



City Council Memorandum

To: City Council
From: Eric Maass, Economic Development Coordinator
Date: January 28, 2022
Item: Adopt Resolution Approving 1st Amendment to Development Contract between City of Hastings, HEDRA, and NJS Development, LLC

REQUEST:

Staff continues to work with NJS Development, LLC on the development of the UBC north site. NJS has continued coordination with adjacent property owners resulting in a short delay in land use submittals. As a result, the following actions are requested:

- 1) **Adopt Resolution Approving 1st Amendment to Development Contract with NJS Development, LLC.**

RECOMMENDATION:

HEDRA unanimously approved of the proposed 1st amendment to the development contract between NJS Development, LLC, HEDRA, and City of Hastings. Staff supports that approval.

BACKGROUND INFORMATION:

History:

The Developer has hosted a neighborhood meeting and continued coordination with neighbors directly adjacent to the proposed project. The Developer has closed on the private property located at 404 3rd Street E.

Contract Amendment Details

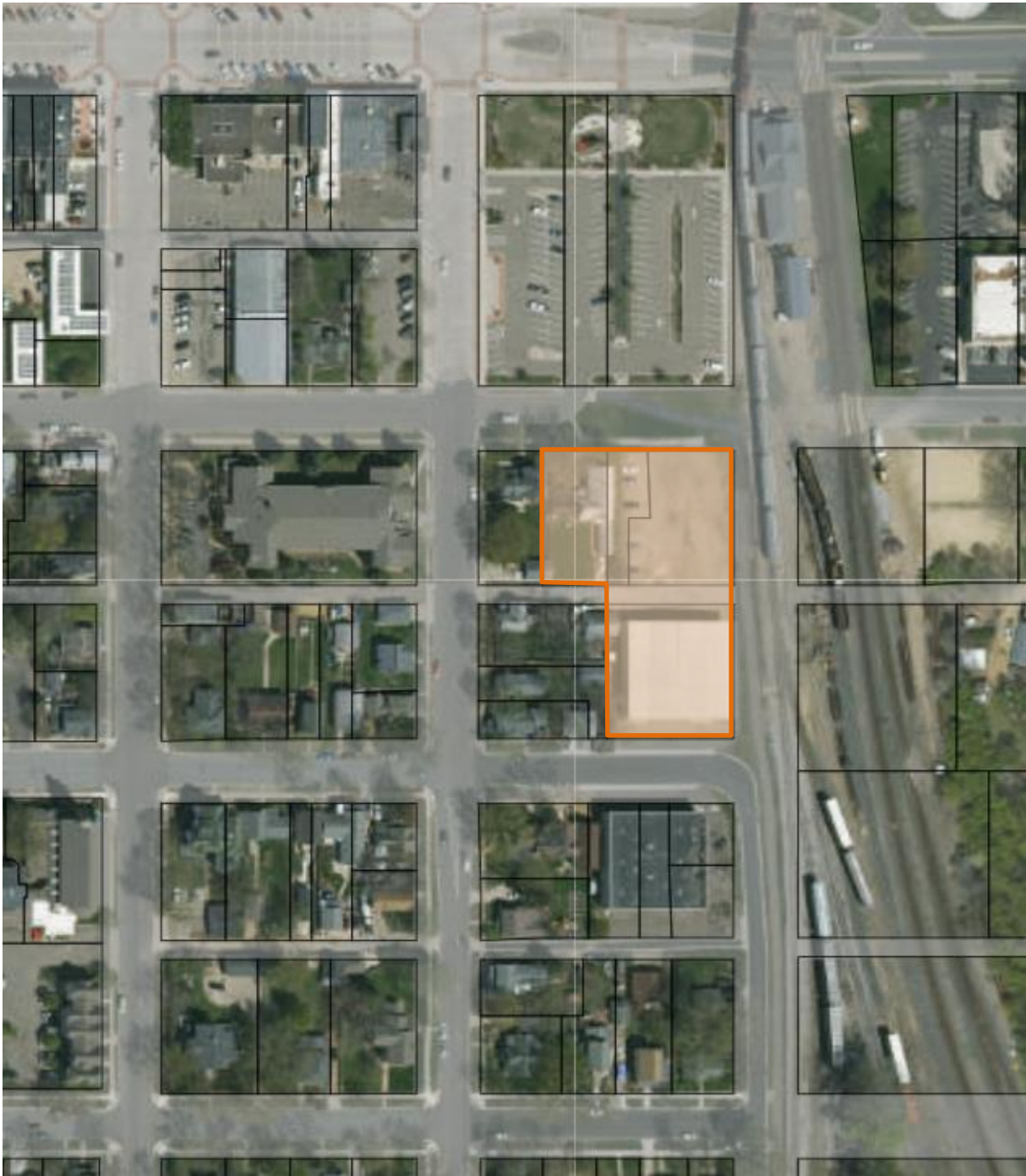
As presented, the Purchase and Development Agreement establishes the following:

- Submittal of construction documents to within 30 days of closing.
- Closing date from February 28th to 60 days from receiving land use entitlements.
- Establish land use entitlements to be submitted by contingency date of April 10, 2022.
- Closing date would then be on or before June 9, 2022 with commencement of construction no later than June 15, 2022 and construction completion by December 31, 2023.

