CITY OF WEST DES MOINES
CITY COUNCIL MEETING COMMUNICATION

DATE: August 19, 2019

ITEM: Motion – Approval of Valley Junction Activity Center Lease and Hold Harmless Agreements – 217 5th St – Chelcee D. Cheers, Lathermore Soap, LLC

FINANCIAL IMPACT: The new one year lease agreement will include a monthly fee of $400 to the City for a total of $4,800 annually. The first six months' rent will be waived as the tenant has agreed to make improvements to the awning and the interior of the building.

BACKGROUND: The leased space located at 217 5th Street in Valley Junction, next to the Valley Junction Activity Center was most recently leased through May 2019.

A Request for Proposal (RFP) was sent out with a notice published. A notice was also placed in the window of the space and Historic Valley Junction Foundation staff assisted with communicating the vacancy with possible renters. One vendor submitted a proposal – Lathermore Soap Company. Staff evaluated the proposal, researched the company, and had several discussions with the owner over the past several weeks. Staff is recommending that Lathermore Soap Company be awarded the contract beginning August 20, 2019. Staff strongly believes that Lathermore Soap Company will be another successful business in Valley Junction. Due to the Tenant's desire to remove and replace the City's awning with own of their own, a Hold Harmless Agreement is required in addition to the lease agreement. The approval of the awning will otherwise be approved by staff following the minor modification process.

Lathermore Soap Company, LLC is a small, independent skincare company that focuses on hand making 100% plant-based and cruelty-free products from scratch using quality ingredients and original formulations.

OUTSTANDING ISSUES: None

RECOMMENDATION: That the Council approve the lease and hold harmless agreements with Lathermore Soap Company, LLC.

Lead Staff Member: Ryan Penning, Superintendent of Recreation RP

STAFF REVIEWS

Department Director	Sally Ortgies, Director of Parks & Recreation
Appropriations/Finance	Tim Stiles, Finance Director
Legal	Richard Scieszinski, City Attorney
Agenda Acceptance	

PUBLICATION(S) (if applicable)

Published In	
Dates(s) Published	

SUBCOMMITTEE REVIEW (if applicable)

Committee	
Date Reviewed	

LEASE AGREEMENT

IT IS AGREED THIS 19th day of August, 2019, by and between the CITY OF WEST MOINES, IOWA, a municipal corporation, Landlord, and Lathermore Soap Company, LLC, an Iowa limited liability company.

That the Landlord hereby leases to the Tenant and the Tenant hereby leases from the Landlord, the following described premises, situated in Polk County, Iowa, to-wit:

Approximately 400 square feet of office space on the first floor of 217 5th Street, Suite 102 in West Des Moines, Iowa

in consideration of the mutual promises of the parties herein and upon the terms, provisions and conditions the parties enter into the following agreement:

1. LEASE PERIOD.
The duration of this Lease shall be from the 20th day of August 2019, to and including the 31st day of August 2020 and shall be automatically renewed for successive one-year periods unless specifically terminated by the Tenant or Landlord. Either party may terminate this lease at the end of the stated term by providing the other party ninety (90) days written notice prior to the termination date.

2. RENT/DEPOSITS
Tenant agrees to pay the Landlord as rental for the initial term as follows: $400/month which is payable the twentieth day of each month. The first payment will be made on February 20, 2020 with the first six months of rent being waived due to the improvements being made by the Tenant prior to the start of the Lease. Monthly rental for successive year(s) shall be determined by factoring in the CPI-W (Consumer Price Index monitored by the Bureau of Labor Statistics) for September of each calendar year. A damage deposit of $1,000 is also due on the first day of this lease. This deposit will be returned to the Tenant at the time this lease is terminated if rental space is found not to have any damages after the Tenant moves out of the space.

3. USE
Tenant shall use the building primarily for office or retail and associated purposes. Tenant shall comply with all lawful regulations, restrictions, ordinances and laws applicable to the purpose, use and occupancy of said premises.

