHORITY; and

WHEREAS, pursuant to the Iowa Department of Transportation Agreement for a Revitalize Iowa's Sound Economy Program (RISE) Project and Addendum (hereinafter collectively "IDOT Agreement"), the CITY is the Sponsor and is deemed the party making the application for funds for the project and the AUTHORITY is the Recipient and shall be the lead organization for carrying out and complying with its provisions.

NOW, THEREFORE, the CITY and the AUTHORITY do hereby agree as follows:

Section 1. General Requirements & Responsibilities

1. The AUTHORITY acknowledges that it could not apply for or enter into the IDOT Agreement without the CITY acting as Applicant and that it is the intention of the AUTHORITY to ensure that the CITY incurs no costs or liability to the CITY as a result of the CITY's action in applying for the grant in entering into the IDOT Agreement or from the Phase 2/3 Project.

2. The AUTHORITY hereby agrees to be responsible for all costs of the Phase 2/3 Project and agrees to reimburse the CITY for costs that the CITY incurs in the performance and administration of the IDOT Agreement. This agreement and responsibility include the AUTHORITY's obligations under sections 4-10 of the IDOT Agreement and any additional costs incurred by the CITY.

3. The CITY agrees that any funds it receives pursuant to the IDOT Agreement from the IDOT shall be paid to the AUTHORITY after offsetting any costs that the AUTHORITY owes the CITY pursuant to this Agreement.

4. The AUTHORITY agrees to perform all its obligations under the IDOT Agreement, including any amendments and addendums to the IDOT Agreement. If the AUTHORITY breaches the IDOT Agreement and the breach results in any costs or damages awarded against or incurred by the CITY, the AUTHORITY agrees to reimburse those costs or damages to the CITY.

5. In the event that the IDOT Agreement or any of its provisions are nullified or set aside by a court or by agreement resulting in any costs or damages or reimbursements awarded against the CITY, the AUTHORITY agrees to pay those costs or damages or reimbursements or if the CITY has paid them, then to immediately reimburse the CITY for those costs or damages or reimbursements.

6. The AUTHORITY shall defend, indemnify, and hold the CITY, its elected and appointed officials, and its agents, employees and volunteers, harmless from and against all claims, demands, actions, suits, judgments, losses, or damages including attorney fees arising out of the IDOT Agreement or the Phase 2/3 Project.

7. The AUTHORITY will pay all legal costs, including attorney fees, that the CITY incurs in enforcing the CITY's rights under this Agreement.

8. This Agreement is effective upon approval and acceptance by the City Council of the City of Des Moines.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their proper officers, duly authorized, therefore.

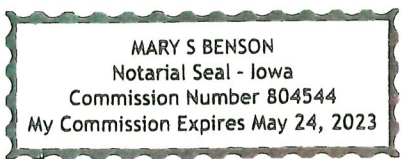
DES MOINES AIRPORT AUTHORITY

Mark Feldmann
Mark Feldmann, Board Chairperson

STATE OF IOWA)
) ss:
COUNTY OF POLK)

On this 14th day of September, 2021, before me, the undersigned, a Notary Public in and for the State of Iowa, personally appeared MARK FELDMANN, to me personally known, who being by me duly sworn, did say that he is a BOARD CHAIRPERSON of the DES MOINES AIRPORT AUTHORITY, that the seal affixed to the foregoing instrument is the seal of the corporation; that the instrument was signed and sealed on behalf of the corporation, by authority of its Board of Directors, and MARK FELDMANN acknowledged the execution of the instrument to be the voluntary act and deed of the corporation, by it and by her voluntarily executed.

Mary S. Benson
Notary Public in the State of Iowa



CITY OF DES MOINES, IOWA

T. M. Franklin Cownie
T. M. Franklin Cownie, Mayor

ATTEST:

P. Kay Cmelik
P. Kay Cmelik, City Clerk

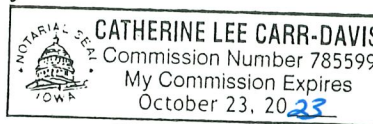
APPROVED AS TO FORM:

Kathleen Vanderpool
Kathleen Vanderpool, Deputy City Attorney

STATE OF IOWA)
) ss:
COUNTY OF POLK)

On this 4th day of October, 2021, before me, the undersigned, a Notary Public, personally appeared T. M. Franklin Cownie and P. Kay Cmelik to me personally know, who, being by me duly sworn, did state that they are the MAYOR and CITY CLERK, respectively, of the City of Des Moines, Iowa; that the seal affixed to the foregoing instrument is the seal of the corporation, and that the instrument was signed and sealed on behalf of the corporation, by authority of its City Council as contained in the Resolution adopted under Roll Call No. 21-1456 dated October 4, 2021, and that T. M. Franklin Cownie and P. Kay Cmelik acknowledged the execution of the instrument to be the voluntary act and deed of the municipal corporation, by it voluntarily executed.

Catherine Lee Carr-Davis
Notary Public in the State of Iowa



ATTACHMENT 1
IDOT AGREEMENT

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