

Date February 23, 2009.....

RESOLUTION ACCEPTING DEVELOPER-INITIATED REDEVELOPMENT PROPOSAL FROM DOLL DISTRIBUTING, LLC TO REDEVELOP DISPOSITION PARCEL NO. 28A (SOUTH OF THOMPSON AVENUE TO E. JEFFERSON AVENUE ON DE WOLF STREET) IN THE GUTHRIE AVENUE BUSINESS PARK URBAN RENEWAL AREA

WHEREAS, on September 26, 1988 by Roll Call No. 88-4238, the City Council of the City of Des Moines approved the Urban Renewal Plan for the Guthrie Avenue Business Park Urban Renewal Project (hereinafter referred to as "Plan"), an area generally bounded by Guthrie Avenue to the north, Washington Avenue to the south, the Union Pacific Railroad right-of-way to the east and East 17th Street to the west and said Plan has subsequently been amended; and

WHEREAS, Doll Distributing, LLC ("Offeror") presented a developer-initiated proposal including preliminary design plans ("Proposal") and the Urban Renewal Development Agreement ("Agreement") for private redevelopment of Disposition Parcel No. 28A ("Property") in the Guthrie Avenue Business Park to the Urban Design Review Board on December 2, 2008, which Proposal is attached herein as Attachment "A"; and

WHEREAS, the attached Proposal, attached as Attachment "A", is tendered herewith and executed by the Offeror, proposes redevelopment of 55,000 square feet of land into an additional 18,000 square feet of an office/distribution facility, parking, circulation and landscaping at an estimated development cost of \$1.8 million; and

WHEREAS, said Proposal provides Offeror will purchase the Property for a purchase price of \$74,250; and

WHEREAS, said Proposal appears to meet the minimum needs of the City for such redevelopment, appears to be comprehensive and legal in form and content, has been reviewed by the Urban Design Review Board at its December 2, 2008 meeting and the Board recommended acceptance of the Offeror's Proposal to this Council; and

WHEREAS, the proposed Minimum Development Requirements and Competitive Criteria, attached herein as Attachment "B", were reviewed by the Urban Design Review Board at its December 16, 2008 meeting, which recommended approval to the Council; and

WHEREAS, said Offeror will tender a cashier's check made payable solely to the City of Des Moines as a good faith deposit in the amount of \$18,562.50 for the development of Disposition Parcel No. 28A; and

WHEREAS, Section 403.8, Code of Iowa, provides:

1. A municipality may sell, lease or otherwise transfer real property or any interest in real property acquired by it, and may enter into contracts for such purposes in an urban renewal area for residential, recreational, commercial, industrial or other uses, or for public use, subject to such covenants, conditions and restrictions, including covenants running with the land, it deems to be necessary or desirable to assist in preventing the development or spread of future slums or blighted areas, or to otherwise carry out the purposes of this chapter. However, the sale, lease, other transfer, or retention, and any agreement relating to it, may be made only after the approval of the urban renewal plan by the local governing body. The purchasers or lessees and their successors and assigns shall devote the real property only to the uses specified in

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The urban renewal plan and they may be obligated to comply with other requirements the municipality determines to be in the public interest including the requirements to begin within a reasonable time any improvements on the real property required by the urban renewal plan. The real property or interest shall be sold, leased, otherwise transferred, or retained at not less than its fair value for uses in accordance with the urban renewal plan except as provided in subsection 3. In determining the fair value of real property for uses in accordance with the urban renewal plan, a municipality shall take into account and give consideration to the uses provided in such plan; the restrictions upon and the covenants, conditions and obligations assumed by the purchaser or lessee or by the municipality retaining the property; and the objectives of the plan for the prevention of the recurrence of slum or blighted areas. The municipality in an instrument of conveyance to a private purchaser or lessee may provide that the purchaser or lessee shall not sell, lease, or otherwise transfer the real property, without the prior written consent of the municipality, until the purchaser or lessee has completed the construction of any or all improvements which the purchaser or lessee has become obligated to construct. Real property acquired by a municipality which, in accordance with the urban renewal plan, is to be transferred, shall be transferred as rapidly as feasible in the public interest, consistent with the carrying out of the urban renewal plan. A contract for a transfer under the urban renewal plan or a part or parts of the contract or plan as the municipality determines, may be recorded in the land records of the county in such a manner to afford actual or constructive notice of the contract or plan.

