



AGENDA MEMO

CITY COUNCIL MEETING DATE: DECEMBER 6, 2006

DEPARTMENT: BUSINESS DEVELOPMENT

ITEM DESCRIPTION: Discussion and possible action regarding a Third Amendment to the Exclusive Negotiation Agreement with Frank Wright Plaza, LLC, to negotiate a Disposition and Development Agreement for parcels located at 4th Street and Stewart Avenue

1. On June 15, 2005, Council approved an Exclusive Negotiation Agreement (ENA) to allow the City and The Henry Brent Company, LLC (Henry Brent) to negotiate terms of a Disposition and Development Agreement (DDA) for parcels located at 4th St. and Stewart Ave. (Site). DDA terms subject to negotiation include (but are not limited to): a. Scope of development; b. Phasing of development; c. Schedule of performance; d. Purchase price; and, e. Earnest money deposit.
2. On November 9, 2005, Henry Brent and Frank Wright Plaza, LLC (FWP) executed an Assignment and Assumption Agreement whereby Henry Brent assigned all of its rights and obligations under the ENA to FWP and FWP accepted said assignment and assumption. FWP was formed specifically by Henry Brent to serve as the Developer of the Site and both entities are owned by the same principals.
3. On May 17, 2006, Council approved the Second Amendment to the ENA in order to extend the ENA term to December 20, 2006.
4. The City has a good faith deposit of \$100,000 for the ENA to ensure that the Developer proceeds diligently to negotiate and perform all of its obligations under the ENA. Should the Developer fail to negotiate in good faith on the terms of a DDA, the deposit may be retained by the City.
5. As part of the ENA, the Developer (at its expense) must complete a master plan for the Site (Master Plan) to define a scope of development that incorporates the highest and best use with the preservation of the historic Post Office (the POST Modern). At the City's request, the Developer is making revisions to the Master Plan to best achieve these goals.
6. In addition, covenants in the Grant Deed from the U.S. General Services Administration that conveyed ownership of the POST Modern to the City require that the National Park Service (NPS) review and approve the Master Plan. Until the NPS has approved the Master Plan, final terms of the DDA cannot be negotiated between the City and the Developer.
7. The Third Amendment to the Exclusive Negotiation Agreement (Amendment) will extend the term of the ENA to April 18, 2007, to allow the Developer to complete the Master Plan, negotiate final DDA terms and bring the DDA to Council for consideration.
8. The DDA will be presented to City Council for consideration upon final negotiation of mutually agreeable terms between the City and FWP.