

The Board of Supervisors met this 18th day of July 2023, at the Mills County Courthouse in Glenwood with Supervisors Lonnie Mayberry and Richard Crouch present. Supervisor Vinton was absent today. The meeting opened with the Pledge of Allegiance.

Motion by Crouch, seconded by Mayberry to approve the Amended Consent Agenda changing the Resolution number from 23-17 to 23-36. Motion carried on vote: Ayes: 2, Nays: 0

Jacob Ferro, Engineer, was present for his scheduled meeting. Motion by Crouch, seconded by Mayberry to approve the payment of \$127,318.55 from LOST Infrastructure funds to Mark Hughes Construction for the new garage. Motion carried on vote: Ayes: 2, Nays: 0

Motion by Crouch, seconded by Mayberry to approve the Driveway Variance for David and Jennifer Warren, due to no sight issue and only being a separation issue per County Ordinance. The Engineer finds no issue with approving the variance. Motion carried on vote: Ayes: 2, Nays: 0

Motion by Crouch, seconded by Mayberry to approve the Driveway Variance for Greg and Shanna Stofer, 51654 275<sup>th</sup> ST, due to no sight issue and only being a separation issue per County Ordinance. The Engineer finds no issue with approving the variance. Motion carried on vote: Ayes: 2, Nays: 0

Ferro informed the Board of his safety meeting with Secondary Roads personnel, and felt it went well. He also discussed the possibility of looking into purchasing a mill to help maintain the roads. Both Supervisors felt that would be a great idea for him to proceed with obtaining more information.

Travis Oetter, Sheriff, was unable to attend the meeting.

Motion by Crouch, seconded by Mayberry to open the Public Hearing at 9:30 a.m. for the Woodfield Phase 3 Urban Renewal Area Development Agreement. Motion carried on Roll call vote: Crouch – Aye, Mayberry – Aye, Vinton – Absent

There were no questions written or Oral received during or prior to the meeting. Supervisor Crouch mentioned how nicely phase 1 and 2 of the subdivision had been laid out and no known erosion happening.

Motion by Crouch, seconded by Mayberry to close the Public Hearing at 9:34 a.m. for the Woodfield Phase 3 Urban Renewal Area Development Agreement. Motion carried on Roll call vote: Crouch – Aye, Mayberry – Aye, Vinton – Absent

Motion by Crouch, seconded by Mayberry to approve Resolution 23-36 Development Agreement with Oak Ranch Development, LLC. Motion carried on Roll call vote: Crouch – Aye, Mayberry – Aye, Vinton – Absent

#### DEVELOPMENT AGREEMENT

##### Resolution 23-36

This Agreement is entered into between Mills County, Iowa (the "County") and Oak Ranch Development, LLC (the "Developer") as of the 18 day of July, 2023 (the "Commencement Date").

WHEREAS, the County has established the Mills County Woodfield Phase 3 Urban Renewal Area (the "Urban Renewal Area") and has adopted a tax increment ordinance for the Urban Renewal Area; and

WHEREAS, the Developer owns certain property in the Urban Renewal Area, the legal description of which is set out in Exhibit A hereto (the "Property").

WHEREAS, the Developer has undertaken the development of a residential subdivision (the "Housing Project") on the Property and the construction of certain public infrastructure improvements in connection therewith (the "Infrastructure Project"); and

WHEREAS, the Developer has requested that the County provide tax increment financing assistance for the Infrastructure Project; and

WHEREAS, the Iowa Urban Renewal law requires that any project related to housing which receives tax increment financing assistance must also generate funds to be used to provide assistance related to housing for low and moderate income families; and

WHEREAS, the taxable base valuation of the Property for purposes of calculations on Incremental Property Tax Revenues (as hereinafter defined) under this Agreement and Section 403.19 of the Code of Iowa is \$1,062,382.00 (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. Developer's Covenants:**

1. **Housing Project, Subdivision, and Infrastructure Project Construction.** The Developer

agrees to submit a detailed site plan (the "Site Plan") to the County for the Housing Project. Upon approval by the Board of Supervisors, the Site Plan shall be attached hereto as Exhibit B. The Developer agrees to construct the Housing Project on the Property in accordance with the Site Plan. Prior to beginning construction of the Housing Project, the Developer will subdivide the Property in accordance with applicable ordinances and regulations.

