CITY OF WEST DES MOINES
CITY COUNCIL MEETING COMMUNICATION

ITEM: Purchase of 7630 Ashworth Road – City Initiated **DATE:** November 2, 2020

RESOLUTION: Approval of the Resolution to purchase 7630 Ashworth Road for future construction of 76th Street.

FINANCIAL IMPACT: The City will be entering into a purchase agreement to reimburse the developer for the acquisition of the necessary right-of-way and clearing the site for 76th Street construction by the City. Since the acquisition cost were less than the appraisal, the City will be only reimbursing the developer their actual amount of their acquisition which was $500,000. The cost of the preparation of the geo-technical report was $2,300, and the site clearing cost are not to exceed $25,000 based upon a bid that was submitted for the work. Total costs that will be reimbursed back to the developer will not exceed $527,300. These costs will be paid for out of the Ashworth Corridor Urban Renewal Tax Increment Financing District.

BACKGROUND: In conjunction with a proposed senior housing project proposed for the property immediately to the south of 7630 Ashworth Road, (the Zimmerman property), the City Council directed staff to work with the developer to facilitate the construction of 76th Street. The Council verbally committed to have the City acquire 7630 Ashworth Road and to construct the necessary street improvements over that property to connect the senior housing project to Ashworth Road. At the October 19, 2020, Council meeting the City is amending the Ashworth Corridor Urban Renewal Plan to add additional projects as they relate to 76th Street construction.

Since initiation of the process, the senior housing developer has withdrawn their request for the project. Staff felt that it was only a short matter of time before a development proposal would be submitted for the former senior housing project site, therefore staff advised the City Council to continue with the purchase of 7630 Ashworth Road, but not the construction of the street improvements. At that Council meeting of October 19, 2020, the Council authorize a purchase agreement for the property at 7630 Ashworth Road.

OUTSTANDING ISSUES: There are no outstanding issues regarding this proposed amendment.

RECOMMENDATION: Staff recommends the approval of the Resolution approving the acquisition of 7630 Ashworth Road.

Lead Staff Member: Clyde E. Evans, AICP

STAFF REVIEWS

Department Director	Clyde E. Evans, Director, Community and Economic Development
Appropriations/Finance	Tim Stiles, Finance Director
Legal	RJS
Agenda Acceptance	

PUBLICATION(S) (if applicable)

Published In	Des Moines Register
Dates(s) Published	October 23, 2020

SUBCOMMITTEE REVIEW (if applicable)

Committee	F&A		
Date Reviewed	8/19/2020		
Recommendation	☒ Yes	☐ No	

Exhibit I

RESOLUTION NO. _____

RESOLUTION APPROVING AND AUTHORIZING EXECUTION OF A PURCHASE AGREEMENT BY AND AMONG THE CITY OF WEST DES MOINES, CZECH MATE, LLC, AND HOPE K. FARMS, LLC

WHEREAS, by Resolution No. 09-11-02-10, adopted November 2, 2009, this Council found and determined that certain areas located within the City are eligible and should be designated as an urban renewal area under Iowa law, and approved and adopted the Ashworth Corridor Urban Renewal Plan for the Ashworth Corridor Urban Renewal Area (the "Area" or "Urban Renewal Area") described therein, which Urban Renewal Plan has been subsequently amended three times, most recently by Amendment No. 4 to the Plan; and

WHEREAS, it is desirable that properties within the Area be redeveloped as part of the overall redevelopment area covered by said Plan; and

WHEREAS, such Plan provides for, among other things, the acquisition of property by the City as a proposed renewal action; and

WHEREAS, the City has received a proposal from Czech Mate, LLC and Hope K. Farms, LLC (collectively the "Developer"), in the form of a proposed Purchase Agreement (the "Agreement") by and between the City and the Developer, pursuant to which the City would acquire certain real property from the Developer for the purchase price of $500,000 under the terms of the Agreement, which property is legally described as follows:

> Commencing at the Northeast corner of Section Eleven (11), Township Seventy-eight (78) North of Range Twenty-six (26) West of the 5th P.M., Dallas County, Iowa, thence South Forty-five (45) feet, thence Southwesterly parallel with the North line of said Section, 726 feet to the place of beginning; thence South Three Hundred (300) feet, thence Southwesterly parallel with the North line of said Section, One Hundred Forty-six (146) feet, thence North Three Hundred (300) feet, thence Northeasterly parallel with the North line of said Section, One Hundred Forty-six (146) feet to the place of beginning. EXCEPT land deeded to the City of West Des Moines recorded August 10, 2017 in Book 2017 Page 15586.[TM1]

