

★ Roll Call Number

13. 2013

Agenda Item Number

51

Date December 23, 2013

HOLD HEARING FOR CONSIDERATION OF LICENSE AGREEMENT WITH AT&T CORPORATION UPON CITY-OWNED PROPERTY LOCATED IN AND ADJACENT TO VACATED MULBERRY STREET, BETWEEN 13TH STREET AND 16TH STREET, FOR \$5,000

WHEREAS, AT & T Corporation 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, AT & T Corporation also desires to maintain fiber optic equipment under, across and below a portion of City-owned, non-right-of-way property located in and adjacent to vacated Mulberry Street between 13th Street and 16th Street (herein "Licensed Premises"), as legally described below; and

WHEREAS, the City's Real Estate Division has negotiated a License Agreement for the use of the Licensed Premises with AT & T Corporation as licensee, which Agreement will include, among other terms, a license term commencing upon execution by City of the License Agreement and terminating on October 31, 2033, with AT & T Corporation having the unilateral right at its option to renew this License Agreement for one additional twenty (20) year term running from November 1, 2033 until October 31, 2053, and with both terms subject to termination for default and termination by either party, with or without cause, upon one-hundred twenty (120) days written notice; and

WHEREAS, pursuant to the negotiated Agreement, AT & T Corporation shall pay an upfront, one-time lump sum payment of \$5,000.00 as consideration for the initial twenty (20) year license term, and an additional upfront, one-time lump sum payment of \$10,000.00 in the event that AT & T Corporation exercises its option to renew the License Agreement, which amounts reflect fair market value of the Licensed Premises and terms as currently estimated by the City's Real Estate Division; and

WHEREAS, the City will not be inconvenienced by approval of the proposed License Agreement with AT & T Corporation; and

WHEREAS, on December 9, 2013, by Roll Call No. 13-1895, it was duly resolved by the City Council that consideration of the proposed License Agreement be set down for hearing on December 23, 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:

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1. Upon due consideration of the facts and statements of interested persons, any and all objections to the proposed License Agreement with AT&T Corporation, 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 AT&T Corporation, as on file in the office of the City Clerk, across City-owned real property located in and adjacent to vacated Mulberry Street between 13th Street and 16th Street, legally described as follows, for the purpose of maintenance of fiber optic line and related utility equipment, for an initial twenty-year term (through October 31, 2033) with option to renew for an additional twenty-year term (November 1, 2033 through October 31, 2053), and for consideration in the lump-sum license amount of \$5,000.00 for the initial term, and \$10,000.00 for the renewal term, and said Agreement is hereby approved:

A 30-FOOT WIDE UNDERGROUND FIBER LINE LICENSE ACROSS A PART OF LOT 5, IN THE OFFICIAL PLAT OF THE NORTHEAST QUARTER (1/4) OF SECTION 8, TOWNSHIP 78 NORTH, RANGE 24 WEST OF THE 5TH P.M., AND ACROSS A PORTION OF VACATED MULBERRY STREET, EXCEPT THAT PORTION OF REDEDICATED MULBERRY STREET RECORDED ON BOOK 14210 PAGE 19 IN POLK COUNTY RECORDER'S OFFICE; ALL NOW INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA, LICENSE LOCATION TO BE 15 FEET ON EACH SIDE OF THE FIBER LINE AS CONSTRUCTED.

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.

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(Council Communication No. 13-612)

Moved by Hensley to adopt.

APPROVED AS TO FORM:

Glenna K. Frank, Assistant City Attorney

psw

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE	✓			
COLEMAN	✓			
GRIESS	✓			
HENSLEY	✓			
MAHAFFEY	✓			
MOORE	✓			
VOSS	✓			
TOTAL	7			
MOTION CARRIED	APPROVED			

T. M. Franklin
Mayor

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.

Diane Rauh City Clerk