



**Roll Call Number**

22-0635

**Agenda Item Number**

55

**Date** April 18, 2022

**HOLD HEARING FOR APPROVAL OF THE OPERATIONAL AGREEMENT WITH  
CHILDTIME CHILDCARE, INC. FOR THE OPERATION AND MAINTENANCE OF THE  
CHILDCARE FACILITY LOCATED IN THE INTERMODAL TRANSPORTATION  
FACILITY LOCATED AT 610 CENTER STREET**

**WHEREAS**, on April 28, 1997, by Roll Call No. 97-1549, the City Council entered into a 28E Agreement with the Des Moines Metropolitan Transit Authority (now Des Moines Area Regional Transit Authority) for construction and operation of a Park & Ride Facility at 6<sup>th</sup> Avenue and Center Street, which facility included a childcare facility to serve the needs of those families working in the downtown area; and

**WHEREAS**, on December 21, 1998, by Roll Call No. 98-3949, the City Council approved an Intermodal Transportation Facility Child Care Center Operational Agreement (“Operational Agreement”) with Childtime Childcare, Inc. (Childtime) for operation of the childcare facility located within the Park & Ride Facility at 610 Center Street, said Operational Agreement having a four-year initial term, with an additional two-year renewable option by the City extending the agreement until March 31, 2004; and

**WHEREAS**, the Operational Agreement has been extended several times and the current Operational Agreement was approved on January 25, 2016, by Roll Call No. 16-0130, having an original term of 3 years plus a 3 year extension option; and

**WHEREAS**, on March 18, 2019, Childtime exercised its option to extend the Operational Agreement for an additional 3 year period, commencing on July 1, 2019 and ending on June 30, 2022; and

**WHEREAS**, on May 18, 2020, City Council approved the First Amendment to Intermodal Transportation Facility Child Care Center Operational Agreement allowing Childtime to defer a portion of rent from April 1, 2020 through June 30, 2020 to help Childtime bear the financial impact of the Covid-19 virus pandemic, with the difference between the full rent rates and the reduced rates to be paid over 48 months from July 1, 2021 through June 30, 2025; and

**WHEREAS**, the City’s Real Estate Division has negotiated a new Operational Agreement with Childtime Childcare, Inc. that includes, among other terms, a three-year term with an initial first year (First Rental Period) monthly rent of \$3,367.00 per month plus the deferred rent amount of \$300.52, a second year (Second Rental Period) monthly rent of \$3,468.00 plus the deferred rent amount of \$300.52, and a third year (Third Rental Period) monthly rent of \$3,872.52 plus the deferred rent amount of \$300.52; and a Renewal Option Period that, if exercised, would extend the Agreement for an additional three (3) years to June 30, 2028 with corresponding annual three percent (3%) increases in rent; a copy of which is on file with the City Clerk’s office; and

**WHEREAS**, pursuant to sections 2-726 and 2-746(b)(3) of the Procurement Ordinance, the procurement of services for the operation and management of a child care center are exempt from the competitive procurement process on the basis that such services are professional services; and



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**WHEREAS**, the continued selection of Childtime Childcare, Inc. to serve as operator of the childcare center in the Intermodal Transportation Facility is in the vital and best interest and in accord with the public purposes of the City.

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

1. Upon due consideration of the facts and statements of interested persons, any and all objections to the above described Intermodal Transportation Facility Child Care Center Operational Agreement with Childtime Childcare, Inc. for operation of the childcare facility located within the Park & Ride Facility at 610 Center Street are hereby overruled and the hearing is closed.
2. That the Intermodal Transportation Facility Child Care Center Operational Agreement with Childtime Childcare, Inc. for operation of the childcare facility located within the Park & Ride Facility at 610 Center Street be and is hereby approved.
3. The Mayor is authorized and directed to sign the Intermodal Transportation Facility Child Care Center Operational Agreement as identified above, and the City Clerk is authorized and directed to attest to the Mayor's signature.
4. The Real Estate Division Manager of the Engineering Department is hereby authorized, directed, and designated to act on behalf of the City to administer and enforce the terms of the Agreement, and is further authorized and directed to approve and execute any non-substantive amendments to the Agreement following approval as to form by the City Legal Department, and is further directed to return any substantive amendments to this Council for approval.

**(Council Communication No. 22-164)**

Moved by Mandelbaum to adopt. Second by Voss.

APPROVED AS TO FORM:

/s/ Lisa A. Wieland

Lisa A. Wieland, Assistant City Attorney

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE	✓			
BOESEN	✓			
GATTO	✓			
MANDELBAUM	✓			
SHEUMAKER	✓			
VOSS	✓			
WESTERGAARD	✓			
TOTAL	7			
MOTION CARRIED				

