

★ Roll Call Number

08-_____

Agenda Item Number

41

Date July 14, 2008.....

COMMUNICATION from the City Manager regarding an offer from Louis and Benjamin Zenti (dba Central Wire and Iron, 401 SE 4th Street) to purchase real estate in the Guthrie Business Park for construction of a light industrial business.

(Council Communication No. 08- 415)

MOVED by _____ to receive and file, and to direct the City Manager to proceed with negotiations toward a final agreement for further consideration by the City Council.

FORM APPROVED:

Roger K Brown

Roger K. Brown
Assistant City Attorney

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

Daniel L. Manning ISBA # 8003

41

OFFER TO PURCHASE REAL PROPERTY AND ACCEPTANCE

TO: City of Des Moines, Iowa

1. **REAL ESTATE DESCRIPTION.** The Buyers offer to buy real estate in Polk County, Iowa, described as follows:

See attached Exhibit A.

with any easements and appurtenant servient estates, but subject to the following: a. any zoning and other ordinances; b. any covenants of record; c. any easements of record for public utilities, roads and highways designated the Real Estate; provided Buyers, on possession, are permitted to make the following use of the Real Estate: _____

2. **PRICE.** The purchase price shall be \$70,000.00, payable at Polk County, Iowa, as follows: Earnest deposit in the amount of \$1,000.00 to be held in trust by the Connolly, O'Malley, Lillis, Hansen & Olson, L.L.P. Law Firm, to be delivered to the Seller upon performance of Seller's obligations and satisfaction of Buyer's contingencies, if any; and the balance of the Purchase Price of \$69,000.00 shall be paid at time of closing, subject only to those provisions as set forth herein as conditions precedent to closing.

3. **REAL ESTATE TAXES.** Sellers shall pay any unpaid real estate taxes payable in prior years. Buyers shall pay all subsequent real estate taxes. Any proration of real estate taxes on the Real Estate shall be based upon such taxes for the year currently payable unless the parties state otherwise.

4. SPECIAL ASSESSMENTS.

a. Sellers shall pay all special assessments which are a lien on the Real Estate as of the date of acceptance of this offer.

b. All other special assessments shall be paid by Buyers.

5. **RISK OF LOSS AND INSURANCE.** Risk of loss prior to Seller's delivery of possession of the Real Estate to Buyers shall be as follows:

a. All risk of loss shall remain with Sellers until possession of the Real Estate shall be delivered to Buyers.

6. **CARE AND MAINTENANCE.** The Real Estate shall be preserved in its present condition and delivered intact at the time possession is delivered to Buyers, provided, however, if 5.a. is stricken and there is loss or destruction of all or any part of the Real Estate from causes covered by the insurance maintained by Sellers, Buyers agree to accept such damaged or destroyed Real Estate together with such insurance proceeds in lieu of the Real Estate in its present condition and Sellers shall not be required to repair or replace same.

7. **POSSESSION.** If Buyers timely perform all obligations, possession of the Real Estate shall be delivered to Buyers on _____, with any adjustments of rent, insurance, and interest to be made as of the date of transfer of possession.

8. **FIXTURES.** All property that integrally belongs to or is part of the Real Estate, whether attached or detached, such as light fixtures, shades, rods, blinds, awnings, windows, storm doors, screens, plumbing fixtures, water heaters, water softeners, automatic heating equipment, air conditioning equipment, wall to wall carpeting, built-in items and electrical service cable, outside television towers and antenna, fencing, gates and landscaping shall be considered a part of Real Estate and included in the sale except: (consider: rental items.) _____

9. **USE OF PURCHASE PRICE.** At time of settlement, funds of the purchase price may be used to pay taxes and other liens and to acquire outstanding interests, if any, of others.

10. **ABSTRACT AND TITLE.** Sellers, at their expense, shall promptly obtain an abstract of title to the Real Estate continued through the date of acceptance of this offer, and deliver it to Buyers for examination. It shall show merchantable title in Sellers in conformity with this agreement, Iowa law and Title Standards of the Iowa State Bar Association. The abstract shall become the property of the Buyers when the purchase price is paid in full. Sellers shall

pay the costs of any additional abstracting and title work due to any act or omission of Sellers, including transfers by or the death of Sellers or their assignees.

11. DEED. Upon payment of the purchase price, Sellers shall convey the Real Estate to Buyers or their assignees, by Warranty deed, free and clear of all liens, restrictions, and encumbrances except as provided in 1 a. through 1 d. Any general warranties of title shall extend only to the time of acceptance of this offer, with special warranties as to acts of Sellers continuing up to time of delivery of the deed.

