CITY OF WEST DES MOINES
CITY COUNCIL MEETING COMMUNICATION

DATE: November 30, 2015

ITEM: Resolution - Acceptance of certification of costs for construction of S. 93rd Street, acknowledgment of development agreement compliance by KTJ 201, LLC and certification of tax increment to Dallas County, Iowa

SYNOPSIS: The Development Agreement executed in November, 2011 and the Second Amendment to the Development Agreement executed in June, 2013 between the City of West Des Moines and KTJ 201, LLC regarding the Woodland Hills (formerly Michael's Landing) development requires KTJ 201 to provide various annual certifications to the City. This includes certification that all taxes for property in the urban renewal district owned by KTJ 201 have been paid, certification that KTJ 201 is in compliance with the Development Agreement, and certification of the costs expended by KTJ 201 for the installation of public improvements in the Woodland Hills Urban Renewal District. The certification of costs allows KTJ 201 to receive economic development grants, payable through the tax increment generated in the residential sub-area of the Woodland Hills Urban Renewal District, for the costs expended for the public improvements. Costs eligible for reimbursement are those costs defined in the Agreement and in state code that are related to the installation of public improvements.

KTJ 201 has complied with the additional requirements of the Second Amendment to the Development Agreement by platting 56 single family residential lots in Sub Area R-2 and providing $250,000 to the City to use in the development of a neighborhood park in Woodland Hills. KTJ 201 has also provided certification from Gary Reed, an Iowa licensed professional engineer, regarding the expenditure of $525,638.46 made by KTJ 201 for the construction of South 93rd Street and has requested that the City certify these costs to Dallas County. Acceptance and submission of the certified costs by the City Council will allow KTJ 201 to receive an economic development grant based upon its expenditure for the public improvement. As provided by state law and as set forth in the Development Agreement, however, a portion of the tax increment generated in the sub-area will be reserved for low and moderate income housing.

RECOMMENDATION: Approve the certification submitted by KTJ 201, LLC for the construction of S. 93rd St., acknowledge compliance by KTJ 201, LLC of the Development Agreement and Second Amendment to the Development Agreement, and certify the costs regarding the installation of S. 93rd St. to Dallas County, Iowa.

Lead Staff Member: Richard J. Scieszinski, City Attorney

STAFF REVIEWS

Department Director	Richard J. Scieszinski, City Attorney
Appropriations/Finance	
Legal	
Agenda Acceptance	RTC

PUBLICATION(S) (if applicable)

Published In	
Dates(s) Published	

SUBCOMMITTEE REVIEW (if applicable)

Committee	Finance and Administration		
Date Reviewed	November 18, 2015		
Recommendation	Yes		

RESOLUTION ACCEPTING COST CERTIFICATION FOR THE CONSTRUCTION OF SOUTH 93RD STREET, ACKNOWLEDGING COMPLIANCE WITH THE DEVELOPMENT AGREEMENT BY KTJ 201, LLC AND CERTIFYING THE RESIDENTIAL SUB-DISTRICT TAX INCREMENT TO DALLAS COUNTY, IOWA

WHEREAS, in November, 2011 the City of West Des Moines entered into a Development Agreement (hereinafter "Agreement") with KTJ 201, LLC for, among other things, the installation of public improvements in Woodland Hills (formerly known as Michael's Landing); and

WHEREAS, in June, 2013 the parties executed the Second Amendment to the Development Agreement (hereinafter "Second Amendment") which, among other things, required KTJ 201, LLC to construct South 93rd Street between Cascade Avenue and Stagecoach Drive, plat approximately 55 single-family residential lots in Residential Sub Area R-2 and provide $250,000 to the City to use for grading, seeding, master planning and other initial improvements for development of a neighborhood park in Woodland Hills; and

WHEREAS, Section 8.1 of the Agreement allows KTJ 201, LLC to receive economic development grants in the form of tax increment-financed rebates in an amount based upon the actual expenditures made by KTJ 201, LLC for installation of the public improvements in the residential sub-district of Woodland Hills; and

WHEREAS, pursuant to Section 4 of the Second Amendment, the economic development grants in the form of tax increment-financed rebates apply to the actual expenditures made by KTJ 201, LLC, not to exceed $750,000, for the construction of South 93rd Street; and

WHEREAS, Section 5 of the Second Amendment requires KTJ 201, LLC to complete construction of the road and receive a Certificate of Completion from the City and to provide $250,000 to the City to use for grading, seeding, master planning and other initial improvements for development of a neighborhood park in Woodland Hills; and

WHEREAS, Section 6.6 of the Agreement requires KTJ 201, LLC to provide an annual certification to the City indicating that:

(a) all ad valorem taxes on the property then owned by KTJ 201, LLC in the Urban Renewal Area for the prior fiscal year have been paid;

(b) certification by an Iowa licensed professional engineer or Iowa licensed CPA of the itemized costs expended by KTJ 201, LLC for construction of the public improvements; and

(c) KTJ 201, LLC has re-examined the terms and provisions of the Development Agreement and Second Amendment and has certified that at the date of the certification, and during the preceding twelve (12) months, KTJ 201, LLC is not, or was not, in default in the fulfillment of any of the terms and conditions of the Agreement and the Second Amendment that no Developer Event of Default is occurring or has occurred as of the date of the certification; and

WHEREAS, on September 8, 2014 KTJ 201, LLC received a Certificate of Completion from the City for the construction of South 93rd Street and has submitted an itemization certified

by an Iowa licensed professional engineer of the actual costs expended for the construction of South 93rd in the amount of $525,638.46; and

WHEREAS, on February 10, 2014 KTJ 201, LLC received approval for platting 56 single family residential lots in Sub Area R2 (Woodland Hills of West Des Moines Plat 1) as required by the Second Amendment; and

WHEREAS, KTJ 201, LLC has provided $250,000 to the City for the development of a neighborhood park in Woodland Hills as required by the Second Amendment; and

WHEREAS, all ad valorem taxes on the property then owned by KTJ 201, LLC in the Urban Renewal Area have been paid for the prior fiscal year, and KTJ 201, LLC has re-examined the terms and provisions of the Development Agreement and Second Amendment and has determined that at the date of the certification and during the preceding twelve (12) months, KTJ 201, LLC is not, or was not, in default in the fulfillment of any of the terms and conditions of the Agreement and that no Developer Event of Default is occurring or has occurred as of the date of the certification; and

WHEREAS, KTJ 201, LLC has requested that the City certify the tax increment generated from the R-2 Residential Sub-Area in the Woodland Hills Urban Renewal District to Dallas County, Iowa.

THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF WEST DES MOINES, IOWA THAT:

1. KTJ 201, LLC has provided the certification of costs for construction of South 93rd Street as required by Section 6.6 of the *Development Agreement by and between the City of West Des Moines and KTJ 201, LLC* and as required by Section 4 of the *Second Amendment to the Agreement*, copies of which are on file in the Office of the City Clerk. The certification of costs submitted by KTJ 201, LLC in the amount of $525,638.46 is approved and accepted.

2. KTJ 201, LLC has platted 56 single family residential lots in Sub Area R-2 (Woodland Hills of West Des Moines Plat 1) in the Woodland Hills Urban Renewal District and is in compliance with Section 4 of the Second Amendment to the Agreement.

3. KTJ 201, LLC has provided $250,000 to the City for the development of a neighborhood park in Woodland Hills and is in compliance with Section 5 of the Second Amendment to the Agreement.

4. KTJ 201, LLC has certified that it is in compliance with Section 6.6 of the Agreement.

5. At the request of KTJ 201, LLC, the City will certify the tax increment generated from Residential Sub-Area R-2 in the Woodland Hills Urban Renewal District to Dallas County, Iowa.

6. Pursuant to Section 8 of the Agreement, the City approves the payment of an economic development grant in the form of a tax increment-financed rebate in the

amount of $525,638.46 to KTJ 201, LLC in satisfaction of Section 4 of the Second Amendment to the Agreement.

7. The City Finance Department and the City Legal Department shall take all steps necessary to fulfill the direction of the City Council.

PASSED AND APPROVED this 30th day of November, 2015.

ATTEST:

Steven K. Gaer, Mayor

Ryan T. Jacobson, City Clerk

CIVIL DESIGN ADVANTAGE L.L.C.
ENGINEERS • LANDSCAPE ARCHITECTS
PLANNERS & SURVEYORS

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November 25, 2015

Duane Wittstock, City Engineer
City of West Des Moines
4200 Mills Civic Parkway
West Des Moines, Iowa 50265

RE: WOODLAND HILLS – COST CERTIFICATION

Dear Mr. Wittstock:

This letter will serve as certification by an Iowa licensed professional engineer of the itemized costs incurred by the Developer in connection with the construction of the Initial Public Improvements pursuant to Section 6.6 of the Agreement for Private Development between City of West Des Moines and KTJ 201, LLC dated November 17, 2011, First Amendment to Agreement for Private Development dated April 30th, 2012 and Second Amendment to the Agreement for Private Development dated June 24th, 2013. All capitalized terms and words of art used in this certification as defined terms shall have the meaning as ascribed to such terms in the Agreement for Private Development and Amendments, unless otherwise specified.