J. M. Franklin Cownie Mayor

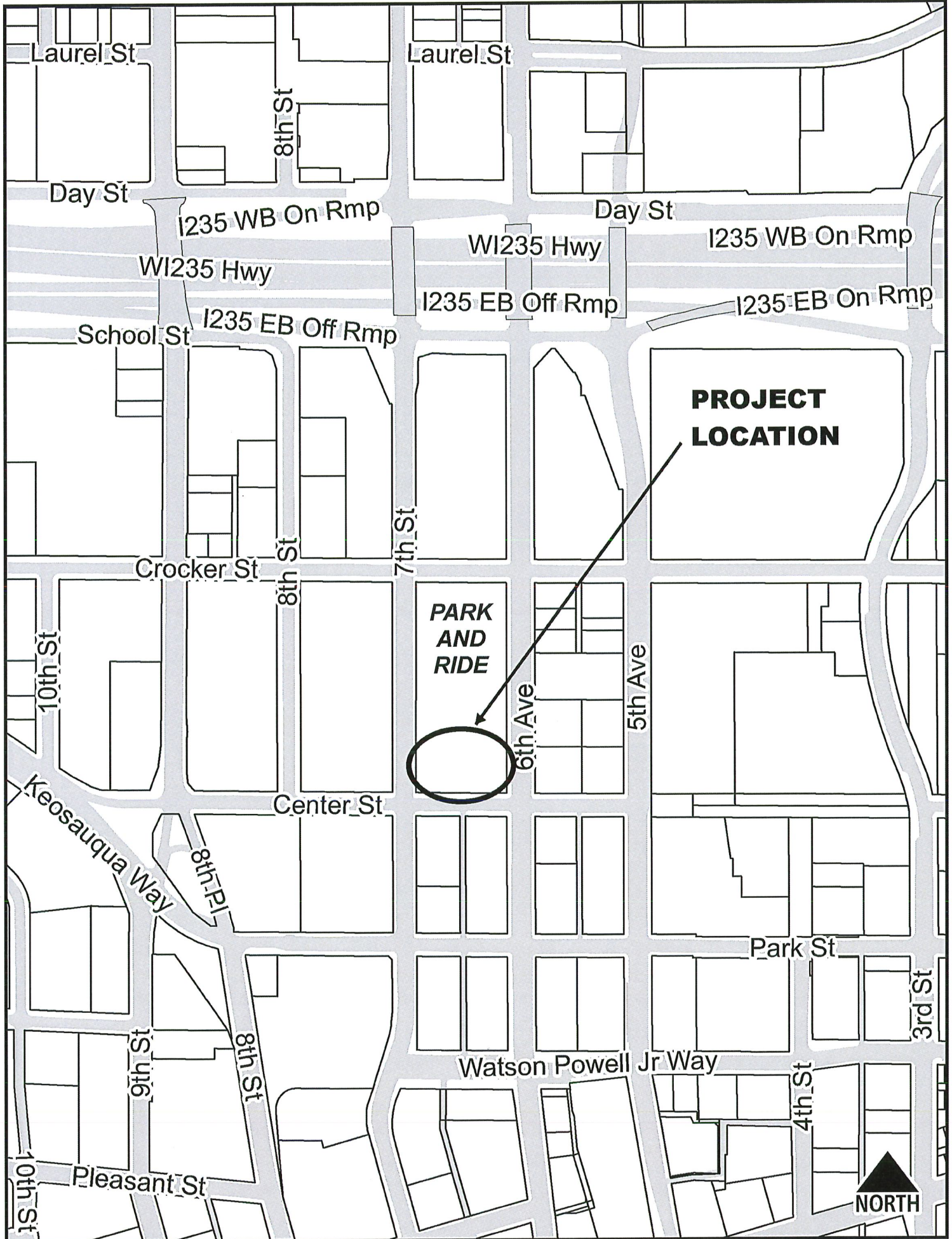
**CERTIFICATE**

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



**PROJECT  
LOCATION**

**PARK  
AND  
RIDE**





55

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:
0005198247	4/6/22	04/06/2022	\$40.03

Copy of Advertisement  
Exhibit "A"

*Nicole Jacobs*  
\_\_\_\_\_  
Staff member, Register Media

Subscribed and sworn to before me by said affiant this

6 day of April, 2022

*Kathleen Allen*  
\_\_\_\_\_  
Notary Public

*1-7-25*  
\_\_\_\_\_  
Commission expires

KATHLEEN ALLEN  
Notary Public  
State of Wisconsin

PD11862j \$40.03

**NOTICE OF PROPOSAL TO  
APPROVE OPERATIONAL  
AGREEMENT  
FOR USE OF CITY-OWNED  
REAL ESTATE**

**NOTICE IS HEREBY GIVEN** that the City Council has adopted resolution relating to a proposal to approve the Intermodal Transportation Facility Child Care Center Operational Agreement (Operational Agreement) with (including) for operation of the (including) for operation of the childcare facility located within the City's Park & Ride Facility at 610 Center Street, Des Moines, Iowa. The proposed Operational Agreement includes, among other terms, an option period that, if exercised, would extend the Agreement for an additional three (3) years to June 30, 2028. **GIVEN NOTICE FURTHER** GIVEN that the City Council of the City of Des Moines, Iowa, will hold a public hearing on the proposed Operational Agreement offer a public hearing to be held at 5:00 p.m. in the City Council Chamber, City Hall, 400 Robert D. Roy Drive, Des Moines, Iowa, on April 6, 2022. 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 of Des Moines received by the City Clerk prior to 5:00 p.m. April 14, 2022 (City Clerk's Office, Des Moines City Hall, 400 Robert D. Roy Drive, 1st Floor, Des Moines, IA 50309, bra) [CityClerk@dmregis.org](mailto:CityClerk@dmregis.org) in advance of the April 6, 2022 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 by the Des Moines Register on April 6, 2022.

PD11862J \$ 40.03

Prepared by: David DeForest Colvig, City of Des Moines, 400 Robert D. Ray Drive, Des Moines, IA 50309-1891, (515) 283-4561

Return to: City of Des Moines, Real Estate Division, 400 Robert D. Ray Drive, Des Moines, IA 50309-1891

Project: Leases – Parking System

Activity ID: 342015007

Property Address: 610 Center Street

Parcel No.: 005

INTERMODAL TRANSPORTATION FACILITY  
CHILD CARE CENTER OPERATIONAL AGREEMENT  
35-2013-000

THIS AGREEMENT is made this 18<sup>th</sup> day of April, 2022, by and between the City of Des Moines, Iowa (hereinafter called “City”) and Childtime Childcare, Inc, an Illinois corporation with offices at 21333 Haggerty Road, Suite 300, Novi, Michigan 48375 (hereinafter called “Provider”)

WHEREAS, the City acknowledges and represents that the City, through an Intergovernmental Agreement, dated April 28, 1997, with Des Moines Area Regional Transit (“DART”), caused an Intermodal Transportation Facility to be built at 610 Center Street, Des Moines, Iowa (“Facility”) and assumed responsibilities for ownership and operation of the Facility, becoming a sub-grantee of the Federal funds used to construct the Facility along with local matching share funding from the City. The terms of the Intergovernmental Agreement were supplemented through the execution of a Memorandum of Agreement between the City and DART on January 27, 2014. As a sub-grantee, the City agreed to comply with all the terms of the Federal Grant Agreements and the Master Agreement.