4. LANDLORD PROVIDED AMENITIES
As part of this lease, Landlord will provide for use by Tenant the following:

- Air conditioning, heat and water services

Arrangement for garbage service must be made through the Historic Valley Junction Foundation at Tenant's expense.

5. CARE OF PREMISES
Tenant shall not permit or allow the premises to be damaged by any act or negligence of the Tenant or any person on the premises by the permission of the Tenant. Tenant shall, as a matter of maintenance, keep the property in good order and in clean, sanitary and safe

condition. Tenant is also responsible for providing rental insurance covering the property and its contents.

6. ASSIGNMENT

Tenant shall not assign this Lease nor sublet said premises or any portion thereof without prior written consent of the Landlord.

7. FIXTURES AND IMPROVEMENTS

Tenant shall leave upon and surrender to Landlord with the premises at the termination of this lease all alterations, additions or improvements made by the Tenant to the premises. The Tenant must receive written approval of any alteration or improvement before the installation of said improvement. If the Landlord's awning is removed during the lease period, it will be the Tenant's responsibility to have the awning re-installed at the Tenant's expense once the lease has expired.

8. ACCEPTANCE OF PREMISES

Tenant accepts said premises in the present condition and will not permit or allow said premises to be damaged or depreciated in value and to make all repairs and replace any part of the premises that are broken, damaged or destroyed during the term of this lease, at Tenant's expense.

9. INSOLVENCY

If the Tenant shall become insolvent or be declared bankrupt or said premises shall come into the possession of any receiver, assignee or other officer acting under an order to any Court, then Landlord shall have the right to terminate this lease; and in case said Landlord shall not exercise such right, the Landlord may accept rent from the receiver or trustee, or officer in possession thereof, for the term of such occupancy, without impairing or affecting any way the rights of the Landlord against the Tenant under this Lease.

10. INDEMNITY AND INSURANCE

Each party shall indemnify and hold the other party harmless from and against any and all claims, demands, causes of action, liability, loss, damage, or injury ("claims"), both to person and property, arising out of or related to this Agreement, to the extent such claims are attributable to the negligent or willful misconduct of the indemnitor; provided, indemnitee gives the indemnitor prompt notice of any such claims and all necessary information and assistance so that indemnitor, at its option, may defend or settle such claims and indemnitee does not take any adverse position in connection with such claims. In the event that any such liability, loss, damage or injury is caused by the joint or concurrent negligence of both parties, the loss, expense or claim shall be borne by each party in proportion to its negligence.

The tenant shall obtain and maintain through the term of this lease, insurance with terms and limits of coverage equal to or in excess of those set forth below but in no event, are such terms and limits to be less than those set forth below. The limits of liability under insurance policies required by this lease shall in no-way limit the tenant's liability.

(1) **Commercial General Liability,**

Including coverage for premises and operations, independent contractors, products & completed operations, contractual liability, explosion, collapse and underground hazards (XCU), personal injury/advertising injury. The limits can be satisfied by providing a primary policy or in combination with an excess/umbrella liability policy. The City shall be named as additional insured on this policy.

Bodily Injury & Property Damage - Each Occurrence	$1,000,000
Personal Injury & Advertising Injury - Per Person	$1,000,000
General Aggregate on the Above	$2,000,000
Products & Completed Operations General Aggregate	$2,000,000
Fire Damage Limit	$100,000
Medical Expense Limit	**$5,000**

(2) **Property Insurance**
The Tenant will carry property insurance with "special" causes of loss insuring the replacement cost of all Tenant's leasehold improvements, trade fixtures and personal property within the premise.

(3) **Workers Compensation and Employers Liability,**
As required by any applicable law or regulation.

Part 1- Workers Compensation Benefits	Statutory

(4) **Employers Liability:**

Bodily Injury Each Accident	$100,000
Bodily Injury by Disease Policy Limit	$300,000
Bodily Injury by Disease Each Employee	$100,000

The Tenant shall furnish an insurance certificate to the City Clerk, showing adequate insurance to be in force. These policies shall not be materially altered without giving the City at least thirty (30) days written notice by registered mail, return receipt requested.

