

★ Roll Call Number
21-0658

Agenda Item Number
43B

Date April 19, 2021

**APPROVING THE AGREEMENT
BY AND BETWEEN THE CITY OF DES MOINES, IOWA AND THE
DES MOINES WASTEWATER RECLAMATION AUTHORITY (WRA) FOR
THE MEREDITH TRAIL BANK REPAIR NEAR S.W. 7th STREET PUBLIC
IMPROVEMENT PROJECT**

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

1. That the Agreement between the City of Des Moines, Iowa and the Des Moines Wastewater Reclamation Authority (WRA) for public improvement project bank stabilization improvements for the Meredith Trail Bank Repair near S.W. 7th Street, is hereby approved as to form and content.
2. That the Mayor and City Clerk are hereby authorized and directed to execute and attest, respectively, said Agreement for and on behalf of the City of Des Moines, Iowa.

(City Council Communication Number 21-182 attached)
Activity ID 11-2021-007

Moved by Mandelbaum to adopt.

FORM APPROVED: s/Kathleen Vanderpool
Kathleen Vanderpool
Deputy City Attorney

SLN Funding Source: 2021-2022 CIP, Page 64, Multi-Use Trails, PK045, Being:
\$519,117.30 in G.O. Bonds and \$123,626.80 from the Wastewater Reclamation Authority (WRA)

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE	✓			
BOESEN	✓			
GATTO	✓			
GRAY	✓			
MANDELBAUM	✓			
VOSS	✓			
WESTERGAARD	✓			
TOTAL	7			
MOTION CARRIED			APPROVED	

J. M. Frankhu Cownie
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

**AGREEMENT BY AND BETWEEN
THE CITY OF DES MOINES
AND
THE DES MOINES METROPOLITAN WASTEWATER
RECLAMATION AUTHORITY
FOR PUBLIC IMPROVEMENT PROJECT
BANK STABILIZATION IMPROVEMENTS FOR THE
MEREDITH TRAIL BANK REPAIR NEAR SW 7TH STREET**

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 City of Des Moines plans to construct the Meredith Trail Bank Repair near SW 7th Street Project (hereafter "Project"), which shall run along the Meredith Trail along the south side of the Raccoon River near SW 7th Street (hereafter "Trail"); and

WHEREAS, the City of Des Moines will include bank stabilization in the vicinity of the proposed bank stabilizations to protect WRA facilities adjacent to the Meredith Trail as depicted in Exhibit A; and

WHEREAS, the City of Des Moines agrees to fund, design, and construct the Project in accordance with the 2020 Editions of the Iowa Statewide Urban Design and Specifications (SUDAS) Design Manual and Standard Specifications Manual as amended by the City of Des Moines General Supplemental Specifications; and

WHEREAS, WRA has requested bank stabilization improvements be extended approximately 250 feet ("Extended Limits") beyond the intended limits of the Project as depicted in Exhibit A; and

WHEREAS, no additional acquisition of property interests are required for the construction of the Extended Limits; and

WHEREAS, Des Moines and the WRA agree that it is of mutual benefit to coordinate this bank stabilization improvement, including the Extended Limits, with the construction of the Project; and

WHEREAS, Des Moines agrees to fund the design and construction of the Project and to design and construct the Extended Limits as a part of its Project; and

WHEREAS, WRA agrees to reimburse the City of Des Moines for all design and construction costs associated with the Extended Limits; 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 City of Des Moines will design and construct the Extended Limits improvements.

NOW THEREFORE, the parties do hereby agree as follows:

Section 1 – Joint Exercise of Powers

- A. Purpose of Agreement. The parties do hereby agree that the purpose of this Agreement is to jointly exercise their respective powers to finance, design, construct, operate, and maintain public improvements, and that pursuant to this Agreement, the City of Des Moines is undertaking to design and construct certain areas of bank stabilization improvements for the Project, which Project is described as follows:

The improvement includes clearing and grubbing, Class 10 excavation, rip rap, 15" storm sewer, storm intakes, pavement removal, modified subbase, Hot Mix Asphalt (HMA), surface restoration, and other incidental items; all in accordance with the contract documents, including Plan File Nos. 628-001/018, located along the north bank of the Meredith Trail on the south side of the Raccoon River near SW 7th Street, Des Moines, Iowa (hereafter collectively "Project Improvements").

