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**Date** July 25, 2016

APPROVAL OF DONATION AND CONSTRUCTION AGREEMENT BETWEEN A  
MID-IOWA ORGANIZING STRATEGY (AMOS) AND CITY OF DES MOINES  
REGARDING SKATEBOARD PARK

WHEREAS, the Park and Recreation Department is charged with the responsibility of providing recreational activities, including skateboard parks, within the City of Des Moines; and

WHEREAS, A Mid-Iowa Organizing Strategy (AMOS) has proposed, and is engaged in a private fundraising effort for, constructing and funding of a downtown regional skateboard park on a portion of City property north of the Rotary Riverwalk Park, such improvements estimated to be in the amount of at least \$3,500,000, and which plans and specifications must be approved by the City Council in order to be put into effect (the "Skate Park"); and

WHEREAS, AMOS's private fund raising effort includes \$225,000.00 for a fund to be donated to and used by the City for repair costs for the Skate Park after the City's acceptance of such improvements; and

WHEREAS, AMOS, along with other donors to AMOS's fundraising program, desires to make a charitable contribution for the benefit of the citizens in the central Iowa region, of the Skate Park to the City of Des Moines upon completion and acceptance by the City Council; and

WHEREAS, Park and Recreation Department staff and AMOS have negotiated a Donation and Construction Agreement Between A Mid-Iowa Organizing Strategy and the City of Des Moines Regarding Downtown Regional Skateboard Park, a copy of which is on file in the City Clerk's Office; and

WHEREAS, such Agreement provides that AMOS shall have the right to recommend to the City Council a name for the Skate Park, which shall be designated the "Downtown Regional Skate Park" and to name park features for a period of 20 years, all in conformance with the City's Policy for Naming of Streets, facilities and park Land in the City of Des Moines.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Des Moines, Iowa that the Donation and Construction Agreement Between A Mid-Iowa Organizing Strategy and the City of Des Moines Regarding Downtown Regional Skateboard Park, a copy of which is available in the City Clerk's Office, as described above, is hereby approved and the Mayor is authorized and directed to sign the agreement on behalf of the City and the City Clerk is authorized and directed to attest to his signature.



Roll Call Number

Agenda Item Number

52

Date July 25, 2016

(Council Communication No. 16-424)

MOVED BY \_\_\_\_\_ to adopt.

APPROVED AS TO FORM:

*Ann DiDonato*

Ann DiDonato  
Assistant City Attorney

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE				
COLEMAN				
GATTO				
GRAY				
HENSLEY				
MOORE				
WESTERGAARD				
TOTAL				

