

★ Roll Call Number

Agenda Item Number

20-1528

810

Date September 14, 2020

**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 8<sup>TH</sup> STREET VIADUCT NORTH OF CHERRY STREET AND AUTHORIZING MAYOR TO EXECUTE AGREEMENT AND ASSOCIATED INTELLECTUAL PROPERTY AGREEMENTS**

**WHEREAS**, the City of Des Moines owns and maintains the 8<sup>th</sup> Street Viaduct (“City Property”) in downtown Des Moines as street 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 use a portion of the underside of the 8<sup>th</sup> Street Viaduct north of Cherry Street to install, maintain and display artwork consisting of RGB Color LED Flood Lights created by artist Alex Braden and titled “BOREALIS” and the associated electrical conduit and electrical box; and

**WHEREAS**, Operation Downtown is the owner of artwork consisting of RGB Color LED Flood Lights with each light’s color cycling through varying hues and brightness within the existing Viaduct architecture, including the associated electrical conduit and electrical box to be installed on one pier of the Viaduct, created by artist Alex Braden and titled “BOREALIS”; 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. 04-145 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 November 20, 2018, and further by letter dated April 23, 2020, 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**, Operation Downtown 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 take on sole responsibility for any and all utility costs such as but not limited to electricity for the artwork; and

**WHEREAS**, the Access Advisory Board approved the placement of the Artwork at its May 20, 2020 meeting; 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

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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 August 17, 2020 by Roll Call No. 20-1326, 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 September 14, 2020, at 5:00 p.m., in the Board Room of the Richard A. Clark Municipal Service Center, 1551 E. Martin Luther King Jr. Parkway, Des Moines, Iowa, and given Mayor Cownie's March 17, 2020 Proclamation, as amended prohibiting indoor gatherings of ten or more persons on public property, Section One of the Governor's June 25, 2020 Proclamation strongly encouraging vulnerable Iowans to limit participation in gatherings of any size and any purpose during the COVID19 outbreak and the City Manager's decision to delay the opening of City buildings to the public due to the recent upwards spikes of positive COVID-19 cases and hospitalizations in Polk County and the need to maintain safety; it is impossible and impractical to have physical public access to the meeting location and the meeting will be conducted electronically with electronic public access to the meeting location; and

**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, including how to participate electronically and telephonically; 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 a portion of the underside of the 8<sup>th</sup> Street Viaduct between Cherry Street and Mulberry Street, Des Moines, Iowa, described as follows, 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, for use of a portion of the underside of the 8<sup>th</sup> Street Viaduct north of Cherry Street to install, maintain and

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display artwork consisting of RGB Color LED Flood Lights and the associated electrical conduit and electrical box.

3. The Mayor is authorized and directed to sign the License Agreement as identified above, and to execute a Waiver of Waiver of Visual Artist Rights Act and a Non-Exclusive, Limited Copyright License in connection with display of the artwork, 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.

Moved by Mandelbaum to adopt.

APPROVED AS TO FORM:

/s/  
Lisa A. Wieland, Assistant City Attorney

*Paul*

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE	✓			
BOESEN	✓			
GATTO	✓			
GRAY	✓			
MANDELBAUM	✓			
VOSS	✓			
WESTERGAARD	✓			
TOTAL	7			
MOTION CARRIED				APPROVED

J. M. Franklin Cownie  
Mayor

**CERTIFICATE**

I, P. Kay Cmelik, 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.

P. Kay Cmelik City Clerk