

Date June 22, 2015

SETTING DATE OF HEARING FOR THE VACATION OF A PORTION OF WALNUT STREET ABUTTING COWLES COMMONS AND AMENDMENT OF LEASE WITH DES MOINES PERFORMING ARTS FOR COWLES COMMONS BLOCK AND CIVIC CENTER BLOCK

WHEREAS, on December 15, 1975, by Roll Call No. 5636, the City Council approved the Contract for Lease and Lease for Development of the Theater Block and the Park Plaza Block with the Civic Center of Greater Des Moines, n/k/a Des Moines Performing Arts; and

WHEREAS, on January 20, 1992, by Roll Call No. 92-204, the City Council approved an Agreement For Purchase of Redeveloper's Leasehold Estate Interest in the Park Plaza Block Property dated January 20, 1992 and filed at Book 6495, Page 5897, et. seq. in the records of the Polk County Recorder, which Agreement incorporated a Second Amendment to the Contract for Lease and Lease; and

WHEREAS, on January 22, 1996, by Roll Call No. 96-331, the City Council approved Third Amendment to the Contract for Lease and Lease dated January 22, 1996 and filed at Book 7411, Page 255 et. seq. in the records of the Polk County Recorder; and

WHEREAS, the Park Plaza Block improvements are more than thirty years old and the property is in need of major renovations and improvements in order to continue as a first-class recreational and cultural amenity in the downtown area; and

WHEREAS, Des Moines Performing Arts desires to enhance and improve the Park Plaza Block and the Theater Block and has undertaken a private fund raising effort to construct and fund capital improvements to the Park Plaza Block and Theater Block in the amount of approximately \$9,000,000 pursuant to a Schematic Design for improvements to the Park Plaza Block and Theater Block; and

WHEREAS, on May 6, 2013, by Roll Call No. 13-0752, the City Council approved the Schematic Design for the Theater Block and the Park Plaza Block and approved all improvements made in accordance with such Schematic Design, which includes in the Park Plaza Block an open plaza for large community events, intimate gathering areas, an interactive fountain, gardens, trees, paved walkways, adjacent sidewalks, lighting, seating, street lights, traffic signals and public art and, in the Theater Block, a paved walkway, and garden areas (hereinafter collectively "the Improvements"); and

WHEREAS, on May 20, 2013, by Roll Call No. 13-0803, the City Council approved the renaming of the Park Plaza Block from "Nollen Plaza" to "Cowles Commons"; and

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WHEREAS, on May 6, 2013, by Roll Call No. 13-0753, the City Council approved an Urban Renewal Development Agreement between the City and Redeveloper which provides for a \$400,000 economic development grant to Des Moines Performing Arts to be used for the payment or reimbursement of costs related to the construction or installation of improvements to the Park Plaza Block and surrounding area or costs related to its operation, management and maintenance; and

WHEREAS, the parties desire that Des Moines Performing Arts be solely responsible for all operational costs and be responsible for all maintenance and capital costs for the improvements and infrastructure and grounds maintenance, except for tree maintenance, on the Theater Block and the Park Plaza Block; and

WHEREAS, the parties desire to add to the leased Property a portion of vacated 4<sup>th</sup> Street and Locust Street right-of-way abutting the Park Plaza Block needed to accommodate the Improvements on the Park Plaza Block, as described below, with the City retaining an easement for a pedestrian pathway between Locust Street and Walnut Street on the leased Property; and

WHEREAS, a Fourth Amendment to Lease of Land for Private Redevelopment has been prepared, a copy of which is on file in the City Clerk's Office, which provides for the lease of a portion of vacated 4<sup>th</sup> Street and Walnut Street right-of-way abutting the Park Plaza Block needed to accommodate the Improvements on the Park Plaza Block, with the City retaining an easement for a pedestrian pathway between Locust Street and Walnut Street on the leased Property. The City shall pay Des Moines Performing Arts \$90,000 per year, with annual increases of \$2,000, in consideration of Des Moines Performing Arts providing all maintenance except for tree care. In consideration of Des Moines Performing Arts paying for the Improvements in the amount of approximately \$9,000,000, no additional rent shall be paid to the City for such additional leased area; and

