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FINANCE & RECORDS

MEMO

To: Gregg Mandsager, City Administrator

From: Nancy A. Lueck, Finance Director

Date: May 16, 2017

Re: Resolution Setting the Date for a Public Hearing on an Amended Development Agreement with Riverview Hotel Development

Introduction and Background:

The City Council approved the original Development Agreement with Riverview Hotel Development at their meeting on December 18, 2014. The City and the Developer now propose to amend the original Agreement in order to (1) update the completion date of the Project; (2) update the Employment Requirements with respect to the Project; (3) increase the amount of tax increment financing assistance to be provided to the Company from \$6,000,000 to \$6,150,000; and (4) make other related changes.

A public hearing is required in order to approve the amended Development Agreement and the proposal to increase the incremental property tax payments thereunder, pursuant to Section 403.9 of the Code of Iowa.

Recommendation:

Please include on the agenda for the May 18, 2017 meeting the attached resolution setting a public hearing for June 1, 2017 on the proposed amended development agreement. Please contact City Administrator Gregg Mandsager or me if you have any questions.

SET DATE FOR HEARING ON
AMENDED DEVELOPMENT
AGREEMENT

(Riverview Hotel Development)

421464-42

Muscatine, Iowa

May 18, 2017

A meeting of the City Council of the City of Muscatine, Iowa, was held at _____ o'clock __.m., on May 18, 2017, at the _____, Muscatine, Iowa, pursuant to the rules of the Council.

The Mayor Pro Tem presided and the roll was called, showing members present and absent as follows:

Present: _____

Absent: _____.

Council Member _____ introduced the resolution next hereinafter set out and moved its adoption, seconded by Council Member _____; and after due consideration thereof by the City Council, the Mayor Pro Tem put the question upon the adoption of said resolution, and the roll being called, the following named Council Members voted:

Ayes: _____

Nays: _____.

Whereupon, the Mayor Pro Tem declared said resolution duly adopted, as follows:

RESOLUTION NO. _____

Resolution Setting a Date of Meeting at which it is Proposed to Approve an Amended Development Agreement with Riverview Hotel Development, Including Annual Appropriation Tax Increment Payments

WHEREAS, the City of Muscatine, Iowa (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 Muscatine Consolidated Urban Renewal Area (the "Urban Renewal Area"); and

WHEREAS, this City Council 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, 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 has previously entered into a certain development agreement (the "Original Agreement") with Riverview Hotel Development (the "Developer") in connection with the development of a hotel and conference center (the "Project") on certain real property in the City's downtown in the Urban Renewal Area; and

WHEREAS, the City and the Developer now propose to amend the Original Agreement in order to (1) update the completion date of the Project; (2) update the Employment Requirements with respect to the Project; (3) increase the amount of tax increment financing assistance to be provided to the Company from \$6,000,000 to \$6,150,000; and (4) make other related changes; and

WHEREAS, it is necessary to set a date for a public hearing on an amended Development Agreement (the "Amended Agreement") and the proposal to increase the incremental property tax payments thereunder, pursuant to Section 403.9 of the Code of Iowa;

NOW THEREFORE, IT IS RESOLVED by the City Council of the City of Muscatine, Iowa, as follows:

Section 1. This City Council shall meet on June 1, 2017, at _____ o'clock __.m., at the _____, in the City, at which time and place proceedings will be instituted and action taken to approve the Amended Agreement and to authorize the increased annual appropriation incremental property tax payments to the Developer.