2. **Infrastructure Project Construction and Costs.** The Developer agrees to cause the construction of the Infrastructure Project in accordance with the timeline and specifications set forth on Exhibit C hereto. Prior to constructing the Infrastructure Project, the Developer will submit copies of all engineering documents related to the proposed Infrastructure Project to the County. The County may request reasonable changes in such documents, to ensure compliance with any applicable ordinances or regulations.

3. The County shall retain all rights to inspect the Infrastructure Project for quality of work and full compliance with County Code. Nothing in this subsection shall be interpreted as limiting the County's rights to not accept the work if the Infrastructure Project is not completed to the satisfaction of the County.

Upon completion of the Infrastructure Project, provided that (i) such improvements are of the type ordinarily dedicated to the County in connection with housing development projects; (ii) the County confirms to the Developer in writing that such completed improvements meet County requirements; and (iii) the County accepts such Infrastructure Project in accordance with State law, the Developer will provide the County with either a deed or permanent easement to the improvements and related right-of-way comprising the Infrastructure Project, which shall thereafter be maintained by the County.

4. **Infrastructure Project Costs Documentation.** Upon completion of the Infrastructure Project, the Developer agrees to provide documentation (the "Costs Documentation,") detailing the costs (the "Infrastructure Costs") incurred in the completion thereof. Such Infrastructure Costs may include all infrastructure-related land acquisition costs, cost of designing and constructing the Infrastructure Project, landscaping and grading all land for the Infrastructure Project, interest expense and other costs of financing the Infrastructure Project, and other reasonably related costs of carrying out the Infrastructure Project, including legal fees as provided for in this Agreement. The Infrastructure Costs shall not include such costs as are incurred in the completion of the Housing Project.

The Costs Documentation will be accompanied by invoices, and such other documentation as is reasonably requested by the County, confirming that the Infrastructure Costs detailed in such Costs Documentation were in fact incurred in the installation of the Infrastructure Project and that such costs are of an amount reasonably to have been expected with respect to such installation. The Developer will include a cover page in the form attached hereto as Exhibit D with its submittal of the Costs Documentation.

5. **Developer's Certifications - Phases; Base Valuation.** The Developer shall have the right to divide the taxable parcels comprising the Property into three (3) phases (the "Phases" and, individually, each a "Phase") for purposes of calculating and administering the Payments (as hereinafter defined). The Developer agrees to certify (each a "Triggering Certification") to the County its intent to begin the process of dividing Incremental Property Tax Revenues (as hereinafter defined) from each Phase. Each Triggering Certification shall be made by no later than October 15 of the year immediately preceding the fiscal year in which the Developer intends for the Payments (as hereinafter defined) to begin for each Phase. The Developer hereby acknowledges that the submission of the initial Worksheet (as defined in Section A.5 of this Agreement) for any particular Phase will satisfy the requirements of this Section A.4. The Developer agrees that the initial Triggering Certification shall be made no later than October 15, 2025.

The Developer agrees that the taxable base valuation (the "Base Valuation") of the Property for purposes of calculating Incremental Property Tax Revenues (as hereinafter defined) under Section 403.19 of the Code of Iowa and this Agreement shall be the taxable valuation of the Property shown on the property tax rolls of Mills County tax rolls as of January 1 of the year prior to the year in which the Triggering Certification for the first Phase is filed with the County. The Base Valuation shall be apportioned between Phases on a pro rata basis, and the apportioned Base Valuation for each such Phase shall be recorded in Section 3 of the Worksheet (as hereinafter defined) for each Phase.

