

SET DATE FOR HEARING ON
DEVELOPMENT AGREEMENT AND
TAX INCREMENT PAYMENTS

(Bush Development, LLC and Hershey
Development, LLC)

421464-57

Muscatine, Iowa

April 18, 2019

A meeting of the City Council of the City of Muscatine, Iowa, was held at _____ o'clock
____.m., on April 18, 2019, at the _____, Muscatine, Iowa, pursuant to the rules of
the Council.

The Mayor presided and the roll was called, showing members present and absent as
follows:

Present: _____

Absent: _____.

Council Member _____ introduced the resolution next hereinafter
set out and moved its adoption, seconded by Council Member _____; and
after due consideration thereof by the Council, the Mayor put the question upon the adoption of
said resolution, and the roll being called, the following named Council Members voted:

Ayes: _____

Nays: _____.

Whereupon, the Mayor declared said resolution duly adopted, as follows:

RESOLUTION NO. _____

Resolution Setting a Date of Meeting at Which it is Proposed to Approve a Development Agreement with Bush Development, LLC and Hershey Property, LLC Including Annual Appropriation Tax Increment Payments

WHEREAS, the City of Muscatine, Iowa (the “City”), pursuant to and in strict compliance with all laws applicable to the City, and in particular the provisions of Chapter 403 of the Code of Iowa, has adopted an Urban Renewal Plan for the Consolidated Muscatine Urban Renewal Area (the “Urban Renewal Area”); and

WHEREAS, this City Council has adopted an ordinance providing for the division of taxes levied on taxable property in the Urban Renewal Area pursuant to Section 403.19 of the Code of Iowa and establishing the fund referred to in Subsection 2 of Section 403.19 of the Code of Iowa, which fund and the portion of taxes referred to in that subsection may be irrevocably pledged by the City for the payment of the principal of and interest on indebtedness incurred under the authority of Section 403.9 of the Code of Iowa to finance or refinance in whole or in part projects in the Urban Renewal Area; and

WHEREAS, the City proposes to enter into an agreement (the “Development Agreement”) with Bush Development, LLC and Hershey Property, LLC (the “Property Owner”) in connection with the redevelopment of the former Hershey Building into a mixed-use building, including multiresidential units and commercial/retail units; and

WHEREAS, the Development Agreement would provide financial incentives to the Property Owner in the form of annual appropriation incremental property tax payments in an amount not to exceed \$500,000 under the authority of Section 403.9(1) of the Code of Iowa; and

WHEREAS, it is necessary to set a date for a public hearing on the Development Agreement, pursuant to Section 403.9 of the Code of Iowa;

NOW THEREFORE, IT IS RESOLVED by the City Council of the City of Muscatine, Iowa, as follows:

Section 1. This Council shall meet on the May 2, 2019, at _____ o’clock ____m., at the _____, in the City, at which time and place proceedings will be instituted and action taken to approve the Development Agreement and to authorize the annual appropriation incremental property tax payments.

Section 2. The City Clerk is hereby directed to give notice of the proposed action, the time when and place where said meeting will be held, by publication at least once not less than four (4) days and not more than twenty (20) days before the date of said meeting in a legal newspaper of general circulation in the City. Said notice shall be in substantially the following form:

NOTICE OF MEETING FOR APPROVAL OF DEVELOPMENT AGREEMENT
WITH BUSH DEVELOPMENT, LLC AND HERSHEY PROPERTY, LLC AND
AUTHORIZATION OF ANNUAL APPROPRIATION TAX INCREMENT
PAYMENTS

The City Council of the City of Muscatine, Iowa (the “City”), will meet at the _____, on May 2, 2019, at _____ o’clock ____m., at which time and place proceedings will be instituted and action taken to approve a Development Agreement among the City, Bush Development, LLC and Hershey Property, LLC (the “Property Owner”) in connection with redevelopment of the former Hershey Building into a mixed-use building, including multiresidential units and commercial/retail units, in the Consolidated Muscatine Urban Renewal Area, which Agreement provides for certain financial incentives in the form of annual appropriation incremental property tax payments to the Property Owner in a total amount not exceeding \$500,000, as authorized by Section 403.9 of the Code of Iowa.

