CITY OF WEST DES MOINES
CITY COUNCIL MEETING COMMUNICATION

DATE: **August 5, 2019**

ITEM: Resolution - Approval and Acceptance of Community Attraction and Tourism (CAT) Grant for the MidAmerican Energy RecPlex

FINANCIAL IMPACT: $500,000 grant to City.

SYNOPSIS: The Community Attraction and Tourism (CAT) Program was established by the Iowa Legislature to support community projects that expand the recreational, cultural, educational and entertainment opportunities in Iowa. It is administered by the Enhance Iowa Board, which has approved the application of the City for a grant of $500,000 to assist in funding the MidAmerican RecPlex Project.

BACKGROUND: The CAT grant, which is disbursed on a reimbursement basis, is calculated as a percentage of the total RecPlex project cost of $33,249,000 and will be reduced proportionately if the total project cost is less. Among other things, the Agreement requires the City Council to approve the attached Resolution authorizing the execution and delivery of the Agreement and such other documents as the Enhance Iowa Board or the Enhance Iowa Board's legal counsel may request, including specifying the officer(s) authorized to execute the Agreement. The CAT grant agreement anticipates a project completion date of July 31, 2021.

OUTSTANDING ISSUES (if any): None.

RECOMMENDATION: Adopt the attached Resolution authorizing the execution and delivery of the Community Attraction and Tourism (CAT) Grant Agreement between the Enhance Iowa Board and the City of West Des Moines.

Lead Staff Member: Tom Hadden, City Manager

STAFF REVIEWS

Department Director	Richard J. Scieszinski, City Attorney RJS
Appropriations/Finance	
Legal	
Agenda Acceptance	

PUBLICATION(S) (if applicable)

Published In	
Dates(s) Published	

SUBCOMMITTEE REVIEW (if applicable)

Committee	None		
Date Reviewed			
Recommendation			

RESOLUTION NO._____

RESOLUTION APPROVING AND ACCEPTING THE COMMUNITY ATTRACTION AND TOURISM (CAT) GRANT AGREEMENT FOR THE MIDAMERICAN ENERGY RECPLEX

WHEREAS, the City of West Des Moines has undertaken the planning, design and construction of a multi-recreational facility to be known as the MidAmerican Energy Company RecPlex ("RecPlex"); and

WHEREAS, the Iowa Legislature has established the Community Attraction and Tourism (CAT) Program to support community projects that expand the recreational, cultural, educational and entertainment opportunities in Iowa; and

WHEREAS, in response to an application filed by City representatives for funding of the RecPlex Project through the CAT Program, the Enhance Iowa Board, as administrator of the Program, has approved the application and awarded a grant of $500,000 to assist the City in funding the RecPlex Project; and

WHEREAS, to memorialize the grant, the Enhance Iowa Board has provided the City with the attached Community Attraction and Tourism (CAT) Grant Agreement; and

WHEREAS, in compliance with Program requirements, the City agrees to authorize the execution and delivery of the Agreement and such other documents as the Enhance Iowa Board or the Enhance Iowa Board's legal counsel may reasonably request, including all documents necessary to bind the City to the Agreement; and

WHEREAS, the City further agrees to provide evidence acceptable to the Enhance Iowa Board or the Enhance Iowa Board's legal counsel of all other funding sources committed to the RecPlex Project, and provide Form "W-9, Request for Taxpayer Identification Number and Certification."

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF WEST DES MOINES, IOWA THAT:

1. *The Community Attraction and Tourism (CAT) Grant Agreement Between the Enhance Iowa Board and the City of West Des Moines for the MidAmerican Energy Company RecPlex Project* is approved.

2. The Mayor is authorized to sign the Agreement and the City Clerk is directed to attest to the Mayor's signature, after which the Agreement shall be delivered to the Enhance Iowa Board.

3. City staff is directed to provide any and all evidence acceptable to the Enhance Iowa Board or the Enhance Iowa Board's legal counsel of all other funding sources that have been committed to this Project, as well as completed Form "W-9, Request for Taxpayer Identification Number and Certification."

PASSED AND ADOPTED this 5th day of August, 2019.

_____
Steven K. Gaer, Mayor

ATTEST:

_____
Ryan T. Jacobson, City Clerk

COMMUNITY ATTRACTION AND TOURISM (CAT)
GRANT AGREEMENT

RECIPIENT: City of West Des Moines
CAT AGREEMENT NUMBER: 20-CAT-003
EFFECTIVE DATE: July 10, 2019
PROJECT NAME: MidAmerican Energy Company RecPlex
TOTAL GRANT AMOUNT: $500,000
PROJECT COMPLETION DATE: July 31, 2021

This **COMMUNITY ATTRACTION AND TOURISM ("CAT") GRANT AGREEMENT** is made by and between the **Enhance Iowa Board** ("**Board**" or "**Enhance Iowa**") and the City of West Des Moines ("**Recipient**").

WHEREAS, the Community Attraction and Tourism (CAT) Program was established by the Iowa Legislature and the Governor of Iowa to support community projects that build on Iowa's unique assets and values and expand the recreational, cultural, educational, and entertainment opportunities in Iowa.

