



City Hall, 215 Sycamore St.  
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**COMMUNITY DEVELOPMENT**

**Planning,  
Zoning,  
Building Safety,  
Construction Inspection Services,  
Public Health,  
Housing Inspections,  
Code Enforcement**

**MEMORANDUM**

**To:** Mayor and City Council Members  
**Cc:** Gregg Mandsager, City Administrator  
**From:** Steven Boka, Director of Community Development  
**Date:** January 14, 2014  
**Re:** Resolution Approving Development Agreement – H. J. Heinz Company, L.P. and Authorizing Annual Appropriation Tax Increment Payments.

**INTRODUCTION:** The City Council adopted the Muscatine Consolidated Urban Renewal Area and adopted an Urban Renewal Plan as provided in Chapter 403 of the Code of Iowa. The City Council also adopted an ordinance providing for the division of taxes levied on taxable property in the Area pursuant to 403.19 of the Iowa Code.

**BACKGROUND:** The City is now requested to consider adoption of a resolution that will approve a Development Agreement with H.J. Heinz, L.P. to facilitate the expansion of their manufacturing facilities, operation and workforce within the Urban Renewal Area. The resolution will further authorize annual appropriation Tax Increment payments and pledging certain tax increment revenues to the payment of the Agreement. If adopted, the resolution would provide annual appropriations tax increment payments to the Company in a total not exceeding \$880,000.

**RECOMMENDATION/RATIONALE:** It is recommended that the City Council adopt the attached resolution approving the Development Agreement and authorizing annual appropriation tax increment payments and pledging certain tax increment revenues to payment of the Agreement to H.J. Heinz Company, L.P.

**BACKUP INFORMATION:**

1. Resolution
2. Development Agreement

**"I remember Muscatine for its sunsets. I have never seen any on either side of the ocean that equaled them" — Mark Twain**

HOLD HEARING ON AND APPROVE  
DEVELOPMENT AGREEMENT AND  
TAX INCREMENT PAYMENTS

(H.J. Heinz Company, L.P.)

421464-39

Muscatine, Iowa

February 20, 2014

A meeting of the City Council of the City of Muscatine, Iowa, was held at 7:00 o'clock p.m., on February 20, 2014, at the City Hall Council Chambers, 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 the H.J. Heinz Company, L.P. in connection with the Company's expansion of its manufacturing facilities, operations and workforce in the Urban Renewal Area, which Agreement provides for certain financial incentives in the form of annual appropriation, incremental property tax payments in a total amount not exceeding \$880,000, 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 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 \_\_\_\_\_

Approving Development Agreement with H.J. Heinz Company, L.P., Authorizing Annual Appropriation 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 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, a certain development agreement (the "Agreement") between the City and H.J. Heinz Company, L.P. (the "Company") has been prepared in connection with the Company's expansion of its manufacturing facilities, operations and workforce in the Urban Renewal Area (the "Heinz Project"); and

WHEREAS, under the Agreement, the City would provide annual appropriation tax increment payments to the Company in a total amount not exceeding \$880,000; 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 February 20, 2014, 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 Heinz Project will add diversity and generate new opportunities for the Muscatine and Iowa economies;

(b) The Heinz 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 financial 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 the Company.

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. All payments by the City under the Agreement shall be subject to annual appropriation by the City Council, in the manner set out in the Agreement. 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 "Heinz 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 legally described as follows:*

**[Insert Property Description]**

Section 5. The City hereby pledges to the payment of the Agreement the Heinz 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 Heinz 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 Heinz 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 20<sup>th</sup> day of February 2014.

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Mayor

Attest:

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City Clerk

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On motion and vote the meeting adjourned.

\_\_\_\_\_  
Mayor

Attest:

\_\_\_\_\_  
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 \_\_\_\_\_, 2014.

\_\_\_\_\_  
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 \_\_\_\_\_, 20\_\_, 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 February 20, 2014, entitled: "Resolution Approving Development Agreement with H.J. Heinz Company, L.P., Authorizing Annual Appropriation 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 \_\_\_\_\_, 2014.

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

## DEVELOPMENT AGREEMENT

This Agreement is entered into between the City of Muscatine, Iowa (the "City") and H.J. Heinz Company, L.P. (the "Company") as of the \_\_\_ day of \_\_\_\_\_, 2014 (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 Areas; and

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

WHEREAS, the Company has proposed to undertake the expansion of its manufacturing facilities, operations and workforce on the Property and the installation of equipment in such facilities for use in its condiment and food processing operations (the "Project"); and

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

WHEREAS, the base valuation of the Property for purposes of Section 403.19 of the Code of Iowa is \$ \_\_\_\_\_ (the "Base Valuation"); 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. **Project Construction.** The Company agrees to construct the Project on the Property and to maintain and use the completed Project as part of its business operations throughout the Term, as hereinafter defined. Furthermore, the Company agrees to invest not less than \$24,000,000 into capital improvements for the Project, including construction work and equipment acquisition. The Company will submit a detailed site plan (the "Site Plan") for the development of the Project to the City. Upon approval by the City, the Site Plan will be attached as Exhibit B hereto. The Company agrees to construct the Project in accordance with the Site Plan and to substantially complete such construction by no later than December 1, 2014.

