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**Date** December 5, 2016

**HOLD HEARING FOR VACATION OF A PORTION OF COURT AVENUE RIGHT-OF-WAY ADJOINING 420 COURT AVENUE AND APPROVAL OF AN AMENDMENT TO THE LEASE AGREEMENT WITH THE DES MOINES BICYCLE COLLECTIVE FOR PLACEMENT OF A B-CYCLE PROGRAM KIOSK IN THE VACATED RIGHT-OF-WAY FOR \$300**

**WHEREAS**, on November 17, 2014, by Roll Call No. 14-1797, the City Council of the City of Des Moines, Iowa, approved a Lease Agreement with the Des Moines Bicycle Collective, as Lessee, for the placement of and operation of the B-Cycle Program bicycle kiosks in various locations throughout the downtown Des Moines area, which Agreement terminates on November 30, 2019, and is subject to termination by either party, with or without cause, upon thirty (30) calendar days written notice; and

**WHEREAS**, CITY is the titleholder of certain street right-of-way located north of and adjoining 420 Court Avenue, Des Moines, Iowa ("City Right-of-Way"); and

**WHEREAS**, the Des Moines Bicycle Collective wishes to amend the existing Lease Agreement in order to place and maintain an additional B-Cycle Program bicycle kiosk in said City Right-of-Way; and

**WHEREAS**, pursuant to the negotiated Lease Agreement, the Des Moines Bicycle Collective shall pay an upfront, one-time lump sum payment as consideration per B-Cycle Program bicycle kiosk location, which upfront, one-time lump sum payment shall reflect a payment of one hundred dollars (\$100.00) per location, per year of the term of the Lease Agreement; and

**WHEREAS**, pursuant to the negotiated terms of the Lease Agreement, to add the new B-Cycle Program bicycle kiosk in the City Right-of-Way, the Des Moines Bicycle Collective shall pay an upfront, one-time lump sum payment of \$300.00, which amount reflects fair market value of the Leased Premises as determined by the City's Real Estate Division, plus \$113.00 for the cost of publishing and recording the proposed Amendment to Lease Agreement; and

**WHEREAS**, there is no known current or future public need for the City Right-of-Way proposed to be vacated and the lease of the City Right-of-Way for the purposes described herein will not adversely affect the use of adjoining real estate by City for municipal purposes, and the City will not be inconvenienced by approval of the proposed Amendment to Lease Agreement with the Des Moines Bicycle Collective; and

**WHEREAS**, on November 21, 2016, by Roll Call No. 16-1990, it was duly resolved by the City Council of the City of Des Moines, Iowa, that consideration of the proposed Amendment to Lease Agreement with the Des Moines Bicycle Collective for placement of a B-Cycle Program bicycle kiosk in the City right-of-way located north of and adjoining 420 Court Avenue, Des Moines, Iowa, for \$300.00, be set down for hearing on December 5, 2016, at 5:00 p.m., in the City Council Chambers; and

**WHEREAS**, due notice of said proposal to vacate and lease the City Right-of-Way was given as provided by law, setting forth the time and place for hearing on said proposal; and

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**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 Right-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, the public would not be inconvenienced by reason of the vacation of the City Right-of-Way, as legally described below, and said vacation is hereby approved:

A PART OF THE COURT AVENUE RIGHT OF WAY IN FORT DES MOINES, AN OFFICIAL PLAT, AND LYING NORTH OF BLOCK 20 OF SAID FORT DES MOINES, ALL NOW INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA, AND DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF SAID BLOCK 20; THENCE NORTHEASTERLY ALONG THE NORTH LINE OF SAID BLOCK 20, A DISTANCE 65 FEET; THENCE NORTHWESTERLY AND PERPENDICULAR TO SAID NORTH LINE, A DISTANCE OF 20 FEET TO THE POINT OF BEGINNING; THENCE CONTINUING NORTHWESTERLY AND PERPENDICULAR TO SAID NORTH LINE, A DISTANCE OF 6 FEET; THENCE NORTHEASTERLY AND PARALLEL TO SAID NORTH LINE, A DISTANCE OF 37 FEET; THENCE SOUTHEASTERLY AND PERPENDICULAR TO SAID NORTH LINE, A DISTANCE OF 6 FEET; THENCE SOUTHWESTERLY AND PARALLEL TO SAID NORTH LINE, A DISTANCE OF 37 FEET TO THE POINT OF BEGINNING.

3. The proposed Amendment to Lease Agreement with the Des Moines Bicycle Collective for placement of a B-Cycle Program bicycle kiosk in the vacated right-of-way, described as follows, for \$300.00 as a one-time, upfront, lump sum payment for lease until November 30, 2019, subject to reservation of easements therein, is hereby approved:

A PART OF THE VACATED COURT AVENUE RIGHT OF WAY IN FORT DES MOINES, AN OFFICIAL PLAT, AND LYING NORTH OF BLOCK 20 OF SAID FORT DES MOINES, ALL NOW INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA, AND DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF SAID BLOCK 20; THENCE NORTHEASTERLY ALONG THE NORTH LINE OF SAID BLOCK 20, A DISTANCE 65 FEET; THENCE

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NORTHWESTERLY AND PERPENDICULAR TO SAID NORTH LINE, A DISTANCE OF 20 FEET TO THE POINT OF BEGINNING; THENCE CONTINUING NORTHWESTERLY AND PERPENDICULAR TO SAID NORTH LINE, A DISTANCE OF 6 FEET; THENCE NORTHEASTERLY AND PARALLEL TO SAID NORTH LINE, A DISTANCE OF 37 FEET; THENCE SOUTHEASTERLY AND PERPENDICULAR TO SAID NORTH LINE, A DISTANCE OF 6 FEET; THENCE SOUTHWESTERLY AND PARALLEL TO SAID NORTH LINE, A DISTANCE OF 37 FEET TO THE POINT OF BEGINNING;

4. The Mayor is authorized and directed to sign the Amendment to Lease Agreement, 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 and all amendments thereto to confirm compliance; to approve and execute 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 the 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. 16- 689 )

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

APPROVED AS TO FORM:

*Lisa A. Wieland*  
 Lisa A. Wieland, Assistant City Attorney

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE				
COLEMAN				
GATTO				
GRAY				
HENSLEY				
MOORE				
WESTERGAARD				
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