WHEREAS, Recipient submitted an application to the Enhance Iowa Board requesting CAT assistance to help finance the Project.

WHEREAS, the Enhance Iowa Board found the Project meets the requirements established for participation in the CAT Program.

WHEREAS, the Board, on July 10, 2019, unanimously voted to award a Grant of $500,000 to Recipient to assist in funding the Project, subject to the terms and conditions herein.

NOW THEREFORE, in consideration of the mutual promises contained in this Agreement and intending to be legally bound, the Enhance Iowa Board and Recipient agree to the following terms:

ARTICLE 1
DEFINITIONS

As used in this Agreement, the following terms shall apply:

1.1 **EFFECTIVE DATE** "Effective Date" means the date stated above on which the terms of this Agreement become in force and effect.

1.2 **GRANT** "Grant" means an award of assistance for which repayment of funds is not required upon fulfillment of the conditions of the award.

1.3 **GRANT AGREEMENT or AGREEMENT** "Grant Agreement" or "Agreement" means this document, the Project budget and all of the notes, leases, assignments, mortgages, and similar documents referred to in this document and all other instruments or documents executed by Recipient or otherwise required in connection with this grant.

1.4 **PROJECT** "Project" means the detailed description of the work, services, and other obligations to be performed or accomplished by Recipient as described in this Agreement, Program Description and Budget (Exhibit C), and the CAT Application as approved by the Board (Exhibit A).

1.5 **PROJECT COMPLETION DATE** "Project Completion Date" means July 31, 2021, which is the date by which the Project tasks are fully constructed and operational.

ARTICLE 2
GRANT AGREEMENT DURATION

2.1 **GRANT AGREEMENT DURATION** This Agreement shall be in effect on the Effective Date and shall remain in effect until after completion of each of the following:

(a) *Through Project Completion Date.* Through the Project Completion Date and for the period after Project Completion Date during which the Iowa Economic Development Authority (IEDA) will conduct Project closeout procedures to verify that the Project was completed in compliance with the Agreement.

(b) *Repayment or Payment Obligation.* Until all outstanding amounts due to the Board, if any, are received by IEDA or all outstanding obligations to the Board are satisfied in full.

(c) *Agreement End Date.* Until IEDA has completed Agreement closeout procedures and provided Recipient with written Notice of Final Agreement Closeout. This Agreement shall terminate as of the date of the Notice of Final Closeout, which date shall be the Agreement End Date.

2.2 **SURVIVAL OF OBLIGATIONS** Section 2.1 shall not abrogate or otherwise affect the obligations, terms, and conditions that survive beyond the Agreement End Date, including but not limited to the following sections of this Agreement: Section 5.4 (Accounting Records), Section 5.5 (Documentation), and Section 5.8 (Conveyance of Project Property).

ARTICLE 3
IDENTITIES OF THE PARTIES

3.1 **ENHANCE IOWA BOARD** The **Enhance Iowa Board** is a public instrumentality of the State of Iowa that was legislatively created to organize, establish, oversee, and approve the administration of the Enhance Iowa Program and the Community Attraction and Tourism Program. Iowa Code Chapter 15F authorizes the Board and its programs. The Board's address is 200 East Grand Avenue, Des Moines, Iowa 50309. The Enhance Iowa program is administered by IEDA. IEDA's address is 200 East Grand Avenue, Des Moines, Iowa 50309.

3.2 **RECIPIENT** The **City of West Des Moines** is an Iowa municipality located at 4200 Mills Civic Parkway, West Des Moines, IA 50265.

ARTICLE 4
FUNDING

4.1 **FUNDING SOURCE** The source of funding for the award is funds legally available to the Board in the Community Attraction and Tourism Fund established pursuant to Iowa Code Section 15F.204. The funds of the State of Iowa, other than those of the CAT Fund, are not obligated or available to meet any obligations of the Board created by this Agreement, and this Agreement shall not constitute an obligation or debt of the Board or the State except to the extent expressly described herein from funds on hand that are legally available for such purposes.

4.2 **RECEIPT OF FUNDS** All payments under this Agreement are subject to possession by the Board of sufficient funds for the CAT Program. Any termination, reduction, or delay of CAT funds to the Board may, in the Board's sole discretion, result in the termination, reduction, or delay of CAT funds to Recipient and/or termination of this Agreement.

ARTICLE 5
TERMS OF GRANT

5.1 **GRANT** The Board shall make a Grant up to the amount first stated herein to Recipient to assist in financing the Project, all subject to Iowa Code Chapter 15F, the Board's administrative rules (261 Iowa Administrative Code Chapter 211), and the terms and conditions of this Agreement. A copy of Recipient's CAT Application describing the Project is an integral part of this Agreement and marked as Exhibit A.

5.2 **MAXIMUM PAYMENTS** It is expressly understood and agreed that the maximum amount to be paid to Recipient for Project activities shall conform to the budget as presented in the Program Description and Budget (Exhibit C). It is further understood and agreed that the total of all payments to Recipient for Project activities shall not exceed the Grant funds unless the amount is modified by written amendment of this Agreement.

