

Date August 24, 2009

APPROVING AND AUTHORIZING THE EXECUTION OF AN AMENDMENT TO THE AGREEMENT BETWEEN THE CITY OF DES MOINES AND TRELLEN J. WILSON AND LINDA L. BENDER REGARDING THE PROPERTY AT 1235 DAVIS AVENUE IN DES MOINES

WHEREAS, on September 22, 2008 by Roll Call No. 08-1662, Council authorized and directed the City Manager to make application with the United States Department of Agriculture (USDA) for assistance under its Emergency Watershed Protection (EWP) Program for certain property owners in the City of Des Moines who experienced issues with land sliding on their property resulting from the flooding and rain conditions of 2008; and

WHEREAS, said application was made and funding pursuant to the USDA's EWP Program is available for construction of slope stabilization on the property located at 1235 Davis Avenue, Des Moines, Iowa, owned by Trelen J. Wilson and Linda L. Bender; and

WHEREAS, on February 23, 2009, by Roll Call No. 09-280, Council authorized and directed the Mayor to execute the agreement between the City and Trelen J. Wilson and Linda L. Bender regarding the City's sponsorship to obtain financial assistance through the EWP Program with the USDA Natural Resource Conservation Service for the property; and

WHEREAS, on June 8, 2009, by Roll Call No. 09-280, Council authorized and directed the Mayor to execute the USDA-NRCS Project Agreement for the EWP Program and Operation and Maintenance Agreement for 1235 Davis Avenue (Trelen J. Wilson and Linda L. Bender, Owners) Soil Stabilization; and

WHEREAS, following Council approval, the USDA-NRCS would not execute or approve the agreement due to a recent change in funding for the EWP Program on this project, and instead forwarded a revised Cooperative Project Agreement (Locally Led Contracting and attachments thereof, and Operation and Maintenance Agreement and Plan, which agreements were approved by Council on August 10, 2009, by Roll Call No. 09-1415, subject to further Council approval of an amended agreement between the City of Des Moines and the owners of the property at 1235 Davis Avenue increasing the property owners' financial share of the project to cover a portion of the shortfall resulting from the revisions to the USDA-NRCS agreement; and

WHEREAS, City staff and the property owners Trelen J. Wilson and Linda L. Bender have negotiated said amendment to the City-Property Owner agreement for the project, which First Addendum and Agreement is on file in the office of the City Clerk and is now presented by this resolution to Council for approval.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Des Moines, Iowa, that the First Addendum and Amendment to Agreement between the City of Des Moines, Iowa and Trelen J. Wilson and Linda L. Bender regarding the City's sponsorship to obtain financial assistance with the United States Department of Agriculture-Natural Resources Conservation

★ Roll Call Number
09-1534

Agenda Item Number
11

Date August 24, 2009

Service for the property at 1235 Davis Avenue in Des Moines, Iowa, be and is hereby approved; the Mayor is directed and authorized to sign said amendment, and the City Clerk is directed to attest to his signature.

BE IT FURTHER RESOLVED, that the City's Engineering and Legal Departments are directed and authorized to implement the terms and provisions of said City-property owner agreement and first amendment thereto; and the Mayor or the City Manager is hereby authorized and directed to sign any minor, non-substantive further amendments to the agreement between the City and the property owners Trelen J. Wilson and Linda L. Bender.

(Council Communication No. 09-601)

Moved by Keernan to adopt.

FORM APPROVED: Glenna K. Frank
 Glenna K. Frank
 Assistant City Attorney

Funding Source: 2009-2010 CIP, Page Storm-4, City-wide Storm Water Utility Projects, STE057, various funding being:

- \$87,055.50 in Federal funds from the USDA-NRCS EWP Program Funds for 75% of construction contract costs, not to exceed \$88,350, per Agreement No. 69-6114-9-49.
- \$9,285.92 in Federal funds for design and inspection costs from the USDA-NRCS EWP Program Funds (maximum 8% of construction contract costs, not to exceed \$9,424) per Agreement No. 69-6114-9-49.
- \$25,000 in Jump Start Funds from the adjacent property owner, as per existing agreement with property owners Trelen Wilson and Linda Bender.
- \$25,000 in private contributions from the adjacent property owner, as per this agreement with the property owners.
- \$10,725.58 in Storm Water Utility funds from STE057, plus any change orders or overages.

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE	✓			
COLEMAN	✓			
HENSLEY	✓			
KIERNAN	✓			
MAHAFFEY	✓			
MEYER	✓			
VLASSIS	✓			
TOTAL	7			

MOTION CARRIED APPROVED
T. M. Franklin 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.

Diane Rauh City Clerk