



Roll Call Number

Agenda Item Number

39

Date June 26, 2023

RESOLUTION APPROVING UNIFORM AMENDMENT TO SKYWALK AGREEMENTS

WHEREAS, the City and various owners of portions of the skywalk system are parties to various skywalk agreements, many of which are set to expire in the near future; and

WHEREAS, the City is willing to amend said skywalk agreements to extend the duration of the skywalk agreements to July 1, 2063, to require membership of the Skywalk Association, to change the regular hours of operation to 6:00 a.m. to 10:00 p.m., and to further address the discretionary hours of operations of the skywalk; and

WHEREAS, City staff have prepared a uniform skywalk amendment to address all these items; and

WHEREAS, said amendment will be made available to all owners of any portion of the skywalk system, and, upon signature of such owners, said amendment will be brought back to the City Council for approval.

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

1. The Uniform Skywalk Amendment is hereby approved.
2. City staff are hereby directed to make available the amendment to all owners of any portion of the skywalk system for future City Council approval.

MOVED BY _____ TO ADOPT. SECOND BY _____.

APPROVED AS TO FORM:

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

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
BOESEN				
COWNIE				
GATTO				
SHEUMAKER				
MANDELBAUM				
VOSS				
WESTERGAARD				
TOTAL				

MOTION CARRIED

APPROVED

Mayor

CERTIFICATE

I, LAURA BAUMGARTNER, 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

Prepared by: Thomas G. Fisher Jr., Deputy City Attorney, City Hall - Legal Department, 400 Robert D. Ray Drive, Des Moines, IA 50309 Phone: 515/283-4130
 Return Address: City Clerk – City Hall, 400 Robert D. Ray Drive, Des Moines, IA 50309
 Taxpayer: No change
 Grantor/Grantee: City of Des Moines, Iowa, and 701 Walnut Partnership, LLC

**UNIFORM AMENDMENT TO THE CITY OF DES MOINES
 SKYWALK AGREEMENT
 REGARDING DURATION AND HOURS OF OPERATION**

This Uniform Amendment to the Des Moines Skywalk Agreement Regarding Duration and Hours of Operation was approved by the Des Moines City Council in Roll Call No. 23-_____ on _____, 2023 (the "Uniform Amendment") and is made and entered into as of the date of execution by the City, by and between the City of Des Moines, Iowa (the "City") and _____, an Iowa limited liability company (hereafter "Owner").

WHEREAS, Owner owns the following described property:

Insert Legal Description

(the "Property").

WHEREAS, the Property is subject to a skywalk agreement titled _____ dated _____, filed of record with the Polk County, Iowa Recorder in Book _____ at Page _____, which has been amended as follows: (collectively the "Skywalk Agreement.")

WHEREAS, the purpose of this Agreement is to extend the duration of the Skywalk Agreement, require membership of the Skywalk Association, and address the hours of operations of the skywalk.

NOW THEREFORE, in consideration of the premises and the mutual obligations of the parties hereto, each of them does hereby covenant and agree as follows:

1. Uniform Availability. In recognition of the City’s intent to extend the skywalk system throughout the skywalk district, the terms of this Uniform Amendment shall be made available to all parties of skywalk agreements with the City.
2. Conditions Precedent.

- a. Owner hereby warrants the following interested parties have a property interest in Owner's portion of the skywalk system:
 - i. _____
 - ii. _____
 - iii. _____
 - b. Consent to amend. Owner hereby warrants that the list set forth in subsection a herein is accurate and complete. Owner has secured the consent necessary from all interested parties identified therein for this Uniform Amendment,
 - c. Skywalk Association Membership. Owner hereby acknowledges and agrees Owner is a member of the Skywalk Association and is in good standing. Owner agrees to maintain such membership in good standing throughout the duration of the Skywalk Agreement and any extension thereof. In the event of a transfer or assignment of the Owner's interest in the skywalk system, Owner's successor and assigns shall be required to maintain a membership of the Skywalk Association in good standing.
 - d. Extension of Skywalk Agreements. Owner hereby acknowledges and agrees the Skywalk Agreement is hereby extended to July 1, 2063. The Owner acknowledges and agrees to such extension regardless of any prior expiration of the Skywalk Agreement and any notice required therein for such an extension.
3. Hours of Operation.
- a. Regular Hours—Owner hereby agrees the regular hours of operation for the skywalk system, including all of Owner's skywalk corridors, nodal points within public easements, skywalk bridges and vertical access facilities shall be 6:00 a.m. to 10:00 p.m. Owner agrees to promptly comply with said regular hours of operations. Owner hereby acknowledges and agrees closure of any portion of the skywalk system shall comply with all fire code and building code requirements of the City of Des Moines and all approvals required thereby. Any permanent change to these hours of operation shall require a further uniform amendment, as approved by the Skywalk Committee.
 - b. Discretionary Closures—In addition to the regular hours of operation set forth above, Owner hereby further agrees and delegates all authority to the Skywalk Association to request discretionary closures of the skywalk system, including all of Owner's skywalk corridors, nodal points within public easements, skywalk bridges and vertical access facilities, as the Skywalk Association sees fit in its sole discretion, which requests shall be considered by the Skywalk Committee for approval. Owner hereby acknowledges and agrees all discretionary closures of any portion of the skywalk system shall comply with all fire code and building code requirements of the City of Des Moines and all approvals required thereby.
4. Except as amended herein, all other terms and conditions of the Skywalk Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have caused this Uniform Amendment to be duly executed, attested and sealed in their respective names, in multiple counterparts, each of which shall constitute one and this same instrument.

[SIGNATURE PAGES FOLLOWING]

CITY OF DES MOINES, IOWA

ATTEST:

By: _____
Laura Baumgartner, City Clerk

By: _____
T.M. Franklin Cownie, Mayor

APPROVED AS TO FORM:

Thomas G. Fisher Jr.
Deputy City Attorney

STATE OF IOWA)
) ss:
COUNTY OF POLK)

On this ___ day of _____, 202___, before me, the undersigned, a Notary Public in the State of Iowa, personally appeared T.M. FRANKLIN COWNIE and LAURA BAUMGARTNER, to me personally known, and who, being by me duly sworn did state that they are the Mayor and City Clerk, respectively, of City of Des Moines, Iowa, a municipal corporation; that the seal affixed to the foregoing instrument is the corporate seal of the corporation; that the instrument was signed on behalf of the City of Des Moines, Iowa, by authority of its City Council, as contained in the Resolution adopted by the City Council under Roll Call No. ___ - _____ of the City Council on the ___ day of _____, 202___, and that T.M. FRANKLIN COWNIE and LAURA BAUMGARTNER acknowledged the execution of the instrument to be the voluntary act and deed of City of Des Moines, Iowa, by it and by them voluntarily executed.

Notary Public in the State of Iowa
My commission expires: _____

OWNER:

By: _____

STATE OF IOWA)
) ss:
COUNTY OF POLK)

This instrument was acknowledged before me on _____, 20____, by
_____, as _____ of _____, on behalf
of whom the instrument was executed.

Notary Public in and for the State of Iowa
My Commission Expires: _____