WHEREAS, the City and Provider entered into the original Intermodal Transportation Facility Child Care Center Operational Agreement dated April 27, 1998 and the Amended Intermodal Transportation Facility Child Care Operational Agreement dated December 21, 1998 regarding the childcare facility located in the Intermodal Transportation Facility owned by the City and located at 610 Center Street, Des Moines, Iowa (the “Center”); and

WHEREAS, on January 7, 2008, the City and Provider entered into a new Intermodal Transportation Facility Child Care Center Operational Agreement (the “Agreement”) with an effective date of April 1, 2004 and ending on March 31, 2009, and granting the Provider the option to extend the Agreement for one additional five-year period commencing on April 1, 2009 and ending on March 31, 2014, and which option Provider did exercise; and

WHEREAS, the term of the 2008 Agreement expired on March 31, 2014 and continued on a month-to-month basis until City and Provider entered into a new Agreement commencing on November 1, 2015 and ending on June 30, 2019, with the Provider exercising its option to extend the Agreement for one additional three year period commencing on July 1, 2019 and ending on June 30, 2022; and

WHEREAS, on June 15, 2020, due to the adverse impacts caused by the Covid-19 pandemic on the Provider’s operations, the City and Provider amended the Agreement, which, in part, required Provider to pay deferral rent amortized without interest on a straight line basis over forty eight months and to be paid as additional rent from July 1, 2021 to June 30, 2025.

WHEREAS, the City believes that the continued selection of the Provider to serve as operator of the Center is in the vital and best interests of the City, and in accord with federal requirements associated with the Intermodal Transportation Facility.

NOW, THEREFORE, for and in consideration of the respective agreements, undertakings, and mutual covenants herein contained, the parties mutually agree as follows:

1. Designation of Provider as Operator; Terms; Consideration. The City hereby engages the Provider to operate and maintain the Center. This Agreement shall be effective commencing on July 1, 2022 and ending on June 30, 2025. The Provider shall have the option to extend this Agreement for one additional three year period commencing on July 1, 2025 and ending on June 30, 2028 by providing notice as outlined in section 21 of this Agreement, 90 days prior to the expiration of the initial term of this Agreement (the “Renewal Option Period”). The City shall invoice, and the Provider shall pay as follows:

- July 1, 2022 and continuing through and including June 30, 2023 (the “First Rental Period”) the rental consideration of \$3,367.00 per month plus the deferred rent amount of \$300.52 for use of the Center for the first year of this Agreement. Subsequently, rental consideration shall increase by three percent (3%) per annum, plus the deferred rent amount of \$300.52:
- July 1, 2023 – June 30, 2024 (the “Second Rental Period”) = \$3,768.52 (\$3,468.00 + \$300.52).
- July 1, 2024 – June 30, 2025 (the “Third Rental Period”) = \$3,872.52 (\$3,572.00 + \$300.52).

Renewal Option Period (if exercised by Provider) monthly rental consideration shall increase by three percent (3%) per annum beginning with the base rent for the Third Rental Period:

- July 1, 2025 – June 30, 2026 (First Renewal Period) = \$3,679.16.
- July 1, 2026 – June 30, 2027 (Second Renewal Period) = \$3,789.53
- July 1, 2027 – June 30, 2028 (Third Renewal Period) = \$3,903.22.

In addition to payment by Provider of rental consideration, Provider shall be responsible for all operating expenses. The Provider will collect all revenues generated by the operation of the Center and it may collect grants and other contributions for its programs conducted at the Center.

2. Use of Child Care Center; Licensing. The Provider shall conduct only childcare and related services for infants, toddlers and preschool children at the Center and shall make the Center and its services available to the general public. The Provider shall administer its childcare services in a manner that meets or surpasses State of Iowa requirements.

Provider shall obtain and maintain for the entire term of this Agreement all required licenses from the Iowa Department of Human Services in accordance with the Iowa Code and all other licenses or permits required by the State of Iowa or any agency or political subdivision thereof. The Provider shall ensure provision of comprehensive childcare and educational related services in accordance with DHS license requirements. The Provider shall comply with all applicable federal, state and local laws, statutes, ordinances, rules and regulations in operating the Center.

3. Center Director. Provider shall employ a full-time on-site director which shall meet or exceed industry-standard qualifications and experience. Provider shall ensure that any replacement of such director shall have such minimum education, training and experience. The Provider shall employ all additional management personnel that are otherwise needed to supervise the performance of childcare services at the Center in accordance with this Agreement.

4. Personnel Policies, Background Check, Priority Enrollment. The Provider shall require that all current and prospective employees, agents and volunteers at the Center are subject to and shall clear a child abuse registry check, a criminal records check and all other background check procedures identified by the Provider. All employees and agents of Provider will be deemed employees or agents exclusively of the Provider and will not for any purpose be considered employees or agents of the City.

The Provider assumes full responsibility for the actions of its employees, agents and volunteers and the Provider shall be solely responsible for their supervision, daily direction and control.

The Provider shall maintain policies and procedures for the assessment and collection of fees and shall maintain a procedure for adequate written notice of changes to childcare service fees. To the best of its ability, the Provider shall observe the following priorities when enrolling children at the Center:

- a.) First Priority – Children of Persons who park in the Intermodal Transportation Facility
- b.) Second Priority – Children of persons who hold a valid DART monthly bus pass.
- c.) Third Priority – Children of persons who work in the downtown area.

Notwithstanding the above enrollment priorities, the Provider shall not be required to terminate the enrollment of or otherwise “bump” an enrolled child at the Center to accommodate such enrollment priorities.

