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TO: Kurt Hodgen, City Manager  
FROM: Chris Brown, City Attorney  
DATE: June 10, 2016  
RE: Conference Center MOU Restatement and Amendment

**Summary:** Consider a Restated and Second Amendment to Memorandum of Understanding approved by council on October 14, 2014

**Background:** On October 14, 2014 council approved and entered into a MOU and various related documents with the Harrisonburg IDA, JMU, the JMU Foundation, and dpM Partners, LLC for the development and financing of a hotel and conference center on property owned by JMU. The city's obligations under the MOU and related documents primarily involved reimbursing the Foundation for financing and costs associated with the conference center. The anticipated cost was approximately \$10,000,000 and was to be repaid solely from tax receipts generated by the hotel and conference center (Project Tax Receipts). Council approved making appropriations equal to the Project Tax Receipts each year to the IDA, which in turn would pay such amounts to the Foundation in the form of economic development grants. In October of 2015, council approved an amendment to the MOU increasing the cost of the conference center to \$10,974,895.

Subsequent to the approval and execution of the MOU and related documents by the parties, the Foundation determined the agreed upon structure would jeopardize its 501(C)(3) status and requested a restructuring of the transaction.

Over the last months, representatives of the parties to the MOU negotiated the attached Restated and Second Amendment to Memorandum of Understanding (the Restated MOU). The most significant change to the structure of the transaction is how the financing funds for the conference center will move from the Foundation to the developer. This change is set out in paragraph 4 of the Restated MOU. The IDA will enter into a Development Agreement with the Foundation by which the Foundation will pay the \$10,974,895 to the IDA (in draws) in exchange for a nonrecourse note from the IDA to the Foundation in that amount. The note will be payable only from Project Tax Receipts and will not be a debt of the city of Harrisonburg or IDA. The IDA will also enter into a Development Agreement with the developer and make economic development grants of the funds received from the Foundation to the developer. Repayment to the Foundation of the conference center financing funds will remain as previously approved by council.

The Restated MOU also reflects a few other changes as the original transaction structure has evolved. First, the conference center will now be owned by the developer. Previously, the Foundation was going to own the conference center and lease it to the developer. Second, JMU will now lease the real property occupied by the conference center to the developer. Previously, JMU was going to lease that property to the Foundation and the Foundation would sublease to the developer. Third, the cost of the conference center is held at \$10,974,895. Finally, the interest rate set out in the Support Agreement signed by the city is reduced to a floor of 2% and a cap of 5%. Previously it was 4% and 8%.

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The only document to be approved by council is the Restated MOU. However, I am including in your information the proposed Development Agreement between the IDA and the Foundation, the proposed Note from the IDA to the Foundation, and the proposed Development Agreement between the IDA and the developer. I am also including for reference purposes an entire set of the documents previously approved by council on October 14, 2014, and the first amendment to the MOU. The original documents include the Support Agreement between the city and the Foundation, and the resolutions passed by council and the IDA. If you would like any other information please let me know.

**Key Issues:** Approval of Restate MOU. Please see above.

**Environmental Impact:** None

**Fiscal Impact:** There will be no monetary impact beyond what has been approved by Council previously, although there will be staff time needed to process draw requests.

**Prior Actions:** Approval of MOU on October 14, 2014 and amended MOU in October, 2015.

**Alternatives:**

- (a) approve Restated MOU
- (b); or
- (c) Do not approve Restate MOU at this time

**Community Engagement:** A public hearing was held prior to Council's approval of the MOU in October of 2014.

**Recommendation:** Staff recommends approval of the Restate MOU.

**Attachments:** Restated MOU, draft Development Agreement and Note between IDA and the Foundation, draft Development Agreement between IDA and Developer, all documents approved by Council on October 14, 2014, amended MOU approved in October of 2015.

**Review:**

*The initiating Department Director will place in Legistar, in sequence of transmittal, the names of each department that must initial their review in order for this item to be placed on the City Council agenda. The completion of review only addresses the readiness of the issue for Council consideration. This does not address the recommendation for approval or denial of the issue.*

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