CITY OF WEST DES MOINES
CITY COUNCIL MEETING COMMUNICATION

DATE: **March 16, 2020**

ITEM: Resolution - Approval and Acceptance of Purchase Agreement of former Bridges of Iowa property for use as regional stormwater management facility

FINANCIAL IMPACT: $675,000.00 - available in the proposed FY 2021 capital improvements program, scheduled for City Council approval March 23, 2020.

SYNOPSIS: In 2013, LT Leon and Associates completed the Southeast Drainage Basin Study for the City. The study area spans the Valley Junction area northwest to Ashworth Road and west to Grand Avenue. Significant improvements were recommended throughout the study area, including the use of the Bridges of Iowa property at 1211 Vine Street for storm water detention. Representatives of Bridges of Iowa subsequently advised the City of its intent to sell the property, and following negotiations, the City agreed to purchase the property for $675,000. Additional costs for hazardous materials testing and potential mitigation, as well as building demolition, will be incurred prior to construction of the detention basin. Closing on this acquisition is tentatively scheduled on or before July 1, 2020.

The negotiated purchase agreement is shown on the attached Exhibit "A." The Resolution approves the purchase agreement and, for policy and title purposes, formally accepts the property interests and authorizes the filing of all relevant documents. Costs associated with acquisition of the property interests will be paid from Account No. 500.000.000.5550.730, Project No. 0510-006-2020.

OUTSTANDING ISSUES (if any): None

RECOMMENDATION:

Adopt Resolution Approving and Accepting Purchase Agreement and Conveyance of Property Interests to the City of West Des Moines for 12th & Vine Regional Stormwater Management Facility.

Lead Staff Member: Richard J. Scieszinski, City Attorney

STAFF REVIEWS

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

PUBLICATION(S) (if applicable)

Published In	
Dates(s) Published	

SUBCOMMITTEE REVIEW (if applicable)

Committee	City Council		
Date Reviewed	February 17, 2020		
Recommendation	Yes		

RESOLUTION NO._____

RESOLUTION AUTHORIZING APPROVAL AND ACCEPTANCE OF PURCHASE AGREEMENT AND CONVEYANCE DOCUMENTS NECESSARY FOR THE ACQUISITION PROPERTY FOR CONSTRUCTION OF A REGIONAL STORMWATER MANAGEMENT FACILITY, PROJECT NO. 0510-006-2020

WHEREAS, in 2013, LT Leon and Associates completed the Southeast Drainage Basin Study for the City; and

WHEREAS, significant improvements were recommended throughout the study area, including the use of the former Bridges of Iowa property at 1211 Vine Street for storm water detention; and

WHEREAS, the City of West Des Moines has negotiated a Purchase Agreement for the acquisition of the former Bridges of Iowa property that can be used for the construction of 12th & Vine Regional Stormwater Management Facility, Project No. 0510-006-2020; and

WHEREAS, approval of the Purchase Agreement and all conveyance documents necessary to complete the transaction is in the best interest of the City of West Des Moines.

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

1. The Purchase Agreement and all documents necessary for the conveyance of the property to the City of West Des Moines are hereby approved and accepted.

2. The City Clerk is directed to certify the City Council's approval and acceptance.

3. The City Attorney is authorized to take all steps necessary and consistent with the Purchase Agreement to acquire the property interests.

4. The Director of Finance is authorized to make payment to the property owners shown on the attached **Exhibit "A"** pursuant to the terms and conditions of the Purchase Agreement.

5. The documents shall be filed with the county recorder as appropriate.

APPROVED AND ADOPTED this 16th day of March, 2020.

_____
Steven K. Gaer, Mayor

ATTEST:

_____
Ryan T. Jacobson
City Clerk

OFFER TO PURCHASE AND AGREEMENT BETWEEN THE CITY OF WEST DES MOINES, IOWA AND BRIDGES OF IOWA

TO: **BRIDGES OF IOWA, an Iowa non-profit corporation**
("Owner" or "Seller")

THE CITY OF WEST DES MOINES, a municipal corporation organized under the laws of the State of Iowa (City") hereby offers to buy the real estate situated in Polk County, Iowa, and legally described on the attached Exhibit "A", together with any easements, restrictions or covenants of record, servient estates appurtenant thereto and buildings and improvements, hereinafter collectively referred to as the "Property", subject to the terms and conditions as set forth below.

