CITY OF DES MOINES	**Council Communication** Office of the City Manager	**Date**	July 9, 2007
		Agenda Item No. 68 **Roll Call No.** 07- **Communication No.** 07-393 **Submitted by: Richard A. Clark, City Manager**	

AGENDA HEADING:

Resolutions Related to the Riverpoint West Redevelopment Project:

A. Resolution Approving Urban Renewal Development Agreement with River Point West LLC for the Riverpoint West Redevelopment Project, Including the Sale of City-Owned Land.

B. Resolution Setting Date of Hearing on the Authorization and Approval of a Contract for Loan Guarantee Assistance Under Section 108 of the Housing and Community Development Act of 1974, As Amended, in the Amount of $17,500,000, and Other Related Financing Documents by the City of Des Moines, Iowa, and Providing for Publication of Notice Thereof.

SYNOPSIS:

No competing proposals have been received for the Riverpoint West Redevelopment Project. Council is requested to:

A. Approve and enter into the Phase I Commercial Development Agreement with River Point West LLC for the Riverpoint West Redevelopment Project, which includes the sale of excess City-owned land generally located from Martin Luther King, Jr. Parkway to Tuttle Street between SW 9th and the southern extension of SW 12th Streets, and potentially including Tuttle Street from SW 9th to SW 11th Streets, to the Developer (George Sherman, President, Sherman Associates, Inc., 233 Park Avenue South, Suite 201, Minneapolis, MN is the managing member of River Point West LLC); and

B. Authorize the Mayor to sign the Special Warranty Deeds for the conveyance of City-owned parcels to the Developer, the City Manager to release the deeds based on conditions in the Agreement and the Finance Department to use up to $1,397,665 of Metro Center TIF proceeds to reimburse the Martin Luther King, Jr. Parkway Project Fund and the Park and Ride Fund; and

C. Authorize the Mayor to sign the Minimum Assessment Agreement for each new development; and

D. Authorize the City Manager to negotiate the loan and trust agreements, assignments and other contracts to implement a New Markets Tax Credits structure; and

E. Authorize the City Manager or his designee to administer the Agreement, while retaining the requirement for further Council action to approve the following: (1) loan and trust agreements, assignments and other contracts to implement a New Markets Tax Credits structure; (2) the Conceptual Development Plan and pro forma and any material amendments thereto; (3) each Parcel Development Agreement for the sale and redevelopment of any parcel; and (4) the future Phase II Commercial Development Agreement and the Residential Development Agreement; and

F. Set the date of public hearing as July 23, 2007, to enter into the HUD Section 108 loan and Brownfields Economic Development Initiative (BEDI) grant agreements.

The Developer is proposing to assemble land, conduct site preparation and install infrastructure in order to facilitate the construction of a mixed-use, residential/commercial project on 125 developable acres directly south of the Central Business District in Riverpoint West. This area, to be re-branded as Gray's Lake Office Park and Gray's Lake Landing, is bounded by Martin Luther King, Jr. Parkway to the north, SW 9th Street to the east and the Raccoon River to the south and west. The Phase I portion is generally located from Martin Luther King, Jr. Parkway to Tuttle Street between SW 9th and SW 16th Streets (excluding MidAmerican Energy's substation and railroad-owned land) and from SW 9th to SW 11th Streets between Tuttle and Murphy Streets. The Phase II area consists primarily of railroad-owned land west of SW 11th Street and residential will be located south of Tuttle Street to the Raccoon River west of SW 11th Street. Large-scale land assemblage and site preparation at one time are essential in order to provide an environment in which to create a signature urban development.

There are two significant implications resulting from the Council entering into the Phase I Commercial Development Agreement. First, the Council is declaring its intent to enter into a Phase II Commercial Development Agreement and a Residential Development Agreement. Second, the Council is declaring its support for amending the current 10-year, 100% residential tax abatement in the downtown to 5-year, 100% residential tax abatement. This is necessary in order to obtain sufficient project-generated TIF revenue to repay the Section 108 loan and additional City financial assistance. It is essential that the tax abatement schedule for this project be applied consistently throughout the downtown. Council's action represents a major policy change that will impact the entire downtown.

