



Roll Call Number

20-1119

Agenda Item Number

34B

Date July 13, 2020

APPROVAL OF AN ECONOMIC DEVELOPMENT PARKING LICENSE AGREEMENT BETWEEN THE CITY OF DES MOINES AND FIDELITY & GUARANTY LIFE BUSINESS SERVICES, INC.

WHEREAS, by separate resolution of this date, the City Council has approved sponsorship of an Iowa Economic Development Authority High Quality Jobs ("HQJ") grant for Fidelity & Guaranty Life Business Services, Inc. ("Fidelity & Guaranty") for its expansion project that is creating new jobs located in the 801 Grand Building; and

WHEREAS, as the City local match for the HQJ grant, City staff has negotiated the terms of a new parking license agreement with Fidelity & Guaranty for use of spaces in the Ninth and Locust Garage and the agreement and rates charged thereunder enhance the revenues of the parking facilities system, further enhance substantial job creation in the downtown in conjunction with the expansion of Fidelity & Guaranty's business operations at 801 Grand and are in the best interests of the City and comply with Des Moines Municipal Code Section 114-666.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Des Moines, Iowa that the Economic Development Parking License Agreement for use of spaces in the Ninth and Locust Garage on file in the Office of the City Clerk between the City of Des Moines and Fidelity & Guaranty Life Business Services, Inc. is hereby approved and the Mayor is authorized and directed to execute the Agreement on behalf of the City and the City Clerk is authorized and directed to attest to the Mayor's signature.

BE IT FURTHER RESOLVED that the City Manager or his designee is hereby directed to administer all terms of the Economic Development Parking License Agreement.

(Council Communication No. 20- 308 Attached)

APPROVED AS TO FORM:

Moved by Gatto to adopt.

/s/ Lawrence R. McDowell
Lawrence R. McDowell
Deputy City Attorney

Table with 5 columns: COUNCIL ACTION, YEAS, NAYS, PASS, ABSENT. Rows include COWNIE, BOESEN, GATTO, GRAY, MANDELBAUM, VOSS, WESTERGAARD, and TOTAL.

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.

MOTION CARRIED APPROVED
J. M. Frankie Cownie Mayor

P. Kay Cmelik City Clerk

NINTH AND LOCUST
ECONOMIC DEVELOPMENT PARKING LICENSE AGREEMENT

This Economic Development Parking License Agreement (this "Agreement") is entered into as of this 13th day of July, 2020 by and between the City of Des Moines, Iowa, a municipal corporation, with offices at 400 Robert D. Ray Dr., Des Moines, IA 50309 (the "City") and Fidelity & Guaranty Life Business Services, Inc., an Iowa Corporation, with offices at Two Ruan Center, 601 Locust Street, Des Moines, IA 50309 ("Fidelity & Guaranty").

WITNESSETH:

WHEREAS, City has undertaken programs to create new jobs and income and retain existing jobs and income that would otherwise be lost by stimulating economic revitalization of the downtown Des Moines area; making use of under-utilized areas of the City of Des Moines; removing conditions which have prevented normal development of the land by private enterprise; and avoiding stagnant and unproductive conditions of land which is potentially useful and viable for contributing to the public health, safety and welfare of residents within the City of Des Moines; and

WHEREAS, Fidelity & Guaranty is expanding its headquarters in downtown Des Moines and is receiving High Quality Jobs Program benefits from the Iowa Economic Development Authority for its expansion project that is creating new jobs located in the 801 Grand Building; and

WHEREAS, Fidelity & Guaranty desires to use parking spaces within the City parking garage located in the vicinity of Ninth and Locust in conjunction with the expansion of its business operations at 801 Grand; and

WHEREAS, to enable such parking, the City agrees to grant to Fidelity & Guaranty a license to use parking spaces in the Ninth and Locust Garage pursuant to the terms and conditions of this Agreement; and

WHEREAS, economic development assistance through the provision of parking spaces at a reduced cost in the Ninth and Locust Garage as set forth herein shall be provided by the City to Fidelity & Guaranty pursuant to Chapter 15A of the Code of Iowa and Des Moines Municipal Code Section 114-666 or successor Code sections, and the provision of such parking will ensure substantial job creation within the City of Des Moines; and

WHEREAS, the City believes that the expansion of business operations by Fidelity & Guaranty resulting in substantial job creation and the fulfillment generally of this Agreement, are in the vital and best interests of the City and the health, safety, morals and welfare of its residents and in accord with the public purposes and provisions of the applicable State and local laws and requirements under which the economic development project has been undertaken and warrant the economic assistance set forth in this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained herein, the parties agree as follows:

1. Economic Development Assistance Requirements. Fidelity & Guaranty shall comply with all terms of the three-party agreement between Fidelity & Guaranty, the City, and the Iowa Economic Development Authority relating to the High Quality Jobs Program benefits for its expansion project within Des Moines