5.3 **USE OF FUNDS** Recipient hereby agrees to construct and operate the Project as described in its CAT Application (Exhibit A) and the Project Description and Budget (Exhibit C). Recipient shall maintain the Project in accordance with the representations in Exhibits A and C during the term of this Agreement. Recipient shall allow the Board, its internal or external auditors, IEDA, the Auditor of the State of Iowa, the Treasurer of the State of Iowa, the Attorney General of the State of Iowa, and the Iowa Division of Criminal Investigations to inspect the Project facilities at all reasonable times to monitor and evaluate performance with Iowa law and the terms of this Agreement.

5.4 **ACCOUNTING RECORDS** Recipient shall maintain its books, records, and all other evidence pertaining to this Agreement in accordance with generally accepted accounting principles and such other procedures specified by the Board. Recipient shall account for all activity pertaining to the Agreement in a distinct and separate category within its accounting system. These records shall be available to the Board, its internal or external auditors, IEDA, the Auditor of the State of Iowa, the Treasurer of the State of Iowa, the Attorney General of the State of Iowa, and the Iowa Division of Criminal Investigations at all times during the duration of the Agreement and any extension thereof, and for three (3) years after the Agreement End Date.

5.5 **DOCUMENTATION** Within ten (10) days of receipt of a written request from the Board, Recipient shall deliver to IEDA,

(i) Copies of all agreements or documents relating to the Project;
(ii) Copies of all invoices, receipts, statements, or vouchers relating to the Project;
(iii) A list of all unpaid bills for labor and materials in connection with the Project; and
(iv) Budgets and revisions showing estimated Project costs and funds required at any given time to complete and pay for the Project.

Recipient shall be bound by Section 5.5 from the Effective Date to the date three (3) years after the Agreement End Date.

5.6 **COST VARIATION** In the event that the actual total Project Cost is less than the amount specified in Exhibit C of the Agreement, the Grant funds shall be reduced by the same ratio as the actual total Project Cost divided by the total Project Cost listed in Exhibit C. Any reimbursed excess above the reduced Grant funds amount shall be returned to IEDA.

Example:

If the total amount spent to complete the project is less than the total Project Cost specified in Exhibit C of the Grant Agreement, the Board or IEDA shall calculate the amount of Grant funds to be returned as follows: first, the total amount spent to complete the project is subtracted from the total Project Cost listed in Exhibit C to determine the change in Project Cost. Second, the change in Project Cost is divided

by the total Project Cost listed in Exhibit C. Third, this percentage is multiplied by the original Grant award. The product is the amount of the Grant award that Recipient shall return to IEDA.

Numbers from Exhibit C of the Agreement

- The funded project had a total project cost listed in Exhibit C of $1,000,000
- The funded project had a total Grant funds listed in Exhibit C of $200,000

Completed project numbers

- The project, when completed, had a total cost of $900,000

Calculation of the amount to be returned

1. The actual total Project Cost ($900,000) is subtracted from the total Project Cost listed in Exhibit C ($1,000,000). This amount equals $100,000.
2. $100,000 divided by $1,000,000 equals 10%.
3. 10% multiplied by $200,000 equals $20,000. **Recipient shall return** $20,000 to IEDA.

5.7 **PRIOR COSTS** No expenditures made prior to the Effective Date may be included as Project Costs for the purposes of this Agreement.

5.8 **CONVEYANCE OF PROJECT PROPERTY** From the Effective Date to the date three (3) years after the Agreement End Date, Recipient shall not sell, transfer, convey, assign, encumber, or otherwise dispose of all or any portion of the Project property as described in Exhibit A without the written permission of the Board. Permission may be withheld in the sole discretion of the Board.

Should the Board grant permission to Recipient to sell, transfer, convey, assign, encumber, or otherwise dispose of any Project property, Recipient shall repay the full amount of the Grant award plus a pro-rata share of the profits realized by the sale of the Project property. The percentage of profit to be allocated to the Board shall be commensurate with the financial assistance contributed to the Project by the Board. The Board may waive its right to reimbursement, in whole or in part, if the Board determines, in its sole discretion, that the public interest would best be served thereby.

ARTICLE 6
CONDITIONS TO REIMBURSEMENT AND DISBURSEMENT OF FUNDS

6.1 **CONDITIONS TO REIMBURSEMENT** All of the following conditions shall be met before IEDA disburses Grant funds to Recipient:

(a) **AGREEMENT EXECUTED** This Grant Agreement shall be properly executed and returned to the Board within forty-five (45) days of the Board's transmittal of the final Agreement to Recipient.

(b) **BINDING FINANCIAL COMMITMENTS** Recipient shall obtain, to the satisfaction of the Board, all other legally binding financial commitments necessary to complete the Project. Failure to secure and submit documentation of such commitments to IEDA by October 8, 2019 may result in the rescission of the award and termination of this Agreement.

(c) **SUBMISSION OF RECIPIENT DOCUMENTATION** Prior to making any distribution of Grant funds, Recipient shall have submitted the following documents to IEDA:

For City/County recipient:

(i) A resolution of the City Council authorizing the execution and delivery by Recipient of this Agreement and such other documents as the Board or the Board's legal counsel may

reasonably request and specifying the officer(s) authorized to execute the Agreement and such other documents that are necessary to bind Recipient.