A separate item on today's Council agenda will formally ask the Council to consider the amendment of the City-wide Urban Revitalization Plan to change tax abatement for the downtown core area to 5 year/100% tax abatement, and to extend the City-wide tax abatement program for residential development for another 5 years. As noted previously, this change in the tax abatement schedule helps ensure that adequate TIF revenues are available to repay the $17.5 million Section 108 Loan. If Council decides not to implement this change in downtown housing tax abatement, the City Manager will recommend against proceeding with the Riverpoint West Redevelopment Project.

FISCAL IMPACT:

There are three components to the Riverpoint West Redevelopment Project—Phase I commercial, Phase II commercial and a separate residential aspect. The total cost of the commercial land assemblage and site preparation project is projected to be $50,780,000, and includes $12,000,000 of net land sales proceeds (excludes real estate commissions and closing costs). The Phase I commercial site preparation cost is estimated at $27,422,000 (includes $6,200,000 of net land sales proceeds); Phase II commercial at $23,358,000 (includes $5,800,000 of net land sales proceeds); and residential at $16,000,000 (net land sales proceeds to be determined). The Phase I Commercial Development Agreement relates only to costs to prepare pad-ready sites for commercial redevelopment along Martin Luther King, Jr. Parkway and SW 9th Street.

Amount/Funding Source:
The following amounts and funding sources will be used to conduct the Phase I project.

Amount	City Funding Sources
$8,500,000	49% of the $17.5 million Section 108 loan that HUD approved on February 23, 2007, will be disbursed to acquire the majority of Phase I land, which will be repaid through project-generated TIF. Up to $2.9 million of Metro Center TIF will be used

to cover any shortfall between the time the loan payments are due and sufficient TIF is generated from the project, anticipated to be in FY 2016/17; however, the City projects that $2.5 million of Metro Center TIF will actually be expended. The Developer will be required to pay any shortfall thereafter in project-related TIF needed to cover loan payments. The Phase I commercial development at full build-out is anticipated to generate approximately $17.7 million in tax revenues over 20 years (75% project-related TIF), which is sufficient to repay the principal and interest on the loan estimated at $16.5 million over 20 years.

$2,500,000	The Developer will purchase City-owned land, and the City will provide a grant for its equivalent value.
$1,397,665	City-owned land at the SW corner of Martin Luther King, Jr. Parkway and SW 9th Street and directly west of SW 11th Street to be sold to the developer was acquired and improved with funds from the Martin Luther King, Jr. Parkway Project Fund and from the Park and Ride Fund. Metro Center TIF will be used to reimburse these funds: $981,665 to the Martin Luther King, Jr. Parkway Project Fund (Federal Title 23 Account, STR 500) and $416,000 to the Park and Ride Fund.
$500,000	The cost to construct SW 11th Street from Martin Luther King, Jr. Parkway to DART Way is estimated at $1.7 million. The segment from Martin Luther King, Jr. Parkway to Murphy Street, projected at $1.2 million, is part of the Phase I commercial development. The segment from Murphy Street to DART Way, estimated at $500,000, is part of the future residential development. Funds will be advanced to construct all of SW 11th Street to be credited against the City's anticipated $4 million infrastructure investment in the residential redevelopment project.

<u>Amount</u>	<u>Other</u> <u>Public Funding Sources</u>
$2,000,000	Brownfield Economic Development Initiative (BEDI) grant that HUD approved on February 23, 2007, will be used to establish a debt service reserve fund to repay the initial four years of payments on the Section 108 loan.
$500,000	RISE grant, which IDOT entered into an agreement with the City on March 5, 2007, will assist in constructing SW 11th Street from Martin Luther King, Jr. Parkway to DART Way.
$297,000	Federal earmark that Congress approved in FY2006 will be used to acquire land.

<u>Amount</u>	<u>Private/Other Funding Sources</u>
$3,100,000	Developer equity will be used to acquire land, conduct environmental remediation and geo-technical work, install infrastructure and/or fund administrative and related costs.
$3,500,000	New Markets Tax Credits will be used to acquire land, conduct environmental remediation and geo-technical work, install infrastructure and/or fund administrative and related costs.

$325,000	Hubbell Terminal Corporation cash contribution will be used to assist in constructing SW 11th Street from Murphy Street to DART Way and Murphy Street from SW 9th to SW 11th Streets.
$6,200,000	Land sales proceeds will be used to create a $3.1 million Land Sales Proceeds Fund to assist with the Phase II commercial redevelopment project, and to return the developer's equity of $3.1 million.