Section 2. The City Clerk is hereby directed to give notice of the proposed action, the time when and place where said meeting will be held, by publication at least once not less than four (4) days and not more than twenty (20) days before the date of said meeting in a legal newspaper of general circulation in the City. Said notice shall be in substantially the following form:

NOTICE OF MEETING FOR APPROVAL OF AMENDED DEVELOPMENT
AGREEMENT WITH RIVERVIEW HOTEL DEVELOPMENT AND
AUTHORIZATION OF INCREASED ANNUAL APPROPRIATION TAX
INCREMENT PAYMENTS

The City Council of the City of Muscatine, Iowa, will meet at the _____, on June 1, 2017, at _____ o'clock ____m., at which time and place proceedings will be instituted and action taken to approve an amended Development Agreement (the "Amended Agreement") between the City and Riverview Hotel Development (the "Developer") in connection with the development of a hotel and conference center (the "Project") on certain real property in the City's downtown in the Muscatine Consolidated Urban Renewal Area, which Amended Agreement (1) updates the completion date of the Project; (2) updates the Employment Requirements with respect to the Project; (3) increases the amount annual appropriation incremental property tax payments to be provided to the Developer from \$6,000,000 to \$6,150,000; and (4) makes other related changes.

As authorized by Section 403.9 of the Code of Iowa, the commitment to make annual appropriation incremental property tax payments to the Developer under the Amended Agreement will not be a general obligation of the City, but will be payable solely and only from incremental property tax revenues generated within the Muscatine Consolidated Urban Renewal Area. All payments under the Amended Agreement may be made subject to annual appropriation by the City Council.

At the meeting, the City Council will receive oral or written objections from any resident or property owner of the City. Thereafter, the City Council may, at the meeting or at an adjournment thereof, take additional action to approve the Amended Agreement or may abandon the proposal.

This notice is given by order of the City Council of Muscatine, Iowa, in accordance with Section 403.9 of the Code of Iowa.

Gregg Mandsager
City Administrator

Section 3. All resolutions or parts of resolutions in conflict herewith are hereby repealed.

Passed and approved May 18, 2017.

Mayor Pro Tem

Attest:

City Clerk

• • • •

On motion and vote the meeting adjourned.

Mayor Pro Tem

Attest:

City Clerk

ATTESTATION AND PUBLICATION CERTIFICATE:

STATE OF IOWA
COUNTY OF MUSCATINE SS:
CITY OF MUSCATINE

I, the undersigned, City Clerk of the City of Muscatine, hereby certify that the foregoing is a true and correct copy of the minutes of the City Council of the City relating to the adoption of a resolution to fix a date of meeting at which it is proposed to take action to approve an amended Development Agreement.

I do further certify that the notice of hearing, to which the printed slip attached to the publisher's original affidavit hereto attached is a true and complete copy, was published on the date and in the newspaper specified in such affidavit, which newspaper has a general circulation in the City.

WITNESS MY HAND this ____ day of _____, 2017.

City Clerk

(Attach here the publisher's original affidavit with clipping of the notice as published.)

(PLEASE NOTE: Do not sign and date this certificate until you have checked a copy of the published notice and have verified that it was published on the date indicated in the publisher's affidavit.)

AMENDED DEVELOPMENT AGREEMENT

This Amended Development Agreement is entered into between the City of Muscatine, Iowa (the "City") and Riverview Hotel Development, (the "Company") as of the ____ day of _____, 2017 (the "Commencement Date").

WHEREAS, the City has established the Muscatine Consolidated Urban Renewal Area (the "Urban Renewal Area"), and has adopted a tax increment ordinance for the Urban Renewal Area; and

WHEREAS, the Company owns certain real property situated in downtown Muscatine in the Urban Renewal Area, such property being legal described on Exhibit A hereto (the "Property"); and

WHEREAS, the Company has proposed to undertake the development of a conference center and hotel facility (the "Project") on the Property; and

WHEREAS, the Company has requested that the City provide financial assistance in the form of incremental property tax payments to be used by the Company in defraying the costs of constructing and maintaining the Project; and

WHEREAS, the City and the Company entered into a Development Agreement (the "Original Agreement") dated December 18, 2014, pursuant to which the City agreed to provide tax increment financing assistance with respect to the Project in an aggregate amount not to exceed \$6,000,000; and

WHEREAS, the City and the Company have agreed to adopt this Amended Development Agreement (the "Agreement") to (1) update the completion date of the Project; (2) increase the amount of tax increment financing assistance to be provided to the Company; and (3) make other related changes; and