(the "Purchase Property"); and

WHEREAS, Iowa Code Chapter 403 (the "Urban Renewal Law") authorizes cities to acquire property in furtherance of the objectives of an urban renewal project and to take other actions as may be necessary to carry out the purposes of said Chapter; and

WHEREAS, the Council has determined that the Agreement is in the best interests of the City and the residents thereof and that the performance by the City of its obligations thereunder is a public undertaking and purpose and in furtherance of the Plan and the Urban Renewal Law; and

Exhibit I

WHEREAS, pursuant to notice published as required by law, this Council has held a public meeting and hearing upon the proposal to approve and authorize execution of the Agreement, and has considered the extent of objections received from residents or property owners as to said proposed Agreement; and, accordingly the following action is now considered to be in the best interests of the City and residents thereof.

NOW THEREFORE, BE IT RESOLVED, BY THE CITY COUNCIL OF THE CITY OF WEST DES MOINES IN THE STATE OF IOWA:

Section 1. The Council finds that acquisition of the Purchase Property under the terms set forth in the Agreement will benefit the health, safety and welfare of, and is in the best interests of the residents of the City. The Council further finds that acquisition of the Purchase Property will promote economic development in the City.

Section 2. That the performance by the City of its obligations under the Agreement be and is hereby declared to be a public undertaking and purpose and in furtherance of the Plan and the Urban Renewal Law and, further, that the Agreement and the City's performance thereunder is in furtherance of appropriate economic development activities and objectives of the City within the meaning of Chapters 15A and 403 of the Iowa Code, taking into account the factors set forth therein.

Section 3. That the form and content of the Agreement, the provisions of which are incorporated herein by reference, be and the same hereby are in all respects authorized, approved and confirmed, and the Mayor and the City Clerk be and they hereby are authorized, empowered and directed to execute, attest, seal and deliver the Agreement for and on behalf of the City in substantially the form and content now before this meeting, but with such changes, modifications, additions or deletions therein as shall be approved by such officers, and that from and after the execution and delivery of the Agreement, the Mayor and the City Clerk are hereby authorized, empowered and directed to do all such acts and things and to execute all such documents as may be necessary to carry out and comply with the provisions of the Agreement as executed.

[TM2]

PASSED AND APPROVED this 2nd day of November 2020.

_____

Steven K. Gaer, Mayor

ATTEST:

_____

Ryan T. Jacobson, City Clerk

Exhibit I

CERTIFICATE

STATE OF IOWA)
) SS
COUNTY OF POLK)

I, the undersigned City Clerk of the City of West Des Moines, State of Iowa, do hereby certify that attached is a true and complete copy of the portion of the corporate records of the City showing proceedings of the Council, and the same is a true and complete copy of the action taken by the Council with respect to the matter at the meeting held on the date indicated in the attachment, which proceedings remain in full force and effect, and have not been amended or rescinded in any way; that meeting and all action thereat was duly and publicly held in accordance with a notice of public hearing and tentative agenda, a copy of which was timely served on each member of the Council and posted on a bulletin board or other prominent place easily accessible to the public and clearly designated for that purpose at the principal office of the Council (a copy of the face sheet of the agenda being attached hereto) pursuant to the local rules of the Council and the provisions of Chapter 21, Code of Iowa, upon reasonable advance notice to the public and media at least twenty-four hours prior to the commencement of the meeting as required by law and with members of the public present in attendance; I further certify that the individuals named therein were on the date thereof duly and lawfully possessed of their respective city offices as indicated therein, that no vacancy existed except as may be stated in the proceedings, and that no controversy or litigation is pending, prayed or threatened involving the incorporation, organization, existence or boundaries of the City or the right of the individuals named therein as officers to their respective positions.

WITNESS my hand and the seal of the Council hereto affixed this _____ day of _____, 2020.

_____
City Clerk, City of West Des Moines, State of Iowa

(SEAL)

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PURCHASE AGREEMENT
BY AND AMONG
CITY OF WEST DES MOINES, IOWA
AND
CZECH MATE, LLC
AND
HOPE K. FARMS, LLC

THIS PURCHASE AGREEMENT (the "Agreement") is made on or as of the day of _____, 2020, by and between the CITY OF WEST DES MOINES, IOWA, a municipality (the "City"), CZECH MATE, LLC, an Iowa limited liability company, and HOPE K. FARMS, LLC, an Iowa limited liability company (hereinafter, collectively the "Developer").