The Agreement to make annual appropriation incremental property tax payments to the Property Owner will not be a general obligation of the City, but will be payable solely and only from incremental property tax revenues generated within the Consolidated Muscatine Urban Renewal Area. Payments under the Development Agreement will be subject to annual appropriation by the City Council.

At the meeting, the City Council will receive oral or written objections from any resident or property owner of the City. Thereafter, the City Council may, at the meeting or at an adjournment thereof, take additional action to approve the Development Agreement or may abandon the proposal.

This notice is given by order of the City Council of Muscatine, Iowa, in accordance with Section 403.9 of the Code of Iowa.

Gregg Mandsager
City Clerk

Section 3. All resolutions or parts of resolutions in conflict herewith are hereby repealed.

Passed and approved April 18, 2019.

Mayor

Attest:

City Clerk

• • • •

On motion and vote the meeting adjourned.

Mayor

Attest:

City Clerk

STATE OF IOWA
COUNTY OF MUSCATINE SS:
CITY OF MUSCATINE

I, the undersigned, City Clerk of the City of Muscatine, hereby certify that the foregoing is a true and correct copy of the minutes of the City Council of the City relating to the adoption of a resolution to fix a date of meeting at which it is proposed to take action to approve a Development Agreement.

I do further certify that the notice of hearing, to which the printed slip attached to the publisher's original affidavit hereto attached is a true and complete copy, was published on the date and in the newspaper specified in such affidavit, which newspaper has a general circulation in the City.

WITNESS MY HAND this ____ day of _____, 2019.

City Clerk

(Attach here the publisher's original affidavit with clipping of the notice as published.)

(PLEASE NOTE: Do not sign and date this certificate until you have checked a copy of the published notice and have verified that it was published on the date indicated in the publisher's affidavit.)

April 12, 2019

VIA EMAIL

Gregg Mandsager
City Administrator/City Hall
Muscatine, IA

Re: Bush Development, LLC and Hershey Development, LLC Development
Agreement
File No. 421464-57

Dear Gregg:

Attached are copies of proceedings to enable the City Council to act on April 18th to set May 2nd as the date for a public hearing on the proposed Development Agreement with Bush Development, LLC and Hershey Development, LLC, including the proposal for tax increment payments.

The notice of public hearing on the Agreement must be published once, not less than four (4) and not more than twenty (20) days prior to the City Council meeting at which the hearing will be held. The last date on which the notice can effectively be published is April 28, 2019. Please print an extra copy of the notice for delivery to the newspaper. Please insert the time and place of the hearing in both the resolution and the notice and email a copy of the published notice to lemke.susan@dorsey.com.

We will prepare and forward to you in time for the May 2nd meeting the necessary proceedings to approve the Agreement. We would appreciate receiving one fully executed copy of these proceedings as soon as they are available. Please contact John Danos or me if you have questions.

Kind regards,

Amy Bjork

Attachments

cc: Nancy Lueck

DEVELOPMENT AGREEMENT

This Agreement is entered into among the City of Muscatine, Iowa (the “City”), Bush Development, LLC (the “Developer”), and Hershey Property, LLC (the “Property Owner”) as of the ____ day of _____, 2019 (the “Commencement Date”).

WHEREAS, the City has established the Consolidated Muscatine Urban Renewal Area (the “Urban Renewal Area”), and has adopted a tax increment ordinance for the Urban Renewal Area; and

WHEREAS, the Property Owner owns certain real property which is situated in the City, lies within the Urban Renewal Area and is more specifically described on Exhibit A hereto (the “Property”); and

WHEREAS, the Developer has proposed to undertake the redevelopment of the former Hershey Building situated on the Property into a mixed-use building (the “Project”), including multiresidential units and commercial/retail units, which will be owned, operated and maintained by the Property Owner; and

WHEREAS, the Property Owner has requested that the City provide financial assistance in the form of incremental property tax payments to be used by the Property Owner in paying the costs of the Project; and

