

★ Roll Call Number

Agenda Item Number

13-1764

48

Date November 4, 2013

**HOLD HEARING FOR CONSIDERATION OF LICENSE AGREEMENT WITH
WELLMARK, INC. UPON CITY-OWNED PROPERTY LOCATED
NORTH OF EAST DOUGLAS AVENUE IN SARGENT PARK FOR \$100**

WHEREAS, Wellmark, Inc. owns and operates fiber optic equipment and lines within City of Des Moines right-of-way pursuant to license agreement administered by City Engineering Department, Traffic & Transportation Division, in accordance with the ROW Management Code, Chapter 102, Article IX of the Des Moines City Code; and

WHEREAS, in order to connect with said equipment, additional fiber optic line installation is required to be established within City-owned real property outside of the right-of-way, and thus Wellmark, Inc. has requested a license agreement to use such City-owned property north of East Douglas Avenue in Sargent Park, as legally described below, for the placement of related utility equipment; and

WHEREAS, the City's Real Estate Division has negotiated a License Agreement with Wellmark, Inc. as licensee, which Agreement includes a twenty year license term commencing upon execution by City of the License Agreement, with an upfront, one-time lump sum payment of \$100.00, which amount reflects fair market value of the licensed area and term as currently estimated by the City's Real Estate Division, and the requirement that the licensee remove all improvements within the licensed area upon expiration or termination of the License, which termination may occur for cause immediately upon notice and without cause upon one-hundred twenty (120) days notice; and

WHEREAS, the City will not be inconvenienced by approval of the proposed License Agreement with Wellmark, Inc.; and

WHEREAS, on October 21, 2013, by Roll Call No. 13-1630, it was duly resolved by the City Council that consideration of the proposed License Agreement be set down for hearing on November 4, 2013, at 5:00 p.m., in the City Council Chambers; and

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

1. Upon due consideration of the facts and statements of interested persons, any and all objections to the proposed License Agreement with Wellmark, Inc., 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 and Wellmark, Inc., as on file in the office of the City Clerk, across City-owned real property located north of East Douglas Avenue in Sargent Park, more specifically described below, for the purpose of construction and maintenance of fiber optic line and related utility equipment, for a twenty-year term, and for consideration in the lump-sum license amount of \$100.00, and said Agreement is hereby approved:

A PART OF THE SOUTHWEST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 20, TOWNSHIP 79 NORTH, RANGE 23 WEST OF THE 5TH P.M. INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA AND DESCRIBED AS FOLLOWS:

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COMMENCING AT THE SOUTH 1/4 CORNER OF SAID SECTION 20; THENCE NORTH 89° (DEGREES) 37' (MINUTES) 22" (SECONDS) EAST ALONG THE SOUTH LINE OF SAID SOUTHEAST 1/4, A DISTANCE OF 738.50 FEET; THENCE NORTH 0°22'38" EAST, 20.00 FEET TO THE NORTH RIGHT-OF-WAY LINE OF DOUGLAS AVENUE AND TO THE POINT OF BEGINNING; THENCE NORTH 82° 07' 10" EAST, 64.45 FEET; THENCE NORTH 85° 52' 21" EAST, 78.59 FEET; THENCE SOUTH 89° 48' 53" EAST, 39.94 FEET; THENCE NORTH 87° 59' 42" EAST, 144.91 FEET; THENCE SOUTH 74° 41' 18" EAST, 20.93 FEET; THENCE SOUTH 83° 17' 21" EAST, 94.18 FEET TO SAID NORTH RIGHT-OF-WAY LINE; THENCE SOUTH 89° 37' 22" WEST ALONG SAID NORTH RIGHT-OF-WAY LINE, 40.52 FEET; THENCE NORTH 83° 17' 21" WEST, 54.34 FEET; THENCE NORTH 74° 41' 18" WEST, 20.54 FEET; THENCE SOUTH 87° 59' 42" WEST, 144.24 FEET; THENCE NORTH 89° 48' 53" WEST, 39.85 FEET; THENCE SOUTH 85° 52' 21" WEST, 78.24 FEET; THENCE SOUTH 82° 07' 10" WEST, 26.33 FEET; THENCE SOUTH 89° 37' 22" WEST, 38.29 FEET ALONG SAID NORTH RIGHT-OF-WAY LINE, 38.29 FEET TO THE POINT OF BEGINNING AND CONTAINING 0.05 ACRES (2,016 S.F.).

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. Non-project related proceeds are used to support general operating budget expenses: Org – EG064090.

(Council Communication No. 13-532)

Moved by Mahaffey to adopt.

APPROVED AS TO FORM:

Glenna K. Frank, Assistant City Attorney

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE	✓			
COLEMAN	✓			
GRIESS	✓			
HENSLEY	✓			
MAHAFFEY	✓			
MOORE	✓			
TOTAL	6			

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 Council Mayor

Diane Rauh City Clerk