



Roll Call Number

22-0676

Agenda Item Number

13

Date May 9, 2022

APPROVAL OF AN AGREEMENT BETWEEN THE CITY OF DES MOINES AND THE DES MOINES METROPOLITAN WASTEWATER RECLAMATION AUTHORITY FOR THE INGERSOLL RUN OUTLET, PHASE 28, SEGMENT 1 PROJECT

WHEREAS, the WRA is undertaking a project to construct the Ingersoll Run Outlet, Phase 28, Segment 1 Project within Des Moines; and

WHEREAS, the Project runs along the rights-of-way of Martin Luther King Parkway (MLK) from 2nd Ave. to approximately S.W. 16th St. in Des Moines; and

WHEREAS, the Project requires the WRA to demolish and replace the northerly two westbound lanes of the Martin Luther King Parkway roadway and turn lanes; and

WHEREAS, the City desires to replace the southerly lanes of westbound MLK plus turn lanes of the roadway at the same time the WRA is replacing the northerly two westbound lanes (City cost limits) as part of the Project; and

WHEREAS, the City is agreeing in the agreement to pay for 42% of the cost of the roadway improvements (estimated at \$1,749,375), \$30,000 for the design and \$43,000 for construction observation services for the City's cost limits; and

WHEREAS, the parties are entering into agreement to set out the responsibilities for the design, construction and funding of the Project.

NOW THEREFORE BE IT RESOLVED BY THE DES MOINES CITY COUNCIL OF DES MOINES, IOWA:

1. That it hereby approves the Agreement by and between the City of Des Moines and the Des Moines Metropolitan Wastewater Reclamation Authority for the Ingersoll Run Outlet, Phase 28, Segment 1 Project and authorizes and directs the Mayor to execute the agreement and the City Clerk to attest to the Mayor's signature.
2. That the City Engineer and Finance Director are authorized to pay the City's costs set forth in and in accordance with the Agreement



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Moved by Boesen to adopt. Second by Gatto

(Council Communication No. 22-219)

APPROVED AS TO FORM:

s/Kathleen Vanderpool

Kathleen Vanderpool
Deputy City Attorney

Funding Source: 2022-2023 CIP, Page 161, MLK Pavement Replacement, ST310, Tax Increment Funding Bonds

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE				✓
BOESEN	✓			
GATTO	✓			
MANDELBAUM	✓			
SHEUMAKER	✓			
VOSS	✓			
WESTERGAARD	✓			
TOTAL	6			1
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.

John Fubelli

MAYOR PRO TEM

P. Kay Cmelik

City Clerk

**AGREEMENT BY AND BETWEEN
THE CITY OF DES MOINES
AND
THE DES MOINES METROPOLITAN WASTEWATER RECLAMATION
AUTHORITY
FOR THE INGERSOLL RUN OUTLET PROJECT, PHASE 28, SEGMENT 1**

THIS AGREEMENT entered into by and between the City of Des Moines, Iowa (hereafter "Des Moines") and the Des Moines Metropolitan Wastewater Reclamation Authority (hereafter "WRA").

WITNESSETH:

WHEREAS, the WRA plans to construct the Ingersoll Run Outlet Project, Phase 28, Segment 1 (hereafter "Project"), which shall run along the rights-of-way of Martin Luther King Parkway (MLK) from 2nd Ave. to approximately S.W. 16th St. in Des Moines (hereafter "Right-of-Way"); and

WHEREAS, the WRA's construction of the Project will require the demolition of and replacement of the northerly two westbound lanes of the roadway and turn lanes as depicted in red on Exhibit A (hereafter "WRA cost limits"); and

WHEREAS, Des Moines desires to replace the southerly lanes of westbound MLK plus turn lanes of the roadway as depicted in blue on Exhibit A ("Des Moines cost limits") at the same time the WRA is replacing the northerly two westbound lanes as part of the Project; and

WHEREAS, the WRA agrees to design and construct the demolition and replacement of the roadway and turn lanes for the WRA cost limits and Des Moines cost limits to the 2022 Editions of the Iowa Statewide Urban Design and Specifications (SUDAS) Design Manual and Standard Specifications Manual, City of Des Moines Supplemental Specifications and the WRA General Supplemental Specifications to the SUDAS Standard Specifications; and

WHEREAS, the WRA shall pay the cost for full replacement of the northerly two westbound lanes and Des Moines shall pay for the cost of the full replacement of the southerly lane of westbound MLK plus turn lanes; and

WHEREAS, Des Moines and the WRA agree that it is of mutual benefit to coordinate these improvements with the construction of the Project; and

WHEREAS, no acquisition of property interests is required for the construction of the Des Moines cost limits of the Project; and

WHEREAS, Des Moines and WRA (hereafter jointly referred to as "the parties") have entered into this Agreement for the purpose of establishing the terms and conditions by which the WRA will design, construct and fund the roadway improvements.