In connection with this certification, I have reviewed the following documents (hereinafter collectively referred to as the "Payment Documents') associated with Woodland Hills Plat 1 (Outlot J), aka Woodland Hills II:

1. Closing Draw with supporting information;
2. Draw #1 with supporting information;
3. Draw #2 with supporting information;
4. Draw #3 with supporting information;
5. Draw #4 with supporting information;
6. Draw #5 with supporting information;
7. Draw #6 with supporting information;
8. Draw #7 with supporting information;
9. Draw #8 with supporting information;
10. Civil Design Advantage invoices;
11. Oppidan Interest with supporting information; and
12. McAninch Proposal for Construction Agreements

In my review of the Payment Documents, I have assumed the genuineness of all signatures, the authenticity of the originals of all documents, the conformity to the original of all

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documents submitted as photostatic or conformed copies, that the work described in the documents was performed in connection with the construction of the north-south Road (further described as South 93rd Street running from Cascade Avenue on the north to Stagecoach Drive on the south), that the pro-rata cost attributed to the north-south Road is accurately estimated as shown on the attached cost certification spreadsheet, that the pro-rata cost attributed to the north-south Road as shown on the attached cost certification spreadsheet is eligible for reimbursement, that the materials described in the documents were utilized in connection with the construction of the north-south Road, that the proposal for construction agreements provided were paid in full and that the payments described in the documents or assumed from the proposal for construction agreements provided were tendered and accepted without reservation. As to certain matters of fact material to this certification, I have relied on information supplied by various managers, members and representatives of the Developer. This certification is qualified as being "to the best of my knowledge". Except to the extent expressly set forth herein, I have not undertaken any independent investigation.

Based on the foregoing and subject to the assumptions, qualifications and exceptions set forth herein, I hereby certify that costs totaling $525,638.46, (Five Hundred Twenty-five thousand six hundred thirty-eight and 46/100 dollars) as itemized on the enclosed spreadsheet entitled Cost Certification dated November 25, 2015, were incurred by the Developer in connection with the construction of the Initial Public Improvements to the date of this certification. Final reimbursement of certified costs are pursuant to the terms within the Second Amendment to the Agreement for Private Development dated June 24th, 2013.

These opinions are furnished solely for the benefit of the City of West Des Moines. This opinion may not be used or relied upon by any other party.

Very truly yours,

CIVIL DESIGN ADVANTAGE

By Gary L. Reed

Gary L. Reed, P.E.

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Cost Certification

For Agreement for Private Development (Including 1st and 2nd Amendments)
By and Between City of West Des Moines, Iowa and FTL 201 LLC
11/19/2015

