

November 10, 2008

WHEREAS, the City of Dallas is the owner of a tract of land containing approximately 87,367 square feet of land, located near the intersection of Sunnyvale Road and Ledbetter Drive, Block A/5844, Dallas County, Texas; and

WHEREAS, said City property was declared surplus to the City's needs by Council Resolution No. 05-1990 on June 22, 2005, and authorized to be offered for sale by sealed bid, with a minimum bid of \$980,000.00 specified; and

WHEREAS, the minimum bid was reduced to \$500,000.00 by Resolution No. 05-3583 on December 14, 2005; and

WHEREAS, on March 7, 2006, the City received 1 bid from Paul M. Kim in the amount of \$520,123.00; and

WHEREAS, on June 28, 2006, the City Council rejected said bid received; and

WHEREAS, the City is willing to consider a lease of the City property with an option to purchase the property in favor of the lessee upon certain minimum terms and conditions; and

WHEREAS, said City property is currently developable and must be disposed of by sealed bid in compliance with State law; **Now Therefore**,

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF DALLAS:

SECTION 1. That the tract of land containing approximately 83,367 square feet in City Block A/5844 and located near the intersection of Sunnyvale Road and Ledbetter Drive is declared unwanted and unneeded by the City Council and is to be advertised for lease with an option to purchase in favor of the lessee, with no minimum monthly rental rate or minimum option purchase price specified.

SECTION 2. That the Director of Development Services is authorized to advertise the above described property for lease with an option to purchase.

SECTION 3. That the advertisement of the property shall state:

- a) that the City of Dallas reserves the right to reject any and all bids received and any lease with option to purchase is subject to approval by the Dallas City Council;

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- b) that the lease with option to purchase shall be in a form approved by the City Attorney and containing the following:
- i) the lease shall be of the land and any improvements currently located thereon;
 - ii) the term of the lease shall be for five (5) years;
 - iii) the rent shall be due and payable in advance monthly;
 - iv) the lease shall be on a triple net basis with the lessee responsible for providing and paying all taxes, insurance, utilities, maintenance and repairs attributable to the property and any improvements;
 - v) the lessee, at the lessee's cost and expense, shall be required to complete any improvements, renovations, restoration, finish-out, and repairs to the property (Tenant Improvements), said Tenant Improvements being subject to the review and written approval of the Directors of Equipment and Building Services and Development Services (Directors) both as to the nature of and plans and specifications for the Tenant Improvements proposed and their satisfactory completion;
 - vi) the property use under the lease shall be for a skating rink or a community based entertainment venue;
 - vii) the lease shall contain an option to purchase the property in favor of the lessee upon the following terms and conditions:
 - 1) the option to purchase shall expire upon the termination of the lease for whatever reason;
 - 2) the Option Purchase Price shall escalate at a rate of 1% per year from the effective date of the lease until closing and lessee/grantee shall pay the Option Purchase Price and any such escalations at closing;
 - 3) the conveyance upon closing shall be by Deed Without Warranty, in a form approved by the City Attorney;
 - 4) property taxes and assessments, if any, will be prorated through the closing and assumed by the lessee/grantee; and
 - 5) all closing costs and title expenses, including without limitation the cost of title insurance, if desired, attributable to the closing of the purchase under the option shall be paid by the lessee/grantee;

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- c) that both the lease and any resulting sale pursuant to the option to purchase, shall be subject to the terms, covenants, conditions, reservations, restrictions and exceptions of this authorizing resolution, including without limitation the following:
- i) a restriction prohibiting the placement of industrialized housing on the property;
 - ii) reservation by the City of Dallas of all oil, gas and other minerals in and under the property with a waiver of surface access rights relating to said minerals;
 - iii) any and all visible and apparent easements and encroachments, whether of record or not;
 - iv) any and all covenants, conditions, reservations, restrictions, exceptions, easements, rights-of-way, mineral interests, mineral leases, or other instruments of record and applicable to the property or any part thereof; and
 - v) standby fees, taxes and assessments, if any, by any taxing authority for the year of closing and subsequent years and assessments by any taxing authority for prior years due to changes in land usage or ownership, the payment of said standby fees, taxes, and assessments being assumed by the lessee/grantee.
- d) that, to the maximum extent allowed by law, both the lease and any resulting sale pursuant to the option to purchase shall be strictly on an "AS IS, WHERE IS, WITH ALL FAULTS" basis; and
- e) such other terms and requirements and/or disclaimers as the City deems necessary, convenient or appropriate.