WHEREAS, this Agreement will replace the Original Agreement; and

WHEREAS, Chapter 15A of the Code of Iowa authorizes cities to provide grants, loans, guarantees, tax incentives and other financial assistance to or for the benefit of private persons;

NOW THEREFORE, the parties hereto agree as follows:

A. Company's Covenants

1. Project. The Company agrees to cause the completion of the Project on the Property and to ensure that the completed Project is used in the operations of a hotel and conference center throughout the Term, as hereinafter defined, of this Agreement. The Company will complete the Project in accordance with the preliminary plans and specifications (the "Project Plans") for the Project which have been reviewed and approved by the City and are attached hereto as Exhibit B. It is anticipated that the Company will invest not less than \$41,000,000 into the development of the Project. The Project will be completed and placed into service by no later than December 31, 2017.

The Project shall be comprised of a 11,500 square foot conference center with an attached hotel comprised of not less than 112 guest rooms. In the construction of the Project and affiliated development of the Property, the Company shall meet all municipal regulations, including, but not limited to, building code, fire code, zoning, platting and hard surfacing requirements.

In addition, the Company, has acquired the property situated at 120 West 2nd Street, upon which certain demolition and site clearance activities have recently been undertaken. The Company shall undertake the redevelopment of this property as a green space connector between 2nd Street West and the riverfront and shall complete such redevelopment by no later than March 31, 2018.

The Company and the City agree to execute a certificate of completion, in substantially the form attached hereto as Exhibit C, when the Project is completed to evidence compliance with this provision. The Company hereby acknowledges that its rights to receive the Payments, as set forth in Section B, hereof, is contingent upon its ongoing ownership and use of the Property and the Project in its business operations in accordance with the requirements of this Section A.1.

2. Operational Certification. The Company agrees to submit documentation to the satisfaction of the City by no later than October 15, commencing October 15, 2018, of each year during the Term (as hereinafter defined) demonstrating that the completed Project is being used as a conference center and hotel facility.

3. Minimum Assessment Agreement. The Company agrees to enter into an assessment agreement (the "Assessment Agreement"), pursuant to Section 403.6 of the Code of Iowa fixing the minimum assessed valuation of the Property, in contemplation of the value to be added by the proposed Project, at not less than Seventeen Million Two Hundred Thousand Dollars (\$17,200,000) (the "Minimum Assessed Valuation") as of January 1, 2018 (the "First Valuation Date"). It is intended by the Company that the Minimum Assessed Valuation shall be established on the Muscatine County property tax rolls as of the First Valuation Date regardless of the then-current degree of completion or incompleteness of the Project. The Assessment Agreement shall remain in effect throughout the Term (as hereinafter defined).

4. Property Taxes. The Company agrees to ensure timely payment of all property taxes as they come due with respect to the Property throughout the Term (as hereinafter defined).

5. Property Tax Payment Certifications. The Company agrees to certify (the "Triggering Certification") to the City its intent for the Payments, as hereinafter defined, to commence. The Triggering Certification shall be made by no later than October 1 of the year immediately preceding the fiscal year in which the Developer intends for the Payments to be made. Furthermore, the Company agrees to certify to the City by no later than November 1 of each year, commencing November 1 of the year in which the Triggering Certification is made, an amount (the "Company's Estimate") the estimated Incremental Property Tax Revenues anticipated to be paid in the fiscal year immediately following such certification with respect to the Property relative to new value added as a result of the property tax assessment of the Project (which amount shall not be less than the Minimum Assessed Valuation) factored by the Annual Percentage (as hereinafter defined). In submitting each such Company's estimate, the Company will complete and submit the worksheet attached hereto as Exhibit D. The City reserves the right to review and request revisions to each such Company's Estimate to ensure the accuracy of the figures submitted. For purposes of this Agreement, Incremental Property Tax Revenues are produced by multiplying the consolidated property tax levy (city, county, school, etc.) times the incremental valuation of the Property, then subtracting debt service levies of all taxing jurisdictions, subtracting the school district instructional support and physical plant and equipment levies and subtracting any other levies which may be exempted from such calculation by action of the Iowa General Assembly.

