

★ Roll Call Number

Agenda Item Number

57A ✓

Date March 6, 2017

**RESOLUTION APPROVING SECOND AMENDMENT TO MEMORANDUM OF UNDERSTANDING WITH THE ROOSEVELT CULTURAL DISTRICT FOR THE IMPLEMENTATION OF THE 42<sup>ND</sup> STREET STREETScape PROJECT**

**WHEREAS**, on August 25, 2014, by Roll Call No. 14-1329, the City Council approved a Memorandum of Understanding with the Roosevelt Cultural District (RCD) for the implementation of the 42<sup>nd</sup> Street Streetscape Project; and

**WHEREAS**, the RCD is the organization that functions as the business association for the 42<sup>nd</sup> Street corridor and represents the common interest of the businesses and property owners within the District; and

**WHEREAS**, said Memorandum of Understanding (MOU) identified the roles and responsibilities of each entity and established expectations for public and private fundraising so that the Project may be successfully implemented in accordance with the City's General Guidelines for City-Assisted Streetscape Projects, which MOU includes, among other terms, the requirement that the RCD will lead private fundraising efforts to secure \$700,000 for final design and construction of the Project, and the acknowledgement that any City funding, design and engineering contracts, construction contracts, and a self-supported municipal improvement district (SSMID) ordinance needed for the Project will be submitted to City Council for approval separately from the MOU; and

**WHEREAS**, on December 5, 2016, by Roll Call No. 16-2072, the City Council approved a First Amendment to the MOU to provide for the extension of the funding deadline from November 1, 2016 to February 3, 2017 and to update other dates included in the anticipated project timeline, but which still provided that RCD needed to make final payment of \$505,900 for the construction phase of the Project in advance of the anticipated project bid letting; and

**WHEREAS**, RCD has paid \$295,000 toward the construction cost pursuant to the MOU, as amended, and owes approximately \$210,000, and has requested a further extension to the funding deadline from February 3, 2017 to August 1, 2017 pending receipt of grant funding and/or other private funding; and

**WHEREAS**, RCD has further requested, and the City Manager supports, that the City directly fund the amount of the project cost that exceeds the initial estimated cost and that the City further directly fund the remaining amount owed by the RCD in the event that RCD does not receive its grant funding or other private funding, with an anticipated additional cost to the City of approximately \$512,000.00 to \$715,000.00; and

**WHEREAS**, RCD and City staff are negotiating the Second Amendment to the MOU, in substantially the form on file in the office of the City Clerk, to provide for the extension of the fundraising deadline from February 3, 2017 to August 1, 2017, and to set forth the City's additional funding obligation as stated above.

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

57A

Date March 6, 2017

1. The Second Amendment to the Memorandum of Understanding (MOU) between the City of Des Moines and the Roosevelt Cultural District for the Implementation of the 42<sup>nd</sup> Street Streetscape Project, in substantially the form on file in the office of the City Clerk, is hereby approved subject to final negotiation by City staff and approval as to form by the City's Legal Department.
2. Following approval as to form by the Legal Department, the City Manager is hereby authorized and directed to execute the Second Amendment to the MOU on behalf of the City of Des Moines, and the City Manager and his designee(s) are authorized and directed to administer the MOU as amended.

MOVED BY \_\_\_\_\_ TO ADOPT.

APPROVED AS TO FORM:

Glenna K. Frank  
 Glenna K. Frank, Assistant City Attorney

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE				
COLEMAN				
GATTO				
GRAY				
HENSLEY				
MOORE				
WESTERGAARD				
TOTAL				

MOTION CARRIED

APPROVED

\_\_\_\_\_  
 Mayor

**CERTIFICATE**

I, DIANE RAUH, 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.

\_\_\_\_\_  
 City Clerk

**SECOND AMENDMENT TO  
MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY OF DES MOINES  
AND THE ROOSEVELT CULTURAL DISTRICT FOR THE IMPLEMENTATION OF  
THE 42<sup>ND</sup> STREET STREETScape PROJECT**

WHEREAS, on August 25, 2014, by Roll Call No. 14-1329, the City Council of the City of Des Moines (“City”) approved a Memorandum of Understanding between the City of Des Moines and the Roosevelt Cultural District (“RCD”) for the Implementation of the 42<sup>nd</sup> Street Streetscape Project (“MOU”), which MOU set forth an anticipated project timeline including deadlines for submittal by RCD of private funds due for the construction phase of the Project; and

WHEREAS, on December 5, 2016, by Roll Call No. 16-2072, the City Council approved a First Amendment to the MOU to revise the deadlines for submittal by RCD of private funds and the timeline of actions to be taken following such submittal; and

WHEREAS, the RCD has requested and the City has agreed to a further extension of the funding deadline and other revisions to the anticipated project timeline, and for City funding assistance with the project funding costs; and

WHEREAS, the City and the RCD have negotiated the following amendment to said MOU.

NOW, THEREFORE, it is mutually agreed by the City and RCD as follows:

1. The MOU is hereby further amended in accordance with the terms set forth in this Second Amendment.
2. Section V, “Anticipated Project Timeline”, is hereby deleted in its entirety and replaced by the following:

**V. Anticipated Project Timeline**

August 25, 2014	Memorandum of Understanding (MOU) approved and signed
September 22, 2014	Private funds due for final design phase
September 22, 2014	Consultant design agreement approved
October 2014 – July 2015	Design
August 2015	Public meeting
September 2015 – March 2017	Right-of-way acquisition
June 2016 – March 2017	Utility Relocation
September 2016	Submittal of maintenance plan by RCD; SSMID approval by City Council
November 2016	Final plan submittal to IDOT
February 2017	IDOT letting
March 2017	Contract award
August 1, 2017	Private funds due for construction phase
April – November 2017	Construction

3. Section IV, "Project Costs & Funding Expectations", is hereby revised to delete the table in its entirety and replace it with the following table:

Project Costs	Final Design Phase*	Construction Phase**	TOTAL
Public Contribution (City)	\$0	Not to exceed \$750,000	Not to exceed \$750,000
Private Contribution (RCD)	\$194,100	Not to exceed \$505,900	Not to exceed \$700,000

\* includes design & engineering costs

\*\*excludes committed City stormwater utility funds (\$457,164.45), property acquisition and staff costs to be incurred by the City, and all non-City funding sources other than RCD funds

4. Section IV, "Project Costs & Funding Expectations", is hereby further revised to add the following paragraph at the end of said Section:

RCD is expected to provide a private contribution toward the Construction Phase costs of \$505,900, for a total private contribution toward the project of \$700,000, as shown in the table. Notwithstanding the foregoing, the parties agree that in the event that RCD does not raise the total amount of \$505,900 for the Construction Phase, the City will pay toward the project any and all of said amount that RCD does not raise.

5. The City and RCD agree that the private funds due for construction phase shall be paid following invoicing by City to RCD for the total amount due, but no later than August 1, 2017.

6. All other terms, provisions, and conditions originally set forth in the MOU remain effective and binding upon City and RCD.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the \_\_\_\_ day of \_\_\_\_\_, 2017.

"RCD"  
Roosevelt Cultural District

"CITY"  
CITY OF DES MOINES, IOWA

By: Susan Noland  
Its: President

Scott Sanders, City Manager

FORM APPROVED:

  
Glenna K. Frank, Assistant City Attorney