2. Term. Provided Fidelity & Guaranty continuously maintains compliance with the terms of Section 1 of this Agreement, then the City hereby grants to Fidelity & Guaranty the right to use seventy-five (75) parking spaces in the Ninth and Locust Garage as provided in Sections 3 and 4 for a five-year term commencing on November 1, 2020 and ending on October 31, 2025, subject, however, to the provisions and limitations set forth in this Agreement. Fidelity & Guaranty may select a delayed commencement date of the five-year term to the first day of any subsequent month up to and including February 1, 2021 by providing the City with thirty (30) day prior notice of the selected commencement date. Any delayed commencement date and corresponding termination date shall be memorialized by written document signed by the parties and appended hereto.

3. Licensed Spaces. Fidelity & Guaranty shall license from the City seventy-five (75) parking spaces in the Ninth and Locust Garage. Fidelity & Guaranty shall be responsible for payment of Rent on the licensed spaces in accordance with Section 5.

4. Right to Use Licensed Spaces

a) The City hereby grants to Fidelity & Guaranty the right to use the parking spaces licensed by Fidelity & Guaranty for vehicle parking in parking areas designated by the City in the Ninth and Locust Garage.

b) Fidelity & Guaranty's use of such parking spaces in the Ninth and Locust Garage shall be subject to the reasonable rules and regulations as established by the City and made known to Fidelity & Guaranty in advance and in writing; and as such may be changed from time to time and such change be notified to Fidelity & Guaranty in writing. The City will operate, maintain and provide security at the Ninth and Locust Garage at a level of service comparable to other City-owned parking facilities. The City may make, modify and enforce reasonable monthly parking rules and regulations relating to the parking of vehicles in the Ninth and Locust Garage and Fidelity & Guaranty shall abide by such reasonable monthly parking rules and regulations as made known to Fidelity & Guaranty in advance and in writing. Fidelity & Guaranty shall promptly pay any fees or charges due the City pursuant to such rules and regulations. Fees include late payment fees or lost card fees. The City will continually monitor the number of monthly and transient parkers in the garage to ensure that the base number of parking spaces licensed by Fidelity & Guaranty will be accommodated in the garage.

c) The City will issue to Fidelity & Guaranty a parking sticker and/or access card for each licensed space which will authorize parking in the Ninth and Locust Garage of a vehicle upon which the sticker is displayed, or the City will provide a reasonable

alternative means of identifying and controlling vehicles authorized to be parked in the Ninth and Locust Garage. The City may designate the area within which each such vehicle may be parked and the City may change such designation from time to time, however, no parking spaces shall be reserved or designated in preferred locations. The City may terminate this Agreement as to any space, person, card, sticker or credential for violation of its monthly parking rules or regulations. The City shall send notice to Fidelity & Guaranty as to any violation of its monthly parking rules and regulations specific to any person, card, sticker, or credential. Fidelity & Guaranty shall have thirty (30) days to cure said default in accordance with Section 11. If uncured beyond the referenced cure period, the City shall have the right to declare the particular vehicle/parker/violation as not allowed in the Ninth and Locust Garage. Any such specific default shall not have the effect of reducing the total number of spaces licensed to Fidelity & Guaranty under this Agreement.

5. Rent.

a) As rental for the parking spaces licensed by the City to Fidelity & Guaranty under this Agreement, Fidelity & Guaranty agrees to pay the City a monthly license fee for each parking space as set forth herein ("Rent"). The monthly Rent is calculated by multiplying the applicable prevailing monthly floater rate charged for each parking space in the Ninth and Locust Garage under Des Moines Municipal Code Section 114-658 or successor Code section (the rate at date of this Agreement being \$120) by a factor of .80 (the "Discount Rent"), which amount shall then be multiplied by seventy-five (75) to determine the total monthly Rent.¹

b) The total monthly rental fee shall be payable in advance on the first day of each and every month during the term of this Agreement and a pro rata portion of such sum shall be payable in advance for any particular calendar month in the event this Agreement terminates on a date other than the last day of the calendar month.