11. RIGHT TO ENTER
Tenant shall allow the Landlord, its agents or employees at reasonable times and at its discretion, to enter the premise to maintain and inspect the same, make repairs or improvements. Landlord shall have the right to enter upon and into said premises, if in good faith it does so, in the absence or apparent absence of Tenant to meet an apparent emergency.

12. LIEN
Landlord shall have in addition to the Landlord's Lien provided by statute, a lien upon all personal property of Tenant kept or used in said premises during the term of this lease and belonging to the Tenant, whether such property is exempt from execution or not, and upon improvements, if any, placed or erected by Tenant on said premises, and upon the unexpired term of this Lease, all expenses including attorney's fees incurred by Landlord in litigation to procure an injunction to prevent removal of personal property, and to secure payment of damages to the premises caused or permitted by Tenant. The lien shall follow the property to whatever location removed, until all secured amounts are paid.

13. OTHER REMEDIES
If Tenant has failed to comply with any of the terms or conditions of this lease, the Landlord, in addition to any other remedies, may exercise at its discretion any one or more of the following remedies, to-wit: (1) elect to declare forfeiture of this lease and all Tenant's rights thereunder, an ordinary 3 Day Notice to Quit being sufficient for this purpose as well as being the basis for suit for possession. In all provisions under this lease time is of the essence and the performance of all other obligations is material.

14. ATTORNEY FEES
In case of any action, or in any proceedings in any Court, to collect any sums payable or secured by this lease, to protect the lien herein given, or in any other case permitted by law in which attorneys' fees are to be collected from Tenant, or charged upon the property, Tenant agrees to pay reasonable attorney fees.

15. SUBROGATION
To the extent permitted by Landlord's insurance policy so long as it shall not jeopardize the Landlord's rights of recovery there under, Landlord waives any claim he might otherwise have against Tenant.

16. RIGHTS CUMULATIVE
The various rights, powers, options, elections and remedies of either party, provided in this lease, shall be construed as cumulative and not one of them is exclusive of the other, or exclusive of any rights, remedies or priorities allowed either party by law, and shall in no way affect or impair the right of either party to pursue any other equitable or legal remedy to which either party may be entitled as long as any default remains in any way unremedied, unsatisfied or undischarged.

17. CHANGES TO BE IN WRITING
None of the covenants, provisions, and terms of conditions of this lease to be kept or performed by Landlord or Tenant shall be in any manner modified, waived or abandoned, except by a written instrument duly signed by the parties and delivered to the Landlord and Tenant. This lease contains the whole agreement of the parties.

18. CONSTRUCTION
Words and phrases herein, including acknowledgement hereof, shall be construed as in the singular or plural number, and as masculine, feminine or neuter gender according to the context.

19. MECHANIC'S LIENS
Neither the Tenant nor anyone claiming by, through, or under the Tenant, shall have the right to file or place any mechanic's liens or other lien of any kind or character whatsoever, upon said premises or upon any building or improvement thereon, or upon the leasehold interest of the Tenant, and notice is hereby given that no contractor, sub-contractor, or anyone else who may furnish any material, service or labor for any building, improvements, alteration, repairs or any part thereof, shall at any time be or become entitled to any lien on the premises, and for the further security of the Landlord, the Tenant covenants and agrees to give actual notice thereof in advance, to any and all contractors and sub-contractors who may furnish or agree to furnish any such material, service or labor.

20. SIGNS

Landlord reserves the right to display any signs on the leased premises. Tenant shall have the right and privilege of attaching, painting or exhibiting any signs on the leased premises that meet the sign code requirements of the City of West Des Moines.

21. NOTICES

All notices shall be given to the other party hereto at the following addresses unless either party notifies the other party, in writing, of a different address. Such notice shall be considered given under the terms of this Lease when it is deposited in the U.S. Mail, certified, properly addressed, return receipt requested, and postage pre-paid.

