

Date June 11, 2018

**RESOLUTION ACCEPTING DEVELOPMENT PROPOSAL FROM
NELSON DEVELOPMENT 1, LLC TO PURCHASE AND DEVELOP CITY-OWNED
PROPERTY AT 418 EAST GRAND AVENUE IN THE
METRO CENTER URBAN RENEWAL AREA, AND SETTING DATE OF PUBLIC HEARING**

WHEREAS, on March 20, 2000, by Roll Call Nos. 00-788 and 00-789, the City Council of the City of Des Moines approved the Urban Renewal Plan for the Metro Center Urban Renewal Project, and such Plan has been amended 22 times (the urban renewal plan as so amended is herein referred to as the "Plan"), encompassing an irregularly shaped area that includes the downtown core and the areas surrounding the downtown core; and

WHEREAS, on March 19, 2018, by Roll Call No. 18-0478, the City Council authorized the City Manager to negotiate an urban renewal development agreement based on preliminary terms of agreement with Nelson Development 1, LLC, represented by Michael Nelson (President) ("Developer"), for sale of City-owned property located at the intersections of East 4th Street and East Grand Avenue, locally known as 418 E. Grand Avenue (Polk County Assessor District/Parcel Nos. 040/01839-002-001 and 040/01839-002-002)(collectively "Property") and located in the East Village, for development in two phases consisting of a three-level parking structure with approximately 402 total parking spaces in Phase 1, and a 5-story mixed use building in Phase 2 with approximately 36,000 square feet of commercial, retail and office space on the ground floor and second story, and 105 residential apartment units on the upper three stories; and

WHEREAS, the Developer and City staff are negotiating Urban Renewal Agreements for the Phase 1 and Phase 2 Improvements, and exhibits thereto including Special Warranty Deeds, mortgages, promissory notes and Declarations of Covenants, and a Parking Lease Agreement for City use of a portion of the Phase 1 Improvements (all collectively "Development Agreement"), for Developer to purchase and develop the Property, which Development Agreement is in substantially the form on file in the office of the City Clerk; and

WHEREAS, the Development Agreement, tendered herewith and to be executed by the Developer, proposes development of the Property as follows:

1. Purchase from the City and development of the Property, consisting of approximately 54,289 square feet of land and legally described as follows, for the above-described Phase 1 and Phase 2 Improvements:

Phase 1 Legal Description (northwest portion of the Property at the intersection of Des Moines Street and E. 4th Street, and northern half of vacated east/west alley adjoining E. 5th Street):

A PART OF LOT 1, AND A PART OF THE VACATED ALLEY LYING SOUTH OF AND ADJACENT TO SAID LOT 1, BLOCK 10, FORT DES MOINES, AN OFFICIAL PLAT IN THE CITY OF DES MOINES, POLK COUNTY, IOWA AND DESCRIBED AS FOLLOWS: COMMENCING AT THE NORTHEAST OF CORNER OF SAID LOT 1; THENCE SOUTH 74°47'22" WEST ALONG THE SOUTH RIGHT-OF-WAY LINE OF DES MOINES STREET, 179.67 FEET TO THE POINT OF BEGINNING; THENCE SOUTH 15°13'14" EAST, 152.33 FEET; THENCE SOUTH 74°49'57" WEST, 21.75 FEET; THENCE NORTH 15°01'35" WEST, 10.00 FEET; THENCE SOUTH 74°49'57" WEST, 138.20 FEET TO THE EAST RIGHT-OF-WAY LINE OF E 4TH STREET; THENCE NORTH 15°17'24" WEST ALONG SAID EAST RIGHT-OF-WAY, 142.21 FEET TO THE SOUTH RIGHT-OF-WAY LINE OF DES MOINES STREET; THENCE NORTH 74°47'22" EAST ALONG SAID

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SOUTH RIGHT-OF-WAY LINE, 160.09 FEET TO THE POINT OF BEGINNING AND CONTAINING 0.53 ACRES (22,981 S.F.).

