CITY OF WEST DES MOINES
CITY COUNCIL MEETING COMMUNICATION

DATE: August 20, 2018

ITEM: Resolution - Approval of Agreement between the City of West Des Moines and Chayse Holdings, L.L.C.

FINANCIAL IMPACT: Total project cost of approximately $8,000,000

BACKGROUND: On July 9, 2018 the City Council approved Amendment No. 2 to the Coachlight Drive Urban Renewal Area. This amendment identified the realignment and reconstruction of the intersection of South 88th Street and Mills Civic Parkway as an urban renewal project eligible for tax increment financing. The inclusion of the intersection as a TIF-eligible project was done due to the unique characteristics of the project, which include the additional cost incurred to realign the roadway to avoid the Huston Cemetery, the necessity to reconstruct Mills Civic Parkway as a major collector that will provide a connection to the Grand Prairie Parkway interchange, and the increasing need to provide adequate substantial transportation infrastructure to a significant portion of the City.

Due to the uncertainty related to the cost and timing of construction of the intersection, development of the four adjacent quadrants to the intersection has not occurred. However, in conjunction with the amendment to the urban renewal plan that provides financing for construction of the intersection, Chayse Holdings, L.L.C. has submitted a proposal to develop the northwest corner of the intersection. The proposal anticipates construction of a continuing care facility and several single family homes.

In order to quantify its exaction obligations related to the proposed development, Chayse and the City have negotiated an agreement in which the City will agree to construct three lanes of Mills Civic Parkway from approximately 81st Street to 93rd Street and construct 88th Street from Mills Civic Parkway north to Coachlight Drive. In return, Chayse will dedicate property necessary for construction of its portion of the improvements and pay the City $250,000 as its contribution toward construction of 88th Street.

The agreement also requires the City to acquire property and construct a public sanitary sewer that will connect to the existing Fox Creek sewer to the west. This sewer will provide service to the area of 88th Street and Mills Civic Parkway and the currently unsewered area beyond. Because the City is expediting construction of the sewer at the developer's request, Chayse has agreed to pay the City the actual cost of constructing that portion of the sewer that will serve its property. No building permits will be issued to Chayse until payment for the construction of 88th Street and the sanitary sewer has been made.

It is anticipated that if the development agreement with Chayse is approved by the City Council, the owners of the other three quadrants adjacent to the intersection will also participate in similar agreements. Although no formal negotiations have occurred, the owners did express interest

when the proposal was presented at a meeting with City staff on August 3, 2018.

If approved, construction of the roadway and sewer improvements are anticipated to begin in 2019.

OUTSTANDING ISSUES (if any): None

RECOMMENDATION: Approve the agreement between City of West Des Moines and Chayse Holdings, L.L.C.

Lead Staff Member: Richard Scieszinski, City Attorney RJS

STAFF REVIEWS

Department Director	Tom Hadden, City Manager
Appropriations/Finance	Tim Stiles, Finance Director
Legal	Richard J. Scieszinski, City Attorney
Agenda Acceptance	

PUBLICATION(S) (if applicable)

Published In	
Dates(s) Published	

SUBCOMMITTEE REVIEW (if applicable)

Committee	Development & Planning		
Date Reviewed	August 6, 2018		
Recommendation	Yes		

RESOLUTION NO. _____

RESOLUTION APPROVING THE AGREEMENT BETWEEN THE CITY OF WEST DES MOINES AND CHAYSE HOLDING, L.L.C.

WHEREAS, Chayse Holdings, L.L.C., an Iowa limited liability company ("Chayse), has negotiated an agreement with the City of West Des Moines in which the City will construct certain improvements that will benefit both the citizens of West Des Moines and Chayse; and

WHEREAS, in consideration for construction of the improvements by the City, Chayse has agreed to dedicate property and provide payment for construction of a portion of the improvements; and

WHEREAS, the attached *Agreement Between the City of West Des Moines and Chayse Holdings, L.L.C.* has been presented to the City Council for approval; and

WHEREAS, it is in the best interest of the City to approve the above-described Agreement.

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

1. The Agreement between the City of West Des Moines and Chayse Holdings, L.L.C. is hereby approved.

2. The Mayor is authorized to sign the Agreement and the City Clerk is directed to attest to the Mayor's signature.

PASSED AND ADOPTED this 20th day of August, 2018.

