



Date October 19, 2020

RESOLUTION APPROVING SECOND AMENDMENT TO URBAN RENEWAL DEVELOPMENT AGREEMENT WITH MERLE HAY INVESTORS, LLC, FOR REHABILITATION OF EXISTING MERLE HAY MALL PROPERTY AND REPURPOSING THE SEARS SITE

WHEREAS, Merle Hay Investors, LLC ("MH Investors"), represented by Elizabeth Holland, CEO/General Counsel, Abbell Associates, LLC, requested financial assistance from the City to address the fact that two anchors at Merle Hay Mall, namely Sears and Younkers, have closed within 45 days of each other after 59 years of continuous operation; and

WHEREAS, on January 28, 2019, by Roll Call No. 19-0151, the City Council approved preliminary terms of an agreement with MH Investors and directed the City Manager or the City Manager's designee to negotiate a final agreement for consideration by the City Council at a later time; and

WHEREAS, on March 25, 2019, by Roll Call No. 19-0479, the City Council approved the Urban Renewal Development Agreement ("Agreement") with MH Investors, whereby MH Investors agreed to renovate existing spaces within the mall for new tenants (the "Phase A Improvements"), and to acquire and renovate or redevelop the existing Sears building site and portions of the mall parking lots to allow for re-tenanting the Sears site (the "Phase B Improvements"), in exchange for two phases of economic development assistance as set forth in the Agreement; and

WHEREAS, the Agreement further provides that if MH Investors, directly or through a related entity under common ownership and control with MH Investors, does not acquire the Sears site, the City's obligation to advance the installments on the Phase A Economic Development Grant will expire upon payment of the 7th installment, and the City will have no obligation to advance any installments on the Phase B Economic Development Grant; and

WHEREAS, on August 17, 2020, by Roll Call No. 20-1332, the City Council approved the First Amendment to the Agreement, extending the deadline for MH Investors to submit to the City a proposed Master Plan and Conceptual Development Plan for the Phase B Improvements from September 25, 2020 to May 1, 2021, following the developer's request due to the longer-than-anticipated conversations regarding environmental issues and purchase price with the property seller (Sears); and

WHEREAS, MH Investors has now identified a financial gap related to the purchase of the Sears parcel, and has requested that the Agreement be further amended to allow the developer to use the agreed-upon Phase A and Phase B Economic Development Grant funds toward acquisition costs for said parcel in addition to the cost of design and construction of improvements to said parcel; and



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WHEREAS, City Economic Development staff and MH Investors have negotiated terms of a Second Amendment to the Agreement, on file in the office of the City Clerk, revising the definition of the eligible Phase A and Phase B expenses to include acquisition costs of the Sears parcel.

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

- 1. The Second Amendment to the Urban Renewal Agreement by and between the City and Merle Hay Investors, LLC, is hereby approved, and the Mayor is authorized and directed to execute said documents on behalf of the City of Des Moines and the City Clerk to attest to his signature.
2. The City Manager and his designees are hereby authorized and directed to administer the Agreement on behalf of the City and to monitor compliance by MH Investors with the terms and conditions of the Agreement, as amended. The City Manager is further directed to forward to City Council all matters and documents that require further City Council review and approval in accordance with the Agreement, as amended.

(Council Communication No. 20- 447)

MOVED by _____ to approve.

FORM APPROVED:

/s/ Glenna K. Frank
Glenna K. Frank
Assistant City Attorney

Table with 5 columns: COUNCIL ACTION, YEAS, NAYS, PASS, ABSENT. Rows include COWNIE, BOESEN, GATTO, GRAY, MANDELBAUM, VOSS, WESTERGAARD, and TOTAL.

MOTION CARRIED APPROVED

CERTIFICATE

I, P. KAY CMELIK, 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