



Roll Call Number

22-0243

Agenda Item Number

28

Date February 21, 2022

APPROVING THIRD AMENDMENT TO URBAN RENEWAL AGREEMENT FOR SALE OF LAND FOR PRIVATE REDEVELOPMENT WITH 101 EAST GRAND PARKING, LLC (PAUL HAYES), FOR THE MULTI-PHASED REDEVELOPMENT OF THE BLOCK EAST OF CITY HALL

WHEREAS, on April 11, 2016, by Roll Call No. 16-0634, the City Council approved an Urban Renewal Agreement for Sale of Land for Private Redevelopment (the "Original Agreement") with 101 East Grand Parking, LLC (the "Developer"), represented by Paul Hayes, President, which provided for the sale of the following parcels by City to the Developer:

Parcels 2016-20, 2016-21 and 2016-22, as shown by the Plat of Survey recorded on March 24, 2016, in Book 15934, at Page 39, being a part of Block 3, East Fort Des Moines, an Official Plat, all now included in and forming a part of the City of Des Moines, Polk County, Iowa.

and for the redevelopment of such parcels by Developer with a parking garage on Parcel 2016-21 to be reacquired by City under a lease purchase agreement, and with separate 4-story mixed-use buildings on Parcels 2016-20 and 2016-22 that are both required to have at least 75% of the ground floor devoted to retail or restaurant space and a combined total of at least 28,000 square feet of office space on the upper floors; and

WHEREAS, on April 23, 2018, by Roll Call No. 18-0702, the City Council approved a First Amendment to said Original Agreement and Conceptual Development Plan for the Phase 2 Improvements, providing for acquisition by 111 East Grand, LLC, represented by Tim Rypma, Vice President, of the parcel at 111 E. Grand Avenue, immediately north of the East Second Parking Garage, and redevelopment by said parcel with a 4-story commercial building with at least 75% of the ground floor devoted to retail, restaurant, and limited professional office use and the upper floors devoted to office use, in substantial conformance with the approved Conceptual Development Plan, subject to amending the economic development incentives for the building as provided for in said First Amendment; and

WHEREAS, Parcel No. 2016-22 constitutes the vacant lot south of the parking garage upon which Developer is to undertake an additional commercial development constituting the Phase 3 Improvements; and

WHEREAS, on December 21, 2020, by Roll Call No. 20-2119, the City Council approved the Second Amendment to the Original Agreement with the Developer by which the Developer exercised its option to extend finalization of a Conceptual Development Plan for the Phase 3 Improvements under Section 3.2(E) of the Original Agreement as amended, which operated as an automatic extension of equal duration of the Developer's obligations to close on acquisition of Parcel 2016-22 and to complete the Phase 3 Improvements, under Sections 1.03(B) and 2.2(C) of the Original Agreement, respectively, pursuant to four Phase 3 extensions totaling a twelve month (one year) delay in project deadlines, and by which Second Amendment the City further waived the contemplated fee for said four Phase 3 extensions but retained payment obligations as originally stated for the fifth and subsequent extensions; and

WHEREAS, the Developer has requested to again exercise its option to extend finalization of a Conceptual Development Plan for the Phase 3 Improvements under Section 3.2(E) of the Original Agreement, equally and automatically extending the Developer's obligations to close on acquisition of



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Parcel 2016-22 and to complete the Phase 3 Improvements, under Sections 1.03(B) and 2.2(C) of the Original Agreement, respectively; and

WHEREAS, the Original Agreement provides that the City may, in its sole discretion, allow extension of the Developer's deadlines under said Agreement, regardless of the payment of a fee, if Developer has demonstrated diligent progress and a good faith intent to continue to pursue its obligations under this Agreement; and

WHEREAS, the City and Developer have negotiated a Third Amendment to the Original Agreement, on file in the office of the City Clerk, allowing for Developer to request and obtain its final four Phase 3 extensions, totaling a further twelve month (one year) delay in project deadlines, with waiver of the contemplated fee for said extensions.

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

- 1. The Third Amendment to the Urban Renewal Agreement by and between the City and Developer 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 Development Services Director and designee(s) are hereby authorized and directed to administer the Development Agreement on behalf of the City and to monitor compliance by the Developer, as defined above, with the terms and conditions of the Development Agreement, as amended.