The City of Des Moines agrees to design and construct the Extended Limits as a part of the Project Improvements.

- B. Effective Date. The parties agree that this Agreement shall be effective upon its approval and execution by all parties; that the duration of this Agreement with respect to the design and construction of the Project Improvements shall extend to December 31, 2022, or until both parties have discharged their respective obligations under this Agreement, whichever occurs later.
- C. Administrator. The parties hereby agree that the City Engineer is the administrator of this Agreement for purposes of designing and constructing the Project Improvements.

Section 2 – Design of the Project Improvements.

- A. Design Standards and Standard Specifications. The City of Des Moines shall design and construct the Project, including the Extended Limits, in conformance with the 2020 Editions of the Iowa Statewide Urban Design and Specifications (SUDAS) Design Manual and Standard Specifications Manual as modified by the City of Des Moines General Supplemental Specifications, and in conformance with its design responsibilities under this Agreement. The City of Des Moines shall ensure that the design and construction of the Extended Limits are in compliance with the requirements of the Americans with Disabilities Act (ADA).
- B. Extended Limit Approval. Design work for the Extended Limits, including Plan File Nos. 628-001/018, has been completed by the City of Des Moines with input from WRA.

Section 3 - Construction of Project Improvements by the City of Des Moines.

- A. Procurement of Construction. The City of Des Moines will procure, by competitive bidding, a contract for the construction of all Project Improvements, including the Extended Limits. The

City of Des Moines agrees to cause its Engineering Department 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. Insurance and Indemnification for Construction Contractor. The City of Des Moines shall require the Contractor on the Project Improvements to provide the insurance coverages and indemnification, as set forth in SUDAS Standard Specifications 2020 Edition, as amended by the City of Des Moines General Supplemental Specifications, to protect the City and the Des Moines Metropolitan Wastewater Reclamation Authority by providing in the specifications for the Project, that the contract documents will require that for purposes of Division 1, Section 1070, Sections 3.02 through 3.07, of the SUDAS Standard Specifications 2020 Edition, as amended by the City of Des Moines General Supplemental Specifications, when the term “Jurisdiction” is used, it shall mean the City of Des Moines and the Des Moines Metropolitan Wastewater Reclamation Authority.
- C. Construction Administration. The City of Des Moines shall construct the Project Improvements in conformance with the design parameters established by the parties as herein provided. The City of Des Moines agrees to provide construction administration services in conjunction with the construction of the Project. Construction administration services shall include the following:
- (1) Publishing of a bid notice and taking of all bids and proposals.
 - (2) The processing of all payments for all permits, fees, costs, charges, and expenses associated with the construction of the Project Improvements.
 - (3) 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.
 - (4) Construction observations services and 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.
 - (5) Reviewing and approving contractor requests for progress payments, withholding therefrom retainage.
 - (6) Reviewing contractor requests for change orders and time extensions to determine the appropriateness thereof for approval by Des Moines pursuant to Section 3, D of this Agreement.
 - (7) Process contractor requests for change orders and time extensions and make change order payments to contractors, withholding therefrom the required retainage.
 - (8) Maintaining all project documents and records for the mandatory three-year retention period from the date of final payment for inspection and auditing by any authorized governmental agency.

- (9) Receiving approval of all appropriate Des Moines and WRA Boards and commissions and obtaining all required Des Moines permits and obtaining all required federal and state permits.
- (10) Processing claims made by subcontractors and material suppliers pursuant to Chapter 573 of the Iowa Code.

D. Change Orders. City of Des Moines will be responsible for change order costs, except WRA will be responsible for costs approved in writing by Des Moines associated with the Extended Limits approved by the WRA as set forth below. The City of Des Moines agrees that all Project Improvements shall be completed in strict adherence to the final plans and specifications. Any deviations from the plans and specifications or substitutions of materials, construction methods, or equipment for the Extended Limits 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 bank stabilization improvements or which alter or change the design or function of the Project's bank stabilization improvements, shall be approved by WRA Board or the WRA Director, depending upon the amount of the change order, before it is approved by the City of Des Moines.