2. A municipality may dispose of real property in an urban renewal area to private persons only under reasonable competitive bidding procedures it shall prescribe, or as provided in this subsection. A municipality, by public notice by publication in a newspaper having a general circulation to the community, thirty days prior to the execution of a contract to sell, lease or otherwise transfer real property, and prior to the delivery of an instrument of conveyance with respect to the real property under this section, may invite proposals from and make available all pertinent information to any persons interested in undertaking to redevelop or rehabilitate an urban renewal area, or a part of the area.

The notice shall identify the area, or portion of the area, and shall state that proposals shall be made by those interested within thirty days after the date of publication of the notice, and that further information available may be obtained at the office designated in the notice. The municipality shall consider all redevelopment or rehabilitation proposals, and the financial and legal ability of the persons making the proposals to carry them out, and the municipality may negotiate with any persons for proposals concerning the purchase, lease or other transfer of real property acquired by the municipality in the urban renewal area. The municipality may accept the proposal it deems to be in the public interest and in furtherance of the purposes of this chapter. However, a notification of intention to accept the proposal shall be filed with the governing body not less than thirty days prior to the acceptance. Thereafter, the municipality may execute a contract in accordance with subsection 1 and may deliver the deeds, leases and other instruments and may take all steps necessary to effectuate the contract.

WHEREAS, it is necessary and appropriate that the City Council take certain actions with respect to the Property in order to accept the Proposal for the purchase of the Property and give fair opportunity for other potential offerors to submit a Proposal for the purchase of the Property; and

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WHEREAS, such necessary and appropriate actions of the City Council shall include the following:

1. Acceptance of the Offeror's Proposal (Attachment "A") in accordance with the Offeror's presentation to the Urban Design Review Board on December 2, 2008 and Urban Renewal Development Agreement.
2. Approval of the Minimum Development Requirements and Competitive Criteria (Attachment "B") which meet the objectives and requirements of the Plan, as amended, and which were developed to evaluate proposals.
3. Approval of the general form of required documents for a redevelopment proposal to be used by competing redevelopers which documents include:
 - A. Summary of Proposal.
 - B. Letter of Transmittal.
 - C. Redeveloper's Statement for Public Disclosure.
 - D. Redeveloper's Statement of Qualifications and Financial Responsibility.
 - E. Financial Condition of the Redeveloper.
 - F. Non-Collusion Affidavit.
 - G. Urban Renewal Development Agreement.
4. Setting dates for:
 - A. The receipt of competing proposal(s) and the opening thereof.
 - B. The period of time after receipt of competing proposal(s) for each offeror to amend its proposal in writing and the deadline for completion of each amendment.
 - C. The period of time for review of proposal(s) by the Urban Design Review Board and the period of time for the Board to make recommendations to this Council.
5. Declaration that in the event the Offeror's Proposal is the only proposal for the redevelopment of the Property or the only one that is timely submitted and meets the Minimum Development Requirements contained in Attachment "B", such Proposal will be given final approval by the Council's authorization that the Agreement herein submitted as a part of Attachment "A" be executed on behalf of the City of Des Moines.
6. Declaration that in the event the Offeror's Proposal is modified or a competing proposal is selected for award of the sale of Property, further public notice will be published of the City's intent to enter into the resulting Agreement; and

WHEREAS, the City has adopted a fair market value for Disposition Parcel No. 28A, which is \$74,250 for uses in accordance with the Urban Renewal Plan; and

WHEREAS, this Council believes the acceptance of the Offeror's Proposal to redevelop the Property and the advertisement for competing redevelopment proposals is in the best interests of the City of Des Moines, Iowa.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Des Moines, Iowa, that:

1. The Proposal, attached herein as Attachment "A" which includes the Agreement executed by the Offeror for the Property be and is hereby accepted and approved as to form for the purposes hereinafter stated.