(ii) Evidence acceptable to the Board or the Board's legal counsel of all other funding sources that have been committed to this Project.

(iii) Form "W-9, Request for taxpayer identification number and certification."

6.2 **REIMBURSEMENT OF FUNDS** Grant funds are disbursed on a reimbursement basis. Recipient shall request reimbursement by submitting the request in the form designated by IEDA and submitting a Project progress report as described in Section 8.1(c) (Reports). The reimbursement form shall itemize Recipient's total actual allowable expenses. Expenses shall be documented in a manner acceptable to IEDA. Recipient shall also submit a Project progress report in the form designated by IEDA with each request for reimbursement.

IEDA will review the request and, if Recipient has met the requirements for reimbursement, will make the appropriate disbursement from the CAT Fund. The reimbursement will be limited to a pro-rata portion of Recipient's allowable expenses for the relevant period. No disbursements under $500 will be made, except for the final draw of Grant funds.

(a) **RETAINAGE** Five percent (5%) of the Grant award will be withheld from disbursement until Agreement closeout procedures have been completed.

(b) **REIMBURSEMENT RATIO** When calculating the reimbursement ratio, IEDA will make an adjustment for up to twenty-five percent (25%) of the local match amount to be in-kind donations. The reimbursement ratio is calculated by dividing the Grant funds by the difference between the total Project Cost and the adjusted in-kind allowance.

Example:

Numbers from Exhibit C of the Agreement

- Total Project Cost: $1,144,000
- Grant funds: $200,000
- Local Match: $944,000

In-kind allowance

- Local Match ($944,000) multiplied by 25% equals $236,000

Calculation of the reimbursement ratio

- The difference between the total Project Cost ($1,144,000) and the in-kind allowance ($236,000) equals $908,000.
- The Grant funds ($200,000) divided by $908,000 equals 22%.
- The reimbursement ratio of Grant funds is 22%.

(c) **METHOD OF PAYMENT** Prior to reimbursement, Recipient shall specify the account to receive funds.

(d) **SUSPENSION OF REIMBURSEMENT** Upon the occurrence of an Event of Default as defined in this Agreement by Recipient, IEDA may suspend payment to Recipient until the default has been cured to the Board's satisfaction. Notwithstanding anything to the contrary in this Agreement, upon a termination of this Agreement because of an Event of Default by Recipient, Recipient will no longer have the right to receive any reimbursements after the date of the Event of Default.

(e) **INVESTMENT OF GRANT FUNDS** In the event that the Grant funds are not immediately utilized, temporarily idle Grant funds held by Recipient may be invested, provided that such investments shall be in accordance with Iowa law, including but not limited to the provisions of Iowa Code Chapter 12C concerning the deposit of public funds. Interest accrued on temporarily idle Grant funds held by Recipient shall be credited to and expended on the Project prior to the expenditure of other Grant proceeds.

All proceeds remaining, including accrued interest, after all allowable Project costs have been paid or obligated shall be returned to IEDA within thirty (30) days after the Project Completion Date. Within ten (10) days of receipt of a written request from the Board or IEDA, Recipient shall inform the Board in writing of the amount of unexpended Grant funds in Recipient's possession or under Recipient's control, whether in the form of cash on hand, investments, or otherwise.

ARTICLE 7
REPRESENTATIONS AND WARRANTIES OF RECIPIENT

To induce the Board to make the Grant award referred to in this Agreement, Recipient represents, covenants, and warrants that:

7.1 **AUTHORITY** Recipient is duly organized and validly existing under the laws of the State and is in good standing and has complied with all applicable laws of the State of Iowa. Recipient is duly authorized and empowered to execute and deliver this Agreement. All action on the part of Recipient, such as appropriate resolution of its governing body for the execution and delivery of the Agreement, has been effectively taken.

7.2 **FINANCIAL INFORMATION** All financial statements and related materials concerning Recipient and the Project provided to the Board are true and correct in all material respects and completely and accurately represent the subject matter thereof as of the effective date of the statements and related materials, and no material adverse change has occurred since that date.

7.3 **APPLICATION** The contents of the CAT Application submitted by Recipient to the Board for CAT funding completely and accurately represents Recipient and the Project as of the date of submission and there has been no material adverse change in the organization, operation, Recipient prospects, fixed properties, key personnel, or Project plan since the date Recipient submitted the CAT Application to the Board.

7.4 **LITIGATION AND OTHER CONTROVERSIES** There is no litigation or governmental proceeding pending, nor to the knowledge of Recipient, threatened, again Recipient which, if adversely determined would be substantially likely to result in any material adverse change in Recipient's ability to complete the Project or the financial condition, properties, business or operations of the Project, nor is Recipient aware of any existing basis for any such litigation or governmental proceeding.

7.5 **EFFECTIVE DATE** The covenants, warranties, and representations of this Article are made as of the date of this Agreement and shall be deemed to be renewed and restated by Recipient when each advance or request for reimbursement of funds is submitted.

