



Council Communication

Office of the City Manager

Date January 28, 2008

Agenda Item No. 59
Roll Call No. 08-
Communication No. 08-027
Submitted by: Richard A. Clark, City Manager

AGENDA HEADING:

Receive and File an extension request as presented in the accompanying communication from Vision Fuels Des Moines, LLC and direct the City Manager to negotiate the appropriate Urban Renewal Agreement amendment.

SYNOPSIS:

Pursuant to the terms of the October 22, 2007 Amended and Restated Urban Renewal Agreement for Sale of Land for Private Development, Vision Fuels Des Moines, LLC (David W. Walters, Chairman, 2641 86th Street, Urbandale, IA 50322) is to close on 164 acres of City-owned land on February 1, 2008 for construction of a 110 million gallon ethanol plant. Vision Fuels has not secured the necessary financing and will not be able to close on the land on February 1, 2008.

Vision Fuels has requested a deadline extension as outlined in the attached letter. The key points of the extension are as follows:

1. Vision Fuels shall have until June 1, 2008 to provide the City Manager written proof of a commitment for the infusion of equity in an amount not less than \$30,000,000. This commitment shall be from a reputable source with the financial ability to perform by delivering the committed equity at financial close.
2. Vision Fuels shall have until June 1, 2008 to provide to the City Manager written proof of a commitment for the provision of \$120,000,000 or more of debt financing, or sufficient debt financing that no further equity is required by Vision Fuels as otherwise required in paragraph 1. This commitment for debt financing shall be from a reputable source with the financial ability to perform by delivering the funds for debt financing at financial close.
3. Vision Fuels has previously delivered to the City a non-refundable good faith deposit of \$848,000. Vision Fuels will tender an additional good faith deposit of \$100,000 upon the City Council's approval of this proposed extension.
4. Vision Fuels agrees that June 1, 2008 is a final "drop dead date" and that if the conditions set forth in paragraphs 1 through 3 are not met that no further extensions will be requested.
5. In the event that Vision Fuels successfully meets each condition set forth in paragraphs 1 through 3 above prior to June 1, 2008, then the City of Des Moines agrees, without the need for further action, to allow Vision Fuels until November 1, 2008 to complete due diligence required by its equity and debt sources necessary to reach final close and to close on the sale of the land from the City of Des Moines to Vision Fuels.

The City Manager recommends the City Council authorize the deadline extensions outlined above and direct the City Manager to negotiate the appropriate changes to the Amended and Restated Urban Renewal

Agreement for Sale of Land for Private Development. This amendment will be presented for City Council approval on February 11, 2008. Both the City Manager's Office and Vision Fuels agree that no further extensions shall be requested if these revised dates cannot be reached.

FISCAL IMPACT:

Amount: \$0 provided Vision Fuels meets the newly established deadlines. Should Vision Fuels not meet the deadlines they would forfeit \$848,000 currently on deposit, plus the additional \$100,000 required by this extension.

Funding Source: Vision Fuels Des Moines, LLC

ADDITIONAL INFORMATION:

Vision Fuels' preliminary financing commitment was unsuccessful in 2007. They have since initiated discussions with other financing sources and feel improved market conditions will increase the likelihood they will successfully raise the equity and debt required for the project. The Federal government approved a new energy bill in December 2007. The new bill stipulates annual biofuels consumption of 36 billion gallons by 2022. This new goal represents an approximate fivefold increase over current U.S. ethanol production capacity.

The City has received no additional interest from developers wishing to pursue the City-owned land.

Performance Benchmarks

Below are the scheduled benchmarks as contained in the October 22, 2007 Amended and Restated Urban Renewal Agreement.

