

RESOLUTION

To Identify a Development Area and Approve An ECONOMIC DEVELOPMENT POLICY

WHEREAS, the City Council (the “Council”) of the City of Harrisonburg, Virginia (the “City”) finds that the further development of the City’s tax base may require the use of economic incentives to attract certain business and commercial investment in the City; and

WHEREAS, the Council has identified a geographic area that is within walking distance of Court Square and the heart of the City’s downtown business center, and uniquely positioned for commercial development and construction of new or expanded facilities (as described in the Addendum attached hereto, the “Development Area”); and

WHEREAS, specifically, dpM Partners, LLC has proposed to develop a hotel and an approximate 18,000 square feet conference center (together, the “Project”) in the Development Area; and

WHEREAS, the Council desires to encourage such substantial capital investment in the Development Area in order for the City to obtain a large-scale venue and facilities unlike any other facilities in the City (or otherwise situated along the I-81 corridor north of Roanoke) that will accommodate sizable groups for multiple activities, including conferences, workshops, festivals and exhibitions, among others; and

WHEREAS, dpM Partners, LLC and other entities will finance the hotel portion of the Project; and

WHEREAS, the James Madison University Foundation, Inc., a not for profit organization recognized under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (the “IRC”), and having public charity status under Section 509 of the IRC (“the

“Foundation”), will finance the development of the conference center portion of the Project (the “Conference Center”); and

WHEREAS, the animating purposes for economic incentives by the City in connection with the Development Area from time to time are the significant public benefits that shall be derived from (i) promoting a strong, viable economy in the City, and in particular, boosting existing businesses and stimulating substantial commercial development in the City’s downtown area, (ii) increasing the City’s sources of tax revenues, and (iii) providing additional employment opportunities for the citizens of the City; and

WHEREAS, the City has undertaken significant due diligence over a period of several months and engaged Hotel & Leisure Advisors, LLC to conduct a market study (the “Independent Study”) and describe financial projections related specifically to the Project; and

WHEREAS, without the realization of the Project, the City would continue to have limited economic expectations for the Development Area; and

WHEREAS, pursuant to Section 15.2-953 of the Code of Virginia, 1950, as amended (the “Virginia Code”), the City is authorized to make gifts, donations and appropriations of money from time to time to the Industrial Development Authority of City of Harrisonburg, Virginia (the “Authority”) for the purpose of promoting economic development; and

WHEREAS, the Council duly established the Authority on April 24, 1973, with all such powers as granted under the Industrial Development and Revenue Bond Act as set forth in Chapter 49 of Title 15.2 of the Virginia Code; and

WHEREAS, pursuant to Section 15.2-4905 of the Virginia Code, the Authority may accept contributions, grants and other financial assistance from the City in order to make grants for the furtherance of economic development, among other things; and

WHEREAS, based on the findings in the Independent Study, among other animating reasons as set forth herein, the Council now desires to designate the Development Area and establish the terms of the Economic Development Policy that shall be applicable to the Conference Center to be located in the Development Area, including the qualifications required for the Foundation to receive any economic incentives related to the Conference Center.

NOW, THEREFORE, BE IT HEREBY RESOLVED BY THE CITY COUNCIL OF THE CITY OF HARRISONBURG, VIRGINIA, as follows:

1. Approval of Development Area; Establishment of Economic Development Policy Therefore. The Council hereby approves the Development Area and establishes this Economic Development Policy for the Conference Center portion of the Project in the Development Area. Accordingly, the Recitals above are incorporated into and made a part of this Economic Development Policy as if set forth in their entirety in this Section 1.

2. Consideration of Appropriations. From time to time, the Council shall consider an appropriation to the Authority, as may be recommended by the City Manager in the annual budget, in order to enable the Authority to make an economic grant, from time to time, to the Foundation in connection with the Foundation's initial capital investment to construct and equip the Conference Center, if the criteria established in this Economic Development Policy is met.

