



Board of County Commissioners Agenda Request

2X

Agenda Item #

Requested Meeting Date: January 28, 2025

Title of Item: Approve Developer's Agreement

<input type="checkbox"/> REGULAR AGENDA <input checked="" type="checkbox"/> CONSENT AGENDA	Action Requested: <input checked="" type="checkbox"/> Approve/Deny Motion <input type="checkbox"/> Adopt Resolution (attach draft) <input type="checkbox"/> Hold Public Hearing <i>*provide copy of hearing notice that was published</i>	<input type="checkbox"/> Direction Requested <input type="checkbox"/> Discussion Item <input type="checkbox"/> Information Only
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Submitted by: Mark Jeffers	Department: Economic Development
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Presenter (Name and Title): Mark Jeffers, Economic Development Coordinator	Estimated Time Needed:
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Summary of Issue:

Upon adoption of the resolution to extend the dates of the tax rebate financing for INH Properties Bunker Hills workforce housing project, an amended developer's agreement must be prepared.

The attached draft is submitted for approval. Edits are identified in red.

The County Attorney was consulted and finds this appropriate to extend.

Alternatives, Options, Effects on Others/Comments:

Recommended Action/Motion:
Approval of the modified developer's agreement

Financial Impact:

Is there a cost associated with this request? Yes No

What is the total cost, with tax and shipping? \$

Is this budgeted? Yes No *Please Explain:*

Modified January 28, 2025

DEVELOPMENT AGREEMENT

BY AND BETWEEN

COUNTY OF AITKIN, MINNESOTA

AND

BUNKER HILLS HOUSING OF AITKIN, LLC

(Workforce Housing Project)

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DEVELOPMENT AGREEMENT

THIS AGREEMENT, made as of October 24, 2023, by and among the County of Aitkin, Minnesota, a municipal corporation, and political subdivision (the "County"), and Bunker Hills Housing of Aitkin, LLC, a Minnesota limited liability company (the "Developer").

WHEREAS, the Developer intends to construct an approximately 44-unit workforce housing project on the Development Property (the "Project") legally described on the attached Exhibit A (the "Development Property"); and

WHEREAS, pursuant to Minnesota Statutes, Sections 469.1812 through 469.1815, the County has established a Tax Abatement Program pursuant to which the County is authorized to grant an abatement of ad valorem property taxes imposed by the County under certain conditions; and

WHEREAS, the Developer has requested that the County provide financial assistance as a 90% tax abatement for a period of up to 20-years to reimburse Developer through the Tax Abatement (defined below); and

WHEREAS, the County believes that the development and construction of the Project and fulfillment of this Agreement are vital and are in the best interests of the County, will increase the tax base in the County, and are in accordance with the public purpose and provisions of the applicable state and local laws and requirements under which the Project has been undertaken and is being assisted; and

WHEREAS, following notice and a public hearing the County adopted Resolution No. 20230822-082 of 2023, dated August 22, 2023 (the "Abatement Resolution"), agreeing to provide, in accordance with the referenced Abatement Resolution, State law and this Agreement, abatement of County property taxes on the Development Property subject to the terms and conditions contained in the above-referenced Abatement Resolution and this Agreement (the "Tax Abatement"); and

WHEREAS, the County believes that the Project will meet the conditions of the Tax Abatement Act and Tax Abatement Program in that: (a) the County expects the benefits to the County from this Agreement to equal or exceed the costs to the County of this Agreement; and (b) the County finds that granting the Tax Abatement is in the public interest because it will increase or preserve the tax base of the County; and

WHEREAS, the County has determined that the Project: (a) will promote and carry out the objectives for which development in the County has been undertaken; (b) will be in the vital best interests of the County and the health, safety, morals and welfare of its residents; and (c) is in accord with the public purposes and provisions of the applicable state and local laws, including requirements of the County's Code, under which the Project will be undertaken and is being assisted; and

WHEREAS, the Developer and the County desire to enter into this Agreement in satisfaction of applicable requirements of the County, and to set out the undertakings and obligations of each party from this point forward with respect to the Project.

NOW, THEREFORE, in consideration of the premises and the mutual obligations of the parties hereto, each of them does hereby covenant and agree with the other as follows:

**ARTICLE I
DEFINITIONS**

Section 1.1 Definitions. All capitalized terms used and not otherwise defined herein shall have the following meanings unless a different meaning clearly appears from the context:

"Agreement" means this Agreement, as the same may be from time to time modified, amended or supplemented;

"Business Day" means any day except a Saturday, Sunday or a legal holiday or a day on which banking institutions in the County are authorized by law or executive order to close;

"County" means the County of Aitkin, Minnesota;

"Code" means the County's Code of Ordinances;

"Completion Date" means the date used in Section 3.3.