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2. For the purposes of defining the offering of the Property for redevelopment, said Proposal of Offeror shall be deemed to be and to illustrate the minimum proposal acceptable to the City of Des Moines in terms of: (A) general form of proposal and data required for competing proposals; (B) land parcelization; (C) type of land use required; (D) intensity of land use required; (E) sale price; (F) easements to be obtained and/or received; (G) form of deed; (H) time and place for delivery of deed; (I) taxes; (J) recordation of deed; (K) performance assurances; (L) time for commencement and completion of improvements; (M) time permitted for plan submission and review; (N) rights of access to property; (O) construction plans, improvements and certificate of completion; (P) restrictions on use of property; (Q) prohibitions against assignment and transfer; (R) mortgage financing and rights of mortgagees; (S) remedies; and (T) all miscellaneous provisions.
3. The Minimum Development Requirements and Competitive Criteria (Attachment "B") are determined to meet the objectives and requirements of the Plan, and are hereby approved and adopted.
4. Competing proposals to the Offeror's Proposal shall:
 - A. Devise a method and sources of financing which must be adequate to assure financing of the project in a timely manner.
 - B. Provide a certified or registered check, bid bond with corporate surety, unconditional and irrevocable letter of credit (from a lending institution approved by the City) or certificate of deposit redeemable by the City without another endorsement issued to the City in the amount of \$18,562.50 payable to the order of the City of Des Moines, Iowa, for Disposition Parcel No. 28A as the good faith deposit. The minimum land price must be offered. If a check is submitted, it shall be deposited in an interest-bearing account by the City. Any interest earned pursuant to such deposit shall be paid to the competing offeror when the good faith deposit is returned. If the competing proposal is accepted, the good faith deposit will be held by the City as security for execution by the competing offeror of the Urban Renewal Development Agreement and as security for proceeding with development. The good faith deposit of a successful competing offeror shall be released upon the completion of construction and the issuance of a Certificate of Completion or in accordance with the other terms of the Urban Renewal Development Agreement. The good faith deposit of an unsuccessful competing offeror shall be returned by the City upon selection of another redeveloper.
 - C. Propose a time schedule for commencement and completion of the construction within one year from execution of the Agreement.
 - D. Devise an architectural and landscaping design which meets the Minimum Development Requirements, contained in Attachment "B", which specify Disposition Parcel No. 28A uses, minimum building size, building setbacks, building height, building entrance, building design and materials, off-street parking, loading and access, outside storage and service areas, site design and materials, lighting and signage.
 - E. Complete all required documentation to indicate design specifications for the development. Development must proceed as designed. Proposals may provide alternate designs which require exception(s) or variance(s) from the Board of Adjustment. If the exception(s) or variance(s) are not granted, the original design must be used.

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Deviations from the proposal form shown in Attachment "A" shall be permitted only as set forth in this resolution or to accommodate submission of competing proposals in accordance with the requirements referenced above.

5. The recommendation of the Urban Design Review Board that the Proposal and plans of the Offeror (Attachment "A") be accepted and approved by this Council are hereby confirmed and approved.
6. It is hereby determined the Offeror possesses the qualifications and financial resources necessary to acquire and redevelop the Property in the manner stated in its Proposal in accordance with the Plan, as amended.
7. It is hereby determined the purchase price of \$74,250 to be paid by the Offeror meets the fair market value thereof for uses in accordance with the Urban Renewal Plan and shall be the established minimum price for Disposition Parcel No. 28A/Guthrie Avenue Business Park Urban Renewal Area.
8. The City Clerk shall receive and retain for public examination the attached Proposal and Urban Renewal Development Agreement for said Property by the Offeror subject to the conditions herein stated and in accordance with Chapter 403, Code of Iowa, and in the event of no qualified competing proposals, the City Clerk shall submit the same to this Council for final approval and execution upon expiration of the notice period hereinafter prescribed.
9. The action of this Council be considered to be and does hereby constitute final notice to all concerned of the intention of this Council to give final approval of the Offeror's Proposal to purchase and redevelop the Property and enter into the Agreement with the Offeror.
10. This roll call and Attachments "A," "B" and "C" shall be on file at the Office of the City Clerk and at the Office of Economic Development, City Hall, 400 Robert D. Ray Drive, Des Moines, Iowa.
11. Approval and acceptance of the Offeror's Proposal (Attachment "A") is conditioned upon there being no better proposal submitted by a competitor for the redevelopment of the Property within the period or periods hereinafter stated.
12. The Property shall be competitively offered for sale based on the terms and conditions hereinafter stated and such offering shall be in substantial conformance with the provisions of Chapter 403, Code of Iowa, requiring "reasonable competitive bidding procedures" as same are herein prescribed and which method is hereby determined to be the appropriate method for making the land available for redevelopment.
13. The required forms for the submission of proposals and statements by the competing offeror(s), including the Urban Renewal Development Agreement, shall be in substantial conformity with the provisions of this Roll Call and available on request from the Office of Economic Development, City Hall, 400 Robert D. Ray Drive, Des Moines, Iowa, 50309 (515-283-4004) and be completely executed in all particulars required by said forms.