ARTICLE I

Section 1.1. Subject to the terms of this Article I, the City agrees to acquire the Property from the Owner legally described above on or before July 1, 2020 ("Closing Date").

Section 1.2. Subject to all of the terms, covenants and conditions of this Agreement, the Owner agrees to sell and the City agrees to purchase the Property for the total purchase price of Six Hundred Seventy-Five Thousand Dollars ($675,000.00) (the "Purchase Price").

Section 1.3. Notwithstanding the provisions of Section 3.2, below, the City, at its sole expense, shall have the right to conduct such studies, investigations, inspections or tests of the Property, including subsurface testing, test borings and soil analysis as it deems reasonable or necessary, prior to the Closing Date. The Owner hereby grants City, its officers, agents, employees and independent contractors, the right to enter upon the Property at reasonable times upon reasonable notice, oral or written, from time to time after the date of this Agreement and prior to the Closing Date for the purpose of investigating, inspecting and testing the Property and for other purposes consistent with the City's interest under this Agreement. If, as a result of such studies, investigations, inspections or tests, the City discovers that there is a substantial likelihood that a hazardous substance is present or that a material structural defect exists on any portion of the Property, the City, in its sole discretion, shall have the absolute right to terminate this Agreement effective immediately by delivering to Owner a written notice of such election. Upon delivery of such notice, this Agreement shall be null and void and all further obligations, duties, claims, rights and liabilities of the parties shall be extinguished.

Section 1.4. Owner shall provide the abstract of title to the City for continuation at Owner's expense. The abstract shall become the property of the City at Closing, when the purchase price is paid in full, and shall show marketable title in conformity with this Agreement, the land title law of the State of Iowa and Iowa Title standards of the Iowa State Bar Association. Owner shall pay costs of additional abstracting and/or title work due to any act or omission of Owner.

Section 1.5. Any outstanding property taxes attributable to the period of Owner's ownership of the Property and any outstanding taxes from prior years shall be the responsibility of the Owner. The Owner shall pay all special assessments on the Property which have been certified to the county treasurer for collection prior to Closing Date.

Section 1.6. Owner shall convey marketable title to the City by Warranty Deed, with terms and provisions as per form approved by the City of West Des Moines, free and clear of liens and encumbrances, including leasehold interests and leasehold claims, reservations or modifications except as in this instrument otherwise expressly provided. All warranties shall extend to time of closing, with special warranties as to acts of Owner up to time of delivery of the warranty deed. Owner agrees that amounts payable by Owner for real estate taxes, special assessments, mortgage payoffs, liens, or judgments shall be deducted at closing from the Property's Purchase Price.

Section 1.7. The Owner shall deliver a Warranty Deed conveying the Property and possession of the Property to the City on or before the Closing Date. Closing shall be made at the principal office of the City, or as otherwise mutually agreed by the parties, on the Closing Date, and the City shall accept such conveyance and pay to the Owner at such time and place the Property's Purchase Price in immediately available funds.

ARTICLE II

Section 2.1. Upon possession, the intent of the City is to demolish the buildings and improvements on the Property. Therefore, Owner may remove any items that do not affect the structural integrity or functionality of the buildings or remove items that do not jeopardize the security of the buildings or which expose the buildings to the elements.

Section 2.2 Owner shall maintain fire, windstorm and extended coverage insurance in an amount not less than the full insurable replacement value of all buildings and personal property included in this Agreement until the Closing Date.

Section 2.3. Owner will preserve the property in its present condition as of the date of this Offer and will deliver it intact at the time possession is given; in case of loss

or destruction of part or all of said premises from causes covered by insurance, City agrees to accept such insurance recovery (proceeds to be applied as the interests of the parties appear) in lieu of that part of the damaged or destroyed improvements and Owner shall not be required to repair or replace same.

ARTICLE III

Section 3.1.

A. For Purposes of this Agreement.

1) The term "Environmental Laws" shall mean and include (i) the Resource Conservation and Recovery Act of 1976, 42 U.S.C. § 6901-6987, as amended by the Hazardous and Solid Waste Amendments of 1984; (ii) the Comprehensive Environmental Response, Compensation and Liability Act, as amended by the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C. § 9601-9657; (iii) the Hazardous Materials Transportation Act of 1975, 49 U.S.C. § 1801-1812; (iv) the Toxic Substances Control Act, 15 U.S.C. § 2601, et. seq.; (v) the Clear Air Act. 42 U.S.C. § 7401, et. seq.; (vi) the Federal Insecticide, Fungicide and Rodenticide Act. 7 U.S.C. § 136, et. seq.; (vii) Chapters 455B and 455E of Iowa Code; and all similar federal, state, or local environmental laws, ordinances, rules, codes and regulations, and any other federal, state and local laws, ordinances, rules, codes and regulations, as any of the foregoing may have been from time to time amended, supplemented or supplanted and any other federal, state or local laws, ordinances, rules, codes and regulations now existing relating to the environment or the regulation or control or imposing liability or standards of conduct concerning toxic or hazardous waste, substances or materials; and

2) The term "Hazardous Substances" shall mean and include any, each and all substances or materials regulated pursuant to any Environmental Laws, including, but not limited to, any such substance, emission or material now defined as or deemed to be a regulated substance, hazardous substance, toxic substance, pesticide, explosives, radioactive materials, hazardous waste or any similar or like classification or categorization thereunder, provided, however, that Hazardous Substances shall not include materials used or stored in connection with the operation or maintenance of the Property and in compliance in all material respects with all Environmental Laws, including petroleum products and any waste products generated therefrom.

B. The Owner hereby represents and warrants to the City in regard to the Property, to the best knowledge and belief of Seller without any investigation,

as follows: 1) No notices, complaints or orders of violation or noncompliance with Environmental Laws have been received by Owner, by any tenant of the Property, and no federal, state or local environmental investigation is pending or has been threatened against Owner, or against any tenants of the Property with regard to (i) the Property or any use thereof; (ii) any alleged violation of Environmental Laws with regard to the Property; (iii) any failure by Owner or any tenant of the Property to have any environmental permit, certificate, approval, registration or authorization required to the conduct of its business; or (iv) the generation, treatment, storage, recycling, transportation, disposal or Release (each a "Regulated Activity") of any Hazardous Substances on, at or under the Property. For purposes hereof, "Release" shall have the meaning given to that term in 42 U.S. C. § 9601(22).

2) The Property has not been used by Owner for the conduct of any Regulated Activity other than in compliance in all material respects with Environmental Laws.

3) That it has not done, caused or allowed any of the following to occur, and has no knowledge that any other person has done, caused or allowed any of the following to occur on the Property (except as stated below):

   a) The erection and existence of any wells;

   b) The existence of any underground storage tanks as defined in Iowa Code Section 455B.471;

   c) The location of any disposal sites for solid waste, as defined by Iowa Code Section 455B.301;

   d) Disposal or location of hazardous wastes as defined by Iowa Code Section 455B.411 or as listed by the Iowa Department of Natural Resources pursuant to Iowa Code Section 455B.412(2) or 455B.464;

   e) Activity which has or would cause (A) a release or threat of release of any Hazardous Substance or waste from the property within the meaning of, or otherwise bring any portion of the property within the ambit of any Environmental Law; (B) the Property to be deemed a hazardous waste treatment storage or disposal facility within the meaning of, or otherwise bring any of its Parcels within the purview of the Resource Conservation and Recovery Act of 1976 ("RCRA"), 42 U.S.C. § 6901 et. seq., as amended, or any similar state law or local ordinance.

4) There exists no petroleum contamination to the Property in violation of applicable Environmental Laws which originated on or off the Property, and there exists no underground storage tanks, surface impoundments, or solid waste disposal sites, active or abandoned, at, on or under the Property in violation of applicable Environmental Laws.

5) Neither Owner nor any third party acting by or on behalf of Owner has caused a release of any Hazardous Substance, nor is there any friable asbestos, polychlorinated biphenyls, formaldehyde or lead at, on or under the Property, the removal of which is required by an Environmental Law or the maintenance of which constitutes a violation of any Environmental Law.

C. The foregoing representations and warranties with respect to the Property shall survive the closing. In addition, the foregoing representations and warranties shall not be affected by any study, investigation, or inspection of the Property by the City.

Section 3.2. The Owner agrees to indemnify, defend, and hold harmless the City from and against any and all claims, demands, fines, penalties, causes of action, losses, damages, liabilities, expenses and costs, including court costs and reasonable attorney fees, (including costs and fees incurred to enforce this provision) incurred by the City or asserted against the City by any third party by reason of or arising out of the breach of any representation, warranty, or agreement of the Owner as set forth above in Section 3.1.

