



**Council
Communication**
Office of the City Manager

Date

January 22, 2007

Agenda Item No. 38

Roll Call No. 07-

Communication No. 07-044

Submitted by: Richard A. Clark, City Manager

AGENDA HEADING:

Resolution Closing Public Hearing and Approving Urban Renewal Agreement for Sale of Land for Private Redevelopment with Vision Fuels Des Moines, LLC (SE Agribusiness Park – Disposition Parcel No. 1).

SYNOPSIS:

Recommend approval to close the public hearing and approve the final Development Agreement with Vision Fuels Des Moines, LLC (David W. Walters, Chairman, 2641 86th Street, Urbandale, IA 50322) for the purchase and redevelopment of part of Disposition Parcel No. 1 in the Agrimergent Technology Park. The site is located at SE 36th Street south of Vandalia Road. Vision Fuels has proposed to construct an approximate 110-million gallon, dry mill fuel ethanol production facility on 128.55 acres. The company has pledged to create at least 45 full-time, permanent jobs within three months after a Certificate of Occupancy has been issued and up to an additional 35 jobs within 21 months thereafter. The minimum annual projected payroll would be \$2.2 million. Vision Fuels intends to start construction by November 1, 2007 and complete the project no later than November 1, 2008.

The final Development Agreement is generally consistent with the company's Preliminary Terms of Agreement, executed on November 30, 2006; its development proposal, supplemented by its written response to the City's information request; its Good Neighbor Agreement; the Minimum Development Requirements; and the additional issues that the company agreed to at the December 4, 2006 Council meeting.

FISCAL IMPACT:

Amount: The developer will make a one-time investment of \$6,090,875 plus recurring annual payments to the City of approximately \$3,516,200.

Funding Source: Vision Fuels Des Moines, LLC has agreed to the following:

1. *One-Time Investment* (land price, regional storm water detention, land assemblage and infrastructure fund, additional payments and road infrastructure): *Approximately \$6,090,875.*
2. *Recurring Payments* (projected annual taxes = \$1,916,200(*all taxing jurisdictions*)) and an estimated annual energy surcharge payable to the City of Des Moines = \$1,600,000 that will be provided for three years @ 5% (or 1% above the gas and electric franchise fee legal requirement not to exceed 5%),

which afterwards will be reduced by the amount of the industrial rebate and will equal the amount that is legally allowed when the franchise fee issue is resolved).

ADDITIONAL INFORMATION:

On December 4, 2006, the City Council authorized the City Manager to negotiate an urban renewal contract with Vision Fuels Des Moines, LLC. The public hearing was continued from December 18, 2006 to January 22, 2007. The City and the Developer have concluded negotiations successfully. The fiscal and economic impact is outlined below. It is somewhat greater than previously forecasted because the acreage to be purchased has increased slightly by approximately one-half acre.

ONE-TIME INVESTMENT	VISION FUELS DES MOINES, LLC
Land price	\$1,806,000 Purchase of 129 acres rounded @ \$14,000/acre. In accordance with the 28E Agreement, the City will remit 1/3 of the sale price, equivalent to \$602,000, to the Des Moines Water Works, which contributed 1/3 of the funds to acquire the property in 2000.
Regional storm water detention	\$ 369,000 The Developer will design and construct, at its expense, the storm water management system to accommodate 26.5 acre-feet of storage needed for the City's regional detention basins south of Vandalia Road, in accordance with City standards.
Land assemblage and infrastructure fund	\$1,606,875 To be paid by Developer upon receipt of the building permits to commence construction of the facility. \$ 809,000 (Net Present Value) The Developer will contribute \$1 million, which will be structured into payments of \$200,000/year over the next five years. The first payment will commence on the date construction begins. An amount equal to developer contributions are to be used for acquisition, relocation and demolition of blighted properties and/or investment in public infrastructure, including but not limited to, streets and utilities in the area.
Additional payments	\$1,500,000 The Developer will pay \$500,000/year for each of three years correlated to the start-up date, which is no later than when the first shipment of ethanol is made.
Road infrastructure	Amount to be determined. The Developer will share costs with the City for the pro-rated portion of Vandalia Road and SE 43 rd Street improvements when justified by an applicable traffic study correlated with need for improvements. The developer will pay all costs related to improvements needed for its facility, including the construction of a turning lane on SE 43 rd Street.
TOTAL ONE-TIME INVESTMENT	\$6,090,875