5. Improvements; Furnishings. The Provider will assume use of the Center in its present configuration and condition and the City shall have no further responsibility or obligations to equip or furnish the Center. The Provider shall, at its sole cost, be responsible for installing or otherwise providing such additional improvements, furnishings and equipment for the Center that are required for the Provider to comply with its obligations to operate the Center in accordance with this Agreement. Provider shall obtain written approval from the City prior to installing any affixed improvements or equipment to the Center or commencing any structural alterations to the Center. All improvements made to the Facility by the Provider shall be at the risk of the Provider.

6. Federal Interest Acknowledgment. The Provider acknowledges that the City has represented that it is a sub-grantee of Federal grants through the Federal Transit Administration (“FTA”). The Provider further acknowledges that pursuant to FTA grant requirements, the City has represented that DART must demonstrate and retain satisfactory continuing control over the use of the Center and the City must ensure compliance with the terms of the Federal Grant Agreement and Master Agreement. The Provider agrees that it will not act in a manner which compromises or otherwise diminishes DART’s and the City’s respective obligations to retain satisfactory continuing control and ensure compliance over the use of the Center.

- a. Satisfactory continuing control is defined as the legal assurance that FTA-funded property will remain available to be used for its originally authorized purpose throughout its useful life until disposition.
- b. The Provider acknowledges the Federal interest in the Center and agrees that it will take no action which compromises or otherwise diminishes such interest.
- c. The Provider acknowledges that the City must comply with all applicable Federal statutes, regulations, orders, certification and assurances, or other Federal law (collectively referred to as “Federal laws”), including, but not limited to, those set forth in the current FTA Master Agreement governing transit projects supported with Federal assistance awarded through the FTA. The Provider agrees that it will take no action seeking compliance with non-Federal laws to the extent such laws conflict with applicable Federal laws.

7. Food Services. The Provider shall ensure the provision of nutrition and food services in accordance with applicable industry standards. All food service and kitchen appliances and equipment utilized by the Provider shall be maintained and operated in a manner that will not compromise the health and safety of children, employees or volunteers at the Center. The food services area of the Center shall be kept in a clean and sanitary manner.

8. Taxes, Utilities and Services. The Provider shall pay for all real estate taxes, if any, relating to the Center. The Provider shall furnish, at its sole expense, and timely pay all charges relating to all



utilities and services which may be used at the Center. The City shall not be liable for any stopping of utility service for needed repairs or improvements to the Intermodal Transportation Facility or arising from causes beyond the control of the City.

9. Maintenance and Operational Expenses.

A. Throughout the term of this Agreement, the Provider shall, at its own expense, maintain the Center, including all fixtures, equipment, furnishings and carpeting in good, safe, clean and presentable condition. All routine maintenance, repair and operational expenses, including janitorial service, garbage collection, interior painting, light bulb replacement, upkeep of furniture and equipment, kitchen fixtures and appliances, regular and routine repair and maintenance of heating, cooling, plumbing and electrical systems within the Center, pest control and snow and ice removal in the play areas shall be performed or paid by the Provider. The Provider shall further be responsible for the proper disposal of all biohazard and OSHA bloodborne waste materials generated by Provider. Upon Termination of this Agreement, the Provider shall vacate and surrender the Center to the City in good and clean condition, except for ordinary wear and tear or damage without fault or liability of the provider.

B. The City shall be responsible for all structural repair and maintenance of the Center and grounds; and shall be responsible for major repair to or replacement of the roof, roof membrane, heating, cooling, plumbing and electrical systems. A major repair shall be defined as any repair with an estimated labor and materials cost exceeding \$1,500.00.

C. The Provider may undertake major repairs to heating, cooling, plumbing and electrical systems only in the event of an emergency that is required to be addressed outside of normal business hours (normal business hours: 8:00 a.m. Monday to 5:00 p.m. Friday, excluding major holidays). In the event that the Provider undertakes such emergency repairs, the Provider shall obtain three (3) bids for the repair work prior to causing such work to be completed and use the lowest responsive, responsible bid thereof, and shall notify the City as provided herein as soon as possible. The City will reimburse Provider for such emergency major repairs made in accordance with this Paragraph.

10. Repair and Maintenance Fund. The City established a minimum balance repair and maintenance fund with previous monies received from the Provider in the amount of \$5,000, to be administered by the City Finance Department. The Provider shall continue to be responsible and pay for all routine operational maintenance, including fixtures, carpentry, carpet and mechanical work, and as outlined above in Paragraph 9, to be documented for bi-annual review by the City. The fund shall be utilized solely for payment of Provider's maintenance, repair and improvement obligations for the Center upon termination of this Agreement and may consist of monies from revenues generated by the City's leasing of the Center to Provider and may consist of monies received from other sources including public and private grants or donations. Upon termination of this Agreement by expiration of the term or otherwise, monies in the repair and maintenance fund shall be utilized by Provider, as necessary, to ensure that the Center and the improvements installed by the City are left in a clean and orderly condition and in good repair, ordinary wear and tear excepted. The City shall inspect the Center at termination and, if the City determines that Provider has fulfilled its obligations with respect to the condition and repair of the Center and City improvements, the Provider shall be refunded all remaining monies in the repair and maintenance fund.

11. Subcontractor. The Provider acknowledges that it is prohibited from assigning or otherwise disposing of this Agreement or any of its contents, or of its right, title or interest therein to any other entity without the previous consent in writing from the City. The Provider further acknowledges that it shall not subcontract with any other entity for childcare or educational related services to be performed under this Agreement unless the City has approved, in writing, the subcontract. The Provider shall ensure that any such approved subcontract requires subcontractor to comply with the terms of this

Agreement including, but not limited to the terms relating to the personnel policies, employee training, and non-discriminations. The Provider shall remain responsible to the City for all provisions of this Agreement which pertain to the services performed by the authorized subcontractor. Upon reasonable request of the City, the Provider shall remove any subcontractor from the Center whose background, performance and/or general methodologies are deemed to be not in the best interest of the overall Center operation.

