



Roll Call Number

21.1973

Agenda Item Number

76

Date December 20, 2021

HOLD HEARING FOR APPROVAL OF A LEASE AGREEMENT WITH POWER BOAT CLUB ON THE RIVER, INCORPORATED FOR A PORTION OF EXCESS CITY PROPERTY LOCATED ON THE NORTH BANK OF THE DES MOINES RIVER LOCALLY KNOWN AS DISTRICT/PARCEL 070/02223-003-000

WHEREAS, the Des Moines Power Boat Club, Inc. has leased the below described portion of Birdland Park from the City since at least 1948 for use as storage for its club member's boats; and

WHEREAS, on April 16, 2001, by Roll Call No. 01-1139 the City Council approved a 5 year lease agreement with the Des Moines Power Boat Club, Inc. for use of land at Birdland Park along the north bank of the Des Moines River, more specifically described below (hereinafter "Leased Premises"); and

WHEREAS, on May 22, 2006, by Roll Call No. 06-1034, the City Council of the City of Des Moines, Iowa voted to approve the vacation of the Leased Premises and a five year lease agreement with Des Moines Power Boat Club, Inc.; and

WHEREAS, on June 19, 2006, by Roll Call No. 06-1229, the City Council of the City of Des Moines, Iowa voted to approve the third reading and pass Ordinance No. 14,570 vacating said Leased Premises; and

WHEREAS, the Des Moines Power Boat Club, Inc. and the City of Des Moines entered into subsequent lease agreements for use of the Leased Premises in 2012, 2015, 2018 and 2019 with the current lease set to expire on December 31, 2021; and

WHEREAS, the City of Des Moines and Power Boat Club on the River, Incorporated (name changed in 2018) have negotiated the terms of a new Lease Agreement ("Agreement") which will include, among other terms, the following:

- A fixed ten (10) year lease term (Initial Term) with the right to renew the Lease Agreement for two additional five (5) year terms;
- The City of Des Moines retains the right to terminate the Agreement with a 30-day notice if such termination becomes necessary due to what the CITY deems to be the best interest of the Public.
- Rental fee for the Initial Term shall be paid according to the following schedule:
 - Year one = \$3,700.00
 - Year two = \$3,750.00
 - Year three = \$3,800.00
 - Year four = \$3,850.00
 - Year five = \$3,900.00
 - Year six = \$4,000.00
 - Year seven = \$4,100.00
 - Year eight = \$4,200.00

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- Year nine = \$4,300.00
- Year ten = \$4,400.00
- Rental fee to be revalued at the end of the Initial Term and following the receipt of notice of intent to renew from Power Boat Club on the River, Incorporated;

which amounts reflect the fair market value of the Leased Premises as currently estimated by the City's Real Estate Division; and

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

WHEREAS, on December 6, 2021, by Roll Call No. 21-1819, it was duly resolved by the City Council of the City of Des Moines, Iowa, that the proposed lease of said portion of vacated parkland be set for hearing on December 20, 2021, at 5:00 p.m. in the City Council Chamber, City Hall, 400 Robert D. Ray Drive, Des Moines, Iowa; and

WHEREAS, due notice of said proposal to lease the Property was given to all necessary parties 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 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 lease of said Property as described herein, are hereby overruled and the hearing is closed.
2. There is no public need or benefit for the vacated parkland proposed to be leased, and the public would not be inconvenienced by reason of the lease of the vacated parkland located along the north bank of the Des Moines River, Des Moines, Iowa, legally described as follows, to Power Boat Club on the River, Incorporated, for Forty Thousand Dollars (\$40,000.00) for the initial ten-year term of the agreement, subject to a reservation of easements therein, and further subject to all terms and conditions contained in the Lease Agreement:

Part of the Northeast ¼ of Section 34, Township 79 North, Range 24 West of the 5th P.M., more particularly described as follows: Commencing at a point of reference at the northeast corner of the Northeast ¼ of said section 34; thence South 0° (degrees) 18' (minutes) 26" (seconds) East along the East line of said Northeast ¼, 341.65 feet; thence south 89° 41' 34" west, 746.40 feet to the point of beginning; thence south 4° 20' 49" West, 139.04 feet to the North Bank of the Des Moines River; thence North 77° 16' 58" West along said North Bank, 365.94 feet; thence North 24° 54' 20" East, 132.84 feet; thence South 78° 40' 25" East, 317.75 feet to the point of beginning,

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all now included in and forming a part of the City of Des Moines, Polk County, Iowa and containing 1.05 acres.

- 3. The Mayor is authorized and directed to sign the Lease Agreement as identified above, and the City Clerk is authorized and directed to attest to the Mayor's signature.
- 4. The City Clerk is authorized and directed to forward the original of the 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 for the purpose of causing said documents to be recorded.
- 5. The Real Estate Division Manager is authorized and directed to forward the original of the Lease Agreement, together with a certified copy of this resolution and of the affidavit of publication of the notice of this hearing, to the Polk County Recorder's Office for the purpose of causing these documents to be recorded.
- 6. Upon receipt of the recorded documents back from the Polk County Recorder, the Real Estate Division Manager shall mail the original of the Lease Agreement and copies of the other documents to the grantee.
- 7. Proceeds from the lease of this property are used to support the Park and Recreation operating budget expenses: Org-PK001200.

Moved by Westergaard to adopt.

APPROVED AS TO FORM:

(Council Communication No. 21-552)

/s/ Lisa A. Wieland

Lisa A. Wieland, Assistant City Attorney

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE	✓			
BOESEN	✓			
GATTO	✓			
GRAY	✓			
MANDELBAUM		✓		
VOSS	✓			
WESTERGAARD	✓			
TOTAL	6			

MOTION CARRIED

APPROVED

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.

