



City Hall, 215 Sycamore St.  
Muscatine, IA 52761-3899  
(563) 264-1550  
Fax (563) 264-0750

To: Gregg Mandsager, City **FINANCE & RECORDS** Administrator

From: Nancy A. Lueck, Finance Director

Date: April 29, 2019

- Re:
1. Public Hearing on Proposed Development Agreement with Hershey Building, LLC and Bush Development LLC
  2. Requested 2<sup>nd</sup> and Final Reading of an Ordinance Providing for the Division of Taxes Levied on Property in the Consolidated Urban Renewal Area Pursuant to Section 403.19 of the Code of Iowa
  3. Resolution Approving Development Agreement with Hershey Building, LLC and Bush Development, LLC

**Introduction and Background:**

At the October 11, 2018 In Depth meeting, Bryce Henderson, of Bush Construction reviewed their plan for the redevelopment of the Hershey Building across the street from City Hall (216 Sycamore Street) and their request for a 10-Year, 100% TIF rebate for the proposed project. After discussion of this proposal, City Council gave approval by consensus to move forward with the process for a Development Agreement for this project.

There are a number of steps required to be taken prior to entering into a Development Agreement. At the March 21 meeting, the City Council approved the resolution setting a public hearing for April 18 on the needed amendment to the City's Urban Renewal Plan. The Urban Renewal Plan amendment includes the Hershey Building project as well as several other upcoming City projects. The City sent letters to set up a Consultation meeting with other taxing entities as required.

At the April 18 meeting, City Council held the public hearing on and approved the Urban Renewal Plan Amendment which included the Hershey Building project. The City Council also approved the 1<sup>st</sup> Reading of the Ordinance creating the TIF district for this project and set the public hearing on the development agreement for the May 2 meeting.

**Next Actions Needed:**

There will be three (3) items related to this project on the agenda for the May 2 meeting.

**Item #1 - Public Hearing on the Proposed Development Agreement with Hershey Building, LLC and Bush Development, LLC.**

**Item #2 – Ordinance Requested to be Approved on 2<sup>nd</sup> and Final Reading Establishing the Tax Increment District and Providing for the Division of Taxes Levied on Taxable Property in the Consolidated Muscatine Urban Renewal Area.**

**Item #3 – Resolution Approving the Development Agreement with Hershey Property, LLC and Bush Development, LLC**

There has been discussion at recent meetings concerning waiving one or more of the three readings

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

normally required for ordinances. Approval of ordinances on first and final or 2<sup>nd</sup> and final reading requires the approval of 75% of City Council (at least 6). Due to the number of previous agenda items on this project and also the developer being interested in finalizing the agreement as part of their overall financing, it is requested that City Council consider approving the Ordinance creating the TIF district on 2<sup>nd</sup> and final reading at the May 2 meeting.

If City Council chooses not to approve the Ordinance on 2<sup>nd</sup> and final reading on May 2, approval of the Development Agreement would also need to be deferred to the May 16 meeting. Upon final approval of the Ordinance, it would need to be published and then filed with the County Auditor which will complete this process.

**Summary:**

Please include these items on the agenda for the May 2 meeting. The resolution and ordinance was prepared by Dorsey & Whitney, the City's bond attorneys. Please contact me if you have any questions or need additional information.

HOLD HEARING ON AND APPROVE  
DEVELOPMENT AGREEMENT AND  
TAX INCREMENT PAYMENTS

(Bush Development, LLC and Hershey  
Development, LLC)

421464-57

Muscatine, Iowa

May 2, 2019

A meeting of the City Council of the City of Muscatine, Iowa, was held at \_\_\_\_\_  
o'clock \_\_.m., on May 2, 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: \_\_\_\_\_.

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 Bush  
Development, LLC and Hershey Development, LLC had been published according to law and as  
directed by the City 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 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 \_\_\_\_\_

Resolution Approving Development Agreement with Bush Development, LLC and Hershey Development, LLC, 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 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, a certain development agreement (the "Agreement") between the City and Bush Development, LLC and Hershey Development, LLC (the "Property Owner") has been prepared in connection with the redevelopment of the former Hershey Building into a mixed-use building, including multiresidential units and commercial/retail units (the "Project"); and

WHEREAS, under the Agreement, the City would provide annual appropriation tax increment payments to the Property Owner in a total amount not exceeding \$500,000; 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 May 2, 2019, 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 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 that a public purpose will reasonably be accomplished by entering into the Agreement and providing the incremental property tax payments to the Property Owner thereunder.

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 "Hershey Development 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 as 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 May 2, 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, 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 \_\_\_\_\_, 2019.

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



April 23, 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 please find the proceedings covering the City Council's public hearing on the proposed Development Agreement with Bush Development, LLC and Hershey Development, LLC, followed by a resolution approving the Agreement and pledging certain incremental property tax revenues to make the payments under the Agreement.

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

Please call John Danos or me with 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/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, 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 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 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 \$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")