12. Insurance and Indemnification. Provider shall purchase and maintain insurance in accordance with the requirements set forth in Attachment 1 to protect the Provider and City of Des Moines, Iowa throughout the duration of this Agreement. Provider shall not commit any act which shall invalidate any policy of insurance. Provider shall be subject to all terms and provisions set forth in Attachment 1. Provider shall not use the Center until all required certificates of insurance and endorsements have been submitted to and approved by the City. All certificates of insurance and endorsements shall be submitted to the Real Estate Division, City Hall, 400 Robert D. Ray Drive, Des Moines, IA 50309, prior to the term of this Agreement. Further, Provider shall indemnify and hold harmless City in accordance with the indemnification requirements set forth in Attachment 1.

13. Default; Prior Termination. The Provider acknowledges that its rights as operator of the Center are subject to its satisfactory compliance with the terms, conditions and obligations of this Agreement. Therefore, in the event of any breach to this Agreement as follows, the City may terminate this Agreement as provided in this Section:

- a.) The Provider has failed to obtain the required licenses from the Iowa Department of Human Services, or any other required license or permit required by the State of Iowa or any agency or political subdivision thereof or any such required license or permit of Provider is required for provision of childcare and educational related services at the Center is revoked or suspended.
- b.) The Provider has materially failed to comply with any applicable federal, state or local law, statute, ordinance, rule or regulation directly related to the provision of childcare and educational related services at the Center;
- c.) The Provider or any of its officers, agents, employees, subcontractors or volunteers at the Center is arrested of a crime or found liable in a civil action involving allegations of abuse, neglect or mistreatment of a child;
- d.) The Provider has materially failed to comply with any terms, conditions and obligations of the Agreement, which in the City's reasonable judgment, jeopardizes the health, safety or well-being of any child at the Center;
- e.) The Provider has failed to procure and maintain insurance for the operation of the Center in accordance with Section 12, and such breach has not been remedied within twenty (20) days written notice thereof from the City;
- f.) The Provider has failed to pay utility expenses for the Center when due in accordance with Section 8, and such breach has not been remedied within thirty (30) days after written notice thereof from the City;
- g.) The Provider has materially failed to maintain the Center or pay operational expenses for the Center when due in accordance with Section 9, and such breach has not been remedied within thirty (30) days written notice thereof from the City;
- h.) The Provider has materially failed to comply with any terms, conditions and obligations of the Agreement other than a breach specified in Subsections (a), (b), (c), (d), (e), (f) and (g) above, and such breach has not been remedied within forty (40) days written notice thereof from the City.

If the Provider is in breach of this Agreement as set forth in Subsections (a)-(h) above, the City may by twenty (20) days written notice to the Provider declare a default and terminate this Agreement. Upon such termination, the Provider shall without further notice remove itself from the Center in

accordance with Section 15. Such termination of this Agreement shall not constitute a release of the Center from liability for payment of any outstanding expenses for which it is responsible under the terms of this Agreement. No waiver of the breach of any of the terms or conditions of this Agreement shall constitute a waiver of any other or succeeding breach of any other provision of this Agreement.

14. Removal at Termination. At the expiration of this Agreement by lapse of time or otherwise, the Provider agrees to remove itself from the Center without further notice to quit and leave the Center in a clean and orderly condition and in good repair, ordinary wear and tear and damage by fire or other unavoidable casualty excepted. All improvements constructed or installed by the City (and all fixtures and structural alterations, additions, and improvements constructed or installed by the Provider for the Center) shall belong to and be the property of the City as a part of the Center without any payment therefore to the Provider, and shall be surrendered to City, together with the Center.

Notwithstanding the above, the Provider may remove the playground equipment, furnishings and non-attached equipment for the Center provided by the Provider, but the Provider shall pay for any damage to the Center caused by such removal. Any playground equipment, furnishings and non-attached equipment remaining in the Center after expiration of the Agreement shall be considered abandoned by the Provider.

15. Parking. At all times during the term of this Agreement, the City will furnish the Provider with 10 parking spaces within the Intermodal Transportation Facility at cost for use exclusively in conjunction with the operation of the Center by the Provider, its employees, or volunteers. At the request of the Provider, the City will also furnish the Provider, at no cost, a maximum of five bus passes for use exclusively in conjunction with the operation of the Center by the Provider, its employees, or volunteers. The Provider shall have no expectation that additional parking or drop off areas will be provided by the City, external to this parking facility, for the sole use of the patrons of the day care. It is the intent and desire of the City, that patrons of the day care use the park and ride facility for limited parking to access the day care. At the request of the Provider, the City will direct the management company operating the public side of the Center Street Park & Ride to provide a "grace" period adequate for patrons using short term parking for patron drop off and pick up so that no charge for parking should accrue. The Provider and patrons thereof will obey all parking regulations posted on, in or around this parking facility and day care, with no expectation that Provider employees, volunteers of patrons have any inherent exemption from parking or traffic regulations. Vehicles used by the Provider to provide child transportation will have no special status nor an expectation that on-street parking regulations will not be applicable due to the perceived necessary proximity for use or size of the transporting day care vehicle.

16. Destruction of Facility; Heating & Cooling System Replacement. In the event that the Center shall be damaged or destroyed by fire or other casualty as to render the Center unusable, then either party shall have the right to cancel and terminate this Agreement by giving the other party written notice. Such termination shall have immediate effect if the Center is unusable, is unsafe or is unsuitable for childcare. Otherwise, such termination shall take effect sixty (60) days after giving notice.

If the heating and cooling system malfunctions and requires replacement, Provider must immediately notify City of such malfunction. In such event, City shall replace the HVAC in accordance with Paragraph 9. Provider shall have the right to terminate this Agreement immediately by giving the City written notice if the Center is unusable, is unsafe or is unsuitable for childcare due to such malfunction and the City does not replace or restore function to the HVAC within 5 business days of notice of such malfunction.

17. Non-Discrimination. The Provider agrees that it will comply with any and all applicable provisions of the Des Moines Human Rights Ordinance, Chapter 62 of the Des Moines Municipal Code.