ATTACHMENTS:

- Location Map
- Resolution
- First Amendment to Development Contract

Location Map



FIRST AMENDMENT TO DEVELOPMENT AGREEMENT

THIS FIRST AMENDMENT TO DEVELOPMENT AGREEMENT (this “First Amendment”) is entered into as of _____, 2022 (the “Effective Date”), by and between the Hastings Economic Development and Redevelopment Authority, a public body corporate and politic organized under the laws of Minnesota (“HEDRA”), the City of Hastings, a Minnesota municipal corporation (“City”), and NJS Development LLC, a South Dakota limited liability company (“Developer”).

RECITALS

Recital No. 1. HEDRA, City and Developer entered into a Development Agreement dated November 11, 2021, recorded as Document No. _____ on _____ in the Dakota County Recorder’s Office (“Development Agreement”), for the purchase and sale of real property identified in the Development Agreement.

Recital No. 2. Developer has requested the Development Agreement be amended to extend the Closing Date to allow additional time to submit the Construction Plans.

Recital No. 3. HEDRA and City do not object to the extension.

NOW, THEREFORE, in consideration of the mutual promises and covenants of each to the other contained in this First Amendment and other good and valuable consideration, receipt of which is hereby acknowledged, the parties hereto do covenant and agree as follows:

1. Section 1(E) of the Development Agreement shall be removed and replaced in its entirety as follows:
 - 1(E). “Closing Date” means on or before sixty (60) days following Developer obtaining all Land Use Entitlements, but no later than June 9, 2022, unless otherwise agreed to by the parties.
2. Section 1(W) shall be added to the Development Agreement as follows:

1(W). “Land Use Entitlements” means planning applications, including but not limited to, plat, site plan, and rezoning approvals, obtained by Developer for the Minimum Improvements.

3. Section 6.1(A)(6) of the Development Agreement shall be removed and replaced in its entirety as follows:

6.1(A)(3). On or before the Contingency Date, Developer shall have obtained all appropriate approvals and permits necessary for the Proposed Use on the Property, which approvals may include, without limitation, access permits, signage permits, building permits, required licenses (the “Approvals”). All costs and expenses related to the preparation of any documentation necessary to create any plans, specifications or the like shall be the responsibility of the Developer.

4. Section 6.1(A)(16) shall be added to the Development Agreement as follows:

6.1(A)(16). On or before Contingency Date, Developer shall have obtained all Land Use Entitlements.

5. Section 10.1 of the Development Agreement shall be removed and replaced in its entirety as follows:

10.1. Construction of Minimum Improvements. No later than thirty (30) days before the Closing Date, Developer shall submit Construction Plans to the City. The Construction Plans shall provide for the construction of Minimum Improvements. All Minimum Improvements constructed on the Property shall be constructed, operated and maintained in accordance with the terms of the Construction Plans, this Agreement, the Comprehensive Plan, and all local, Minnesota and federal laws and regulations (including, but not limited to, Environmental Controls and Land Use Regulations). Developer will use commercially reasonable efforts to obtain, or cause to be obtained, in a timely manner, all required permits, licenses and approvals, and will use commercially reasonable efforts to meet, in a timely manner, the requirements of applicable Environmental Controls and Land Use Regulations which must be met before Developer’s Minimum Improvements may be lawfully constructed.

6. Section 10.6 of the Development Agreement shall be removed and replaced in its entirety as follows:

10.6 Commencement and Completion of Construction. Subject to Unavoidable Delays, Developer shall commence construction of the Minimum Improvements no later than June 15, 2022. “Commence Construction” shall mean the start of site grading and installation of utilities. Subject to Unavoidable Delays, Developer shall have substantially completed the construction of the Minimum Improvements no later than December 31, 2023. All work with respect to the Minimum Improvements to be constructed or provided by Developer on the Property shall be in substantial conformity with the Construction Plans and Developer will not modify the size or exterior

appearance of the Minimum Improvements without the consent of HEDRA and the City, which consent shall not be unreasonably withheld.

7. Except as provided for above, the terms and provisions of the Development Agreement shall remain in full force and effect.
8. This First Amendment and all disputes or controversies arising out of or relating to this First Amendment or the transactions contemplated hereby shall be governed by, and construed in accordance with, the internal laws of the State of Minnesota, without regard to the laws of any other jurisdiction that might be applied because of the conflicts of laws principles of the State of Minnesota.
9. Nothing contained herein shall be deemed a waiver by HEDRA of any governmental immunity defenses, statutory or otherwise. Further, any and all claims brought by Developer or its successors or assigns, shall be subject to any governmental immunity defenses of HEDRA and the maximum liability limits provided by Minnesota Statutes, Chapter 466.
10. This First Amendment may be executed in two or more counterparts, all of which shall be considered one and the same instrument and shall become effective when one or more counterparts have been signed by the parties and delivered to the other parties.
11. This First Amendment shall not be amended, modified or supplemented, except by a written instrument signed by an authorized representative of each party.