WHEREAS, the base valuation of the Property for purposes of calculating Incremental Property Tax Revenues (as herein defined) under this Agreement and Section 403.19 of the Code of Iowa is \$862,460 (the “Base Valuation”); and

WHEREAS, Chapter 403 of the Code of Iowa and the City’s Urban Renewal Plan for the Urban Renewal Area authorize the City to undertake economic development and blight alleviation projects in the Urban Renewal Area; and

WHEREAS, Chapter 15A of the Code of Iowa authorizes cities to provide grants, loans, guarantees, tax incentives and other financial assistance to or for the benefit of private persons;

NOW THEREFORE, the parties hereto agree as follows:

A. Developer’s and Property Owner’s Covenants.

1. Project Construction. The Developer agrees to construct the Project on the Property. Furthermore, the Developer expects to invest approximately \$6,900,000 into capital improvements for the Project, including construction work, equipment, furnishings and other capital improvements. The Developer agrees to complete construction of the Project by no later than December 31, 2019.

2. Property Taxes. The Property Owner agrees to make or ensure timely payment of all property taxes as they come due with respect to the Property with the completed

Project thereon throughout the Term, as hereinafter defined, and to submit a receipt or cancelled check in evidence of each such payment.

3. Property Owner's Certifications. The Property Owner agrees to submit documentation to the satisfaction of the City by no later than each October 15 during the Term, as hereinafter defined, commencing October 15, 2020, demonstrating that the completed Project is being maintained and used as part of the Property Owner's business operations.

4. Property Tax Payment Certification. Furthermore, the Property Owner agrees to certify to the City by no later than October 15 of each year during the Term, as hereinafter defined, commencing October 15, 2020, an amount (the "Property Owner's Estimate") equal to the estimated Incremental Property Tax Revenues anticipated to be paid in the fiscal year immediately following such certification with respect to the taxable valuation of the Property. In submitting each such Property Owner's Estimate, the Property Owner will complete and submit the worksheet attached hereto as Exhibit B. The City reserves the right to review and request revisions to each such Property Owner's Estimate to ensure the accuracy of the figures submitted. For purposes of this Agreement, Incremental Property Tax Revenues are calculated by: (1) determining the consolidated property tax levy (city, county, school, etc.) then in effect with respect to taxation of the Property; (2) subtracting (a) the debt service levies of all taxing jurisdictions, (b) the school district instructional support and physical plant and equipment levies, and (c) any other levies which may be exempted from such calculation by action of the Iowa General Assembly; (3) multiplying the resulting modified consolidated levy rate times any incremental growth in the taxable valuation of the Property, as shown on the property tax rolls of Muscatine County, above and beyond the Base Valuation; and (4) deducting any property tax credits which shall be available with respect to taxable incremental valuation of the Property.

Upon request, the City staff shall provide reasonable assistance to the Property Owner in completing the worksheet required under this Section A.4.

5. Insurance.

(a) The Property Owner, and any successor in interest to the Property Owner, shall obtain and continuously maintain insurance on the Property and the completed Project and, from time to time at the request of the City, furnish proof to the City that the premiums for such insurance have been paid and the insurance is in effect. The insurance coverage described below is the minimum insurance coverage that the Property Owner must obtain and continuously maintain, provided that the Property Owner shall obtain the insurance described in clause (i) below prior to the commencement of construction of the Project (excluding excavation and footings):

- (i) Builder's risk insurance, written on the so-called "Builder's Risk—Completed Value Basis," in an amount equal to one hundred percent (100%) of the insurable value of the Project at the date of completion, and with coverage available in non-reporting form on the so-called "all risk" form of policy.
- (ii) Comprehensive general liability insurance (including operations, contingent liability, operations of subcontractors, completed operations and contractual liability insurance) together with an Owner's/Contractor's Policy naming the City,

as an additional insured, with limits against bodily injury and property damage of not less than \$2,500,000 for each occurrence (to accomplish the above-required limits, an umbrella excess liability policy may be used), written on an occurrence basis.

(iii) Workers compensation insurance, with statutory coverage.