12. JOINT TENANCY IN PROCEEDS AND IN REAL ESTATE. If Sellers, immediately preceding acceptance of this offer, hold title to the Real Estate in joint tenancy with full right of survivorship, and the joint tenancy is not later destroyed by operation of law or by acts of the Sellers, then the proceeds of this sale, and any continuing or recaptured rights of Sellers in the Real Estate, shall belong to Sellers as joint tenants with full rights of survivorship and not as tenants in common; and Buyers, in the event of the death of either Seller, agree to pay any balance of the price due Sellers under this contract to the surviving Seller and to accept a deed from the surviving Seller consistent with paragraph 11.

13. JOINDER BY SELLER'S SPOUSE. Seller's spouse, if not a titleholder immediately preceding acceptance of this offer, executes this contract only for the purpose of relinquishing all rights of dower, homestead and distributive shares or in compliance with Section 561.13 of the Iowa Code and agrees to execute the deed or real estate contract for this purpose.

14. TIME IS OF THE ESSENCE. Time is of the essence in this contract.

15. REMEDIES OF THE PARTIES

a. If Buyers fail to timely perform this contract, Sellers may forfeit it as provided in the Iowa Code, and all payments made shall be forfeited or, at Seller's option, upon thirty days written notice of intention to accelerate the payment of the entire balance because of such failure (during which thirty days such failure is not corrected) Sellers may declare the entire balance immediately due and payable. Thereafter this contract may be foreclosed in equity and the Court may appoint a receiver.

b. If Sellers fail to timely perform this contract, Buyers have the right to have all payments made returned to them.

c. Buyers and Sellers also are entitled to utilize any and all other remedies or actions at law or in equity available to them and shall be entitled to obtain judgment for costs and attorney fees as permitted by law.

16. STATEMENT AS TO LIENS. If Buyers intend to assume or take subject to a lien on the Real Estate, Sellers shall furnish Buyers with a written statement from the holder of such lien, showing the correct balance due.

17. SUBSEQUENT CONTRACT. Any real estate contract executed in performance of this contract shall be on a form of the Iowa State Bar Association.

18. APPROVAL OF COURT. If the sale of the Real Estate is subject to Court approval, the fiduciary shall promptly submit this contract for such approval. If this contract is not so approved, it shall be void.

19. CONTRACT BINDING ON SUCCESSORS IN INTEREST. This contract shall apply to and bind the successors in interest of the parties.

20. CONSTRUCTION. Words and phrases shall be construed as in the singular or plural number, and as masculine, feminine or neuter gender, according to the context.

21. TIME FOR ACCEPTANCE. If this offer is not accepted by Sellers on or before November 4, 2002 it shall become void and all payments shall be repaid to the Buyers.

22. OTHER PROVISIONS.

This Offer is contingent upon the Buyers' ability to reach a settlement with the City of Des Moines concerning the acquisition of certain property by the City at 401 SE

4th Street in the City of Des Moines, Iowa; said property being acquired by the City for purposes of the extension of the Martin Luther King Parkway.

Dated: JUNE 12, 2008

BUYERS:

Benjamin Zenti
Benjamin Zenti

Louis Zenti
Louis Zenti

THIS OFFER IS ACCEPTED

SELLER:

City of Des Moines

By: _____

41

EXHIBIT "A"

Part of Block 28 and 29, T.E. Brown's Official Plat of the North ½ of the Northeast ¼ of Section 36, Township 79 North, Range 24 West of the 5th P.M., except the Northeast 40 acres of same, and part of the vacated Thompson Avenue and part of the vacated East 19th Street and part of Blocks 3 and 4, East End Addition, an Official Plat, Des Moines, Polk County, Iowa, more particularly described as follows:

Beginning at the Northwest corner of Lot 24, Block 28 of said T.E. Brown's Official Plat; thence North 89°(Degrees) 51'(Minutes) 03''(Seconds) East along the North line of said Lot 24 extended a distance of 514.23 feet; thence South 01°15'38" East, 178.79 feet; thence North 89°56'22" West, 517.68 feet to the West line of Lot 46, Block 4, of said East End Addition; thence North 00°03'49" East along the West line of said Block 4 extended a distance of 101.86 feet to the centerline of vacated Thompson Avenue; thence North 00°27'26" West along the Southerly extension of the West line of said Lot 24, Block 28, and the West line of said Lot 24, 75.00 feet to the point of beginning, all now included in and forming a part of the City of Des Moines, Polk County, Iowa. (Said tract of land contains 2.11 acres more or less.)