

Date June 22, 2020

HOLD HEARING FOR APPROVAL OF AN AMENDMENT TO THE GROUND LEASE AND OPERATION AND MAINTENANCE AGREEMENT FOR METROPOLITAN SALT STORAGE FACILITY ON METRO WASTE AUTHORITY PROPERTY

WHEREAS, on May 9, 2014, by Roll Call No. 14-0757, the City Council of the City of Des Moines, Iowa voted to approve a Ground Lease and Operation and Maintenance Agreement for Metropolitan Salt Storage Facility on Metro Waste Authority Property dated August 7, 2014, with the Des Moines Metropolitan Area Solid Waste Agency d/b/a Metro Waste Authority and the cities of West Des Moines, Urbandale, Johnston, Clive, Windsor Heights, Waukee, Grimes, Des Moines and Pleasant Hill (“Agreement”); and

WHEREAS, Metro Waste Authority gave a Notice of Termination of the Agreement to the City of Des Moines, indicating Metro Waste Authority was electing to terminate the Agreement on July 24, 2020 (“Termination”); and

WHEREAS, the Termination indicated Metro Waste Authority was requiring the City of Des Moines to remove the Des Moines’ ten thousand ton capacity salt storage building known as the Des Moines Building located at 5180 Beisser Drive, Grimes, IA 50111 from the Leased Premises; and

WHEREAS, the City of Des Moines is willing to withdraw from the Agreement and provide a Bill of Sale to the Des Moines Building for the considerations including but not limited to Metro Waste Authority withdrawing and rescinding the Termination and for Des Moines being allowed to leave the Des Moines Building upon withdraw from the Agreement; and

WHEREAS, all parties to the Agreement propose to amend the Agreement by withdrawing the City of Des Moines from the Agreement, effective October 1, 2020, requiring the City of Des Moines to provide a Bill of Sale to the Des Moines Building, and allowing the City of Des Moines to leave the Des Moines Building upon withdraw, in addition to various amendments relating to exhibits, termination, and maintenance fees; and

WHEREAS, on June 8, 2020, by Roll Call No. 20-0906, it was duly resolved by the City Council of the City of Des Moines, Iowa, that the proposed amendment to the Agreement be set for hearing on June 22, 2020, at 5:00 P.M. Iowa Code Section 21.4 requires that each Council meeting shall be held at a place reasonably accessible to the public and at a time reasonably convenient to the public, unless for good cause such a place or time is impossible or impracticable. Given Mayor Cownie’s March 17, 2020 Proclamation Amendment prohibiting gatherings of ten or more persons on public property and the Section One of the Governor’s May 26, 2020 Proclamation strongly encouraging vulnerable Iowans to limit participation in gatherings of any size and any purpose during the COVID19 outbreak and further given Section One Thirty Nine of the Governor’s May 26, 2020 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, the City Council has determined that a meeting at a physical place is

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impossible or impracticable and all Council meetings for the time being will be conducted electronically; and

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

WHEREAS, in accordance with City Council direction, those interested in the proposed amendment, 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 above described proposed amendment of the Agreement are hereby overruled and the hearing is closed.
2. That the proposed amendment to the Agreement and associated bill of sale is hereby approved.
3. The Mayor is authorized and directed to sign the amendment to the Agreement as identified above and the associated bill of sale, and the City Clerk is authorized and directed to attest to the Mayor's signature.
4. That the Public Works Director is hereby authorized and directed to deliver the amendment to the Agreement to the Metro Waste Authority upon execution of the Mayor and City Clerk,
5. That the Public Works Director is authorized and directed to deliver bill of sale to the Metro Waste Authority on October 1, 2020 as provided in the Amendment.

★ **Roll Call Number**

Agenda Item Number

78

Date June 22, 2020

Moved by _____ to adopt.

APPROVED AS TO FORM:

s/Kathleen Vanderpool

Kathleen Vanderpool, Deputy City Attorney

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE				
BOESEN				
GATTO				
GRAY				
MANDELBAUM				
VOSS				
WESTERGAARD				
TOTAL				
MOTION CARRIED			APPROVED	

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.

Mayor

City Clerk

-Metro Waste Authority
Amendment to Ground Lease and Operation Maintenance Agreement for Metropolitan Salt Storage Facility on Metro Waste Authority Property

THIS AMENDMENT is made and entered into this ____ day of _____, 2020, by and between Metro Waste Authority, an entity organized pursuant to Section 28E of the Iowa Code, (hereinafter referred to as "Authority" or "MWA") and the Cities of West Des Moines, Urbandale, Johnston, Clive, Windsor Heights, Waukee, Grimes, Des Moines and Pleasant Hill (hereinafter, the "Cities").