6. **Property Tax Payment Certification.** The Developer agrees to certify to the County by no later than October 15 of each year during the Tenn (as hereinafter defined) commencing October 15 of the year in which the Triggering Certification is made for the first Phase, an amount (each, the "Developer's Estimate") equal to the estimated Incremental Property Tax Revenues, as hereinafter defined, anticipated to be paid in the fiscal year immediately following such certification with respect to the taxable valuation of each of the then-certified Phases of the Property. However, the Developer shall only have the right to include incremental valuation from a particular Phase in the Developer's Estimate for a period not in excess of sixteen (16) years.

In submitting each such Developer's Estimate for each Phase, the Developer will complete and submit the worksheet (the "Worksheet") attached hereto as Exhibit E. Each Developer's Estimate shall be divided into two figures: (1) 36.44% shall be designated as the "LMI Amount" (see Section B.5 below); and (2) 63.56% shall be designated as the "Projected Payment Amount." A separate Worksheet must be submitted for each Phase. The County reserves the right to review and request revisions to each such Developer'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 (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 relevant Phase of the Property, as shown on the property tax rolls of Mills County, above and beyond that the Base Valuation of the lots included with each such Phase; and (4) deducting any property tax credits which shall be available with respect to the incremental valuation of the Property.

Upon request, the County staff shall provide reasonable assistance to the Developer in completing the worksheet(s) required under this Section A.5.

7. **Events of Default.**

a. **Events of Default.** 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:

(i) Failure by the Developer to cause the construction of the Housing Project pursuant to the terms and conditions of this Agreement.

(ii) Failure by the Developer to complete construction of the Infrastructure Project pursuant to the terms and conditions of this Agreement.

(iii) Failure by the Developer to comply with Sections A.3, A.4 and A.5 of this Agreement.

(iv) Failure by the Developer to observe or perform any other material covenant on its part, to be observed or performed hereunder.

b. **Notice and Remedies.** Whenever any Event of Default described in this Agreement occurs, the County shall provide written notice to the Developer describing the cause of the default and the steps that must be taken by the Developer in order to cure the default. The Developer shall have thirty (30) days after receipt of the notice to cure the default or to provide assurances satisfactory to County that the default will be cured as soon as reasonably possible. If the Developer fails to cure the default or provide assurances, County shall then have the right to:

(i) Pursue any action available to it, at law or in equity, in order to enforce the terms of this Agreement.

(ii) Withhold the Payments under Section B.2 of this Agreement, such right being additional to the right of annual appropriation as set forth in Section B.3 below.

7 **Legal and Administrative Costs.** The Developer hereby acknowledges that the County will cover the initial payment of legal fees and administrative costs (the "Actual Admin Costs") incurred by the County in connection with the drafting, negotiation and authorization of this Agreement, including the necessary amendment to the Urban Renewal Area. Furthermore, the Developer agrees that the County shall withhold an amount (the "Admin Withholding Amount") equal to the lesser of (1) \$10,000 or (2) the Actual Admin Costs from the initial Payments (as hereinafter set forth) in order to recover some or all of the Actual Admin Costs.

B. **County's Covenants:**

1. **Review of Costs Documentation.** The County staff will review the Cost Documentation upon receipt from the Developer. If the County determines the costs set forth in the Costs Documentation are costs reasonably incurred in the construction of the Infrastructure Project, the County shall record a summary of the date, amount and nature of the costs (the "Accepted Infrastructure Costs") on the Summary of Accepted Public Infrastructure Costs attached hereto as Exhibit F, and such summary shall be the official record of the Accepted Infrastructure Costs for purposes of tallying the Maximum Payment Total, as defined in Section B.2 of this Agreement.

If the County determines the Infrastructure Costs set forth in the Costs Documentation are not costs reasonably incurred in the construction of the Infrastructure Project, the County shall notify the Developer of such determination within fifteen (15) days of such determination in order to allow an opportunity for the Developer to cure the noted deficiencies.

