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**Finance and Records**

**MEMO**

To: Gregg Mandsager, City Administrator

From: Nancy A. Lueck, Finance Director

Date: July 18, 2016

Re: Muscatine Mall TIF – Contract Settlement and Termination Agreement

**Introduction:**

In January, 2008, the City entered into an agreement with the three new owners of the Muscatine Mall to assist in their plan to redevelop, renovate, and improve this mall. The agreement provided for a rebate of 50% of the incremental taxes for a 20-year period up to a maximum total of \$5,325,000.

**Background:**

The three parties to the development agreement no longer have any ownership interest in the Muscatine Mall and no ability to make improvements to this property going forward. With the existing agreement still in place, the remaining amount of potential TIF rebate obligations (\$5,174,263) is considered debt of the City and counts against the City's legal debt limit.

City staff and the City's bond attorney have been working with the three previous owners and their attorney for a settlement and termination of the current development agreement. The proposed settlement would be in the amount of the fiscal year 2015/2016 rebate (\$42,032.83) and the first half of the rebate for the 2016/2017 year (\$18,781.10) for a total of \$60,813.93. The three parties have requested the settlement amount be allocated and paid to each of the parties according to the allocation in the settlement agreement.

Additionally, one of the previous owners continues to own property adjacent to the Mall which is in the Mall TIF district. This owner has requested a new 10 year, 50% basic TIF agreement for the planned improvements to those parcels using the base value of those parcels in the previous agreement. Rebates under the proposed new agreement would be subject to annual appropriation.

**"I remember Muscatine for its sunsets. I have never seen any  
on either side of the ocean that equaled them" — Mark Twain**

**Recommendation:**

Please include the attached Contract Settlement and Termination Agreement on the agenda for the July 21 meeting. Please contact me if you have any questions.

## **CONTRACT SETTLEMENT AND TERMINATION AGREEMENT**

THIS SETTLEMENT AND TERMINATION AGREEMENT is entered into by and among the City of Muscatine, Iowa (the "City"); Financial District Properties MM, LLC ("FDP"); KRE, LLC ("KRE"); and Mogul Holdings, LLC ("Mogul") as of the \_\_\_ day of \_\_\_\_\_, 2016.

WHEREAS, the City, pursuant to and in strict compliance with all laws applicable to the City, and in particular the provisions of Chapter 403 of the Code of Iowa, has adopted an Urban Renewal Plan for the Consolidated Muscatine Urban Renewal Area (the "Urban Renewal Area"); and

WHEREAS, the City has adopted an ordinance providing for the division of taxes levied on taxable property in the Urban Renewal Area pursuant to Section 403.19 of the Code of Iowa and establishing the fund referred to in Subsection 2 of Section 403.19 of the Code of Iowa (the "Urban Renewal Tax Revenue Fund"), which fund and the portion of taxes referred to in that subsection may be irrevocably pledged by the City for the payment of the principal and interest on indebtedness incurred under the authority of Section 403.9 of the Code of Iowa to finance or refinance in whole or in part projects in the Urban Renewal Area; and

WHEREAS, the City previously authorized and entered into a development agreement (the "Development Agreement") attached hereto as Exhibit A with FDP, KRE, and Mogul (collectively, the "Developers"), pursuant to which the Developers agreed to undertake certain redevelopment, renovation and improvement of the Muscatine Mall and adjacent out-lots pursuant to the Development Agreement (the "Project") on the Property (as defined in the Development Agreement), and the City agreed to provide tax increment payments to the Developers; and

WHEREAS, the City and the Developers have determined it to be in their mutual best interests to settle and terminate the Development Agreement; and

WHEREAS, this Settlement and Termination Agreement has been prepared to provide for the final termination of the Development Agreement and to set forth conditions precedent to such termination;

NOW, THEREFORE, the parties hereto, intending to be legally bound, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, hereby agree as follows:

1. As conditions precedent to the termination of the Development Agreement, the City shall concurrently remit three Payments (as defined in the Development Agreement) totaling \$60,813.93, to the Developers upon full execution of this Settlement and Termination Agreement payable to and as follows:

\$34,094.02 to FDP;

\$3,990.56 to KRE;

\$22,729.35 to Mogul.

2. Upon the remittance by the City of the amounts set forth in section 1 above (collectively, the “Final Payment”), the Development Agreement shall terminate. The date on which the Final Payment is remitted shall hereinafter be referred to as the “Termination Date”.
3. The City, KRE, FDP and Mogul hereby each mutually release and discharge each other from any ongoing obligations and liabilities under the Development Agreement as of and after the Termination Date. The City, KRE, FDP and Mogul also hereby each mutually release and discharge each other from any and all claims, liabilities, obligations, demands or causes of action, known or unknown, fixed or contingent, existing as of the Termination Date, which they may have or claim to have against one another for breach of contract based on the Development Agreement or by virtue of any other legal or equitable claim or theory arising out of, relating to or accruing from the Development Agreement. The releases set forth in this paragraph shall not apply to a breach of this Settlement and Termination Agreement.
4. This Settlement and Termination Agreement constitutes the entire understanding of the parties hereto with respect to the obligations contemplated hereby and supersedes all prior agreements and understandings between the parties with respect to the subject matter hereof. No representations, warranties, undertakings or promises, whether oral, implied, written or otherwise, have been made by any party to the other unless expressly stated in this Settlement and Termination Agreement or the Development Agreement, or unless mutually agreed to in writing between the parties thereto after the date hereof, and no party has relied upon any verbal representations, agreements or understandings not expressly set forth herein.
5. This Settlement and Termination Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which, when taken together, shall constitute one in the same. This Settlement and Termination Agreement shall be deemed fully executed and effective when all parties have executed at least one of the counterparts, even though no single counterpart bears all such signatures.
6. Facsimile copies of this Settlement and Termination Agreement and the signatures hereto may be used with the same force and effect as the original.

[Signatures Commence on Following Page]

IN WITNESS WHEREOF, the parties hereto have executed this Settlement and Termination Agreement as of the date first written above.

CITY OF MUSCATINE, IOWA, an Iowa municipal corporation

By \_\_\_\_\_  
Mayor

Attest:

By \_\_\_\_\_  
City Clerk

FINANCIAL DISTRICT PROPERTIES MM, LLC, an Iowa limited liability company

By \_\_\_\_\_

KRE, LLC, an Iowa limited liability company

By \_\_\_\_\_

MOGUL HOLDINGS, LLC, an Iowa limited liability company

By \_\_\_\_\_

**Exhibit A**

[Attach Development Agreement]