Community Development and Renewal Agency of Herriman City Agenda

Wednesday, July 12, 2023

NOTICE IS HEREBY GIVEN that the Herriman City Council shall assemble for a meeting in the City Council Chambers, located at
5355 WEST HERRIMAN MAIN STREET, HERRIMAN, UTAH

1. **Call to Order - 6:50 p.m. (or as soon as possible thereafter)**
2. **Approval of Minutes**
   2.1. Review and outline of the finalization process for the July 12, 2023 Community Development and Renewal Agency minutes
3. **Consent Agenda**
   3.1. Consideration of a participation agreement with Herriman Towne Center Communities LLC – Blake Thomas, Community Development Director
4. **Adjournment**

In accordance with the Americans with Disabilities Act, Herriman City will make reasonable accommodation for participation in the meeting. Request assistance by contacting Herriman City at (801) 446-5323 or info@herriman.org and provide at least 48 hours advance notice of the meeting.

ELECTRONIC PARTICIPATION: Members may participate electronically via telephone, Skype, or other electronic means during this meeting.

I, Jackie Nostrom, certify the foregoing agenda was emailed to at least one newspaper of general circulation within the geographic jurisdiction of the public body, at the principal office of the public body, on the Utah State Public Notice website www.utah.gov/pmn/index.html and on Herriman City's website at www.herriman.org

Posted and Dated this 6th day of July, 2023 /s/Jackie Nostrom, City Recorder

HERRIMAN CITY

STAFF REPORT

DATE: **July 6, 2023**

TO: The Board of Directors

FROM: Blake Thomas, Community Development Director

SUBJECT: **Consideration of a participation agreement with HTC Communities, LLC. to reimburse for infrastructure improvements associated with the Herriman Towne Center Community Development Area**

RECOMMENDATION:
Staff recommends that the Board approve the participation agreement.

ISSUE BEFORE COUNCIL:
HTC Communities, LLC., the master developer of the Herriman Towne Center, has constructed nearly all the infrastructure required to develop the project and has requested reimbursement from the city for certain infrastructure costs. Should the Community Development and Renewal Agency (CDRA) of Herriman City enter into an agreement to reimburse the developer for the costs of the infrastructure installed?

BACKGROUND/SUMMARY:
When the Herriman Towne Center (HTC) was created there were funding mechanisms created to generate and secure the necessary funds to construct the infrastructure needed for the development. The two mechanisms created were a Special Assessment Area (SAA) and a Community Development Area (CDA). In addition to these funding mechanisms, impact fees for roads, water, parks, and storm drainage associated with new development were also in effect. An SAA creates an annual assessment on the property that is paid by the property owner with their annual property tax. The anticipated revenue from the SAA was used as security for the purpose of obtaining funds through a bond for the purpose of constructing necessary infrastructure to support the project. A CDA allows the city to enter into agreements with other public agencies (i.e. Salt Lake County, Jordan School District, Unified Fire Authority, etc.) allowing the city to receive a portion of the property tax revenue the other agency would normally receive from the property within the CDA boundary for a certain amount of time. These revenues can be used to fund infrastructure improvements associated with the CDA area.

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The developer proceeded with the installation of key infrastructure improvements that were funded by a bond using SAA revenues (SAA Bond 1). The developer was reimbursed completely for those improvements associated with SAA Bond 1.

The developer proceeded with additional infrastructure improvements to support the HTC development with the anticipation of being reimbursed using CDA revenue and impact fees. There was never an agreement executed between the developer and the city for reimbursement of this infrastructure work, however, research shows that some reimbursements have been made for the following projects:

- 13400 South Roadway and Storm Drainage Improvements
- 5600 West Roadway Improvements
- TOD Market Study

Additionally, the developer anticipates constructing the extension of 13200 South from Fort Herriman Parkway to Mountain View Corridor. The costs incurred by the developer for this project could be reimbursed with funds from the CDA.