Upon request, the City staff shall provide reasonable assistance to the Company in formulating the annual estimates required under this Section A.5.

6. Legal and Administrative Costs. The Company hereby agrees to pay for the legal fees and administrative costs incurred by the City in connection with the drafting, negotiation and authorization of the Original Agreement, including the prerequisite amendment to the urban renewal plan, and the drafting of this Agreement up to an aggregate amount not in excess of \$8,000. The Company agrees to remit payment to the City within 30-days of the submission of reasonable documentation by the City to the Company evidencing such costs.

7. Employment Requirements. The Company agrees to establish and maintain a workforce (the "Workforce Requirement") of not less than seventy (70) employees with a minimum annual payroll and contractor payments of not less than One Million Eight Hundred and Eighty-Eight Thousand Dollars (\$1,888,000) in connection with the Company's business. This includes 32 hotel or management company staff with a minimum annual payroll and contractor payments of not less than One Million One Hundred Thousand Dollars (\$1,100,000) (including, but not limited to hotel, parking, spa operations, and kitchen staff) and an estimated 38 contract laborers with contractor payments of not less than Seven Hundred and Eighty-Eight Thousand Dollars (\$788,000) (including, but not limited to landscaping, valet, and catering contract labor). The Company agrees to demonstrate to the satisfaction of the City, by no later than October 15 of each year, commencing October 15, 2018, the number of employees hired and the annual payroll anticipated with respect to the compensation of such employees. The hotel will have a three-year period, until December 31, 2020, to ramp up to full employment and contract labor requirements. Failure to comply with this Section as stated will give the City the right to withhold Payments, as defined in Section B, below.

8. Insurance.

(a) The Company, and any successor in interest to the Company, shall obtain and continuously maintain insurance on the Property and the completed Project and, from time to time at the request of the City, furnish proof to the City that the premiums for such insurance have been paid and the insurance is in effect. The insurance coverage described below is the minimum insurance coverage that the Company must obtain and continuously maintain, provided that the Company shall obtain the insurance described in clause (i) below prior to the commencement of construction of the Project (excluding excavation and footings):

- (i) Builder's risk insurance, written on the so-called "Builder's Risk—Completed Value Basis," in an amount equal to one hundred percent (100%) of the insurable value of the Project at the date of completion, and with coverage available in non-reporting form on the so-called "all risk" form of policy.
- (ii) Comprehensive general liability insurance (including operations, contingent liability, operations of subcontractors, completed operations and contractual liability insurance) together with an Owner's/Contractor's Policy naming the City, as an additional insured, with limits against bodily injury and property damage of not less than \$2,500,000 for each occurrence (to accomplish the above-required limits, an umbrella excess liability policy may be used), written on an occurrence basis.
- (iii) Workers compensation insurance, with statutory coverage.

(b) All insurance required in this Section shall be obtained and continuously maintained in responsible insurance companies selected by the Company or its successors that are authorized under the laws of the State of Iowa to assume the risks covered by such policies. Unless otherwise provided in this Section, each policy must contain a provision that the insurer will not cancel nor modify the policy without giving written notice to the insured at least thirty (30) days before the cancellation or modification becomes effective. Not less than fifteen (15) days prior to the expiration of any policy, the Company, or its successors or assigns, must renew the existing policy or replace the policy with another policy conforming to the provisions of this Section. In lieu of separate policies, the Company or its successors or assigns, may maintain a single policy, blanket or umbrella policies, or a combination thereof, having the coverage required herein.

(c) The Company, its successors or assigns, agrees to notify the City promptly in the case of damage exceeding \$250,000 in amount to, or destruction of the Project resulting from fire or other casualty. Furthermore, the Company further agrees to apply the proceeds from any and all casualty claims against the insurance detailed in this Section to the restoration and improvement of the Property and/or the Project.

