CITY OF WEST DES MOINES
CITY COUNCIL MEETING COMMUNICATION

DATE: November 12, 2018

ITEM: Motion – Approval of Oxbow Restoration Agreement – The Nature Conservancy

FINANCIAL IMPACT: Donated services of approximately $60,000 from the Nature Conservancy.

BACKGROUND: The City was approached by the Nature Conservancy to provide an oxbow restoration project along Jordan Creek. The project initially included one oxbow fully funded by the Nature Conservancy. As two oxbows had existed in this same area, City staff suggested restoring both. To assist with the additional cost, the City offered in-kind assistance by providing the excavation services on the project. The oxbows will improve water quality, improve hydrology, and maintain biodiversity through habitat creation and restoration along the Jordan Creek. These improvements are all goals set forth by the Nature Conservancy, as well as advocated by the City. The project would include restoration of two oxbows along Jordan Creek, with the City partnering with in-kind support. The bulk of the remaining items are being provided by the Nature Conservancy as described in the agreement. The City would also provide educational signage along the trail at the completion of the project.

Council approval of the attached agreement is a requirement of The Nature Conservancy, and the agreement has been reviewed by the Legal Department.

OUTSTANDING ISSUES: None.

RECOMMENDATION: That the Council approve the Oxbow Restoration Agreement.

Lead Staff Member: David Sadler, Superintendent of Parks

STAFF REVIEWS

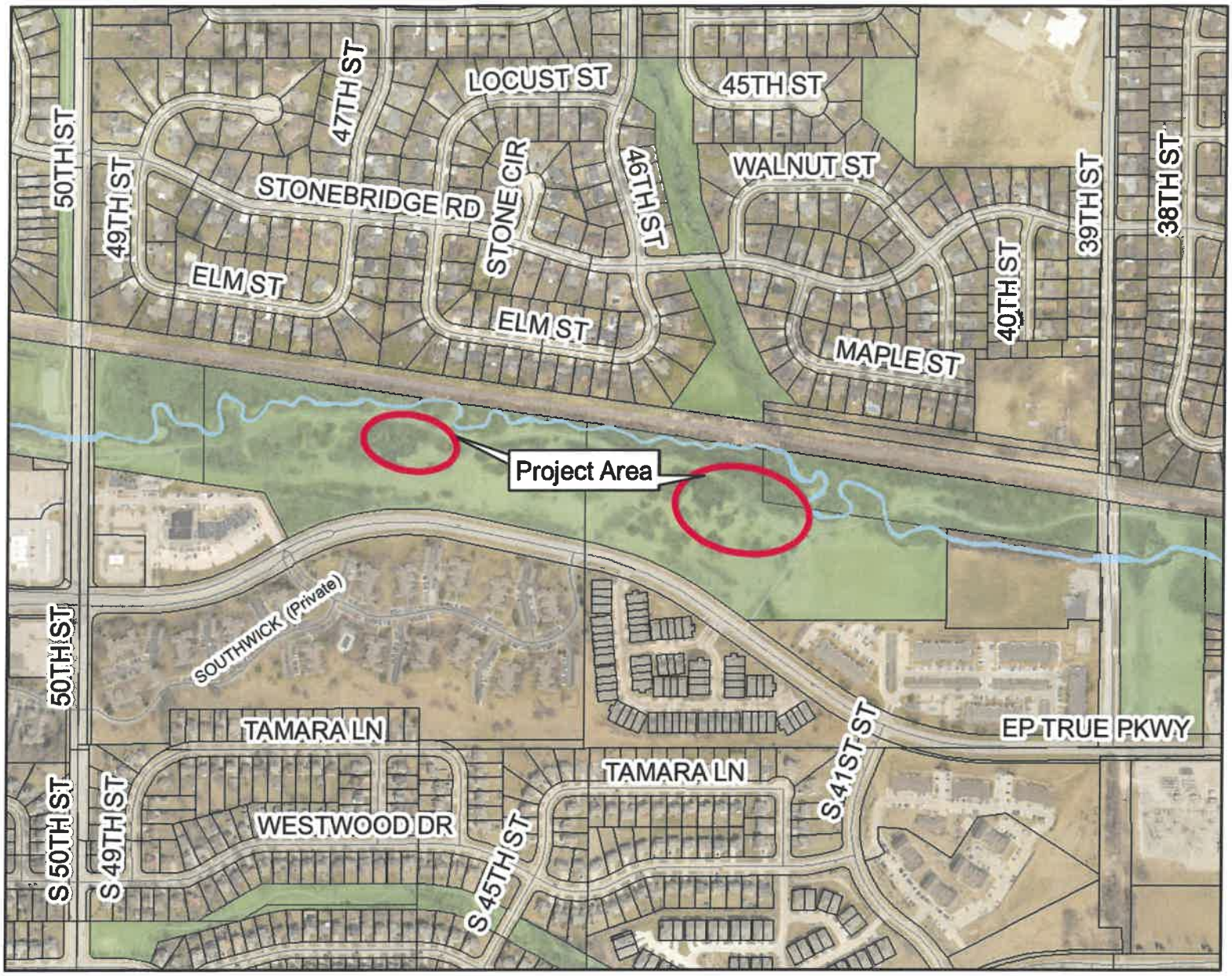
Department Director	
Appropriations/Finance	
Legal	
Agenda Acceptance	