AND

A PART OF THE VACATED ALLEY LYING SOUTH OF AND ADJACENT TO LOT 1, BLOCK 10, EAST FORT DES MOINES, AN OFFICIAL PLAT IN THE CITY OF DES MOINES, POLK COUNTY, IOWA AND DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST OF CORNER OF LOT 1 OF SAID BLOCK 10, EAST FORT DES MOINES; THENCE SOUTH 15°20'33" EAST ALONG THE WEST RIGHT-OF-WAY OF E 5TH STREET, 9.06 FEET; THENCE SOUTH 74°48'52" WEST, 180.01 FEET; THENCE NORTH 15°13'14" WEST, 9.13 FEET TO THE NORTH LINE OF SAID VACATED ALLEY; THENCE NORTH 74°50'22" EAST ALONG SAID NORTH LINE, 179.99 FEET TO THE POINT OF BEGINNING AND CONTAINING 0.04 ACRES (1,637 S.F.).

Phase 2 Legal Description (418 E. Grand Ave. – southwest portion of property at intersection of E. Grand Avenue and E. 4th Street, and southern half of vacated east/west alley adjoining E. 5th Street):

A PART OF LOTS 1, 3, 4, 5, AND A PART OF THE VACATED ALLEY LYING SOUTH OF AND ADJACENT TO SAID LOT 1, ALL IN BLOCK 10, EAST FORT DES MOINES, AN OFFICIAL PLAT IN THE CITY OF DES MOINES, POLK COUNTY, IOWA AND DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST OF CORNER OF SAID LOT 5; THENCE SOUTH 74°49'57" WEST ALONG THE NORTH RIGHT-OF-WAY LINE OF E GRAND AVENUE, 159.70 FEET TO THE EAST RIGHT-OF-WAY LINE OF E 4TH STREET; THENCE NORTH 15°17'24" WEST ALONG SAID EAST RIGHT-OF-WAY LINE, 177.00 FEET; THENCE NORTH 74°49'57" EAST, 138.20 FEET; THENCE SOUTH 15°01'35" EAST, 10.00 FEET; THENCE NORTH 74°49'57" EAST, 21.75 FEET; THENCE SOUTH 15°13'14" EAST, 167.00 FEET TO THE POINT OF BEGINNING AND CONTAINING 0.64 ACRES (28,068 S.F.).

AND

A PART OF THE VACATED ALLEY LYING NORTH OF AND ADJACENT TO LOTS 6-8, BLOCK 10, EAST FORT DES MOINES, AN OFFICIAL PLAT IN THE CITY OF DES MOINES, POLK COUNTY, IOWA AND DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST OF CORNER OF LOT 8 OF SAID BLOCK 10, EAST FORT DES MOINES; THENCE SOUTH 74°50'22" WEST ALONG THE SOUTH LINE OF SAID VACATED ALLEY, 180.03 FEET; THENCE NORTH 15°13'14" WEST, 8.87 FEET; THENCE NORTH 74°48'52" EAST, 180.01 FEET TO THE WEST RIGHT-OF-WAY LINE OF E 5TH STREET; THENCE SOUTH 15°20'33" EAST ALONG SAID EAST RIGHT-OF-WAY LINE, 8.94 FEET TO THE POINT OF BEGINNING AND CONTAINING 0.04 ACRES (1,603 S.F.).

2. Phase 1 Improvements:

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- a. Forgivable Economic Development Loan in the amount of \$694,473.78, advanced at the time of closing on Developer's purchase of the Phase 1 Property and equaling the purchase price of the Phase 1 Property, which loan shall be forgiven if Developer constructs the required Phase 1 Improvements, qualifies for issuance of the Certificate of Completion and is in compliance with the Development Agreement.
 - b. Deferred Economic Development Grant to be paid in 20 annual installments, providing 100 percent of project generated tax increment (TIF) funding in the estimated total amount of \$2,400,000.00.
3. Phase 2 Improvements:
- a. Forgivable Economic Development Loan in the amount of \$837,018.91, advanced at the time of closing on Developer's purchase of the Phase 2 Property and equaling the purchase price of the Phase 2 Property, which loan shall be forgiven if Developer constructs the required Phase 2 Improvements, qualifies for issuance of the Certificate of Completion and is in compliance with the Development Agreement.
 - b. Deferred Economic Development Grant to be paid in for commercial development to be paid in 15 annual installments, providing a declining percentage of project generated tax increment (TIF) funding allocated to the commercial portion of the Phase 2 project improvements starting at 100 percent in the first year of grant payments and declining to 85 percent in the eleventh year of grant payments, in the estimated total amount of \$2,700,000.00.
 - c. Deferred Economic Development Grant to be paid in 9 annual installments, providing a declining percentage of project generated tax increment (TIF) funding allocated to the residential portion of the Phase 1 project improvements starting at 100 percent in the first year of grant payments and declining to 70 percent in the ninth year of grant payments, in the estimated total amount of \$3,000,000.00; and