3. Eligibility for Economic Incentives. The Foundation shall qualify for receipt of an Annual Grant (as defined in Section 4 hereof) for each year during the term of this Economic Development Policy if: (a) the Foundation shall have financed an investment for construction of a Conference Center within the Development Area; (b) the Project is completed substantially in the form presented to City Council and the City has issued a final Certificate of Occupancy for both the hotel and Conference Center portions of the Project; (c) the hotel and Conference Center portions of the Project are in full operation as contemplated by the City; (d) the full and timely

payment of all taxes properly due and payable from all sources within the Development Area are made from time to time during the term of this Economic Development Policy, including, but not limited to, property taxes, meals taxes, lodging taxes, sales taxes, and business, professional, and occupational license taxes, or fees derived directly from all development within the Development Area, business operating there, and transactions occurring there (the “Project Tax Receipts”); (e) the Foundation has cooperated with City Staff and other City Officials as may be appropriate in the verification of the incremental increase in tax revenues and fees attributable to all initial capital investment in the Development Area; (f) there is no default on any payment due or condition related to the financing of any portion of the Project within the Development Area; and (g) there are no, and have not been, any bankruptcy or other insolvency proceedings initiated by any investor or entity within the Development Area that affects the Project or Development Area in any manner.

4. Computation of Economic Incentives; Term. The total amount of economic incentives pursuant to this Economic Development Policy shall not exceed [\$10,500,000] (the “Total Incentive Amount”), which constitutes the total amount of principal and interest [, including estimated construction-period interest,] that shall be due to the Foundation’s lender in connection with a ten (10) year loan in order to pay the costs to construct and equip the Conference Center in the Development Area.

The Total Incentive Amount shall be payable to the Authority for the benefit of the Foundation in annual installments (with each annual installment amount being referenced herein as the “Annual Grant”). The amount of the Annual Grant shall be computed as an amount equal to 100% of the City’s actual receipt of annual Project Tax Receipts that are above the amount of tax revenue receipts attributable to the Development Area as of June 1, 2014 (the

“Annual Incremental Increase”), up to the amount of annual debt service actually payable by the Foundation as debt service on its loan to construct and equip the Conference Center.

To the extent that Project Tax Receipts received by the City in a certain year exceed the amount of the Foundation’s annual debt service payment, the City reserves the right, in its sole discretion, to appropriate an Annual Grant in an amount that exceeds the Foundation’s annual debt service payment paid, but not to exceed the amount of Project Tax Receipts received. However, to the extent that the Project Tax Receipts actually received by the City in a given year are less than the amount of the Foundation’s annual debt service payment, the Annual Grant, under all circumstances, shall not exceed Project Tax Receipts actually received. Accordingly, it is the express intent hereunder that all payments of the Annual Grant by the City during the term of this Economic Development Policy, if any, under no circumstances shall exceed an amount that is equal to actual Project Tax Receipts that are received for each annual period hereof.

Payment of the Annual Grant to the Authority for the benefit of the Foundation shall commence on _____, 2017 (in respect to the 2016 Tax Year of the City), and shall continue on _____, 2018 (in respect to the 2017 Tax Year of the City), and so on, until the entire Total Incentive Amount shall have been paid to the Authority for the benefit of the Foundation, *provided, however*, the latest date for payment of any Annual Grant shall be _____, 2029 (in respect to the 2028 Tax Year of the City), regardless of whether the Total Incentive Amount shall have been paid.

Accordingly, it is to be understood that (i) the Total Incentive Amount represents a maximum amount payable under this Economic Development Policy; (ii) the amounts of each Annual Grant may vary from time to time and shall not exceed an amount that is equal to actual Project Tax Receipts that are received by the City for any given annual period; (iii) the term of

this Economic Development Policy shall expire after _____, [2026??], regardless of whether the Total Incentive Amount shall have been paid; and (iv) payment of each Annual Grant to the Authority for the benefit of the Foundation shall be made in accordance with law and shall be subject to the provisions hereof.

It is to be understood, however, that any and all payments of the Annual Grant by the City to the Authority shall be subject to the provisions of Section 7 below, and, further, shall be payable from funds of the City that are lawfully available and appropriated for such purpose, from time to time.