"Developer" means Bunker Hills Housing of Aitkin, LLC and its successors and assigns;

"Development Property" means the real property described on **Exhibit A**, attached hereto;

"Event of Default" means any of the events described in Section 4.1;

"Project" means the construction of an approximately 44-unit workforce housing project on the Development Property, pursuant to County specifications as provided in the Project Plans (as the same may be modified with County approval from time to time) and this Agreement;

"Project Plans" means all submissions required by the County Ordinances, or this Agreement with respect to the Project and all plans, drawings, plats and related documents for the construction of the Project, approved by the County and Developer, irrespective of whether the Developer's and/or the County's final approval of any such documents occurs before or after the execution and delivery of this Agreement;

"State" means the State of Minnesota;

"Tax Abatement Act" means Minnesota Statutes, Sections 469.1812 through 469.1815;

"Tax Abatement Program" means the action by the County pursuant to Minnesota Statutes, Section 469.1812 through 469.1815, as amended, and undertaken in support of the Project;

"Tax Abatement" means the County's reimbursement to the Developer for a portion of public infrastructure pursuant to the specific provisions of Section 3.8.

ARTICLE II
REPRESENTATIONS AND WARRANTIES

Section 2.1 Representations and Warranties of the County. The County makes the following representations and warranties:

(1) The County is a municipal corporation and political subdivision organized under the laws of the State and has the power to enter into this Agreement and can carry out its obligations hereunder.

(2) The Tax Abatement Program was created, adopted, and approved in accordance with the terms of the Tax Abatement Act.

(3) To finance the costs of the Project to be undertaken by the Developer, the County proposes, subject to the further provisions of this Agreement, to reimburse the Developer for Project costs as further provided in this Agreement.

(4) The County has made the findings required by the Tax Abatement Act for the Tax Abatement Program.

(5) This Agreement has been duly approved by the Aitkin County Board of Commissioners and the execution and delivery of this Agreement has been authorized by such County Board of Commissioners.

Section 2.2 Representations and Warranties of the Developer. The Developer makes the following representations and warranties:

(1) The Developer is a Minnesota limited liability company duly organized, in good standing, and validly existing under the laws of the State and is registered and in good standing with the Office of the Secretary of State of Minnesota, with full authority to transact business in this State, has the power to enter into the Agreement and to perform its obligations hereunder, and is not in violation of its charter, articles of incorporation, operating agreement or any local, state or federal laws.

(2) The Developer will cause the Project to be constructed in accordance with the terms of this Agreement, the Project Plans, and all applicable local, state, and federal laws and regulations (including, but not limited to, environmental, zoning, energy conservation, building code and public health laws and regulations, County Policy, and Code).

(3) The Developer will obtain or cause to be obtained, in a timely manner, all required permits, licenses and approvals, and will meet, in a timely manner, all requirements of all applicable local, state, and federal laws and regulations which must be obtained or met before the Project may be lawfully constructed. Without in any way limiting the foregoing, the Developer will request and seek to obtain from the County, if necessary, such approvals, variances, conditional use permits, zoning changes and other required County approvals as may be applicable.

(4) The Project will, as of the date it is completed and subject to the issuance of County approvals as herein contemplated, contain only uses permitted under the Code.

(5) The construction of the Project would not be undertaken by the Developer, and in the opinion of the Developer would not be economically feasible within the reasonably foreseeable future, without the assistance and benefit to the Developer provided for in this Agreement.

(6) Neither the execution and delivery of this Agreement, the consummation of the transactions contemplated hereby, nor the fulfillment of or compliance with the terms and conditions of this Agreement is prevented, limited by or conflicts with or results in a breach of, the terms, conditions or provision of any contractual restriction, evidence of indebtedness, agreement or instrument of whatever nature to which the Developer is now a party or by which it is bound, or constitutes a default under any of the foregoing.

(7) The Developer will cooperate fully with the County with respect to any litigation commenced with respect to the Project, but only to the extent that the County and the Developer are not adverse parties to the litigation.

ARTICLE III

UNDERTAKINGS BY DEVELOPER AND COUNTY

Section 3.1 Construction of Project and Reimbursement of Cost.

(1) The Developer will construct or cause the Project to be constructed in a good and workmanlike manner in accordance with the Project Plans and at all times prior to the termination of this Agreement will operate and maintain, preserve and keep the Project or cause the Project to be maintained, preserved and kept with the appurtenances and every part and parcel thereof, in good repair and condition.