WHEREAS, MWA and the Cities, are parties to the Ground Lease and Operation Maintenance Agreement for Metropolitan Salt Storage Facility on Metro Waste Authority Property dated August 7, 2014, by and among MWA, the City and the Cities of West Des Moines, Urbandale, Johnston, Clive, Windsor Heights, Waukee, Grimes, Des Moines and Pleasant Hill (the "Agreement"); and

WHEREAS, MWA gave a Notice of Termination of Ground Lease and Operation Maintenance Agreement for Metropolitan Salt Storage Facility on Metro Waste Authority Property dated July 24, 2019, to Des Moines, indicating MWA was electing to terminate the Agreement on July 24, 2020; and

WHEREAS, the Notice of Termination was only to Des Moines and not the other Cities, further indicating it was requiring Des Moines to remove the Des Moines' ten thousand ton capacity salt storage building from the Leased Premises; and

WHEREAS, Section 3.02 of the Agreement provides that either MWA or the Cities may give a one year notice to terminate the Agreement, which termination shall be effective at the end of the one year notice; and

WHEREAS, the Agreement does not permit MWA to terminate the Agreement only as to Des Moines and not the other Cities; however Des Moines is willing to withdraw and provide a Bill of Sale to the Des Moines Building for the considerations set forth herein; including but not limited to MWA withdrawing and rescinding the Notice of Termination of Ground Lease and Operation Maintenance Agreement for Metropolitan Salt Storage Facility on Metro Waste Authority Property dated July 24, 2019 and for Des Moines being allowed to leave the Des Moines Building upon withdraw from the Agreement; and

WHEREAS, MWA and the Cities desire to amend the Agreement as provided herein.

NOW, THEREFORE, for and in consideration of the mutual covenants given each to the other, the parties hereby acknowledge the following:

1. Section 1.03, Identification of Exhibits is amended by replacing Exhibit “A” with the attached revised Exhibit “A” effective October 1, 2020.
2. Section 3.02, Termination, is deleted and replaced with the following:

At any time during the Term, either MWA or the Cities may give a one (1) year notice to terminate this Agreement, which termination shall be effective at the end of the one (1) year notice. Any notice given by the Cities shall be given by the West Des Moines Public Works Director and shall include letters from each City requesting termination. Notwithstanding the foregoing, during the Term, if Des Moines elects to withdraw from this Agreement or if one or more of the Shared Building Cities elects to forfeit its or their share of the Shared Building in accordance with Article 14 below, such City or Cities shall give MWA and the other Cities a one (1) year notice to terminate, which notice shall include only the City or Cities desiring to terminate this Agreement, and this Agreement shall continue with respect to the other remaining Cities. The costs and fees of this Agreement shall then be reallocated between the remaining Cities. Notwithstanding, this Section, it is agreed between the parties that Des Moines withdraws from this Agreement effective October 1, 2020, that this Agreement shall continue as to the MWA and other remaining Cities and all costs and fees of this Agreement shall be reallocated between the Shared Cities. MWA hereby withdraws and rescinds the Notice of Termination given to the City of Des Moines dated July 24, 2019.

3. Section 4.02, Maintenance Fee Provisions, Paragraph A, is deleted and replaced with the following:

A. *Maintenance Fee*. Beginning on the Effective Date, each City shall pay a maintenance fee of one (\$1.00) per ton of each City’s capacity storage in the Facility each remaining year of the Agreement (the “Maintenance Fee”). Des Moines' payment shall be made to the Des Moines Maintenance Fee Account (as defined below) and the Shared Building Cities' payment shall be made to the Shared Building Cities Maintenance Fee Account (as defined below). Thereafter, the West Des Moines Public Works Director shall invoice each City annually by July 1st of each year of the Term for each City’s respective Maintenance Fee. The Cities shall pay such invoice within thirty (30) days of receipt of said invoice. Des Moines shall pay the prorata portion of the Maintenance Fee due July 1, 2020 for the months of July, August and September of 2020 only and shall owe no further Maintenance Fee or any other fees thereafter.