The developer has requested reimbursement for several other projects that are complete. There is no agreement in place with HTC Communities establishing criteria for reimbursement of costs associated with infrastructure installed for the HTC CDA.

DISCUSSION:

The city bonded twice using the SAA. HTC Communities received reimbursement totaling \$9.83MM for all work in associated with the first SAA bond. Projects funded by the first SAA bond included 13400 South road widening, Main Street realignment, property acquisition, and various utility improvements. The second bond was utilized solely by the city to construct Crane Park, and the U-Road (Black Locust Way and Fort Herriman Parkway).

Separate from the work associated with SAA Bond 1, HTC Communities proceeded with the installation of additional infrastructure to support the HTC with the anticipation that revenue from the CDA and impact fees would be used to provide reimbursement. The developer's records show that \$24.658MM in improvements was completed and that the city has reimbursed \$5.391MM toward those costs to date. This leaves an outstanding balance requested by the developer of \$19.267 MM.

City staff has reviewed the project costs submitted by the developer and researched finance records for items that have been reimbursed and have determined the following:

- Completed project costs eligible for reimbursement from the CDA total \$18,788,093
- Future project costs eligible for reimbursement are anticipated to be \$1,500,000

The draft agreement contemplates making reimbursement payments to the developer annually after the tax settlement is received from Salt Lake County. If no funds are received from the County in any calendar year then the city is not liable for reimbursement.

ALTERNATIVES:

Option	Pros	Cons
1. Approve the participation agreement as written. **RECOMMENDED**	Reimbursement is based on sound reasoning and in accordance with the city's master plans.	None
2. Approve the participation agreement with changes.	Changes may address an issue that has not yet been contemplated	Could delay the approval of the agreement and reimbursement to the developer.
3. Elect not to enter into the reimbursement agreement with the Developer.	None	Could become a legal matter that could be costly to the city.

FISCAL IMPACT:

All funds used for reimbursement will be exclusively from tax increment funding from the HTC CDA. Tax increment funds will be provided by the CDRA through December 2035. It is anticipated that annual tax settlements will be no less than $1.2MM (after bond payments are made). With anticipated development in the CDA, it is certain that the developer will be reimbursed in full prior to December 2035.

ATTACHMENTS

1. Participation Agreement
2. Projects Map

TAX INCREMENT PARTICIPATION AGREEMENT

This Tax Increment Participation Agreement (this "Agreement") is made and entered into by and between the Community Development and Renewal Agency of Herriman, a Utah Limited Purpose Local Government Entity (the "Agency"), and HTC Communities LLC, a Utah limited liability company ("Developer"), to be effective as of ___________________, 2023 (the "Effective Date"). Agency and Developer may sometimes be referred to separately as a "Party" and collectively as the "Parties."

<u>Recitals</u>:

A. Agency is a Utah Limited Purpose Local Government Entity with authority under Utah Code §17C-1-101 *et seq.* and other statutes and applicable laws to enter into participation agreements relating to the development of real property within its defined and adopted Community Development Area.

B. The Agency has created a Community Development Area known as the Herriman Town Center Community Development Area ("Area"); Developer owns certain real property located within the Area ("Property") and Developer intends to develop the Property (the "Project") and the Agency has determined that the Project is in the best interests of the Agency.

C. The Project has and will require the installation of infrastructure consisting of a water system, certain roads, storm drain, sanitary sewer improvements, parks and trails. To facilitate development of the Property, Developer has been and is willing to continue to contract for the construction of the improvements ("Improvements") as described in Exhibit "A" attached hereto and Agency is willing to reimburse Developer from tax increment and certain other impact fees as provided in this Agreement.

