CITY OF WEST DES MOINES
STAFF REPORT COMMUNICATION

Meeting Date: November 1, 2021

ITEM: Approval of the Form of the Construction Staging Lease Agreement for the use of city property for construction staging. AO-005359-2021

MOTION: Approve as to Form the Construction Staging Lease Agreement

Background: Per a separate action, Development Services Staff has requested an amendment to the noted chapter and section of Title 7 (Public Ways and Property) to give the City, in its sole discretion, the ability to allow the use of public property for construction staging associated with private development. The amendment does require the party interested in utilizing city property for construction staging to enter into a lease agreement with the City to permit the temporary use of the property and define the regulations for the use of the property.

Staff Review & Comment:

- *Ordinance Amendment*: The first reading of the ordinance amendment to enable the use of City property for construction staging was approved on October 18, 2021. The second reading for the amendment is scheduled on this same meeting agenda. The third reading and final adoption is anticipated at the November 15, 2021 Council meeting.
- *Key Aspects of Proposed Lease Agreement:* The ordinance amendment gives the City, in its sole discretion, the ability to allow the use of public property for construction staging. The authority to approve will be either by City Council or administratively by Staff depending on the size of the area to be used. This will follow the project area allowance used for a Minor vs. Major Modification planning application, with the maximum allowed size Staff can approve to be 2,000 square feet. In addition, the developer will be required to enter into a lease agreement with the City which will set forth the requirements for safety, maintenance, and restoration of public facilities. The lease will also include provisions regarding insurance, performance bond/security deposit, length of time, penalties, etc. Staff is requesting City Council approve as to form the lease agreement to be used in conjunction with the ordinance amendment.

Outstanding Issues: There are no outstanding issues.

Recommendation: Approve the Form of the Lease Agreement.

Lead Staff Member: Linda Schemmel

Approval Meeting Dates:

City Council: First Reading	November 1, 2021

Staff Report Reviews

City Council	☒ Director	☐ Legal Department
	☐ Appropriations/Finance	☑ Agenda Acceptance

Publications

Published In	N/A
Date Published	N/A

Subcommittee Review (if applicable)

Committee	Public Service		
Date Reviewed	July 26, August 9, and October 11, 2021		
Recommendation	☐ Yes	☐ No	☒ Split

CONSTRUCTION STAGING LEASE AGREEMENT

THIS LEASE AGREEMENT ("Agreement"), made and entered into on Click or tap to enter a date., by and between the City of West Des Moines, Iowa, a municipal corporation, ("City"), and Click or tap here to enter text., an Choose an item., ("Lessee"), located at Click or tap here to enter text. , West Des Moines, Iowa.

WHEREAS, City is the titleholder of certain real estate adjoining the property at Click or tap here to enter text., and legally described as follows:

INSERT LEGAL WITH SQUARE FEET LISTED

("Leased Premises"), and shown on Exhibit "A" attached hereto;

and

WHEREAS, the exclusive use of the Leased Premises is not presently required by the City for municipal purposes; and

WHEREAS, Lessee wishes to lease the Leased Premises to use for construction staging as shown on Exhibit "B" for the development project located at Click or tap here to enter text. ("Development Project") as set forth in this Agreement; and

WHEREAS, the lease of the Leased Premises for the purposes described herein will not adversely affect the use of adjoining City property.

NOW, THEREFORE, in consideration of the mutual covenants, promises, and agreements hereinafter set forth, the City and Lessee agree as follows:

1. **TERM OF LEASE.** Lessee shall lease the Leased Premises for an initial term of six (6) months. Use of the Leased Premises shall be allowed from Click or tap to enter a date.until Click or tap to enter a date.("Lease Term"). An extension of the Lease Term may be approved based on reasonable need or delay in the completion of the Development Project.

2. **APPROVAL OF THE CITY.** This Agreement shall not be binding until it has received the final approval and acceptance by the City of West Des Moines, Iowa, which approval and acceptance shall be noted on this Agreement either by City staff or by the City Clerk.