(2) The County shall partially reimburse the Developer for the costs of the Project paid by the Developer pursuant to the Abatement Program as provided in Section 3.8 and shall have no other financial obligation to the Developer with respect to the Project.

Section 3.2 Limitations on Undertaking of the County. Notwithstanding the provisions of Section 3.1, the County shall have no obligation to reimburse the Developer for the costs of the Project, if the County, at the time or times such payment is to be made, is entitled under Section 4.2 to exercise any of the remedies set forth therein as a result of an Event of Default which has not cured.

Section 3.3 Commencement and Completion of Construction. The Developer shall commence the Project by ~~June 1, 2024~~, **June 1, 2025** and complete the Project by ~~May 1, 2025~~ **December 31, 2026**(the "Completion Date"), unless extended to a date mutually agreeable to the County and Developer, in writing, which shall not be unreasonably denied. All work with respect to the Project to be constructed or provided by the Developer shall be in conformity with the Project Plans as submitted by the Developer and approved by the County.

Nothing in this Agreement shall be deemed to impair or limit any of the County's rights or responsibilities under its zoning laws or construction permit processes.

Section 3.4 Damage and Destruction. In the event of damage or destruction of the Project the Developer shall repair or rebuild the Project.

Section 3.5 No Change in Use of Project. The County's obligations pursuant to this Agreement shall be subject to the continued operation of the Project by the Developer.

Section 3.6 Assignment of Agreement. Developer may not assign its rights or obligations under this Agreement, or any portion of them, to a third party without the written consent of the County which consent the County may grant or withhold in its sole and absolute discretion. An assignment of the Developer's rights or obligations under this Agreement, shall not relieve the Developer of liability to the County for the performance of the Developer's obligations under this Agreement unless the County expressly agrees, in writing and in its sole and absolute discretion, to so release the Developer.

Section 3.7 Real Property Taxes. The Developer acknowledges that it is obligated under law to pay all real property taxes payable with respect to any part of the Development Property while owned by Developer.

Section 3.8 Tax Abatement Program.

(1) The Tax Abatement paid to the Developer shall be in accordance with and subject to the terms and conditions contained in the Abatement Resolution and the Tax Abatement Act.

(2) Commencing with taxes payable during the year ~~2026~~ **2027**, the Tax Abatement shall be for a duration of not to exceed twenty years and shall apply to the lesser of: **i)** 90% of the amount produced by extending the County's total local tax rate for the applicable year against the total net tax capacity of the Development Property as of January 2 in the prior year, less the total net tax capacity of the Abatement Property as of January 2, ~~2023~~ **2025**; or **ii)** an amount not to exceed \$20,286.00 annually.

(3) On or before August 1 and February 1 each year commencing August 1, ~~2026-2027~~, to and including February 1, ~~2045~~ **2046**, the County shall pay the Developer the amount of the Tax Abatement received by the County in the previous six-month period.

(4) In order to be entitled to the Tax Abatement provided for in this Agreement, the Developer shall not be in default within the County of any of its payment obligations respecting any taxes, assessments, utility charges or other governmental impositions. Notwithstanding the other provisions of this Article, the County shall not have any obligation to the Developer with respect to the Abatement of taxes hereunder if the County, at the time or times such obligation is required, is entitled to exercise any of the remedies set forth in this Agreement as a result of an Event of Default, which has not been cured.

**ARTICLE IV
EVENTS OF DEFAULT**

Section 4.1 Events of Default Defined. 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 any one or more of the following events:

(1) Failure by the Developer to timely pay when due the payments required to be paid or secured under any provision of this Agreement or which are otherwise required, including the payment of any ad valorem real property taxes, special assessments, utility

charges or other governmental impositions with respect to the Development Property, the Project or any portion thereof owned by the Developer.

(2) Failure by the Developer to cause the construction of the Project to be completed pursuant to the terms, conditions and limitations of this Agreement.

(3) Failure by the Developer to observe or perform any other material covenant, condition, obligation or agreement on its part to be observed or performed under this Agreement.

(4) If Developer admits in writing of its inability to pay its debts generally as they become due or shall file or be involuntarily named as a debtor in a petition in bankruptcy or shall make an assignment for the benefit of creditors, or shall consent to the appointment of a receiver of itself or of the whole or any substantial part of the Development Property.

(5) If the Developer, on a petition in bankruptcy filed against it, be adjudicated bankrupt, or a court of competent jurisdiction shall enter an order or decree appointing, without the consent of the Developer, a receiver of the Developer or of the whole or substantially all of its property, or approve a petition filed against the Developer seeking reorganization or rearrangement of the Developer under the federal bankruptcy laws, and such adjudication, order or decree shall not be vacated or set aside or stayed within sixty (60) days from the date of entry thereof.