7.6 **PROJECT COST** Based on all information known or that should be known by Recipient, the estimated cost of the Project is thirty-three million, two hundred forty-nine thousand, three hundred eighty-two dollars ($33,249,382). If the estimated cost of the Project changes by more than five percent (5%), Recipient shall notify the Board within thirty (30) days of identifying that the Project Cost has changed. Upon notice of change in the estimated cost of the Project, the Board may exercise its discretion to adjust the reimbursement ratio accordingly.

ARTICLE 8
COVENANTS OF RECIPIENT

8.1 **AFFIRMATIVE COVENANTS** Until the terms of this Agreement are fulfilled, Recipient covenants to the Board that:

(a) **PROJECT WORK; OPERATION AND MAINTENANCE** Recipient shall complete the Project by July 31, 2021. For the purposes of this section, "complete" means the Project is fully constructed and operational at a level acceptable to the Board. For the duration of this Agreement, Recipient shall operate and maintain the Project facilities at a level acceptable to the Board.

(b) **NOTICE OF PROCEEDINGS** Recipient shall promptly notify the Board of the initiation of any claims, lawsuits, bankruptcy proceedings, or other proceedings brought against Recipient that would adversely impact the Project.

(c) **REPORTS** Recipient shall prepare, sign, and submit the requests and reports as specified below in the form and content specified by the Board. Recipient shall review all reimbursement requests and verify that claimed expenditures are allowable costs and submit Project progress reports with each reimbursement request. Recipient shall maintain documentation adequate to support the claimed costs. Upon request of the Board or IEDA, Recipient shall submit:

(i) Annual audited financial statements.

(ii) Certified year-end financial statements or balance sheets.

(iii) Final Performance or Audit Reports.

The Board reserves the right to require more frequent submission of any of the above reports if, in the opinion of the Board, more frequent submissions would help improve Recipient's Project performance.

(d) **NOTICE OF MEETINGS** Recipient shall notify the Board at least ten (10) working days in advance of all meetings of its governing body at which the subject matter of this Agreement or Project is proposed to be discussed. Recipient shall provide the Board with copies of the agenda and minutes of such meetings and expressly agrees that a representative of the Board may attend all such meetings for the purposes of the discussion of this Project.

(e) **INDEMNIFICATION** Recipient shall indemnify, defend, and hold harmless the Board; IEDA; the State of Iowa; and its departments, divisions, agencies, sections, commissions, officers, employees, and agents from and against all losses, liabilities, penalties, fines, damages, and claims, including but not limited to taxes, and all related costs and expenses, including but not limited to reasonable attorneys' fees and disbursements and costs of investigation, litigation, settlement, judgments, interest, and penalties arising from or in connection with any of the following:

(i) Any claim, demand, action, citation, or legal proceeding arising out of or resulting from the Project;

(ii) Any claim, demand, action, citation, or legal proceeding arising out of or resulting from a breach by Recipient of any representation or warranty made by Recipient in the Agreement;

(iii) Any claim, demand, action, citation, or legal proceeding arising out of or related to occurrences that Recipient is required to insure against as provided for in this Agreement; and

(iv) Any claim, demand, action, citation, or legal proceeding that results from an act or omission

of Recipient or any of its agents in its capacity as an employer of a person.

(f) **RELEASE** Recipient shall release, discharge, and relinquish the Board; all Board members; IEDA; the State of Iowa; and all departments, divisions, agencies, sections, commissions, officers, employers, agents, contractors, associates, and affiliates of the State of Iowa from any and all liability resulting from or related to the termination, suspension, reduction, or delay of grant proceeds under this contract, including but not limited to a termination, suspension, reduction, or delay under the following sections of this Agreement: Section 4.2 (Receipt of Funds), Section 6.2(d) (Suspension of Reimbursement), Section 9.5 (Remedies Upon Default), Section 9.6 (Termination for Convenience), and Section 9.7 (Procedure Upon Termination).

(g) **PROJECT FEES** Recipient shall promptly pay all appraisal, survey, recording, title, license, permit, and other fees and expenses incurred incident to the Project funded by this Agreement.

(h) **INTEREST AND SURPLUS PROCEEDS** Recipient shall return all unexpended Grant funds and interest accrued on Grant funds to IEDA within thirty (30) days after the Project Completion Date.

8.2 **NEGATIVE COVENANTS** Throughout the terms of this Agreement, Recipient shall not, without prior written disclosure to the Board and prior written consent of the Board:

(a) **RECIPIENT'S INTEREST** Assign, waive, or transfer any of Recipient's rights, powers, duties, or obligations under this Agreement.

(b) **PROPERTY/COLLATERAL** Sell, transfer, convey, assign, encumber, or otherwise dispose of any of the real property for the Project.

(c) **RESTRICTIONS** Place or permit any restrictions, covenants, or any similar limitations on the real property or the Project.

(d) **REMOVAL OF PROJECT PROPERTY** Remove from the Project site or the State all or any part of the Project property.

