



Roll Call Number

16-1358

Agenda Item Number

49

Date August 8, 2016

**HOLD HEARING FOR CONSIDERATION OF LICENSE AGREEMENT WITH IOWA COMMUNICATION NETWORK ON CITY PROPERTY LEASED BY THE BLANK PARK ZOO FOUNDATION, LOCATED at 7401 SW 9<sup>TH</sup> STREET**

**WHEREAS**, the City of Des Moines, Iowa, is the owner of the real property located at 7401 SW 9<sup>th</sup> Street, in Des Moines, Iowa, which property is currently being leased to the Blank Park Zoo Foundation; and

**WHEREAS**, Iowa Communication Network, an agency of the State of Iowa, has requested a license agreement under, across and below a portion of City-owned property located at 7401 SW 9<sup>th</sup> Street, which property is currently being leased to the Blank Park Zoo Foundation, in order to construct and maintain a telecommunication line and related utility equipment (herein "Licensed Premises"), as legally described below; and

**WHEREAS**, the City's Real Estate Division has negotiated a License Agreement (herein "Agreement") for the use of the Licensed Premises with Iowa Communication Network as licensee, which Agreement will include, among other terms, a license term commencing upon execution by City of the License Agreement and terminating on July 31, 2031, with Iowa Communication Network having the unilateral right at its option to renew this License Agreement for one additional fifteen (15) year term running from August 1, 2031 until July 31, 2046, and with both terms subject to termination for default and termination by either party, with or without cause, upon one-hundred eighty (180) days written notice; and

**WHEREAS**, pursuant to Iowa Code §364.7(3) Iowa Communication Network shall pay no consideration for said Agreement; and

**WHEREAS**, Blank Park Zoo Foundation has provided its consent to the Agreement, and the City will not be inconvenienced by approval of the proposed Agreement with Iowa Communication Network; and

**WHEREAS**, on July 25, 2016, by Roll Call No. 16-1207, it was duly resolved by the City Council that consideration of the proposed Agreement be set down for hearing on August 8, 2016, at 5:00 p.m., in the City Council Chambers; and

**WHEREAS**, in accordance with City Council direction, those interested in the proposed Agreement, 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:



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

2. The public would not be inconvenienced by reason of a License Agreement between the City of Des Moines, Iowa, and Iowa Communication Network, as on file in the office of the City Clerk, across a portion of City-owned property located at 7401 SW 9<sup>th</sup> Street, legally described as follows, for the purpose of constructing and maintaining telecommunication lines and related utility equipment, for an initial fifteen-year term (through July 31, 2031) with option to renew for an additional fifteen-year term (August 1, 2031 until July 31, 2046), and for no consideration pursuant to Iowa Code §364.7(3), and said Agreement is hereby approved:

A 10-FOOT WIDE FIBER OPTIC LICENSE AREA ACROSS A PART OF THE SOUTHWEST QUARTER (SW 1/4) OF THE NORTHEAST QUARTER (NE 1/4) OF SECTION 33, TOWNSHIP 78 NORTH, RANGE 24 WEST OF THE 5<sup>TH</sup> P.M., ALL NOW INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA, GENERALLY DEPICTED ON EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF, LICENSE AREA LOCATION TO BE 5 FEET ON EITHER SIDE OF THE CENTERLINE OF THE FIBER OPTIC LINE AS CONSTRUCTED.

3. The Mayor is authorized and directed to sign the License Agreement 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 the documents to be recorded.

6. There are no proceeds associated with this transaction.



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Moved by Gatto to adopt.

APPROVED AS TO FORM:

Lisa A. Wieland, Assistant City Attorney

RW

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE	✓			
COLEMAN	✓			
GATTO	✓			
GRAY	✓			
HENSLEY	✓			
MOORE	✓			
WESTERGAARD	✓			
TOTAL	7			

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

7. M. Franklin Council Mayor