( Council Comm. No. 22-056 )

MOVED by Gatto to adopt. Second by Boesen.

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, SHEUMAKER, MANDELBAUM, VOSS, WESTERGAARD, and TOTAL (YEAS: 7).

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.

MOTION CARRIED APPROVED
J.M. Frankhu Cownie Mayor

P. Kay Cmelik City Clerk

**THIRD AMENDMENT TO  
URBAN RENEWAL AGREEMENT FOR SALE OF LAND  
FOR PRIVATE REDEVELOPMENT**

**METRO CENTER URBAN RENEWAL PROJECT**

**By and Between  
CITY OF DES MOINES, IOWA  
and  
101 East Grand Parking, LLC**

Approved by City Council:  
Date: February 21, 2022  
Roll Call No. 22- 0243

## **THIRD AMENDMENT TO URBAN RENEWAL AGREEMENT FOR SALE OF LAND FOR PRIVATE REDEVELOPMENT**

This Third Amendment to Urban Renewal Agreement for Sale of Land for Private Redevelopment (this "Third Amendment"), is made as of \_\_\_\_\_, 2022, by and between the **CITY OF DES MOINES, IOWA**, a municipal corporation (the "City"), acting pursuant to Chapter 403 of the Code of Iowa, and **101 EAST GRAND PARKING, LLC**, an Iowa limited liability company (the "Developer"). The City and the Developer are each a "Party" and together, the "Parties".

WITNESSETH:

WHEREAS, the Parties previously entered into that Urban Renewal Agreement for Sale of Land for Private Redevelopment (the "Original Agreement") dated April 11, 2016, as previously amended by the First Amendment thereto, which provided for the sale of the following parcels by City to the Developer:

Parcels 2016-20, 2016-21 and 2016-22, as shown by the Plat of Survey recorded on March 24, 2016, in Book 15934, at Page 39, being a part of Block 3, East Fort Des Moines, an Official Plat, all now included in and forming a part of the City of Des Moines, Polk County, Iowa.

and for the redevelopment of such parcels by Developer with a parking garage on Parcel 2016-21 to be reacquired by City under a lease purchase agreement, and with separate 4-story mixed-use buildings on Parcels 2016-20 with retail, restaurant or professional space on the ground floor and approximately 50,000 square feet of office space on the upper three floors, subject to receipt of the amended Phase 2 Deferred Grant as provided in the First Amendment; and

WHEREAS, the Developer wishes to again exercise its option to extend finalization of a Conceptual Development Plan for the Phase 3 Improvements under Section 3.2(E) of the Original Agreement as amended, which operates as an automatic extension of equal duration of the Developer's obligations to close on acquisition of Parcel 2016-22 and to complete the Phase 3 Improvements, under Sections 1.03(B) and 2.2(C) of the Original Agreement, respectively; and

WHEREAS, the Original Agreement provides that the City may, in its sole discretion, allow extension of the Developer's deadlines under said Agreement, regardless of the payment of a fee, if Developer has demonstrated diligent progress and a good faith intent to continue to pursue its obligations under this Agreement; and

WHEREAS, the parties desire to amend the Original Agreement as provided below to waive the second year of the extension fee required pursuant to Section 3.2(D-E) and footnotes thereto of the Original Agreement.

NOW, THEREFORE, in consideration of the premises and the mutual obligations of the Parties, each of them does hereby covenant and agree with the other as follows:

Sec. 1. Amendment to Original Agreement. The Original Agreement, as previously amended by the First Amendment and Second Amendment, is hereby amended as provided in this Third Amendment. All references in this Third Amendment and in the Original Agreement,

and First and Second Amendments thereto, to "the Agreement" or "this Agreement" shall be interpreted to mean the Original Agreement as previously amended by the First and Second Amendments and as now amended by this Third Amendment. Except as otherwise specifically provided in this Third Amendment, the Original Agreement, as amended by the First and Second Amendments, shall remain in full force and effect.