MOTION CARRIED

APPROVED

\_\_\_\_\_  
Mayor

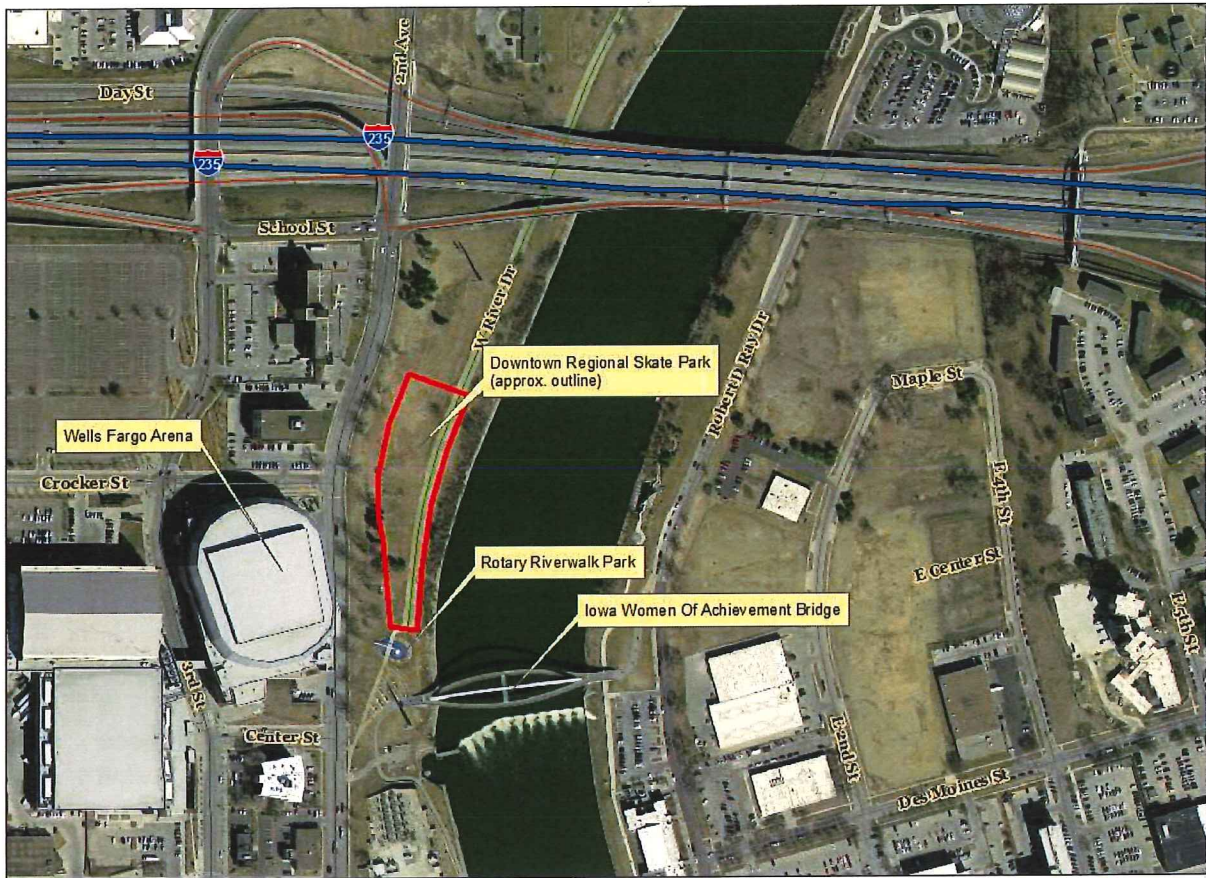
CERTIFICATE

I, DIANE RAUH, 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

EXHIBIT A1



**Des Moines Downtown Regional Skate Park**



# EXHIBIT A2



## DES MOINES REGIONAL SKATEPARK

W. River Dr and 2nd Ave, Des Moines, Iowa

Conceptual Site Plan

03. 30. 2012



Permanent restroom facilities, to be added at a location mutually agreed to by the CITY and Donor.

EXHIBIT A3



**DES MOINES REGIONAL SKATEPARK**

w River Dr and 2nd Ave, Des Moines, Iowa



californiaskateparks.com



CITY OF DES MOINES

DONATION AND CONSTRUCTION AGREEMENT  
BETWEEN  
A MID-IOWA ORGANIZING STRATEGY (AMOS)  
AND  
THE CITY OF DES MOINES  
REGARDING DOWNTOWN REGIONAL SKATEBOARD PARK

This Donation and Construction Agreement, hereinafter “Agreement”, made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2016 by and between the City of Des Moines, Iowa, 1551 E. Martin Luther King Jr. Pkwy, Des Moines, Iowa 50317, (the “CITY”) and the A Mid-Iowa Organizing Strategy (AMOS), 3700 Cottage Grove, Des Moines, Iowa, 50311, 604 (“Donor”).

WHEREAS, the CITY Park and Recreation Department is charged with the responsibility of providing recreational activities, including skateboard parks, within the City of Des Moines; and

WHEREAS, Donor is engaged in a private fundraising effort, and desires to be responsible, for the construction and funding of a downtown regional skateboard park on a portion of City property north of the Rotary Riverwalk Park, such improvements and location as described herein and as shown on the attached **Exhibit A1-A3**, estimated to be in the amount of at least \$3,500,000, and which plans and specifications must be approved by the City Council in order to be put into effect (the “**Skate Park Improvements**”); and

WHEREAS, Donor’s private fund raising effort includes \$225,000.00 for a fund to be donated to and used by the CITY for maintenance costs for the Skate Park Improvements after the CITY’s acceptance of such improvements; and

WHEREAS, Donor, along with other donors to Donor’s fundraising program, desires to make a charitable contribution for the benefit of the citizens in the central Iowa region, of the Skate Park Improvements to the City of Des Moines; and

WHEREAS, the Donor is desirous of obtaining use of a portion of City property north of the Rotary Riverwalk Park to construct the Skate Park Improvements during the Construction Period, as described herein; and

WHEREAS, the CITY is desirous of accepting such donation.