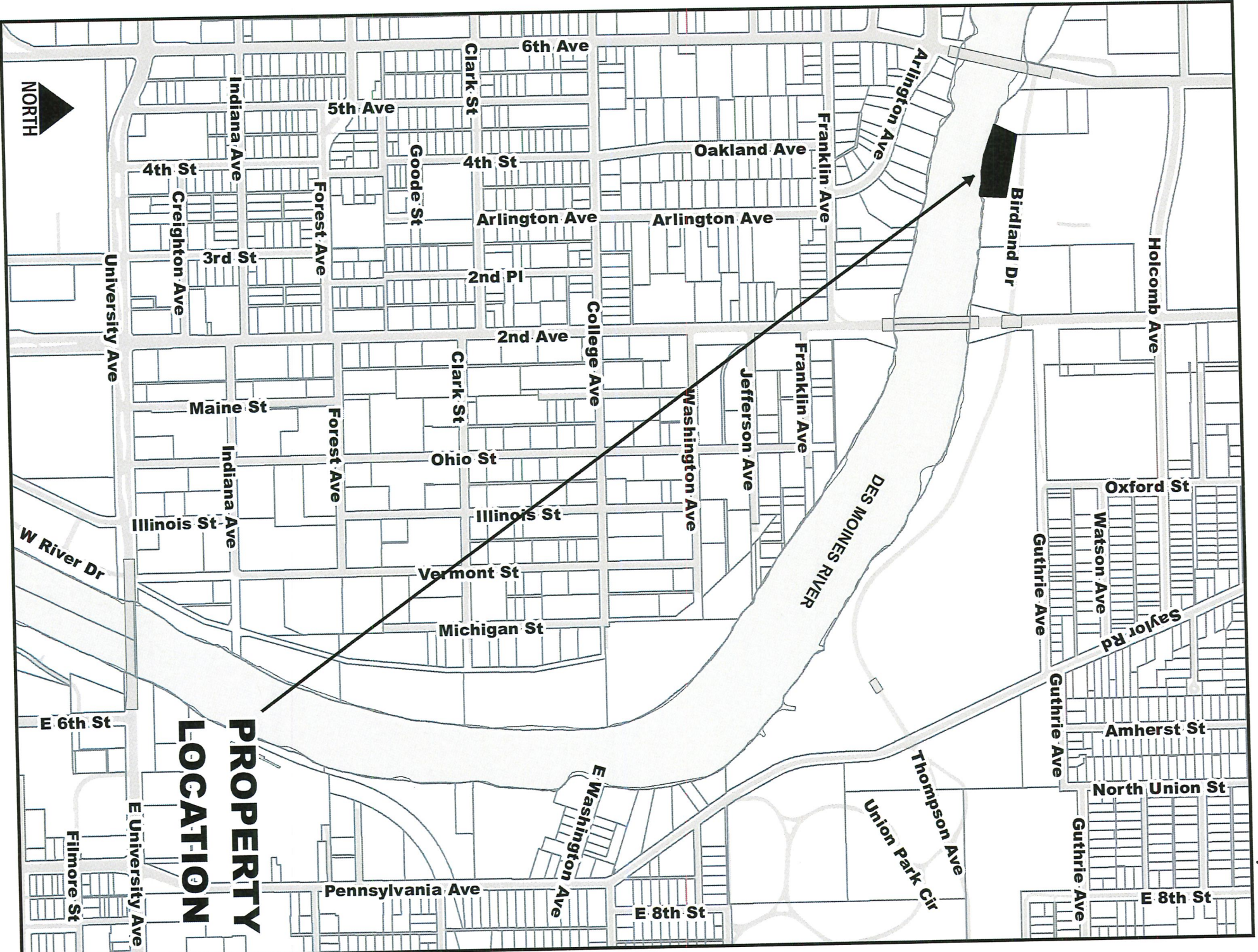
IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal the day and year first above written.

P. Kay Cmelik

City Clerk



**PROPERTY
LOCATION**



76
21-1973

REGISTER ORDER NO.11744 ROLL CALL LEGAL BULLETIN BOARD FOLLOW UP

NOTICE OF PROPOSAL TO LEASE CITY-OWNED REAL ESTATE

NOTICE IS HEREBY GIVEN that the City Council has adopted a resolution relating to a proposal to lease a portion of the vacated parkland located along the north bank of the Des Moines River (hereinafter "Property"), Des Moines, Iowa, as legally described, to Power Boat Club on the River, Incorporated, for Forty Thousand Dollars (\$40,000.00) paid in annual installments for the initial ten-year term of the agreement, with the option for two five-year renewal terms, subject to a reservation of easements therein, and further subject to all terms and conditions contained in the Lease Agreement:

Part of the Northeast $\frac{1}{4}$ of Section 34, Township 79 North, Range 24 West of the 5th P.M., more particularly described as follows: Commencing at a point of reference at the northeast corner of the Northeast $\frac{1}{4}$ of said section 34; thence South 0° (degrees) $18'$ (minutes) $26''$ (seconds) East along the East line of said Northeast $\frac{1}{4}$, 341.65 feet; thence south $89^{\circ} 41' 34''$ west, 746.40 feet to the point of beginning; thence south $4^{\circ} 20' 49''$ West, 139.04 feet to the North Bank of the Des Moines River; thence North $77^{\circ} 16' 58''$ West along said North Bank, 365.94 feet; thence North $24^{\circ} 54' 20''$ East, 132.84 feet; thence South $78^{\circ} 40' 25''$ East, 317.75 feet to the point of beginning, all now included in and forming a part of the City of Des Moines, Polk County, Iowa and containing 1.05 acres.

NOTICE IS FURTHER GIVEN that the City Council will consider the proposed lease agreement after a public hearing to be held at 5:00 p.m. December 20, 2021 in the City Council Chamber, City Hall, 400 Robert D. Ray Drive, Des Moines, Iowa. At that time, the City Council will consider the above-described proposal and any other(s) submitted prior to or during the public hearing. Persons interested in the proposal will be given the opportunity to express their views at that hearing. In addition, the City Council shall receive written views, comments, objections and arguments from any resident or taxpayer of the City that are received by the City Clerk prior to 5:00 p.m. December 16, 2021 (City Clerk's Office, Des Moines City Hall, 400 Robert D. Ray Drive, 1st Floor, Des Moines, IA 50309; Email cityclerk@dmgov.org).

Please check the posted agenda in advance of the December 20, 2021 meeting for any update on the manner in which the public hearing will be conducted to comply with COVID-19 social distancing and safety guidelines.

Published in the Des Moines Register on December 8, 2021.

