

HOLD HEARING ON AND APPROVE  
DEVELOPMENT AGREEMENT AND  
TAX INCREMENT PAYMENTS

(A&E Convenience, LLC)

421464-32

Muscatine, Iowa

January 20, 2011

A meeting of the City Council of the City of Muscatine, Iowa, was held at \_\_\_\_\_ o'clock \_\_.m., on January 20, 2011, 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: \_\_\_\_\_.

The City Council investigated and found that notice of the intention of the Council to conduct a public hearing on a Development Agreement between the City and A&E Convenience, LLC with respect to the development of a new commercial convenience store, car wash and fuel station facilities in the South End Urban Renewal Area, which provides for certain financial incentives in the form of incremental property tax payments in a total amount not exceeding \$40,000, 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 City 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 City 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 \_\_\_\_\_

Approving Development Agreement with A&E Convenience, 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 South End 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 (the "Urban Renewal Tax Revenue Fund"), 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 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, an agreement between the City and A&E Convenience, LLC has been prepared (the "Agreement"), pursuant to which A&E Convenience, LLC has agreed to develop a new commercial convenience store, car wash and fuel station facilities in the Urban Renewal Area (the "A&E Convenience, LLC Project") and the City has agreed to provide tax increment payments in a total amount not exceeding \$40,000; 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 Agreement on January 20, 2011, and has otherwise complied with statutory requirements for the approval of the 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 City Council hereby finds that:

(a) The A&E Convenience, LLC Project will add diversity and generate new opportunities for the Muscatine and Iowa economies;

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

Section 2. The City Council further finds that a public purpose will reasonably be accomplished by entering into the Agreement and providing the incremental property tax payments to A&E Convenience, LLC.

Section 3. The Agreement is hereby approved and the Mayor and City Clerk are hereby authorized and directed to execute and deliver the Agreement on behalf of the City, in substantially the form and content in which the 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 Agreement.

Section 4. As provided and required by Chapter 403 of the Code of Iowa, the City's obligations under the Agreement shall be payable solely from a subfund (the "A&E Convenience, LLC Subfund") which is hereby 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, County of Muscatine, State of Iowa more particularly described as follows:

Lot 2 of Island Grove Subdivision, a subdivision in the City of Muscatine, Muscatine County, Iowa, such Lot bearing Muscatine County Property Tax Parcel Identification Number 1319251008.

Section 5. The City hereby pledges to the payment of the Agreement the A&E Convenience, LLC Subfund and the taxes referred to in Subsection 2 of Section 403.19 of the Code of Iowa to be paid into such Subfund.

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 A&E Convenience, LLC 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 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 this 20th day of January, 2011.

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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  
COUNTY OF MUSCATINE SS:  
CITY OF MUSCATINE

I, the undersigned, Clerk of the City of Muscatine, 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 a Development Agreement.

WITNESS MY HAND this \_\_\_\_ day of \_\_\_\_\_, 2011.

\_\_\_\_\_  
City Clerk

STATE OF IOWA

SS:

COUNTY OF MUSCATINE

I, the undersigned, County Auditor of Muscatine County, in the State of Iowa, do hereby certify that on the \_\_\_\_ day of \_\_\_\_\_, 2011, the City Clerk of the City of Muscatine filed in my office a certified copy of a resolution of the City shown to have been adopted by the City Council and approved by the Mayor thereof on January 20, 2011, entitled: "Resolution Approving Development Agreement with A&E Convenience, LLC, Authorizing Tax Increment Payments and Pledging Certain Tax Increment Revenues to the Payment of the Agreement", and that I have duly placed the copy of the resolution on file in my records.

WITNESS MY HAND this \_\_\_\_ day of \_\_\_\_\_, 2011.

\_\_\_\_\_  
County Auditor



## DEVELOPMENT AGREEMENT

This Agreement is entered into between the City of Muscatine, Iowa (the "City") and A&E Convenience, LLC (the "Company") as of the \_\_\_\_\_ day of January, 2011.