<u>Agreement</u>:

NOW, THEREFORE, in consideration of the premises, covenants, and undertakings set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties intending to be legally bound, agree as follows:

1. **<u>Agency's Obligations</u>**. The Improvements, which will qualify for Reimbursement under this Agreement began to be constructed by Developer in calendar year 2006. Since calendar year 2006, the City and the Developer have expended funds to construct qualifying Improvements within the Area. The Agency and the Developer have worked together to put Special Assessment Area Bonds ("SAA Bonds") in place for the purpose of constructing some of the Improvements. The Developer committed to subordinate the land within the Area for the bond and make assessment payments until such time that the tax increment generated from the Area was able to make the annual SAA Bond payments. The Agency shall remit funds received from the tax increment to the payment of the annual assessments for the SAA Bonds upon processing of the final bond payment, provided that funds are available. Agency shall reimburse Developer, on an annual basis, in an amount equal to the Reimbursement (defined below) from tax increment generated from the Area excluding tax increment attributable to Salt Lake County-Countywide Tax Levy and Library Levy, only after the city has paid the annual bond payment for the SAA Bonds. Tax increment shall mean the difference between (a) the total amount of real property tax revenues generated in any given current tax year by taxing authorities that have entered into an interlocal cooperative agreement with the Agency with respect to such tax increment based upon the real property situated within the Area using the then current assessed value of such real property and (b) the total amount of real property tax revenues that were generated from the Area using the taxable value of the real property located within the Area as set forth in the interlocal cooperative agreement between the taxing authorities and the Agency and referred to in the interlocal cooperative agreement as the base year ("Tax Increment"). The Agency shall make the annual Reimbursement payments no later than thirty (30) days after receipt of the final calendar year tax settlement from Salt Lake County and only if such Tax Increment is actually received

by the Agency. If no Tax Increment is received during a specific year, then no reimbursement to Developer for that specific year shall be due or payable. The Agency shall provide to the Developer on an annual basis a summary of all tax increment collected by the Agency and all bond assessment payments made.

2. **Developer's Obligations**. Developer has funded and agrees to fund One hundred percent (100%) of the cost for construction of the Improvements shown and listed in Exhibit "A". The actual cost incurred by Developer for projects that have been constructed has been approved by the Agency for the Improvements listed in exhibit "A" under the *Completed Projects* table and shall be referred to herein as the "Actual Costs". The anticipated costs to be incurred by The Developer for Improvements that have not been constructed as listed in Exhibit "A" under the *Future Projects* table shall be referred to herein as the "Estimated Costs". The Developer shall provide to the City all of the bids, invoices, and payments made for the Estimated Costs Improvements.

3. **Offset/ Payment Diversion Rights.** Developer agrees that, in addition to any other rights and remedies available under this Agreement, at law, or in equity, the Agency may offset against any payments otherwise due and owing to Developer under this Agreement any amount due and owing to the Agency by the Developer under this Agreement. Agency may also choose to temporarily postpone reimbursement to the Developer pursuant to any other reimbursement agreements between Agency and Developer in the event Developer has payments due and owing Agency.

4. **Representation and Warranties**.

a. Agency's Representations and Warranties. Agency represents, warrants, and agrees as follows as of the Effective Date:

i. Agency shall diligently and timely collect all Tax Increment that has accrued and is due and owing and that it is legally obligated to collect pursuant to this Agreement.

ii. Agency has full power and authority to enter into and perform all obligations under this Agreement and to execute and deliver this Agreement. Any and all hearings, ordinances, warrants, and approvals requisite to the execution and delivery of this Agreement have been held, enacted, or granted, and full compliance with notices all and hearing requirements under applicable law have been achieved.

iii. The execution and delivery of this Agreement and the documents required hereunder and the consummation of the transactions contemplated by this Agreement will not (i) conflict with or contravene any law, order, rule, or regulation applicable to the Agency or to the Agency's organizational or governing documents, (ii) result in the breach of any of the terms or provisions or constitute a default under any agreement or other instrument to which the Agency is a party or by which it may be bound or affected, or (iii) permit any party to terminate any such agreement or instruments or to accelerate the maturity or any indebtedness or other obligation of the Agency.

