



City of Omaha
Jean Stothert, Mayor

RECEIVED

2016 JUN 20 PM 3:31

CITY CLERK
OMAHA, NEBRASKA

Public Works Department

Omaha/Douglas Civic Center
1819 Farnam Street, Suite 601
Omaha, Nebraska 68183-0601
(402) 444-5220
Fax (402) 444-5248

Robert G. Stubbe, P.E.
Public Works Director

Honorable President

and Members of the City Council,

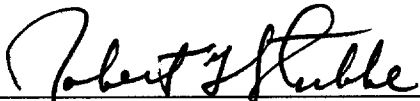
The attached Ordinance authorizes a lease agreement between the City of Omaha and Capitol District Parking, L.L.C., for the lease of certain property adjacent to Interstate 480, generally located between 8th and 10th Streets and north of Capitol Avenue, beginning June 1, 2017, or earlier upon proper notice by Capitol District Parking. This lease will allow for the productive use of such property by permitting a surface parking lot to be constructed on the property, which will support activities at the Capitol District and provide parking for its visitors.

Capitol Parking will pay \$5,280.00 per year in consideration for the use and operation of the property.

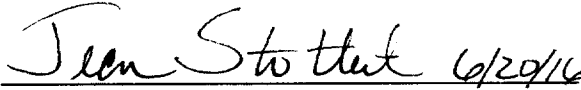
We therefore, recommend approval of the attached Ordinance.

Respectfully submitted:

Referred to City Council for Consideration:


Robert G. Stubbe, P.E.
Public Works Director

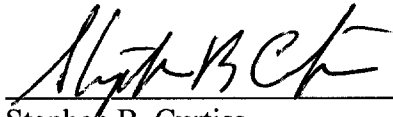
Date


Mayor's Office/Title

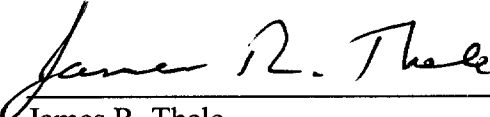
Date

Approved as to Funding:

Approved:


Stephen B. Curtiss
Finance Director

Date


James R. Thele
Planning Director

Date

ORDINANCE NO. 40811

AN ORDINANCE to approve a lease agreement between the City of Omaha and Capitol District Parking, L.L.C., for the lease of certain premises adjacent to Interstate 480 and located between 8th and 10th Streets, north of Capitol Avenue, beginning June 1, 2017, or earlier upon proper notice by Capitol District Parking, in the amount of approximately \$5,280.00 per year; and to provide an effective date.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF OMAHA:

Section 1. That the attached lease agreement between the City of Omaha and Capitol District Parking, L.L.C., for the lease of certain premises adjacent to Interstate 480 and located between 8th and 10th Streets, north of Capitol Avenue, beginning June 1, 2017, or earlier upon proper notice by Capitol District Parking, L.L.C., in the amount of approximately \$5,280.00 per year, to be paid by Capitol District Parking, LLC is hereby approved.

Section 2. That this Ordinance, not being of legislative character, shall be in force and take effect immediately upon its date of passage.

INTRODUCED BY COUNCILMEMBER

Brian S. Busby

APPROVED BY:

John Stroger 7/14/16
MAYOR OF THE CITY OF OMAHA DATE

PASSED JUL 12 2016 7-0

ATTEST:

DEPUTY Sandra L. Moses 7/14/16
CITY CLERK OF THE CITY OF OMAHA DATE

APPROVED AS TO FORM:

[Signature] 6/20/16
Asst. CITY ATTORNEY DATE

LEASE AGREEMENT

THIS LEASE AGREEMENT is hereby made and entered into this 14th day of July, 2016, by and between the CITY OF OMAHA, a municipal corporation organized and existing under the laws of the State of Nebraska located in Douglas County, Nebraska, (hereinafter referred to as "City") and CAPITOL DISTRICT PARKING, LLC, a Nebraska limited liability company, (hereinafter referred to as "Capitol Parking").