21-1973



#76

DES MOINES, CITY OF
400 ROBERT D RAY DR

DES MOINES IA 503091813

of Affidavits 1

This is not an invoice

AFFIDAVIT OF PUBLICATION

State of Wisconsin

County of Brown, ss.:

The undersigned, being first duly sworn on oath, states that The Des Moines Register and Tribune Company, a corporation duly organized and existing under the laws of the State of Iowa, with its principal place of business in Des Moines, Iowa, the publisher of

THE DES MOINES REGISTER

newspaper of general circulation printed and published in the City of Des Moines, Polk County, Iowa, and that an advertisement, a printed copy of which is attached as Exhibit "A" and made part of this affidavit, was printed and published in The Des Moines Register in the editions dated:


Ad No.	Start Date:	Editions Dated:	Cost:
0005032811	12/8/21	12/08/2021	\$53.43

Copy of Advertisement
Exhibit "A"


Staff member, Register Media

Subscribed and sworn to before me by said affiant this

8 day of December, 2021


Notary Public

1-7-25
Commission expires

KATHLEEN ALLEN
Notary Public
State of Wisconsin

PO # 11744
\$53.43

NOTICE OF PROPOSAL TO
LEASE CITY-OWNED REAL

ESTATE GIVEN THAT
NOTICE IS HEREBY GIVEN THAT
the City Council has adopted a
resolution relating to a proposal to
lease a portion of the vacated
parkland located along the north
bank of the Des Moines River
bank of the Des Moines River,
Des Moines, Iowa, as legally
described, to Power Boat Club on
the River, Incorporated, for Forty
thousand Dollars (\$40,000.00)
in annual payments over the
initial ten-year term of the
agreement, with the option for two
five-year renewal terms, subject
to a reservation of power in
the event of forfeiture of the
herein set forth conditions in
the Lease Agreement:
Part 1 of the Northeast 1/4 of Section
34, Township 79 North, Range 22
West of the 5th P.M., Ranges 22
West of the 5th P.M., Iowa, as
more fully described as follows:
Commencing at a point of
reference of the northeast corner
of the Northeast 1/4 of said section,
34, thence North 60 degrees East
along the East line of said
Northeast 1/4, 341.45 feet; thence
south 89 degrees 41' 34" West, 246.40 feet
to the point of beginning; thence
south 22 degrees 49' West, 390.4 feet to
the North Bank of the Des Moines
River; thence North 77 degrees 16' 58"
West along said North Bank, 653.94
feet; thence North 24 degrees 40'
25" East, 317.75 feet to the point of
beginning, all now included in and
forming a part of the City of Des
Moines, Polk County, Iowa and
containing 100 acres, more or less.

NOTICE IS FURTHER GIVEN
that the City Council will consider
the proposed lease agreement
either a public hearing on 2021 in the
City Council Chamber, City Hall,
400 Robert D. Roy Drive, Des
Moines, Iowa. At that time, the
City Council will consider and any
issues raised at that time, and
during the public hearing. Persons
interested in the proposal will be
given the opportunity to appear
and give their views thereon. In
addition, the City Council shall
receive written views, comments,
objections and arguments from
any resident or taxpayer of the
City of Des Moines, Iowa, by the City
Clerk prior to 5:00 P.M. December
16, 2021 (City Clerk's Office, Des
Moines City Hall, 400 Robert D.
Roy Drive, 1st floor, Des Moines,
Iowa 50319) or by email at
cityclerk@dmgov.org).

Please check the posted agenda in
advance of the December 20, 2021
meeting for any update on public
hearing information. The public
hearing will be conducted to
comply with COVID-19 social
distancing and safety guidelines.
Published in the Des Moines
Register on December 8, 2021.

**LEASE AGREEMENT
CITY OF DES MOINES
and
POWER BOAT CLUB ON THE RIVER, INCORPORATED**

THIS LEASE AGREEMENT made and entered into this 20th day of December, 2021, by and between the CITY OF DES MOINES, IOWA, acting through the DES MOINES PARK AND RECREATION DEPARTMENT, hereinafter called "CITY," whose address for the purpose of this lease is 1551 MLK Jr. Parkway, Des Moines, Iowa, 50317, and the POWER BOAT CLUB ON THE RIVER, INCORPORATED, hereinafter called "LESSEE," whose address for the purpose of this lease is 600 6th Avenue and Birdland Drive, Des Moines, Iowa 50313.

WHEREAS, the Des Moines City Council has charged the Des Moines Park and Recreation Department with the responsibility for the maintenance and overall supervision of Birdland Park along the Des Moines River and the below described adjacent City owned land along the Des Moines River, vacated by Ordinance No. 14,570 dated June 19, 2006; and

WHEREAS, the LESSEE desires to lease such vacated property from the CITY for the use as a boat club; and

WHEREAS, the parties desire to enter into a new lease and have reached agreement on all terms.

NOW THEREFORE, in consideration of the mutual covenants, promises, and agreements hereinafter set forth, it is agreed by and between the parties as follows:

THE CITY leases to the LESSEE the property described as:

Part of the Northeast ¼ of Section 34, Township 79 North, Range 24 West of the 5th P.M., more particularly described as follows: Commencing at a point of reference at the northeast corner of the Northeast ¼ of said section 34; thence South 0° (degrees) 18' (minutes) 26" (seconds) East along the East line of said Northeast ¼, 341.65 feet; thence south 89° 41' 34" west, 746.40 feet to the point of beginning; thence south 4° 20' 49" West, 139.04 feet to the North Bank of the Des Moines River; thence North 77° 16' 58" West along said North Bank, 365.94 feet; thence North 24° 54' 20" East, 132.84 feet; thence South 78° 40' 25" East, 317.75 feet to the point of beginning, all now included in and forming a part of the City of Des Moines, Polk County, Iowa and containing 1.05 acres.

As shown in **Exhibit A** and hereinafter called "Leased Premises", to have and to hold such premises and all rights, privileges, easements, parking areas, and appurtenances thereto belonging. In addition, LESSEE is granted non-exclusive driveway access across the multi-use recreational trail, subject to yielding the right-of-way to pedestrian and bicycle use of such trail, from Birdland Drive for ingress-egress to the Leased Premises as shown on **Exhibit A**.

- 1. TERM OF LEASE.** LESSEE shall lease the Leased Premises for a fixed Ten (10) year term commencing on January 1, 2022 and continuing through December 31, 2031 or until terminated prior

to the end of this fixed term as provided for in Section 6(L) below. LESSEE shall have the option to renew this Lease Agreement at the end of the initial period as outlined in Section 2 below.