4. Section 4.02, Maintenance Fee Provisions, Paragraph F, is deleted and replaced with the following:

F. Maintenance Fees Remaining if a City Withdraws from the Agreement. 100% of the Maintenance Fees and Interest in the Des Moines Maintenance Fee Account, as existing on September 30, 2020 shall be returned to Des Moines. If a Shared Building City withdraws from the Agreement pursuant to Article 14 herein, such Shared Building City shall forfeit any Maintenance Fees and interest paid into the Shared Building Cities Maintenance Fee Account.

5. Section 4.02, Maintenance Fee Provisions, Paragraph G is deleted and replaced with the following:

G. Maintenance Fees Remaining After Sale of Building. If the Shared Building Cities elect to sell the Shared Building, the Shared Building Cities shall forfeit 100% of the Maintenance Fees paid by the Shared Building Cities into the Shared Building Cities Maintenance Fee Account, and such funds shall be transferred to the purchaser of the Shared Building.

6. Section 5.09, Condition of Property at Termination of Agreement, is deleted and replaced with the following:

At the termination of this Agreement, the Shared Cities shall return the Leased Premises to its original condition. The Shared Building Cities shall be required to remove the Shared Building from the Leased Premises. The Cities shall not be required to remove any of the permanent infrastructures in place at the time of termination. Des Moines shall leave the Des Moines Building on the Leased Premises at its withdraw from this Agreement effective October 1, 2020 and shall not be required to remove any of the permanent infrastructure in place at the time of termination. For purposes of this Agreement, permanent infrastructure shall mean the paving and storm water improvements.

7. Section 5.10, Insurance of Buildings, is deleted and replaced with the following:

Des Moines shall procure and maintain full replacement insurance coverage on the Des Moines Building, including insurance covering the contents through September 30, 2020. After September 30, 2020, all risk of loss for the Des Moines Building and its contents shall belong to MWA. The Shared Building Cities shall procure and maintain full replacement insurance coverage on the Shared Building, including insurance covering the contents. The cost of insuring the Shared Building shall be allocated between the Shared Building Cities in accordance with the Shared Building Allocated Salt Storage Capacity. The West Des Moines Public Works Director shall secure and bill the Shared Building Cities for the costs of insurance for full replacement value of the Shared Building and content insurance. Certificates of Insurance and/or letters of self-insurance citing such coverages, limits and endorsements shall be provided to MWA and the West Des Moines Public Works Director by Des Moines and the Shared Building Cities on an annual basis.

8. Section 10.01 Ownership of Buildings, is deleted and replaced with the following:

MWA and the Cities agree and acknowledge that (i) the Shared Building is under the ownership and possession of the Shared Building Cities, which ownership is allocated to the Shared Building Cities in accordance with the Shared Building Allocated Salt Storage Capacity; and (ii) the Des Moines Building is under the exclusive ownership and possession of Des Moines. Des Moines shall deliver a Bill of Sale for the Des Moines Building to MWA on October 1, 2020 at which time the Des Moines Building will be under the exclusive ownership and possession of MWA and shall be the sole obligation and responsibility of MWA.

9. Section 10.03, Utilities, paragraph B deleted.

10. Section 11.01, Des Moines Building, is deleted and replaced with the following:

A. Fire or Casualty Occurring Before October 1, 2020.

If before October 1, 2020, the Des Moines Building is damaged by fire or other casualty, covered by the insurance Des Moines obtains pursuant to Section 5.10 herein, Des Moines shall either cause such repairs to be made to the Des Moines Building or remove the Des Moines Building from the Leased Premises with the proceeds of the insurance secured as set forth in Section 5.10 of this Agreement. In the event the damage is not covered by Des Moines' insurance, then in such instance the West Des Moines Public Works Director, upon written direction and concurrence by Des Moines as to whether the Des Moines Building shall be repaired or removed, shall cause such repairs to be made to the Des Moines Building or shall remove the Des Moines Building from the Leased Premises, using the proceeds from the Des Moines Maintenance Fee Account, and the following costs shall be charged to Des Moines, as applicable: (i) the cost of such repairs or replacement of the Des Moines Building, in excess of the Des Moines Maintenance Fee Account, or (ii) the cost of removal of the Des Moines Building from the Leased Premises in excess of the Des Moines Maintenance Fee Account. Des Moines shall have the right to use the Des Moines Maintenance Fee Account for any insurance deductible Des Moines shall have for any such fire or casualty, upon documentation of such deductible by Des Moines. The West Des Moines Public Works Director shall pay Des Moines the deductible amount from the Des Moines Maintenance Fee Account, upon submission of documentation of the deductible amount. Notwithstanding the foregoing, Des Moines acknowledges and agrees that: (i) any repair, replacement or removal of the Des Moines Building in the event of any fire or other casualty shall be commenced within six (6) months of such fire or other casualty, as applicable, and (ii) MWA shall not be responsible for any repair, replacement or removal of the Des Moines Building in the event of any fire or other casualty.