5. Expected Annual Incremental Increase in Tax Revenues. The expected Annual Incremental Increase in Tax Revenues in the Development Area is projected as follows:

Category of Taxes	Current Tax Base of the Development Area (as of June 1, 2014)	Estimated Annual Project Tax Receipts Attributable to Development Area without Project	Expected Incremental Increase in Taxes (Aggregate Years 1-10)
Lodging (Rooms)	\$ 0	\$ 0	\$ 5,152,538
Meals (Food and Beverage)	\$ 0	\$ 0	\$ 2,537,860
Business License	\$ 0	\$ 0	\$ 242,297
Real Estate	\$ 0	\$ 0	\$ 2,316,318
Personal Property	\$ 0	\$ 0	\$ 506,880
Personal Property (Computers)	\$ 0	\$ 0	\$ 55,120
Sales Taxes	\$ 0	Not Available	Not Available
Total:	\$ 0	\$ 0	\$ 10,811,013

Total Expected Incremental Increase in Taxes from Development Area between June 1, 2014 to Year 10 of Project operation = \$ 10,811,013.

6. Verification of Actual Annual Incremental Increase in Taxes. The City Manager shall coordinate with City Staff and other City Officials as may be appropriate in the verification process to determine the actual amount of the Annual Incremental Increase that is paid to the City, from time to time. The City Manager shall include the amount of each Annual Grant in his budget submitted to the Council for the following fiscal year as an amount to be appropriated to the Authority pursuant to this Economic Development Policy. The City Manager shall also deliver to the Chairman of the Authority, within ten (10) business days after the adoption of the City's budget for each fiscal year, a written confirmation stating whether the Council has appropriated to the Authority an Annual Grant for the purposes described in this Economic Development Policy, including the precise amount thereof and any applicable payment instructions for such Annual Grant by the Authority to the Foundation.

7. Nature of Payments of Annual Grants. It is to be understood that the amount of the Project Tax Receipts for the various tax revenues and fees attributable to all initial capital investment in the Development Area and the realization of the Project merely provides a benchmark for the City to compute the maximum amount of each Annual Grant that may be appropriated by the City to the Authority, for the benefit of the Foundation, from time to time during the term of this Economic Development Policy. To such end, the Council hereby approves a non-binding obligation of the City to consider certain appropriations to the Authority during the term of this Economic Development Policy in the amount of each Annual Grant for the benefit of the Foundation and as may be verified by City Staff and other City Officials in connection with the Project and requested by the City Manager from time to time in his annual budget, all in accordance with the provisions hereof. Such non-binding obligation of the City

hereunder is made to the fullest degree and in such manner as is consistent with the Constitution and laws of the Commonwealth of Virginia, and is expressly limited during each year of the term hereof to the amount of actual Project Tax Receipts received by the City. The Council, while recognizing that it is not empowered to make any binding commitment to make such appropriations in future fiscal years, hereby states its intent to make such appropriations in future fiscal years during the term of this Economic Development Policy and pursuant to the requirements hereof with respect to the Development Area, and hereby recommends that future Councils do likewise in order for the City to achieve the significant public benefits described herein. Further, it is to be understood that nothing herein contained is or shall be deemed to be a lending of the credit of the City, and nothing herein contained is or shall be deemed to be a pledge of the faith and credit or the taxing power of the City, nor shall anything herein contained legally bind or obligate the Council to appropriate funds to the Authority for the purposes described herein, all in accordance with Virginia law. The Mayor and the Vice Mayor, either or both of whom may act, are authorized to execute a support agreement or other instrument to describe the terms of the City's non-binding obligation to consider certain appropriations in the amount of each Annual Grant to the Authority for the benefit of the Foundation in connection with the Conference Center, all as particularly described in this Economic Development Policy.

Mayor

CERTIFICATE

The record of the roll-call vote by the City Council of the City of Harrisonburg, Virginia, on the foregoing Resolution adopted by the City Council by a roll-call vote at its regular public meeting held on June 24, 2014, is as follows:

	AYE	NAY	ABSTAIN	ABSENT
Ted Byrd, Mayor				
Charles Chenault, Vice-Mayor				
Richard Baugh				
Kai Degner				
Abe Shearer				

Dated: June 24, 2014

[SEAL]

Erica Kann, Clerk of Council

City of Harrisonburg, Virginia

Attachment: Addendum

ADDENDUM

All of that land located in the City of Harrisonburg, lying south of Martin Luther King, Jr. Way,
west of South Mason Street, north of East Grace Street, and east of South Main Street.