6. Limitations. Fidelity & Guaranty's rights under this Agreement are subject to limitations, as follows:

a) Fidelity & Guaranty's right of use is subject to the rights of other users of the Ninth and Locust Garage approved by the City on the same or similar basis as Fidelity & Guaranty and not in conflict with the terms of this Agreement, provided, however, that other users of the Ninth and Locust Garage will not adversely impact the use of the licensed parking spaces by Fidelity & Guaranty.

b) The City may temporarily interrupt Fidelity & Guaranty's use of the Ninth and Locust Garage in its discretion for repairs, maintenance or safety. In the event any licensed parking spaces are not available because of any of the above events, the rent shall abate pro rata during the time said spaces are unavailable and the City shall refund to Fidelity & Guaranty any amount previously paid for abated rent. The City shall assist Fidelity & Guaranty in finding replacement parking spaces in other City garages at the

¹ Example – At date of Agreement - $\$120.00 \times .80 = \96.00 , $\$96.00 \times 75 = \$7,200$ total monthly rental fee.

prevailing rates for such garages (as adjusted by the Discount Rate factor set forth in Section 5), provided the City at its sole discretion determines that such replacement parking spaces are available and the license thereof to Fidelity & Guaranty does not adversely impact the City's operation of its parking facilities system to accommodate the demand of hourly or transient parkers throughout the downtown, violate City parking system revenue bond covenants and restrictions or adversely impact the tax-exempt status of City parking system revenue bonds.

c) This Agreement provides for a mere license of use as described herein within the Ninth and Locust Garage while the City uses the City Garage for public parking of vehicles. It does not obligate the City to continue such use of the Ninth and Locust Garage. In the event the City discontinues use of the Ninth and Locust Garage for public parking of vehicles or transfers ownership of the Garage, this Agreement will terminate as to any licensed spaces in such Garage and the City will assist Fidelity & Guaranty in finding replacement spaces in other City garages in the manner described in subsection 6(b).

d) The City may use the licensed parking spaces during nighttime hours (6 p.m. - 6 a.m.) and during weekends and holidays to provide for vehicle parking in such spaces for individuals attending entertainment, sporting events and special events in the downtown area. The City shall retain all proceeds derived from such use of the licensed parking spaces and the City shall have no obligation to refund Rent. Notwithstanding the above, Fidelity & Guaranty shall not be required to remove vehicles to accommodate the City's use of the licensed parking spaces.

7. Damage or Destruction. If the Ninth and Locust Garage shall be destroyed, damaged or rendered unusable, either in whole or in part, by fire or other casualty, the City in its sole discretion may determine whether to rebuild or restore such Garage. Either party may terminate this Agreement or absent such termination, this Agreement shall continue in full force and effect for the remaining usable licensed parking spaces and the monthly Rent shall be abated pro rata for the unusable portion of the licensed parking spaces.

8. Surrender of Possession. Upon expiration of the term of this Agreement, whether by early termination, lapse of time or otherwise, Fidelity & Guaranty shall promptly and peacefully surrender use of the licensed parking spaces and return all parking access and/or identification cards or credentials to the City.

9. Sub-license. During the term of this Agreement, Fidelity & Guaranty, or its successors or assigns, may sub-license the use of parking spaces covered herein to other parties in conjunction with its business operations at 801 Grand at not less than the prevailing monthly Rent set forth in Section 5, subject to the written approval of the City. All such use shall remain subject to the City's rights under the law and this Agreement. Fidelity & Guaranty shall remain liable for payments and performance of its obligations under this Agreement

10. City Default - Fidelity & Guaranty Remedies. The following event shall constitute a material default and breach of this Agreement by the City:

- (i) the failure of the City to comply with any of the terms and conditions of this Agreement within thirty (30) days after written notice of such failure has been given by Fidelity & Guaranty to the City.

In the event of such material default, Fidelity & Guaranty shall have the right to terminate this Agreement upon written notice to the City and notwithstanding whether Fidelity & Guaranty exercises such right to terminate, Fidelity & Guaranty shall have available all legal and equitable remedies to enforce performance and observance of any obligation, agreement or covenant of the City under this Agreement.

11. Fidelity & Guaranty Default - City Remedies. The occurrence of one or more of the following events shall constitute a material default and breach of this Agreement by Fidelity & Guaranty:

- (i) the failure by Fidelity & Guaranty to comply with any of the provisions set forth in Paragraph 5 related to the payment of Rent for parking; or
- (ii) the failure of Fidelity & Guaranty to comply with any of the other terms and conditions of this Agreement within thirty (30) days after written notice of such failure has been given by the City to Fidelity & Guaranty.

In the event of any such material default by Fidelity & Guaranty, the City shall have the right to terminate this Agreement upon written notice to Fidelity & Guaranty and notwithstanding whether the City exercises such right to terminate, the City shall have available all legal and equitable remedies necessary to collect any payments due under this Agreement or to enforce performance and observance of any obligation, agreement or covenant of Fidelity & Guaranty under this Agreement.