Sec. 2. Amendment to Section 3.2(E). Subsection E of Section 3.2 of the Original Agreement is hereby amended to add footnote 4A thereto and to read as follows, with all other footnotes related to said Section remaining as stated in the Original Agreement:

E. Phase 3 Extension. Developer may request and purchase, as applicable, up to eight (8) consecutive three (3) month extensions of the requirements of subsection D above and the requirements under Sections 1.03(B) *Second Closing Deadline*, and 2.2(C) *Phase 3 Improvements*, by payment to City of a Phase 3 Extension Fee <sup>4A</sup>, provided that each such payment is made to the City before Developer is in default of its obligations under Section 3.2(D), above. The Phase 3 Extension Fee is equal to:<sup>5</sup>

$(75 - (\text{Commercial Space in Phase 2 Improvement}/622)) \times M \times 3$

In the formula above:<sup>6</sup>

"Commercial Space in Phase 2 Improvement" is the square footage, not to exceed 28,000 square feet, of the commercial office space existing in the Phase 2 Improvements, rounded to the nearest whole number.

"M" is the monthly parking rate then lawfully established for the public use of the Parking Garage.

Notwithstanding the foregoing, nothing in this Agreement shall prevent City, in its sole discretion, from further extending Developer's deadlines under this Agreement, regardless of the payment of a fee and the lapse of the last extension contemplated above, if Developer has demonstrated diligent progress and a good faith intent to continue to pursue its obligations under this Agreement.

[FN 4A] <sup>4A</sup> No Phase 3 Extension Fee shall be due from Developer to City for extensions one to eight, totaling 24 months of extension.

Sec. 3. Developer's Exercise of Extensions. Developer hereby requests four 3-month month extension(s) of the Original Agreement, as amended, constituting extensions five to eight pursuant to Section 3.2(E) as amended by this Third Amendment.

Sec. 4. Recordation. Developer, at Developer's sole cost, shall have the right to record this Third Amendment, or a memorandum of the same, in the event that the Original Agreement and First and Second Amendments thereto or memorandum thereof have been previously recorded with the Office of the Polk County Recorder, and City shall perform such further acts and execute such additional instruments as may be necessary and/or proper to accomplish such objective.

IN WITNESS WHEREOF, the Parties have caused this Second Amendment to be duly executed.

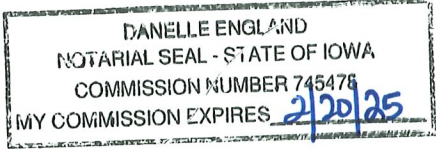
**101 East Grand Parking, LLC,**  
an Iowa limited liability company

*Paul D. Hays*  
By: *Paul D. Hays*  
Its: *Manager*

STATE OF IOWA            )  
  ) ss:  
COUNTY OF POLK        )

This instrument was acknowledged before me on *February 15*, 20 *22*, by *Paul D. Hays* (name) as *Manager* (title) of **101 East Grand Parking, LLC**, an Iowa limited liability company, on behalf of whom the instrument was executed.

*Danelle England*  
Notary Public in and for the State of Iowa  
My Commission Expires: *2/20/2025*



CITY OF DES MOINES, IOWA

ATTEST:

By: P. Kay Cmelik  
P. Kay Cmelik, City Clerk

By: T.M. Franklin Cownie  
T.M. Franklin Cownie, Mayor

APPROVED AS TO FORM:

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

STATE OF IOWA     )  
                                  ) ss:  
COUNTY OF POLK )

On this 21<sup>st</sup> day of February, 2022, before me, the undersigned, a Notary Public in the State of Iowa, personally appeared **T.M. FRANKLIN COWNIE** and **P. KAY CMELIK**, to me personally known, and who, being by me duly sworn did state that they are the Mayor and City Clerk, respectively, of **City of Des Moines, Iowa**, a municipal corporation; that the seal affixed to the foregoing instrument is the corporate seal of the corporation; that the instrument was signed on behalf of City of Des Moines, Iowa, by authority of its City Council, as contained in the Resolution adopted by City Council under Roll Call No. 22-0243 of City Council on the 21<sup>st</sup> day of February, 20 22, and that T.M. FRANKLIN COWNIE and P. KAY CMELIK acknowledged the execution of the instrument to be the voluntary act and deed of City of Des Moines, Iowa, by it and by them voluntarily executed.

Sandi L Deery  
Notary Public in the State of Iowa