Other issues that affect fiscal impact are as follows:

- It is anticipated that the City will draw down the entire $8.5 million Section 108 loan and $2 million Brownfield Economic Development Initiative (BEDI) grant in 2007. The first interest-only payment will be due by January 23, 2008. Prior to this action, the U.S. Department of Housing and Urban Development (HUD) must have approved the Section 108 Loan Agreement, including the loan repayment schedule acceptable to the City and the Developer. In addition, the Developer must own or have under contract 60% of the Phase I commercial redevelopment area, have provided the City with a Special Warranty Deed for acquired property, and have demonstrated that it has obtained a minimum of $6.6 million in equity, which may include New Markets Tax Credits.

- Developers of pad-ready sites will be limited to 3-year, 100% tax abatement on new commercial development. This is essential in order to ensure that sufficient TIF is generated to repay the Section 108 loan.

- The City will hold a deed in escrow for all land acquired by the Developer which the City has not granted its consent to resell, except for the northern portion of the current Jeld-Wen site located south of Martin Luther King, Jr. Parkway between MidAmerican Energy's substation and SW 14th Street. The Developer anticipates constructing the first commercial building on this site in fall 2007. The Developer and all other purchasers of property in the Phase I area will be required to enter into a Parcel Development Agreement with the City, which the Council must approve before the City releases the land for sale. The Parcel Development Agreement will accord the City the right to approve the building plans, which must demonstrate how the development will promote environmental sustainability; Minimum Assessment Agreement of at least $90/sf; building permit issuance; evidence of financing and construction contract. This is to assure that the City retains security for its investment and is able to produce sufficient tax revenue to repay the Section 108 loan from the new buildings to be constructed on property sold by the Developer.

- One half of the land sales proceeds of $6.31/sf for the sale of the northern portion of the Jeld-Wen site will be deposited into the Land Sales Proceeds Fund upon the earlier of July 1, 2012 or when 80% of the space in the first commercial building has been leased or sold. Fifty percent (50%) of all other land sales proceeds will be deposited into the Land Sales Proceeds Fund which will be used to fund an estimated $3.1 million of the Developer's $5.2 million required equity contribution to the Phase II commercial redevelopment project.

- The Section 108 loan will not count against the City's constitutional debt limit. Its repayment will be structured as non-recourse debt, subject to annual appropriation of Metro Center TIF funds. The Section 108 loan must be repaid. If not, HUD will withhold payments from the City's future Community Development Block Grant (CDBG) allocations.

- The Developer will be responsible to pay any additional costs to acquire land and install infrastructure in Phase I as well as the City's out-of-pocket expenses, not to exceed $100,000, to obtain and administer the Section 108 loan and Brownfield Economic Development Initiative (BEDI) grant as well as review and approve the New Markets Tax Credit financing structure.

- The City will have oversight on the uses of funds. The City and the Developer will enter into a Trust Agreement with a trust powers bank, who will serve as the escrow agent. The City will be required to approve project expenditures before the escrow agent disburses funds.

- Interest earnings on each of the following project funds will accrue to the principal amount of the fund and will be utilized for approved uses of each fund: Debt Service Reserve Fund; Land Sales Proceeds Fund; Acquisition, Environmental, Geo-technical and Infrastructure (AEGI) Fund; and Administrative Fund.

- The City will control the Debt Service Reserve Fund. It will retain the entire Land Sales Proceeds Fund if the City is willing but the Developer does not enter into a Phase II agreement. In 2014, the City will keep 75% of the balance in the AEGI Fund and the Developer, 25% if they do not enter into a Phase II agreement and (1) the Developer has completed all Phase I site preparation work and (2) the project TIF exceeds 130% of the maximum installments due on the Section 108 loan. Similarly, the Developer will keep 100% of the Administrative Fund if the above conditions are met. Otherwise, the balances in the AEGI Fund and the Administrative Fund will be applied to the Phase II commercial redevelopment project.

- If the Developer defaults in timely repaying any amount due under the Phase I Commercial Development Agreement, the City may call the loan due. In this case, the City may take title to all or a portion of the property not sold for redevelopment and well as direct the escrow agent to transfer and disburse to the City all of the Land Sales Proceeds Fund, AEGI Fund and Administrative Fund.