8. Mercer Grant Deduction. The Company hereby acknowledges that it has received the proceeds of a loan (the "Mercer Loan") through the Mercer Muscatine Revolving Loan Fund, and the City has provided a cash grant (the "Grant") to the Bi-State Regional Commission in the amount of \$67,500 to satisfy the local match requirements of the Mercer Loan. The Company hereby consents to the City's withholding of the Mercer Grant Deduction, as hereinafter defined, as detailed in Section B.3 of this Agreement.

9. **Remedy.** The Company hereby acknowledges that failure to comply with the requirements of this Section A, will result in the City having the right to withhold Payments under Section B of this Agreement at its sole discretion.

B. City's Obligations

1. **Payments.** In recognition of the Company's obligations set out above, the City agrees to make forty (40) semiannual economic development tax increment payments (the "Payments") to the Company during the Term of this Agreement (as hereinafter defined), pursuant to Chapters 15A and 403 of the Code of Iowa, provided however that the aggregate, total amount of the Payments shall not exceed \$6,150,000 (the "Max Payment Amount"), and all Payments under this Agreement shall be subject to annual appropriation by the City Council, as provided hereunder.

The Payments shall not constitute general obligations of the City, but shall be made solely and only from Incremental Property Tax Revenues received by the City from the Muscatine County Treasurer attributable to the Property.

The Payments will be made on December 1 and June 1 of each fiscal year, beginning on December 1 of the fiscal year immediately succeeding the year in which the Triggering Certification was made, and continuing for a total of twenty (20) fiscal years.

For example, assuming the Triggering Certification is made October 1, 2018, then Payments will be made on December 1 and June 1 of each fiscal year, beginning December 1, 2019, and continuing through and including June 1, 2039, or until such earlier date upon which total Payments equal to the Max Payment Amount have been made.

2. **Annual Appropriation.** Each Payment shall be subject to annual appropriation by the City Council. Prior to December 1 of each year during the Term (as hereinafter defined) of this Agreement, commencing the 2018 calendar year, the City Council of the City shall consider the question of obligating for appropriation to the funding of the Payments due in the following fiscal year, an amount (the "Appropriated Amount") of Incremental Property Tax Revenues to be collected in the following fiscal year equal to or less than the most recently submitted Company's Estimate factored by the annual percentage (the "Annual Percentage") scheduled to be in effect the following fiscal year. The Annual Percentage in each year during the Term of this Agreement shall be as follows:

For the first through fifth Payment years:	100%
For the sixth and seventh Payment years:	95%
For the eighth through fifteenth Payment years:	75%
For the sixteenth through twentieth Payment years:	50%

In any given fiscal year, if the City Council determines to not obligate the then-considered Appropriated Amount, then the City will be under no obligation to fund the Payments scheduled to become due in the following fiscal year, and the Company will have no rights whatsoever to compel the City to make such Payments or to seek damages relative thereto or to compel the funding of such Payments in future fiscal years. A determination by the City Council to not obligate funds for any particular fiscal year's Payments shall not render this Agreement null and void, and the Company shall make the next succeeding submission of the Company's Estimate as called for in Section A.5 above, provided however that no Payment shall be made after June 1, 2040.

3. **Payment Amounts.** The aggregate Payments to be made in a fiscal year shall not exceed an amount equal to the corresponding Appropriated Amount (for example, for the Payments due on December 1, 2019 and on June 1, 2020, the aggregate maximum amount of such Payments would be determined by the Appropriated Amount determined for certification by December 1, 2018), provided, however, that no Payment shall exceed the amount of Incremental Property Tax Revenues received by the City from the Muscatine County Treasurer attributable to the taxable valuation of the Property. The City shall deduct (the "Mercer Grant Deduction") an amount equal to the Mercer Grant Amount from the initial Payments hereunder in order to make the City whole for the up-front funding of the Grant.

4. **Certification of Payment Obligation.** In any given fiscal year, if the City Council determines to obligate the then-considered Appropriated Amount, as set forth in Section B.2 above, then the City Clerk will certify by December 1 of each such year to the Muscatine County Auditor an amount equal to the most recently obligated Appropriated Amount.