(e) **RECIPIENT OWNERSHIP** Change the ownership, structure, or control of Recipient including but not limited to, entering into any merger or consolidation with any person, firm or corporation or permitting substantial distribution, liquidation or other disposal of Recipient's assets directly associated with the Project, if such change materially affects the Project. Recipient shall notify the Board forty-five (45) days prior to any change in Recipient's ownership, structure, or control. A change in board membership of Recipient, which takes place in the normal course of business, does not require Board consent. The Board has sole discretion to determine whether the change materially affects the Project. The Board shall not unreasonably withhold consent and will notify Recipient prior to the expiration of the 45-day period if it determines that the change in ownership, structure, or control does not materially affect the Project and therefore does not require Board consent

(f) **RECIPIENT OPERATION** Materially change the scope or use of the Project or the nature of the business and activities being conducted or proposed to be conducted by Recipient as described in Recipient's approved CAT Application (Exhibit A), unless the change is approved in writing by the Board. The Board shall determine the materiality of the change.

ARTICLE 9
DEFAULT; REMEDIES; AND TERMINATION

9.1 **NOTICE OF EVENT(S) OF DEFAULT** Recipient shall promptly notify the Board upon becoming aware of an actual or imminent Event of Default by Recipient.

9.2 **EVENT(S) OF DEFAULT** Each of the following shall constitute an Event of Default under this Agreement:

(a) **MATERIAL MISREPRESENTATION** Any representation, warranty or statement made or furnished to the Board by, or on behalf of, Recipient in connection with this Agreement or to induce the Board to make a Grant to Recipient shall be determined by the Board to be incorrect, false, misleading, or erroneous in any material respect when made or furnished.

(b) **NONCOMPLIANCE** Recipient fails to comply with Iowa Code Chapter 15F, the Board's administrative rules (261 Iowa Administrative Code Chapter 211), or any of the covenants, terms or conditions contained in this Agreement or documents executed pursuant to this Agreement.

(c) **FAILURE TO COMPLETE PROJECT** The Project, in the sole judgment of the Board, is not completed on or before the Project Completion Date. For the purposes of this section, "completed" means the Project is fully constructed and operational.

(d) **FAILURE TO OPERATE AND MAINTAIN** Recipient fails to operate and maintain the Project facilities for the duration of this Agreement.

(e) **RECIPIENT CHANGES** There is a material change in Recipient's ownership, structure, or control that occurs without the prior written disclosure to and, if required, written consent of the Board.

(f) **MISSPENDING** Recipient expends Grant funds for purposes not described in the CAT Application as approved by the Board (Exhibit A) or the Program Description and Budget (Exhibit C).

(g) **INSOLVENCY OR BANKRUPTCY** Recipient becomes insolvent or bankrupt, or admits in writing its inability to pay its debts as they mature, or makes an assignment for the benefit of creditors, or Recipient applies for or consents to the appointment of a trustee or receiver for Recipient or for the major part of its property; or if a trustee or receiver is appointed for Recipient or for all or a substantial part of the assets of Recipient and the order of such appointment is not discharged, vacated or stayed within sixty (60) days after such appointment; or if bankruptcy, reorganization, arrangement, insolvency, or liquidation proceedings or other proceedings for relief under any bankruptcy or similar law or laws for the relief of debtors are instituted by or against Recipient and, if instituted against Recipient, are consented to, or, if contested by Recipient, such proceeding is not dismissed by the adverse parties or by an order, decree or judgment within sixty (60) days after such institution.

(h) **INSURANCE** Loss, theft, damage, or destruction of any substantial portion of the Project property occurs for which there is either no insurance coverage or for which, in the opinion of the Board, there is insufficient insurance coverage.

(i) **INSECURITY** The Board in good faith deems itself insecure and reasonably believes, after consideration of all the facts and circumstances then existing, that the prospect of payment and satisfaction of the obligations under this Agreement or the performance of or observance of the covenants in this Agreement or the value of its collateral is or will be materially impaired.

(j) **CONVEYANCE OF RESPONSIBILITIES** Recipient assigns, waives, or transfers any of Recipient's rights, powers, duties, or obligations under this Agreement without written permission of the Board.

(k) **CONVEYANCE OF PROPERTY** Recipient sells, transfers, conveys, assigns, encumbers, or otherwise disposes of any real property of the Project without written permission of the Board.

(l) **NO DISBURSEMENT OF FUNDS** IEDA has not disbursed CAT funds within the twelve (12) months immediately following the Effective Date.

9.4 **NOTICE OF DEFAULT** The Board shall issue a written notice of default providing therein a thirty (30) day period during which Recipient shall have an opportunity to cure. Notwithstanding this Section 9.4, if the Board determines cure is not possible or feasible, the Board may immediately deem Recipient in default without prior written notice or opportunity to cure.

9.5 **REMEDIES UPON DEFAULT** Upon the occurrence of any Event of Default, the Board shall have the right to terminate this Agreement and to require immediate repayment of the full amount of funds disbursed to Recipient under this Agreement plus interest at the rate of ten percent (10%) per annum without presentment, demand, protest, notice of protest, notice of intention to accelerate, or other notice of any kind, all of which are expressly waived by Recipient.

