



Roll Call Number

20-1727

Agenda Item Number

53

Date October 19, 2020

HEARING AND RESOLUTION TAKING ACTION ON THE PROPOSITION TO AUTHORIZE AND ENTER INTO AN AMENDMENT TO LEASE AGREEMENT BETWEEN THE CITY OF DES MOINES AND KOCH BROTHERS, INC. FOR THE LEASE OF UP TO 44 ADDITIONAL MULTI-FUNCTION DEVICES (PRINTER, COPIER, SCANNER AND FACSIMILE) FOR USE IN CITY OPERATIONS FOR A PERIOD NOT TO EXCEED FIVE YEARS, IN THE AMOUNT NOT TO EXCEED AN ADDITIONAL \$440,608.78 (\$1,150,000.00 TOTAL) AND AUTHORIZING FINANCE DIRECTOR TO ENTER INTO SUCH ADDITIONAL LEASES

WHEREAS, on September 23, 2019, by Roll Call No. 19-1551, the City Council authorized and entered into a lease agreement with Koch Brothers, Inc. for the lease of 81 multi-function devices (printer, copier, scanner, and facsimile) for use in City operations for a five year period, in the amount not to exceed \$709,391.22, ("the Lease") following a hearing pursuant to the Iowa Code; and

WHEREAS, it is now deemed necessary and advisable that the City of Des Moines, Iowa, should enter into a Lease Agreement Amendment for the rental of up to an additional 44 multi-function devices (printer, copier, scanner and facsimile) (125 total devices) for use in City operations for a period not exceed five years, in an amount not to exceed an additional \$440,608.78 (\$1,150,000.00 total) to be paid in less than sixty monthly installments during the five year term of the Lease (the "Lease Agreement Amendment" or "Amendment") as authorized by Sections 364.4 and 384.25 of the Code of Iowa for the purpose of providing funds to pay costs of acquiring the devices as hereinafter described; and

WHEREAS, the term of the proposed Amendment will not exceed the economic life of the property to be leased; and

WHEREAS, the Lease and Amendment shall be payable solely and only out of the City's general fund and various enterprise funds of the City of Des Moines, and will not cause the total annual lease or lease payments due from the general fund in any single future fiscal year for all lease contracts currently enforced to exceed ten percent of the last certified general fund budget amount; and

WHEREAS, a copy of the proposed Amendment is on file in the Office of the City Clerk which provides that the City shall pay less than 60 monthly lease payments during the five year term for such additional multi-function devices; and

WHEREAS, before the proposed Agreement may be authorized, it is necessary to comply with the provisions of the Code of Iowa Sections 364.4 and 384.25 and to publish a notice of the proposal and of the time and place of the meeting at which the City Council proposes to take action for the authorization of the Amendment and to receive oral and/or written objections from any resident or property owner of said City to such action; and



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WHEREAS, pursuant to Sections 364.4 and 384.25 of the Code of Iowa, notice of the hearing on the proposed authorization of a Lease Agreement Amendment between the City of Des Moines and Koch Brothers, Inc. for a period of up to 5 years in the additional amount of not to exceed \$440,608.78 (\$1,150,000.00 total), for an additional 44 multi-function devices (printer, copier, scanner and facsimile) (125 devices total) for use in conjunction with City operations. The Lease Agreement Amendment, on file in the Office of the City Clerk at City Hall, provides that the City shall pay for such additional multi-function devices for less than 60 monthly payments during the five-year term. The Lease Agreement Amendment and Lease Agreement will be payable from the general fund and various enterprise funds of the City; and

WHEREAS, on October 5, 2020 by Roll Call No. 20- 1570, the City Council resolved that the proposition to authorize and enter into the Lease Agreement Amendment be set down for hearing on October 19, 2020 at 5:00 p.m. in the in the MSC Board Room, 2nd Floor, Municipal Service Center, 1551 E. Martin Luther King, Jr. Parkway, Des Moines, Iowa; and

WHEREAS, due notice of said proposal and the time and place of said hearing was published in the Des Moines Register on October 8, 2020, as provided by law.

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

1. The public meeting and hearing on the City's proposition to authorize and enter into an Lease Agreement Amendment with Koch Brothers, Inc. for the purpose of leasing up to an additional 44 multi-function devices (printer, copier, scanner and facsimile) (125 total) has been duly held at the time and place provided and in accordance with said notice, oral or written objections from residents or property owners of the City have been received and filed.
2. That the time for receiving oral and written objections from any resident or property owner of the City and the hearing be closed and the proposition to authorize and enter into the Lease Agreement Amendment with Koch Brothers, Inc. and all objections thereto are taken into consideration by the City Council.
3. The City hereby takes action to authorize, approve and enter into the Lease Agreement Amendment with Koch Brothers, Inc. and all incorporated and ancillary documents and the City Manager is hereby authorized and directed to sign the Amendment to Master Lease Agreement.
4. The City Manager or his designee is hereby authorized and directed to administer the terms of the Lease Agreement as amended and to sign all other incorporated and ancillary documents thereto including but not limited to, letters, Acknowledgement of Assignment, ~~orders for up to 44 additional copiers~~ and certificates as may be required. The Finance Director is authorized to sign Delivery and Acceptance Certificates. The City Risk Manager is authorized to sign Evidence of Insurance documents and letters. The City Clerk is authorized to sign Incumbency Certificate of Incumbency. The Finance Director is authorized and



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directed to make all rental payments in accordance with the terms of the Lease Agreement as amended.

