

★ Roll Call Number

23-0861

Agenda Item Number

54

Date June 12, 2023

HOLD HEARING FOR CONSIDERATION OF A LICENSE AGREEMENT WITH DOWNTOWN DES MOINES SELF-SUPPORTED MUNICIPAL IMPROVEMENT DISTRICT, D/B/A OPERATION DOWNTOWN, FOR INSTALLATION, MAINTENANCE AND DISPLAY OF ARTWORK WITHIN THE PRINCIPAL RIVERWALK TRAIL UNDERPASS UNDER THE IOWA WOMEN OF ACHIEVEMENT PEDESTRIAN BRIDGE AND AUTHORIZING MAYOR TO EXECUTE AGREEMENT AND ASSOCIATED INTELLECTUAL PROPERTY AGREEMENTS

WHEREAS, the City of Des Moines owns and maintains Principal Riverwalk Trail Underpass Iowa Women of Achievement Pedestrian Bridge (“City Property”) in downtown Des Moines as parkland and right-of-way; and

WHEREAS, Downtown Des Moines Self-Supported Municipal Improvement District, an Iowa nonprofit corporation d/b/a Operation Downtown (“hereinafter Licensee”) desires to enter into a License Agreement with the City of Des Moines to install, maintain and display a new public art mural installation proposed for the Principal Riverwalk trail underpass located on the east bank of the Iowa Women of Achievement Pedestrian Bridge created by artist Ally Frame and titled “We Are One”; and

WHEREAS, the Greater Des Moines Art Foundation (“PAF”) has the responsibility to conduct the affairs and activities of the Public Art Program under an amended Contract approved by the City Council by Roll Call No. 04-1451 on July 12, 2004, which includes the duty to prepare recommendations for the City Council’s consideration for proposed public arts related projects; and

WHEREAS, the PAF has advised the City Council by letter dated April 21, 2023, that the proposed installation of the artwork on the licensed premises is consistent with the standards of the public art program and recommends that the City approve the installation; and

WHEREAS, the City of Des Moines will retain ownership of the artwork, and provide for maintenance of the artwork, including maintenance and repair of the electrical components of the artwork; and

WHEREAS, pursuant to the License and a Non -Exclusive, Limited Copyright License in connection with the display of the artwork; and Agreement, the artist is required to execute a Waiver of Visual Artist Rights Act and a Non-Exclusive, Limited Copyright License in connection with display of the artwork; and

WHEREAS, there is no known current or future public need for the property proposed to be licensed, and the City will not be inconvenienced by the license of said Property; and

WHEREAS, on May 22, 2023 by Roll Call No. 23-0724, it was duly resolved by the City Council of the City of Des Moines, Iowa, that the proposed License Agreement be set down for hearing on June 12, 2023, at 5:00 p.m., in the City Council Chamber, City Hall, 400 Robert D. Ray Drive, Des Moines, Iowa; and

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WHEREAS, due notice of said proposal to enter into a License Agreement with Downtown Des Moines Self-Supported Municipal Improvement District, an Iowa nonprofit corporation d/b/a Operation Downtown as given to all necessary parties as provided by law, setting forth the time and place for hearing on said proposal; 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 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 License Agreement by and between City of Des Moines and Downtown Des Moines Self-Supported Municipal Improvement District, an Iowa nonprofit corporation d/b/a Operation Downtown, of the Principal Riverwalk trail underpass located on the east bank of the Iowa Women of Achievement Pedestrian Bridge, Des Moines, Iowa, as described herein, are hereby overruled and the hearing is closed.
2. There is no public need or benefit for the right-of-way proposed to be licensed, and the public would not be inconvenienced by reason of the City of Des Moines entering into a license agreement with Downtown Des Moines Self-Supported Municipal Improvement District, d/b/a Operation Downtown, to install, maintain and display a new public art mural installation proposed for the Principal Riverwalk trail underpass located on the east bank of the Iowa Women of Achievement Pedestrian Bridge.
3. The Mayor is authorized and directed to sign the License Agreement as identified above, and the City Clerk is authorized and directed to attest to the Mayor's signature.
4. The City Manager is authorized to sign any minor and non-substantial amendments to the License Agreement.
5. 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.
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 licensee.

(Council Communication No. 23-279)

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Moved by Mandelbaum to adopt.
Second by Gatto.

APPROVED AS TO FORM:

/s/ Chas M. Cahill
Chas M. Cahill
Assistant City Attorney

| COUNCIL ACTION | YEAS | NAYS | PASS | ABSENT |
|----------------|------|------|------|--------|
| COWNIE | ✓ | | | |
| BOESEN | ✓ | | | |
| GATTO | ✓ | | | |
| MANDELBAUM | ✓ | | | |
| SHEUMAKER | | | | ✓ |
| VOSS | ✓ | | | |
| WESTERGAARD | ✓ | | | |
| TOTAL | 6 | | | 1 |

MOTION CARRIED

APPROVED

J. M. Franklin Cownie 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.

Laura Baumgartner City Clerk