2. **RENEWAL OPTION.** Provided that the LESSEE is not in default of the terms of this Lease Agreement as determined by CITY, the lease term shall be renewable for two (2), 5-year renewal terms, after proper notice is given and upon mutual agreement of both LESSEE and CITY. If LESSEE wishes to renew, LESSEE shall exercise the option by providing to CITY a written notice of renewal by no later than October 1, 2031, and by October 1, 2036, if the first renewal option has been exercised, in the manner provided below for notice to CITY. Such renewal period shall be subject to all terms and conditions of this Lease Agreement, including but not limited to the termination provisions set forth below in Section 6.L, except that the CITY shall have the unilateral right to modify, in writing, any terms and conditions set forth herein, including a revaluation of the Rental Fee, following receipt of notice of renewal from LESSEE and prior to commencement of the first renewal period.
3. **RENTAL FEE.** The LESSEE shall pay a rental fee of Three Thousand Seven Hundred Dollars (\$3,700.00) for the first year of the lease term. Subsequent years shall be paid as follows:
- Year two = \$3,750.00
 - Year three = \$3,800.00
 - Year four = \$3,850.00
 - Year five = \$3,900.00
 - Year six = \$4,000.00
 - Year seven = \$4,100.00
 - Year eight = \$4,200.00
 - Year nine = \$4,300.00
 - Year ten = \$4,400.00

All rental fees shall be due and payable on January 1 of each lease year. Payments shall be made to the City of Des Moines at the Treasurer's Office located in City Hall, 400 Robert D. Ray Drive, Des Moines, Iowa 50309. The fee is paid for use of the Leased Premises only. No fee is associated with the ingress-egress for driveway access.

4. **USE OF PREMISES.**

A. **Acceptance of Leased Premises "As Is"** By entering into this Lease, the LESSEE shall be deemed to accept the Leased Premises and ingress-egress driveway access on the term commencement date in the condition of "As Is." LESSEE acknowledges that the clubhouse building on the Leased Property does not have availability for City water or sanitary sewer service. The water service provided to the Leased Premises is non-potable. Every such water outlet must be clearly posted per **Attachment 1** of this Agreement, or as otherwise provided under the International Plumbing Code.

B. **Permitted Uses and Street Access** The LESSEE shall have the right to use, operate, and maintain the property for a club house, a boat house, a boat yard, and other activities related to boating. LESSEE may maintain and operate facilities for the housing, handling, servicing, docking, and protection of the boats, canoes, and other related equipment of its members who engage in boating activities on the Des Moines River.

The LESSEE shall be allowed access to Birdland Drive or other streets abutting the above-described property per the driveway access described above in this Agreement and shown in **Exhibit**

A. Access shall be granted at only those places authorized by the CITY. The cost of maintaining, grading, filling, or improving any access streets or for damage to the multi-use recreational trail shall be paid by the LESSEE.

In the event that any repair or construction work by the CITY or its agents causes a temporary cut off of vehicular access to the Leased Premises or limited vehicular access, the CITY shall not owe any damages or other compensation to LESSEE.

C. **Improvements**

- i. **Filling and Grading** The LESSEE shall have the right to fill, grade, improve, keep, and maintain the property to permit it to be used for the landing, launching, and storage of boats, docks, and other boating equipment, subject to the City Engineer's, or their designee's, prior written approval, including all required City, state or federal approvals and necessary permits.
- ii. **Landscaping** No changes in the landscaping may be made without prior written approval of the Parks and Recreation Director, or their designee.
- iii. **Approval** All external improvements, including painting, paving and shoreline beautification shall align with the Parks and Recreation Comprehensive Plan adopted by the City Council, LiveDSM, and the Birdland Park and Marina Master Plan, and shall require presentation to, and the review and written approval of the Parks and Recreation Director, or their designee.

D. **Buildings**

- i. **Alterations** The LESSEE may build, alter, remodel, repair, improve, rebuild, or add to any boat house or club house only after receiving written approval of the City Engineer, the Parks and Recreation Director or their designee(s) and is subject to any City, State or Federal permits and approvals, and CITY requirements applicable to similar improvements.
- ii. **Removal of Buildings** All buildings and improvements constructed or installed by LESSEE at its cost shall be the property of the LESSEE during the Lease Agreement. Upon the final termination of the tenancy, the LESSEE shall remove all buildings and improvements placed on the property by the LESSEE. However, CITY shall have the option to accept such buildings and improvements from LESSEE prior to LESSEE's demolition of same. Conveyance to CITY shall be made at no cost to CITY. If CITY opts not to accept the buildings and improvements, the LESSEE must make suitable arrangements for removal of buildings and improvements prior to the termination of this Lease Agreement. LESSEE shall be responsible for the removal of all debris and material associated with said buildings and improvements and shall fill the areas previously occupied by buildings and improvements and return to the same grade as the contiguous area achieving appropriate soil compaction and desirable vegetative coverage. Failure to do so shall result in LESSEE being responsible for reimbursement of all costs incurred by the CITY to restore the site.

E. **Signs** LESSEE shall not place any commercial signs on the premises other than a sign indicating the name of LESSEE's organization, subject to compliance with all local permitting requirements and ordinances.

F. Supervision The LESSEE shall supervise the entire Leased Premises, including all grounds and structures in each of the following particulars:

- i. That no unlawful, disorderly, or unruly conduct shall be permitted.
- ii. That all grounds, equipment, and facilities shall be maintained and used in a safe and sanitary manner.
- iii. That the Leased Premises shall not be used for any commercial purpose except for boat storage mentioned under Section 4.B.
- iv. That the Leased Premises be maintained in a well-groomed manner permitting no nuisance thereon.
- v. That vehicular traffic be permitted only on roadways and hard surfaced parking areas designed for that purpose except for purposes of building or grounds maintenance.

G. Compliance with Law LESSEE agrees to comply at all times during the term of this Agreement, and at LESSEE'S own cost and expense, with all ordinances and regulations of the City of Des Moines, Iowa and Polk County and the laws of the State of Iowa and Federal Government, and LESSEE shall not allow any illegal activity to be conducted, operated, or to occur on the Leased Premises. LESSEE shall further comply with the provisions of the Iowa Smokefree Air Act, Iowa Code Chapter 142D, 2008 Iowa Acts, House File 2212, and the administrative rules promulgated to implement the Act.