Line	Description of Work	Entity	Note	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
1	[illegible]	[illegible] Amount	a	$617,764.70												
	[illegible]		c													$32,744.86
	Pro-Rata															5.0%
	Pro-rata [illegible] Costs															$48,886.87
	PCC Payment	McKenzie Contract Amount	k	$289,470.00												
	PCC Payment Subtotal															$289,470.00
	Pro Rata															12.9%
	Pro-rata PCC Payment Costs															$36,487.86
		CDA Inv. 17387														
		CDA Inv. 18601					28,277.67									
		CDA Inv. 18602														
		CDA Inv. 19000										$1,453.16				
		CDA Inv. 19030														
		CDA Inv. 19031														2,026.00
		CDA Inv. 19032														$4,869.00
		CDA Inv. 19033														750.40
		CDA Inv. 19045														523,884.55
		CDA Inv. 19060														$14,821.54
		CDA Inv. 19061														$4,054.13
		CDA Inv. 19062				$1,549.39										
		CDA Inv. 19063														
		CDA Inv. 19064														$425.00
		CDA Inv. 19165														$48.00
		CDA Inv. 19166														$2,377.80
		CDA Inv. 19167														$1,847.71
		CDA Inv. 19168														$595.00
		CDA Inv. 19169														$4,236.56
		CDA Inv. 19170														$1,479.17
		CDA Inv. 19171														$85.50
		CDA Inv. 19172														300.00
	Engineering Subtotal															
	Pro-Rata															$97,582.89
	Pro-rata Engineering Costs															42.9%
2	Storm Sewer/Utilities	McKenzie Contract Amount	b	$914,212.00												$488,862.11
	Storm Sewer/Utilities Sub-tot															
	Pro-Rata															$488,862.11
	Pro-rata Storm Sewer/Utilities Costs															43.3%
	Landscaping															$209,771.76
4	Street Utilities/Electrical	Mid-Am [illegible]	m							$54,152.92	$4,792.00					
		McKenzie [illegible]	f													
	Street Utility/Electrical Subtotal															$58,952.92
	Pro-Rata		p													36.5%
	Pro-rata Street Lighting/Electrical Costs															$21,522.86
5	Construction Allowance	Shade Concepts Inc. 47026	h		$5,895.00											
		Shade Concepts Inc. 47029	h		$390.00											
		Shade Concepts Inc. 47030	h		$1,324.00											
		Shade Concepts Inc. 48327	h				12,[illegible]									
		Shade Concepts Inc. 48804	h									$2,850.00				
		Shade Concepts Inc. 50232	h											$300.00		
	Construction Management Subtotal															
	Pro-Rata		z													$22,859.00
	Pro-rata Construction Management Costs															41.7%
																$9,579.14
6	Other Costs	Iowa Title - Abstracting	i		[illegible]											
		Nelson - Appraisal	i		$2,500.00											
		Iowa Business Law - Title [illegible]	i		$3,992.00											
		Landmark - Land Title	i		$10,000.00											
		WDM Microwaves - Impactness	i		$3,980.00											
		Legal Land	m		$40,000.00											
		Legal Finance	n		$15,000.00											
		Schulte Land - Appraisal [illegible]			$3,750.00											
		Hub Title - Abstracting			$325.00											
		Simmons Perrine - Appraisal [illegible]			$242.00											
		Mortgage Fund - Appraisal [illegible]			$3,487.50											
		Recording Fees	z		$2,398.70											
	Closing Costs Subtotal															$94,304.20
	Pro-Rata															41.7%
	Pro-rata Closing Costs															$39,493.66
7	Interest	[illegible] Bank Interest 7/23/14						$12,468.34								
		Pro Bank Interest 7/28/14						[illegible]								
		Pro Bank Interest 8/25/14							$10,032.99							
		Pro Bank Interest 9/8/14										$12,[illegible]				
		Pro-Bank Interest 10/22/14											[illegible]			
	Interest Cost Subtotal															[illegible]
	Pro-Rata		o													4.9%
	Pro-rata Interest Costs															$1,[illegible]
8	Traffic Control															
															TOTAL ESTIMATED CERTIFIED COSTS	$526,638.46

Notes:
a - Bid [illegible] dated 8/8/2013.
b - Portion of McKenzie contract dated 11/5/2013
c - Electrical [illegible] dated [illegible]. Allocation for $20,581.13, of which $16,172.72 is [illegible] construction.
f - Includes electrical [illegible].
h - Shade [illegible].
k - Pursuant to Second Amendment to the Agreement for Private Development by and Between the City of West Des Moines and FTL 201, LLC:
...Developer has proposed the Second Amendment to the Agreement due to its desire to build a north-south road, further described
as South 32nd Street running from Cascade Avenue on the north to Mainstreet Drive on the south...
Estimated pro-rata cost associated with South 32nd Street (north-south road) shall be calculated as follows:
South 32nd Street approximate quantity = 30.89 square yards
[illegible] pavement surface (Woodland Hills of WDM Plat 2) = 8229 square yards
Estimated pro-rata cost for South 32nd Street only = 30.89/8229 = 41.7%
l - Based on Settlement Statement dated December 12, 2013
m - Based on Opinion Letter dated 12/11/2013.
o - Pursuant to Second Amendment to the Agreement for Private Development by and Between the City of West Des Moines and FTL 201, LLC:
...Prior to the proposed the Second Amendment to the Agreement due to its desire to build a north-south road, further described
as South 32nd Street running from Cascade Avenue on the north to Mainstreet Drive on the south...
Estimated pro-rata cost associated with South 32nd Street (north-south road) shall be calculated as follows:
South 32nd Street approximate area = 1.47 Acres
Total [illegible] of Woodland Hills of WDM Plat 1 = 30.34 acres
Estimated pro-rata cost for [illegible] = 1.47/30.34 = 4.9%
p - Pursuant to Second Amendment to the Agreement for Private Development by and Between the City of West Des Moines and FTL 201, LLC:
...Prior to the proposed the Second Amendment to the Agreement due to its desire to build a north-south road, further described
as South 32nd Street running from Cascade Avenue on the north to Mainstreet Drive on the south...
Estimated pro-rata cost associated with South 32nd Street (north-south road) shall be calculated as follows:
South 32nd Street approximate quantity = 0
Total [illegible] surface [illegible] Woodland Hills of WDM Plat 2 = 0
Estimated pro-rata cost for South 32nd Street = 0/0 = 0%.