WITNESSETH:

WHEREAS, the Developer anticipates acquiring certain real property located within the City's Ashworth Road Urban Renewal Area, locally known as 7630 Ashworth Road, which property is legally described in Exhibit A attached hereto and made a part hereof (the "**Purchase Property**"); and

WHEREAS, if Developer acquires marketable title to the Purchase Property, then the City is willing to purchase the Purchase Property from Developer, under the terms and conditions of this Agreement; and

WHEREAS, if Developer acquires marketable title to the Purchase Property, then the Developer is willing to sell the Purchase Property to the City under the terms of this Agreement; and

WHEREAS, the City believes that the development of the Purchase Property pursuant to this Agreement and the fulfillment generally of this Agreement are in the vital and best interests of the City and in accord with the public purposes of the applicable State and local laws and requirements under which the foregoing project has been undertaken and is being assisted.

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

ARTICLE I. PURCHASE AND SALE OF REAL ESTATE

Section 1.1. Conditions Precedent to Transfer. The City's obligation to pay the Purchase Price and take title to the Purchase Property, and the Developer's obligation to transfer title and possession of the Purchase Property to City at Closing, shall be subject to satisfaction of the following conditions precedent:

a. The Developer shall have acquired marketable title to the Purchase Property by no later than November 3, 2020;

b. The City's purchase of the Purchase Property must qualify as a validly authorized urban renewal project under the Urban Renewal Plan for the Ashworth Road Urban Renewal Area;

c. The Developer shall have demolished all existing structures on the Purchase Property and shall have cleared and properly disposed of all debris by November 11, 2020; and

d. The Developer shall have completed a geo-technical report for the Purchase Property and provided a copy of the report to the City.

Section 1.2. Purchase of Purchase Property. For the amount of Five Hundred Thousand Dollars ($500,000) (the "Purchase Price") and other consideration, the Developer agrees to sell, and the City agrees to purchase, the Purchase Property, subject to easements and appurtenant servient estates and any zoning and other ordinances.

Section 1.3. Closing.

a. The Developer's obligation to transfer title of the Purchase Property to the City, and the City's obligation to pay the Purchase Price to the Developer, upon the obligations of both parties hereunder being met, including the execution of all documents required hereunder, shall occur on November 15, 2020 or such other date as mutually agreed by the parties (the "Closing Date"). Possession of the Purchase Property ("Possession") shall be delivered to the City on the Closing Date. Any adjustments of rent, insurance, taxes, interest, and all charges attributable to the Developer's possession of the Purchase Property shall be made as of the date of Possession. The City shall pay the Purchase Price to the Developer by check or wire transfer at the Closing (subject to prorations, reductions, and credits as provided herein).

b. The City shall be responsible for the preparation of all closing documents, including a general warranty deed, and shall pay the costs for such preparation outside of Closing.

c. The transfer shall be considered closed upon Developer's delivery to the City of a duly executed general warranty deed for the Purchase Property, the filing of all title transfer documents, and the Developer's receipt of all funds due at the Closing Date from City under this Agreement ("Closing"). All parties and individual signatories hereto further agree to make, execute, and deliver such further and additional documents as may be reasonably requested by the other party for the purpose of accomplishing the transfer herein contemplated.

Section 1.4. Real Estate Taxes.

a. The Developer shall pay all real estate taxes that are liens on the Purchase Property for prior years and all those that are due and payable in the fiscal year in which Possession is given, if any.

b. The Developer shall pay its pro-rated share, based upon date of Possession, of the real estate taxes on the Purchase Property for the fiscal year in which Possession is given due and payable in the subsequent fiscal year, if any. The City shall be given a credit for such proration at Closing based upon the last known actual real estate taxes payable according to the public record based on the expected tax classification of the Purchase Property for the fiscal year in which such taxes are payable.

c. The Developer shall pay in full all special assessments on the Purchase Property that are certified as liens on the public record at Closing. All charges for solid waste removal, sewage and

assessments for maintenance that are attributable to the Developer's possession of the Purchase Property shall be paid by the Developer.

Section 1.5. Risk of Loss and Insurance. The Developer shall bear the risk of loss or damage to the Purchase Property prior to Closing. The Developer agrees to maintain existing insurance, if any, and the City may purchase additional insurance on the Purchase Property prior to Closing. In the event of substantial damage or destruction prior to the Closing, the Developer shall have the option of using insurance proceeds to repair the Purchase Property such that this Agreement shall continue and the City shall complete the Closing regardless of the extent of damages. The Developer shall bear the risk of loss or damage to any improvements undertaken or caused by Developer on the Purchase Property prior to Closing, and the City shall bear the risk of loss or damage to the Purchase Property after the Closing.