H. Utilities The LESSEE shall be obligated to pay all utility charges for gas, water, electricity, light, heat and power, and telephone and other communication service supplied to the Leased Premises as a result of the uses described in this Agreement and shall indemnify the CITY for such charges that may in fact be paid by the CITY.

I. Maintenance, Restoration and Repair The LESSEE shall be responsible for facility supervision, cleaning, painting, all maintenance and repairs of all structural elements and improvements located on the Leased Premises, including without limitation, all buildings, docks and fencing and debris removal (including that caused by severe weather conditions and flooding) on the Leased Premises. The LESSEE shall remove or restore and rehabilitate any improvements of any kind to the Leased Premises which may be damaged or destroyed by any casualty whatsoever including but not limited to damage caused by fire, storms, and flood.

J. Taxes All real estate taxes levied or assessed by lawful authority by reason of the fact of this Lease Agreement and of the LESSEE's use of the Leased Premises shall be timely paid by LESSEE. The LESSEE further agrees to pay all taxes, assessments or other public charges levied or assessed by lawful authority (but reasonably reserving LESSEE's right of appeal) against personal property on the premises.

5. ACCESS AND EASEMENTS. During the term of this Lease Agreement, the LESSEE shall not interfere with or in any way prohibit the CITY or its authorized agents from the use or improvement of the Leased Premises and adjacent right-of-way and park, including but not limited to park facilities and infrastructure, trails, landscaping, shoreline and utility improvements. LESSEE acknowledges that access to the Leased Premises may be temporarily cut off or rerouted during such CITY use or construction. The CITY and its authorized agents shall have the right to reasonably enter upon and inspect the Leased Premises. This Lease Agreement is subject to any and all easements for existing utilities, restrictions and covenants of record on the Leased Premises.

6. GENERAL PROVISIONS.

A. Insurance and Indemnification The Lessee shall purchase and maintain insurance in accordance with the insurance requirements set forth in **Attachment 2** to protect the Lessee and City throughout the duration of this Agreement. The Lessee shall not commit any act which shall invalidate any policy of insurance. The Lessee shall defend, indemnify and hold harmless the City in accordance with the indemnification requirements set forth in Attachment 2. The Lessee shall be subject to all terms and provisions set forth in Attachment 2 and the exhibits thereto.

B. Notices Notices as provided for in this lease shall be given to the respective parties hereto at the respective addresses designated on page one of this lease unless either party notifies the other, in writing, of a different address. Without prejudice to any other method of notifying a party in writing or making a demand or other communication, such notice shall be considered given under the terms of this lease when sent, addressed as above designated, postage prepaid, by means of the United States Mail and so deposited in a United States mailbox.

C. Complaints All complaints by the CITY with regard to the operation of the area, Leased Premises, and facilities shall be directed to the LESSEE in writing by the CITY's Parks and Recreation Director, or their designee, and shall consist of a description of the complaint and time that the occurrence complained of occurred. Any complaints by the LESSEE directed to the CITY shall be in writing to the CITY's Parks and Recreation Director under the signature of an authorized representative of the LESSEE.

D. Successors Each and every covenant and agreement herein contained shall extend to and be binding upon the respective successors, heirs, administrators, executors, and assignees of the parties hereto.

E. Modification No covenants, provisions, terms of conditions of this lease to be observed or performed by the CITY or the LESSEE shall be in any manner modified, waived, or abandoned, except by a written instrument duly signed by the parties and delivered to the CITY and the LESSEE. This lease contains the whole agreement of the parties.

F. Rights The various rights, powers, options, elections, and remedies of either party provided in this lease shall be construed as cumulative and no one of them as exclusive of the others, or exclusive of any rights, remedies, or priorities allowed either party by law, and shall in no way affect or impair the right of either party to pursue any other equitable or legal remedy in any way unremedied, unsatisfied, or undischarged.

G. Language Words and phrases herein, including acknowledgement hereof, shall be construed as in the singular or plural number, and as masculine, feminine or neuter gender according to the context. The captions in this Agreement are for convenience only and shall not constitute a limitation of any terms therein.

H. Sublet or Transfer The LESSEE shall not assign, sublet, or transfer any of its rights under this lease at any time to anyone without the written approval of the CITY's Parks and Recreation Director, or their designee.

I. Mechanics Lien Neither the LESSEE nor anyone claiming by, through, or under the LESSEE, shall have the right to file or place any mechanic's lien or other lien of any kind of character whatsoever, upon said Leased Premises or upon any building or improvement thereon, or upon the leasehold interest of the LESSEE therein, and notice is hereby given that no contractor, subcontractor, or anyone else who may furnish any material, service, or labor for any building, improvements, alterations, repairs or any part thereof, shall at any time be or become entitled to any lien thereof, and for the further security of the CITY, the LESSEE covenants and agrees to give actual notice thereof, in advance, to any and all contractors and subcontractors who may furnish any such materials, service, or labor.

J. Relationship It is expressly understood and agreed that the LESSEE is and shall be deemed an independent contractor and operator in the maintenance, operation, and use of the premises and improvements specified in this Agreement, and the CITY shall in no way be responsible to any person, firm, or corporation for any injuries or damages occasioned by the design, construction, or maintenance of the improvements as specified in this Agreement.

K. Discrimination The LESSEE agrees that, during the term of this Lease, it will not exclude any qualified person from participation in any programs or activities operated by the LESSEE on the Leased Premises and that the LESSEE shall not separately or together with anyone else deny anyone the benefits of such programs or activities, or otherwise subject anyone to discrimination on the grounds of age, race, religion, creed, color, sex, national origin, ancestry, sexual orientation, gender identity, familial status, or disability. LESSEE agrees to comply with all applicable federal, state, and local civil rights laws.

L. Termination In the event the LESSEE violates or fails to carry out any of the provisions of this Agreement, the CITY shall give the LESSEE thirty (30) days written notice of said violation or failure; and in the event the LESSEE does not correct such violation or failure within thirty (30) days (or such longer period if the same is not reasonably curable in thirty days), or if the LESSEE habitually violates such provisions, then the CITY may cancel this Agreement. The CITY retains the right to terminate this Agreement with a 30-day notice if such termination becomes necessary due to what the CITY deems to be the best interest of the Public. In the event of such termination, there shall be no damages except for prepaid rental fees and payments, if any, which shall be refundable by the CITY on a pro rata basis.