iv. This Agreement constitutes a valid and binding obligation of the Agency, enforceable according to its terms, except to the extent limited by bankruptcy, insolvency, and other laws of general application affecting creditors' rights. The Agency will defend the validity of this Agreement in the event of any litigation arising hereunder that names the Agency as a party or that attacks or questions the authority of the Agency to enter into or perform its obligations hereunder.

b. Developer's Representations and Warranties. Developer represents, warrants, and agrees as follows as of the Effective Date:

i. Developer has the unencumbered right and full authority to enter into this Agreement without the consent or approval of any other person or entity.

ii. Developer is duly organized, validly existing, and in good standing under the laws of Utah;

iii. The execution and delivery of this Agreement and the documents required hereunder and the consummation of the transactions contemplated by this Agreement will not (i) conflict with or contravene any law, order, rule, or regulation applicable to Developer or to the Developer's organizational or governing documents, (ii) result in the breach of any of the terms or provisions or constitute a default under any agreement or other instrument to which the Agency is a party or by which it may be bound or affected, or (iii) permit any party to terminate any such agreement or instruments or to accelerate the maturity or any indebtedness or other obligation of Developer.

iv. This Agreement constitutes a valid and binding obligation of Developer, enforceable according to its terms, except to the extent limited by bankruptcy, insolvency, and other laws of general application affecting creditors' rights.

v. Developer agrees to comply with the applicable provisions of Utah Code Ann. §17C-1-101 et seq. and applicable interlocal agreements between the Agency and various taxing entities.

6. **Miscellaneous Provisions**.

(a) Governing Law. This Agreement shall be interpreted and construed in accordance with the laws of the State of Utah.

(b) Force Majeure. Neither party shall be liable or deemed to be in default for any delay, failure, or interruption in performance under the Agreement resulting, directly or indirectly, from acts of God, acts of civil or military authority, acts of public enemy, war, accidents, fires, explosions, earthquakes, floods, failure of transportation, machinery or supplies, vandalism, strikes or other work interruptions, or any other cause beyond the control of either party. Both Parties, however, agree to make good faith efforts to perform under this Agreement in the event of any such circumstance.

(c) Agreement Binding on Successors. This Agreement shall be binding upon the successors and assignees of Agency and Developer.

(d) No Modification Except in Writing. This Agreement cannot be modified except in writing signed by both the Agency and Developer.

(e) Construction. The Parties stipulate that this Agreement and all agreements or documents incorporated herein shall not be subject to the rule of construction that a written agreement is construed against the Party preparing or drafting that Agreement.

(f) Headings. The descriptive headings of the paragraphs of this Agreement are inserted for convenience only and shall not control or affect the meaning or construction of any of the provisions hereof.

(g) Exhibits. Any exhibit referenced herein shall be deemed to have been incorporated herein by this reference with the same force and effect as if fully set forth in the body hereof.

(h) Validity. Invalidity of any portion or provisions of this Agreement by reason of the laws of Utah or for any other reason shall not render any other provisions or portions of this Agreement invalid.

(i) No Waiver. The failure of either Party to exercise in any respect a right provided for in this Agreement shall not be deemed to be a subsequent waiver of the same right or of any other right.

(j) Counterparts/Digital Version. This Agreement may be executed in any number of counterparts each of which, when executed and delivered, shall be deemed to be an original with all the counterparts constituting but one and the same instrument. The execution of this Agreement by any Parties hereto will not become effective until counterparts hereof have been executed by all Parties. Additionally, signatures delivered electronically shall bind the undersigned.

(k) Entire Agreement. This Agreement constitutes the entire agreement between the Parties pertaining to the subject matter hereof. All prior and contemporaneous agreements, representations, and understandings of the Parties, oral or written, regarding the subject of the infrastructure are hereby superseded and merged herein. Notwithstanding the above, the Parties acknowledge and agree that this Agreement is one of several agreements entered into between the Parties and Herriman City related to reimbursement of construction costs incurred by Developer for the construction of improvements on the Property.