(6) If the Developer is in default under any mortgage and has not entered into a workout agreement with its mortgagee within sixty (60) days after such default.

Section 4.2 Remedies on Default. Whenever any Event of Default referred to in Section 4.1 occurs and is continuing, the County, as specified below, in addition to any other remedies or rights given the County under this Agreement, after the giving of thirty (30) days' written notice to the Developer citing with specificity the item or items of default and notifying the Developer that it has thirty (30) days within which to cure said Event of Default, and provided Developer does not cure such Event of Default within such time period, may take any one or more of the following actions:

(1) The County may suspend its performance under this Agreement, including the payment of any Tax Abatement, until it receives assurances from the Developer, deemed adequate by the County, that the Developer will cure its default and continue its performance under this Agreement.

(2) The County may cancel and rescind the Agreement.

(3) The County may take any action, including legal or administrative action, in law or equity, which may appear necessary or desirable to collect any payments due under this Agreement, or to enforce performance and observance of any obligation, agreement, or covenant of the Developer under this Agreement; provided that any exercise by the County of its rights or remedies hereunder shall always be subject to and limited by, and shall not defeat, render invalid or limit in any way the lien of any mortgage authorized by this Agreement; and provided further that should any mortgagee succeed by foreclosure of the

mortgage or deed in lieu thereof in respect to the Developer's interest in the Development Property, the mortgagee shall, notwithstanding the foregoing, be obligated to perform the obligations of the Developer to complete construction of the Project described, and in the manner required hereunder, but only to the extent that the same have not theretofore been performed by the Developer.

(4) The County may withhold any certificate or permit required hereunder.

The notice of an Event of Default required in this Section shall be effective on the date mailed or hand delivered to the Developer.

Section 4.3 No Remedy Exclusive. No remedy herein conferred upon or reserved to the County is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. Except as expressly set forth herein, it shall not be necessary to give notice to exercise a remedy, other than such notice as may be required in this Article.

Section 4.4 No Implied Waiver. In the event any obligation contained in this Agreement should be breached by either party hereto and thereafter waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other concurrent, previous or subsequent breach hereunder.

Section 4.5 Agreement to Pay Attorneys' Fees and Expenses. Whenever any Event of Default occurs and the County shall employ attorneys or incur other expenses for the collection of payments due or for the enforcement or performance or observance of any obligation or agreement on the part of the Developer herein contained, the Developer agrees that it shall, on demand therefore, pay to the County the reasonable fees of such attorneys and such other expenses so incurred by the County.

Section 4.6 Release and Indemnification Covenants.

(1) The Developer expressly releases from and covenants and agrees to indemnify and hold the County and its officers, agents, servants, employees and all members of the County Council, County planning commission and other County board or commission harmless from and against all claims, costs and liability of every kind and nature, for injury or damage received or sustained by any person or entity to the extent in connection with, or an account of the Project, the Development Property, or the performance of work at the development site and elsewhere pursuant to this Agreement, and further releases such officers employees, agents and members from any personal liability in connection with handling funds pursuant to the terms of this Agreement. The indemnification provided hereunder shall not apply to intentional acts or gross misconduct of the individual or entity so indemnified.

(2) Except for any material misrepresentation or any willful or wanton or gross misconduct of the following named parties, the Developer agree to protect and defend the County and

its officers, agents, servants and employees and all members of the County Council, County planning commission and other County board or commission, now or forever, and further agrees to hold the aforesaid harmless from any claim, demand, action or other proceeding whatsoever by any person or entity whatsoever to the extent arising or purportedly arising from a breach of the obligations of the Developer under (i) this Agreement, or (ii) the transactions contemplated hereby, or (iii) the acquisition, construction, installation, ownership, maintenance and operation of the Project.

(3) The County and its officers, agents, employees and all members of the County Council, County planning commission and other County board or commission shall not be liable for any damages or injury to the persons or property of the Developer or its officers, agents, servants or employees or any other person who may be about the Project due to any act of negligence of any person other than their own.

(4) All covenants, stipulations, promises, agreements, and obligations of the County contained herein shall be deemed to be the covenants, stipulations, promises, agreements and obligations of the County and not of any officer, agent, servant, employee or any members of the County Council, planning commission and other board or commission of the County in the individual capacity thereof.

(5) The Developer is not an agent of the County, and this Agreement shall not be construed as creating a joint venture, partnership or other joint arrangement between the Developer and the County relating to the Project.