NOW, THEREFORE, in consideration of the mutual covenants, promises, and agreements hereinafter set forth, the parties agree as follows:

I. DONOR’S RESPONSIBILITIES

A. FUND RAISING

1. In addition to fund raising for at least \$3,500,000 to cover the costs of design and construction of the Skateboard Park Improvements plus \$225,000 for a maintenance fund, Donor shall also raise sufficient additional funds to provide for unforeseen construction conditions, and unexpected costs regarding utilities, soil, permit



requirements, and the like.

B. MAINTENANCE FUND

1. Upon the date of acceptance by the CITY Council of the Skate Park Improvements, Donor shall transfer to the CITY \$2250,000 for use as a fund for maintenance costs of the Skate Park Improvements (“Maintenance Fund”). CITY shall use the Maintenance Fund solely for maintenance of the Skate Park Improvements.

C. SKATE PARK IMPROVEMENTS CONSTRUCTION

1. The plans and specifications for the Skate Park Improvements must receive the prior written approval of the CITY Park and Recreation Director and City Engineer, or their respective designee, and the written approval of the City Engineer is required for all construction documents and final selections of building materials prior to construction, which approval shall not be unreasonably delayed or withheld. The Donor agrees that the plans shall include a permanent restroom facility, with permanent water and sewer service. The Donor agrees that the Skate Park Improvements shall be completed in strict adherence to the design as approved by the CITY. Any deviations from the design drawings shall be permitted only with the prior written approval of the CITY.
2. At no cost to the CITY, Donor agrees to be responsible for and to fund the construction of the Skate Park Improvements to be constructed during the construction period at times mutually agreed to by the CITY and Donor. Construction shall not begin until Donor has received at least 50% of funds to be raised and pledges for the remainder. The construction period shall begin no later than March 1, 2018 (weather permitting) and shall end no later than November 30, 2019 (the “**Construction Period**”). In the event that construction is not completed by November 30, 2019, Donor may request an extension of time for the Construction Period for up to 3 additional years, and City Manager may grant such exception at his sole discretion.
3. Donor shall undertake the construction of the Skate Park Improvements, including the site survey, tree protection, site preparation and demolition, grading, concrete, lighting, signage, site furnishings, and installation of miscellaneous skate park equipment in conformance with a **Private Construction Contract** entered into by Donor and its contractor(s) in conformance with **Exhibit B**, including insurance, indemnification and payment and performance bond requirements, which must receive approval by the City Council prior to the start of any work thereunder. Donor, or Donor’s contractor, shall be responsible for the work, which includes but is not limited to:
  - a. The contracting with the General Contractor for performance of the Skate Park Improvements.
  - b. Require the General Contractor to warrant that the construction of the Skate Park Improvements was in accordance with generally recognized engineering or safety standards or design theories in existence at the time of the construction of

the Skate Park Improvements and to indemnify the CITY in conformance with the indemnification requirements specified in **Attachment 1** of this Agreement and require the architect to warrant that the design and specifications for the Skate Park Improvements are in accordance with generally recognized engineering or safety standards in existence at the time of the construction of the Skate Park Improvements and require the architect to indemnify the CITY and to provide the CITY with the insurance coverages in conformance with the indemnification and insurance requirements in **Attachment 2** of this Agreement. Donor shall require the General Contractor and architect (1) to provide the CITY with a certificate of insurance verifying the General Contractor's compliance with this coverage requirement in conformance with the Private Construction Contract requirements and to provide the CITY with a certificate of insurance verifying the architect's compliance with this coverage requirement at least two weeks prior to the beginning of any work by the contractor. In addition, Donor shall provide CITY with a copy of the contract between Donor and the General Contractor and between the Donor and the Architect for CITY review and approval as to form by the CITY Legal Department for compliance with the indemnification requirements of this Agreement. The foregoing review and approval shall not be unreasonably delayed or conditioned, so long as the contract includes the terms required by this Section, as further outlined in the Attachments.

- c. The hiring of all contractors/subcontractors and/or suppliers and the purchasing of all materials for the installation/construction of the Skate Park Improvements.
- d. The scheduling and supervision of all work.
- e. The timely payment of all fees, costs, charges, and expenses associated with this work, including all required permit fees.
- f. Donor shall require any contractor or subcontractor to secure the site in a manner which is reasonable under the circumstances during entire construction of the Skate Park Improvements.
- g. Require the General Contractor: (1) to comply with all applicable requirements for construction standards of the then current edition of the Urban Standard Specifications for Construction of Public Improvements which has been adopted by the CITY, including current supplements, unless waived by the CITY Engineer; and (2) impose the same requirements on any subcontractor.
- h. Upon acceptance of the Skate Park Improvements by the CITY, deliver to the CITY all project construction documents, records, as-builts, and manuals.
- i. Allow the Park and Recreation Department Director and the CITY Engineer or their designees access to conduct any inspection he or she deems necessary.