2. **Payments.** In recognition of the Developer's obligations set out above, the County agrees to make semiannual economic development tax increment payments (the "Payments" and, individually, each a "Payment") to the Developer 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 (the "Maximum Payment Total") shall not exceed the lesser of (i) the Accepted Infrastructure Costs, or (ii) \$1,600,000. The Payments shall be funded from the incremental valuation of any given Phase for a period not in excess of sixteen (16) years after the certification of such Phase. All Payments under this Agreement shall be subject to annual appropriation by the Board of Supervisors, as provided hereunder.

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

Prior to funding any Payments under this Agreement, the County will first withhold from the Incremental Property Tax Revenues an amount equal to the Admin Withholding Amount. Once an amount equal to the Admin Withholding Amount has been withheld by the County, the Payments shall be made as hereinafter set forth.

Each Payment shall be in an amount which represents the Incremental Property Tax Revenues received by the County with respect to the incremental valuation of the Property resulting from the Housing Project during the six (6) months immediately preceding such payment date reduced by the LMI Amount as set forth in Section A.5 above and Section B.5 below.

The Payments with respect to each Phase will be made on December 1 and June 1 of each fiscal year following an affirmative appropriation decision as provided for under Section B.3 below, beginning on December 1 of the fiscal year immediately succeeding the year in which the Triggering Certification is made for such Phase, and continuing for a period of a total of sixteen (16) fiscal years for each Phase, provided, however, that no Payments will be made after the sooner of (i) the date on which the aggregate sum of Payments made hereunder equals the Maximum Payment Total; or (ii) June 1, 2046.

For example, assuming the Triggering Certification for the first Phase is made October 15, 2025, and all appropriation determinations are approved affirmatively by the Board of Supervisors under Section B.3 below, then Payments for that first Phase will be made on each December 1 and June 1, beginning December 1, 2026 and continuing through the sooner of June 1, 2042 or the date on which the aggregate sum of Payments made hereunder equals the Maximum Payment Total.

**3. Annual Appropriation.** The Payments shall be subject to annual appropriation by the Board of Supervisors. Prior to December 1 of each year during the Term, beginning in the fiscal year in which the Triggering Certification is filed for the first Phase, the Board of Supervisors of the County 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 Developer's Estimate.

In any given fiscal year, if the Board of Supervisors determines to not obligate the then-considered Appropriated Amount, then the County will be under no obligation to fund the Payments scheduled to become due in the following fiscal year, and the Developer will have no rights whatsoever to compel the County to make such Payments, to seek damages relative thereto or to compel the funding of such Payments in future fiscal years. A determination by the Board of Supervisors to not obligate funds for any particular fiscal year's Payments shall not render this Agreement null and void, and the Developer shall make the next succeeding submission of the Developer's Estimate as called for in Section A.5 above, provided however that no Payment shall be made under this Agreement after June 1, 2046.

**4. 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, 2026 and on June 1, 2027, the aggregate maximum amount of such Payments would be determined by the Appropriated Amount determined for certification by December 1, 2025). 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 County from the Mills County Treasurer attributable to the taxable incremental valuation of the Property in the six (6) months immediately preceding such Payment due date minus the then-effective LMI Amount.

**5. Low and Moderate Income Set Aside.** On each Payment date, the County shall retain from then-accumulated Incremental Property Tax Revenues received with respect to the Property an amount equal to such accumulated Incremental Property Tax Revenues multiplied by the minimum percentage required by Section 403.22 of the Code of Iowa. As of the date of this Agreement, the applicable minimum percentage is 36.44%. At such time that the County has retained Incremental Property Tax Revenues equal to 36.44% of the Maximum Payment Total, the County shall no longer be required to retain the LMI Amount from the Incremental Property Tax Revenues before making the Payments to the Developer.