The Provider agrees that it will not discriminate against any employee, applicant for employment or volunteer because of age, race, color, creed, religion, sex, sexual orientation, gender identity, national origin, ancestry, disability, or familial status. The Provider agrees there shall be no discrimination against or segregation of any person, child, family or group of persons on account of age, race, color, creed, religion, sex, sexual orientation, gender identity, national origin, ancestry, disability, or familial status in the use or enjoyment of the Center, nor shall the Provider or any person claiming under or through the Provider establish or permit any such practices of discrimination or segregation with reference to the selection, location, number, use or enjoyment of users of the Center.

18. Right of Entry. The Provider shall not interfere or attempt to restrict the City's rights of access to the Center by authorized City personnel. Notwithstanding the above, the City and its employees, contractors, and consultants shall make a good faith effort to enter the Center in such a reasonable manner to not disrupt the childcare service activities administered by the Provider. Further, the City's access to the Center shall be subject to and must conform with all license rules and regulations and all reasonable rules and regulations imposed by the Provider for the safety of children at the Center. City employees designated by the City shall be furnished keys and/or access codes to all areas of the Center including stairways, elevators, common areas and space used by the Provider. At the request of the Provider, a listing of designated City employees shall be supplied to the Provider and shall be updated by the City as appropriate. Only those employees who have cleared a child abuse registry check shall be allowed access to the Center.

19. Signs. No sign, notice, advertisement, or other inscription of any kind, unless specially permitted by City in writing, shall be put in or attached to any part of the Center, except on the glass of the doors, and then only of such size, form, and color as may be first prescribed in writing by the City. No unsightly placards shall be posted within or upon any part of the Center.

20. Notices. All notices herein provided to be given shall be in writing and delivered personally or by registered or certified United States mail. The address of each party, until further notification in writing being:

City of Des Moines  
Real Estate Division  
400 Robert D. Ray Drive  
Des Moines, IA 50309

for City, and

c/o Learning Care Group, Inc.  
21333 Haggerty Road, Suite 200  
Novi, Michigan 48375  
Attn: Real Estate Department

With Copy To:  
c/o Learning Care Group, Inc.  
21333 Haggerty Road, Suite 200  
Novi, MI 48375  
Attn: Legal Department

for Provider.

If notice is given by reputable overnight courier, registered or certified mail, then the notice shall be deemed to have been given when the envelope containing the notice, properly addressed, is deposited in the United States mail at Des Moines, Iowa, postage prepaid.

21. Disclaimer. It is mutually understood by the City and the Provider that nothing in this Agreement is intended or shall be construed as in any way creating or establishing the relationship of copartners between the parties or as constituting the Provider as an agent or representative of the City for any purpose whatsoever.

22. No Third-Party Beneficiaries. No third-party beneficiaries are contemplated by the parties to this Agreement and no third party shall claim or be entitled to any benefits from any of the provisions hereof or the obligations imposed herein.

23. Provisions Binding. Each and every covenant and agreement herein contained shall extend to and be binding upon the respective successors, heirs, administrators, executors and assigns of the parties hereto.

24. Annual Operating Budget and Annual Report; Quarterly Reports; Audit. In the event that City determines or is directed by DART or by the FTA or otherwise, that an annual operating profit and loss statement is needed for review, Provider shall provide its most recent and current profit and loss statement to City within thirty (30) calendar days of a written request thereof, but no more frequently than once per Fiscal Year.

25. Early Termination. Either party may terminate this Agreement by providing sixty (60) calendar days' written notice to the other party of such early termination. If either party so terminates or cancels this Agreement by giving sixty (60) calendar days' written notice, there shall be no damages except for prepaid monthly lease payments, which shall be refunded on a pro rata basis if so requested by Provider.

26. Entire Agreement; Changes in Lease Terms. No act of either party, or both parties, shall be construed as an extension of this Agreement, or any change in the terms and provisions, unless changes are reduced to writing and signed by duly authorized representatives of both parties as an Amendment to this Agreement. The Provider acknowledges that this Agreement supersedes and cancels any and all previous agreements relating to the Center between the Provider and the City.

27. Subletting. The Provider shall not sublet the Center or any part thereof without the prior written consent of the City.

28. Prohibition on Encumbrance. It is expressly agreed and understood between the parties hereto that nothing in this Agreement shall be construed as empowering the Provider to encumber, mortgage or pledge, or cause to be encumbered, mortgaged or pledged any interest in the Center or improvements thereon in any manner whatsoever. In the event that, regardless of this prohibition, any person furnishing or claiming to have furnished labor or materials at the request of the Provider or of any person claiming by, through, or under the Provider shall file a lien against the Center or improvements thereon, the Provider shall, within thirty (30) days after being notified thereof, shall cause said lien to be satisfied of record, or shall cause the Center and improvements thereto to be released therefrom by the posting of a bond or other security as prescribed by law, or shall cause same to be discharged as a lien against the Center and improvements thereon by an order of a court having jurisdiction to discharge such lien.

29. Environmental Covenants. The Provider will only store equipment and supplies customary to general office use and day care use.

30. Security. The Provider agrees that it will provide any and all security measures necessary at the Center. The Provider agrees that the City shall not be responsible, or be in any way liable, for any

damages sustained as a result of the Provider's use of the Center or the use thereof by Provider's clients, employees, invitees, guests, agents, or any other party. The City agrees that Provider shall not be responsible, or be in any way liable, for any damages sustained as a result of the City's entry upon and/or use of the Center or the entry, repair and/or use thereof by the City's employees, invitees, guests, agents, or any other party acting on behalf of the City. Provider acknowledges and accepts full responsibility for the security and protection of all permitted improvements located within the Center and for reasonable efforts to prevent unauthorized access to such property or Center.

