



Roll Call Number

18-0222

Agenda Item Number

42

Date February 5, 2018

**RESOLUTION AUTHORIZING EXECUTION OF THE  
RESTATED COMMENCEMENT DATE AGREEMENT FOR LEASE OF  
THE EAST SECOND STREET PARKING GARAGE IN ACCORDANCE WITH  
THE LEASE PURCHASE AGREEMENT BETWEEN THE CITY OF DES MOINES,  
101 EAST GRAND PARKING, LLC AND WEST BANK**

WHEREAS, by Roll Call No. 16-0636 of April 11, 2016, the City Council of the City of Des Moines, Iowa approved the Lease Purchase Agreement between the City of Des Moines and 101 East Grand Parking, LLC (the "Lessor") and West Bank relating to the construction and acquisition of a multi-story public parking garage located in the vicinity of East Second Street; and

WHEREAS, the East Second Street Parking Garage has been substantially completed and in accordance with the terms of the Lease Purchase Agreement and the approved plans for the garage and by the terms of Roll Call No. 17-1774 of October 9, 2017, the City approved a Commencement Date Agreement to take possession of the garage improvements on or about October 10, 2017; and

WHEREAS, most punch lists items have been completed and final disbursements for work, materials and supplies have been made, less retainage, and the City Manager has prepared a Restated Commencement Date Agreement for consideration and approval by the City Council which includes the agreed adjustment to final project costs, the agreed adjustment to balance of principal outstanding, and finalized exhibits reflecting adjustments to final project costs and adjustments to balance of principal outstanding and corresponding payment amounts; and

WHEREAS, it is appropriate for the City, Lessor, and West Bank to enter into the Restated Commencement Date Agreement for the Lease all as contemplated by the terms of the Lease Purchase Agreement.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Des Moines, Iowa that the Lease Restated Commencement Date Agreement, on file in the Office of the City Clerk, is hereby approved subject to such changes and revisions to its terms and exhibits as may be approved by the City Manager and Legal Department and the Mayor is authorized and directed to execute such Restated Commencement Date Agreement and the City Clerk is directed to attest to the Mayor's signature.

(Continued)

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BE IT FURTHER RESOLVED that the City Engineer is hereby directed to monitor progress and completion of all remaining punch list items to the garage improvements to ensure their completion by the Lessor and the City Engineer is authorized to promptly approve the release of such portion of the Contractor retainage that the City Engineer reasonably determines is not required to ensure completion of the punch list items and, following satisfactory completion of all punch list items, the City Engineer is authorized to approve the release of all remaining retainage amounts all in accordance with the terms of the Agreement Regarding Escrow Fund relating to disbursement of project costs.

BE IT FURTHER RESOLVED that the City Engineer shall continue its regular inspection of the East Second Street Parking Garage and initiate, as required, any of the City's rights under the previously approved Agreement Regarding Escrow Fund relating to the escrow of funds for garage maintenance and the Maintenance Bond.

BE IT FURTHER RESOLVED that the City Manager, City Engineer and the Finance Director/Treasurer or their designees are authorized and directed to take all actions as may be required by the City under the Lease Purchase Agreement and associated documents including executing or acknowledging any associated documents contemplated herein, obtaining issuance of final lien waivers and issuance of final certificate of occupancy for the Garage improvements, filing application for sales and use tax refunds with the Iowa Department of Revenue, making appropriate application and deposit of funds remaining in the Escrow Funds and including disbursing all scheduled lease payments, in order that the City be and remain in compliance with the Lease Purchase Agreement.

APPROVED AS TO FORM:

Moved by Gatto to adopt.

Lawrence R. McDowell  
Deputy City Attorney

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COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE	✓			
BOESEN	✓			
COLEMAN	✓			
GATTO	✓			
GRAY	✓			
MANDELBAUM	✓			
WESTERGAARD	✓			
TOTAL	7			

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.

T. M. Franklin Cownie  
Mayor

Diane Rauh  
City Clerk