PUBLICATION(S) (if applicable)

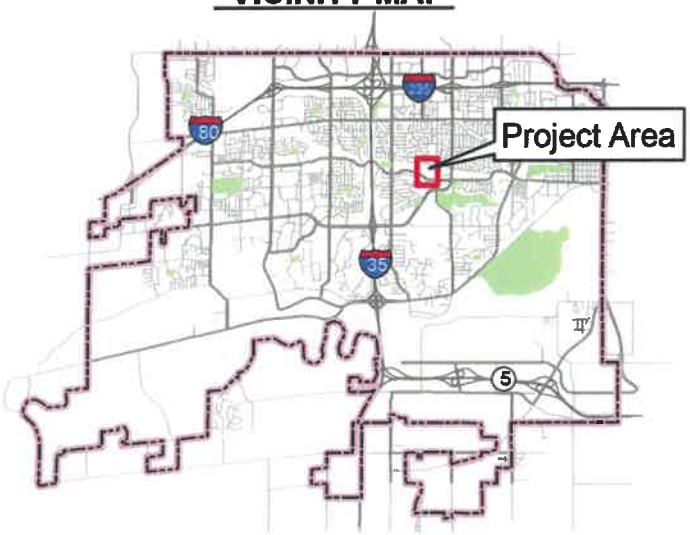
Published In	
Dates(s) Published	

SUBCOMMITTEE REVIEW (if applicable)

Committee	N/A		
Date Reviewed			
Recommendation	Yes	No	Split



VICINITY MAP



0 250 500 1,000 Feet

N

LEGEND

Project Area

THE CITY OF WEST DES MOINES	PROJECT:	OXBOW RESTORATION PROJECT	
	LOCATION:	JORDAN CREEK GREENWAY	
	DRAWN BY: MAA	DATE: 11/8/2018	PROJECT NO.:	SHT. 1 of 1

OXBOW RESTORATION AGREEMENT

This is an Agreement between The City of West Des Moines ("**Landowner**"), whose address is 4200 Mills Civic Parkway, P.O. Box 65320, West Des Moines, IA 50265-0320 and The Nature Conservancy, a non-profit corporation of the District of Columbia ("**Conservancy**"), 505 5th Avenue, Suite 930, Des Moines, IA 50309.

RECITALS:

A. The Conservancy is working in the Jordan Creek watershed to improve water quality, improve hydrology, and maintain biodiversity through habitat creation and restoration.

B. Landowner owns certain land located within the Jordan Creek watershed in Polk County, Iowa, which is legally described as:

Oxbow 1 property legal description: Outlot 2 Southwoods East Plat 4.
Oxbow 2 property legal description: Outlot A Southwoods.

("**Property**").

C. The Conservancy and Landowner wish to restore an oxbow on the Property to assess the impact of the restoration on nutrient processing, water storage, and wildlife habitat benefits,

In order to cooperate in the oxbow restoration on the Property, Landowner and the Conservancy agree as follows:

1. **Oxbow Restoration.** Landowner shall allow the Conservancy, its employees, agents and contractors to enter the Property to remove soil excavated during the oxbow restoration as part of reconstruction of an oxbow wetland to its former meander by the City of West Des Moines. as shown on attached **Exhibit A** (the "Project"). The City of West Des Moines shall obtain any permits required for the Project. The roles and associated costs for each entity shall be split between Landowner and Conservancy as outlined on the attached "Overview of Roles".

2. **Oxbow Function and Maintenance; Future Owners.** Landowner shall allow drain tile water or storm water to flow through the reconstructed oxbow, if applicable. Landowner shall not modify the reconstructed oxbow during the Term of this Agreement without the prior written consent of the Conservancy. If Landowner sells the property, Landowner may assign this Agreement to the new owner, but the contractual obligations herein shall remain joint and severable.

3. **Access by Conservancy and Others.** During the Term of this Agreement, the Conservancy, its employees, agents and contractors shall be entitled to:

   a. Enter the Property to monitor water quality, water storage, and habitat benefits. Monitoring activities may include collecting water samples, deploying area velocity meters and water level loggers to determine flow and water levels throughout the oxbow, and fish surveys with assistance from the Iowa Department of Natural Resources. If requested, the Conservancy will provide information to Landowner about monitoring results.

   b. Bring third parties interested in the reconstruction onto the Property for field trips for educational and outreach activities, provided that the Conservancy provides Landowner with reasonable prior notice of each field trip.