_____
Steven K. Gaer, Mayor

ATTEST:

_____
Ryan T. Jacobson, City Clerk

AGREEMENT BETWEEN THE CITY OF WEST DES MOINES, IOWA AND CHAYSE HOLDINGS, L.L.C. REGARDING THE INSTALLATION OF SANITARY SEWER AND THE CONSTRUCTION OF PUBLIC ROADWAY IMPROVEMENTS

This Development Agreement ("Agreement") is made as of this ___ day of August, 2018, by and between the CITY OF WEST DES MOINES, IOWA ("City") a municipal corporation with its general offices at 4200 Mills Civic Parkway, West Des Moines, IA 50265 and Chayse Holdings, L.L.C., an Iowa limited liability company ("Developer"), with its office located at 9550 Hickman, Suite 101, Clive, IA 50325.

RECITALS:

A. The City, as a municipal corporation, provides public sanitary and storm sewer utility services to areas within its corporate boundaries. The provision of the utilities are determined by demand for the services and the availability of City resources necessary for the construction and operation of the utilities.

B. The Developer is the owner of certain real property ("Property") in an area of the City which has been designated for future sanitary sewer service but for which the timing of construction has not be determined.

C. The Developer has submitted a plan to the City for the platting of the Property and the construction of improvements on the Property that will require the Property to comply with the subdivision ordinance of the City.

D. Requirements of the subdivision ordinance require the Developer to provide sanitary sewer service and construct public roadway to adequately serve the Property.

E. The Developer has agreed to provide funding to the City to expedite the construction of a public sanitary sewer to serve both the Property and the undeveloped areas near the Property.

F. The City desires to construct infrastructure in accordance with its comprehensive street circulation plan and its comprehensive public utilities plan and the exaction requirements regarding public infrastructure of the West Des Moines Subdivision Ordinance.

G. The Developer has requested that the roadway infrastructure requirements imposed by the subdivision ordinance for development of the Property be specified and the financial obligation of the Developer be memorialized by agreement.

H. The City and Developer desire to enter into this Agreement for the purpose of detailing the responsibilities of each party related to the payment and extension of sanitary sewer to currently unserved areas of the City and the responsibilities of each party regarding the payment and construction of roadway improvements related to development of the Property.

NOW, THEREFORE, in consideration of the above stated recitals, undertakings and conditions it is agreed as follows:

I. Projects, Obligations and Undertakings of the City. The City agrees to undertake the following:

A. The Projects:

1. Extension of Sanitary Sewer. The Sewer Project, which will be comprised of the design, engineering, property acquisition and construction by the City, will be approximately 1700 linear feet of 8-inch sanitary sewer from the Fox Creek Sanitary Sewer to the Property, all as generally shown on the attached Exhibit "A." Substantial completion of the Extension of Sanitary Sewer Project is anticipated to occur by July 15, 2019. Construction of the Sewer Project shall be done in accordance with all City design standards and specifications.

2. Construction of Mills Civic Parkway and South 88th Street Roadway. The Roadway Project will consist of the construction by the City of three lanes of pavement of an ultimate six lane facility for Mills Civic Parkway, including all final grading for the ultimate six lane facility including all appurtenances (water main and storm sewer), to be constructed from approximately one-half mile east (South 81st Street) and approximately one-quarter mile west (existing South 91st Street) from the intersection of Mills Civic Parkway and South 88th Street. The Roadway Project for South 88th Street will consist of the construction by the City of three lanes of pavement of an ultimate five lane facility, including all final grading for the ultimate five lane facility including all appurtenances (water main and storm sewer), to be constructed from Coachlight Drive to Mills Civic Parkway. Substantial completion of the Mills Civic Parkway and South 88th Street Roadway Project is anticipated to occur by December 31, 2019. Construction shall be done in accordance with all City design standards and specifications.

Construction of each of the Extension of Sanitary Sewer and of construction of Mills Civic Parkway and South 88th Street will be done in full compliance with Iowa Code Chapter 6A and 6B regarding the acquisition of property and Chapter 26 regarding public improvement bidding.