- If the Developer has met the performance thresholds for the Phase II commercial redevelopment and residential redevelopment projects but the City does not enter into these future development agreements, the Developer will retain all of the Land Sales Proceeds Fund, estimated at $3.1 million, and any remaining amounts in the AEGI Fund and the Administrative Fund.

- The City will participate in any upside potential of the project if it is successful and the City and Developer proceed with the Phase II commercial redevelopment project. All net land sales proceeds above $16,750,000, which will provide the Developer with an estimated 15% internal rate of return, will be shared as follows: 40% to the City and 60% to the Developer. The threshold of $16,750,000 may be raised for additional documented increases in land acquisition, environmental, geo-technical and infrastructure costs and developer equity needed above estimates in the existing pro forma.

ADDITIONAL INFORMATION:

On October 24, 2005 by Roll Call No. 05-2603, the City Council approved the Preliminary Agreement with River Point West LLC, which established the framework for the financial obligations to redevelop Riverpoint West. Attached is a comparison of the key provisions of the preliminary and the final development agreements. River Point West LLC, as master developer, intends to sell pad-ready commercial and residential sites to third parties, which must be approved by the City. The new $165 million, mixed-use urban village will comprise an estimated 740,000 square feet of office and retail space, at least 543 dwellings, and environmental enhancements. The first new commercial development is anticipated to be completed by 2009 and the entire project by 2015, pending market absorption, which represents a six-year build-out.

The City has negotiated a Phase I Commercial Development Agreement to allow the initial commercial land assemblage and site preparation project to proceed. Project phasing will assist in minimizing the City's and the Developer's risks. At build-out, the Phase I commercial development is expected to generate 557,000 square feet of office and retail space, which will yield approximately $50 million in new taxable value. It is a prelude to Phase II commercial and the residential development, which is projected to provide an additional tax base of $115 million.

The City will exercise control over the quality and density of development in several ways. Within 60 days after the City enters into the Section 108 Loan Agreement with HUD, the Developer is required to submit a Conceptual Development Plan and a "PUD" Conceptual Plan to the City and apply for rezoning. In addition, purchasers of redevelopment parcels will be required to enter into a Parcel Development Agreement with the City that will specify building and site characteristics. Council will review and approve the Conceptual Development Plan, "PUD" Conceptual Plan and each Parcel Development Agreement before development proceeds.

As part of the Phase I Commercial Development Agreement, the Developer would acquire approximately 7.7 acres of excess City-owned land generally located from Martin Luther King, Jr. Parkway to Tuttle Street between SW 9th and the southern extension of SW 12th Streets. The Developer has been negotiating the acquisition of property with adjoining landowners in order to create larger, more developable parcels. It is important for the Developer to have City-owned land under control to facilitate redevelopment and produce tax revenue.

Currently, the Principal Life Insurance Company has a one-year license agreement with the City to park on the above-referenced site until April 30, 2008, as well as up to 2 one-year renewal options. After April 30, 2008, the City or Principal may terminate the license, or the City may relocate this parking to the 11th and Mulberry Streets site at any time, but would need to have 3-4 months in order to design and pave it for Principal's use.

Closing on the sale of the excess City-owned land to River Point West LLC would not occur sooner than November 15, 2008. Closing may occur between November 15, 2008 and May 15, 2010, or at such time as Principal has relinquished its license and the Developer has provided seven months notice. Closing may occur after May 15, 2010, provided the Developer has given 60 days notice. The Developer will be required to submit an actual development proposal for the site before the City transfers title to the land.

By entering into the Phase I Commercial Development Agreement, the City is declaring its intent to enter into a Phase II Commercial Development Agreement as well as a Residential Development Agreement for the land assemblage and site preparation project. River Point West LLC will be required to meet performance thresholds in order to enter into these agreements.