4. **Research Results**. The Conservancy shall be entitled to publish the results of the Project, including its monitoring, provided that the Conservancy will not identify Landowner by name unless Landowner consents to being identified in published results.

5. **Term and Termination**. The term of this agreement shall begin on date of last signature and shall end on December 31st, 2028.

6. This Agreement may be modified at any time by mutual written consent of the parties. It may be terminated by either party upon 30 days advance written notice to the other party. The Conservancy may terminate this Agreement immediately in the event the Landowner fails to comply with the terms of this Agreement or if monies to fund this Agreement are not available to the Conservancy for any reason. However, if the Landowner:

   (a) terminates the Agreement before its expiration,
   (b) sells the Property prior to this Agreement's expiration and the new landowner does not agree in writing to assume the obligations of this Agreement, or
   (c) modifies the oxbow in violation of Paragraph 2 above,

   the Landowner agrees to reimburse the Conservancy a pro rata share of the costs of the Project, in the amount of $_____ for each year left under the Agreement.

7. **Certification for Conflict of Interest Determination.** Landowner certifies that the information Landowner has provided on the Attachment entitled **"Disclosure Form"** is true and correct to the best of Landowner's knowledge. In the event that any material misrepresentation in the Disclosure Form is discovered during the term of this Agreement, the Conservancy may elect to declare this Agreement null and void and immediately terminate it.

8. **Notice of Transfer**. Landowner will notify the Conservancy in writing at least 30 days before closing of any planned sale or other change in the ownership of the Property.

9. **Contacts**. The primary contact at the Conservancy will be David De Geus, 505 Fifth Avenue, Suite 930, Des Moines, IA 50309, 515-244-5044, ddegeus@tnc.org, AND primary contact for the Landowner will be **Kevin Conn, 4200 Mills Civic Parkway, Suite 1B, West Des Moines, Iowa, 65320, 515-222-3449, kevin.conn@wdm.iowa.gov**.

Landowner

_____ _____

_____ _____
Date Date

The Nature Conservancy

By: _____, Iowa State Director

_____

Date

DRAFT

Exhibit A
Map showing Oxbow Restoration

The Nature Conservancy

Exhibit A

0 250 500 1,000 Feet

Oxbow construction area #1 is located in the SW 1/4 of the SW 1/4 of Section 8, T78N R25W

Oxbow construction area #2 is located in the SE 1/4 of the SW 1/4 of Section 8, T78N R25W

Overview of Roles - Jordan Creek Oxbow Restoration

Design- Natural Resources Conservation Service (NRCS) is providing all designs and construction oversite. This includes pre-construction meeting, staking, and checkout. NRCS will also complete threatened/endangered species and cultural resources requirements for project site.

Funding- The Nature Conservancy (TNC) will provide up to $60,000 to fund tree removal, spoil hauling, site restoration and erosion control. TNC will complete a maintenance agreement and contract with the City of West Des Moines to allow for future access.

Construction (excavation)- City of West Des Moines Public Services staff will provide excavator and complete the excavation of the oxbows and provide and place two 24" culverts under bike trail for stream connection. A temporary construction access will be built with spoils for hauling and removed following completion.

Trail Repair- City of West Des Moines Parks and Recreation will incorporate trail repairs, following placement of stream connection culvert, into future trail project. This will take place following construction of oxbows if timing allows, or temporary gravel will be placed until trail project is completed.

Spoils Site- Spoils will be transported to new West Des Moines Public Services facility by private contractor hired by TNC. These spoils will be incorporated into site grading plan, permits and SWPP plan provided by City.

Hauling/Tree Removal- A private contractor will be hired by TNC to remove trees/brush on site and haul and dispose of spoils to an acceptable site.. This contractor will be paid through grant funding provided by the Nature Conservancy. A sub-contractor will be hired by TNC for erosion control and restoration/seeding upon completion of project.

Signage and Education- City of West Des Moines will provide and install a sign overviewing project and possibly additional education and outreach as they see fit.

Permits- Polk SWCD will submit West Des Moines floodplains permit. Iowa DNR has notified that for this restoration project a joint application is not necessary. ACE has requested that Polk SWCD submit one permit for all projects for Fall 2018 for documentation. A SWPP will not be necessary because the disturbance area is less than 1 acre.

Timeline

Submit permits- August (Polk SWCD)

Submit designs to West Des Moines for Review- August (NRCS)

Receive 3 bids from local contractors for tree clearing/spoils hauling- August/September (Polk SWCD)

Submit maintenance agreement and contract to West Des Moines for review- September (TNC)

Construction- after October 1st, 2018to avoid bat tree issues

- When spoils site is ready
- Ideally November/early December