B. Obligations of the City:

1. Uneconomic Developer Remnant. The Parties acknowledge that following dedication of Developer's proportionate share of property for the construction of Mills Civic Parkway and South 88th Street, the realignment of the existing Mills Civic Parkway and South 88th Street will create an uneconomic remnant on a portion of Developer's Property, all as generally shown on the attached Exhibit "B." The City agrees to pay Developer $58,355.00 for the _____ square feet of property comprising the uneconomic remnant. Upon payment by the City,

Developer agrees to release any right, title or interest in the uneconomic remnant, including the right of first refusal to repurchase the remnant.

II. Contributions, Obligations and Undertakings of the Developer:

A. Contribution by Developer:

1. Extension of Sanitary Sewer. Developer shall pay to the City the actual cost of the Extension of Sanitary Sewer as defined in Section I(A)(1), above, anticipated not to exceed $350,000.00. Payment shall be made by Developer to City prior to connection by Developer of the Sewer to any property or improvements. Developer shall also provide at no cost to the City all easements necessary for construction of the Extension of Sanitary Sewer located on Developer's Property.

2. Construction of Mills Civic Parkway and South 88th Street. In consideration of the public infrastructure improvements to be constructed by the City, and as an obligation imposed by the West Des Moines Subdivision Ordinance, Developer shall convey at no cost to the City all property under the ownership of Developer as shown on the Acquisition Plat attached hereto as Exhibit "B", including all permanent and temporary easements necessary for construction of Mills Civic Parkway and South 88th Street. Developer shall also be responsible to dedicate property, if necessary, and construct all turn lanes consistent with the traffic study completed for the Property.

   Developer shall pay to the City $250,000.00 as a proportionate share of Developer's obligations for the construction by the City of South 88th Street. Payment shall be made by Developer to City prior to connection by Developer of the Sewer to any property or improvements.

B. Obligations of Developer:

1. Developer shall be obligated to pay its proportionate share of all water, sanitary sewer and storm sewer connection fees imposed by City ordinance for service to Developer's property.

2. Unless otherwise provided by this Agreement, Developer shall comply with all development and subdivision requirements of the City of West Des Moines, including but not limited to all requirements of the City regarding parkland dedication, streetlights, sidewalks and trails.

III. Other Provisions.

Project Scope. The parties acknowledge that the Mills Civic Parkway Project will comprise the construction of three lanes of an ultimate six lane facility and that the South 88th Street Project will comprise three lanes of an ultimate five lane facility, and related improvements as set forth in this Agreement, and that the obligation of the Parties, if any,

regarding future development and construction of the roadway and appurtenant structures is not subject to or addressed by this Agreement.

Time: City agrees that it will endeavor to complete construction of the Extension of the Sanitary Sewer by July 15, 2019 and the construction of Mills Civic Parkway and South 88th Street by December 31, 2019, assuming full and timely compliance by Developer of the subdivision requirements of City and the terms and conditions of this Agreement.

IV. Representations and Warranties:

(1) Representation and Warranties of the City. The City makes the following representation and warranties:

a. The City is a municipal corporation and municipality organized under the provisions of the constitution and the laws of the state of Iowa and has power to enter into this Agreement and carry out its obligations and undertakings hereunder.

b. The execution and delivery of this Agreement, the consummation of the transactions contemplated hereby and the fulfillment of or compliance with the terms and conditions of the Agreement are not prevented by, limited by, in conflict with, or result in a breach of, the terms, conditions or provisions of any contractual restriction, evidence of indebtedness, agreement or instrument of whatever nature to which the City of now a party or by which it is bound, nor do they constitute a default under any of the foregoing.

c. All covenants, stipulations, promises and agreements and obligations of the City contained herein shall be deemed to be the covenants, stipulations, promises, agreements and obligations of the City and not of any governing body member, officer, agent, servant or employee of the City in the individual capacity hereof.