SECTION 4. That as a material part of the consideration for both the lease and any resulting sale pursuant to the option to purchase, the lessee/grantee and the City shall acknowledge and agree and provided in any relevant instrument(s) that, to the maximum extent allowed by law, (a) lessee/grantee is taking the property "AS IS, WHERE IS, WITH ALL FAULTS", (b) the City disclaims responsibility as to the accuracy or completeness of any information relating to the property, (c) lessee/grantee assumes all responsibility to examine all applicable building codes and zoning ordinances to determine if the property can be used for the purposes desired and to check for outstanding or pending code enforcement actions including but not limited to repair or demolition orders, and (d) the City expressly disclaims and lessee/grantee expressly waives, any warranty or representation, express or implied, including without limitation any warranty of condition, habitability, merchantability or fitness for a particular purpose of the property.

COUNCIL CHAMBER

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Without limiting the foregoing, the City makes no representations of any nature regarding the property and specifically disclaims any warranty, guaranty or representation, oral or written, express or implied, past, present, or future, concerning: (i) the nature and condition of the property, including without limitation, the water, soil and geology, and the suitability thereof and the property for any and all activities and uses which lessee/grantee may elect to conduct thereon, and the existence of any environmental substances, hazards or conditions or presence of any endangered or protected species thereon or compliance with all applicable laws, rules or regulations; (ii) the nature and extent of any right-of-way, lease, possession, lien, encumbrance, license, reservation, condition or otherwise; (iii) the compliance of the property or its operation with any law, ordinance or regulation of any federal, state, or local governmental authority; and (iv) whether or not the property can be developed or utilized for any purpose. For purposes hereof, "environmental substances" means the following: (a) any "hazardous substance" under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C.A. Section 9601 et. seq., as amended, (b) any "hazardous substance" under the Texas Hazardous Substances Spill Prevention and Control Act, Tex. Water Code, Section 26.261, et. seq., as amended, (c) petroleum or petroleum-based products (or any derivative or hazardous constituents thereof or additives thereto), including without limitation, fuel and lubrication oils, (d) any "hazardous chemicals" or "toxic chemicals" under the Occupational Safety and Health Act, 29 U.S.C.A. Section 651 et. seq., as amended, (e) any "hazardous waste" under the Resource Conservation and Recovery Act, 42 U.S.C.A. Section 6901 et. seq., as amended, (f) asbestos, (g) polychlorinated biphenyls, (h) underground storage tanks, whether empty, filled, or partially filled with any substance, (i) any substance, the presence of which is prohibited by federal, state or local laws and regulations, and (j) any other substance which by federal, state or local laws and regulations requires special handling or notification of governmental authorities in its collection, storage, treatment or disposal. References to particular acts or codifications in this definition include all past and future amendments thereto, as well as applicable rules and regulations as now or hereafter promulgated.

SECTION 5. That any procedures required by Code Section 2-24 that are not required by state law are hereby waived with respect to this transaction.

SECTION 6. That this resolution shall take effect immediately from and after its passage in accordance with the provisions of the Charter of the City of Dallas, and it is accordingly so resolved.

APPROVED AS TO FORM:

THOMAS P. PERKINS, Jr., City Attorney

BY 
Assistant City Attorney

APPROVED BY
CITY COUNCIL

NOV 10 2008


City Secretary