M. Water Level LESSEE agrees to make no claim against the CITY for damages, loss, or injury to their property or the property of others resulting from a low water level or high water level of the Des Moines River or flooding of the area covered by this lease. CITY takes no responsibility for the water level, or for flooding, or for boats and equipment that go aground.

N. Bankruptcy If the LESSEE shall become insolvent or be declared bankrupt or said premises shall come into the possession of any receiver, assignee, or other officer acting under an order of any court, then CITY shall have the right to terminate this Agreement, and in the event CITY shall not exercise such right, the CITY may accept rent from said receiver, trustee, or officer in possession thereof, for the term of such occupancy, without impairing or affecting in any way the rights of the CITY under this Agreement.

O. Surrender Upon the expiration or termination of this Agreement, the LESSEE shall vacate and surrender the property and deliver possession of the same to the CITY in as good

and clean a condition as said premises are now in except for unavoidable wear and tear through careful use.

P. Security

The LESSEE agrees that it will provide any and all security measures deemed necessary by the City or LESSEE on the Leased Premises. The LESSEE agrees that the CITY shall not be responsible, or be in any way liable, for any damages or loss of personal property sustained as a result of the LESSEE's use of the Leased Premises.

Q. Force Majeure

No party shall be responsible for events that are unforeseeable and/or beyond its reasonable control, such as Acts of God, weather delays, governmental restrictions or unforeseen commercial delays.

R. Governing Law, Attorney Fees and Court Costs

This Lease Agreement shall be governed by, construed and enforced in accordance with the laws of the State of Iowa. LESSEE agrees to pay and discharge all costs and attorney fees or any expense that shall arise from enforcing any of the terms of this Lease Agreement incurred by CITY.

IN WITNESS WHEREOF, the parties hereto have caused this Lease Agreement to be executed by their duly-authorized officers on the date first above written.

CITY OF DES MOINES

BY: *T.M. Franklin Cownie*
T.M. Franklin Cownie, Mayor

Attest: *P. Kay Cmelik*
P. Kay Cmelik, City Clerk

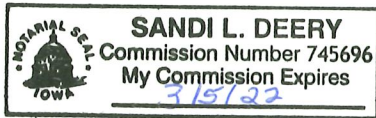
APPROVED AS TO FORM:

DocuSigned by:
BY: *Ann DiDonato*
3E7699FB991A43D...
Ann DiDonato, Assistant City Attorney

STATE OF IOWA)
) ss.
COUNTY OF POLK)

On this 20th day of December, 2021, 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 thereto is the seal of the corporation; that the instrument was signed and sealed on behalf of the corporation, by authority of its City Council, as contained in Roll Call No. 21-1973 passed and approved by the City Council on December 20, 2021, and that T. M. Franklin Cownie and P. Kay Cmelik acknowledged the execution of the instrument to be the voluntary act and deed of said City by it and by them voluntarily executed.

Sandi L. Deery
Notary Public in and for the State of Iowa



POWER BOAT CLUB ON THE RIVER, INCORPORATED

By 
Terry Nittler, President

By 
Lannie Davis, Secretary

STATE OF Iowa)
) ss.
COUNTY OF Pack)

This instrument was acknowledged before me on December 14, 2021, by Terry Nittler as President and Lannie Davis as Secretary of Power Boat Club on the River, Incorporated.


Notary Public in and for the State of Iowa

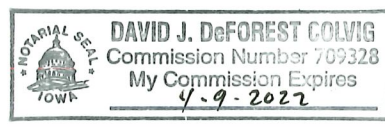
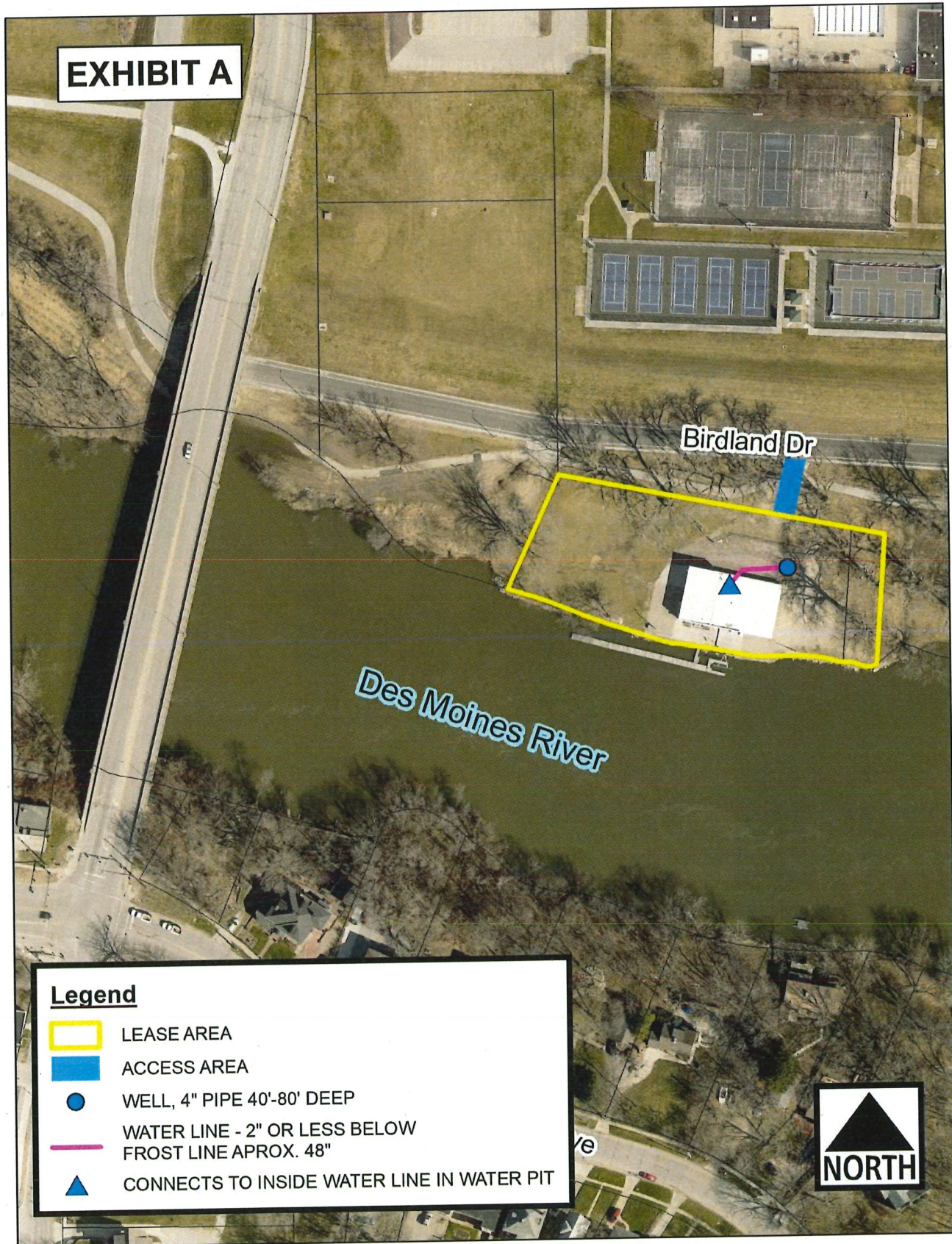