(b) All insurance required in this Section shall be obtained and continuously maintained in responsible insurance companies selected by the Property Owner or its successors that are authorized under the laws of the State of Iowa to assume the risks covered by such policies. Unless otherwise provided in this Section, each policy must contain a provision that the insurer will not cancel nor modify the policy without giving written notice to the insured at least thirty (30) days before the cancellation or modification becomes effective. Not less than fifteen (15) days prior to the expiration of any policy, the Property Owner, or its successors or assigns, must renew the existing policy or replace the policy with another policy conforming to the provisions of this Section. In lieu of separate policies, the Property Owner or its successors or assigns, may maintain a single policy, blanket or umbrella policies, or a combination thereof, having the coverage required herein.

(c) The Property Owner, its successors or assigns, agrees to notify the City promptly in the case of damage exceeding \$250,000 in amount to, or destruction of the Project resulting from fire or other casualty. Furthermore, the Property Owner agrees to apply the proceeds from any and all casualty claims against the insurance detailed in this Section to the restoration and improvement of the Property and/or the Project.

6. Legal and Administrative Costs. The Property Owner hereby agrees to pay for the legal fees and administrative costs incurred by the City in connection with the drafting, negotiation and authorization of this Agreement, including the prerequisite amendment to the urban renewal plan, up to an amount not in excess of \$10,000. The Property Owner agrees to remit payment to the City within 30-days of the submission of reasonable documentation by the City to the Property Owner evidencing such costs.

7. Default Provisions. The following shall be “Events of Default” under this Agreement, and the term “Event of Default” shall mean, whenever it is used in this Agreement (unless otherwise provided), any one or more of the following events:

- a) Failure by the Developer to commence and complete construction of the Project pursuant to the terms and conditions of this Agreement.
- b) Failure by the Property Owner to fully and timely remit payment of property taxes when due and owing.
- c) Failure by the Property Owner to comply with Sections A.2, A.3, A.4, A.5 or A.6 of this Agreement.

Whenever any event of default described in this Agreement occurs, the City shall provide written notice to the Property Owner describing the cause of the default and the steps that must be taken by the Developer and/or Property Owner, as applicable, in order to cure the default. The Developer and/or Property Owner, as applicable, shall have thirty (30) days after receipt of the notice to cure the default or to provide assurances satisfactory

to City that the default will be cured as soon as reasonably possible. If the Developer or Property Owner fail to cure the default or provide assurances, the City shall then have the right to:

- a) Pursue any action available to it, at law or in equity, in order to enforce the terms of this Agreement.
- b) Withhold the Payments provided for under Section B.1 below.

B. City's Obligations

1. Payments. In recognition of the Developer's and Property Owner's obligations set out above, the City agrees to make twenty (20) semiannual economic development tax increment payments (the "Payments" and each, individually a "Payment") to the Property Owner during the Term, as hereinafter defined, pursuant to Chapters 15A and 403 of the Code of Iowa, provided however that the aggregate, total amount of the Payments shall not exceed \$500,000 (the "Maximum Payment Total"), and all Payments under this Agreement shall be subject to annual appropriation by the City Council, as provided hereunder.

The Payments shall not constitute general obligations of the City, but shall be made solely and only from Incremental Property Tax Revenues received by the City from the Muscatine County Treasurer attributable to the taxable valuation of the Property.

Each Payment shall not exceed an amount which represents the Incremental Property Tax Revenues available to the City with respect to the Property during the six (6) months immediately preceding each Payment date.

This Agreement assumes that the new valuation from the Project will go on the property tax rolls as of January 1, 2020. Accordingly, Payments will be made on December 1 and June 1 of each fiscal year, beginning December 1, 2021, and continuing through and including June 1, 2031, or until such earlier date upon which total Payments equal to the Maximum Payment Total have been made.

2. Annual Appropriation. The Payments shall be subject to annual appropriation by the City Council. Prior to December 1 of each year during the Term of this Agreement, commencing in calendar year 2020, the City Council of the City shall consider the question of obligating for appropriation to the funding of the Payments due in the following fiscal year, an amount (the "Appropriated Amount") of Incremental Property Tax Revenues to be collected in the following fiscal year equal to or less than the most recently submitted Property Owner's Estimate.