Date	Action
completed	Have requested a Pre-Application Conference pursuant to Section 501.
completed	Have provided the report regarding the use of innovative technologies required by Section 403.
completed	Provide preliminary evidence of financing as required by Section 205(A).
completed	<ul style="list-style-type: none"> • Have submitted a Conceptual Development Plan pursuant to Article 5 of this Agreement. • Have submitted a "PUD" Conceptual Plan for the Improvements. • Have submitted an application to rezone the Property to the "PUD" Planned Unit Development District classification, and for approval of the "PUD" Conceptual Plan. • Have submitted a Preliminary Subdivision Plat for the Property
completed	Have obtained approval of a Preliminary Subdivision Plat by the Plan and Zoning Commission
completed, pending final review of the office building design	<ul style="list-style-type: none"> ▪ Have obtained approval of the Conceptual Development Plan. ▪ Have obtained approval of the "PUD" Conceptual Plan. (Enactment of the Rezoning Ordinance may be delayed by the requirement for 3 separate readings.)
completed	Have filed a combined "PUD" Development Plan and Site Plan for the

	Property and Improvements.
completed	Have obtained approval of a "PUD" Development Plan and Site Plan for the Property and Improvements.
Feb 01, 2008	<ul style="list-style-type: none"> • Closing - Have satisfied the conditions precedent to Closing under Section 205(B) of this Agreement and have tendered Closing. • Have provided to City a copy of the Air Quality Permit pursuant to Section 401(3) or evidence that Developer has filed the appropriate documentation and is diligently pursuing such a "minor source" permit.
Mar 01, 2008	Have obtained approval of and recorded a subdivision plat for the Property.
Apr 15, 2008	Have obtained footing and foundation permits and have commenced construction of the footings and foundations for a substantial portion of the Improvements.
Nov 01, 2009	Have substantially completed the Improvements and qualified for the issuance of the Certificate of Completion
Dec 31, 2009	Startup Date

PREVIOUS COUNCIL ACTION(S):

Date: November 19, 2007

Roll Call Number: 07-2254

Action: Regarding request from Vision Fuels Des Moines, LLC to rezone property located in the 3801 block of Vandalia Road from "M-1" (Light Industrial) to "PUD" (Planned Unit Development) and approve revised "Vision Fuels" PUD Conceptual Plan for 165 acres of land to be developed with light industrial and limited heavy industrial uses including development and production of renewable fuels such as dry mill Ethanol. Moved by Meyer to adopt and approve the rezoning and Conceptual Plan, subject to final passage of the rezoning ordinance. Motion Carried 6-1. Nays: Cownie.

Date: October 22, 2007

Roll Call Number: 07-2050

Action: On proposed Amended and Restated Urban Renewal Agreement for Sale of Land for Private Redevelopment to Vision Fuels Des Moines, L.L.C. (SE Agribusiness Park-Disposition Parcel No. 1). (Council Communication No. 07-643) Moved by Meyer to adopt. Motion Carried 6-1. Nays: Cownie.

Date: October 8, 2007

Roll Call Number: 07-1945

Action: On proposed Amended and Restated Urban Renewal Agreement for Sale of Land for Private Redevelopment, to Vision Fuels Des Moines, L.L.C., (10-22-07). Moved by Hensley to adopt. Motion Carried 6-1. Nays: Cownie.

Date: September 24, 2007

Roll Call Number: 07-1871

Action: From Vision Fuels Des Moines, L.L.C., regarding its progress towards financing and construction of an Ethanol Production Facility in the SE Agribusiness Park, and requesting amendment to the Agreement for sale of real estate. Moved by Meyer to receive and file, and to authorize and direct the City Manager to negotiate with Vision Fuels on the sale of the additional 36 acres and other appropriate amendments to the Agreement, for consideration by the City Council after notice and public hearing at a later date. Motion Carried 6-1. Pass: Cownie.

Date: January 22, 2007

Roll Call Number: 07-145

Action: On Urban Renewal Agreement for sale of land for private redevelopment with Vision Fuels Des Moines, L.L.C. (Council Communication No. 07-044) Moved by Meyer to adopt. Motion Carried 7-0.

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:

Approval of Urban Renewal Agreement amendment on February 11, 2008.