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Date November 17, 2014

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CONTINUED HEARING FOR VACATION OF CITY RIGHT-OF-WAY AND APPROVAL OF A PROPOSED LEASE AGREEMENT WITH THE DES MOINES BICYCLE COLLECTIVE FOR PLACEMENT OF B-CYCLE PROGRAM KIOSKS ON THE VACATED CITY RIGHT-OF-WAY

WHEREAS, the Des Moines Bicycle Collective wishes to lease portions of various City-owned street rights-of-way in Des Moines, Iowa, for the placement of and operation of the B-Cycle Program bicycle kiosks; and

WHEREAS, the City's Real Estate Division has negotiated a Lease Agreement with the Des Moines Bicycle Collective as Lessee, which Agreement will include, among other terms, a license term commencing upon execution by City of the Lease Agreement and terminating on November 30, 2019, and subject to termination by either party, with or without cause, upon thirty (30) calendar days written notice; and

WHEREAS, pursuant to the negotiated Lease Agreement, Des Moines Bicycle Collective shall use the Leased premises for the placement of and operation of the B-Cycle Program bicycle kiosks, in accordance with all applicable local, state and federal laws and requirements, including but not limited to site plan requirements, and in accordance with the agreement between the City of Des Moines and the Des Moines Bicycle Collective for development and completion of bicycle sharing stations approved by the Des Moines City Council on February 25, 2013, by Roll Call No. 13-0293; and in accordance with the Development and Completion Agreement approved by City Council on October 20, 2014, by Roll Call 14-1664, to develop, complete and maintain the expansion of the Des Moines Bicycle Project; and in accordance with the ICAAP Agreement between the City of Des Moines and the Iowa Department of Transportation approved on October 20, 2014, by Roll Call No. 14-1663; and

WHEREAS, Des Moines Bicycle Collective further agrees to provide the following throughout the entire term of the Lease Agreement: (a) mow all grassed areas and trim and maintain all landscaping within the Leased Premises; (b) cut and remove any weeds growing on the Leased Premises; (c) keep the premises free from nuisances and debris; (d) maintain the premises in a clean, safe and attractive condition (e) clear snow, ice and other debris from and adjacent to the Leased Premises, including the adjacent sidewalks; and

WHEREAS, on October 6, 2014, by Roll Call No. 14-1561, it was duly resolved by the City Council that consideration of a proposed Lease Agreement with Des Moines Bicycle Collective, for placement of B-Cycle Kiosks at the intersection of 12th Street and Grand Avenue and the intersection of 10th Street and Walnut Street, Des Moines, Iowa, for \$1,000, be set down for hearing on October 20, 2014, at 5:00 p.m., in the City Council Chambers; and

WHEREAS, on October 20, 2014, by Roll Call No. 14-1661, it was duly resolved by the City Council that the hearing for consideration of the proposed Lease Agreement be continued, in order to revise the locations of the B-Cycle kiosks, to November 3, 2014, at 5:00 p.m., in the City Council Chambers; and

WHEREAS, on November 3, 2014, by Roll Call No. 14-1733, it was duly resolved by the City Council that the hearing for consideration of the proposed Lease Agreement be continued, in order to publish notice

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of the revised locations of the B-Cycle kiosks and the proposed vacation of corresponding segments of the right of way, to November 17, 2014, at 5:00 p.m., in the City Council Chambers; and

WHEREAS, the Des Moines Bicycle Collective has revised and finalized the proposed B-Cycle kiosk locations, which are now to be located in a portion of the street rights-of-way on the east side of 13th Street, south of Grand Avenue; and on the north side of Walnut Street, east of 10th Street; and on the west side of 5th Avenue, north of Grand Avenue, Des Moines, Iowa, as further described herein; and

WHEREAS, pursuant to the negotiated revised Agreement, Des Moines Bicycle Collective shall pay an upfront, one-time lump sum payment of \$1,500.00 as consideration, which amount equals payment of one hundred dollars (\$100.00) per location, per year of this Lease Agreement, which amount reflects fair market value of the Leased Premises and terms as currently estimated by the City's Real Estate Division.

WHEREAS, there is no known current or future public need or benefit for the rights-of-way proposed to be vacated, and leased, and the City will not be inconvenienced by the vacation and lease of said right-of-way; and

WHEREAS, due notice of said proposal to vacate and lease the street rights-of-way located on the east side of 13th Street, south of Grand Avenue; and on the north side of Walnut Street, east of 10th Street; and on the west side of 5th Avenue, north of Grand Avenue, Des Moines, Iowa, was given as provided by law, setting forth the time and place for hearing on said proposal; and

WHEREAS, in accordance with City Council direction, those interested in the proposed vacation and lease, both for and against, have been given an opportunity to be heard with respect thereto and have presented their views to the City Council.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Des Moines, Iowa, as follows:

1. Upon due consideration of the facts and statements of interested persons, any and all objections to the proposed vacation and lease of the City Rights-of-Way, as described herein, are hereby overruled and the hearing is closed.
2. There is no public need or benefit for the City Rights-of-Way proposed to be vacated, and the public would not be inconvenienced by reason of the vacation of the City Rights-of-Way, as legally described below, and said vacation is hereby approved:

Legal Description – Location 1 (East Side of 13th St, South of Grand Ave)

A PART OF THE 13th STREET RIGHT OF WAY LYING IN LOT 4, FOURTEENTH STREET PLACE, AN OFFICIAL PLAT, ALL NOW INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA, AND DESCRIBED AS FOLLOWS:

Date November 17, 2014

COMMENCING AT THE SOUTHEAST CORNER OF SAID LOT 4; THENCE WEST ALONG THE SOUTH LINE OF SAID LOT 4 TO A POINT ON THE EAST RIGHT OF WAY LINE OF 13TH STREET, AS PRESENTLY ESTABLISHED; THENCE CONTINUING WEST ALONG SAID SOUTH LINE, 4 FEET; THENCE NORTH AND PARALLEL TO SAID EAST RIGHT OF WAY LINE, 10 FEET TO THE POINT OF BEGINNING; THENCE WEST AND PERPENDICULAR TO SAID EAST RIGHT OF WAY LINE, 6 FEET; THENCE NORTH AND PARALLEL TO SAID EAST RIGHT OF WAY LINE, 30 FEET; THENCE EAST AND PERPENDICULAR TO SAID EAST RIGHT OF WAY LINE, 6 FEET; THENCE SOUTH AND PARALLEL TO SAID EAST RIGHT OF WAY LINE, 30 FEET TO THE POINT OF BEGINNING.

Legal Description – Location 2 (North Side of Walnut St, East of 10th St)

A PART OF THE WALNUT STREET RIGHT OF WAY LYING SOUTH OF LOT 8, BLOCK 5, WEST FORT DES MOINES, AN OFFICIAL PLAT, ALL NOW INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA, AND DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF SAID LOT 8; THENCE EAST ALONG THE SOUTH LINE OF SAID LOT 8, 75 FEET; THENCE SOUTH AND PERPENDICULAR TO SAID SOUTH LINE, 10 FEET TO THE POINT OF BEGINNING; THENCE EAST AND PARALLEL TO SAID SOUTH LINE, 36 FEET; THENCE SOUTH AND PERPENDICULAR TO SAID SOUTH LINE, 6 FEET; THENCE WEST AND PARALLEL TO SAID SOUTH LINE, 36 FEET; THENCE NORTH AND PERPENDICULAR TO SAID SOUTH LINE, 6 FEET TO THE POINT OF BEGINNING.

Legal Description – Location 3 (West Side of 5TH Ave, North of Grand Ave)

A PART OF THE 5TH AVENUE RIGHT OF WAY LYING EAST OF LOT 9, ALHAMBRA NO.2, AN OFFICIAL PLAT, ALL NOW INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA, AND DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF SAID LOT 9, SAID CORNER LYING ON THE NORTH RIGHT OF WAY LINE OF GRAND AVENUE; THENCE EAST ALONG SAID NORTH RIGHT OF WAY LINE, 5.03 FEET TO THE WEST RIGHT OF WAY LINE OF 5TH AVENUE, AS PRESENTLY ESTABLISHED; THENCE NORTH ALONG SAID WEST RIGHT OF WAY LINE, 130 FEET TO THE POINT OF BEGINNING; THENCE CONTINUING NORTH ALONG SAID WEST RIGHT OF WAY LINE, 37 FEET; THENCE EAST AND PERPENDICULAR TO SAID WEST RIGHT OF WAY LINE, 6 FEET; THENCE SOUTH AND PARALLEL TO SAID WEST RIGHT OF WAY LINE, 37 FEET; THENCE WEST AND PERPENDICULAR TO SAID WEST RIGHT OF WAY LINE, 6 FEET TO THE POINT OF BEGINNING.

- 3. The proposed lease of the vacated rights-of-way, described as follows, to Des Moines Bicycle Collective for \$1,500.00 as a one-time, upfront, lump sum payment for lease until November 30, 2019, subject to termination in the event of an emergency, as determined solely by the City or applicable utility, easement holder or other license holder, or by either party upon 30 days notice, be and is hereby approved:

Legal Description – Location 1 (East Side of 13th St, South of Grand Ave)

A PART OF THE VACATED 13TH STREET RIGHT OF WAY LYING IN LOT 4, FOURTEENTH STREET PLACE, AN OFFICIAL PLAT, ALL NOW INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA, AND DESCRIBED AS FOLLOWS:

Date November 17, 2014

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4. The Mayor is authorized and directed to sign the Lease Agreement and any related real estate documents for the lease identified above, and the City Clerk is authorized and directed to attest to the Mayor's signature and, upon final passage of an ordinance vacating the said right-of-way and upon proof of payment of the consideration plus \$113.00 for publication and recording costs, to deliver the aforementioned documents to the Real Estate Division Manager for recording and closing purposes, together with a certified copy of this resolution and of the affidavit of publication of the notice of this hearing.

5. The City Manager and/or his designee, the City's Real Estate Division Manager, is hereby authorized and directed to administer and monitor the Lease Agreement to confirm compliance; to approve and execute

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documents pertaining to minor or unsubstantial changes to said Lease Agreement, except for renewals or extensions of the Lease Agreement, following approval of the City's Legal Department as to form; and, if needed, to proceed with and execute documents pertaining to the termination of the Lease Agreement if Des Moines Bicycle Collective fails to fulfill the terms required therein or if the Lease Agreement needs to be terminated for any reason, pursuant to the provisions of the Lease Agreement as applicable and following approval of the City's Legal Department as to form.

(Council Communication No. 14-539)

Moved by _____ to adopt.

APPROVED AS TO FORM:



 Cori Kuhn Coleman, Assistant City Attorney

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COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE				
COLEMAN				
GATTO				
GRAY				
HENSLEY				
MAHAFFEY				
MOORE				
TOTAL				
MOTION CARRIED			APPROVED	
_____ Mayor				

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.

_____ City Clerk