WHEREAS, it is proposed that the area of the leased premises be amended as follows:

**Disposition Parcel 2A Theater Block (Civic Center)**

Block 32 Fort Des Moines (aka Town of Fort Des Moines and Original Town of Fort Des Moines), an Official Plat, now included in and forming a part of the City of Des Moines, Polk County, Iowa, except that portion thereof nine feet in width lying parallel with and adjoining the westerly boundary line thereof which grantor reserves and by such reservation dedicates for street purposes, subject to any and all easements, restrictions and covenants of record.

**Disposition Parcel 2B Park Plaza Block (Cowles Commons fka Nollen Plaza)**

Block 23 Fort Des Moines, an Official Plat, now included in and forming a part of the City of Des Moines, Polk County, Iowa, subject to any and all easements, restrictions and covenants of record.

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**Vacated 4<sup>th</sup> Street (adjoining Park Plaza Block)**

The East 10 feet of vacated 4th Street lying West of and adjoining Block 23, Fort Des Moines, an Official Plat, all now included in and forming a part of the City of Des Moines; Polk County, Iowa, subject to any and all easements, restrictions and covenants of record.

**Portions of Vacated Walnut Street (adjoining Park Plaza Block)**

The North 7.75 feet of Walnut Street right of way lying South of and adjoining Block 23, Fort Des Moines, an Official Plat, all now included in and forming a part of the City of Des Moines, Polk County, Iowa, subject to any and all easements, restrictions and covenants of record.

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

1. That the City Council of the City of Des Moines shall consider adoption of an ordinance permanently vacating the below described right-of-way adjacent to the Park Plaza/Cowles Commons Block:

The North 7.75 feet of Walnut Street right of way lying South of and adjoining Block 23, Fort Des Moines, an Official Plat, all now included in and forming a part of the City of Des Moines, Polk County, Iowa.

2. That if the City Council decides to vacate the above described right-of-way, the City of Des Moines proposes to lease such property and the below described property and to adopt a Fourth Amendment to Lease Agreement between the City and Des Moines Performing Arts which provides for the lease of a portion of vacated 4<sup>th</sup> Street right-of-way and vacated Locust Street right-of-way abutting the Park Plaza Block needed to accommodate the Improvements to the Park Plaza Block, with the City retaining an easement for a pedestrian pathway between Locust Street and Walnut Street on the leased Property. The City shall pay Des Moines Performing Arts \$90,000 per year, with annual increases of \$2,000, in consideration of Des Moines Performing arts providing all maintenance except for tree care. In consideration of Des Moines Performing Arts paying for the Improvements in the amount of approximately \$9,000,000, no additional rent shall be paid to the City for such additional leased area.

3. That the area of the leased premises shall be changed to the following, which includes the additional area:

**Disposition Parcel 2B Park Plaza Block (Cowles Commons f/k/a Nollen Plaza)**

Block 23 Fort Des Moines, an Official Plat, now included in and forming a part of the City of Des Moines, Polk County, Iowa, subject to any and all easements, restrictions and covenants of record.

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**Portions of Vacated Walnut Street (adjoining Park Plaza Block)**

The North 7.75 feet of Walnut Street right of way lying South of and adjoining Block 23, Fort Des Moines, an Official Plat, all now included in and forming a part of the City of Des Moines, Polk County, Iowa, subject to any and all easements, restrictions and covenants of record.

4. That the meeting of the City Council at which the adoption of said ordinance and the Amendment of Lease Agreement for such real estate is to be considered shall be on July 13, 2015, said meeting to be held at 5:00 p.m., in the City Council Chamber, City Hall, 400 Robert D. Ray Drive, Des Moines, Iowa.

5. The City Clerk is authorized and directed to publish notice of the proposal and hearing in the form hereto attached not less than four or more than twenty days from the date of the hearing.

(Council Communication No. 15- 342)

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

APPROVED AS TO FORM:

Ann DiDonato  
Ann DiDonato, Assistant City Attorney

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