City of West Des Moines
Parks and Recreation Director
4200 Mills Civic Parkway
P.O. Box 65320
West Des Moines, IA 50265

Lathermore Soap Company, LLC
Chelcee D. Cheers
1445 Marks Way
Creston, IA 50801

IN WITNESS WHEREOF, the parties hereto have duly executed this lease in duplicate the day and year first above written.

CITY OF WEST DES MOINES, IOWA

_____
Steven K. Gaer, Mayor

ATTEST:

_____
Ryan Jacobson, City Clerk

LATHERMORE SOAP COMPANY, LLC

_____
Chelcee D. Cheers, Owner

Prepared by: L. Schemmel, City of West Des Moines Development Services, P.O. Box 65320, West Des Moines, IA 50265-0320, (515) 222-3620
When Recorded, Return to: City Clerk, City of West Des Moines, P.O. Box 65320, West Des Moines, IA 50265-0320
Address Tax Statement to: Not applicable

HOLD HARMLESS AND INDEMNFICATION AGREEMENT

This Agreement is made and entered into this _____day of _____2019, by and between Lathermore Soap Company, LLC, an Iowa Domestic Limited Liability Company ("Tenant") and the City of West Des Moines, Iowa, an Iowa municipal corporation ("City").

WITNESSETH:

WHEREAS, the Tenant leases property located in West Des Moines, Iowa, legally described as:

LOT 14, BLOCK 11, VALLEY JUNCTION, AN OFFICIAL PLAT,
ALL IN AND FORMING A PART OF THE CITY OF WEST DES MOINES, POLK COUNTY, IOWA

WHEREAS, the Tenant has requested approval to install one (1) canopy ("Improvements") on a building located on the above legally described property, locally known as 217 5th Street, West Des Moines, Iowa; and

WHEREAS, a portion of the Improvements will encroach upon the right of way of 5th Street which is owned and controlled by the City; and

WHEREAS, the West Des Moines City Code prohibits private property improvements within the area comprising the right-of-way or City-owned property without approval of the City; and

WHEREAS, in exchange for approval by the City to allow installation of the Improvements, the Tenant has agreed to enter into this Agreement.

NOW, THEREFORE, in consideration of the premises, the mutual covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is expressly acknowledged by the Tenant, the Tenant hereby agrees as follows:

1. Indemnification and Hold Harmless. The Tenant agrees to indemnify, hold harmless, and defend the City, its officials, employees, agents, contractors, and assigns, from any and all claims, demands, causes of action, liability, loss, damage, or injury, both to person and property, arising out of, related to, or connected with any activity or placement of the Improvements above and within the City's property by the Tenant. This indemnification applies to and includes, but is not limited to, the payment of all penalties, fines, judgments, awards, decrees, attorney's fees, expert witness fees, investigation fees, settlements, related costs or expenses, interest, and any reimbursements incurred by or assessed to the City, its officials, employees, agents, contractors and assigns. The Tenant shall provide the City with prompt notice of any such claim, demand, or action so that the City may, at its sole option, defend or settle such claim, demand, or action. The Tenant shall be liable for the

costs of indemnification and defense.

The Tenant understands and agrees that the Tenant shall have no right of coverage under any existing or future insurance policies owned by the City. The Tenant shall obtain and maintain insurance coverage, naming the City as an additional insured, in a commercially reasonable amount sufficient to protect the City. Tenant also acknowledges that the City has no responsibility for any damage caused to the Tenant's property by any source. The Tenant agrees the encroachment above and within the City's property is at the Tenant's own volition and Tenant assumes all known or unknown risks associated with the encroachment.

This Indemnification and Hold Harmless provision shall be effective upon execution, shall be of indefinite duration, and shall survive the termination of this Agreement.