- C. Cost of Design. The WRA will be responsible for design costs for all WRA improvements and the WRA cost limits. Des Moines shall pay for all design costs associated with the Des Moines cost limits which is \$30,000.00
- D. The Engineer's estimated cost of construction for said Project is \$12,855,120.

Section 3 – Construction of Project Improvements by the WRA.

- A. Procurement of Construction. The WRA will procure, by competitive bidding, a contract for the construction of the Project, which includes the Des Moines cost limits. The WRA has or will cause its engineering consultant to prepare the plans, specifications, cost estimate and contract documents, and to make all publications and hold all hearings, as required by Chapter 26 of the Iowa Code for the award of public improvement construction contracts.
- B. Construction Administration. The WRA shall construct the Project in conformance with the design parameters established by the parties as herein provided. The WRA agrees to provide construction administration services in conjunction with the construction of the Project. Construction administration services shall include the following:
 - A. Publishing of a bid notice and taking of all bids and proposals.
 - B. The processing of all payments for all permits, fees, costs, charges, and expenses associated with the construction of the Project.
 - C. Providing qualified personnel to observe the progress of construction at appropriate stages to determine if the work is proceeding on schedule and is being performed in accordance with the design documents and related contract documents.
 - D. Performing or reviewing compaction tests and test materials provided or emplaced by the contractor to determine compliance with the design documents and related contract documents.
 - E. Reviewing and approving contractor requests for progress payments, withholding therefrom retainage.
 - F. Reviewing contractor requests for change orders and time extensions to determine the appropriateness thereof for approval by Des Moines pursuant to section 4(B) of this Agreement.
 - G. Process contractor requests for change orders and time extensions and make change order payments to contractors, withholding therefrom the required retainage.
 - H. Maintaining all project documents and records for the mandatory three-year retention period from the date of final payment for inspection and auditing by the any authorized governmental agency.

Des Moines cost limits. The cost allocation for the construction of the WRA cost limits, and the City cost limits are as follows:

Des Moines cost limits: 42% of Bid Items No. 3, No. 36, No. 37, and No. 43 for full replacement of the roadway (19,323 square feet)

WRA: 58% of Bid Items No. 3, No. 36, No. 37, and No. 43 for full replacement of the roadways (162,851 square feet)

The cost estimates for construction of Bid Items No. 3, No. 36, No. 37 and No. 43 are as follows:

Bid Item Number	Description	Total Quantity	Total Estimated Cost	WRA Share Estimate	DSM Share Estimate
3	Modified Subbase, 12"	30150 SY	\$ 904,500	\$ 524,610	\$ 379,890.00
36	Pavement, PCC, 10"	26400 SY	\$ 2,904,000	\$ 1,684,320	\$ 1,219,680.00
37	Removal of Pavement	22640 SY	\$ 271,680	\$ 157,574	\$ 114,105.60
43	Permanent Pavement Markings & Symbols	1 LS	\$ 85,000	\$ 49,300	\$ 35,700.00
			\$ 4,165,180.00	\$ 2,415,804.00	\$ 1,749,375.60

Des Moines shall pay 42% and the WRA shall pay 58% of the actual cost of Bid Items No. 3, 36, 37 and No. 43.

B. Change Orders. WRA will be responsible for change order costs, except Des Moines will be responsible for costs approved in writing by Des Moines associated with the Des Moines cost limits for the Project. Any deviations from the plans and specifications or substitutions of materials, construction methods, or equipment for the Project's roadway improvements and shall be permitted only with the prior written approval of the WRA and Des Moines. WRA and Des Moines agree that all change orders for the Project's roadway improvements or which alter or change the design or function of the Project's roadway improvements, shall be approved by WRA and Des Moines in the following manner:

- i. For so long as the Des Moines' portion of the change order is less than \$50,000, WRA will notify the Des Moines City Engineer in writing proposing said change order, provide a three business-day review and comment period, and obtain written approval of the change order from the Des Moines City Engineer.
- ii. For so long as the Des Moines' portion of the change order equals and/or exceeds \$50,000, the change order may not be approved by WRA until the Des Moines City Council has approved such change order in writing.

