



Date May 24, 2021

APPROVAL OF PARKING LICENSE AGREEMENT
BETWEEN THE CITY OF DES MOINES
AND UNITED STATES GENERAL SERVICES ADMINISTRATION

WHEREAS, City staff has negotiated the terms of a Parking License Agreement with the United States General Services Administration ("GSA") for the use of 41 parking spaces for a one-year term commencing April 1, 2021 within the Third and Court Garage to accommodate the users of the Neal Smith Federal Building located at 210 Walnut Street; and

WHEREAS, the proposed Parking License Agreement provides that GSA will pay the prevailing monthly floater rate for each licensed parking space and the Agreement is on file in the Office of the City Clerk.

NOW THEREFORE, BE IT RESOLVED, by the City Council of the City of Des Moines, Iowa, that the Parking License Agreement on file in the Office of the City Clerk between the City of Des Moines and GSA 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 Parking License Agreement.

FORM APPROVED: Moved by _____ to adopt.

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

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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
Mayor

City Clerk

THIRD AND COURT
PARKING LICENSE AGREEMENT
GS-06P-LIA00433

This Parking License Agreement ("Agreement") is entered into as of this _____ day of _____, 2021 by and between the CITY OF DES MOINES, IOWA, a municipal corporation (the "City") and United States General Services Administration ("GSA").

W I T N E S S E T H:

WHEREAS, GSA desires to use parking spaces within the City parking garage located in the vicinity of Third and Court Avenues in conjunction with its use of the Neal Smith Federal Building located at 210 Walnut Street; and

WHEREAS, to enable such parking, the City agrees to grant to GSA a license to use parking spaces in the Third and Court Garage pursuant to the terms and conditions of this Agreement.

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

1. Term, Licensed Spaces.

The City hereby grants to GSA the right to use forty-one (41) non-reserved floater parking spaces in the Third and Court Garage as provided in Section 2 for a term commencing on April 1, 2021 and ending on March 31, 2022, subject, however, to the provisions and limitations set forth in this Agreement.

2. Right to Use Licensed Spaces.

a) The City hereby grants to GSA the right to use the parking spaces licensed by GSA for vehicle parking in parking areas designated by the City in the Third and Court Garage.

b) GSA's use of such parking spaces in the Third and Court Garage shall be subject to the reasonable rules and regulations as established by the City and as such may be changed from time to time. The City will operate, maintain and provide security at the Third and Court 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 Third and Court Garage and GSA shall abide by such reasonable monthly parking rules and regulations. Specific spaces may or may not be assigned to GSA. The City will continually monitor the number of monthly and transient parkers in the garages to ensure that the parking spaces licensed by GSA will be accommodated in the Garage.

c) The City will issue to GSA a parking sticker and/or access card for each licensed space which will authorize parking in the Third and Court 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 Third and Court 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. 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 GSA as to any violation of its monthly parking rules and regulations specific to any person, card, sticker, or credential. GSA shall have thirty (30) days to cure said default in accordance with Section 8. 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 Third and Court Garage. Any such specific default shall not have the effect of reducing the total number of spaces licensed to GSA under this Agreement.

3. Rent.

a) As rental for the parking spaces licensed by the City to GSA under this Agreement, GSA agrees to pay the City a monthly fee of Four Thousand Nine Hundred Twenty Dollars (\$4,920).¹

b) The rental fee for each month shall be paid in arrears by GSA on or before the third day of the following month and a pro rata portion of such sum shall be paid for any particular calendar month in the event this Agreement begins or terminates on a date other than the last day of the calendar month.

4. Limitations. GSA's rights under this Agreement are subject to limitations, as follows:

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

b) The City may temporarily interrupt GSA's use of the Third and Court 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. The City shall assist GSA in finding replacement parking spaces in other City garages at the prevailing rates for such garages, provided the City at its sole discretion determines that such replacement parking spaces are available and the license thereof to GSA does not interfere with or adversely impact the goals, objectives and operation of the City's parking facilities downtown to accommodate and provide parking for other customers including the demand of hourly and transient parkers throughout the downtown and the license thereof to GSA does not violate City

¹ Effective January 1, 2018, rate for each monthly non-reserved floater space - \$120, rate for monthly non-reserved preferred space - \$140, rate for monthly reserved space - \$160.