RECURRING PAYMENTS	VISION FUELS DES MOINES, LLC
Minimum taxable value and projected annual tax revenue	\$1,916,200 (All taxing jurisdictions) Projected Annual Tax Revenue (Total minimum taxable value for the development of 128.55 acres = \$41,716,500). This is based on a minimum of \$7.45/sf with no tax

	abatement for all acres to be purchased, including the projected 12.5 acres the Developer intends to deed back to the City for the regional storm water detention basins south of Vandalia Road . Any tax shortfall resulting from a lower taxable valuation than expected will be made up by a PILOT to be paid directly to City for 15 years.
<i>Estimated annual energy surcharge – electricity and natural gas</i>	<p>\$ 100,000 (\$2 million in electricity costs x 5%)</p> <p>\$1,500,000 (\$30 million in natural gas costs x 5%)</p> <p>For three years after start-up, the Developer will pay the City an energy surcharge or an equivalent payment based on the total costs to acquire, transport and deliver all electricity and natural gas used on the Property. The surcharge will be equal to the lesser of 5% of such costs or 1% over and above the legally established limit for three years.</p>
PROJECTED RECURRING PAYMENTS (FOR AT LEAST THREE YEARS)	\$3,516,200

At its December 4, 2006 meeting, Council wanted several provisions to be included in the final Development Agreement, which are detailed as follows.

Use of Innovative Technologies

The contract requires that in order to ensure the long-term economic viability of the project, the Developer shall explore, in cooperation with the Iowa Department of Natural Resources and Iowa State University, the use of innovative technologies, such as the use of combined heat and power (CHP) and the various bio-fuels options, and provide a written report to the Des Moines City Council by April 1, 2007, as to the technical and economic feasibility of using these technologies in the design, construction and operation of the Improvements.

The Developer, Iowa Department of Natural Resources and other experts participated in an initial teleconference regarding the use of innovative technologies on December 19, 2006. Vision Fuels will be pursuing a Level One Feasibility Study in partnership with the U.S. Environmental Protection Agency, Combined Heat and Power (CHP) Partnership.

Maximize Leadership in Energy and Environmental Design (LEED) Rating

The contract requires the Developer to incorporate features, measures and procedures in the design, construction and operation of the Property and Improvements sufficient to support a reasonable expectation that the site can be awarded at least a LEED Silver certification and shall endeavor to design the Improvements to maximize the LEED rating of the Property and Improvements. In addition, precedent to taking title to the Property, the Developer must demonstrate that it has filed the appropriate documentation to register construction of the Improvements with the U.S. Green Building Council and has retained a LEED-accredited professional to assist it in maximizing the LEED rating of the Property and Improvements.

Minimize Pollutants from Proposed Facility

The contract prohibits the use of coal without the prior written consent of the City, limits the Developer to a “minor source” air quality permit, and requires the Developer to take reasonable steps, including the use of Best Available Control Technology (BACT), to minimize the discharge of air pollutants, such as but not limited to particulate matter, sulfur dioxide, nitrogen oxide, carbon monoxide, carbon dioxide and volatile

organic compounds. By October 1, 2007, the Developer shall provide the City with a copy of its approved air quality permit, which demonstrates that it is categorized as a “minor source” or with evidence that it has filed the appropriate documentation and is diligently pursuing a “minor source” permit as well as that it will use Best Available Control Technology (BACT) to minimize the discharge of air pollutants, as referenced above.

Performance Benchmarks

The Developer is required to comply with the following timeline for construction and completion of the Improvements.

<i>DATE</i>	<i>ACTION</i>
<i>2/1/07</i>	Requested pre-application conference
<i>3/1/07</i>	Submitted Conceptual Development Plan, "PUD" Conceptual Plan and an application to re-zone the Property to Planned Unit Development ("PUD") and for approval of the "PUD" Conceptual Plan
<i>4/1/07</i>	Provided the report regarding the use of innovative technologies
<i>4/24/07</i>	Obtained approval of Conceptual Development Plan and "PUD" Conceptual Plan; submitted a Preliminary Subdivision Plat
<i>5/15/07</i>	Provided preliminary evidence of financing commitment (see detail below)
<i>6/1/07</i>	Filed a combined "PUD" Development Plan and Site Plan
<i>7/1/07</i>	Obtained approval of a Preliminary Subdivision Plat
<i>8/1/07</i>	Submitted satisfactory evidence of financing commitment
<i>10/1/07</i>	Closed on Property, but must have met all above-referenced requirements as precedent to closing in addition to (1) allowing the City to review its contract to provide natural gas to the site at least 60 days prior to start-up and (2) filed the appropriate documentation to register construction of the Improvements with the U.S. Green Building Council and retained a LEED-accredited professional to assist it in maximizing the LEED rating of the Property and Improvements
<i>10/1/07</i>	Provided the City with a copy of its air quality permit or evidence that the appropriate documentation has been filed and a "minor source" permit is being diligently pursued
<i>11/1/07</i>	Received footing and foundation permits and commenced construction
<i>12/4/07</i>	Obtained approval of and recorded a subdivision plat for the Property
<i>11/1/08</i>	Substantially completed the Improvements and qualified for issuance of the Certificate of Completion

At the December 4, 2006 Council meeting, the Developer agreed to submit evidence by May 15, 2007, that it had equity and debt commitments for adequate financing to complete the project. Vision Fuels has requested flexibility in this provision due to the complex state and federal securities regulations it must comply with in order to obtain additional equity. The Developer has agreed to provide evidence by May 15, 2007, that it has at least \$40 million for the project and that it has applied for and is diligently pursuing debt financing commitments sufficient to complete construction of the project. Prior to closing, anticipated on August 1, 2007, it will submit satisfactory evidence to the City Manager that it has adequate financing.

Compelling Performance

The contract provides remedies to compel performance and monetary penalties if the Developer fails to obtain financing, timely close on the Property or promptly complete the Improvements. In these cases, the City will have the right to terminate the Agreement or to retain part or all of the Good Faith Deposit (\$848,000) or part of the down payment on the purchase price of the land as liquidated damages. Efforts will be made throughout the project to minimize the potential for contract default to occur.

PREVIOUS COUNCIL ACTION(S):

Date: December 18, 2006

Roll Call Number: 06-2499

Action: [On](#) proposed sale of land in the SE Agribusiness Park – Disposition Parcel No. 1, to Vision Fuels Des Moines, LLC. Moved by Kiernan to continue the public hearing on the proposed sale of land to Vision Fuels until January 22, 2007 at 5:00 P.M. Motion Carried 6-0.

Date: December 4, 2006

Roll Call Number: 06-2401

Action: [To](#) receive supplement to the proposal from Vision Fuels for the purchase and redevelopment of Disposition Parcel No. 1 in the Agrimergent Technology Park. ([Council Communication No. 06-768](#)) Moved by Kiernan to receive and file the communications and the supplemental material from Vision Fuels. Motion Carried 6-0.

Date: December 4, 2006

Roll Call Number: 06-2402

Action: [Selecting](#) Vision Fuels as the Preferred Redeveloper. Moved by Kiernan to adopt, subject to the addition of the following points to be included in the final development agreement with Vision Fuels: (i.) In order to ensure the long-term economic viability of the project, Vision Fuels will be required to explore, in cooperation with the Iowa Department of Natural Resources and Iowa State University, the use of innovative technologies such as the use of combined heat and power (CHP) and the various biofuels options, and to provide a written report to the Council by April 1, 2007, as to the technical and economic feasibility of using these technologies at the Agrimergent Technology Park site. (ii.) Vision Fuels will be required to maximize the use of LEED to enhance the environment and minimize the pollutants emanating from its facility, as specified in its proposed boiler technology. (iii.) Vision Fuels will be required to conform its site development to the Council-adopted Agrimergent Technology Park plan. (iv.) Vision Fuels will be required to proceed expeditiously and to adhere to performance benchmarks, which include obtaining all project financing, PUD zoning, Urban Design Review Board review, air quality and building permits and commencement and completion of construction. The dates for performance shall be identified in the final Development Agreement, with project financing in place by May 15, 2007. (v.) Vision Fuels will pay the franchise fee or its equivalent for three years, and after three years, it may apply for the industrial rebate in accordance with the Council ordinance in effect at that time. (vi.) City Manager will look at alternatives to the franchise fee and alternative forms of energy. Motion Carried 6-0.