ARTICLE V ADDITIONAL PROVISIONS

Section 5.1 Conflicts of Interest/No Personal Liability. No member of the governing body or other official or employee of the County shall have any personal interest, direct or indirect, in this Agreement, nor shall any such member, official or employee participate in any decision relating to the Agreement which affects his or her personal interests or the interests of any corporation, partnership or association in which he or she is directly or indirectly interested. No member, official or employee of the County shall be personally liable to the Developer in the event of any default or breach by the County or for any amount that may become due to the Developer for any obligations under the terms of this Agreement.

Section 5.2. Non-Discrimination. Developer shall not violate any law applicable to it with respect to civil rights and non-discrimination including, without limitation, Minnesota Statutes, Section 181.59.

Section 5.3. No Merger. None of the provisions of this Agreement are intended to be or shall be merged by reason of any deed transferring any interest in any part of the Development_ Property and any such deed shall not be deemed to affect or impair the provisions of this Agreement.

Section 5.4. Responsibility for Costs. Developer shall be responsible for the following costs incurred with respect to this Agreement, which costs shall be paid as set forth below:

(1) The Developer shall reimburse the County for reasonable, administrative, and out-of-pocket costs, expenses and disbursements incurred in the enforcement of this Agreement, including engineering and attorney's fees.

(2) The Developer shall pay in full all bills submitted to it by the County within thirty (30) days after receipt. If the bills are not paid on time, the County may without further notice to Developer exercise any one or more of the remedies provided to the County by Article IV hereunder.

Section 5.5 Notices and Demands. Except as otherwise expressly provided in this Agreement, a notice, demand or other communication under this Agreement by any party to any other shall be sufficiently given or delivered if it is dispatched by registered or certified mail, postage prepaid, return receipt requested, or delivered personally, and

(1) in the case of the Developer is addressed to or delivered personally to:

Bunker Hills Housing of Aitkin, LLC
Attn: James Illies
175 7th Avenue South
Waite Park, MN 56387

(2) in the case of the County is addressed to or delivered personally to:

County of Aitkin
Attn: County Administrator
307 Second Street NW
Aitkin, MN 56431

or at such other address with respect to any such party as that party may, from time to time, designate in writing and forward to the other, as provided in this Section.

Section 5.6 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall constitute one and the same instrument.

Section 5.7 Duration. This Agreement shall remain in effect through February 1, 2046, unless earlier terminated or rescinded in accordance with its terms.

Section 5.8 Provisions Surviving Rescission or Expiration. Sections 4.5 and 4.6 shall survive any rescission, termination, or expiration of this Agreement with respect to or arising out of any event, occurrence or circumstance existing prior to the date thereof.

Section 5.9 Data Practices. The parties acknowledge that this Agreement is subject to the requirements of Minnesota's Government Data Practices Act, Minnesota Statutes, Section 13.01 et seq.

Section 5.10 Rules of Interpretation.

(1) *Governing Law.* This Agreement shall be interpreted in accordance with and governed by the laws of the State of Minnesota,

(2) *Includes Entire Agreement.* The words "herein" and "hereof" and words of similar import, without reference to any particular section or subdivision refer to this Agreement as a whole rather than any particular section or subdivision hereof.

(3) *Original Sections.* References herein to any particular article, section, or paragraph hereof are to the section or subdivision of this Agreement as originally executed.

(4) *Headings.* Any headings, captions, or titles of the several parts, articles, sections, and paragraphs of this Agreement are inserted for convenience and reference only and shall be disregarded in construing or interpreting any of its provision,

(5) *Conflict Between Agreements.* In the event of any conflict between the terms, conditions and provisions of this Agreement and the terms, conditions and provisions of any other instrument, the terms, conditions and provisions of this Agreement shall control and take precedence.

(6) *Entire Agreement.* This Agreement including any Schedules and Exhibits hereto contain the entire agreement of the parties relating to the subject matter herein, and no other prior or contemporary agreements, oral or written, shall be binding upon the parties hereto.

(7) *Binding Effect.* This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns as provided and as conditioned in this Agreement.

(Remainder of this page left blank intentionally)

IN WITNESS WHEREOF, the County has caused this Agreement to be duly executed in its name and on its behalf and the Developer has caused this Agreement to be duly executed in its name and on its behalf: on or as of the date first above written.

COUNTY OF AITKIN, MINNESOTA

By _____

By _____

BUNKER HILLS HOUSING OF AITKIN, LLC

Exhibit A

Legal Description of Development Property

PID NO. 56 1-179500