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IN AGREEMENT, the parties hereto have hereunto set their hands as of the Effective Date.

**HEDRA:
HASTINGS ECONOMIC
DEVELOPMENT AND
REDEVELOPMENT AUTHORITY**

By _____

Its President

By _____
Eric Maass
Its Secretary

STATE OF MINNESOTA)
) ss.
COUNTY OF DAKOTA)

The foregoing instrument was acknowledged before me this ____ day of _____, 2022, by _____ and Eric Maass, the President and Secretary respectively, of the Hastings Economic Development and Redevelopment Authority, a public body corporate and politic organized and existing under the Constitution and laws of Minnesota, on behalf of HEDRA.

Notary Public

**CITY:
CITY OF HASTINGS**

By: _____
Mary Fasbender
Its Mayor

By: _____
Kelly Murtaugh
Its City Clerk

STATE OF MINNESOTA)
) ss.
COUNTY OF DAKOTA)

On this ____ day of _____, 2022, before me a Notary Public within and for said County, personally appeared Mary Fasbender and Kelly Murtaugh, to me personally known, who being each by me duly sworn, each did say that they are respectively the Mayor and City Clerk of the City of Hastings, the municipality named in the foregoing instrument, and that the seal affixed to said instrument was signed and sealed on behalf of said municipality by authority of its City Council and said Mayor and City Clerk acknowledged said instrument to be the free act and deed of said municipality.

Notary Public

CITY OF HASTINGS
DAKOTA COUNTY, MINNESOTA

CITY COUNCIL RESOLUTION NO. 01-__-22

A RESOLUTION AUTHORIZING SIGNATURE OF THE FIRST AMENDMENT TO A CONTRACT FOR PRIVATE DEVELOPMENT WITH NJS DEVELOPMENT, LLC

Council member _____ introduced the following resolution and moved its adoption:

WHEREAS, by Resolution No. 11-06-21, the Hasting City Council authorized staff to terminate an existing contract for private development and enter into a new contract for private development of the real property described on Exhibit A (the "HEDRA Property") for redevelopment purposes to NJS Development, LLC ("Developer"); and

WHEREAS, the Developer will be constructing the Project on the real property legally described on Exhibit A (the "Property"); and

WHEREAS, the Development Contract describes and articulates the sale of the Property and the Developer agrees to accept these terms of the sale; and

WHEREAS, the proposed first amendment would establish that application for Land Use Entitlements are due from the Developer by the Contingency Date which is April 10, 2022 resulting in a closing date of on or before June 9, 2022, commencement of construction no later than June 15, 2022, and construction completion by December 31, 2023; and

NOW THEREFORE BE IT RESOLVED by the City Council of the City of Hastings as follows:

- 1) The City Council authorizes signature for the First Amendment to Development Agreement between the City of Hastings, HEDRA, and NJS Development, LLC

Council member _____ moved a second to this resolution and upon being put to a vote it was adopted by the Council Members present.

Adopted by the Hastings City Council on February 7, 2022, by the following vote:

AYES:

NAYS:

ABSENT:

Mary Fasbender, Mayor

ATTEST:

Kelly Murtaugh, City Clerk

(City Seal)

EXHIBIT A
LEGAL DESCRIPTION OF PROPERTY

Real property in Dakota County, Minnesota legally described as follows:

PID: 19-32150-17-030 (Abstract Property)

Lot Three (3) in Block Seventeen (17) in the Town (now city) of Hastings, according to the plat thereof now on file and of record in the office of the County Recorder in and for Dakota County, Minnesota.

PID: 19-32150-17-020 (Abstract Property)

All of Lot One (1), Block Seventeen (17) in the Town of Hastings, excepting therefrom, however, all that portion lying northeasterly of a line 25 feet southwesterly of, measured at right angles and parallel with, the centerline of Chicago, Milwaukee, St. Paul, and Pacific Railroad Company's spur track as now there laid across Bailey Street in said Town of Hastings, Dakota County, Minnesota; and

ALSO

All of Lot Two (2), Block Seventeen (17), Town of Hastings, excepting therefrom the West two-thirds (W 2/3) of the North half (N 1/2) of said Lot Two (2) and further excepting therefrom the West one-third (W 1/3) of the South half (S 1/2) of said Lot Two (2), Town of Hastings, Dakota County, Minnesota.

PID: 19-32150-17-021 (Abstract Property)

The North 1/2 of the West 1/2 of the East 2/3 of Lot 2 and the West 1/3 of Lot 2, Block 17, Town of Hastings, Dakota County, Minnesota.

PID: 19-32150-17-080 (Abstract Property)

Lots 7 and 8, Block 17, Town of Hastings, Dakota County, Minnesota.