3. **USE OF LEASED PREMISES**. Lessee has inspected the Leased Premises and leases same "as is." Lessee agrees to use the Leased Premises for purposes of parking, storing, placing construction vehicles, equipment, materials, and related items only during the Period of Use Term. The City may, in its sole discretion, prohibit certain construction equipment, vehicle types, fuel tanks, or any item that is likely to cause significant damage to the Leased Premises. Lessee shall not store any hazardous material on the Leased Premises. Lessee shall use flaggers and spotters when moving any large equipment or vehicle(s) to ensure the safety of any vehicle(s) and passengers nearby. Lessee shall

remove any and all items at the end of the Lease Term, unless otherwise allowed by the City to remain. Lessee shall maintain insurance coverages, limits and endorsements set forth in Exhibit D. Lessee agrees to comply at all times during the term of this Agreement, and at Lessee's own cost and expense, with all ordinances and regulations of the City of West Des Moines, Iowa, and all county, state and federal laws and regulations. Lessee shall not allow any nuisances or illegal activity to be conducted, operated, or to occur on the Leased Premises.

4. **CONSIDERATION**. Lessee shall pay to City a one-time lease payment of _____Dollars ($Click or tap here to enter text.), which sum shall be paid by Lessee prior to the City's execution of this Agreement. Any extension of the Lease Term may require additional consideration to be paid to the City. Said payment shall be delivered in person or mailed to the following address: City of West Des Moines, Finance Department, 4200 Mills Civic Parkway, West Des Moines, Iowa 50265. Past due amounts, if any, must be paid in full prior to the execution of this Agreement.

5. **DEPOSIT.** In addition to the consideration set forth in Section 4 herein, Lessee shall pay a security deposit ("Deposit") to City in the sum of Five Hundred Dollars ($500.00) for the performance and observance by Lessee of the terms of this Agreement, which Deposit is due and payable at the time of execution by Lessee of this Agreement. In addition to the Deposit, Lessee shall also provide a performance bond or other appropriate security acceptable to the City ("Security") in an amount identified in Exhibit "C". In the event that Lessee fails to restore the Leased Premises to a condition substantially similar to its condition at the beginning of the lease term per Paragraph 10 below, said Deposit shall be forfeited and used by City to cover the estimated costs of restoring the Leased Premises. If the Deposit does not cover the costs of restoring the Leased Premises, then the City may collect on the Security. Photographs will be taken prior to the start of the Lease Term, provided to the City, and compared to the condition of the Leased Premises at the end of the Lease Term to assist in determining whether the Lease Premises has sustained any damage.

6. **ADDITIONAL CONSIDERATION.** In addition to payment of the consideration as described above, Lessee agrees to provide the following as additional consideration throughout the entire Lease Term of this Agreement:
   A. Regularly cut or mow any grass growing on the Leased Premises;
   B. Cut and remove any weeds growing on the Leased Premises;
   C. Keep the premises free from nuisances and debris;
   D. Maintain the premises in a clean, safe and orderly condition; and
   E. Remove snow and ice promptly from any public sidewalk abutting the Leased Premises. Snow and ice must be completely removed within twenty-four (24) hours from the end of a snow event.

7. **COVENANT OF QUIET ENJOYMENT.** Lessee shall at all times during the term of this Agreement and during any extension thereof peaceably and quietly enjoy the Leased Premises without any unreasonable disturbance from City, its agents or employees. However, City and franchised utilities, and their officers, employees and agents may order the immediate removal of all improvements and personal property from the Leased Premises and temporarily take possession and occupy the Leased Premises when and to

the extent reasonably necessary for the maintenance, repair or replacement of any public utilities located under, over, through or within the Leased Premises. Upon completion of any such maintenance, repair or replacement activities, the City or franchised utility shall promptly restore the improvements and surface of the Leased Premises to substantially the same condition it was in prior to such activities. During such temporary possession, the City shall not be responsible for damages resulting from business interruption.

8. **SECURITY.** The Lessee agrees that it will provide any and all security measures necessary at the Leased Premises. The Lessee agrees that the City shall not be responsible, or be in any way liable, for any damages sustained as a result of the Lessee's use of the Leased Premises.

9. **FORCE MAJEURE.** No party shall be responsible for events that are unforeseeable and/or beyond its reasonable control, such as Acts of God, weather delays, governmental restrictions or unforeseen commercial delays.