In order to enter into the Phase II Commercial Development Agreement, which would require the City to provide a $9 million loan (51% of the $17.5 million Section 108 loan) primarily for public infrastructure, the Developer must have satisfied the following conditions by June 30, 2012: (1) met a majority of its Phase I Commercial Development Agreement obligations; (2) acquired or has under contract 90% of the land in Phase I; (3) cleared, graded and completed preparation of pad sites to accommodate construction of at least 414,000 square feet of commercial space; (4) caused construction to commence of at least 300,000 square feet of commercial space to be assessed at a minimum of $90/square foot; (5) received a commitment of additional equity, estimated at $7.8 million in the pro forma, from all sources including New Markets Tax Credits; (6) paid for the land for the first Phase I commercial building; (7) received EPA approval of itself and the site(s) as being eligible for an environmental remediation loan from EPA funds if needed; and (8) the Developer and the City have agreed to the terms of a Residential Development Agreement.

In order to enter into the Residential Development Agreement, which would require the City to contribute $4 million for the construction of public improvements and to assist in seeking private or public funding for construction of a pedestrian bridge across the Raccoon River, the Developer must have satisfied the following conditions by June 30, 2012: (1) met all conditions cited above for Phase II; (2) acquired or has under contract 100% of the land for residential development; (3) submitted a preliminary Conceptual Development Plan and updated pro forma that shows the number of housing units to be constructed, estimated sales prices by type of unit and timeline for construction, and demonstrates that the site preparation budget is adequate; (4) provided a study that indicates the market will be able to absorb the projected number of units to be constructed in the proposed timeline so as to generate sufficient incremental taxes to repay the Section 108 loan and the additional $4 million City contribution; (5) committed at least $10,750,000 in equity, loans or other financial commitments to be used for land acquisition and site preparation; (6) received EPA approval of itself and the site(s) as being eligible for an environmental remediation loan from EPA funds if needed; and (7) provided a performance guarantee that the Developer or another developer acceptable to the City will commit to constructing at least 160 dwelling units, commit to starting construction as soon as infrastructure is substantially installed and completing the units on schedule, and submit evidence of financing in the form of earnest money for land acquisition and a Letter of Credit or other form of guarantee that will provide the equivalent of three years of full taxes on the 160 dwelling units if construction is delayed.

Repayment of the $9 million loan derived from the Section 108 loan and the $4 million additional City contribution is contingent upon obtaining sufficient TIF revenue from the Phase II commercial and the residential redevelopment projects. This project is anticipated to cash flow only if developers of Gray's Lake Landing are limited to 5-year, 100% residential tax abatement. The tax abatement schedule for this project must be applied consistently throughout the downtown. By entering into the Phase I Commercial Development Agreement, the Council is declaring its support for amending the current 10-year, 100% residential tax abatement in the downtown to 5-year, 100% residential tax abatement. This is a major policy change that will impact the entire downtown.

The Riverpoint West Redevelopment Project is very complex and will not occur as a signature urban development without the City's investment. It provides a unique opportunity for the City to affect the quality and density of development within an integrated design instead of allowing this 125-acre area to develop piecemeal and be a significant under-performer. The City and the Developer have worked diligently during the last 21 months to address issues related to the high-risk nature of this endeavor. The predominant risks relate to unforeseen costs associated with potential environmental remediation and geo-technical challenges on this former industrial site that could not be ascertained fully until site preparation is underway and less than expected tax revenues due to slower market absorption of the new commercial and residential space.

The City has built provisions into the project's structure and the Phase I Commercial Development Agreement that assuage but do not completely avoid financial risk. These provisions include phasing the project, accessing various funding sources, ensuring that the Developer has a reasonable financial investment and risk, obtaining security for the City's investment, maintaining oversight on project expenditures, limiting commercial tax abatement to 3-year, 100% as well as requiring sufficient density and minimum assessed values to generate anticipated tax revenue, providing interim funding through a debt service reserve and the Metro Center TIF to cover any shortfall between the time the Section 108 loan payments are due and sufficient TIF is generated from the project (anticipated to be in FY 2016/2017), requiring the Developer to pay any shortfall thereafter in project-related TIF needed to cover loan payments, and exercising financial remedies in case of default.

Although the financial risks are high, the City has the potential to yield substantial benefits. This project will transform a heavy industrial brownfield site into a thriving mixed-use urban neighborhood that adds significant vitality to the downtown area and increases Riverpoint West's current tax base exponentially from $12 million to at least $165 million. In addition, the Hubbell Realty Company will invest approximately $15 million to construct 143,000 square feet of office/flex space along SW 9th Street south of the Phase I Commercial Development Area. Ultimately the project will contribute to the long-term viability of the Central Business District by providing new office, retail and residential opportunities within walking distance. The new Gray's Lake Office Park and Gray's Lake Landing collectively will be a key smart growth initiative.