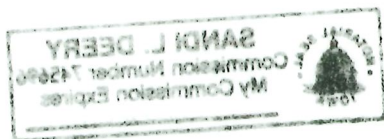
Section 5 – Construction Administration Costs

The cost of construction observation shall be allocated between Des Moines and the WRA as follows:

Des Moines: \$43,000.00

WRA: \$2,070,711

- E. Remedies. In addition to any other remedies available under applicable law, Des Moines and the WRA shall have the right to the equitable remedy of specific performance to enforce compliance with any provision of this Agreement
- F. Assignment of Agreement. Neither party may assign this Agreement to a third party without the written consent of the other party.
- G. No Third-Party Beneficiaries. Nothing in this Agreement shall be construed to create in any third party, or in favor of any third party, any right(s), license(s), power(s), or privilege(s).
- H. Severability. If any section, provision or part of this Agreement shall be found to be invalid or unconstitutional, such finding shall not affect the validity of the Agreement as a whole or any section, provision or part thereof not found to be invalid or unconstitutional.
- I. Governing Law; Jurisdiction. This Agreement shall be governed by and interpreted in accordance with the laws of the State of Iowa. Lawsuits brought by either party in connection with this Agreement shall be heard and tried in Iowa District Court in and for Polk County.
- J. Execution of Agreement. This Agreement may be executed in three counterparts, each of which so executed shall be deemed to be an original.
- K. Entire Agreement. This Agreement represents the entire agreement between Des Moines and the WRA. Any subsequent change or modification to the terms of this Agreement shall be in the form of a duly executed addendum to this Agreement.



**DES MOINES METROPOLITAN
WASTEWATER RECLAMATION
AUTHORITY**

By: _____
Sara Kurovski, Chair

Attest:

Chelsea Huisman, Secretary

STATE OF IOWA)
)
COUNTY OF POLK)

On this ____ day of _____, 2022 before me, the undersigned, a Notary Public in and for the State of Iowa, personally appeared Sara Kurovski and Chelsea Huisman, to me personally known, and, who, being by me duly sworn, did say that they are the Chair and Secretary, respectively of the DES MOINES METROPOLITAN WASTEWATER RECLAMATION AUTHORITY, a legal entity created and existing under the laws of the State of Iowa; that the seal affixed to the foregoing instrument is the seal of said Authority, and that the instrument was signed and sealed on behalf of said Authority, by authority of its Board, and said Chair and Secretary acknowledged the execution of the instrument to be the voluntary act and deed of said Authority by it voluntarily executed.

Notary Public in and for the
State of Iowa

Coverage shall be no less comprehensive and no more restrictive than the coverage provided by a standard form Commercial General Liability Policy (ISO CG 0001, Ed 07/98 with standard exclusions “a” through “o” or any subsequent ISO equivalent or a non-ISO equivalent form).

C. AUTOMOBILE LIABILITY INSURANCE: The Des Moines Wastewater Reclamation Authority and the City of Des Moines, Iowa, shall procure and maintain during the life of this Agreement, Automobile Liability Insurance with limits of liability of not less than \$1,000,000 per occurrence combined single limit including Bodily Injury and Property Damage. Coverage shall include all owned vehicles, all non-owned vehicles, and all hired vehicles.

D. UMBRELLA/EXCESS INSURANCE: The General Liability and Automobile Liability Insurance requirements above may be satisfied with a combination of primary and Umbrella/Excess Insurance. The Umbrella/Excess Insurance shall also be written on a per occurrence basis.

E. SUBCONTRACTORS: The Des Moines Wastewater Reclamation Authority and the City of Des Moines, Iowa shall require that any of its agents and subcontractors who perform work and/or services pursuant to the provisions of this Agreement meet the same insurance requirements as are required of the Party. The option of self-insurance is not extended to subcontractors.

F. PROOF OF INSURANCE: Each Party shall provide to all other Parties to this Agreement either a Certificate(s) of Insurance utilizing the latest version of the ACORD form or a Letter of Self-insurance/Excess Insurance (as allowed in “1” above) evidencing all required insurance coverage as provided in A through D. The Certificate(s) of Insurance or Letter of Self-Insurance shall specify under “Description of Operations/ Locations/ Vehicle/Special Items”: The title of the Agreement.

3. WAIVER OF SUBROGATION

A. WAIVER OF SUBROGATION: To the extent permitted by law, Des Moines Wastewater Reclamation Authority and the City of Des Moines, Iowa, hereby release one another, their respective elected and appointed officials, its agents, employees and volunteers and other working on their behalf, from and against any and all liability or responsibility to each other or anyone claiming through or under the others by way of subrogation or otherwise, for any loss or damage to property caused by fire or any other casualty and for any loss due to occupational injury. This provision shall be applicable and in full force and effect only with respect to loss or damage occurring during the time of this Agreement. The policies of insurance of each shall contain a clause or endorsement to the effect that such release shall not adversely affect or impair such policies or prejudice the right of each to recover thereunder.

