



# City of Muscatine



## AGENDA ITEM SUMMARY

DATE: 3-4-21

City Council

### STAFF

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Nancy A. Lueck, Finance Director

Jodi Royal-Goodman, Community Development Director

Andrew Fangman, Assistant Community Development Director

### SUBJECT

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Resolution Approving Amended Development Agreement with Bush Development, LLC and Hershey Property, LLC, Authorizing Tax Increment Payments and Pledging Certain Tax Increment Revenues to the Payment of the Agreement

### EXECUTIVE SUMMARY

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At the June 11, 2020 In Depth meeting, City Council reviewed a request to amend the Development Agreement with Hershey Property LLC and Bush Development LLC to increase the amount of the tax increment rebate from a maximum of \$500,000 to an amount not to exceed \$700,000. At that meeting, City Council gave consensus approval of this request. The increase in the maximum amount in the Development Agreement was included in the Urban Renewal Plan Amendment approved by City Council on February 4, 2021. At the February 18, 2021 meeting, the City Council set the required public hearing for the Amended Development Agreement for March 4, 2021. After the public hearing, the City Council will consider the Resolution approving the Amended Development Agreement.

### STAFF RECOMMENDATION

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Staff recommends approval of the Resolution Approving Amended Development Agreement with Bush Development, LLC and Hershey Property, LLC, Authorizing Tax Increment Payments and Pledging Certain Tax Increment Revenues to the Payment of the Agreement

### BACKGROUND/DISCUSSION

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The City traditionally groups projects or programs into a single Urban Renewal Plan Amendment. The Urban Renewal Plan Amendment approved by City Council on February 4, 2021 included a number of projects. One of the projects was for the proposed amendment to the Development Agreement for the Hershey Building project.

At the June 11, 2020 In Depth meeting, City Council reviewed a request to amend the development agreement with Hershey Property LLC and Bush Development LLC to increase the amount of the rebate from a maximum of \$500,000 to an amount not to exceed \$700,000. At that meeting, City Council gave consensus approval of this request with the formal approval of an amended development agreement to be considered later. With this project now in the City's Urban Renewal Plan, the required public hearing

was set for March 4, 2021 with the Amended Development Agreement to be considered for approval later in the agenda for that meeting.

#### **CITY FINANCIAL IMPACT**

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The funding for this project will be from future incremental property taxes (TIF) funds, and as such, will have no impact on the current City budget.

#### **ATTACHMENTS**

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1. Resolution Approving Amended Development Agreement with Bush Development, LLC and Hershey Property, LLC, Authorizing Tax Increment Payments and Pledging Certain Tax Increment Revenues to the Payment of the Agreement

HOLD HEARING ON AND APPROVE  
AMENDED DEVELOPMENT  
AGREEMENT AND TAX INCREMENT  
PAYMENTS

(Bush Development, LLC/Hershey Property,  
LLC)

421464-61

Muscatine, Iowa

March 4, 2021

A meeting of the City Council of the City of Muscatine, Iowa, was held at 7:00 o'clock p.m., on March 4, 2021, pursuant to the rules of the Council.

The City Council met electronically via GoToMeeting, which was accessible at the following:

<https://global.gotomeeting.com/join/139304725>

The City Council conducted this meeting electronically due to federal and state government recommendations in response to COVID-19 pandemic conditions. Electronic access information was included in the posted agenda of this public meeting.

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

Present: \_\_\_\_\_

Absent: \_\_\_\_\_.

The City Council investigated and found that notice of the intention of the Council to conduct a public hearing on an Amended Development Agreement among the City, Bush Development, LLC, and Hershey Property, LLC had been published according to law and as directed by the Council and that this is the time and place at which the Council shall receive oral or written objections from any resident or property owner of the City. All written objections, statements, and evidence heretofore filed were reported to the Council, and all oral objections, statements, and all other exhibits presented were considered.

The following named persons presented oral objections, statements, or evidence as summarized below; filed written objections or statements, copies of which are attached hereto; or presented other exhibits, copies of which are attached hereto:

**(Here list all persons presenting written or oral statements or evidence and summarize each presentation.)**

There being no further objections or comments, the Mayor announced that the hearing was closed.

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 2021-0073

Resolution Approving Amended Development Agreement with Bush Development, LLC and Hershey Property, LLC, Authorizing Tax Increment Payments and Pledging Certain Tax Increment Revenues to the Payment of the Agreement

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 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 has previously entered into a certain development agreement (the "Original Agreement") with Bush Development, LLC (the "Developer") and Hershey Property, LLC (the "Property Owner") in connection with the redevelopment of the former Hershey Building situated on certain real property in the Urban Renewal Area into a mixed-use building, including multiresidential units and/or commercial/retail units (the "Project"); and

WHEREAS, the City, the Developer, and the Property Owner now propose to amend the Original Agreement in order to (1) increase the amount of annual appropriation incremental tax payments to be made to the Property Owner from an amount not to exceed \$500,000 to an amount not to exceed \$700,000; and (2) make other related changes; and

WHEREAS, an amended development agreement (the "Amended Agreement") has been prepared to set forth the new understanding between the City, the Developer, and the Property Owner; and