31. Governing Law, Attorney Fees and Court Costs. This Agreement shall be governed by, construed and enforced in accordance with the laws of the State of Iowa. Provided that the City is deemed the prevailing party by a court of law of competent jurisdiction, the Provider agrees to pay and discharge all reasonable costs and fees, including fees for services rendered by the City's legal department, outside attorneys, officers, employees, or agents, or any expense that shall arise from enforcing any of the terms of this Agreement by City. The rights and remedies of the Provider and the City, whether provided by law or this Agreement, shall be cumulative, and the Provider and the City shall have the right to institute such actions as they deem desirable for enforcing the terms of this Agreement, and the exercise by the Provider and City of any one or more remedies shall not preclude the exercise by the party, at the same or different times, of any other such remedies for the same default or breach.

32. Nonwaiver of Rights. No waiver of default by either party of any of the terms, covenants, and conditions hereof to be performed, kept, and observed by the other party shall be construed as, or shall operate as, a waiver of any subsequent default of any of the terms, covenants, or conditions herein contained, to be performed, kept, and observed by the other party.

33. Severability. If one or more clauses, sections, or provisions of this Agreement, or the application thereof, shall be held to be unlawful, invalid, or unenforceable, the remainder of this agreement and application of its remaining provisions will not be affected, unless this Agreement without the unenforceable provision(s) fails in its essential purpose.

34. Holdover Tenancy. Upon prior written approval by the City, Provider may holdover and Provider will pay as liquidated damages on or before the first day of each month of such holdover as previously provided, 150% of the applicable rental consideration, as listed in Paragraph 1 of this Agreement, for the holdover in monthly increments only and will pay all attorneys' fees and expenses incurred by the City in enforcing its rights hereunder. If the Provider fails to surrender the Center to the City on expiration of the term as required by this Agreement, or any agreed upon holdover period, the Provider will hold the City harmless from all damages resulting from the Provider's failure to surrender the Center, including without limitations, claims made by a succeeding tenant resulting from the Provider's failure to surrender the Center. The foregoing provisions of this paragraph are in addition to and do not affect the City's right of re-entry or any other right of the City hereunder or as otherwise provided by law.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement, on the day and year first above-written.

CHILDTIME CHILDCARE, INC.

CITY OF DES MOINES, IOWA

DocuSigned by:  
Tim Truly  
919CCD2C0A184AE  
By: Tim Truly  
Its: SVP Finance  
Date: 3/7/2022

T. M. Franklin Cownie  
T. M. Franklin Cownie, Mayor

ATTEST:  
P. Kay Cmelik  
P. Kay Cmelik, City Clerk

Approved as to form:

Lisa A. Wieland  
Lisa A. Wieland, Assistant City Attorney

STATE OF IOWA )  
 ) ss:  
COUNTY OF POLK )

On this 18<sup>th</sup> day of April, 20 22, 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, by authority of its City Council, as contained in the Resolution adopted by the City Council on the 10<sup>th</sup> day of April, 20 22, and that T. M. Franklin Cownie and Diane Rauh acknowledge the execution of the instrument to be the voluntary act and deed of the municipal corporation, by it voluntarily executed.

S S  
Notary Public in the State of Iowa

**Acknowledgement**

State of Michigan)  
 ) ss.  
County of Oakland



The foregoing was acknowledged before me by means of        physical presence or X electronic notarization, on March 7, 2022, by Tim Truly as Senior Vice President of Finance for Childtime Childcare, Inc., who is X personally known to me or produced        for identification.

DocuSigned by:  
Stephanie Holowchak  
5EB2E332DD15477...  
Notary Public in and for the State of Michigan

STEPHANIE N HOLOWCHAK  
Notary Public - State of Michigan  
County of Oakland  
My Commission Expires Jul. 6, 2027





**ATTACHMENT 1**  
**STANDARD INSURANCE AND INDEMNIFICATION REQUIREMENTS**  
(Major)

**1. GENERAL**

The Provider shall purchase and maintain insurance to protect the Provider and the City of Des Moines, Iowa throughout the duration of the Agreement. Said insurance shall be provided by an insurance company(ies), “admitted” and “nonadmitted” 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 of Des Moines. Certificates of Insurance confirming adequate insurance coverage shall be submitted to the City prior to contract execution or commencement of work and/or services.

**2. INSURANCE REQUIREMENTS**

A. WORKER’S COMPENSATION & EMPLOYER’S LIABILITY INSURANCE: The Provider shall procure and maintain during the life of this Agreement, Worker’s Compensation Insurance, including *Employer’s Liability Coverage*, in accordance with all applicable statutes of the State of Iowa. The coverage limits shall include \$500,000 each accident for Bodily Injury by Accident, \$500,000 each accident for Bodily Injury by Disease, and \$500,000 policy limit for Bodily Injury by Disease.

B. COMMERCIAL GENERAL LIABILITY INSURANCE: The Provider shall procure and maintain during the life of this Agreement, Commercial General Liability insurance on a per occurrence basis with limits of liability not less than \$2,000,000 per occurrence and/or aggregate combined single limit, Personal Injury, Bodily Injury and Property Damage. Coverage shall include the following extensions: (a) Contractual Liability, (b) Premises and Operations, (c) Products and Completed Operations, (d) Independent Contractors Coverage, (e) Personal and Advertising Injury and (f) deletion of Explosion, Collapse and Underground (XCU), where applicable.

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, Ed 07/98 with standard exclusions “a” through “o” or any subsequent ISO equivalent or a non-ISO equivalent form). Any additional exclusions shall be clearly identified on the Certificate of Insurance and shall be subject to the review and approval of the City. Aggregate per Location Endorsement is required.

C. AUTOMOBILE LIABILITY INSURANCE: The Provider shall procure and maintain during the life of this Agreement, Automobile Liability Insurance with limits of liability of not less than \$2,000,000 per occurrence combined single limit including Bodily Injury and Property Damage. Coverage shall include all owned vehicles, all non-owned vehicles, and all hired vehicles.

D. UMBRELLA/EXCESS INSURANCE: The General Liability and Automobile Liability Insurance requirements above may be satisfied with a combination of primary and Umbrella/Excess Insurance. The Umbrella/Excess Insurance shall also be written on a per occurrence basis and shall include the same endorsements as required of the primary policy(ies).