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14. All inquiries regarding the terms and conditions of this offering must be submitted in writing to the Office of Economic Development, City Hall, 400 Robert D. Ray Drive, Des Moines, Iowa, 50309. All responses to inquiries shall be in writing and will be kept on file at the Office of the City Clerk and the Office of Economic Development Division, City Hall. No written inquiries shall be accepted after 5:00 p.m. on April 6, 2009.
15. Written competing proposals for the purchase and redevelopment of said Property must be received by the Office of Economic Development on or before 5:00 pm on April 6, 2009. All proposals must be submitted in three manually executed copies in a securely sealed package with no exterior indication of the identity of the person or firm making the proposal. The form of proposals must include completed and executed copies of all documents. Said proposals shall be received in the Office of Economic Development located in City Hall, 400 Robert D. Ray Drive, Des Moines, Iowa.
16. An Office of Economic Development staff member shall deliver the competing proposals to the Urban Design Review Board at its meeting on April 7, 2009, and the Urban Design Review Board is hereby nominated and appointed as the agent of the City of Des Moines, Iowa, to receive competing proposals for the purchase of said Property from the Office of Economic Development staff members at its April 7, 2009 meeting. Each proposal will then be publicly opened at a meeting of the Urban Design Review Board commencing at 7:30 a.m. on April 7, 2009. The Urban Design Review Board shall proceed at such time to acknowledge receipt of each proposal in its Minutes and the Board is authorized and directed to make a preliminary analysis of each proposal for compliance with the requirements hereinabove stated and for quality of the proposal in view of the following criteria by which each proposal will finally be evaluated by this Council, to wit:
 - A. The degree to which the proposal meets the objectives and requirements of the Urban Renewal Plan, as amended, as reflected by the Minimum Development Requirements and Competitive Criteria (Attachment "B").
 - B. The ability of the competing offeror to commence and complete the redevelopment activity in an expeditious and timely manner with the start of construction anticipated to being on or by 90 days after the date of conveyance of the Property by the City.
 - C. Ambiguity and/or lack of information in the proposal shall be judged negatively.
17. Following receipt of a competing proposal(s) and during the period of such preliminary analysis, there shall be a period of seven days, starting on April 7, 2009 and ending at 9:00 a.m. on April 15, 2009 for the Offeror to amend its proposal in response and deliver same to the Office of Economic Development in the same manner as competing proposal(s) aforesaid.
18. In the event any competing proposal is received and determined by the Urban Design Review Board to meet the Minimum Development Requirements contained in Attachment "B" and the required form of proposal requirements of this Roll Call, the Board shall schedule a meeting on or by April 16, 2009 for a bid-off. During such bid-off, each competing proposal will bid against the other, starting with the first proposal received until each proposal will not be further improved in response to the last bid. The period of time of such bid-off shall not be in excess of three consecutive hours and the rules of such bid-off shall be as informally determined by the Urban Design Review Board at or before such bid-off period and shall be absolute.

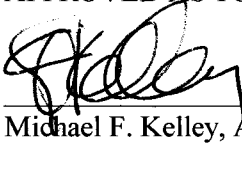
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19. In the event of such bid-off, the Urban Design Review Board shall forthwith make its recommendation to this Council for such further proceedings as may then be appropriate under the provisions of Chapter 403, Code of Iowa.
20. In the event the Urban Design Review Board determines that no competing proposal meets the Minimum Development Requirements contained in Attachment "B" or the form of proposed requirements stated in this Roll Call, any material submitted by the Offeror to amend its proposal shall not become binding.
21. All competing proposals received which are deemed to meet the requirements of this Roll Call shall not be withdrawn under any circumstances until September 30, 2009.
22. The City Clerk is hereby authorized and directed to publish notice of said proposal and hearing in the form hereto attached as Attachment "C" in the Des Moines Register on or by February 26, 2009.

(Council Communication No. 09- 081 attached)

APPROVED AS TO FORM:



Michael F. Kelley, Assistant City Attorney

Moved by _____ to adopt.

Attachments:

- A – Development Proposal from Offeror including Urban Development Agreement
- B - Minimum Development Requirements and Competitive Criteria
- C – Public Notice for Publication

| COUNCIL ACTION | YEAS | NAYS | PASS | ABSENT |
|----------------|------|------|------|--------|
| COWNIE | | | | |
| COLEMAN | | | | |
| HENSLEY | | | | |
| KIERNAN | | | | |
| MAHAFFEY | | | | |
| MEYER | | | | |
| VLASSIS | | | | |
| TOTAL | | | | |

MOTION CARRIED

APPROVED

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.

City Clerk