B. Fire or Casualty Occurring After September 30, 2020.

If the Des Moines Building is damaged by fire or other casualty after September 30, 2020, it shall be the sole responsibility and obligation of the MWA to remove or repair the Des Moines Building.

11. Section 14.01, Withdrawal by Des Moines, is deleted and replaced with the following:

Des Moines withdraws from this Agreement effective October 1, 2020 and all costs of this Agreement shall be reallocated between the remaining Cities.

12. Section 16.12, Intent of the Parties, is deleted and replaced with the following:

It is the intent of the parties to this Agreement that the operation of the Facility and the removal of the Buildings will be done without cost to MWA, unless said costs are reimbursed by the Cities as provided in this Agreement. Notwithstanding the foregoing, it is understood that Des Moines shall leave the Des Moines building upon Des Moines withdraw from the Agreement effective on October 1, 2020.

All other terms of the Agreement shall remain effective and enforceable as written.

DES MOINES METROPOLITAN AREA SOLID WASTE AGENCY D/B/A
METRO WASTE AUTHORITY:

By: _____
Chair, MWA Board

Attest:

Secretary, MWA Board

STATE OF IOWA)
) SS
COUNTY OF POLK)

On this _____ day of _____, 20___, before a Notary Public in and for the Des Moines Metropolitan Area Solid Waste Agency D/B/A Metro Waste Authority, personally appeared _____ and _____, to me personally known, who being duly sworn, did say that they are the Chair and Secretary, respectively of the Des Moines Metropolitan Area Solid Waste Agency D/B/A Metro Waste Authority, a legal entity created and existing under the laws of the State of Iowa, and that the seal affixed to the foregoing instrument is the seal of said Authority, and that said instrument was signed and sealed on behalf of said Authority by authority and resolution of its Board and said Chair and Secretary acknowledged said instrument to be the free act and deed of said Authority by it voluntarily executed.

Notary Public in and for the State of Iowa

CITY OF DES MOINES, IOWA

By _____

Attest:

STATE OF IOWA)
) SS
COUNTY OF POLK)

On this _____ day of _____, 20____, before a Notary Public in and for the City of _____, personally appeared _____ and _____, to me personally known, who being duly sworn, did say that they are the Mayor and City Clerk, respectively of the City of _____, Iowa, a Municipality, created and existing under the laws of the State of Iowa, and that the seal affixed to the foregoing instrument is the seal of said Municipality, and that said instrument was signed and sealed on behalf of said Municipality by authority and resolution of its City Council and said Mayor and City Clerk acknowledged said instrument to be the free act and deed of said Municipality by it voluntarily executed.

Notary Public in and for the State of Iowa

CITY OF WEST DES MOINES, IOWA

By _____

Attest:

STATE OF IOWA)
) SS
COUNTY OF POLK)

On this _____ day of _____, 20____, before a Notary Public in and for the City of _____, personally appeared _____ and _____, to me personally known, who being duly sworn, did say that they are the Mayor and City Clerk, respectively of the City of _____, Iowa, a Municipality, created and existing under the laws of the State of Iowa, and that the seal affixed to the foregoing instrument is the seal of said Municipality, and that said instrument was signed and sealed on behalf of said Municipality by authority and resolution of its City Council and said Mayor and City Clerk acknowledged said instrument to be the free act and deed of said Municipality by it voluntarily executed.

Notary Public in and for the State of Iowa

CITY OF URBANDALE, IOWA

By _____

Attest:

STATE OF IOWA)
) SS
COUNTY OF POLK)

On this _____ day of _____, 20____, before a Notary Public in and for the City of _____, personally appeared _____ and _____, to me personally known, who being duly sworn, did say that they are the Mayor and City Clerk, respectively of the City of _____, Iowa, a Municipality, created and existing under the laws of the State of Iowa, and that the seal affixed to the foregoing instrument is the seal of said Municipality, and that said instrument was signed and sealed on behalf of said Municipality by authority and resolution of its City Council and said Mayor and City Clerk acknowledged said instrument to be the free act and deed of said Municipality by it voluntarily executed.