E. PROPERTY INSURANCE: Provider shall procure and maintain during the life of the Agreement, Property Insurance in a form at least as broad as the standard Insurance Services Office special cause of loss form, covering all structural and other insurable improvements to the Center and all fixtures, furnishings and other contents essential to the Provider performing its business functions. The Provider’s Property Insurance policy shall provide coverage on a replacement cost basis.

F. INSURANCE FOR OTHER LOSSES: The Provider shall assume during the life of this Agreement, full responsibility for all loss or damage from any cause whatsoever to any property brought onto City property that is owned or rented by the Provider, or any of the Provider’s employees, agents, subcontractors, suppliers or their employees, to the extent that such property is utilized in carrying out the provisions of this Agreement.

G. **SUBCONTRACTORS**: The Provider shall require that any of its agents and subcontractors who perform childcare work and/or services pursuant to the provisions of this Agreement meet the same insurance requirements as are required of the Provider.

H. **ADDITIONAL INSURED & GOVERNMENTAL IMMUNITY**: Except for Workers Compensation, the insurance policies providing the coverages specified in B, C, and D above shall include the City of Des Moines, Iowa Additional Insured and Governmental Immunities Endorsements. Copies of these endorsements are included below.

I. **CANCELLATION & MATERIAL CHANGE ENDORSEMENT**: The insurance policies providing the coverages specified in A, B, C, D, E and F above shall include the City of Des Moines, Iowa Cancellation & Material Change Endorsement. A copy of this endorsement is included below.

J. **PROOF OF INSURANCE**: The Provider shall provide to the City of Des Moines, Iowa a Certificate(s) of Insurance evidencing all required insurance coverage as provided in A through F and I and J above utilizing the latest version of the ACORD form. The Certificate(s) of Insurance shall specify under "Description of Operations/ Locations/ Vehicle/Special Items": (1) the title of the contract or permit or license, etc. and (2) the following statement, "*Where required, Additional Insured, Governmental Immunities, and Cancellation and Material Change endorsements have been included as per attached.*" These endorsements shall be attached to the Certificate(s) of Insurance so as to evidence their inclusion in the coverages required.

### **3. INDEMNIFICATION REQUIREMENTS**

A. **INDEMNIFICATION (HOLD HARMLESS) PROVISION**: To the fullest extent permitted by law, the Provider agrees to defend, pay on behalf of, indemnify, and hold harmless the City of Des Moines, Iowa, its elected and appointed officials, employees and volunteers and others working on behalf of the City of Des Moines, Iowa against any and all claims, demands, suits, or loss, including any and all outlay and expense connected therewith, and for any damages which may be asserted, claimed or recovered against or from the City of Des Moines, Iowa, its elected and appointed officials, employees, volunteers or others working on behalf of the City of Des Moines, Iowa, by reason of personal injury, including bodily injury or death, and property damages, including loss or use thereof, which arises out of or is in any way connected or associated with the work and/or services provided by the Provider to the City of Des Moines, Iowa pursuant to the provisions of this Agreement.

It is the intention of the parties that the City of Des Moines, Iowa, its elected and appointed officials, employees, volunteers or other working on behalf of the City of Des Moines, Iowa shall not be liable or in any way responsible for injury, damage, liability, loss or expense incurred by the Provider, its officers, employees, subcontractors, and others affiliated with the Provider due to accidents, mishaps, misconduct, negligence or injuries either in person or property resulting from the work and/or services performed by the Provider pursuant to the provisions of this Agreement, except for and to the extent caused by the negligence of the City of Des Moines, Iowa.

The Provider expressly assumes full responsibility for any and all damages caused to the City of Des Moines, Iowa premises resulting from the activities of the Provider, its officers, employees, subcontractors, and others affiliated with the Provider. The Provider represents that its activities pursuant to the provisions of this Agreement will be performed and supervised by adequately trained and qualified personnel, and the Provider will observe, and cause its officers, employees, subcontractors and others affiliated with the Provider to observe all applicable safety rules.

### **4. WAIVER OF SUBROGATION**

A. **WAIVER OF SUBROGATION**: To the extent permitted by law, Provider hereby releases the City of Des Moines, Iowa, its elected and appointed officials, its agents, employees and volunteers and other working on behalf of the City of Des Moines, Iowa, from and against any and all liability or responsibility to the Provider or anyone claiming through or under the Provider by way of subrogation or otherwise, for any loss or damage to property caused by fire or any other casualty and for any Provider workers compensation loss. 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 Provider's policies of insurance shall contain a clause or endorsement to the

effect that such release shall not adversely affect or impair such policies or prejudice the right of the Provider to recover thereunder.

## 5. ENDORSEMENTS

The following endorsements are to be applied to the policies of insurance required above as indicated above:

### CITY OF DES MOINES, IOWA ADDITIONAL INSURED ENDORSEMENT

The City of Des Moines, Iowa, including all its elected and appointed officials, all its employees and volunteers, all its boards, commissions and/or authorities and their board members, employees, and volunteers, are included as Additional Insureds. This coverage shall be primary to the Additional Insureds, and not contributing with any other insurance or similar protection available to the Additional Insureds, whether other available coverage be primary, contributing or excess.

### CITY OF DES MOINES, IOWA GOVERNMENTAL IMMUNITIES ENDORSEMENT

(For use when *including* the City as an Additional Insured)

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 an 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.
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.

### CITY OF DES MOINES, IOWA CANCELLATION AND MATERIAL CHANGES ENDORSEMENT

Thirty (30) days Advance Written Notice of Cancellation, Non-Renewal, Reduction in coverage and/or limits and ten (10) days written notice of non-payment of premium shall be sent to: Risk Management Office, City of Des Moines, City Hall, 400 East First Street, Des Moines, Iowa 50309. This endorsement supersedes the standard cancellation statement on the Certificate of Insurance to which this endorsement is attached.