WHEREAS, this City Council, pursuant to Section 403.9 of the Code of Iowa, has published notice, has held a public hearing on the Amended Agreement on March 4, 2021, and has otherwise complied with statutory requirements for the approval of said Agreement; and

WHEREAS, Chapter 15A of the Code of Iowa ("Chapter 15A") declares that economic development is a public purpose for which a City may provide grants, loans, tax incentives, guarantees and other financial assistance to or for the benefit of private persons; and

WHEREAS, Chapter 15A requires that before public funds are used for grants, loans, tax incentives or other financial assistance, a City Council must determine that a public purpose will reasonably be accomplished by the spending or use of those funds; and

WHEREAS, Chapter 15A requires that in determining whether funds should be spent, a City Council must consider any or all of a series of factors;

NOW, THEREFORE, It Is Resolved by the City Council of the City of Muscatine, Iowa, as follows:

Section 1. Pursuant to the factors listed in Chapter 15A, the Council hereby reaffirms that:

(a) The Project will add diversity and generate new opportunities for the Muscatine and Iowa economies;

(b) The Project will generate public gains and benefits, particularly in the creation of new jobs and new housing opportunities, which are warranted in comparison to the amount of the proposed property tax incentives.

Section 2. The City Council further finds and reaffirms that a public purpose will reasonably be accomplished by entering into the Amended Agreement and providing the incremental property tax payments to the Developer.

Section 3. The Amended Agreement is hereby approved and the Mayor and City Clerk are hereby authorized and directed to execute and deliver the Amended Agreement on behalf of the City, in substantially the form and content in which the Amended Agreement has been presented to this City Council, and such officers are also authorized to make such changes, modifications, additions or deletions as they, with the advice of bond counsel, may believe to be necessary, and to take such actions as may be necessary to carry out the provisions of the Amended Agreement.

Section 4. As provided and required by Chapter 403 of the Code of Iowa, the City's obligations under the Amended Agreement shall be payable solely from a subfund (the "Hershey Development Subfund") which has previously been established, into which shall be paid that portion of the income and proceeds of the Urban Renewal Tax Revenue Fund attributable to property taxes derived from the property described as follows:

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.

Section 5. The City hereby pledges to the payment of the Agreement the Hershey Development Subfund and the taxes referred to in Subsection 2 of Section 403.19 of the Code of Iowa to be paid into such Subfund, provided, however, that no payment will be made under the Agreement unless and until monies from the Hershey Development Subfund are appropriated for such purpose by the City Council.

Section 6. After its adoption, a copy of this resolution shall be filed in the office of the County Auditor of Muscatine County to evidence the continuing pledging of the Hershey Development Subfund and the portion of taxes to be paid into such Subfund and, pursuant to the direction of Section 403.19 of the Code of Iowa, the County Auditor shall allocate the taxes in accordance therewith and in accordance with the tax allocation ordinance referred to in the preamble hereof.

Section 7. All resolutions or parts thereof in conflict herewith are hereby repealed.

Passed and approved on March 4, 2021.

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Mayor

Attest:

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City Clerk

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On motion and vote the meeting adjourned.

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Mayor

Attest:

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City Clerk

STATE OF IOWA  
MUSCATINE COUNTY  
CITY OF MUSCATINE

I, the undersigned, Clerk of the aforementioned City, hereby certify that the foregoing is a true and correct copy of the minutes of the Council of the City relating to holding a public hearing and adopting a resolution to approve an Amended Development Agreement.

WITNESS MY HAND hereto affixed this \_\_\_\_ day of \_\_\_\_\_, 2021.

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## City Clerk

## **AMENDED DEVELOPMENT AGREEMENT**

This Amended Development 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 4th day of March, 2021 (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 multi-residential units and/or 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, the City, the Developer and the Property Owner entered into a Development Agreement (the "Original Agreement") dated May 2, 2019, pursuant to which the City agreed to provide incremental property tax payments to the Property Owner in an aggregate amount not to exceed \$500,000 in order to assist the Property Owner in paying a portion of the costs of the Project; and

WHEREAS, it is now necessary to amend the Original Agreement to (1) increase the amount of incremental property tax payments to be provided to the Property Owner; and (2) make other related changes; and

WHEREAS, this Amended Development Agreement (the "Agreement") has been prepared to set forth the updated, mutual understanding between the City, the Developer, and the Property Owner and to replace the Original Agreement; 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 for a total construction cost of approximately \$6,600,000, including design, development, construction, equipping, furnishing and other related improvements to the Property. The Developer agrees to Substantially Complete (as defined below) construction of the Project by no later than February 28, 2020. For the purposes of this Agreement "Substantially Complete" means the date of issuance of a certificate of occupancy or temporary certificate of occupancy for the Property, which shall be issued by the City pursuant to applicable laws and ordinances and not unreasonably withheld or delayed.

**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 agreed to pay for the legal fees and administrative costs incurred by the City in connection with the drafting, negotiation and authorization of the Original Agreement, including the prerequisite amendment to the urban renewal plan, up to an amount not in excess of \$10,000. The Property Owner and the City have agreed that these legal fees will be deducted from the first rebate payment under this agreement.

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 Substantially 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 \$700,000 (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:

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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")