- j. The design and construction of the Skate Park Improvements shall be in compliance with, as applicable, the City of Des Moines ADA Transition Plan and the 2010 ADA Standards for Accessible Design, and as amended, and implementing regulation, and the Donor shall apply for and receive all necessary permits, including from the Army Corps of Engineers and the Iowa Department of Natural Resources, and CITY board, commission and CITY Council approvals, including but not limited to, the Park and Recreation Board, Urban Design Review Board, and Access Advisory Board.
  - k. Donor shall restore the site used for construction of the Skating Park Improvements and construction staging areas to the same condition or better as prior to the start of construction activities, including without limitation the planting of comparable trees, as determined by the Municipal Arborist, and the laying and establishing of sod and restoring hardscape such as fencing, sidewalks, signage, and concrete.
4. In the event that during the grading period of the construction process Donor becomes aware of a condition of the premises which Donor could not have reasonably anticipated, such as an environmental hazard or protected historic artifacts, the cost of which to remediate or accommodate would be prohibitive relative to the total cost of the project, Donor shall have the right to terminate this Agreement. Upon such termination, Donor shall restore the site in accordance with Section I.C.3.k above.

## II. CITY'S RIGHTS AND RESPONSIBILITIES

### A. FUNDRAISING

- 1. The CITY reserves the right for prior review and approval of any City of Des Moines name or logo to be used on any fund raising items or promotional or advertising materials, with such consent shall not be unreasonably withheld or denied. Donor agrees not to alter in any manner the names or logos approved by the Park and Recreation Director.

### B. APPROVALS AND REVIEWS

- 1. The CITY shall provide a timely review of all exhibits, plans and other documents requiring feedback to allow the project to move forward efficiently.

### C. CONSTRUCTION

- 1. The CITY agrees to provide access to those portions of CITY owned property north of the Rotary Riverwalk Park which are needed for the construction the Skate Park Improvements. Construction access shall be from the north to limit any conflict with the existing improvements to the south of the site.
- 2. The CITY and Donor shall mutually agree to the date and time for a ground breaking ceremony date.

#### D. ACCEPTANCE OF IMPROVEMENTS

1. Upon completion of all of the Skate Park Improvements, such improvements shall be reviewed by the CITY Park and Recreation Director and City Engineer or their respective designee, and, if approved, and upon receipt of the Donor's professional Engineer/Architect certification of completion of the Skating Park Improvements in substantial compliance with the plans and specifications approved by the CITY, it shall be recommended to the City Council for acceptance in conformance with the Private Construction Contract. Acceptance of ownership of these Improvements shall be subject to the verification by the CITY that the project has been completed in compliance with this Agreement and subject to receipt by the CITY Engineer of as built plans and other required documents. Such acceptance shall occur by resolution of the City Council.
2. Upon acceptance by resolution of the City Council, the Skate Park Improvements shall immediately become the property of the CITY and the Donor forfeits all rights to such Skate Park Improvements. It is expressly agreed and understood that nothing in this Agreement shall be construed as empowering the Donor to encumber, mortgage or pledge any interest in the site or improvements thereon in any manner whatsoever.
3. Following CITY Council acceptance of the Skating Park Improvements, the CITY and Donor shall mutually agree to a date and time for a ribbon cutting ceremony.

#### E. NAMING OF SKATE PARK

1. Upon the acceptance of the Skate Park Improvements by the City Council, the Skate Park Improvements shall be designated the "Downtown Regional Skate Park", or other recommended name from the Donor which is approved by the City Council, for a period of 20 years, and which is subject to compliance with the CITY's Policy for Naming of Streets, Facilities and Park Land in the City of Des Moines. In addition, Donor shall have the right to designate the naming of the skate park features for a period of 20 years, subject to compliance with the CITY's Policy for Naming of Streets, Facilities and Park Land in the City of Des Moines. Signage indicating the skate park name will be displayed at the park. Such signage location and wording must receive the approval of the Donor and the City Park and Recreation Department Director prior to installation. Donor shall pay all costs of such park sign and all costs of other donor recognition signs for park features. Naming recognition is subject to future change/reconsideration by the CITY in the event that the recognition becomes damaging to the CITY's reputation, or contradictory to applicable law, as determined by the CITY, in conformance with the CITY's Policy for Naming of Streets, Facilities and Park Land in the City of Des Moines, as it may be amended from time to time.
2. Donor shall have the right to install a donor recognition plaque, on the skate park site with the location, wording, size and design subject to approval of the Park and



Recreation Director, and the costs of such sign will be paid by Donor.