WHEREAS, the City of Omaha owns certain real property located under Interstate Highway 480 between 8th and 10th Streets and north of Capitol Avenue (the "Premises"); and,

WHEREAS, pursuant to the terms and conditions of this Lease, Capitol Parking desires to lease the Premises from the City, and the City desires to lease the Premises to Capitol Parking for the construction and operation of surface parking lot on the Premises; and,

WHEREAS, parties acknowledge that it is in the best interests of the citizens of the City of Omaha to facilitate the development of such surface parking on the Premises for the purpose set forth herein.

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements herein contained, the City and Capitol Parking do hereby mutually undertake, promise, agree and contract each for itself and its successors and assigns as follows:

I. LEASED PREMISES

The City hereby leases to Capitol Parking, and Capitol Parking hereby leases from the City, the Premises, pursuant to the terms and conditions of this Lease, for the sole purpose of constructing and operating a surface parking lot thereon as generally depicted on Exhibit A attached hereto.

II. TERM AND TERMINATION

The term of this Lease shall run concurrently with that certain Airspace Lease Agreement between the Department of Roads of the State of Nebraska (the "NDOR") and the City commencing on the earlier of: (x) June 1, 2017; or (y) upon thirty (30) days prior written notice from Capitol Parking to the City, and shall end on the date of expiration of the Lease or the date of termination of the lease between the City and the NDOR with respect to the two (2) adjacent parcels of property owned by the NDOR as depicted on Exhibit A.

In addition to all other remedies available to the City, this Lease shall be subject to cancellation by the City should any one or more of the following events occur:

1. If Capitol Parking shall abandon and discontinue the use and operation of the surface parking on the Premises.

2. If Capitol Parking shall fail to use the Premises for parking and landscaping purposes without prior written approval from the City.

3. If Capitol Parking shall fail to perform, keep and observe any of the terms, provisions, covenants and conditions contained in this Sublease, including the failure to make any required payments, or the related Airspace Lease Agreement between the NDOR and the City of Omaha.

4. If Capitol Parking shall fail to abide by all applicable laws, ordinances, rules and regulations of the United States, State of Nebraska, Douglas County, or the City.

5. If Capitol Parking shall fail to obtain any insurance or indemnity required under the terms of this Lease or permit any such insurance or indemnity to lapse or become void.

6. If Capitol Parking shall fail to construct the surface parking lot on the Premises and have the same operational on or before June 1, 2017.

7. Provided; however upon the happening of any of the events recited in subparagraphs 1 through 6 above, the City shall provide Capitol Parking written notice identifying the event and requiring Capitol Parking to correct or cure same, and, if, within thirty (30) days from the date of such notice, the default, failure to perform or breach complained of shall not have been corrected in a manner reasonably satisfactory to the City, then the City shall have the right to terminate this Lease, without further notice, to enter upon and take full possession, ownership and control of the Premises. Upon such happening, this Lease shall automatically be deemed to have been irrevocably breached by Capitol Parking and shall terminate. The acceptance of the Lease Payment (as defined in Section III below) or any portion thereof, by the City for any period or periods after an event of default of any of the terms, covenants, and conditions herein contained to be performed, kept and observed by Capitol Parking shall not be deemed a waiver of any rights on the part of the City to terminate this Lease for failure by Capitol Parking to so perform, keep, or observe, any of the terms of the Lease to be kept, performed and observed by Capitol Parking. Upon termination, Capitol Parking shall immediately vacate the Premises and cease all operation and control of the use of the Premises, except for removal activity as provided herein below in Article IV.

III. CONSIDERATION

Capitol Parking agrees to pay to City the sum of Five Thousand Two Hundred Eighty Dollars (\$5,280.00) per year in consideration for the use and operation of the Premises (the "Lease Payment"). Capitol Parking shall pay City the Lease Payment in twelve monthly equal installments, on or before the 10th of each month during the term of this Lease. Any increases imposed by the NDOR on lease payments from the City to the NDOR on the related Sublease and agreement will be the basis for an increase of the Lease Payment under this Lease on a per stall basis.