(2) Representations and Warranties of Developer. Developer makes the following representations and warranties:

a. Chase Holdings, L.L.C. is an Iowa limited liability company, duly organized and validly existing under the laws of the state of Iowa and it has all requisite power and authority to own and operate its properties, to carry on its businesses now conducted and as presently proposed to be conducted, and to enter into to perform its obligations under this Agreement.

b. This Agreement has been duly and validly authorized, executed, and delivered by Developer and, assuming due authorization execution and delivery by the City, is in full force and effect and is a validly legally binding instrument of Developer enforceable in accordance with its terms, except as may be limited by bankruptcy, insolvency, reorganization or other laws relating to or effecting creditors' rights generally.

c. The execution and delivery of this Agreement, the consummation of the transactions contemplated hereby, and the fulfillment of or compliance with the terms and conditions of this Agreement are not prevented by, limited by, in conflict with or result in a violation or breach of the terms conditions or provisions of the governing documents of Developer or of any contractual restriction, evidence of indebtedness, agreement of instrument of whatever nature to which Developer is now a party or by which it or its property is bound, nor do they constitute a default under any of the foregoing.

d. There are no actions, lawsuits or proceedings pending or threatened against or affecting Developer in any court or before any arbitrator or before or by any governmental body for which there is a reasonable possibility of an adverse decision which could materially adversely affect the business (present or prospective), financial position or results of operations of Developer or which in manner raises any questions affecting the validity of the Agreement or Developers ability to perform its obligations under this Agreement.

e. Developer has not received any notice from any local, state or federal official that the activities of Developer with respect to the right-of-way property may or will be in violation of any environmental law or regulation (other than those notices, if any, of which the City has been previously notified in writing). Developer is not aware of any state or federal claim filed or planned to be filed by any party relating to any violation of any local, state or federal environmental law, regulation or review procedure applicable to the Project and Developer is not currently aware of any violation of any local, state or environmental law, regulation or review procedure which would give any person a valid claim under any state or environmental statute with respect thereto.

f. Developer has good and marketable title to the Developer right-of-way for the Project.

VI. 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:

(a) Failure by the Developer to substantially observe or perform any covenant, condition, obligation or agreement on its part to be observed or performed under this Agreement;

(b) The Developer shall:

(i) file any petition in bankruptcy or for any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under the United States Bankruptcy Act of 1978, as amended, or under any similar federal or state law; or

(ii) make an assignment for the benefit of its creditors; or

(iii) admit in writing its inability to pay its debts generally as they become due; or

(iv) be adjudicated a bankrupt or insolvent; or if a petition or answer proposing the adjudication of the Developer as a bankrupt or its reorganization under any present or future federal bankruptcy act or any similar federal or state law shall be filed in any court and such petition or answer shall not be discharged or denied within ninety (90) days after the filing thereof; or a receiver, trustee or liquidator of the Developer or part thereof, shall be appointed in any proceedings brought against the Developer and shall not be discharged within ninety (90) days after such appointment, or if the Developer shall consent to or acquiesce in such appointment;

(c) Any representation or warranty made by the Developer in this Agreement, or made by the Developer in any written statement or certificate furnished by the Developer pursuant to this Agreement, shall prove to have been incorrect, incomplete or misleading in any material respect on or as of the date of the issuance or making thereof; or

(d) Any representation or warranty made by the City in this Agreement shall prove to have been incorrect, incomplete or misleading in any material respect on or as of the date of the issuance.

City's Remedies on Default. Whenever any Event of Default referred to in Section VI (a-c) of this Agreement occurs and is continuing, the City, as specified below, may take any one or more of the following actions after (except in the case of an Event of Default under subsections (b) of said Section VI) the giving of thirty (30) days written notice by the City to the Developer of the Event of Default, but only if the Event of Default has not been cured within said thirty (30) days, or if the Event of Default cannot reasonably be cured within thirty (30) days and the Developer does not provide assurances reasonably satisfactory to the City that the Event of Default will be cured as soon as reasonably possible:

(a) The City may suspend its performance under this Agreement until it receives assurances from the Developer, deemed adequate by the City, that the Developer will cure its default and continue its performance under this Agreement;

(b) The City may terminate this Agreement;

(c) The City may take any other action, including legal, equitable or administrative action, which may appear necessary or desirable to recover damages or enforce performance and observance of any obligation, agreement, or covenant of the Developer under this Agreement.

VII. Developer's Remedies on Default. Whenever any Event of Default occurs by the City, the Developer may terminate this Agreement, and the Developer may take any legal action it considers necessary to recover damages from the City or to enforce this Agreement, subject to a 120 day written notice to the City with an opportunity for the City to cure the Event of Default during the 120 day notice period.

VIII. No Remedy Exclusive. No remedy herein conferred upon or reserved to the City is intended to be exclusive of any other available remedy or remedies, but each and every 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.