9.6 **TERMINATION FOR CONVENIENCE** In addition to termination due to an Event of Default or nonappropriation of CAT funds, this Agreement may be terminated in whole, or in part, when the Board and Recipient agree that the continuation of the Project would not produce beneficial results commensurate with the future disbursement of funds.

9.7 **PROCEDURE UPON TERMINATION** If this Agreement is terminated for convenience, reimbursement shall be allowed for costs expended up to the date of termination determined by the Board to be in compliance with Iowa Code Chapter 15F, the Board's administrative rules (261 Iowa Administrative Code Chapter 211), and this Agreement. If this Agreement is terminated for an Event of Default, nonappropriation of funds, or a reduction of appropriated funds, the Board may, in its sole discretion, allow reimbursement or partial reimbursement for costs up to the date of termination determined by the Board to be in compliance with Iowa Code Chapter 15F, the Board's administrative rules (261 Iowa Administrative Code Chapter 211), and this Agreement. Recipient shall return to IEDA all unencumbered Grant funds within one (1) week of receipt of Notice of Termination. Any costs previously paid by the Board that are subsequently determined to be unallowable through audit procedures shall be returned to the Board within thirty (30) days of the disallowance.

ARTICLE 10
GENERAL TERMS AND PROVISIONS

10.1 **BINDING EFFECT** This Agreement shall be binding upon and shall inure to the benefit of the Board and Recipient and their respective heirs, successors, legal representatives, and assigns. The obligations, covenants, warranties, acknowledgments, waivers, agreements, terms, provisions, and conditions of this Agreement shall be jointly and severally enforceable against the parties to this Agreement.

10.2 **TIMELY PERFORMANCE** The parties agree that the dates and time periods specified in this Agreement are of the essence to the satisfactory performance of this Agreement.

10.3 **ENHANCE IOWA RECOGNITION** The Project shall permanently recognize, in a manner acceptable to IEDA, the financial contribution to the Project made by the State of Iowa through the Community Attraction and Tourism Program.

10.4 **COMPLIANCE WITH LAWS AND REGULATIONS**

(a) Recipient shall comply with all applicable State and federal laws, rules, ordinances, regulations and orders. Recipient shall comply with Iowa Code Chapter 15F and the Board's administrative rules (261 Iowa Administrative Code Chapter 211).

(b) Recipient shall comply with all applicable federal, state, and local laws, rules, ordinances, regulations and orders when performing within the scope of this Agreement, including without limitation, all laws applicable to the prevention of discrimination in employment, the administrative rules of the Iowa Department of Management or the Iowa Civil Rights Commission which pertain to equal employment opportunity and affirmative action, laws relating to prevailing wages, occupational safety and health standards, prevention of discrimination in employment, payment of taxes, gift laws, lobbying laws, and laws relating to the use of targeted small businesses as contractors or suppliers.

(c) Recipient declares that it has complied or will comply, in a timely fashion, with all federal, state, and local laws regarding permits, licenses, and clearances that may be required to carry out the Project.

(d) As required by Iowa Code Section 15F.106, Recipient shall provide and pay at least fifty percent (50%) of the cost of a standard medical insurance plan for all full-time employees working at the Project after the completion of the Project.

(e) The Board may consider the failure of Recipient to comply with any law or regulation as a material breach of this Agreement. In addition, Recipient may be declared ineligible for future Community Attraction and Tourism Program assistance or be subjected to other sanctions, as defined by law, for failure to comply with this section.

10.5 **SURVIVAL OF AGREEMENT** Each provision of this Agreement shall be deemed severable from all other provisions of the Agreement and, if one or more of the provisions of the Agreement shall be declared invalid, the remaining provisions of the Agreement shall remain in full force and effect.

10.6 **CHOICE OF LAW AND FORUM** The laws of the State of Iowa shall govern and determine all matters arising out of or in connection with this Agreement without regard to any other principles of conflicts of law.

In the event any proceeding of a quasi-judicial or judicial nature is commenced in connection with this Agreement, the proceeding shall be brought in Des Moines, Iowa, in Polk County District Court for the State of Iowa, if such court has jurisdiction. If however, such court lacks jurisdiction and jurisdiction lies only in a United States District Court, the matter shall be commenced in the United States District Court for the Southern District of Iowa, Central Division.

This provision shall not be construed as waiving any immunity to suit or liability, in state or federal court, which may be available to the Enhance Iowa Board, the State of Iowa or their Board members, officers, employees or agents.

10.7 **NO THIRD-PARTY BENEFICIARIES** There are no third-party beneficiaries to this Agreement.

10.8 **MODIFICATION** Neither this Agreement nor any documents incorporated by reference in connection with this Agreement may be changed, waived, discharged, or terminated orally, but only as provided below:

(a) **WRITING REQUIRED** The Agreement may only be amended through written prior approval of the Board. Examples of situations where amendments are required include, but are not limited to, extensions for completion of Project activities and changes to the Project including, but not limited to, alteration of existing approved activities or inclusion of new activities.