IV. ALTERATIONS AND IMPROVEMENTS

Capitol Parking shall not develop, construct or install any alterations, improvements or fixtures ("Improvements") on the Premises, other than the contemplated surface parking lot to be constructed on the Premises by Capitol Parking, without the express prior written approval of the City. Such Improvements shall be limited to surface parking and landscaping. Advertising signs, devices or displays shall not be permitted on the Premises except that public service messages and local event information may be displayed.

Such written approval by City shall not relieve Capitol Parking from ensuring that Improvements comply with plans and construction documents, and all pertinent City ordinances, state and federal law, building, plumbing, mechanical, safety, fire, sanitation and electrical codes, and other pertinent laws and regulations and that any necessary permits, licenses or other approvals for design, construction or operation are obtained from any jurisdiction having management or regulatory control over development construction and operation of the transit center or Improvements.

Capitol Parking may remove any of the Improvements it has installed on the Premises upon the expiration or termination of this Lease. If Capitol Parking elects to remove some or all of such Improvements, Capitol Parking shall perform such work on a schedule acceptable to City, and in a manner, form and method approved by City. Provided, that at City's option, Capitol shall be required, at its cost, to remove all Improvements it has not elected to remove from the Premises. All Improvements not elected for removal by Capitol Parking or required by City to be removed shall be the property of the City. Capitol Parking shall, in a timely fashion, provide to City documents satisfactory to the City evidencing title.

V. MAINTENANCE

Capitol Parking shall maintain the Premises and all Improvements located thereon in a safe and neat appearing condition and free of noxious weeds, trash, debris, scrap material, or flammable, explosive, or hazardous substances. If Capitol Parking fails to maintain the Premises and Improvements in such a manner, Capitol Parking agrees to reimburse City for any costs incurred to remove or repair the Premises and Improvements.

VI. NOTICE OF ACTIVITY ON HIGHWAY

Capitol Parking expressly acknowledges that the NDOR has reserved the right (1) to push, blow or otherwise remove snow from the elevated structures of the interstate highway above the Premises, (2) to store snow, and (3) to paint the elevated structures of such interstate highway, as more specifically delineated in the Lease, and that such activity may occur on short notice. Capitol Parking further acknowledges that debris may fall or land on the Premises due to usage and maintenance of the interstate highway. Such activities or occurrences may cause injury, damage or inconvenience to Capitol Parking and/or to persons or property on the Premises. Capitol Parking agrees to hold City and the State of Nebraska harmless from any and all claims or suits for damages to persons or property due to such activities or occurrences.

VII. PIER PROTECTION

Capitol Parking shall provide pier protection, in a design, form, method and manner acceptable to City, on each pier on the Premises throughout the term of this Lease.

VIII. FEES TAXES OR ASSESSMENTS

Capitol Parking agrees, at its own expense, to pay any and all fees, taxes or assessments properly levied by any City, county, state, federal or other governmental unit against its operations, property or income or the Premises as a result of this Lease or the use of the Premises by Capitol Parking for operation of surface parking or the Improvements.

Capitol Parking agrees, at its own expense, to pay all franchise, royalty and licensing fees and protect and save harmless the City from any claims and suits that may arise from infringement of any ownership, trademark, or patent right or from the provision or use of articles or services by Capitol Parking on the Premises under this Lease.

IX. RIGHT OF ENTRY

City, and its duly authorized representatives, shall, throughout the term of this Lease, have full and unrestricted access and the right to enter the Premises at any and all times the surface parking is open, or following a minimum of four (4) hours' notice if the facility is closed, for the purposes of (1) inspecting, observing, or protecting the Premises, including the interstate highway located above the Premises (2) performing any obligation of the City under this Lease, or (3) taking any action the City deems necessary in the exercise of its police powers. Where feasible, City shall not unreasonably interfere with the operation of the Premises in exercising such access and entry rights.