10. **TERMINATION OF LEASE**. This Agreement shall remain in effect for the term herein provided unless otherwise terminated by either party under the terms of this Agreement. If Lessee shall fail to meet any of the terms included in this Agreement, as determined by City, expand use of city-owned property beyond that approved in this Agreement, or assigns this Agreement or sublets the Leased Premises or any part thereof without the written consent of the City, then the City shall give ten (10) business days' written notice to Lessee of its intent to terminate and may give the Lessee an opportunity to remedy the reason for the termination. In addition, either party may terminate this Agreement prior to the end of the Lease Term without cause upon thirty (30) days' written notice to the other party in the manner provided below for notice to said party. The City shall have the right to immediately terminate this Agreement if the use of the Leased Premises results in criminal activity, property damage, or other similar significant negative impact to the Leased Premises or surrounding area. In the event of termination by either party prior to the end of the Lease Term, Lessee shall be entitled only to a proration of any prepaid consideration. However, in no event shall the City be responsible for payment of lost business profits or reimbursement for any other costs. Upon termination of this Agreement, any and all items shall either be removed by Lessee, shall be removed by the City at the Lessee's expense, or shall become the property of City, as decided by City in its sole discretion. If damage is caused to the Leased Premises as a result of this Agreement, Lessee shall be responsible for the cost of any damage.

11. **TAXES**. All real estate taxes levied or assessed by lawful authority by reason of the fact of this Agreement and of the Lessee's use of the Leased Premises shall be timely paid by Lessee. The Lessee further agrees to pay all tax assessments or other public charges levied or assessed by lawful authority (but reasonably reserving Lessee's right of appeal) against personal property on the premises.

12. **POSSESSION AND CONDITION AT END OF TERM**. At the expiration of the Lease Term of this Agreement and/or upon termination of the Agreement, Lessee will deliver possession of the Leased Premises to City. Prior to the time of such delivery, Lessee will

restore the Leased Premises to a condition substantially similar to its condition at the beginning of the lease term and shall remove all items placed upon the Leased Premises. If Lessee has not removed all items PRIOR to termination of this Agreement, said items shall be considered abandoned and may be removed and disposed of at the discretion of the City, without any compensation or liability incurred on the part of the City. Lessee shall be responsible for any costs incurred by the City due to the removal and disposal of any items left on the Leased Premises. In addition, there will be a penalty in the amount of $750.00 per day for each day any item remains on the Leased Premises past the Lease Term. In the event the Lessee has not removed all items from the Leased Premises, the City shall have the ability to withhold any Occupancy Permit for the Development Project.

13. **NO ASSIGNMENT OR SUBLETTING**. Lessee shall not sell, assign, sublet or relinquish the Leased Premises without prior written approval of City. Any and all approved subsequent purchasers, assignees or sublessees shall be bound and obligated by the terms of this Agreement.

14. **ACCESS AND EASEMENTS**. During the term of this Agreement, the Lessee shall not interfere with or in any way prohibit the City or its authorized agents from use of the Leased Premises. The City and its authorized agents shall have the right to reasonably enter upon and inspect the Leased Premises. This Agreement is subject to any and all easements for existing utilities, restrictions and covenants of record on the Leased Premises.

15. **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 and any judicial action under the terms of this Agreement and shall be exclusively within the jurisdiction of the district court for _____ County, Iowa. Lessee agrees to pay and discharge all costs and attorney fees or any expense that shall arise from enforcing any of the terms of this Agreement by City.

16. **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 accepted and approved by West Des Moines City Council.

17. **INDEMNIFICATION AND INSURANCE.** Lessee shall defend, indemnify and hold harmless the City, its elected officials, employees, officers, agents, representatives, contractors, and assigns from and against any and all claims or demands for liability, loss, damage, costs, expenses, or attorney's fees of any kind for actions or omissions of the Lessee arising out of or in connection with any undertaking arising out of or otherwise related to this Agreement. Lessee shall obtain and maintain in continuous effect during the term of this Agreement and while any of its obligations remain unsatisfied, the insurance coverages, limits and endorsements set forth in Exhibit "D". The City reserves the right to require and enforce future revisions to the insurance requirements in Exhibit "D", and Lessee agrees to abide by such future revisions upon notice thereof. Lessee shall require that any of its agents or sublessees who perform work and/or services pursuant to this Agreement meet the same insurance requirements as are required of Lessee. A Certificate of Insurance citing such coverages, limits and endorsements shall be provided to City on

an annual basis.