E. Final Inspection. When the contractor requests final payment, the City of Des Moines shall arrange for a final inspection of the Project Improvements and shall inform WRA in writing of the date and time thereof. WRA agrees to provide a qualified representative to attend and participate in such final inspection, whose participation shall be limited in scope to the Extended Limits. The City of Des Moines shall be responsible for developing the punch list of work items for completion. The City of Des Moines shall include all punch items submitted by WRA regarding the Extended Limits and shall address all such items or concerns of WRA. The City of Des Moines shall determine when such items have been completed. Upon determination that construction of the Project has been completed, the City Engineer shall give written notice of Project completion to the WRA, therein declaring that the Project has been constructed in substantial conformance with the plans and specifications, recommending to WRA, its final acceptance of the Project's bank stabilization improvements, and indicating when its recommendation to accept the Project as complete and the contractor's request for final payment will be presented to the City of Des Moines City Council for approval.

In the event that WRA objects to the City of Des Moines City Engineer recommendation to accept the Project as complete, WRA shall notify the City of Des Moines of its objection in writing not less than 15 days after receipt of the notice of Project completion, therein identifying the nature of its objection

F. Acceptance of the Project. Upon approval of final payment and acceptance of the Project by the City of Des Moines City Council, the City of Des Moines shall forward the resolution approving acceptance and final payment and all supporting details to WRA.

Section 4 –Design and Construction Administrations Cost for Extended Limits.

Cost of Design and Construction Administration. The WRA will pay the City of Des Moines \$5,000.00 for design and construction administration costs for the Extended Limits.

Section 5 – Cost of Construction of the Extended Limits.

A. Cost of Construction. The estimated costs associated with the construction of the Project’s bank stabilization improvements, including the Extended Limits, as described in the Agreement are \$642,744.10 and are shown in Exhibit B. City of Des Moines will be responsible for all Project costs, except WRA will be responsible for all construction costs associated with the Extended Limits. The costs share for the construction of the Project’s bank stabilization improvements, including the Extended Limits, are estimated as follows:

Des Moines: \$519,117.30
WRA: \$123,626.80 (for Extended Limits)

Section 6 - General Provisions

A. Insurance and Indemnification. The Parties shall not, by reason of this Agreement, be obligated to defend, hold harmless or indemnify the other from any liability to third parties, from any occupational injuries, or from and against any liability, loss, damage, claim or lawsuit asserted against them or any of them arising out of or in any way connected with this Agreement.

B. Notices and Invoices. The City of Des Moines shall periodically invoice WRA for payment of all costs as set forth herein. WRA shall issue payment of all invoices within thirty (30) days of the date of the invoice. All notices which the parties are authorized or required to give one another pursuant to this Agreement, and all invoices, shall be in writing and may be personally delivered or sent by ordinary mail to the addresses hereafter provided. Mailed notices or invoices shall be deemed to be received by the party to whom directed when they are postmarked. Such notices and invoices shall be delivered or mailed to the following persons at the addresses listed:

Notices to Des Moines:
Steve Naber, City Engineer
City of Des Moines
400 Robert D. Ray Drive
Des Moines, Iowa 50309-1891

Notices to the WRA:
Scott Hutchens, WRA Director
Wastewater Reclamation Authority
3000 Vandalia Road
Des Moines, Iowa 50317

C. Declaration of Default and Notice. In the event that either party determines that the other has defaulted in the performance of its obligations hereunder, the aggrieved party may declare that

default has occurred and given notice thereof to the defaulting party. Notice of default shall be given in writing, shall specify the nature of the default and the provision of this Agreement involved, and shall specify what action is required of the defaulting party to correct the default. The defaulting party shall have thirty (30) days from the date of its receipt of the notice of default to correct the default. If at the end of said thirty-day period the default has not, in the opinion of the aggrieved party, been corrected, that party may thereupon pursue any remedies available to it.

