

★ Roll Call Number

18-0933

Agenda Item Number

71

Date May 21, 2018

**HOLD HEARING FOR CONSIDERATION OF LICENSE AGREEMENT WITH DES MOINES PERFORMING ARTS TO ALLOW FOR VEHICLE IMPACT PROTECTION DEVICES WITHIN CITY STREET RIGHT-OF-WAY FOR \$6,000.00**

**WHEREAS**, Des Moines Performing Arts leases real property located at 221 Walnut Street, Des Moines, Iowa and operates Des Moines Civic Center thereon; and

**WHEREAS**, Des Moines Performing Arts has requested a license agreement under, over and across portions of Third Street and Locust Street to install vehicle impact protection devices within City street right-of-way (herein "Licensed Premises"), as legally described below; and

**WHEREAS**, the vehicle impact protection devices specifically proposed by Des Moines Performing Art are bollards; and

**WHEREAS**, the City's Real Estate Division has negotiated a License Agreement (herein "Agreement") for the use of the Licensed Premises with Des Moines Performing Arts as licensee, which agreement will include, among other terms, a license term commencing from the execution of this License Agreement by the City until October 24, 2075, which coincides with the date of expiration of Des Moines Performing Arts' existing lease with the City for the adjoining property; and

**WHEREAS**, pursuant to the negotiated Agreement, Des Moines Performing Arts shall pay \$6,000.00 as consideration for the Agreement, which amount reflects the fair market value of the Licensed Premises, as determined by the City's Real Estate Division; and

**WHEREAS**, said Agreement may be revoked at any time during the license term upon the conditions of 102-614 of the Municipal Code of the City of Des Moines, Iowa and all amendments thereto; and

**WHEREAS**, said Agreement shall be subject to all of the requirements of Chapter 102, Article VIII of the Municipal Code of the City of Des Moines, Iowa and all amendments thereto; and

**WHEREAS**, on May 7, 2018, by Roll Call No. 18-0792, it was duly resolved by the City Council of the City of Des Moines, Iowa, that the proposed License Agreement be set for a hearing on May 21, 2018, at 5:00 p.m. in the City Council Chambers, 400 Robert D. Ray Drive, Des Moines, Iowa; and

**WHEREAS**, due notice of said Agreement with Des Moines Performing Arts was given to all necessary parties as provided by law, setting forth the time and place for hearing on said Agreement; and

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**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 with respect thereto 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, as follows:

1. Upon due consideration of the facts and statements of interested persons, any and all objections to the proposed Agreement with Des Moines Performing Arts, as described herein, are hereby overruled and the hearing is closed.
2. The public would not be inconvenienced by reason of the Agreement with Des Moines Performing Arts for installation of vehicle impact protection devices within the areas legally described as follows, and said Agreement is hereby approved:

Area A

An area in the 3<sup>rd</sup> Street Right of Way lying in a part of Block 32, Fort Des Moines, an official plat and lying west of said Block 32, and more particularly described below:

Commencing at the Southwest Corner of said Block 32; Thence Easterly along the South line of said Block 32, a distance of 9 feet and 0 inches; Thence Northerly along a line parallel with the West line of said Block 32, a distance of 9 feet and 2 inches; Thence Westerly along a line that is parallel with the South line of said Block 32, a distance of 2 feet and 8 inches to the point of Beginning; Thence continuing Westerly along a line that is parallel with said South Block line, a distance of 7 feet and 9 inches; Thence Northerly along a line that is parallel with the West line of said Block 32, a distance of 270 feet and 8 inches; Thence Easterly along a line that is parallel with the North line of said Block 32, a distance of 2 feet and 7 inches; Thence Southerly along a line that is parallel with said West Block line, a distance of 267 feet and 8 inches; Thence Easterly along a line that is parallel with said South Block line, a distance of 5 feet and 2 inches; Thence Southerly along a line that is parallel with said West Block line, a distance of 3 feet and 0 inches to the point of Beginning.

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Area B

An area in the Locust Street Right of Way and 3<sup>rd</sup> Street Right of Way lying in a part of Block 32 and lying North of and adjoining Block 32, Fort Des Moines, an official plat, and more particularly described below:

Commencing at the Northwest Corner of said Block 32; Thence Easterly along the North line of said Block 32, a distance of 9 feet and 0 inches to the point of beginning; Thence Southerly along a line that is parallel with the West line of said Block 32, a distance of 1 feet and 3-1/2 inches; Thence Westerly along a line that is parallel with the South Right of Way line of Locust Street, a distance of 8 feet and 8 inches; Thence Northerly along a line that is parallel with said West Block line, a distance of 2 feet and 7 inches; Thence Easterly along a line that is parallel with said South Right of Way line, a distance of 30 feet and 10 inches; Thence Southerly along a line that is perpendicular with said South Right of Way line to said South Right of Way line; Thence Westerly along said South Right of Way line to the point of Beginning.

Area C

An area in the Locust Street Right of Way lying north of and adjoining Block 32, Fort Des Moines, an official plat, and more particularly described below:

Commencing at the Northwest Corner of said Block 32; Thence Easterly along the North line of said Block 32, a distance of 37 feet and 2 inches to the point of Beginning; Thence Northerly along a line that is perpendicular to the South Right of Way line of Locust Street, a distance of 3 feet and 0 inches; Thence Easterly along a line that is parallel with said South Right of Way line, a distance of 28 feet and 9 inches; Thence Southerly along a line that is perpendicular to said South Right of Way line to said South Right of Way line; Thence Westerly along said South Right of Way line to the point of Beginning.

3. The proposed Agreement allowing for placement of vehicle impact protection devices in the form of bollards within the right-of-way, as legally described above to Des Moines Performing Arts for \$6,000.00, subject to any and all easements, restrictions and covenants of record and further subject to all requirements of Chapter 102, Article VIII of the Municipal Code of the City of Des Moines, Iowa and all amendments thereto, is hereby approved.
4. The Mayor is authorized and directed to sign the License Agreement as identified above, subject to final terms and conditions being approved by the Legal Department, and the City Clerk is authorized and directed to attest to the Mayor's signature.

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5. Upon proof of payment of the consideration, plus \$113.00 for publication and recording costs, 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 said documents to be recorded.
6. 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.
7. 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 a copy of the other documents to the Licensee.
8. Non-project related conveyance proceeds are used to support general operating budget expenses: Org – EG064090.

**(Council Communication No. 18-269)**

Moved by Mandelbaum to adopt.

APPROVED AS TO FORM:

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

psv

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE	✓			
BOESEN	✓			
COLEMAN	✓			
GATTO	✓			
GRAY	✓			
MANDELBAUM	✓			
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.

T. M. Franklin  
 Mayor

Diane Rauh  
 City Clerk