C. **Administrative Provisions**

1. **Assignment.** This Agreement may not be amended or assigned by either party without the prior written consent of the other party. However, the City hereby gives its permission that the Company's rights to receive the Payments hereunder may be assigned by the Company to any "affiliate" or a private lender, as security on a credit facility taken in connection with the acquisition of the Property and/or the construction of the Project, without further action on the part of the City.

2. **Successors.** This Agreement shall inure to the benefit of and be binding upon the successors and assigns of the parties.

3. **Term.** The term (the "Term") of this Agreement shall commence on the Commencement Date and end on the date on which the last Payment is made by the City to the Company under Section B.1 above.

4. **Choice of Law.** This Agreement shall be deemed to be a contract made under the laws of the State of Iowa and for all purposes shall be governed by and construed in accordance with laws of the State of Iowa.

The City and the Company have caused this Agreement to be signed in their names and on their behalf by their duly authorized officers, all as of the day and date written above.

CITY OF MUSCATINE, IOWA

By: _____
Mayor Pro Tem

Attest:

City Clerk

RIVERVIEW HOTEL DEVELOPMENT

By: _____

By: _____

EXHIBIT A:

LEGAL DESCRIPTION OF THE PROPERTY

Certain real property situated in the City of Muscatine, County of Muscatine, State of Iowa bearing the Muscatine County Property Tax Identification Parcel Numbers as follows:

1302226031, 1302226001, 1302226002, 1302226003, 1302226004, 1302226005, 1302226006, 1302226009, 1302226012, 1302226014, 1302226000, & 1302226018.

The area comprised of Block 11 of Original Town and the Mississippi Drive right-of-way adjoining Block 11.

EXHIBIT B:

PROJECT PLANS

EXHIBIT C:

CERTIFICATE OF COMPLETION

WHEREAS, the City of Muscatine, (the "City") and Riverview Hotel Development (the "Company"), did on or about the ____ day of _____, 201____, make, execute and deliver, each to the other, a Development Agreement (the "Agreement"), wherein and whereby the Company agreed, in accordance with the terms of the Agreement, to develop and maintain certain real property located within the City, defined in said Agreement as the Property; and

WHEREAS, the Agreement incorporated and contained certain covenants and restrictions with respect to the development of the Property and obligated the Company to construct a certain Project, as defined therein, in accordance with the Agreement; and

WHEREAS, the Company agrees that, to the present date, said covenants and conditions are met insofar as they relate to the construction of said Project in a manner deemed by the City to be in conformance with the approved building plans to permit the execution and recording of this certification.

NOW, THEREFORE, pursuant to Section A.1 of the Agreement, the City hereby certifies that all covenants and conditions of the Agreement with respect to the obligations of the Company to construct the Project on the Property have been completed and performed satisfactorily by the Company. All other provisions of the Agreement shall otherwise remain in full force and effect until termination as provided therein.

CITY OF MUSCATINE, IOWA

By: _____
Mayor

ATTEST:

By: _____
City Clerk

EXHIBIT D:

COMPANY'S ESTIMATE WORKSHEET

- (1) Date of Preparation: October ____, 20__.
- (2) Assessed Valuation of Property as of January 1, 20__:
\$_____.
- (3) Base Valuation of Property as of January 1, 2016:
\$_____.
- (4) Incremental Valuation of Property (2 minus 3):
\$_____ (the "TIF Value").
- (5) Current City fiscal year consolidated property tax levy rate for purposes of calculating Incremental Property Tax Revenues (the "Adjusted Levy Rate"):
\$_____ per thousand of value.
- (6) The TIF Value (4) factored by the Adjusted Levy Rate (5).
\$_____ x \$_____/1000
- (7) Company's Estimate = \$_____ x Annual Percentage ____% = _____

Effective Annual Percentages

For the first through fifth Payment years: 100%

For the sixth and seventh Payment years: 95%

For the eighth through fifteenth Payment years: 75%

For the sixteenth through twentieth Payment years: 50%