WHEREAS, said Development Agreement provides that the Developer will purchase the Property in separate parcels for the Purchase Price of \$694,473.78 for the Phase 1 property and \$873,018.91 for the Phase 2 property; and

WHEREAS, the Development Agreement further provides that the Phase 1 Improvements are subject to a proposed Parking Lease Agreement providing for City use of the 133 ground-level parking spaces in the parking structure for City and public purposes for a minimum of 20 years, with the option for City to extend the duration of the Parking Lease Agreement for four additional consecutive terms of 5 years each, with semi-annual payment by City to Developer of \$135.00 U.S. Dollars per leased parking space per month, equaling \$107,730.00 for each six-month period, subject to annual adjustment as set forth in the Parking Lease Agreement, and giving the right and obligation to City to operate, manage and maintain the City's leased spaces in the manner deemed appropriate by City and at City expense for the duration of the Parking Lease Agreement; and

WHEREAS, the Development Agreement further provides that, in addition to Conceptual Development Plan and Site Plan conditions and other City requirements, the Phase 2 Improvements are subject to the following minimum requirements:

1. Minimum floor plates of 18,000 square feet.
2. Building set within one foot of the adjoining street rights-of-way.
3. At least 65% of the ground floor shall be devoted to commercial retail uses.
4. At least 75% of the second floor shall be devoted to commercial office uses.



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5. Durable construction and materials commensurate with those used in surrounding developments including steel and/or concrete structures, with exterior finishes utilizing high quality materials such as full dimension brick, concrete and architectural metal panels. Materials utilized must have a minimum 50-year warranty with composition approved by the Urban Design Review Board.
6. At least 10% of total apartment unit count for the upper three floors shall be committed to affordable housing by keeping rent structures at 80% of the area median income (AMI); and

WHEREAS, the Development Agreement further provides that the Phase 2 Improvements shall exceed applicable Energy Code requirements by seeking participation and approval of Mid-American Energy's Commercial New Construction program, as verified by Developer; and

WHEREAS, the proposed development of the Property furthers the objectives of the Plan to provide a range of housing including market-rate and affordable housing in decent, safe and sanitary conditions in attractive settings to preserve and create an environment which will protect the health, safety, and general welfare of City residents and maintain taxable values within the Urban Renewal Project Area, and will serve employees and other people who would like to live in the downtown area; to increase employment opportunities; and to encourage intensive and coordinated commercial and residential mixed-use development; and

WHEREAS, the economic development incentives for the development of the Improvements shall be provided by the City to Developer pursuant to the Urban Renewal Law and Chapter 15A of the Code of Iowa, and Developer's obligations to construct the Improvements will generate the following public gains and benefits: it will advance the improvement and redevelopment of the Project Area in accordance with the Urban Renewal Plan; it will establish conditions which attract further new investments and prevent the recurrence of blight and blighting conditions; it will encourage further private investment and will attract and retain residents and businesses in the East Village area; and it will further the City's efforts to retain and create job opportunities within the Project Area which might otherwise be lost; and

WHEREAS, City believes that the redevelopment of the Property pursuant to the proposed Development Agreement, and the fulfillment generally of the proposed Development Agreement, are in the vital and best interests of City and the health, safety, morals, and welfare of its residents, and in accord with the public purposes and provisions of the applicable state and local laws and requirements under which the project will be undertaken; and

WHEREAS, it is necessary and appropriate that the City Council take certain actions in accordance with Iowa Code Section 403.8 with respect to the Property in order to accept the proposal for the development of the Property and give full and fair opportunity for other potential developers to submit a proposal for the development of the Property; and

WHEREAS, the City Council believes that the acceptance of the Developer's proposal and the Development Agreement to develop the Property and the advertisement for competing development 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, as follows:



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1. The Developer's proposal, which includes the terms set forth in Council Communication No. 18-124, received and filed on March 19, 2018 by Roll Call No. 18-0478, and further includes the proposed Development Agreement in substantially the form on file with the City Clerk for development of the Property (hereinafter collectively "Proposal"), be and is hereby accepted and approved as to form for the purposes hereinafter stated.
2. For the purposes of defining the competitive bid process for purchase and development of the Property, said Proposal of Developer shall be deemed to be and to illustrate the minimum proposal acceptable to the City of Des Moines in terms of: general form of proposal and data required for competing proposals; Property description; purchase price, time for commencement and completion of improvements; time permitted for conceptual plan submission and review; development requirements for improvements; construction plans and certificate of completion; urban renewal covenants; remedies; parking lease agreement; and all miscellaneous provisions.
3. Competing proposals to the Developer's Proposal shall:
 - A. Provide a detailed description of the proposed development that shall be substantially similar to or superior than the developer proposed by Developer.
 - B. Devise a proposed method and sources of financing which must be adequate to assure financing of the development in a timely manner.
4. It is hereby determined that the Developer possesses the qualifications and financial resources necessary to purchase and develop the Property in the manner stated in its Proposal and the proposed Development Agreement in accordance with the Plan.
5. It is hereby determined that the purchase price for the Property of \$694,473.78 for the Phase 1 parcel and of \$837,018.91 for the Phase 2 parcel, to be paid by the Developer, meets the fair market value thereof for uses in accordance with the Plan and shall be the established minimum sales price for the competitive bid process, taking into account the restrictions upon the Property, and the terms, covenants, conditions and obligations assumed by the Developer for construction of the improvements on the Property in accordance with the terms of the proposed Development Agreement.
6. The City Clerk shall retain for public examination the Proposal and proposed Development Agreement in substantially the form on file and in the event of no timely qualified competing proposals, the City Clerk and staff shall submit the same to this Council for formal consideration, approval and execution at a public hearing at 5:00 p.m. in the Council Chambers, located at City Hall, 400 E. Robert D. Ray Drive, Des Moines, Iowa, during the regular City Council meeting of July 23, 2018.
7. The City Clerk shall be authorized to publish, on June 12, 2018, the attached notice of the competitive bid process and the City's intent to accept the Developer's Proposal and to enter into the proposed Development Agreement if no competing proposals are received.
8. This resolution, the Proposal and proposed Development Agreement shall be on file at the office of the City Clerk, mailing and physical address: City Hall, 400 Robert D. Ray Drive, Des Moines, Iowa.



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9. Approval and acceptance of the Developer's Proposal is conditioned upon there being no better proposal submitted by a competitor for the development of the Property within the period hereinafter stated.
10. This competitive bid process, conducted in accordance with the terms of this resolution, is hereby determined to comply with the provisions of Iowa Code Section 403.8(2), requiring "reasonable competitive bidding procedures" for the sale of the Property and this competitive bid process is hereby determined to be the appropriate method for making the Property available for development in accordance with the Plan.
11. The submittal of proposals and statements by competing developers, including the form of Development Agreement executed by competing developers, shall be in substantial conformance with the provisions of this resolution.
12. All inquiries regarding the terms and conditions of this competitive bid process must be submitted in writing to the Office of Economic Development, mailing and physical address: Office of Economic Development, City Hall, 400 Robert D. Ray Drive, Des Moines, Iowa. All responses to inquiries shall be made in writing and will be kept on file at the Office of the City Clerk, City Hall, and the Office of Economic Development, City Hall. No written inquiries shall be accepted after 5:00 p.m. on July 6, 2018.
13. Written competing proposals for the purchase and development of the Property must be received in the Office of Economic Development on or before 5:00 p.m., July 13, 2018. Said proposals shall be received in the Office of Economic Development located at City Hall, 400 Robert D. Ray Drive, Des Moines, Iowa. Each proposal will then be submitted to City Council at the public hearing on July 23, 2018.
14. The Office of Economic Development staff is directed to receive competing proposals for the purchase and development of the Property and prepare a report on each competing proposal for the City Council, regarding the following, to wit:
 - A. The degree to which the proposal meets the objectives and requirements of the Plan, as amended.
 - B. The ability of the competing developer to commence and complete the development activity in an expeditious and timely manner.
 - C. Ambiguity or lack of information in the proposal shall be judged negatively.
15. Following public hearing on July 23, 2018, as set herein above, the City Council may take action to select the Developer's Proposal, a competing proposal, or no proposal, to continue the hearing, and/or to approve sale of the Property.



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(Council Comm. No. 18-294)

MOVED BY _____ to adopt.

FORM APPROVED:

Glenna K. Frank
Glenna K. Frank, Assistant City Attorney

Table with 5 columns: COUNCIL ACTION, YEAS, NAYS, PASS, ABSENT. Rows include COWNIE, BOESEN, COLEMAN, GATTO, GRAY, MANDELBAUM, WESTERGAARD, TOTAL, MOTION CARRIED, APPROVED.

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.

Mayor

City Clerk