2. **Property Taxes.** The Company agrees to make 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. **Company's Certifications.** The Company agrees to submit documentation to the reasonable satisfaction of the City by no later than each October 15 during the Term, as hereinafter defined, commencing October 15, 2015, demonstrating that the completed Project is being used as part of the Company's business operations and that the ongoing use of the Project is in compliance with the terms of a certain agreement between the Company and the State of Iowa (the "State Agreement") as set forth on Exhibit C hereto.

4. **Property Tax Payment Certification.** Furthermore, the Company agrees to certify to the City by no later than October 15 of each year, commencing October 15, 2015, an amount (the "Company'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 factored by the Annual Percentage (as herein defined). In submitting each such Company's Estimate, the Company will complete and submit the worksheet attached hereto as Exhibit D. The City reserves the right to review and request revisions to each such Company's Estimate to ensure the accuracy of the figures submitted. For purposes of this Agreement, Incremental Property Tax Revenues are produced by multiplying the consolidated property tax levy (city, county, school, etc.) times the incremental taxable valuation of the Property, then subtracting debt service levies of all taxing jurisdictions, subtracting the school district instructional support and physical plant and equipment levies and subtracting any other levies which may be exempted from such calculation by action of the Iowa General Assembly.

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

5. **Remedy.** The Company hereby acknowledges that failure to comply with the requirements of this Section A, will result in the City having the right to withhold Payments under Section B of this Agreement at its sole discretion, until such time as the Company has demonstrated, to the satisfaction of the City, that it has cured such non-compliance.

6. **Legal and Administrative Costs.** The Company hereby agrees to pay for the reasonable 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 \$5,000. The Company agrees to remit payment to the City within 30-days of the submission of reasonable documentation by the City to the Company evidencing such costs.

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

1. **Payments.** In recognition of the Company's obligations set out above, the City agrees to make five (5) annual economic development tax increment payments (the "Payments") to the Company in each fiscal year 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 \$880,000 (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.

It is assumed that the new valuation from the Project will go on the tax rolls as of January 1, 2015. Accordingly, the Payments will be made on June 1 of each fiscal year, beginning on June 1, 2017 and continuing to, and including, June 1, 2021, or until such earlier date upon which total Payments equal to the Maximum Payment Total have been made.

**2. Annual Appropriation.** Each Payment shall be subject to annual appropriation by the City Council. Prior to December 1 of each year during the term of this Agreement, 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 Company's Estimate factored by the annual percentage (the "Annual Percentage") scheduled to be in effect in the following fiscal year. The Annual Percentages shall be as follows:

For the Payment coming due in the 2016-2017 Fiscal Year:	75%
For the Payment coming due in the 2017-2018 Fiscal Year:	60%
For the Payment coming due in the 2018-2019 Fiscal Year:	45%
For the Payment coming due in the 2019-2020 Fiscal Year:	30%
For the Payment coming due in the 2020-2021 Fiscal Year:	15%

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 Company 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 Company shall make the next succeeding submission of the Company's Estimate as called for in Section A.4 above, provided however that no Payment shall be made after June 1, 2021.

**3. Payment Amounts.** Each Payment shall be in an amount equal to the corresponding Appropriated Amount (for example, for the Payment due on June 1, 2018, the amount of such Payment would be determined by the Appropriated Amount determined for certification by December 1, 2016), provided, however, that each Payment shall not exceed the amount of Incremental Property Tax Revenues received by the City from the Muscatine County Treasurer attributable to the taxable valuation of the Property.

**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.2 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.** This Agreement may not be amended or assigned by either party without the written consent of the other party. However, the City hereby gives its permission that the Company's rights to receive the Payments hereunder may be assigned by the Company 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, 2021 or on such earlier date upon which the aggregate sum of Payments made to the Company 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 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

H.J. HEINZ COMPANY, L.P.

By: Heinz Management, LLC  
Its Sole Managing General Partner

\_\_\_\_\_

**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 follows:*

[Insert Legal Description Here]

**EXHIBIT B**

**SITE PLAN**

**[ATTACH SITE PLAN HERE]**

**EXHIBIT C**

**STATE AGREEMENT**

**[ATTACH STATE AGREEMENT HERE]**

**EXHIBIT D**

**COMPANY'S ESTIMATE WORKSHEET**

- (1) Date of Preparation: October \_\_\_\_, 20\_\_.
- (2) Assessed Valuation of Property as of January 1, 20\_\_:  
\$\_\_\_\_\_.
- (3) Base Valuation of Property:  
\$\_\_\_\_\_.
- (4) Incremental Valuation of Property (1 minus 2):  
\$\_\_\_\_\_ (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
- (7) Company's Estimate = \$\_\_\_\_\_ x Annual Percentage = \$\_\_\_\_\_

February 14, 2014

**VIA EMAIL**

Gregg Mandsager  
City Administrator/City Hall  
Muscatine, IA

Re: H.J. Heinz Company, L.P. Development Agreement  
File No. 421464-39

Dear Gregg:

Attached are copies of proceedings covering the City Council's February 20, 2014 public hearing on the proposed Development Agreement with H.J. Heinz Company, L.P., followed by a resolution approving the Agreement and pledging certain incremental property tax revenues to the payment of the Agreement.

A copy of the Resolution must be filed with the Muscatine County Auditor. Please print extra copies of the Resolution for that purpose.

We would appreciate receiving one fully-executed copy of these proceedings and of the executed Development Agreement as soon as they are available.

Best regards,

John P. Danos

**Attachments**

cc: Nancy Lueck  
Steve Boka