WHEREAS, the City has established the South End Urban Renewal Area (the "Urban Renewal Area"), and has adopted a tax increment ordinance for the Urban Renewal Area; and

WHEREAS, the Company owns certain real property (the "Property") situated in the Urban Renewal Area, the legal description of which is set forth on Exhibit A hereto, and the Company has undertaken the renovation and development of a commercial convenience store, car wash and fuel station facilities thereon (the "Project") for use in connection with its business operations; and

WHEREAS, the Company has requested tax increment financing assistance in paying the costs of the Project; 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. Company's Covenants**

1. **Construction and Maintenance of Project.** The Company agrees to construct and maintain the Project on the Property for use in its business operations.
2. **Property Taxes.** The Company agrees to ensure timely payment of all property taxes as they come due throughout the term of this Agreement and to submit a receipt or cancelled check in evidence of each such payment.
3. **Deceleration/Turning Lane.** The Company agrees to cause the construction of an IDOT-approved deceleration or turning lane on Highway 61 in accordance with the timeline and details set forth on Exhibit B hereto. The Company further agrees to pay the costs of such construction.
4. **Payment of Legal Fees.** The Company hereby agrees to pay the legal fees incurred by the City in connection with the negotiation, drafting and authorization of this Agreement, up to an amount not to exceed \$3,500.00. The Company will remit payment to the City in-full for such legal fees within 30-days of the submission by the City to the Company of a billing statement evidencing such fees.

### **B. City's Obligations**

In recognition of the Company's obligations set out above, the City agrees to make not more than 20 semiannual economic development tax increment payments (the "Payments") to the Company during the term of this Agreement, pursuant to Chapters 15A and 403 of the Code

## DEVELOPMENT AGREEMENT

This Agreement is entered into between the City of Muscatine, Iowa (the "City") and ASH Concrete, LLC (the "Company") as of the \_\_\_\_\_ day of January, 2011.

WHEREAS, the City has established the South End Urban Renewal Area (the "Urban Renewal Area") and has adopted a tax increment ordinance for the Urban Renewal Area; and

WHEREAS, the Company owns certain real property (the "Property") situated in the Urban Renewal Area, the legal description of which is set forth on Exhibit A hereto, and the Company has undertaken the renovation and development of a commercial convenience store, car wash and fuel station facilities thereon (the "Project") for use in connection with its business operations; and

WHEREAS, the Company has requested tax increment financing assistance in paying the costs of the Project; 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. Company's Covenants

1. Construction and Maintenance of Project. The Company agrees to construct and maintain the Project on the Property for use in its business operations.

2. Property Taxes. The Company agrees to ensure timely payment of all property taxes as they come due throughout the term of this Agreement and to submit a receipt or cancelled check in evidence of each such payment.

3. Acceleration/Turning In. The Company agrees to cause the construction of an IDOT-approved deceleration or turning lane on Highway 61 in accordance with the timeline and details set forth on Exhibit B hereto. The Company further agrees to pay the costs of such construction.

4. Payment of Legal Fees. The Company hereby agrees to pay the legal fees incurred by the City in connection with the negotiation, drafting and execution of this Agreement, up to an amount not to exceed \$3,500.00. The Company will retain payment to the City (in full) for such legal fees within 30 days of the submission by the City to the Company of a billing statement evidencing such fees.

### B. City's Obligations

In recognition of the Company's obligations set out above, the City agrees to make not more than 30 semiannual economic development tax increment payments (the "Payments") to the Company during the term of this Agreement pursuant to Chapters 15A and 403 of the Code

of Iowa, provided however that the aggregate, total amount of the Payments shall not exceed Forty Thousand Dollars (\$40,000).

The Payments will be made on June 1 and December 1 of each fiscal year, beginning on the first December 1 for which incremental property tax revenues become available, and continuing for a total of ten (10) fiscal years. This Agreement assumes that a substantial portion of the new taxable value attributable the Project will go on the property tax rolls as of January 1, 2011. Accordingly, Payments will be made beginning December 1, 2012 and continue to and including June 1, 2022 or until such earlier date upon which total Payments equal to \$40,000 have been made.

