



Roll Call Number

21-0812

Agenda Item Number

47A

Date May 24, 2021

HEARING APPROVING FORM AND AUTHORIZING EXECUTION OF AN AMENDMENT TO LEASE AGREEMENT WITH U.S.S. HUSMANN, L.L.C. FOR THE RENTAL OF WAREHOUSE SPACE AT 301 SE 8TH STREET FOR TEMPORARY USE BY THE PUBLIC WORKS DEPARTMENT

WHEREAS, the City of Des Moines, Iowa ("City") and U.S.S. HUSMANN, L.L.C. ("Landlord") entered into a Lease Agreement (the "Agreement") dated December 21, 2020 for the rental of warehouse space located at 301 SE 8th Street ("Leased Premises"), for temporary use by the Public Works Department for equipment storage until the Municipal Services Center Phase 2 project is completed; and

WHEREAS, the parties would like to redefine the improvements the Landlord is obligated to complete under the Agreement and to redefine the obligation of both parties to contribute toward such improvements; and

WHEREAS, it is deemed necessary and advisable that the City should enter in to said Amendment to address improvements that were not contemplated at the time the Agreement was originally executed; and

WHEREAS, on May 10, 2021, by Roll Call No. 21-0695, the City Council of the City Des Moines, Iowa resolved that the proposal be set down for hearing on May 24, 2021, at 5:00 p.m., in the City Council Chambers; and

WHEREAS, due notice of said proposal was given as provided by law, setting forth the time and place for hearing on said proposal, including how to participate electronically and telephonically; and

WHEREAS, the public meeting and hearing has been duly held at the time and place provided and in accordance with said notice, and given Mayor Cownie's March 15, 2020 Proclamation, as amended, prohibiting indoor gatherings of ten or more persons on public property, Section One of the Governor's February 5, 2021 Proclamation strongly encouraging vulnerable Iowans to limit participation in gatherings of any size and any purpose during the COVID19 outbreak, and further given Section 108 of the Governor's February 5, 2021 Proclamation suspending the regulatory provisions of Iowa Code §§ 21.8, 26.12, and 414.12, or any other statute imposing a requirement to hold a public meeting or hearing, and further given the City Manager's decision to delay the opening of City buildings to the public due to the recent upwards spikes of positive COVID-19 cases and hospitalizations in Polk County and the need to maintain safety; it is impossible and impractical to have physical public access to the meeting location, but the meeting was conducted electronically with electronic and telephonic public access to the meeting location; and

WHEREAS, pursuant to due notice required by law, this City Council held a public meeting and hearing upon the proposal to institute proceedings for the authorization of said Amendment to Lease Agreement for



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such purpose, and this City Council is therefore now authorized to proceed with the authorization of said Amendment to Lease Agreement; and

WHEREAS, the terms of the Amendment to Lease Agreement have been negotiated by and between the City and U.S.S. HUSMANN, L.L.C. ("Landlord"), pursuant to which the City would amend the lease agreement, and are set forth as follows:

1. Landlord shall insure all improvements set forth on Exhibit D to the Agreement, are completed within the Leased Premises as soon as possible.
2. The total cost of all improvements to be made by the Landlord is \$85,734.00.
3. Landlord agrees to pay all costs and expenses related to completing the exterior steps (\$3,325.00) and tear down of a lean to structure (\$6,500.00).
4. In addition, Landlord further agrees to pay \$30,000.00 towards the cost of the improvements set forth on Exhibit D.
5. The City agrees to pay for the remaining cost of improvements, all of which are required for the City's specific use and occupancy of the Leased Premises, in the amount of \$45,909.00.
6. Upon termination of the Lease or any extension thereof, the City may remove its furniture, furnishings, fixtures, equipment and other property, including but not limited to the CO2 exhaust system, located upon and installed in the subject premises at City's expense, except as otherwise provided.
7. City shall repair any damage to the Leased Premises to the condition prior to its tenancy, reasonable wear and tear excepted.

WHEREAS, a copy of the proposed Amendment to Lease Agreement is on file in the office of the City Clerk; and

WHEREAS, the Amendment to Lease Agreement shall be payable solely out of the City's General Fund.

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

Section 1. Authority and Purpose. The Amendment to Lease Agreement authorized by this resolution and related documents between the City of Des Moines, Iowa, and U.S.S. HUSMANN, L.L.C. for improvements not contemplated at the time the Lease Agreement was originally executed, shall be issued pursuant to Sections 364.4 and 384.25 of the Code of Iowa, and in compliance with all applicable provisions of the Constitution and laws of the State of Iowa. The Amendment to Lease Agreement and related documents are hereby authorized to be issued in a form in accordance with the terms of this resolution.



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Section 2. Execution. 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 shall forward the original of the Amendment to Lease Agreement, together with a certified copy of this resolution and of the affidavit of publication of the notice of this hearing, to the Real Estate Division of the Engineering Department.

Section 3. Source of Payment. Payments due under the Amendment to Lease Agreement shall be payable solely out of the City's General Fund and the Finance Director is hereby authorized to pay all future payments due under the Amendment to Lease Agreement.

Section 4. Administration of Lease Terms, Amendments. The City Manager, or his designee, is authorized to administer the terms of the Amendment to Lease Agreement and to sign any minor and non-substantial amendments to the Amendment to Lease Agreement. The City Manager, or his designee, is further authorized to approve any additional costs with respect to improvements to the Leased Premises for occupancy by the City in an amount not to exceed \$10,000.00.

(Council Communication No. 21- 230)

Moved by Gatto to adopt.

APPROVED AS TO FORM:

/s/ Lisa A. Wieland

Lisa A. Wieland, Assistant City Attorney

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

MOTION CARRIED

APPROVED

J. M. Frankin Cownie 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.

Diane Rauh City Clerk