#### F. MAINTENANCE OF IMPROVEMENTS

1. The CITY shall maintain the Skate Park Improvements after acceptance by the CITY Council consistent with how it maintains other similar improvements in the CITY. Donor understands that maintenance, repairs and replacement of the Skate Park Improvements are at the CITY's sole discretion and are subject to funding approved by the City Council.
2. Notwithstanding the foregoing, the CITY agrees that the Maintenance Fund shall be used solely for the purposes of maintenance of the Skate Park Improvements.

#### G. OPERATION OF THE SKATE PARK AS A CITY PARK

1. Donor understands that the CITY will establish the rules, hours of operation and may program events at its discretion and will enforce such rules and CITY ordinances as determined by the CITY to be in the best interests of the CITY.
2. The CITY agrees that the uses allowed at the skate park will be in substantial conformance with the then current park and recreation standards for skate board parks, which standards currently designate bicycle use as a non-conforming use.

### III. ENCUMBRANCES AND LIENS

Neither the Donor nor anyone claiming by, through, or under the Donor shall have the right to file or place any mechanic's lien or any other lien of any kind or character whatsoever upon the Skate Park Improvements, the underlying real property, or any CITY property. Notice is hereby given that no contractor, subcontractor, or anyone else who may furnish any materials, service, or labor for any improvements, alterations, repairs, or any part thereof shall at any time be or become entitled to any lien thereon. For the further security of CITY, the Donor covenants and agrees to give actual notice thereof in advance to any and all contractors and subcontractors who may furnish or agree to furnish any such material or labor and further agrees to include such a provision in every agreement made with contractors and subcontractors in connection with the Skate Park Improvements and to require the General Contractor to include such a provision in every agreement with a subcontractor in connection with the Skate Park Improvements.

### IV. INDEMNIFICATION.

Upon acceptance of ownership of the Skate Park Improvements by the City Council of the City, the CITY shall accept liability for the Skate Park Improvements to the same extent as with other CITY owned park and recreational facilities in accordance with Iowa law and shall hold the Donor harmless with respect to any such liability, except for liability arising from the design of the Skate Park Improvements.

### V. TERM

This Agreement shall be considered to be fulfilled upon completion of the construction and City Council acceptance of the Skate Park Improvements, subject to the continuing requirements pursuant to sections IV and II.E of this Agreement. This Agreement will terminate in the event



that construction of the Skate Park Improvements are not completed by the dates designated by the Construction Period. Donor shall have the right to terminate this Agreement at any time before the start of construction.

VII. NOTICES

Any notice required or permitted to be given under this Agreement shall be in writing and shall be deemed to be an adequate and sufficient notice if given in writing and service is made either by (i) personal delivery, in which case the service shall be deemed received the date of such personal delivery; or (ii) U. S. Mail, return receipt requested, in which case the notice shall be deemed to have been received as shown in such return receipt, to the following address:

If to the DONOR:

A Mid-Iowa Organizing Strategy  
Attention: President  
3700 Cottage Grove  
Des Moines, Iowa 50311

If to the CITY:

Park and Recreation Director  
City of Des Moines, Iowa  
1551 East Martin Luther King Jr. Parkway  
Des Moines, Iowa 50311

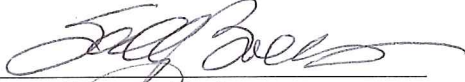
with a copy to:

Legal Department  
City of Des Moines, Iowa  
400 Robert D. Ray Drive  
Des Moines, Iowa 50309-1891

Each party may by written notice to the other specify a different address for subsequent notice purposes.

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

A MID-IOWA ORGANIZING STRATEGY



Sally Boeckholt  
President

CITY OF DES MOINES, IOWA

\_\_\_\_\_  
T. M. Franklin Cownie  
Mayor