18. **NOTICES.** Notices to City pursuant to this Agreement shall be sent to City of West Des Moines, Attn: City Clerk, 4200 Mills Civic Parkway, West Des Moines, Iowa 50265. Notices to the Lessee under this Agreement shall be sent to Click or tap here to enter text..

19. **RESERVATION OF RIGHTS.** Any and all rights and privileges not granted to Lessee by this Agreement are reserved for and to City.

20. **ADDITIONAL PROVISIONS.**

(1) Mechanics' Lien(s). Neither the Lessee nor anyone claiming by, through or under Lessee shall have the right to file or place any mechanics' lien or other lien of any kind upon any improvements made within the Leased Premises, and Lessee shall give prior actual notice of this restriction to any and all contractors and/or subcontractors who may furnish or agree to furnish any material, service or labor for the Leased Premises.

(2) Priority. Lessee understands and agrees that this Agreement gives Lessee no priority or right of claim upon the Leased Premises in the event that the Leased Premises is offered for sale by the City.

(3) Utilities. Lessee shall furnish and pay, at its sole expense, all charges and connection costs relating to all water, sewer, gas, heating, air conditioning, electricity, steam, telephone or television, and any other utilities of every kind and nature as required for the intended purpose of this Agreement. City shall not be responsible for furnishing such utilities in connection with the Leased Premises unless otherwise specifically designated in this Agreement and shall not be liable for any interruption of such utilities. Lessee shall further be responsible for payment of any utility bills that accrue during Lessee's use of the Leased Premises prior to termination of this Agreement that are billed following such termination.

(4) Limitation of Liability. The City shall not be liable for claims, losses, costs, expenses, or damages of any nature whatsoever to the Leased Premises unless attributable to the willful misconduct of the City, its elected officials, agents, employees, officers, contractors, successors and assigns.

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

LESSEE

By: _____
Name, Position
Company Name

STATE OF IOWA)
) SS
COUNTY OF _____)

This record was acknowledged before me on this _____ day of _____ _____, 2021, by **INSERT NAME(S)**, as _____ of _____ on behalf of whom the record is executed.

CITY OF WEST DES MOINES, IOWA [or change to signature of City staff if will be administratively approved]

By: _____
Steven K. Gaer, Mayor

ATTEST:

By: _____
Ryan T. Jacobson, City Clerk

STATE OF IOWA)
) ss:
COUNTY OF POLK)

On this ____ day of _____, 2021, 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 said record was signed on behalf of said municipal corporation by authority and resolution of its City Council as contained in the Roll Call No. _____, passed on the ___ day of _____, 2021, 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

Exhibit "A"

[Insert legal description of City-owned property]

Exhibit "B"

[Insert drawing of construction staging items]

Exhibit "C"

[Insert description of required Security]

Exhibit "D"

Insurance Requirements

The Lessee shall obtain and maintain through the Period of Use Term of this Agreement, or unless otherwise required by the City pursuant to Section 3, insurance with terms and limits of coverage equal to or in excess of those set forth in the specifications governing the agreement, 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 Agreement shall in no-way limit the Lessee's actual 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 City shall be named as additional insured on a primary and non-contributing basis for on-going and completed operations, waiver of subrogation and provide 30 days' notice of cancellation to the City.

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) Business Automobile Liability Insurance:

Including coverage for all owned, non-owned and hired automobiles with limits of liability not less than the following. The City shall be added as an additional insured on a primary and non-contributing basis, waiver of subrogation and provide 30 days' notice of cancellation to the City.

Bodily Injury & Property Damage – Each Accident	$1,000,000

(3) Workers Compensation and Employers Liability:

As required by any applicable law or regulation. The policy will include waiver of subrogation endorsement in favor of the City.

Part 1- Workers Compensation Benefits	Statutory

(4) Employers Liability:

Bodily Injury Each Accident	$500,000
Bodily Injury by Disease Policy Limit	$500,000
Bodily Injury by Disease Each Employee	$500,000

(5) Umbrella Liability:

Maintain umbrella liability insurance in excess of the general liability, automobile liability and employer's liability (if applicable) insurance described above which is at least as broad as all underlying policies including but not limited to additional insured applying on a primary and non-contributing basis, waiver of subrogation and 30 days' notice of cancellation to the City.

Each Occurrence Limit	City to Determine
Aggregate Limit	City to Determine