IX. No Implied Waiver. In the event any agreement contained in this Agreement should be breached by the Developer and thereafter waived by the City, 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.

X. Agreement to Pay Attorneys' Fees and Expenses. Whenever any Event of Default occurs and either party employs attorneys or incurs other expenses for the collection of payments due or to become due or for the enforcement or performance or observance of any obligation or agreement on the part of the other party, the non-prevailing party shall pay to the prevailing party its reasonable attorneys' fees and costs.

XI. Statutory Compliance. Fulfillment of this Agreement is contingent upon the ability of the City to acquire the necessary property and construct the public improvement projects in compliance with all federal, state and local laws. If the City is unable to fulfill the obligations set forth in this Agreement due to a successful legal challenge of any adverse party or because of any findings made by a court of competent jurisdiction inhibiting the ability of the City to acquire the necessary property and/or construct the public improvements, this Agreement may be terminated by either the Developer, the City, or both.

XII. No Third Party Beneficiaries. No rights or privileges of either party hereto shall inure to the benefit of any landowner, contractor, subcontractor, material supplier, or any other person or entity and no such contractor, landowner, subcontractor, material supplier, or any other person or entity shall be deemed to be a third-party beneficiary of any of the provisions contained in this Agreement.

XIII. Miscellaneous.

(1) Notices and Demands. A notice, demand or other communication under this Agreement by any party to the other shall be sufficiently given or delivered if it is dispatched by a registered or certified mail, postage prepaid, return receipt requested or delivered personally and

a. in the case the Developer is addressed or delivered personally to Chayse Holdings, L.L.C., 9550 Hickman, Suite 101, Clive, IA 50325; and

b. in the case of the City it is addressed to or delivered personally to the City of West Des Moines, 4200 Mills Civic Parkway, West Des Moines, IA 50265 Attn: City Manager.

(2) Counterparts. This agreement may be executed in any number of counterparts each of which will constitute one in the same instrument.

(3) Governing Office. This agreement shall be governed and construed in accordance with the laws of the state of Iowa.

(4) Entire Agreement. This Agreement and the exhibits hereto reflect the entire agreement among the parties regarding the subject matter hereof and supersedes all prior agreements, negotiations or discussions weather oral or written. This agreement may not be amended except by subsequent writing signed by all parties hereto.

(5) Successors and Assigns. This Agreement is intended to and shall inure to the benefit of and be binding upon the parties hereto and their respective permitted accessors and assigns.

XIV. Termination. Unless otherwise terminated as provided in Section VI, Section VII or Section XI, above, this Agreement shall terminate upon fulfillment by each party of the obligations set forth herein.

[Signatures on Following Pages]

IN WITNESS WHEREOF, the City has caused this Agreement to be duly executed in name and its behalf by its Mayor and its sealed to be duly affixed and attested by its City Clerk, and Developer has caused this Agreement to be duly executed in its name and behalf by its authorized representatives all on as of the day first above written.

CITY OF WEST DES MOINES

_____

Steven K. Gaer, Mayor

ATTEST

_____

City Clerk

STATE OF IOWA)
)
COUNTY OF POLK)

On this 20th day of August, 2018, before me a Notary Public in and for said State, personally appeared Steven K. Gaer and Ryan T. Jacobson, to me personally known, who being duly sworn, did say that they are the Mayor and City Clerk, respectively, or the City of West Des Moines, Iowa a municipality created and existing under the laws of the State of Iowa, and that the seal affixed to the foregoing instrument is the seal of said municipality, and that said instrument was signed and sealed on behalf of said municipality by authority and resolution of its City Council, and said Mayor and City Clerk acknowledged said instrument to be the free act and deed of said Municipality by it voluntarily executed

_____

Notary Public in and for the State of Iowa

CHAYSE HOLDINGS, L.L.C.
an Iowa limited liability company

_____
Toby Torstenson
Managing Member

STATE OF IOWA)
)ss:
COUNTY OF POLK)

This record was acknowledged before me on the ____ day of August, 2018 by Toby Torstenson, Managing Member of Chayse Holdings, L.L.C, an Iowa limited liability company, on behalf of whom the record was executed.

_____
Notary Public
(Stamp or Seal)

Exhibit "A"

PROJECT SPECIFICATIONS

Exhibit “B”

UNECONOMIC REMNANT