

**AMENDED AND RESTATED SUBAGREEMENT #4
SUB-AGREEMENT BETWEEN DES MOINES AREA MPO AND CENTRAL IOWA
WATER TRAILS, LLC REGARDING FUNDING OF THE WATER TRAILS PROJECT**

This AMENDED AND RESTATED SUB-AGREEMENT (hereinafter “Subgreement #4” or “Sub-Agreement”) is made as of the ____ of _____, 2022 (the “Effective Date”) , by and between Central Iowa Water Trails, LLC, an Iowa limited liability company (hereinafter “CIWT”) and the Des Moines Area Metropolitan Planning Organization, a unit of local government pursuant to Iowa Code Chapter 28E (hereinafter “MPO”).

WHEREAS, CIWT, Polk County, and the MPO desire to develop, construct, and operate a world class system of water trails and dams with the goals of improving the quality of life for Iowans, attracting visitors and revitalizing local river fronts, all located in central Iowa; and

WHEREAS, the MPO was awarded a Better Utilizing Investments to Leverage Development Transportation Discretionary Grants Program (as further set forth in a Grant Agreement Under the Fiscal Year 2019 Build Transportation Grants Program, dated November 18, 2021, as amended and replaced with a First Amended and Restated Grant Agreement Under the Fiscal Year 2019 Build Transportation Grants Program, dated June 13, 2022, hereinafter, as so and hereafter amended or amended and restated, “BUILD Grant”) grant in an amount not to exceed \$25,000,000 for the first phase of a multi-phased project that will modify a low-head dam at Scott Avenue to help facilitate a water recreational trail, and enhance access points at Prospect Park, Birdland Marina and Harriet Street along the Des Moines River within the City of Des Moines (hereinafter, collectively, the “Project”); and

WHEREAS, the first phase of the Project is further described in Section 3.1 of the BUILD Grant and generally consists of three (3) components—Component 1: Scott Avenue Dam (in-water improvements), Component 2: Scott Avenue Dam (upland improvements), and Component 3: Harriet Street Access (“Phase 1”); and

WHEREAS, the BUILD Grant funds were granted to MPO for use in further development of the Project; and

WHEREAS, the current construction cost of Phase 1 is estimated to be \$48,000,000 and CIWT has agreed to secure all necessary funds to construct the Project in excess of the \$25,000,000 BUILD grant funds and the \$550,000 Surface Transportation Block Grant (STBG) funds; awarded to MPO on account of the Project under (collectively, the “Allocated Funds”); and

WHEREAS, the MPO will serve as the contracting authority and be in responsible charge of the construction contract for the Project; and

WHEREAS, CIWT will deposit funds in excess of the Allocated Funds necessary to complete the construction of the Project into the Project Account (defined below) to be expended

exclusively in accordance with and in fulfillment of this Sub-Agreement, the Subagreement #2 (defined below), and the Surface Transportation Block Grant; and

WHEREAS, CIWT, the MPO, and Polk County, Iowa have previously entered into an agreement entitled “Agreement Between Des Moines Area MPO, Polk County, Iowa and Central Iowa Water Trails, LLC (Regarding Construction and Funding of the Build Grant Project), as amended and superseded by an Amended and Restated Agreement Between Des Moines Area MPO, Polk County, Iowa, and Central Iowa Water Trails, LLC (Regarding Construction and Funding of the Build Grant Project), of even date herewith (as so and hereafter amended or amended and restated, hereinafter the “Subagreement #2”) that sets forth numerous understandings and duties between the parties; and

WHEREAS, the City of Des Moines, the Iowa Department of Transportation (hereinafter “IDOT”), and the FHWA are expressly within the contemplation of the parties to this Sub-Agreement and mutually intended to be third-party beneficiaries of this Subagreement; and

NOW THEREFORE, in consideration of the forgoing and mutual covenants contained herein, the receipt and sufficiency of which are hereby mutually acknowledged, the parties agree as follows:

1. Sub-Agreement. Sub-Agreement means this Sub-Agreement entitled “Amended and Restated Sub-Agreement Between Des Moines Area MPO and Central Iowa Water Trails, LLC, as the same may hereafter be amended from time to time.” As of the Effective Date, this Sub-Agreement supersedes and replaces the Sub-Agreement Between Des Moines Area MPO and Central Iowa Water Trails, LLC Regarding Funding of the Water Trails Project, dated September 16, 2021.
2. Project Financing. The Project, as may be amended in accordance with the BUILD Grant and other agreements providing for the Allocated Funds, and as otherwise permitted by the Subagreement #2, shall be financed from funds secured by CIWT and the Allocated Funds. The MPO’s financing obligation is limited to such Allocated Funds, which include the BUILD Grant funds and the STBG funds. Any additional funding required to construct the Project shall be the responsibility of CIWT, as further specified in Subagreement #2. All references to “Subagreement #2 in this Sub-Agreement shall refer to that certain Subagreement #2 Agreement Between Des Moines Area MPO, Polk County, Iowa, and Central Iowa Water Trails, LLC Regarding Construction and Funding of the Build Grant Project, dated September 14, 2021, as amended and superseded by an Amended and Restated Subagreement #2 Agreement Between Des Moines Area MPO, Polk County, Iowa, and Central Iowa Water Trails, LLC Regarding Construction and Funding of the Build Grant Project, of even date herewith, and as the same may hereafter be amended or amended and restated.
3. Bank Account. MPO shall open a bank account at a local financial institution (hereinafter “the Project Account”). The use of said Project Account shall be reserved solely for the financing of the construction of the Project. MPO shall have

exclusive right to withdraw from the Project Account to pay construction costs incurred by MPO in furtherance of the Project or make final disbursements to CIWT as provided herein or in the Subagreement #2. MPO shall deposit such funds in the Project Account as set forth in Exhibit C to Subagreement #2. Funds remaining in the Project Account after completion of construction of the Project and the deposit of all Allocated Funds received by MPO shall be promptly disbursed to CIWT. Funds in the Project Account as of the earlier termination of the Subagreement #2 shall be disbursed as provided in Subagreement #2.

4. Line of Credit. CIWT will obtain a line of credit in an amount equal to 110 percent of the engineer's final estimate of costs less the \$25,550,000 in federal funds. The line of credit will be unrestricted and fully available to the Project Account for Phase 1 construction expenses payable by MPO in accordance with the Subagreement #2 or any Exhibit thereto. CIWT shall only be required to fund the Project Account if funds in the Project Account, including, without limitation, any Allocated Funds reimbursed to MPO and deposited in the Project Account, are insufficient to cover expenses due and payable by MPO. CIWT shall provide proof that the line of credit has been secured no later than the day that bids are to be received for the project letting (currently scheduled for December 21, 2022). Additionally, CIWT will provide proof that the line of credit will remain available to the MPO until the final audit is completed for Phase 1 and the Project, as it relates to Phase 1, is closed out or the earlier termination of Subagreement #2. The line of credit may be closed by CIWT after final payment for the construction of Phase 1 is made by MPO to its general contractor or the earlier termination of Subagreement #2.
5. Change Orders. All changes or change orders which alter or change the design or function of the Project or deviate from the plans and specifications or substitutions of materials, construction methods or equipment shall be permitted only with the prior written approval of the MPO Executive Committee, which shall not be unreasonably withheld, and only after consultation with CIWT and Polk County as provided in Subagreement #2. In addition, the MPO will not propose change orders that will increase the cost of the Project, except as required for public safety or to comply with Federal, State, and local laws and approved plans and specifications. Costs associated with change orders will be covered by funds deposited in the Project Account by CIWT.
6. Contract Award and Rejection. The MPO will use the guidance in the Iowa DOT's Instructional Memorandum (I.M. 5.030) as a basis for reviewing, awarding, and rejecting bids submitted for the Project.

Subagreement #2. All of the provisions of Subagreement #2 remain in full force and effect and are specifically incorporated herein. CIWT shall have the same assignment rights with respect to this Sub-Agreement as it does under Subagreement #2.

IN WITNESS WHEREOF, the parties have executed this Sub-Agreement effective as of the Effective Date.

CENTRAL IOWA WATER TRAILS, LLC

**DES MOINES AREA METROPOLITAN
PLANNING ORGANIZATION**

By:

By:

Name:

Name:

Title:

Title:
