



**Roll Call Number**

**Agenda Item Number**

52

**Date** August 8, 2011

**RESOLUTION APPROVING AGREEMENT FOR SHARING OF GAMING REVENUE**

WHEREAS, by Roll Call No. 04-1610 of July 26, 2004, the City Council authorized execution of an Agreement for Sharing of Gaming Revenue by and among Polk County ("Polk County"), a precursor entity (RACI) to Prairie Meadows, which is a non-profit corporation doing business in Altoona, and The City of Des Moines (the "City"); and

WHEREAS, effective as of June 1, 2011, Prairie Meadows and Polk County entered into a Lease Agreement (the "Lease") wherein Polk County, as landlord, leased to Prairie Meadows, as tenant, the land and improvements (the "Premises") in Altoona whereon Prairie Meadows conducts its Gaming business; and

WHEREAS, because of the various factors noted above, Prairie Meadows and Polk County believe it to be in their mutual best interests, and the best interests of the taxpayers of Polk County, that no other gaming operator conducts business in the City or in Polk County and the City is not in disagreement with such a position, provided the City receives adequate revenues to compensate it foregoing attraction of an additional gaming operator in the City; and

WHEREAS, Prairie Meadows and Polk County are willing to share with the City some of the revenue generated by Prairie Meadows as hereinafter more particularly set forth and the City believes it and its citizens are better served by entering into this Agreement and realizing the revenues assured herein rather than pursuing the speculative and uncertain revenues, if any, of any other gaming operator; and

WHEREAS, the City has consistently spent the monies previously received from Prairie Meadows and Polk County on street and bridge maintenance and reconstruction projects and intends that monies from this Agreement be similarly earmarked for street and bridge maintenance and reconstruction projects, and other purposes necessary for the provision of essential services and development of the City.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Des Moines, Iowa, that the Agreement for Sharing of Gaming Revenue, on file in the Office of the City Clerk, is hereby approved and the Mayor is authorized and directed to execute such document on behalf of the City and the City Clerk is directed to attest to the Mayor's signature.

APPROVED AS TO FORM:

Moved by \_\_\_\_\_ to adopt.

Jeffrey D. Lester, City Attorney

**(Council Communication No. 11-521)**

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE				
COLEMAN				
GRIESS				
HENSLEY				
MAHAFFEY				
MEYER				
MOORE				
<b>TOTAL</b>				

MOTION CARRIED APPROVED

**CERTIFICATE**

I, DIANE RAUH, 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.

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
City Clerk

**AGREEMENT FOR SHARING OF GAMING REVENUE**

THIS AGREEMENT FOR SHARING OF GAMING REVENUE (“Agreement”) is made and entered into as of the \_\_\_\_ day of August, 2011, by and among Polk County (“Polk County”), Prairie Meadows Racetrack and Casino, Inc. (“Prairie Meadows”) and The City of Des Moines (the “City”).

WHEREAS, Prairie Meadows is a non-profit corporation doing business in Altoona, Iowa and is duly licensed by the Iowa Racing and Gaming Commission (“Commission”) to conduct pari-mutual wagering and gambling games (collectively “Gaming”) in the State of Iowa; and

WHEREAS, effective as of June 1, 2011, Prairie Meadows and Polk County entered into a Lease Agreement (the “Lease”) wherein Polk County, as landlord, leased to Prairie Meadows, as tenant, the land and improvements (the “Premises”) in Altoona whereon Prairie Meadows conducts its Gaming and other business; and

WHEREAS, the term of the Lease is from June 1, 2011 through December 31, 2018 and requires Prairie Meadows to pay to Polk County (i) \$1,300,000 per month (\$15,600,000 per year) in rent for the term of the Lease, plus (ii) Ten Million Four Hundred Thousand Dollars for calendar years 2011, 2012 and 2013, plus (iii) Five percent (5%) of Prairie Meadows’ Adjusted Gross Receipts per year for calendar years 2014-2018, plus (iv) an additional one percent (1%) of Adjusted Gross Receipts in excess of Two Hundred Twenty Five Million Dollars (\$225,000,000) for calendar years 2014-2018; and

WHEREAS, Polk County has heretofore utilized the monies it has received from Prairie Meadows for economic development, roads, grants, loans and other projects beneficial to the City and the other communities within Polk County and intends to similarly utilize future monies it receives from Prairie Meadows as well as utilize such monies to satisfy Polk County’s Vision Iowa bonding obligations, all for the benefit of the taxpayers of Polk County; and

WHEREAS, because of the various factors noted above, Prairie Meadows and Polk County believe it to be in their mutual best interests, and the best interests of the taxpayers of Polk County, that no other gaming operator conducts business in the City or in Polk County, it being understood that neither Prairie Meadows nor Polk County can prevent or preclude such event from occurring; and

WHEREAS, various companies (“Applicant” or “Applicants”) have previously contacted the City, each seeking an agreement with the City whereby, in exchange for certain consideration, the City would work exclusively with the respective Applicant to obtain and maintain a license for gambling games in the City; and

WHEREAS, pursuant to Iowa law, before an Applicant can operate gambling games in the City, the electorate of Polk County will need to pass a referendum approving the operation of such games and the Commission will need to grant a gaming license to such Applicant, which conditions precedent may not be accomplishable by any Applicant; and

WHEREAS, Prairie Meadows and Polk County are willing to share with the City some of the revenue generated by Prairie Meadows as hereinafter more particularly set forth; and

WHEREAS, the City has consistently spent the monies previously received from Prairie Meadows and Polk County on street and bridge maintenance and reconstruction projects and intends that monies from this Agreement be similarly earmarked for street and bridge maintenance and reconstruction projects, and other purposes necessary for the provision of essential services and development of the City; and

WHEREAS, the City intends to recognize Prairie Meadows and Polk County through project signage, where applicable, for monies received pursuant to this Agreement; and

WHEREAS, the City believes it and its citizens are better served by entering into this Agreement and realizing the revenues assured herein rather than pursuing the speculative and uncertain revenues, if any, of any Applicant.

NOW, THEREFORE, IT IS HEREBY AGREED AS FOLLOWS:

1. Payments to City. Commencing in calendar year 2011, and continuing each calendar year thereafter through 2018, Prairie Meadows and Polk County (collectively the “Grantors”) shall tender to the City a variable amount which shall be calculated each year as follows: (i) Prairie Meadows’s adjusted gross receipts, as determined pursuant to Iowa Code section 99F.1(1), for the applicable calendar year, less (ii) the total gaming taxes paid or payable on such revenue, less (iii) all rent and other contractual obligations Prairie Meadows is required to pay Polk County for such year (even if paid in the next succeeding year), based upon the Lease, times 5.1%. Such amount shall be tendered by Grantors on or before January 31 of the next succeeding year and shall be paid one-third (1/3) by Polk County and two-thirds (2/3) by Prairie Meadows.

2. Payments to Polk County School Districts. Commencing in calendar year 2011, and continuing each calendar year thereafter through 2018, Grantors shall tender to each school district or portion of a school district within Polk County a pro rata share based upon the ratio which the percentage of actual enrollment for the school district that attends school in Polk County bears to the percentage of the total combined actual enrollments for all school districts that attend school in Polk County, a variable amount which shall be calculated each year as follows: (i) Prairie Meadows's adjusted gross receipts, as determined pursuant to Iowa Code Section 99F.1(1), for the applicable calendar year, less (ii) the total gaming taxes paid or payable on such revenue, less (iii) all rent and other contractual obligations Prairie Meadows is required to pay Polk County for such year (even if paid in the next succeeding year), based upon the Lease, times .9 %. Such amount shall be tendered by Grantors on or before January 31 of the next succeeding year and shall be paid one-third (1/3) by Polk County and two-thirds (2/3) by Prairie Meadows.

3. a. Possible Economic Impact: Polk County Payments to City. Paragraph 3(d) of the Lease provides for the reopening of the Lease upon the occurrence of certain conditions specified therein. Upon the resolution of such reopening by the parties to the Lease, whether by settlement or arbitration, the annual obligations of Polk County to the City shall be totally dependent upon

the annual amount of Additional Payments Polk County ultimately receives from Prairie Meadows; provided, however, that Grantors shall at all times deal fairly with City and Grantors shall renegotiate any such reopening in good faith, including without limitation renegotiating so as not to shift, delay or otherwise reallocate revenues or expenses into or from the “Additional Payment to Landlord” paragraph 3(a) of the Lease to any other form of compensation or payment, whether specified in the Lease or not, that would result in or have the effect of resulting in a reduction of payments to the City beyond that contemplated in this paragraph. In addition, should the Lease be reopened, once Polk County has received 20.1 Million Dollars pursuant to the Lease each year, including without limitation both Rental and Additional Payments, County shall pay one half of any and all amounts in excess of 20.1 Million Dollars to City; provided, however, for the year of reopening and any year thereafter where the amount of Rental Payments plus Additional Payments paid to the County exceeds 26 Million Dollars, City shall receive only the amount specified in Paragraph 1 hereof. Additionally, in no instance shall the amount paid to the City pursuant to this paragraph exceed the amount that would be paid to the City pursuant to Paragraph 1.

b. Possible Economic Impact: Polk County Payments to Polk County School Districts. Paragraph 3(d) of the Lease provides for the reopening of the Lease upon the occurrence of certain conditions specified therein. Upon the resolution of such reopening by the parties to the Lease, whether by settlement or arbitration, the annual obligations of Polk County to the Polk County School Districts shall be totally dependent upon the annual amount of Additional Payments Polk County ultimately receives from Prairie Meadows; provided, however, that in the event the amount Prairie Meadows pays to Polk County drops below 26 Million Dollars, no further distributions will be made to the School Districts until any such annual payments return to an amount in excess of 26 Million Dollars.

c. Possible Economic Impact: Prairie Meadows Payments to City. Paragraph 3(d) of the Lease provides for the reopening of the Lease upon the occurrence of certain conditions specified therein. Should the Lease be reopened for a specified occurrence, the City and Prairie Meadows agree to reopen this Agreement to renegotiate in good faith the payments to the City described in Paragraph 1 above, it being the intent of the City and Prairie Meadows that any renegotiated changes in the payments due thereunder shall be equitable between and among the City and Prairie Meadows and shall be proportionate to any renegotiated changes in payments made to Polk County in accordance with Paragraph 3(d) of the Lease. The City acknowledges that nothing contained herein is intended to imply or infer that Prairie Meadows shall pay any portion of the amount not paid by Polk County to the City pursuant to Paragraph 1 above, as may be reduced by Paragraph 3(a) above. If, within 60 days after any party requests the reopening of this Agreement, the City and Prairie Meadows have been unable to renegotiate the payments to be made under Paragraph 1 above to their mutual satisfaction, they agree to submit this issue to a Polk County District Court Judge for equitable resolution; provided that the payments under Paragraph 1 above shall continue to accrue during such 60 days and any time in which the Judge is reaching a resolution, but ultimate payment of such accrual remains at all times subject to the Judge’s resolution.

d. Possible Economic Impact: Prairie Meadows Payment to Polk County School Districts. Should the Lease and this Agreement be reopened as provided in Paragraph 3(c) above, the

parties acknowledge and agree that Prairie Meadows may be unable to make some or all of the payments to the Polk County School Districts as described in Paragraph 2 above, as solely determined in Prairie Meadows' discretion.

4. Additional Casino by Grantors. If Prairie Meadows and/or Polk County, or their affiliates, construct and/or operate another casino or gambling facility, whether in Polk County, or elsewhere, Grantors shall tender to the City a variable amount which shall be calculated each year as follows: (i) Prairie Meadows's adjusted gross receipts, as determined pursuant to Iowa Code section 99F.1(1), for the applicable calendar year, less (ii) the total gaming taxes paid or payable on such revenue, less (iii) all rent and other contractual obligations Prairie Meadows is required to pay Polk County for such year (even if paid in the next succeeding year) based upon the Lease, times 5.1%. Such amount shall be tendered by Grantors on or before January 31 of the next succeeding year and shall be paid one-third (1/3) by Polk County and two-thirds (2/3) by Prairie Meadows through 2018. For purposes of this Agreement, the term "affiliate" means a corporation, partnership, limited liability company or other business organization of any kind, whether for-profit or not-for-profit, which directly or indirectly controls or is controlled by, or is under common control of, Grantors jointly or severally.

5. Location of Additional Casino by Grantors. If a referendum authorizing issuance of a new gaming license should pass and Prairie Meadows and/or Polk County, or their affiliates, should make application to the Commission to operate an additional gaming facility, then Prairie Meadows and/or Polk County, or their affiliates, shall give primary consideration to locating such additional gaming facility within the City.

6. Adjustment for Revenue Otherwise Received by City. In the event any gaming facility which is not operated by Prairie Meadows or Polk County or their affiliates is constructed or operated within the City so as to benefit the City in any way, including property tax revenue, (it being understood that such a gaming facility could be licensed and operated without the support or endorsement of the City, Polk County or Prairie Meadows), the full amount of such benefit shall be deducted from the amounts Grantors are otherwise required to tender to the City pursuant to the terms of this Proposal.

7. Conditions to be Fulfilled by City. Grantors obligations to pay the funds to City and the Polk County School Districts as provided herein are subject to and conditioned upon: (i) the City not entering into any agreement with any person or organization for the operation of a gaming facility within the City or elsewhere through December 31, 2018; (ii) the City refraining from all negotiations with parties interested in establishing a gaming facility in the City or elsewhere; (iii) the City actively opposing any and all efforts by any party to establish a gaming facility in the City or elsewhere, through December 31, 2018; and (iv) the City actively opposing any and all efforts by any party to pass a referendum approving another gaming facility in either Polk County or the City, provided, however, nothing contained herein shall prevent or preclude the City from cooperating with Grantors to establish another gaming facility in Polk County operated by Prairie Meadows on a non-profit basis similar in manner to the manner in which Prairie Meadows operates Prairie Meadows.

8. Default by City. In the event the City defaults under any of the terms of this Agreement, which default is not cured to Grantors' satisfaction within thirty (30) days of sending

written default notice to the City, the City shall be obligated and liable to disgorge and remit to Grantors all monies Grantors have paid to the City during the term of this Agreement and Grantors may collect same by legal or equitable action.

9. Default by Grantors. In the event Grantors, or either of them, default under their payment obligations hereunder, which default is not cured to City's satisfaction within thirty (30) days of sending written default notice to Grantors, or either of them, the City may collect same by legal or equitable action.

10. Severability. If any provision of this Agreement is determined to be invalid or unenforceable in whole or in part, the remainder of this Agreement shall continue to be valid and enforced, and the invalid or unenforceable provision (or part thereof) shall be replaced by a provision which achieves the original intent of the parties to the fullest extent possible.

11. Renewal of Terms Upon Expiration. On or before July 31, 2018, and assuming Gaming is still authorized in Polk County, the parties to this Agreement agree to meet and negotiate in good faith with the intent of reaching a new agreement addressing the respective responsibilities of Grantors and the City.

12. Subject to Approval of Commission. The parties acknowledge that this Agreement is subject to approval by the Commission.

CITY OF DES MOINES, IOWA

POLK COUNTY, IOWA

By: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Title: \_\_\_\_\_

Prairie Meadows Racetrack and Casino, Inc.

By: \_\_\_\_\_  
Title: \_\_\_\_\_