X. NONDISCRIMINATION

Capitol Parking shall not, in the performance of this Lease and in the operation of surface parking on the Premises, discriminate or permit discrimination in violation of federal or state laws or local ordinances because of race, color, sex, age, disability, political or religious opinions, affiliations or national origin.

XI. ASSIGNMENT

Capitol Parking shall not lease, sell, or assign its interests or rights in the Premises and this Lease without the express prior written consent of the City. Notwithstanding the foregoing, it is understood and agreed that the Premises may be used by any guest, invitee and/or permittee of The Capitol District (Lots 1, 2 and 5, The Capitol District and Lots 1 and 2, The Capitol District Replat 1, or any replat thereof). In addition, notwithstanding the foregoing, Capitol Parking anticipates the need to execute a collateral assignment of this Sublease in favor First National Bank of Omaha. The City agrees to use its best efforts to accommodate such a collateral assignment in the event such a request is made.

XII. INDEMNIFICATION AND INSURANCE

- A. Capitol Parking covenants and agrees to indemnify and hold harmless the City, its officers, agents and employees, their successors and assigns, individually or collectively from and against all liability for any fines, claims, suits, demands, actions or causes of action of any kind and nature asserted by Capitol Parking or by anyone else, for personal injury or death, or property damage in any way arising out of or resulting from any activity or operation of Capitol Parking on the Premises or in connection with its lease of the Premises and Capitol Parking further agrees to pay all expenses in defending against any claims made against the City; provided, however, that Capitol Parking shall not be liable for any injury, damage or loss occasioned by the sole negligence or willful misconduct of the City, its agents or employees. Capitol Parking and the City shall give prompt and timely notice of any claim made or suit instituted which, in any way, directly or indirectly, contingently or otherwise, affects or might affect either party.
- B. Capitol Parking shall procure and maintain in effect during the term of this Lease, with companies licensed to do business in the State of Nebraska, public liability insurance with at minimum, policy limits of \$1,000,000/\$5,000,000 for bodily injury or death and property damage. Said policy shall expressly include the City as an additional named insured.
- A certified copy of the policy or a certificate evidencing the existence thereof, shall be delivered to the Public Works Department Director within ten (10) days after the execution of this Lease. Each such copy shall contain a valid provision or endorsement that the policy may not be cancelled, terminated or materially changed or modified without giving thirty (30) days written advance notice thereof to the City. Each such policy shall contain an additional endorsement providing that the insured's carrier shall not, without obtaining express advance permission from the City, raise any defense involving in any way the immunity of the City, officers, agents or employees, the governmental nature of the City, or the provisions of any statutes respecting suits against the City.
- C. Capitol Parking shall furnish to the City satisfactory evidence that it carries Workers' Compensation Insurance in accordance with the laws of the State of Nebraska.
- D. Upon receipt of notice from the City, Capitol Parking shall take such action as the City shall deem necessary and expedient to insure that the City is held harmless from any liability from any cause whatsoever arising as a result of Capitol Parking's operations and activities in and upon the Premises to any person, individual or entity.
- E. Capitol Parking shall procure and maintain in effect during the term of this Lease, with companies licensed to do business in the State of Nebraska, fire, theft and extended coverage hazard insurance on all property utilized by Capitol Parking on the Premises and all buildings or Improvements installed by Capitol Parking.

- F. In the event Capitol Parking shall fail to obtain any such insurance, or shall permit any such insurance or other type of indemnity to lapse or become void, the City may terminate this Lease.