(b) **BOARD REVIEW** The Board will consider whether an amendment request is so substantial as to necessitate reevaluating the Board's original funding decision on the Project. The Board will deny an amendment if it substantially alters the circumstances under which the Project funding was originally approved or if it does not meet requirements set forth in Iowa Code Chapter 15F or 261 Iowa Administrative Code Chapter 211.

10.9 **NOTICES** Whenever this Agreement requires or permits any notice or written request by one party to another, it shall be in writing, enclosed in an envelope, addressed to the party to be notified at the address heretofore stated (or at such other address as may have been designated by written notice), properly stamped, sealed and deposited in the United States Mail. Any such notice given hereunder shall be deemed delivered upon the earlier of actual receipt or three (3) days after posting. The Board may rely on the addresses of Recipient as set forth heretofore.

10.10 **WAIVERS** No waiver by the Board of any default hereunder shall operate as a waiver of any other default or of the same default on any future occasion. No delay on the part of the Board in exercising any right or remedy hereunder shall operate as a waiver thereof. No single or partial exercise of any right or remedy by the Board shall preclude future exercise thereof or the exercise of any other right or remedy.

10.11 **LIMITATION** It is agreed by Recipient that the Board shall not, under any circumstances, be obligated financially under this Agreement except to disburse funds according to the terms of the Agreement.

10.12 **ENFORCEMENT EXPENSES** Recipient shall pay upon demand all reasonable fees and expenses, including but not limited to the fees and expenses of the Board's attorneys, including the Iowa Attorney General, experts and agents, in connection with the exercise or enforcement of any of the Board's rights under the Agreement.

10.13 **HEADINGS** The headings in this Agreement are intended solely for convenience of reference and shall be given no effect in the construction and interpretation of this Agreement.

10.14 **EVENT OF BOARD DISSOLUTION** Recipient hereby acknowledges that the Enhance Iowa Board is a public instrumentality of the State of Iowa and that, in the event that the Board is dissolved for any reason, the State of Iowa is entitled to enforce any right, title, or interest held by the Board and that all Recipient's obligations hereunder are also owed to the State of Iowa.

10.15 **FINAL AUTHORITY** The Board shall have the final authority to assess whether Recipient has complied with the terms of this Agreement. The Board's decision shall be final and binding on all questions concerning the interpretation of this Agreement.

10.16 **INTEGRATION** This Agreement contains the entire understanding between Recipient and the Board relating to this Project and any representations that may have been made before or after the signing of this Agreement, which are not contained herein, are nonbinding, void, and of no effect. None of the Parties has relied on any such prior representation in entering into this Agreement.

10.17 **COUNTERPARTS** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute but the same instrument.

10.18 **DOCUMENTS INCORPORATED BY REFERENCE** The following documents are hereby incorporated by reference:

(a) Exhibit A - CAT Application, as approved by the Enhance Iowa Board. Due to its size, Exhibit A will not be attached to this Agreement, but will be kept on file at IEDA.
(b) Exhibit B - Enhance Iowa Award Letter.
(c) Exhibit C - Program Description and Budget.

10.19 **ORDER OF PRIORITY** In the event of a conflict between documents, the following order of priority shall be applied:

(a) Articles 1-10 of this Grant Agreement.

(b) Exhibit C - Program Description and Budget.
(c) Exhibit B - Enhance Iowa Award Letter.
(d) Exhibit A - CAT Application as approved by the Enhance Iowa Board.

IN WITNESS WHEREOF in consideration of the mutual covenants set forth above and for other good and valuable consideration, the receipt, adequacy and legal sufficiency of which are hereby acknowledged, the parties have entered into the above Agreement and have caused their duly authorized representatives to execute this Agreement, effective as of the Effective Date first stated.

FOR THE ENHANCE IOWA BOARD:

BY: _____
John M Burns, Chairman

FOR RECIPIENT:

BY: _____
Steve Gaer, Mayor

LIST OF EXHIBITS

Exhibit A	CAT Application as approved by the Enhance Iowa Board (on file with IEDA)
Exhibit B	Enhance Iowa Award Notification
Exhibit C	Program Description and Budget

COMMUNITY ATTRACTION AND TOURISM (CAT)
PROGRAM DESCRIPTION AND BUDGET

EXHIBIT C

Recipient: City of West Des Moines **Award Date:** July 10, 2019

Agreement Number: 20-CAT-003

PROJECT DESCRIPTION		AMOUNT BUDGETED		
		CAT	MATCH	TOTAL
The 294,000 square foot facility will include two sheets of ice plus a 19,000 square foot common area. The main ice arena seats 1,600 people and the second arena seats 500. The turf fieldhouse, at nearly 100,000 square feet, includes one full sized turf soccer field (that converts into indoor netted fields), with mezzanine seating for spectators. Additionally, 41,000 square feet of convertible hard-court, which will accommodate 4 basketball or 8 volleyball courts will be included. The site will also contain five full sized outdoor soccer, lacrosse, and football fields. On-site parking will accommodate over 1,000 vehicles.		$500,000	$32,749,382	$33,249,382
TOTAL OF ALL FUNDS BUDGETED:		$500,000	$32,749,382	$33,249,382