Nothing in this Agreement shall be deemed to be or constitute a waiver by the City of any defense available to it as a governmental entity pursuant to 42 U.S.C. §§ 9601(35)(A)(ii) and 9607(b)(3).

Section 3.3. Notices, demands, or other communications under this Agreement by either party to the other shall be sufficiently given or delivered if it is dispatched by registered or certified mail, postage prepaid, return receipt requested, or delivered personally, and

(a) In the case of the City, to City of West Des Moines, Iowa, 4200 Mills Civic Parkway, West Des Moines, Iowa 50265 (515) 222-3475. Attention: City Engineer;

(b) In the case of the Owner, to Bridges of Iowa, 1211 Vine Street, Suite 2210, West Des Moines, Iowa 50265, Attention: Jered Headrick,

or to such other designated individual or officer or to such other address as either party shall have furnished to the other in writing in accordance herewith.

Section 3.4. This Agreement shall be governed and construed under the laws of the State of Iowa.

Section 3.5. This Agreement and the Exhibits herein referenced, if any, shall constitute the entire agreement between the City and the Owner and supersedes all other written and oral agreements, discussions and negotiations.

Section 3.6. This Agreement may not be amended or assigned by either party without the express written permission of the other party.

Section 3.7. This Agreement may be executed in counterparts, each of which shall constitute one and the same instrument.

Section 3.8. In the event any term or provision of this Agreement is held to be unenforceable by a court of competent jurisdiction, the remainder shall continue in full force and effect, to the extent the remainder can be given effect without the invalid provision.

Section 3.9. This Agreement is subject to the approval of the City of West Des Moines City Council and shall be of no force or effect unless and until approved by the City Council.

Section 3.10. This Offer to Purchase shall expire March 16, 2020.

IN WITNESS WHEREOF, the City and Developer have caused this Agreement to be duly executed as of the day first above written.

CITY OF WEST DES MOINES,
an Iowa municipal corporation

_____
Steven K. Gaer, Mayor

ATTEST:

_____
Ryan T. Jacobson, City Clerk

STATE OF IOWA)
) SS
COUNTY OF POLK)

On this _ day of March, 2020, before me a Notary Public in and for said County, personally appeared **Steven K. Gaer and Ryan T. Jacobson**, to me personally known, who being duly sworn, did say that they are the Mayor and City Clerk, respectively of the City of West Des Moines, Iowa, a municipal corporation, created and existing under the laws of the State of Iowa and that said record was signed on behalf of said municipal corporation by authority and resolution of its City Council as contained in Resolution No. _____ passed on the 16th day of March, 2020, and said Mayor and City Clerk acknowledged said record to be the free act and deed of said municipal corporation by it voluntarily executed.

_____
Notary, State of Iowa

BRIDGES OF IOWA,
an Iowa non-profit corporation
By: _____
Its: Executive Director

STATE OF IOWA)
) ss
COUNTY OF POLK)

This record was acknowledged before me on the 3RD day of March, 2020, by PATRICK COUGHLIN, on behalf of Bridges of Iowa, an Iowa non-profit corporation, on behalf of whom the record was executed.

_____
Notary Public in and for the State of Iowa

JERED DALE HEADRICK
Commission Number 738811
My Commission Expires
March 9, 2021

EXHIBIT**"A"**

LEGAL DESCRIPTION OF PROPERTY

A parcel of land in the West 335 feet of the East Half of the Southwest Quarter of the Northeast Quarter of Section 10, Township 78 North, Range 25, West of the 5th P.M., now in and fonning a part of the City of West Des Moines, Iowa, more particularly described as: Beginning at the Northeast comer of Lot 73, Clover Hills Plat No. 3, West Des Moines, Iowa, thence S 89 degrees 36 minutes 56 seconds E, 332.57 feet to the West line of Penrod Place, an Offcial Plat, now included in and forrning a part of the City of West Des Moines, Iowa, thence S O degrees 10 minutes 45 seconds E along the West line of said Penrod Place 763.35 feet to the North line ofVine Street, thence N 90 degrees 00 minutes 00 seconds W along the North line of Vine Street 337.79 feet to the Southeast comer of Lot 85, said Clover Hills, Plat No. 3, thence N 0 degees 09 minutes 42 seconds W along the East line of said Clover Hills, Plat No. 3, 765.58 Feet to the place of beginning.