


## COUNCIL COMMUNICATION

	Number:	<b>21-472</b>	Meeting:	<b>November 1, 2021</b>
	Agenda Item:	<b>33</b>	Roll Call:	<b>21-1667</b>
	Submitted by:	<b>Erin Olson-Douglas, Development Services Department Director</b>		

### AGENDA HEADING:

Resolution approving Community Catalyst Building Remediation Grant Agreement (21-CTBF-031) with the Iowa Economic Development Authority (IEDA), and approving First Amendment to City of Des Moines Neighborhood Commercial Revitalization Program Grant Agreement with Des Moines Film Society, related to the Varsity Theater Redevelopment Project.

### SYNOPSIS:

The Des Moines Film Society (Benjamin Godar, Director, 1207 25<sup>th</sup> Street, Des Moines, IA 50311) has proposed to renovate the Varsity Theater building located at 1207 25<sup>th</sup> Street. The project has received a Neighborhood Commercial Revitalization (NCR) grant in the amount of \$149,808, approved by the City on May 10, 2021. The project has also been approved for a grant from the IEDA's Emergency Theater Community Catalyst Grant program (ETCC) in the amount of \$100,000.

A requirement of the ETCC program is the City being the direct recipient of the funds and the project treated by IEDA as a "City project." For that reason, the City must sign the agreement with IEDA, and the City must amend the existing NCR grant agreement with the Des Moines Film Society to address its obligations as the developer of the project.

### FISCAL IMPACT:

Amount: \$100,000 revenue to be received from the IEDA and a corresponding \$100,000 expense to be granted to the Des Moines Film Society at the completion of the project.

Funding Source: IEDA's Emergency Theater Community Catalyst Grant Program

### ADDITIONAL INFORMATION:

- The subject property is located on the east side of 25<sup>th</sup> Street, north of the University Avenue intersection and west of the Drake University campus. It contains the Varsity Theatre building, which is a 2-story commercial building constructed in 1917.
- On June 22, 2020, the City Council designated the Varsity Theater as a local landmark.
- The project is scheduled to begin in November 2021 and is expected to be completed by May 2022.

- The Des Moines Film Society, an Iowa non-profit corporation, is the property owner and developer.
  - The other funding sources for this project include Bravo Greater Des Moines, Meredith Foundation, Invest DSM, State Historic Tax Credits, and a fundraising effort, which is 50% complete and anticipated to be achieved within one (1) year.
- Pursuant to the ETCC grant agreement between IEDA and the City, the City will be required to, among other terms set forth in said agreement:
  - Review all claims under this program and submit requests for reimbursement on behalf of the Des Moines Film Society, which is the entity undertaking the project.
  - Retain a consultant, if so directed by IEDA.
  - Repay to IEDA up to the full amount of the grant agreement (\$100,000) and related penalties in the event of any claims are disallowed, as determined by IEDA through monitoring, close-out procedures or otherwise.
  - Indemnify the State of Iowa from all costs, including attorney's fees, directly or indirectly related to the Agreement including any breach thereof; any negligent, intentional, or wrongful act or omission by the City or by Des Moines Film Society; performance or attempted performance by the City or by Des Moines Film Society; any failure to report and pay taxes and fees related to the Agreement; and any violation of any rights of any third party. Said indemnification requirement survives termination of the IEDA agreement and is open-ended regarding amount and when claims may be discovered by IEDA.
  - Represent that no current relationship exists or will exist during the IEDA Agreement that constitutes a conflict of interest under Iowa Code chapter 68B, and to report to IEDA any potential, real or apparent conflict of interest known to the City.
  - Maintain, and require Des Moines Film Society to maintain, the property in good repair and condition, and require Des Moines Film Society to maintain insurance naming IEDA and the City as additional loss payees.
- IEDA has stated its intent to bind the City to all terms set forth in the ETCC grant agreement between IEDA and the City, regardless of the project being undertaken by Des Moines Film Society.
- The City has attempted to require Des Moines Film Society to be responsible for many of the ETCC grant agreement obligations through the First Amendment to the NCR Program Grant Agreement, which includes indemnification of the City by Des Moines Film Society and its contractor, and insurance provided by Des Moines Film Society and its contractor.

**PREVIOUS COUNCIL ACTION(S):**

Date: March 22, 2021

Roll Call Number: [21-0467](#)

Action: [Round](#) One Neighborhood Commercial Revitalization (NCR) Program Funding, and authorizing execution of agreements with funding recipients. ([Council Communication No. 21-143](#)) Moved by Gatto to approve. Motion Carried 6-0. Council Member Westergaard declares a conflict of interest and abstains from voting.

**BOARD/COMMISSION ACTION(S):**

Board: Zoning Board of Adjustment

Date: July 28, 2021

Resolution Number: [ZON 2021-00068](#)

Action: Approval of the following:

- Conditional Use Approval (per City Code Section 134-6.4) for an “Other Use with Sales of alcoholic liquor, wine, and beer for on-premise consumption” in the “MX2” District. Motion Carried 6-0.
- Type 2 Zoning Exception (per City Code Section 134-6.6.1) of three (3) wall-mounted signs over the maximum two (2) wall-mounted signs earned for the frontage (west) along 25<sup>th</sup> Street. Motion Carried 6-0.
- Type 2 Zoning Exception (per City Code Section 134-6.6.1) of 67 square feet over the maximum 50 square feet of signage allowed for a building with 40 linear feet of building frontage along 25<sup>th</sup> Street frontage (1.25 square feet of signage area per linear foot of building frontage). Motion Carried 6-0.
- Type 2 Zoning Exception (per City Code Section 134-6.6.1) of 0.17-foot less than the minimum 9 feet of vertical clearance required for a projecting sign above the sidewalk, driveway or other ground surface beneath the sign. Motion Carried 6-0.
- Zoning Variance (per City Code Section 134-6.7) of the provision that only allows an electronic or multi-vision display to be located on a monument sign with no more than 24 square feet utilized electronic or multi-vision display, or on a general advertising sign (billboard). Motion Failed 3-3-1.

**ANTICIPATED ACTIONS AND FUTURE COMMITMENTS:**

- Administration of the grant as required by IEDA.

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