



Date May 6, 2019

APPROVING ESCROW AGREEMENT FOR PRIVATE CONTRIBUTION TO COSTS OF STREET LIGHTING ON 19TH STREET ADJOINING 901 19TH STREET

WHEREAS, at a public hearing held on November 1, 2018, the City Plan and Zoning Commission members voted in support of a motion to recommend **APPROVAL** of a request from Kenney Linhart Ministries, Inc., a/k/a KLM International (owner), represented by Pastor Kenney Linhart (officer), for a Site Plan “KLM International” under design guidelines in NPC Districts to allow improvement of the existing parking lot to the north of the existing church building on property located at 901 19th Street (“Property”), subject to conditions set forth in the staff recommendation; and

WHEREAS, the approved Site Plan for the Property contains the following requirement:

- 8. Installation of black utility/street light poles, with “Autobahn LED” light fixtures as currently required by the Sherman Hill Self-Supported Municipal Improvement District (SSMID) and Downtown Overlay District shall be deferred indefinitely, subject to the following terms:
 - a) Approval of an agreement between the City Council and the developer which specifies that the developer shall deposit funds with the City of Des Moines that are equivalent to the City approved estimated cost to install black utility/street light poles, with “Autobahn LED” light fixtures adjacent to the subject property, but not to exceed a total cost of \$18,000.00 dollars.
 - b) The City will hold and then combine funds contributed by the developer with Sherman Hill SSMID funds to install yet to be determined, unified and district specific street light fixtures or to install the black utility/street light poles with “Autobahn LED” light fixtures adjacent to the subject property on a later date; and

WHEREAS, City staff have negotiated an Escrow Agreement with Kenney Linhart Ministries, Inc. a/k/a KLM International, whereby KLM International has agreed to deposit the sum of \$18,000.00 with the City in payment of the required cost share for the street lighting and related improvements as set forth in the approved Site Plan.

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

- 1. The proposed Escrow Agreement with Kenney Linhart Ministries, Inc. a/k/a KLM International is hereby approved, and the Mayor and City Clerk are hereby authorized and directed to execute the Escrow Agreement on behalf of the City.



Roll Call Number

19-0717

Agenda Item Number

25

Date May 6, 2019

- 2. The Engineering Department and Finance Department are hereby authorized and directed to administer the Escrow Agreement and to use and disburse the escrowed funds as required by the Escrow Agreement.

MOVED by Gatto to adopt.

FORM APPROVED:

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

(10-2019-7.38)

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.

J. M. Franklin Cownie Mayor

Diane Rauh City Clerk

19-0717

ESCROW AGREEMENT

This Escrow Agreement (this "Agreement") is made on or as of the 19 day of April, 2019, by and between the **City of Des Moines, Iowa**, a municipal corporation (the "City") and **Kenney Linhart Ministries, Inc. a/k/a KLM International**, an Oklahoma non-profit corporation (the "Owner" or "developer").

WHEREAS, the Owner owns the real estate at 901 19th Street, Des Moines, Iowa (the "Property"); and

WHEREAS, on November 1, 2018, on application by the Owner, the City's Plan and Zoning Commission approved a Site Plan "KLM International" under design guidelines in NPC Districts to allow improvement of the existing parking lot to the north of the existing church building on the Property; and

WHEREAS, the approved Site Plan for the Property contains the following requirement:

8. Installation of black utility/street light poles, with "Autobahn LED" light fixtures as currently required by the Sherman Hill Self-Supported Municipal Improvement District (SSMID) and Downtown Overlay District shall be deferred indefinitely, subject to the following terms:
 - a) Approval of an agreement between the City Council and the developer which specifies that the developer shall deposit funds with the City of Des Moines that are equivalent to the City approved estimated cost to install black utility/street light poles, with "Autobahn LED" light fixtures adjacent to the subject property, but not to exceed a total cost of \$18,000.00 dollars.
 - b) The City will hold and then combine funds contributed by the developer with Sherman Hill SSMID funds to install yet to be determined, unified and district specific street light fixtures or to install the black utility/street light poles with "Autobahn LED" light fixtures adjacent to the subject property on a later date; and

WHEREAS, the purpose of this Agreement is to memorialize the agreement between City and Owner for the installation of street lighting as described above and required by the approved Site Plan.

NOW THEREFORE, the City and Owner hereby agree as follows:

1. Deposit of Escrowed Funds. No later than October 31, 2019, and prior to the issuance by City of a permanent Certificate of Occupancy for the occupancy of the building on the Property, Owner shall deposit the sum of Eighteen Thousand U.S. Dollars (\$18,000.⁰⁰) (the "Escrowed Funds") with City, to be held by City in trust for the benefit of Owner and City under the terms of this Agreement.

2. Construction of Public Street Lighting. City shall proceed with all necessary steps to design and install the City-approved, unified and district specific street light fixtures or to install black utility/street light poles with "Autobahn LED" light fixtures, as determined appropriate by the City Engineer, and related work and improvements (all collectively "improvements"), within City right-of-way adjacent to the Property as a public improvement.

3. Application of Escrowed Funds. City may draw on the Escrowed Funds for payment of the construction of improvements as identified above at the time of such construction, either as an advance payment or as a reimbursement for City payment of construction costs. If the City's cost for construction of the improvements described above is less than the amount deposited by Owner pursuant to this Agreement (\$18,000.00), then the remaining balance of the Escrowed Funds shall be promptly refunded to Owner.

4. Deadline for Release of Funds. If the City has not completed the construction of improvements as described above within 10 years of the date of this Agreement, then the Escrowed Funds shall be returned to Owner.

5. Investment of Escrowed Funds. City, at its sole discretion, may comingle the Escrowed Funds for the purpose of placing the Escrowed Funds on deposit with a financial institution, including but not limited to comingling of the Escrowed Funds with Sherman Hill Self-Supported Municipal Improvement District (SSMID) funds. Any interest earned by the Escrowed Funds shall be retained by City.

6. Force Majeure. In the event the City is delayed in the timely performance of its obligation to complete the design, bidding and construction of the improvements as described above due to unforeseeable causes beyond its control and without its fault or negligence, the time allowed for performance of the obligation shall be extended for the period of such delay.

IN WITNESS WHEREOF, the City and Owner have caused this Agreement to be duly executed on or as of the day first above written.

"OWNER"

Kenney Linhart Ministries, Inc.
a/k/a KLM International
an Oklahoma non-profit corporation

By: 

Its: President

4/19/19 KL


"CITY"

City of Des Moines, Iowa,
a municipal corporation

By: 

T.M. Franklin Cownie, Mayor

ATTEST:


By: Diane Rauh, City Clerk

Authorized by Roll Call No. 19-0717 passed
May 6, 2019

CITY OF DES MOINES
OFFICE OF CITY CLERK

TO: Michelle Schomer

DATE: May 8, 2019

FROM: City Clerk's Office

**RE: City Council Agenda of
May 6, 2019**

We are transmitting herewith the following from the City Council Agenda of:

ROLL CALL

SUBJECT

**19-0717 Escrow Agreement for Private Contribution to Costs of Street Lighting on
19th Street adjoining 901 19th Street - original.**

Thank you.



Diane Rauh
City Clerk

DR:rb
Attachments

cc: Roll Call
File