In any given fiscal year, if the City Council determines to not obligate the then-considered Appropriated Amount, then the City will be under no obligation to fund the Payments scheduled to become due in the following fiscal year, and the Property Owner will have no rights whatsoever to compel the City to make such Payments or to seek damages relative thereto or to compel the funding of such Payments in future fiscal years. A determination by the City Council to not obligate funds for any particular fiscal year's Payments shall not render this Agreement null and void, and the Property Owner shall make the next succeeding submission of the Property Owner's

Estimate as called for in Section A.4 above, provided however that no Payment shall be made after June 1, 2031.

3. Payment Amounts. The aggregate Payments to be made in a fiscal year shall not exceed an amount equal to the corresponding Appropriated Amount (for example, for the Payments due on December 1, 2021 and on June 1, 2022, the aggregate maximum amount of such Payments would be determined by the Appropriated Amount determined for certification by December 1, 2020). Furthermore, the amount of each such Payment shall not exceed the amount of Incremental Property Tax Revenues (excluding allocations of “back-fill” or “make-up” payments from the State of Iowa for property tax credits or roll-back) actually received by the City from the Muscatine County Treasurer attributable to the taxable incremental valuation of the Property in the six months immediately preceding the extant Payment due date.

4. Certification of Payment Obligation. In any given fiscal year, if the City Council determines to obligate the then-considered Appropriated Amount, as set forth in Section B.1 above, then the City Clerk will certify by December 1 of each such year to the Muscatine County Auditor an amount equal to the most recently obligated Appropriated Amount.

C. Administrative Provisions

1. Amendment and Assignment. The parties hereto may not cause this Agreement to be amended, assigned, assumed, sold or otherwise transferred without the prior written consent of the other party. However, the City hereby gives its permission that the Property Owner’s rights to receive the Payments hereunder may be assigned by the Property Owner to a private lender, as security on a credit facility taken with respect to the Project, without further action on the part of the City.

2. Successors. This Agreement shall inure to the benefit of and be binding upon the successors and assigns of the parties.

3. Term. The term (the “Term”) of this Agreement shall commence on the Commencement Date and end on June 1, 2031 or on such earlier date upon which the aggregate sum of Payments made to the Property Owner equals the Maximum Payment Total.

4. Choice of Law. This Agreement shall be deemed to be a contract made under the laws of the State of Iowa and for all purposes shall be governed by and construed in accordance with laws of the State of Iowa.

The City, the Developer and the Property Owner have caused this Agreement to be signed, in their names and on their behalf by their duly authorized officers, all as of the day and date written above.

CITY OF MUSCATINE, IOWA

By: _____
Mayor

Attest:

City Clerk

BUSH DEVELOPMENT, LLC

By: _____
[Name, Title]

HERSHEY PROPERTY, LLC

By: _____
[Name, Title]

EXHIBIT A
DESCRIPTION OF THE PROPERTY

Certain real property situated in the City of Muscatine, Muscatine County, State of Iowa bearing Muscatine County Property Tax Parcel Identification Number 0835485006 and more particularly described as Lots 6 & 7 of Original Town.

EXHIBIT B
PROPERTY OWNER'S ESTIMATE WORKSHEET

- (1) Date of Preparation: October ____, 20__.
- (2) Assessed Valuation of Property as of January 1, 20__:
\$_____.
- (3) Base Taxable Valuation of Property:
\$_____.
- (4) Incremental Taxable Valuation of Property (2 minus 3):
\$_____ (the "TIF Value").
- (5) Current City fiscal year consolidated property tax levy rate for purposes of calculating Incremental Property Tax Revenues (the "Adjusted Levy Rate"):
\$_____ per thousand of value.
- (6) The TIF Value (4) factored by the Adjusted Levy Rate (5).
\$_____ x \$_____/1000 = \$_____ (the "TIF Estimate")
- (7) Subtract anticipated property tax credits from the TIF Estimate (6 minus 7) =
\$_____ (the "TIF Estimate")