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 Third and Court Garage while the City uses the Garage for public parking of vehicles. It does not obligate the City to continue such use of the Third and Court Garage.

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, GSA shall not be required to remove vehicles to accommodate the City's use of the licensed parking spaces.

5. Damage or Destruction. If the Third and Court 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 rental obligation shall be abated pro rata for the unusable portion of the licensed parking spaces.

6. Surrender of Possession. Upon expiration of the term of this Agreement, whether by early termination, lapse of time or otherwise, GSA 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.

7. City Default - GSA 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 GSA to the City.

In the event of such material default, GSA shall have the right to terminate this Agreement upon written notice to the City and notwithstanding whether GSA exercises such right to terminate, GSA 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.

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

- (i) the failure by GSA to comply with any of the provisions set forth in Paragraph 3 related to the payment of rental fees for parking; or

- (ii) the failure of GSA 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 GSA.

In the event of any such material default by GSA, the City shall have the right to terminate this Agreement upon written notice to GSA 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 GSA under this Agreement.

9. Early Termination. Either party shall have the right to terminate this Agreement without cause prior to the end of the License term by giving the other party at least one hundred eighty (180) days advance notice of such termination. In the event the City terminates this Agreement pursuant to this Section, the City shall assist GSA in finding replacement parking spaces in other City garages at the prevailing rates for such garages, provided the City at its sole discretion determines that such replacement parking spaces are available and the license thereof to GSA does not interfere with or adversely impact the goals, objectives and operation of the City's parking facilities downtown to accommodate and provide parking for other customers including the demand of hourly and transient parkers throughout the downtown and the license thereof to GSA does not violate City parking system revenue bond covenants and restrictions or adversely impact the tax-exempt status of City parking system revenue bonds.

10. 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.

11. Liability. The City shall require that all individuals utilizing the Third and Court Garage pursuant to this Agreement sign a document indemnifying and releasing the City from liability and GSA agrees to cooperate and assist the City in obtaining such signed documents. The City assumes no responsibility whatsoever for injury or for the loss or damages to vehicles and their contents and the personal property of individuals utilizing the Third and Court Garage pursuant to this Agreement.

12. 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.

13. 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 GSA as an agent or representative of the City.

14. Successors and Assigns. The City shall have the right to assign, mortgage or otherwise encumber all of its right, title and interest in the Third and Court Garage at any time without notice to GSA. The City shall be released from its 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.

15. 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.

16. Waiver of Jury Trial. The City and GSA 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.

17. 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

United States General Services Administration
Attn: Kristin M. Schlueter
2300 Main Street, FL7 (6PIRE)
Kansas City, MO 64108

18. Construction. This Agreement shall be construed and enforced in accordance with the laws of the State of Iowa to the extent not contrary to Federal law.

19. 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.

20. 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, Mayor

ATTEST:

P. Kay Cmelik, City Clerk

STATE OF IOWA)
) ss:
COUNTY OF POLK)

On this _____ day of _____, 2021, 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. _____ on the _____ day of _____, 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 the municipal corporation, by it voluntarily executed.

Notary Public in and for the State of Iowa

UNITED STATES GENERAL
SERVICES ADMINISTRATION

By: _____
_____, its _____

STATE OF MISSOURI)
) ss:
COUNTY OF JACKSON)

On this ____ day of _____, 2021, before me, a Notary Public in and for the State of Missouri, personally appeared _____, to me personally known, who being by me duly sworn, did say that he/she is the _____ of UNITED STATES GENERAL SERVICES ADMINISTRATION, that the instrument was signed on behalf of the UNITED STATES GENERAL SERVICES ADMINISTRATION; and that _____ acknowledged the execution of the instrument to be the voluntary act and deed of the UNITED STATES GENERAL SERVICES ADMINISTRATION, by it voluntarily executed.

Notary Public in the State of Missouri