Date: November 1, 2006

Roll Call Number: 06-2145

Action: [Approving](#) selection of a Preferred Redeveloper and an Alternate Redeveloper of Disposition Parcel No. 1 in the Des Moines Agrimergent Technology Park in the SE Agribusiness Urban Renewal Area, (continued from October 23, 2006). ([Council Communication No. 06-683](#)) Moved by Vlassis that the City Manager is hereby directed to negotiate with the two remaining redevelopers regarding the following issues related to their proposals, and to report back to the City Council at the meeting on December 4, 2006: 1. (a) The local participation in the construction of the facility; (b) The environmental impact and economic feasibility of using coal versus natural gas to power the ethanol plant; (c) The overall financial impact upon the City; and, (d) The ability of MidAmerican Energy to provide the natural gas required for the ethanol plant proposed by Vision Fuels. 2. That the City Council hereby declares its intent to select a redeveloper at the meeting on December 4, 2006, and to then schedule a public hearing to be held on December 18, 2006, to approve an agreement for the sale of Disposition Parcel No. 1 to the selected redeveloper for construction of an ethanol plant. Motion Carried 6-0.

Date: October 23, 2006

Roll Call Number: 06-2135

Action: [Selection](#) of Lincolnway Energy, LLC as the Preferred Redeveloper and Vision Fuels Des Moines, LLC as the Alternate Redeveloper of Disposition Parcel No. 1 in the Des Moines Agrimergent Technology Park in the SE Agribusiness Urban Renewal Area. ([Council Communication No. 06-663](#)) Moved by Vlassis to set a Special Council Meeting for Wednesday, November 1st at 6:00 PM. Each Redeveloper will make a presentation and Council will make a selection at that meeting. Motion Carried 6-0.

Date: August 21, 2006

Roll Call Number: 06-1713

Action: [Resolution](#) for Competitive Process and Minimum Development Requirements and Competitive Criteria for the redevelopment of Disposition Parcel No. 1 in the Des Moines Agrimergent Technology Park in the SE Agribusiness Urban Renewal Area. ([Council Communication No. 06-529](#)) Moved by Kiernan to approve. Motion Carried 5-1.

Date: July 10, 2006

Roll Call Number: 06-1368

Action: [From](#) Vision Fuels, LLC regarding proposed ethanol facility in the Des Moines Agrimergent Technology Park. ([Council Communication No. 06-401](#)) Moved by Brooks to receive and file letter and refer to the City Manager for further action. Motion Carried 5-2. Absent: Kiernan and Vlassis.

Date: April 24, 2006

Roll Call Number: 06-799

Action: [From](#) Lincolnway Energy, LLC regarding a proposed ethanol facility in the Des Moines Agrimergent Technology Park. ([Council Communication No. 06-214](#)) Moved by Brooks to receive and file letter and refer to the City Manager for further action. Motion Carried 7-0.

Date: December 3, 2001

Roll Call Number: 01-3577

Action: On proposed Des Moines Agrimergent Technology Park Plan, generally between SE 30th and SE 43rd Streets in vicinity of Vandalia Road. ([Council Communication No. 01-599](#)) Moved by Brooks to adopt. Motion Carried 6-1. Absent: McPherson.

Date: December 6, 1999

Roll Call Number: 99-3720

Action: Approving Offer to Purchase approximately 166 acres owned by Archer Daniels Midland, ([Council Communication No. 99-512](#)) Moved by Brooks to adopt. Motion Carried 5-2. Absent: Daniels and McPherson.

BOARD/COMMISSION ACTION(S):

Date: October 19, 2006

Roll Call Number: N/A

Action: Urban Design Review Board recommended selection of Lincolnway Energy, LLC as the preferred redeveloper and Vision Fuels Des Moines, LLC as the alternate redeveloper of Parcel No. 1 in the Des Moines Agrimergent Technology Park.

Date: August 15, 2006

Roll Call Number: N/A

Action: Urban Design Review Board recommended approval of the Minimum Development Requirements and Competitive Criteria for Disposition Parcel No. 1 in the Des Moines Agrimergent Technology Park.

ANTICIPATED ACTIONS AND FUTURE COMMITMENTS:

The above-referenced schedule outlines anticipated actions.