12. Public Use of Garage. The Ninth and Locust Garage is devoted for public use as part of the City's parking facilities system enterprise to provide for the public parking needs and continued vitality of the downtown. This Agreement provides for a mere license of use of parking spaces in the Ninth and Locust Garage pursuant to the terms and limitations set forth herein in accordance with the City's operation of the Ninth and Locust Garage for the public parking of vehicles. All fees and charges for parking derived herein are considered revenues of the City's parking facilities system enterprise devoted to payment of the expenses for operation and maintenance of the parking facilities system enterprise. Notwithstanding the above, in the event that on the basis of the terms of this Agreement, any part of the Ninth and Locust Garage is determined to be subject to property taxation under Iowa Code Chapter 427 by an authorized officer, agency or department of the State of Iowa or Polk County, Iowa or by a Court, the City may unilaterally modify the terms of this Agreement as necessary to retain property tax exempt status for the Ninth and Locust Garage and if retainage of tax exempt status is unsuccessful the City may terminate this Agreement. In the event of such termination, the Parties shall in good faith negotiate terms of a new parking license agreement that will not result in property taxation for the Ninth and Locust Garage or will fully compensate the City for the additional operational costs of the Ninth and Locust Garage attributable to property taxation.

13. Non-Waiver. Waiver by either party of any breach of any term, covenant or condition herein contained shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant or condition herein contained unless so provided in writing by the parties.

14. Indemnification. Fidelity & Guaranty shall bear all responsibility and liability for the negligence, fault and willful conduct of its own agents, employees, contractors, invitees or other parties using the parking spaces licensed herein. Fidelity & Guaranty hereby agrees to indemnify and hold the City harmless against and from any and all claims for damages or injury arising from the fault, negligence or willful conduct of its own agents, employees, contractors, invitees or other parties using the parking spaces licensed herein. The City assumes no responsibility whatsoever for loss or damages to vehicles and their contents and the personal property of individuals utilizing the Ninth and Locust Garage pursuant to this Agreement.

15. Severability. If any term of this Agreement, or the application thereof to any person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term to a person or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby and each term of this Agreement shall be valid and enforceable to the full extent permitted by law.

16. No Partnership. Nothing herein shall be deemed or construed by the parties hereto, nor any third party, as creating the relationship of co-partners between the parties or constituting Fidelity & Guaranty as an agent or representative of the City.

17. Successors and Assigns. The City shall have the right to transfer, assign, mortgage or otherwise encumber all of its right, title and interest in the Ninth and Locust Garage at any time without notice to Fidelity & Guaranty, provided that the assignee agrees in writing to assume and be bound by all of the obligations of City under this Agreement. Fidelity & Guaranty may, subject to approval of the City, assign its rights and interests under this Agreement to another entity as part of its business operations at 801 Grand. Neither the City nor Fidelity & Guaranty shall be released from their obligations under this Agreement pursuant to any such assignment. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors, heirs, administrators and assigns.

18. Entire Agreement. This Agreement contains the entire agreement between the parties hereto with respect to the subject matter hereof and may not be amended, modified or changed, nor shall any waiver of any provision hereof be effective, except only by an instrument in writing and signed by the party against whom enforcement of any waiver, amendment, change, modification or discharge is sought.

19. Waiver of Jury Trial. The City and Fidelity & Guaranty each irrevocably waives all right to trial by jury in any action, proceeding or counterclaim arising out of or relating to this Agreement or any instrument or document delivered hereunder.

20. Notices. All notices under this Agreement must be delivered in person or mailed by registered or certified mail, return receipt requested, postage prepaid, to the parties at their addresses set forth below:

City of Des Moines
Attn: City Manager
400 Robert D. Ray Drive
Des Moines, IA 50309

Fidelity & Guaranty Life Business Services, Inc.
Two Ruan Center
601 Locust Street
Des Moines, IA 50309

21. Construction. This Agreement shall be construed and enforced in accordance with the laws of the State of Iowa.

22. Representation and Warranty. Both parties represent, warrant and acknowledge that they have full authority to comply with all provisions contained in this Agreement, that this Agreement is being executed with full corporate authority and that the persons whose signatures appear hereon are duly authorized to execute this Agreement.

23. Personal Liability. Notwithstanding anything contained in this Agreement to the contrary, or any applicable law, the person or persons executing this Agreement on behalf of either party shall incur no personal liability with respect to either party's performance under the Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

THE CITY OF DES MOINES, IOWA

By: T.M. Franklin Cownie
T.M. Franklin Cownie, Mayor

ATTEST:

P. Kay Cmelik
P. Kay Cmelik, City Clerk

STATE OF IOWA)
) ss:
COUNTY OF POLK)

On this 13th day of July, 2020, before me, the undersigned, a Notary Public, personally appeared T.M. FRANKLIN COWNIE and P. KAY CMELIK, to me personally known, who, being by me duly sworn, did state 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 seal of the corporation, and that the instrument was signed and sealed on behalf of the corporation, by authority of its City Council, as Roll Call No. 20-1119 on the 13th day of July, 2020, and that T.M. Franklin Cownie and P. Kay Cmelik