2. Placement and Removal of Improvements. The Tenant shall have the right to place the Improvements in the areas identified as the 5th Street right of way, subject to all rules and regulations of the City of West Des Moines. If, as solely determined by the City, removal of the Improvements becomes necessary, the Tenant agrees to remove the Improvements and any appurtenant structures at the Tenant's expense and without compensation from the City. The Tenant shall remove the Improvements within sixty (60) days of written notice from the City. If the Tenant fails to remove the Improvements within sixty (60) days of notice, the City may remove the Improvements and restore any damage at the Tenant's cost.

3. Maintenance. The Tenant acknowledges and agrees that Tenant is responsible and liable at all times for the maintenance, repair, removal, replacement or relocation of the Improvements and Tenant expressly acknowledges and agrees that the City shall not have any responsibility or liability for the repair, removal, replacement or relocation of the Improvements or any appurtenant structures or devices.

4. Running of Benefits and Burdens. The terms and conditions of this Agreement are binding upon the Tenant including, but not limited to, future owners, future tenants, developers, successors-in-interest, assigns, heirs, lessees, and occupants.

5. Representations and Warranties. The Tenant covenants with the City that the Tenant has good, right, and lawful authority to make and execute this Agreement. The Tenant warrants that the Tenant will defend this Agreement against the lawful claims of all persons.

6. Jurisdiction and Venue. The Tenant agrees that the district court in and for the State of Iowa shall have exclusive jurisdiction over the subject matter and enforcement of the terms and conditions of this Agreement. The parties consent to the district court in and for Polk County, Iowa as proper venue.

7. Words and Phrases. Words and phrases herein shall be construed as in the singular or plural number, and as masculine, feminine, or neuter gender, according to the context.

8. Parties. The term "City" as used herein shall refer to the City of West Des Moines, Iowa, its elected officials, agents, employees, officers, and contractors. The term "Tenant" shall refer to Lathermore Soap Company, LLC, successors-in-interest, assigns, heirs, lessees, and occupants if any.

9. Paragraph Headings. The paragraph headings in this Agreement are included solely for convenience and shall not affect or be used in connection with the interpretation of this Agreement.

10. Integration/Construction. This Agreement shall constitute the entire agreement between the parties regarding the subject matter hereof, and no amendments or additions to this Agreement shall be binding unless in writing and executed by the Tenant and the City. This Agreement has been fully negotiated at arms-length between the signatories hereto, and after advice by counsel and other representatives chosen by such signatories, such signatories are fully informed with respect thereto;

no such signatory shall be deemed the scrivener of this Agreement; and, based on the foregoing, the provisions of this Agreement and the Exhibits hereto shall be construed as a whole according to their common meaning and not strictly for or against any party.

11. Recording. This Agreement shall be recorded in the Office of the Polk County Recorder. Cost of recording shall be the responsibility of the Tenant.

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

LATHERMORE SOAP COMPANY, LLC

_____
Chelcee D'Lynn Cheers

STATE OF IOWA)
) SS:
COUNTY OF _____)

This record was acknowledged before me on this _____ day of _____, 2019, by Chelcee D'Lynn Cheers as Owner of Lathermore Soap Company, LLC, on behalf of whom the record was executed.

_____
Notary Public in and for the State of Iowa

CITY OF WEST DES MOINES, IOWA

_____

Steven K. Gaer, Mayor
Owner and City

Attest:

_____

Ryan T. Jacobson
City Clerk

STATE OF IOWA)
) ss:
COUNTY OF POLK)

On this ____ day of _____, 2019, before me a Notary Public in and for said County, personally appeared Steven K. Gaer and Ryan T. Jacobson, to me personally known, who being duly sworn, did say that they are the Mayor and City Clerk, respectively of the City of West Des Moines, Iowa, a Municipal Corporation, created and existing under the laws of the State of Iowa, and that the seal affixed to the foregoing record is the seal of said Municipal Corporation, and that said record was signed and sealed on behalf of said Municipal Corporation by authority and resolution of its City Council as contained in the Resolution adopted under Roll Call No. _____, and said Mayor and City Clerk acknowledged said record to be the free act and deed of said Municipal Corporation by it voluntarily executed.

_____

Notary Public in and for the State of Iowa