The Incremental Property Tax Revenues retained shall be used by the County in the provision of assistance to low and moderate income families, pursuant to Section 403.22 of the Code of Iowa. The Developer may apply to the County for all or a portion of the funds set aside for assistance to low and moderate income families, provided the Developer can document to the satisfaction of the County that housing units which are located on the Property are occupied or reserved to be occupied by families which meet the required income limits of state law. The County reserves the right to allocate funds retained under this Section B.5 in any lawful manner of its choosing.

**6. Certification of Payment Obligation.** In any given fiscal year, if the Board of Supervisors determines to obligate the then-considered Appropriated Amount, as set forth in Section B.3 above, then the County Auditor will certify by December 1 of each such year to the Mills County Auditor (for purposes of Section 403.19 of the Code of Iowa) an amount equal to the most recently obligated Appropriated Amount for the funding of the Payments, plus the corresponding LMI Amount due in the next succeeding fiscal year.

C. Administrative Provisions:

**1. Assignment.** Neither party shall have the right to cause the Agreement to be amended,

assigned, assumed, sold or otherwise transferred without the prior written consent of the other party. However, the County hereby gives its permission that the Developer's rights to receive the economic development tax increment payments hereunder may be assigned by the Developer to a private lender, as security on a credit facility taken in connection with the Housing Project

1. **Assignment.** Neither party shall have the right to cause the Agreement to be amended, assigned, assumed, sold or otherwise transferred without the prior written consent of the other party. However, the County hereby gives its permission that the Developer's rights to receive the economic development tax increment payments hereunder may be assigned by the Developer to a private lender, as security on a credit facility taken in connection with the Housing Project and/or the Infrastructure Project, without further action on the part of the County. This Agreement is personal to the Developer and shall not run with the Property.

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 the date on which the last Payment is made by the County to the Developer under Section B.2 above.

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 County and the Developer 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.

Motion by Crouch, seconded by Mayberry to approve the Chair to Sign Development Agreement between Mills County, Iowa and Oak Ranch Development, LLC. Motion carried on vote: Ayes: 2, Nays: 0

Recognition of School Board's approval of the Oak Ranch Urban Renewal Area, Resolution 23-17.

Travis Hitchcock, Director of 911/Communications and Emergency Management, was present for his meeting. Motion by Crouch, seconded by Mayberry to authorize the Chair to sign the 28E Agreements with the cities of Emerson, Malvern and Silver City. Motion carried on vote: Ayes: 2, Nays: 0

LuAnne Christiansen, Recorder, arrived for her scheduled meeting. Christiansen discussed an additional fee for ATVs in the county and having an Ordinance in place. The recorder was instructed to review with the County Attorney and have an Ordinance made.

Steve Poole, Head Building and Grounds Supervisor, was present for his scheduled meeting. Poole presented the Board with information on the sidewalk project. Several bids were solicited and only one contractor had submitted. Fortunately, this company was very thorough and knowledgeable and presented a bid coming in approximately \$70,680. Motion by Crouch, seconded by Mayberry to accept the bid from Ideal Construction in the amount of approximately \$70,680 using ARPA funds. Motion carried on vote: Ayes: 2, Nays: 0

Patrick Binns, IT Director, was available for his scheduled meeting. Motion by Crouch, seconded by Mayberry to Approve Posting for a Revised Bid for Annex Building Addition. Posting starts Monday the 24<sup>th</sup> and will be open for 16 days, closing August 8<sup>th</sup> at 11:00A.M. Motion carried on vote: Ayes: 2, Nays: 0

Motion by Mayberry, seconded by Crouch on the Reappointment of Richard Crouch to the City P&Z Board. Motion carried on vote: Ayes: 2, Nays: 0

Motion by Crouch, seconded by Mayberry to approve the signing of the Contract and purchasing of the Veteran's Affairs Building using ARPA funds in the amount of \$140,000. Motion carried on vote: Ayes: 2, Nays: 0

End of month reports were approved and signed by the Board.

There being no further business to come before the Board, they adjourned to meet on Wednesday, July 26, 2023.

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Lonnie Mayberry, Chair

ATTEST:

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Carol Robertson, Auditor