Section 1.6. Condition of Property; Demolition of Existing Structures. The City agrees to take the Purchase Property "As Is and Where Is and Without Any Guarantees or Warranties Whatsoever as to Its Condition or its Fitness for a Particular Purpose," provided however, that, prior to Closing, the Developer shall demolish the existing structures on the Purchase Property and shall clear and properly dispose of all debris from the Purchase Property. The City agrees to provide a credit to Developer at Closing up to the amount of Developer's demonstrated reasonable costs of:

a. demolishing the existing structures and clearing and disposing of the debris from the Purchase Property, but not to exceed $25,000, provided that Developer submits invoices or receipts showing Developer's paid costs for such demolition, clearance, and disposal; and

b. conducting a geo-technical report for the Purchase Property, but not to exceed $2,300, provided that Developer submits a copy of the report to the City along with invoices or receipts showing Developer's paid costs for such report.

Section 1.7. Abstract and Title. At least seven (7) days prior to the Closing Date, the Developer shall provide an abstract of title for the Purchase Property, continued to and including the date of this Agreement, and deliver it to the City for examination, which shall become the property of the City upon Closing. Such abstract of title shall show merchantable title in the Developer for the Purchase Property in conformity with this Agreement, the land title laws of the State of Iowa, and the Iowa Title Standards of the Iowa State Bar Association.

Section 1.8. Survey and Platting.

a. Developer shall be responsible for all surveys and platting of the Purchase Property necessary to convey the Purchase Property to City, if any.

b. City may, at City's expense prior to Closing, have the Purchase Property surveyed and certified by a Registered Land Surveyor. City shall be responsible for all surveys and platting of the Purchase Property after Closing.

Section 1.9. Certification. The Developer and the City each certify that they are not acting, directly or indirectly, for or on behalf of any person, group, entity or nation named by any Executive Order or the United States Treasury Department as a terrorist, "Specially Designated National and Blocked Person" or any other banned or blocked person, entity, nation or transaction pursuant to any law, order,

rule or regulation that is enforced or administered by the Office of Foreign Assets Control; and are not engaged in this transaction, directly or indirectly on behalf of, any such person, group, entity or nation. Each party hereby agrees to defend, indemnify and hold harmless the other party from and against any and all claims, damages, losses, risks, liabilities and expenses (including attorney's fees and costs) arising from or related to my breach of the foregoing certification.

Section 1.10. Environmental Matters. At Closing, the Developer shall provide a properly executed Groundwater Hazard Statement to be filed with the County Recorder's Office

ARTICLE II. DEFAULT

Section 2.1 Forfeiture. If the City fails to timely perform this Agreement, Developer may forfeit it as provided in the Iowa Code, and all payments made shall be forfeited.

Section 2.2. Termination of Agreement. If Developer fails to timely perform this Agreement, the City has the right to terminate this Agreement by delivery of written notice to Developer.

ARTICLE III. MISCELLANEOUS

Section 3.1. Conflict of Interest. To the best knowledge and belief after due inquiry of the Developer and the City, no officer or employee of the City, or its designees or agents, nor any consultant or member of the governing body of the City, and no other public official of the City who exercises or has exercised any functions or responsibilities with respect to the properties described in this Agreement during his or her tenure, or who is in a position to participate in a decision-making process or gain insider information with regard to the properties described in this Agreement, has had or shall have any interest, direct or indirect, in any contract or subcontract, or the proceeds thereof, for work or services to be performed in connection with the properties described in this Agreement, or in any activity, or benefit from any activity, related to the properties described in this Agreement at any time during or after such person's tenure.

Section 3.2. Notices and Demands. A notice, demand or other communication under this Agreement by any party to the other shall be sufficiently given or delivered if it is dispatched by registered or certified mail, postage prepaid, return receipt requested, or sent by nationally recognized overnight delivery service, or delivered personally, and

a. In the case of Developer, is addressed or delivered personally to:

i. Czech Mate, LLC, 4500 Westown Parkway, Suite 277, West Des Moines, Iowa 50266, Attn: Daniel J. Stanbrough, Partner/Developer; and

ii. Hope K. Farms, LLC, 4500 Westown Parkway, Suite 277, West Des Moines, Iowa 50266, Attn: Reza Razizadeh, Owner and General Manager;

b. In the case of the City, is addressed to or delivered personally to City at City Hall, 4200 Mills Civic Parkway, P.O. Box 65320, West Des Moines, Iowa 50265-0320; Attn: City Clerk;

or to such other designated individual or officer or to such other address as any party shall have furnished to the other in writing in accordance herewith. With respect to notices, demands or other communications given by United States mail, same shall be deemed given upon the date of such registered or certified mailing.