Each Payment shall be in an amount which represents Fifty Percent (50%) of the Incremental Property Tax Revenues available to the City with respect to the Property during the six months immediately preceding each Payment date. Incremental Property Tax Revenues are produced by multiplying the consolidated property tax levy (city, county, school, etc.) times the incremental valuation of the Property, with the completed Project thereon, then subtracting debt service levies of all taxing jurisdictions, subtracting the school district physical plant and equipment levy and subtracting any other levies which may be exempted from such calculation by action of the Iowa General Assembly.

The Payments shall not constitute general obligations of the City, but shall be made solely and only from incremental property taxes received by the City from the Muscatine County Treasurer which are attributable to the Property.

The City agrees to certify to the Muscatine County Auditor by December 1, 2011, relative to the Payments to be made under this Agreement an amount equal to \$40,000, with further instructions that the Payments be funded with 50% of the Incremental Property Tax Revenues as may from time to time become available with respect to the Property.

**C. Administrative Provisions**

1. This Agreement may not be amended or assigned by either party without the express permission of the other party, provided, however, that the City hereby gives its permission that the Company's rights to receive the economic development tax increment payments hereunder may be assigned by the Company to a lender, as security for financing activity with respect to the Project, without further action on the part of the City.

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

3. 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.

of Iowa, provided however that the aggregate total amount of the Payments shall not exceed Forty Thousand Dollars (\$40,000).

The Payments will be made on June 1 and December 1 of each fiscal year beginning on the first December 1 for which incremental property tax revenues become available and continuing for a total of ten (10) fiscal years. This Agreement assumes that a substantial portion of the now taxable value attributable the Project will go on the property tax rolls as of January 1, 2011. Accordingly, Payments will be made beginning December 1, 2011 and continue to and including June 1, 2022 or until such earlier date upon which total Payments equal to \$40,000 have been made.

Each Payment shall be in an amount which represents Fifty Percent (50%) of the incremental Property Tax Revenues available to the City with respect to the Property during the six months immediately preceding each Payment date. Incremental Property Tax Revenues are produced by multiplying the consolidated property tax levy (city, county, school, etc.) times the incremental valuation of the Property, with the completed Project thereon, then subtracting debt service levies of all taxing jurisdictions, subtracting the school district physical plant and equipment levy and subtracting any other levies which may be exempted from such calculation by action of the Iowa General Assembly.

The Payments shall not constitute general obligations of the City, but shall be made solely and only from incremental property taxes received by the City from the Muscatine County Treasurer which are attributable to the Property.

The City agrees to certify to the Muscatine County Auditor by December 1, 2011, relative to the Payments to be made under this Agreement an amount equal to \$40,000 with further instructions that the Payments be funded with 50% of the incremental Property Tax Revenues as may from time to time become available with respect to the Property.

### C. Administrative Provisions

1. This Agreement may not be amended or assigned by either party without the express permission of the other party provided, however, that the City hereby gives its permission that the Company's rights to receive the economic development tax increment payments hereunder may be assigned by the Company to a lender, as security for financing activity with respect to the Project, without further action on the part of the City.

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

3. 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 and the Company 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

A&E CONVENIENCE, LLC

By: Michael D. Frye  
Michael D. Frye, Manager

**EXHIBIT A**  
**LEGAL DESCRIPTION OF THE PROPERTY**

Certain real property situated in the City of Muscatine, County of Muscatine, State of Iowa more particularly described as follows:

Lot 2 of Island Grove Subdivision, a subdivision in the City of Muscatine, Muscatine County, Iowa, such Lot bearing Muscatine County Property Tax Parcel Identification Number 1319251008.

**EXHIBIT B**  
**TIMELINE & DETAILS FOR**  
**DECELERATION/TURNING LANE PROJECT**

**TIMELINE:**

Anticipated Start Date: April 15, 2011, or sooner if weather permits.

Anticipated Completion Date: 30 days after Start.

**DETAILS:** Please see attached plans..

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