Notary Public in and for the State of Iowa

CITY OF JOHNSTON, IOWA

By _____

Attest:

STATE OF IOWA)
) SS
COUNTY OF POLK)

On this _____ day of _____, 20____, before a Notary Public in and for the City of _____, personally appeared _____ and _____, to me personally known, who being duly sworn, did say that they are the Mayor and City Clerk, respectively of the City of _____, Iowa, a Municipality, created and existing under the laws of the State of Iowa, and that the seal affixed to the foregoing instrument is the seal of said Municipality, and that said instrument was signed and sealed on behalf of said Municipality by authority and resolution of its City Council and said Mayor and City Clerk acknowledged said instrument to be the free act and deed of said Municipality by it voluntarily executed.

Notary Public in and for the State of Iowa

CITY OF CLIVE, IOWA

By _____

Attest:

STATE OF IOWA)
) SS
COUNTY OF POLK)

On this _____ day of _____, 20____, before a Notary Public in and for the City of _____, personally appeared _____ and _____, to me personally known, who being duly sworn, did say that they are the Mayor and City Clerk, respectively of the City of _____, Iowa, a Municipality, created and existing under the laws of the State of Iowa, and that the seal affixed to the foregoing instrument is the seal of said Municipality, and that said instrument was signed and sealed on behalf of said Municipality by authority and resolution of its City Council and said Mayor and City Clerk acknowledged said instrument to be the free act and deed of said Municipality by it voluntarily executed.

Notary Public in and for the State of Iowa

CITY OF WINDSOR HEIGHTS, IOWA

By _____

Attest:

STATE OF IOWA)
) SS
COUNTY OF POLK)

On this _____ day of _____, 20____, before a Notary Public in and for the City of _____, personally appeared _____ and _____, to me personally known, who being duly sworn, did say that they are the Mayor and City Clerk, respectively of the City of _____, Iowa, a Municipality, created and existing under the laws of the State of Iowa, and that the seal affixed to the foregoing instrument is the seal of said Municipality, and that said instrument was signed and sealed on behalf of said Municipality by authority and resolution of its City Council and said Mayor and City Clerk acknowledged said instrument to be the free act and deed of said Municipality by it voluntarily executed.

Notary Public in and for the State of Iowa

CITY OF WAUKEE, IOWA

By _____

Attest:

STATE OF IOWA)
) SS
COUNTY OF POLK)

On this _____ day of _____, 20____, before a Notary Public in and for the City of _____, personally appeared _____ and _____, to me personally known, who being duly sworn, did say that they are the Mayor and City Clerk, respectively of the City of _____, Iowa, a Municipality, created and existing under the laws of the State of Iowa, and that the seal affixed to the foregoing instrument is the seal of said Municipality, and that said instrument was signed and sealed on behalf of said Municipality by authority and resolution of its City Council and said Mayor and City Clerk acknowledged said instrument to be the free act and deed of said Municipality by it voluntarily executed.

Notary Public in and for the State of Iowa

CITY OF GRIMES, IOWA

By _____

Attest:

STATE OF IOWA)
) SS
COUNTY OF POLK)

On this _____ day of _____, 20____, before a Notary Public in and for the City of _____, personally appeared _____ and _____, to me personally known, who being duly sworn, did say that they are the Mayor and City Clerk, respectively of the City of _____, Iowa, a Municipality, created and existing under the laws of the State of Iowa, and that the seal affixed to the foregoing instrument is the seal of said Municipality, and that said instrument was signed and sealed on behalf of said Municipality by authority and resolution of its City Council and said Mayor and City Clerk acknowledged said instrument to be the free act and deed of said Municipality by it voluntarily executed.

Notary Public in and for the State of Iowa

CITY OF PLEASANT HILL, IOWA

By _____

Attest:

STATE OF IOWA)
) SS
COUNTY OF POLK)

On this _____ day of _____, 20____, before a Notary Public in and for the City of _____, personally appeared _____ and _____, to me personally known, who being duly sworn, did say that they are the Mayor and City Clerk, respectively of the City of _____, Iowa, a Municipality, created and existing under the laws of the State of Iowa, and that the seal affixed to the foregoing instrument is the seal of said Municipality, and that said instrument was signed and sealed on behalf of said Municipality by authority and resolution of its City Council and said Mayor and City Clerk acknowledged said instrument to be the free act and deed of said Municipality by it voluntarily executed.

Notary Public in and for the State of Iowa