Section 3.3. Titles of Articles and Sections. Any titles of the several parts, Articles, and Sections of this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.

Section 3.4. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall constitute one and the same instrument. To facilitate execution of this Agreement, the parties may execute, deliver and exchange counterparts of the signature pages by facsimile transmission or by electronic mail in "portable document format" (.pdf) or similar form, which will be valid and binding.

Section 3.5. Governing Law. This Agreement shall be governed and construed in accordance with the laws of the State of Iowa.

Section 3.6. Entire Agreement. This Agreement and the exhibits hereto reflect the entire agreement between the parties regarding the subject matter hereof, and supersedes and replaces all prior agreements, negotiations or discussions, whether oral or written. This Agreement may not be amended except by a subsequent writing signed by all parties hereto.

Section 3.7. Successors and Assigns. This Agreement is intended to and shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

Section 3.8. No Third-Party Beneficiaries. No rights or privileges of either party hereto shall inure to the benefit of any third-party landowner, contractor, subcontractor, material supplier, or any other person or entity, and no such contractor, landowner, subcontractor, material supplier, or any other person or entity shall be deemed to be a third-party beneficiary of any of the provisions contained in this Agreement.

IN WITNESS WHEREOF, the City has caused this Agreement to be duly executed in its name and behalf by its Mayor and its seal to be hereunto duly affixed and attested by its City Clerk, and Developer has caused this Agreement to be duly executed in its name and behalf by its duly authorized trustees all on or as of the day first above written.

[Rest of page intentionally left blank; signature pages to follow]

CITY OF WEST DES MOINES, IOWA,
an Iowa municipal corporation

_____
Steven K. Gaer
Mayor

ATTEST:

_____
Ryan T. Jacobson
City Clerk

STATE OF IOWA)
) ss:
COUNTY OF POLK)

On this_____day of_____, 2020, before me a Notary Public in and for said County, personally appeared Steven K. Gaer and Ryan T. Jacobson, to me personally known, who being duly sworn, did say that they are the Mayor and City Clerk, respectively of the City of West Des Moines, Iowa, a municipal corporation, created and existing under the laws of the State of Iowa and that said record was signed on behalf of said municipal corporation by authority and resolution of its City Council as contained in Roll Call No._____, passed on the 2nd_____day of November, 2020, and said Mayor and City Clerk acknowledged said record to be the free act and deed of said municipal corporation by it voluntarily executed.

_____
Notary, State of Iowa

DEVELOPER:
CZECH MATE, LLC,
an Iowa limited liability company

By_____
Daniel J. Stanbrough, Partner/Developer

STATE OF_____)
) ss
COUNTY OF_____)

This record was acknowledged before me on_____, 2020, by Daniel J. Stanbrough as the Partner/Developer of Czech Mate, LLC, an Iowa limited liability company.

_____
Notary Public in and for said State

DEVELOPER:
HOPE K. FARMS, LLC,
an Iowa limited liability company

By_____
Reza Razizadeh
Its Owner and General Manager

STATE OF_____)
) ss
COUNTY OF_____)

This record was acknowledged before me on_____, 2020, by Reza Razizadeh as Owner and General Manager of Hope K. Farms, LLC, an Iowa limited liability company.

_____
Notary Public in and for said State

EXHIBIT A

DESCRIPTION OF PURCHASE PROPERTY

The Purchase Property is described as follows:

Commencing at the Northeast corner of Section Eleven (11), Township Seventy-eight (78) North of Range Twenty-six (26) West of the 5th P.M., Dallas County, Iowa, thence South Forty-five (45) feet, thence Southwesterly parallel with the North line of said Section, 726 feet to the place of beginning; thence South Three Hundred (300) feet, thence Southwesterly parallel with the North line of said Section, One Hundred Forty-six (146) feet, thence North Three Hundred (300) feet, thence Northeasterly parallel with the North line of said Section, One Hundred Forty-six (146) feet to the place of beginning. EXCEPT land deeded to the City of West Des Moines recorded August 10, 2017 in Book 2017 Page 15586.

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