PREVIOUS COUNCIL ACTION(S):

Date: June 4, 2007

Roll Call Number: 07-1119

Action: Setting date of hearing on Proposal to enter into an Urban Renewal Development Agreement with River Point West, LLC for the Riverpoint West Redevelopment Project including the sale of land and inviting competing proposals, (7-9-07). (Council Communication No. 07-315) Moved by Hensley to adopt. Motion Carried 7-0.

Date: August 7, 2006

Roll Call Number: 06-1617

Action: Section 108 Loan Guarantee Application and Amended Brownfield Economic Development Initiative (BEDI) Grant Application for Redevelopment of Riverpoint West. (Council Communication No. 06-484) Moved by Hensley to adopt. Motion Carried 6-1.

Date: October 24, 2005

Roll Call Number: 05-2603

Action: Preliminary Agreement with Riverpoint West LLC for redevelopment of Riverpoint West Area. (Council Communication No. 05-611) Moved by Hensley to adopt. Motion Carried 7-0.

Date: May 23, 2005

Roll Call Number: 05-1331

Action: Preliminary Agreement with Hubbell Realty Company and Hubbell Terminal Corporation (Rick Tollakson, President & CEO) and Riverpoint West LLC (George Sherman, President) for redevelopment of parcels west of SW 9th along Tuttle and Murphy Streets. (Council Communication No. 05-305) Moved by Hensley to adopt. Motion Carried 6-1. Absent:Vlassis.

BOARD/COMMISSION ACTION(S):

Date: May 1, 2007

Roll Call Number: N/A

Action: Urban Design Review Board recommended approval of using tax increment finance revenue to repay the $8.5 million Section 108 loan.

ANTICIPATED ACTIONS AND FUTURE COMMITMENTS:

The public hearing for the City to enter into the HUD Section 108 loan and Brownfields Economic Development Initiative (BEDI) grant agreements is scheduled for July 23, 2007. Other actions include:

- Amending the current 10-year, 100% residential tax abatement in the downtown to 5-year, 100% residential tax abatement.
- Approving loan and trust agreements, assignments and other contracts to implement a New Markets Tax Credits structure.
- Approving the Conceptual Development Plan and pro forma and any material amendments thereto.
- Approving each Parcel Development Agreement for the sale and redevelopment of any parcel.
- Approving the future Phase II Commercial Development Agreement and the Residential Development Agreement.

COMPARISON OF KEY PROVISIONS OF PRELIMINARY AND FINAL DEVELOPMENT AGREEMENTS FOR THE REDEVELOPMENT OF RIVERPOINT WEST

PRELIMINARY AGREEMENT	***FINAL AGREEMENT***
City financing not anticipated to exceed 75% of the Net Present Value of projected TIF revenues generated by the project over 20 years	City investment not anticipated to exceed 75% of projected TIF revenues generated by the project over 22 years
Developer will agree to a reduction in the current 10-year, 100% tax abatement schedule consistently applied throughout the downtown	Same
CDBG funds will not be placed at risk; Metro Center TIF to be used to address cash flow issues	Same; in addition, up to $2.9 million of Metro Center TIF to be used to address cash flow issues until FY 2015/2016; thereafter, Developer responsible to pay any shortfall in projected TIF
City's financial participation structured as an economic development grant to limit the amount of local funds invested in project	Same
Section 108 loan and G.O. bonds drawn down in several installments according to a defined project schedule with performance benchmarks	Same
City to maintain first position in the mortgage on land as security for the Section 108 loan	Same effectively; City to hold deed in escrow for all land Developer acquires
Repayment of Section 108 loan to be structured as non-recourse debt, subject to annual appropriation of TIF funds	Same
Other than tax abatement, no other City incentives provided to project	Same
Developer to adhere to Metro Center Urban Renewal Plan covenants	Same
Developer to use best efforts to assemble land by voluntary acquisition; City to exercise eminent domain if necessary	Same
Savings from pro forma shall reduce City's economic development grant	Savings to be reinvested into Phase II commercial and residential projects