- 5. The Finance Director is authorized to initiate and execute on behalf of the City leases for the lease of up to 44 additional multi-function devices in one or more additional Schedules to the Master Lease Agreement as set out in the Master Lease agreement as amended.

(Council Communication No. 20- 464)

Moved by Gatto to adopt.

APPROVED AS TO FORM:

Ann DiDonato
Ann DiDonato
Assistant City Attorney

Table with columns: COUNCIL ACTION, YEAS, NAYS, PASS, ABSENT. Rows include COWNIE, BOESEN, GATTO, GRAY, MANDELBAUM, VOSS, WESTERGAARD, TOTAL (7), MOTION CARRIED, APPROVED. Signature of J. M. Franklin Cownie, Mayor.

CERTIFICATE
I, P. Kay Cmelik, 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.
Signature of P. Kay Cmelik, City Clerk

**AMENDMENT TO
U.S. COMMUNITIES MASTER LEASE AGREEMENT
BETWEEN
KOCH BROTHERS, INC.
AND
CITY OF DES MOINES**

THIS AMENDMENT is made as of Oct 19, 2020, to the U.S. Communities Master Lease Agreement by and between Koch Brothers, Inc. ("Koch") and the City of Des Moines, Iowa, ("City"), dated September 23, 2019 ("Master Lease Agreement").

WHEREAS, on September 23, 2019, by Roll Call No. 19-1551, the City Council authorized and entered into the Master Lease Agreement for the lease of 81 multi-function devices (printer, copier, scanner, and facsimile) ("copiers"), all as listed in the Product Schedule, Schedule A list of copiers leased by the City, for use in City operations for a five year period, in the amount not to exceed \$709,391.22; and

WHEREAS, the City desires to amend the Master Lease Agreement by adding additional types of copiers and pricing for such to the Product Schedule, Schedule A, which the City will have the option of adding to the Master Lease Agreement from time to time,, to be paid in monthly installments equal to the number of months remaining in the five year term of the Master Lease Agreement at the time of lease of such additional copiers.

NOW, THEREFORE, in consideration of the mutual promises contained herein, the Master Lease Agreement is amended as follows:

1. The Product Schedule, Schedule A shall be amended by adding the attached **Schedule A-1**. The parties agree that the City shall have the right during the term of the Master Lease Agreement to add additional copiers to the Master Lease Agreement, including those listed in Schedule A-1, via execution by both parties of a Product Schedule listing the number of copier(s) to be added, the type, location, model/description, serial/model number, monthly lease rate and service charge for such added copiers.
2. In the event that any copiers are added to the Master Lease Agreement, the term of the monthly payments shall be equal to the number of months remaining in the five-year term of the Master Lease Agreement at the time of lease of such additional copiers by the City.
3. All other terms of the Master Lease Agreement shall remain in effect.

IN WITNESS WHEREOF, the parties have executed this Amendment to Master Lease Agreement by their duly authorized representatives as of the dates set forth below.

CITY OF DES MOINES, IOWA

T. M. Franklin Cownie
T. M. Franklin Cownie, Mayor

KOCH BROTHERS, INC.

Richard Koch
Name, President

APPROVED AS TO FORM:

Ann V. Dix
Assistant City Attorney

STATE OF IOWA)
) ss:
COUNTY OF POLK)

On this 19th day of October, 2020, before me, the undersigned, a Notary Public in and for the State of Iowa, personally appeared T. M. Franklin Cownie, and P. Kay Cmelik, to me personally known, who being by me duly sworn, did say that they are the Mayor and City Clerk, respectively of the City of Des Moines, Iowa; that the seal affixed to the foregoing instrument is the corporate seal of the corporation, and that the instrument was signed and sealed on behalf of said Municipal Corporation, by authority and resolution of its City Council on October December _____, 2020 by Roll Call No. 20 - 1727, and said Mayor and City Clerk acknowledged said instrument to be the free act and deed of said Municipal Corporation by it voluntarily executed.

Sandi L. Deery
Notary Public for the State of Iowa

STATE OF IOWA)
) ss:
COUNTY OF POLK)



On this 29th day of September, 2020, before me, the undersigned, a Notary Public in and for the State of Iowa, personally appeared Richard Koch Jr., to me personally known, who being by me duly sworn, did say that he is the President of Koch Brothers, Inc., that the seal affixed to the foregoing instrument is the seal of the limited liability company (or no seal has been procured by the company); that the instrument was signed (and sealed) on behalf of the corporation, by authority of its Board of Directors; and that He acknowledged the execution of the instrument to be the voluntary act and deed of the corporation, by it and by him voluntarily executed.

Kevin D. Justice
Notary Public for the State of Iowa