EXHIBIT A



Legend

-  LEASE AREA
-  ACCESS AREA
-  WELL, 4" PIPE 40'-80' DEEP
-  WATER LINE - 2" OR LESS BELOW FROST LINE APPROX. 48"
-  CONNECTS TO INSIDE WATER LINE IN WATER PIT

ATTACHMENT 1

Nonpotable Water Sign Requirements

601.2.2 Color and Information.

Nonpotable water systems shall have a yellow background with black uppercase lettering, with the words: caution:

NONPOTABLE WATER, DO NOT DRINK

Such signs shall be prominently displayed at each water outlet in a easily readable type size and font.

ATTACHMENT 2

CITY STANDARD LEASE AGREEMENT – MAJOR INSURANCE & INDEMNIFICATION REQUIREMENTS

For the purposes of this Attachment and all provisions included herein, the term “CITY” shall mean the City of Des Moines, Iowa, including its elected and appointed officials, employees, agents, volunteers, boards, commissions and others working on its behalf.

1. GENERAL

The LESSEE shall purchase and maintain insurance to protect the LESSEE and CITY throughout the duration of the Agreement to which these Requirements are attached (hereinafter “Agreement”). Said insurance shall be provided by an insurance company(ies), “admitted” and “non-admitted” to do business in the State of Iowa, having no less than an A. M. Best Rating of “B+.” All policies shall be written on a per occurrence basis, not a claims-made basis, and in form and amounts and with companies satisfactory to the CITY. Certificates of Insurance confirming adequate insurance coverage shall be submitted to the CITY prior to Agreement execution or commencement of LESSEE use or occupancy of Leased Premises including that of LESSEE’S officers, agents, employees, contractors, subcontractors or any other party working for, through, or on behalf of LESSEE.

The City of Des Moines, Iowa hereby reserves the right to revise and enforce the requirements in this Attachment over the term of this Agreement but only after providing LESSEE at least sixty (60) days advance written notification of any such change

2. INSURANCE REQUIREMENTS

B. COMMERCIAL GENERAL LIABILITY INSURANCE: The LESSEE shall procure and maintain Commercial General Liability insurance on an occurrence basis with limits of liability not less than \$1,000,000 per occurrence and \$2,000,000 aggregate combined single limit covering Personal Injury, Bodily Injury and Property Damage. Coverage shall include: (a) Contractual Liability, (b) Premises and Operations, (c) Products and Completed Operations, (d) Independent Contractors Coverage, (e) Personal and Advertising Injury and (f) Explosion, Collapse and Underground – XCU (when applicable). ***Waiver of Subrogation in favor of the CITY is required as per Paragraph 2.H. below.***

Coverage shall be no less comprehensive and no more restrictive than the coverage provided by a standard form Commercial General Liability Policy (ISO CG 0001 including standard exclusions or a non-ISO equivalent form).

C. UMBRELLA/EXCESS LIABILITY INSURANCE: The Liability Insurance requirements above may be satisfied with a combination of primary and Umbrella or Excess Liability Insurance. If the Umbrella or Excess Insurance policy does not follow the form of the primary policies, it shall include the same endorsements as required of the primary policies including a ***Waiver of Subrogation in favor of the CITY is required as per Paragraph 2.H. below.***

C. WORKER’S COMPENSATION & EMPLOYER’S LIABILITY INSURANCE: As required by State of Iowa Workers’ Compensation Law, the LESSEE shall procure and maintain Worker’s Compensation Insurance, including Employer’s Liability Coverage. The Workers’ Compensation Insurance shall be written with State of Iowa statutory limits. If, by Iowa Code Section 85.1A, the LESSE is not required to purchase Workers’ Compensation Insurance, the LESSE shall submit a copy of the Nonelection of Workers’ Compensation or Employers’ Liability Coverage form filed with the Iowa Workers’ Compensation Insurance

Commissioner, as required by Iowa Code Section 87.22. ***Waiver of Subrogation in favor of the CITY is required as per paragraph 2.H. below.***

- D. **ADDITIONAL INSURED ENDORSEMENT:** The General Liability Insurance policy shall include standard ISO endorsements CG 20 26 07 04 and CG 20 37 07 04 or their non-ISO equivalents. LESSEE'S insurance shall be primary to that of the CITY and noncontributory to any other insurance or similar coverage available to the CITY whether the other available coverage is primary, contributing or excess.
- E. **GOVERNMENTAL IMMUNITY ENDORSEMENT:** The General Liability Insurance policy shall include the CITY Governmental Immunities Endorsement language as provided below. Standard ISO or insurance carrier "Waiver of Immunity" endorsements are not acceptable.