- D. 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.
- E. Assignment of Agreement. Neither party may assign this Agreement to a third party without the written consent of the other party.
- F. 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).
- G. 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.
- H. 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.
- I. Execution of Agreement. This Agreement may be executed in three counterparts, each of which so executed shall be deemed to be an original.
- J. 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.

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed.

CITY OF DES MOINES, IOWA

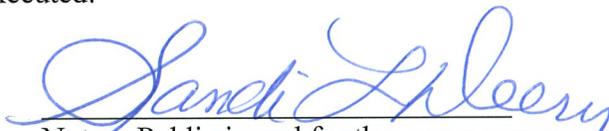
By: 
T.M. Franklin Cownie, Mayor

Attest:


P. Kay Cmelik

STATE OF IOWA)
)
COUNTY OF POLK)

On this 19th day of April, 2021, before me, the undersigned, a Notary Public in and for the State of Iowa, personally appeared T.M. Franklin Cownie and P. Kay Cmelik, to me personally known, and, who, being by me duly sworn, did say that they are Mayor and City Clerk, respectively of the CITY OF DES MOINES, IOWA; that the seal affixed to the foregoing instrument is the corporate 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 (Ordinance No. _____ passed) (the Resolution adopted) by the City Council, under Roll Call No. 21-0658 of the City Council on the 19th day of April, 2021, and that T.M. Franklin Cownie and P. Kay Cmelik acknowledged the execution of the instrument to be their voluntary act and deed and the voluntary act and deed of the corporation by it voluntarily executed.


Notary Public in and for the
State of Iowa

**DES MOINES METROPOLITAN WASTEWATER
RECLAMATION AUTHORITY**

By: 
Paul Moritz, Chair

Attest:

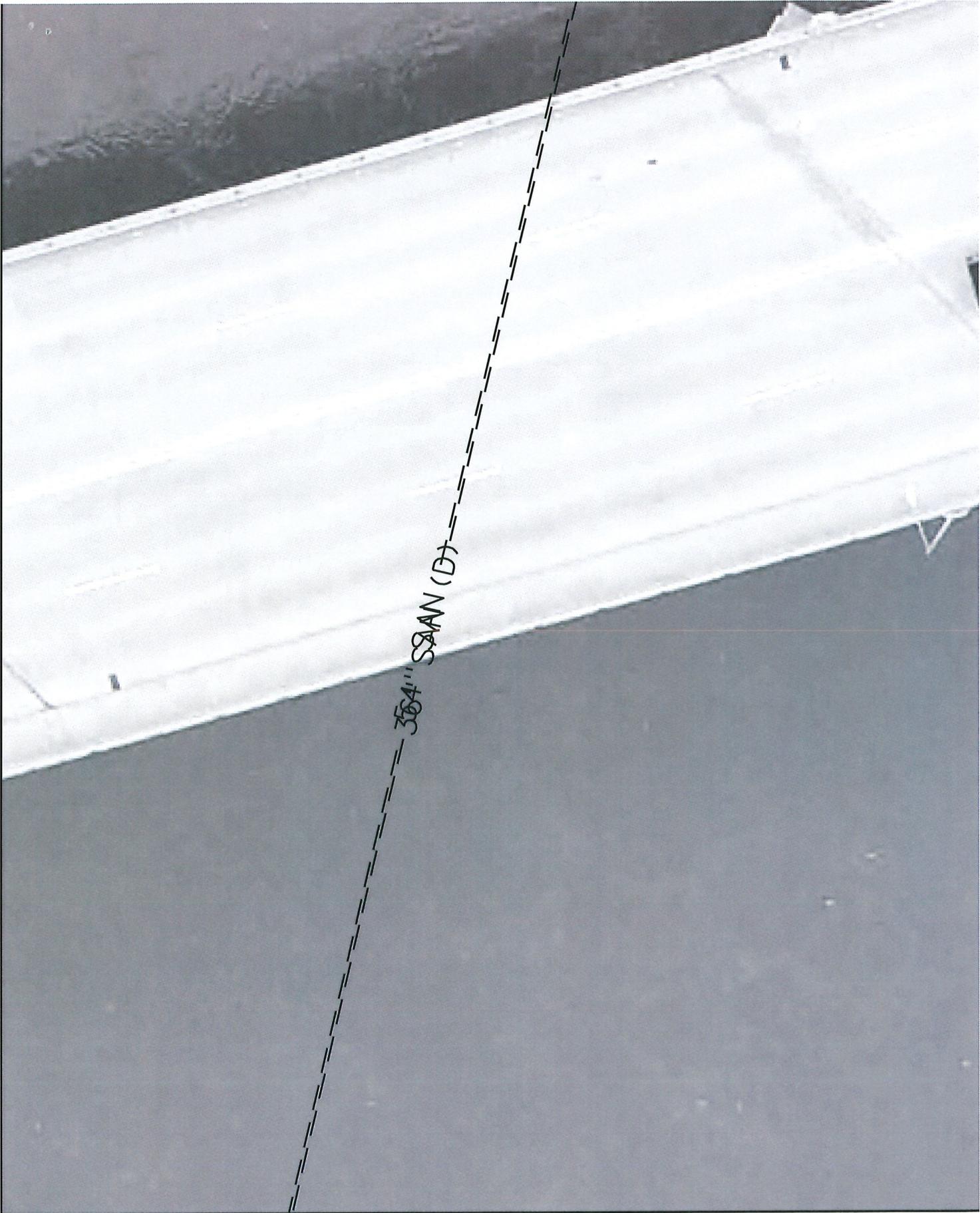

Michael McCoy, Secretary

STATE OF IOWA)
)
COUNTY OF POLK)

On this 20 day of April, 2021 before me, the undersigned, a Notary Public in and for the State of Iowa, personally appeared Paul Moritz and Michael McCoy, 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 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