XIII. INDEPENDENT CONTRACTOR

It is understood and agreed by and between Capitol Parking and City that any and all acts that Capitol Parking or its personnel, employees, agents, contractors, or servants, perform pursuant to the terms of this Lease shall be undertaken as independent contractors and not as employees of the City. The City and Capitol Parking shall each act in their individual capacities and not as agents, employees, partners, joint venturers or associates of the other. An employee or agent of one shall not be deemed or construed to be the employee or agent of the other for any purpose whatsoever. Neither Capitol Parking nor its personnel, employees, agents, contractors, or servants shall be entitled to any City benefits. The City shall not provide any insurance coverage to Capitol Parking or its employees including, but not limited to, workers' compensation insurance. Capitol Parking shall pay all wages, salaries and other amounts due its employees and shall be responsible for all reports, obligations, and payments pertaining to social security taxation, income tax withholding, workers' compensation, unemployment compensation, group insurance coverage, collective bargaining agreements or any other such similar matters. Capitol Parking shall have no authority to bind the City by or with any contract or agreement, nor to impose any liability upon the City. All acts and contracts of Capitol Parking shall be in its own name and not in the name of the City, unless otherwise provided herein.

XIV. APPLICABLE LAW

Parties to this Lease shall conform with all existing and applicable City ordinances, resolutions, state and local laws, federal laws, and all existing and applicable rules and regulations. Nebraska law will govern the terms and the performance under this Lease.

XV. AUTHORIZED REPRESENTATIVES

In further consideration of the mutual covenants herein contained, the parties hereto expressly agree that for purposes of notice, including legal service of process, during the term of this Lease and for the period of any applicable statute of limitations thereafter, the following individuals shall be the authorized representatives of the parties:

- | | |
|--|--|
| (1) City of Omaha
Director
Public Works
Omaha/Douglas Civic Center
1819 Farnam Street
Omaha, Nebraska 68183 | (2) Capitol District Parking LLC
Attn: Michael T. Moylan
1111 N. 13th Street, Suite 101
Omaha, Nebraska 68102 |
|--|--|

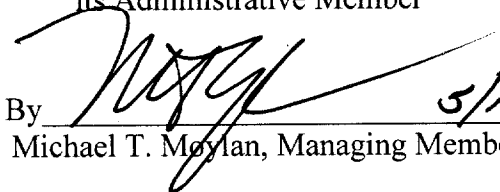
ATTEST:

 7/12/16
Public Works Department Director

CAPITOL DISTRICT PARKING LLC, a
Nebraska limited liability company

By: The Capitol District, LLC, a Nebraska
limited liability, as Administrative Member


By: MTM Capitol District, LLC, a
Nebraska limited liability company,
its Administrative Member

By  5/17/16
Michael T. Moylan, Managing Member


ATTEST:

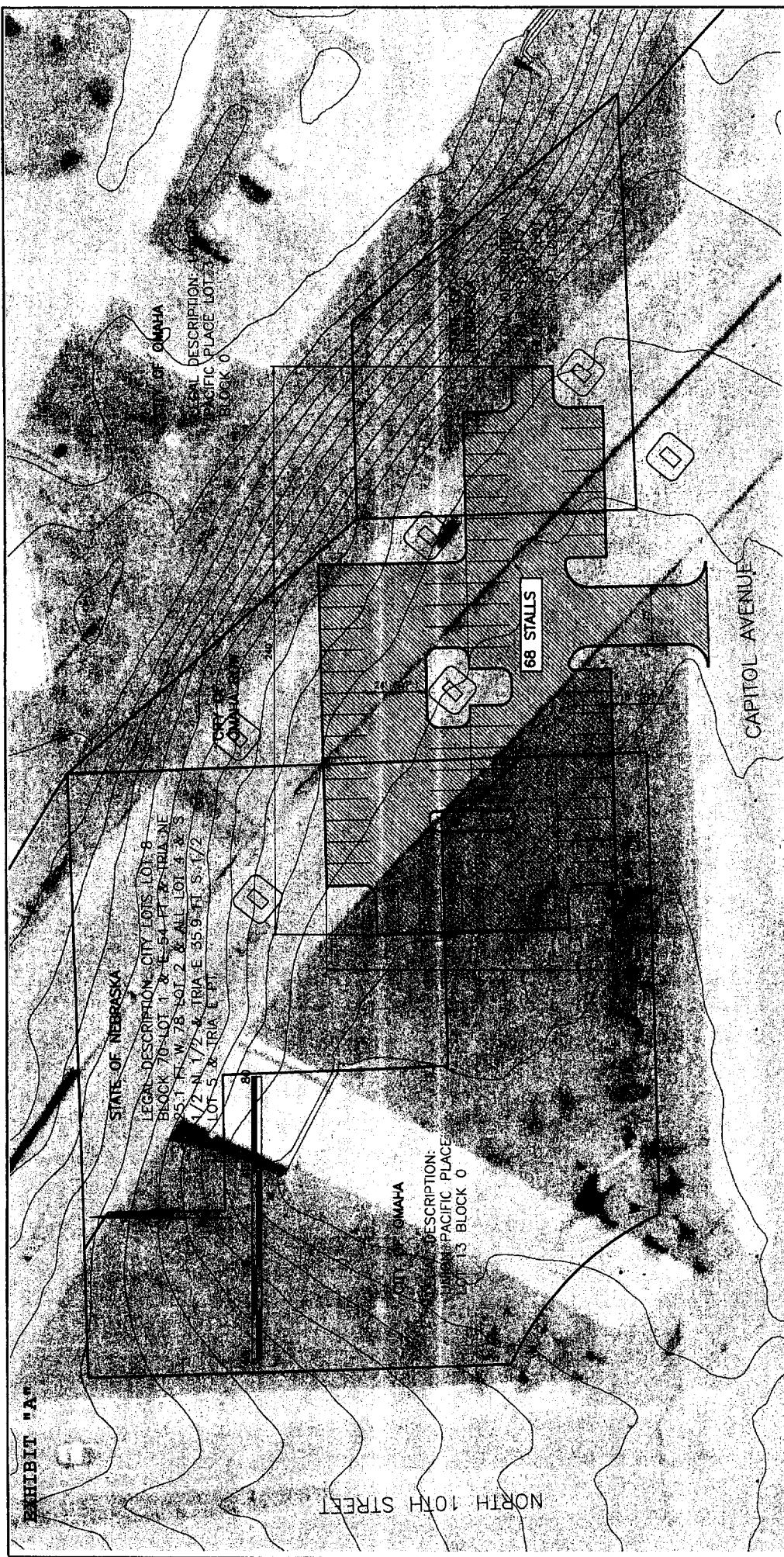
DEPUTY  7/14/16
City Clerk, City of Omaha

CITY OF OMAHA, A Municipal Corporation

By  7/14/16
Mayor, City of Omaha

APPROVED AS TO FORM:

 5/17/16
Assistant City Attorney



NOTES:

1. A Post Construction Stormwater Management Plan Will Be Required For This Parking Lot.



LAMP RYNEARSON & ASSOCIATES
 14710 West Dodge Road, Suite 100
 Omaha, Nebraska 68154-2027
 www.LRA-inc.com

drawn by	designed by	reviewed by	project - task number	date	book and page	revisions
JTF	JTF	MPM	011001.01	12/19/2013		

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CAPITOL DISTRICT
 EAST PARKING LOT
 PRELIMINARY DESIGN

9/13

9/13
5

ORDINANCE NO. 40811

AN ORDINANCE to approve a lease agreement between the City of Omaha and Capitol District Parking, L.L.C., for the lease of certain premises adjacent to Interstate 480 and located between 8th and 10th Streets, north of Capitol Avenue, beginning June 1, 2017, or earlier upon proper notice by Capitol District Parking, in the amount of approximately \$5,280.00 per year; and to provide an effective date.

p:\law - city council documents\2016\20036vjd

24 ✓

PRESENTED TO COUNCIL

1st Reading JUN 21 2016 - Hearing
6/28/16

Hearing JUN 28 2016
2/2/16 pursuant to City Council
Rule 4

Final Reading JUL 12 2016
Passed 7-0

BUSTER BROWN
City Clerk

PUBLICATIONS

PUBLICATION OF HEARING
Date 6-24-16

PUBLICATION OF ORDINANCE
Date 7-20-16