CITY OF DES MOINES, IOWA

GOVERNMENTAL IMMUNITIES ENDORSEMENT

1. **Nonwaiver of Government Immunity.** The insurance carrier expressly agrees and states that the purchase of this policy and the including of the City of Des Moines, Iowa as Additional Insured does not waive any of the defenses of governmental immunity available to the City of Des Moines, Iowa under Code of Iowa Section 670.4 as it now exists and as it may be amended from time to time.
 2. **Claims Coverage.** The insurance carrier further agrees that this policy of insurance shall cover only those claims not subject to the defense of governmental immunity under the Code of Iowa Section 670.4 as it now exists and as it may be amended from time to time. Those claims not subject to Code of Iowa Section 670.4 shall be covered by the terms and conditions of this insurance policy.
 3. **Assertion of Government Immunity.** The City of Des Moines, Iowa shall be responsible for asserting any defense of governmental immunity, and may do so at any time and shall do so upon the timely written request of the insurance carrier. Nothing contained in this endorsement shall prevent the carrier from asserting the defense of governmental immunity on behalf of the City of Des Moines, Iowa.
 4. **Non-Denial of Coverage.** The insurance carrier shall not deny coverage under this policy and the insurance carrier shall not deny any of the rights and benefits accruing to the City of Des Moines, Iowa under this policy for reasons of governmental immunity unless and until a court of competent jurisdiction has ruled in favor of the defense(s) of governmental immunity asserted by the City of Des Moines, Iowa.
 5. **No Other Change in Policy.** The insurance carrier and the City of Des Moines, Iowa agree that the above preservation of governmental immunities shall not otherwise change or alter the coverage available under the policy.
- F. **CANCELLATION & NONRENEWAL NOTIFICATION ENDORSEMENT:** The General Liability Insurance policy shall include a policy endorsement providing the CITY with no less than thirty (30) days Advance Written Notice of Cancellation, forty-five (45) days Advance Written Notification for Nonrenewal and ten (10) days Written Notification of Cancellation due to non-payment of premium.
Written notifications shall be sent to: City of Des Moines, Real Estate Division, City Hall, 400 Robert D. Ray Drive, Des Moines, Iowa 50309.
- G. **PROPERTY INSURANCE** – LESSEE shall procure and maintain Property Insurance in a form at least as broad as the standard Insurance Services Office special cause of loss form covering, *to the extent required by this Agreement*, all structures located on Leased Premises, all structural improvements made upon Leased Premises and all contents (including, but not limited to, fixtures, furniture, equipment, etc.) within or on the Leased Premises. To the extent that the CITY has an insurable interest in any property covered by this

insurance, the CITY shall be named as an Additional Insured or Loss Payee on LESSEE'S Property Insurance policy.

- H. **WAIVER OF SUBROGATION:** To the fullest extent permitted by law, LESSEE hereby releases the CITY from and against any and all liability or responsibility to the LESSEE or anyone claiming through or under the LESSEE by way of subrogation or otherwise, for any loss without regard to the fault of the CITY or the type of loss involved, including loss due to occupational injury. This provision shall be applicable and in full force and effect only with respect to loss or damage occurring during the time of this Agreement. The LESSEE'S policies of insurance shall contain either a policy provision or endorsement affirming the above stated release in favor of the CITY including its elected and appointed officials, agents, employees and volunteers, and others working its behalf.
- I. **PROOF OF INSURANCE:** The LESSEE shall provide the following proof of insurance to the CITY:
- (1) Certificates of Insurance evidencing all insurance coverage as required in paragraphs A through H above utilizing the latest version of the ACORD form. The Certificate(s) of Insurance shall specify the Title of the Agreement under "Description of Operations/Locations/Vehicle/Special Items" and indicate Waiver of Subrogation by marking the corresponding boxes on COI and/or including a statement of compliance under Description of Operations.
 - (2) If applicable as per paragraph 2.C. above, a copy of the Nonelection of Workers' Compensation or Employers' Liability Coverage form.
 - (3) A copy of the Cancellation and Nonrenewal Notification Endorsements required in paragraph 2.F. above, or its equivalent.
- Mail Certificate of Insurance to: City of Des Moines, Real Estate Division, City Hall, 400 Robert D. Ray Drive, Des Moines, Iowa 50309.**
- J. **AGENTS, CONTRACTORS AND SUBCONTRACTORS:** The LESSEE shall require all its agents, contractors and subcontractors who perform work and/or services on behalf of the LESSEE to purchase and maintain the types of insurance customary to the services provided.
- K. **RESPONSIBILITY FOR THE PROPERTY OF OTHERS** – LESSEE shall assume full responsibility for all loss or damage from any cause whatsoever to any property brought onto Leased Premises that is owned or rented by LESSEE, or any of LESSEE'S employees, agents, contractors, subcontractors including that of LESSEE'S officers, agents, employees, contractors, subcontractors and any other party working for, through, or on behalf of LESSEE.

3. **INDEMNIFICATION REQUIREMENTS**

To the fullest extent permitted by law, LESSEE agrees to defend, pay on behalf of, indemnify, and hold harmless the CITY against any and all claims, demands, suits, damages or losses, together with any and all outlay and expense connected therewith, including, but not limited to, attorneys' fees and court costs, that may be asserted or claimed against, recovered from or suffered by the CITY by reason of any injury or loss, including, but not limited to, personal injury, bodily injury including death, property damage including loss of use thereof, and economic damages that arise out of or are in any way connected or associated with the Agreement and/or LESSEE'S use or occupancy of Leased Premises including that of LESSEE'S officers, agents, employees, contractors, subcontractor and others under the control of LESSEE.

LESSEE's obligation to indemnify the CITY contained in this Agreement is not limited by the amount or type of damages, compensation or benefits payable under any workers' compensation acts, disability benefit acts, or other employee benefits acts.

The CITY shall not be liable or in any way responsible for any injury, damage, liability, claim, loss or expense incurred by LESSEE arising out of or in any way connected or associated with the Agreement and/or LESSEE's use or occupancy of Leased Premises including that of LESSEE'S officers, agents, employees,

contractors, subcontractor and others under the control of LESSEE, except to the extent caused by or resulting from the negligence of the CITY.

LESSEE expressly assumes responsibility for any and all damage caused to CITY property arising out of or in any way connected or associated with the Agreement and/or LESSEE'S use or occupancy of Leased Premises including that of LESSEE'S officers, agents, employees, contractors, subcontractor and others under the control of LESSEE.

LESSEE shall ensure that its activities on CITY property will be performed and supervised by adequately trained and qualified personnel, and LESSEE will observe all applicable safety rules.