



Roll Call Number

19-0479

Agenda Item Number

29

Date March 25, 2019

RESOLUTION APPROVING 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, has 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, Ms. Holland reports that all of the lease agreements with the smaller in-line stores have requirements for: 1.) number of anchors connected to the mall; and 2.) co-tenancy within the mall (70%-80% of in-line stores must be occupied), which now allow many of the remaining tenants to pay less rent, which impacts the financial ability of the mall to make improvements to available space to attract new tenants and ensure that the co-tenancy requirements are met; 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, the City Manager has negotiated an *Urban Renewal Development Agreement* (the "Agreement") with MH Investors which is on file and available for inspection in the office of the City Clerk, whereby MH Investors has 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 consideration of:

- A Phase A Economic Development Grant not to exceed \$1,875,000, to be advanced in semi-annual installments not to exceed the amounts identified in Table 1, to be paid in reimbursement of the documented costs of the Phase A Improvements; and
- A Phase B Economic Development Grant not to exceed \$2,925,000, to be advanced in semi-annual installments not to exceed the amounts identified in Table 1, to be paid in reimbursement of the documented costs of the Phase B Improvements; and,

WHEREAS, if MH Investors, directly or through a related entity under common ownership and control with NM Investors, does not acquire the Sears site, the City's obligation to advance the instalments 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,



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

1. The City Council hereby makes the following findings of fact in support of the proposed Agreement.
  - a) MH Investor's obligation under the Agreement to construct the Phase A and Phase B Improvements (collectively the "Improvements") furthers the objectives of the Merle Hay Mall Commercial Urban Renewal Plan to reinforce the existing development and to encourage new development in the urban renewal area that creates retail, office and other commercial space that appeals to local residents and visitors and businesses; that serves and strengthens the surrounding commercial corridors and residential neighborhoods; that retains, expands and creates new employment opportunities; and that retains and expands the existing tax base.
  - b) The economic development incentives provided by the City to MH Investors under the Agreement are provided pursuant to the authority granted by the Iowa Urban Renewal Law and Chapter 15A of the Code of Iowa.
  - c) MH Investor's obligations under the Agreement to construct the Improvements will generate the following public gains and benefits: (i) it will advance the improvement and redevelopment of the Merle Hay Commercial Area in accordance with the Merle Hay Commercial Area Urban Renewal Plan; (ii) it will encourage further private investment and will attract and retain businesses in the urban renewal area and the surrounding commercial corridors; and, (iii) it will further the City's efforts to create and retain job opportunities within the urban renewal area and vicinity which might otherwise be lost.
  - d) The construction of the Improvements is a speculative venture and the construction and resulting redevelopment opportunities would not occur without the economic incentives provided by the Agreement; and,
  - e) The redevelopment of portions of the Merle Hay Mall pursuant to the Agreement, and the fulfillment generally of the 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 has been undertaken, and warrant the provision of the economic assistance set forth in the Agreement.
2. The proposed *Urban Renewal Development Agreement* with Merle Hay Investors, LLC, is hereby approved.



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3. The Mayor and City Clerk are hereby authorized and directed to sign the Agreement on behalf of the City of Des Moines. The City Clerk is further directed to forward two certified copies of the Agreement and exhibits to the Legal Department.
4. The Mayor and City Clerk are further authorized to sign the *Expanded and Restated Minimum Assessment Agreement* in the form of Exhibit "D-1" to the Agreement.
5. Upon requisition by the Office of Economic Development, the Finance Department shall advance the installments on the Phase A and Phase B Economic Development Grants pursuant to Article 4 of the Agreement.
6. 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. 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.

( Council Communication No. 19- 140 )

MOVED by Gray to approve.

FORM APPROVED:

Roger K. Brown

Roger K. Brown  
Assistant City Attorney

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COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE	✓			
BOESEN	✓			
COLEMAN	✓			
GATTO	✓			
GRAY	✓			
MANDELBAUM	✓			
WESTERGAARD	✓			
TOTAL	7			3

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.

MOTION CARRIED APPROVED  
J. M. Franklin Cownie Mayor

Diane Rauh City Clerk