

Date June 27, 2011

CONTINUED HEARING FOR CONVEYANCE OF A LICENSE AGREEMENT ON CITY-OWNED PROPERTY AT 1012 OAK PARK AVENUE (McHENRY PARK) TO QWEST CORPORATION FOR \$200

WHEREAS, Qwest Corporation owns and operates fiber optic equipment and lines within the street right-of-way of Oak Park Avenue which lines must be relocated, and thus Qwest has requested a license agreement to use City-owned property at 1012 Oak Park Avenue (McHenry Park) for the relocation and for the placement of related utility equipment; and

WHEREAS, the City's Real Estate Division has negotiated a License Agreement, on file in the office of the City Clerk, which Agreement has been approved and executed by Qwest Corporation as licensee and establishes a term commencing upon execution by City of the License Agreement through April 30, 2026, with a one-time lump sum payment of \$200, which amount reflects fair market value of the licensed area and term as currently estimated by the City's Real Estate Division, and which Agreement requires the licensee to remove all improvements to the licensed area upon termination thereof and allows for termination for cause immediately upon notice and without cause upon one-hundred twenty (120) days notice; and

WHEREAS, the City will not be inconvenienced by approval of the negotiated License Agreement with Qwest Corporation; and

WHEREAS, on April 25, 2011, by Roll Call No. 11-0676, it was duly resolved by the City Council that approval of the proposed License Agreement be set down for hearing on May 9, 2011, at 5:00 p.m., in the City Council Chambers; and

WHEREAS, due notice of the proposal to enter into the License Agreement was given as provided by law, setting forth the time and place for hearing on the proposal; and

WHEREAS, on May 9, 2011, by Roll Call 11-0828, Council opened the public hearing, received comments and continued the public hearing to May 23, 2011, at 5:00 p.m., in the Council Chamber, upon request by Qwest corporation and City staff; and

WHEREAS, on May 23, 2011, by Roll Call No. 11-0932, the hearing on said proposal was further continued to June 13, 2011; and

WHEREAS, on June 13, 2011, by Roll Call No. 11-1037, the hearing on said proposal was further continued to June 27, 2011; and

WHEREAS, in accordance with City Council direction, those interested in this proposed conveyance, both for and against, have been given an opportunity to be heard and have presented their views to the City Council.

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

1. Upon due consideration of the facts and statements of interested persons, the objections to the proposed License Agreement with Qwest Corporation, as described below, are hereby overruled and the hearing is closed.

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2. The public would not be inconvenienced by reason of a License Agreement between the City and Qwest Corporation, as on file in the office of the City Clerk, across City-owned property locally known as 1012 Oak Park Avenue, more specifically described below, for \$200 and in accordance with the terms set forth above, and said Agreement is hereby approved subject to final review of Qwest Corporation's insurance documentation by the City's Risk Manager and Legal Department:

A PARCEL OF LAND BEING THE WEST 17 FEET OF THE EAST 42.37 FEET OF THE NORTH 14 FEET OF LOT 10, OAK PARK SUBDIVISION, AS RECORDED IN PLAT BOOK D, PAGE 88 IN THE RECORDS OF POLK COUNTY IOWA, ALL NOW INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA

3. Following approval by the City's Risk Manager and Legal Department of Qwest Corporation's insurance documentation, the Mayor is authorized and directed to sign the License Agreement for the conveyance identified above, and the City Clerk is authorized and directed to attest to the Mayor's signature.

4. The City Clerk is authorized and directed to forward the original of the License Agreement, together with a certified copy of this resolution and of the affidavit of publication of the notice of this hearing to the Real Estate Division of the Engineering Department for the purpose of causing the documents to be recorded.

5. The Real Estate Division Manager is authorized and directed to forward the original of the License Agreement, together with a certified copy of this resolution and of the affidavit of publication of the notice of this hearing, to the Polk County Recorder's Office for the purpose of causing these documents to be recorded.

6. Upon receipt of the recorded documents back from the Polk County Recorder, the Real Estate Division Manager shall mail the original of the License Agreement and copies of the other documents to the grantee.

7. The proceeds from the sale of this License Agreement shall be deposited into the following account: Property Maintenance Endowment Fund, SP767, ENG980500.

Moved by Mahaffey to adopt.

(Council Communication No. 11-421)

APPROVED AS TO FORM:

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

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE	✓			
COLEMAN	✓			
GRIESS	✓			
HENSLEY	✓			
MAHAFFEY	✓			
MEYER	✓			
MOORE	✓			
TOTAL	7			

MOTION CARRIED

APPROVED

T. M. Franklin 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.

Diane Rauh City Clerk