(l) Amendments. No change or addition is to be made to this Agreement, except by a written amendment executed by the Parties.

(m) Severability. If any provision of this Agreement is declared void or unenforceable, such provision shall be severed from this Agreement, which shall otherwise remain in full force and effect. If any applicable law or court of competent jurisdiction prohibits or excuses the Agency from undertaking any contractual commitment to perform any act hereunder, this Agreement shall remain in full force and effect, but the provision requiring such action shall be deemed to permit the Agency to take such action at its discretion. In such event, the Agency agrees to negotiate in good faith and reach an alternative agreement or solution to meet the original intent of the provision to the maximum extent permitted by law.

[Signature Page Follows]

IN WITNESS WHEREOF, this Participation Agreement is entered as of the Effective Date.

COMMUNITY DEVELOPMENT AND RENEWAL AGENCY OF HERRIMAN

By_________________________________
Chair

ATTEST:

____
Jackie Nostrom, City Recorder

STATE OF UTAH)
: ss.
COUNTY OF SALT LAKE)

The foregoing instrument was acknowledged before me this ______ day of _______, 2023, by Nathan Cherpeski and Jackie Nostrom, as the City Manager and the City Recorder, respectively, of Herriman City, a Utah municipality.

____
Notary Public

DEVELOPER

HTC COMMUNITIES LLC,
a Utah limited liability company
By: Momentum-HTC, LLC
Its: Manager

By_________________________________
Its: Manager

State of Utah)
ss.
County of Salt Lake)

On the __ day of ___________, _______ personally appeared before me, __________ who duly acknowledged that he executed the within document as the Manager of Momentum-HTC, LLC the Manager of HTC Communities, LLC.

____
NOTARY PUBLIC

Residing at:___________________

Exhibit A

IMPROVEMENTS

Table 1. Completed Projects

Project ID	Name	Actual Cost	Amount Eligible for Reimbursement
2	Main Street, Brundisi Way, Elementary Dr.	$ 14,478	$ 14,478
3	U-Road	$ 203,412	$ 203,412
4	Fort Herriman Pkwy	$ 3,845,500	$ 3,845,500
5	Herriman Rose Blvd	$ 1,314,269	$ 1,314,269
6	13400 South	$ 2,040,355	$ 483,897
7	5600 West	$ 3,380,233	$ 104,081
8	Outer U-Road East	$ 2,091,499	$ 2,091,499
9	Outer U-Road West	$ 1,448,835	$ 1,448,835
10	Moorfield Dr.	$ 681,247	$ 681,247
11	Transit Park Property & Improvements	$ 2,026,895	$ 2,026,895
12	HTC Storm Water and Park Improvements*	$ 494,646	$ 494,646
13	Herriman Entry Park	$ 121,653	$ 121,653
A	HTC Master Planning	$ 11,700	$ 11,700
B	TOD Market Study - SW SLCo Transit	$ 45,000	$ 20,515
C	Bond Payments**	$ 5,925,467	$ 5,925,467
	Totals	$ 23,976,471	$ 18,788,093

* Only Storm Water Portion is Reimbursable

** Bond Payments (Project ID: C) are to be reimbursed after bond(s) have been paid off.

Table 2. Future Projects

Project ID	Name	Estimated Cost	Amount Eligible for Reimbursement
1	Herriman Rose Blvd - Tower Ridge Drive to MVC	$ 1,500,000	$ 1,500,000
	Totals:		

Completed Projects

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		$ 23,976,471	$ 18,788,093

* Only Storm Water Portion is Reimbursable

** Bond Payments to be reimbursed after bond has been paid off.

HERRIMAN CITY ENGINEERING DEPARTMENT

Infrastructure Requesting Reimbursement

0 500 1,000
Feet

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