**CONSTRUCTION ESTIMATE
EXHIBIT "B"**

DEPARTMENT OF ENGINEERING
CITY OF DES MOINES, IOWA

Activity ID 11-2021-007

DATE: 3/30/2021

PROJECT: MEREDITH TRAIL BANK REPAIR NEAR SW 7TH STREET

NO.	ITEM CODE			DESCRIPTION	ESTIMATED UNITS						
					UNIT	TOTAL	UNIT PRICE	DES MOINES QUANTITY	DES MOINES COST	WRA QUANTITY	WRA COST
0001 *	2010	1.08	C	Clearing and Grubbing of Trees and Shrubs	LS	1	\$5,000.00	0.7	\$3,500.00	0.3	\$1,500.00
0002	2010	1.08	D	Topsoil, Imported	CY	145	\$35.00	130	\$4,550.00	15	\$525.00
0003 *	2010	1.08	E	Class 10 Excavation, Haul Off-Site	CY	2800	\$20.00	2685	\$53,700.00	115	\$2,300.00
0004 *	2010	1.08	G	Subgrade Preparation, Trail, 6 Inch	SY	1050	\$4.00	630	\$2,520.00	420	\$1,680.00
0005	2010	1.08	I	Granular Subbase, 12 Inch - Modified Subbase	SY	200	\$22.00	200	\$4,400.00	0	\$0.00
0006	2010	1.08	I	Granular Subbase, 6 Inch - Modified Subbase	SY	850	\$11.00	430	\$4,730.00	420	\$4,620.00
0007 *	2010	2.04	A	Road Surfacing - IDOT Roadstone - Lundstrum Access Repair	TON	1300	\$35.20	1040	\$36,608.00	260	\$9,152.00
0008	2010	2.04	B	Clean Crushed Stone (3")	TON	140	\$40.00	140	\$5,600.00	0	\$0.00
0009	2010	2.04	C	Subgrade Treatment, Geogrid, Type 2	SY	1210	\$3.00	790	\$2,370.00	420	\$1,260.00
0010	4020	1.08	A	15" Storm Sewer, Perforated	LF	125	\$90.00	125	\$11,250.00	0	\$0.00
0011	6010	1.08	B	SW-512 Circular Area Intake	EA	2	\$2,568.00	2	\$5,136.00	0	\$0.00
0012	6010	1.08	E	Manhole Adjustment, Minor	EA	1	\$2,500.00	1	\$2,500.00	0	\$0.00
0013	6010	1.08	G	15" Storm Sewer Connection to Existing Intake	EA	1	\$1,000.00	1	\$1,000.00	0	\$0.00
0014	7020	1.08	A	Lundstrum Access Repair - HMA ST Base, 3/4" Mix, No Fric, PG 58-28S	TON	250	\$87.70	200	\$17,540.00	50	\$4,385.00
0015	7020	1.08	A	Lundstrum Access Repair - HMA ST Surface, 1/2" Mix, No Fric, PG 58-28H	TON	100	\$98.80	80	\$7,904.00	20	\$1,976.00
0016	7020	1.08	B	HMA Trail - HMA ST Base, 3/4" Mix, No Fric, PG 58-28S, 4 Inch	SY	915	\$22.44	545	\$12,229.80	370	\$8,302.80
0017	7020	1.08	B	HMA Trail - HMA LT Surface, 3/8" Mix, No Fric, PG 58-28S, 2 Inch	SY	890	\$14.95	530	\$7,923.50	360	\$5,382.00
0018 *	7030	1.08	A	Removal of Trail	SY	870	\$12.00	524	\$6,288.00	346	\$4,152.00
0019 *	7040	1.08	H	Existing HMA Pavement Removal - Lundstrum, Inc. Access Repair	SY	840	\$15.00	672	\$10,080.00	168	\$2,520.00
0020 *	8030	1.08	A	Traffic Control - Trail Closure	LS	1	\$3,460.00	0.8	\$2,768.00	0.2	\$692.00
0021 *	9010	1.08	B	Hydraulic Seeding, Seeding, Fertilizing, and Mulching (Type 1)	ACRES	0.65	\$10,000.00	0.42	\$4,200.00	0.23	\$2,300.00
0022 *	9010	1.08	E	Warranty	LS	1	\$3,000.00	0.8	\$2,400.00	0.2	\$600.00
0023 *	9040	1.08	A	Storm Water Pollution Prevention	LS	1	\$4,000.00	0.8	\$3,200.00	0.2	\$800.00
0024 *	9040	1.08	D-1	Filter Socks, Installation	LF	320	\$4.00	140	\$560.00	180	\$720.00
0025 *	9040	1.08	D-2	Filter Socks, Removal	LF	320	\$1.00	140	\$140.00	180	\$180.00
0026 *	9040	1.08	J	Rip Rap, Class E Revetment	TON	5100	\$57.75	4200	\$242,550.00	900	\$51,975.00
0027 *	9040	1.08	O	Stabilized Construction Entrance	EA	1	\$6,500.00	0.8	\$5,200.00	0.2	\$1,300.00
0028 *	9040	1.08	Q	Temporary Erosion Control Mulching, Hydromulch	ACRES	0.65	\$4,500.00	0.42	\$1,890.00	0.23	\$1,035.00
0029 *	9040	1.08	T-1	Inlet Protection Device, Drop-In Sediment Trap	EA	1	\$150.00	1	\$150.00	0	\$0.00
0030 *	9040	1.08	T-2	Inlet Protection Device, Maintenance & Removal	EA	1	\$50.00	1	\$50.00	0	\$0.00
0031 *	9060	1.08	E	Removal of Existing Temporary Fence	LS	1	\$400.00	1	\$400.00	0	\$0.00
0032 *	9060	1.08	F	Temporary Fence, Chain Link, 72"	LF	100	\$20.00	50	\$1,000.00	50	\$1,000.00
0033 *	11020	1.08	A	Mobilization	LS	1	\$60,000.00	0.8	\$48,000.00	0.2	\$12,000.00
0034 *	Est. Reference Notes			Existing Light Pole Removal, Protection, and Reinstallation	EA	4	\$1,400.00	2	\$2,800.00	2	\$2,800.00
0035 *	Est. Reference Notes			Levee Protection	LS	1	\$2,000.00	0.8	\$1,600.00	0.2	\$400.00
0036 *	Supplemental Specs			Tree Protection Fence, 48"	LF	700	\$3.50	680	\$2,380.00	20	\$70.00

WRA CONSTRUCTION COST \$123,626.80

DES MOINES CONSTRUCTION COST \$519,117.30