

August 18, 2014

To: Mayor Bemrich and City Council
From: David Fierke, City Manager
**Subject: Approve Development Agreement
Triton Plaza Project**



ACTION: For Vote Monday August 25, 2014

Brief History

Triton Plaza, LLC is currently in negotiations with James Schmidt to acquire the approximate 12-acre parcel at the Junction of Highways 169 and 20 for a development project. The proposal by the developer would include the potential construction of a hotel, office space, retail space and apartments.

The preliminary infrastructure costs are estimated at \$1,200,000, which includes \$1,010,000 in on-site costs and \$190,000 in off-site costs.

Analysis of Issue

The developer has requested TIF assistance in paying the costs of the public improvements required.

Budget Impact

The total incentive payments would be the lesser of \$550,000 or the aggregate off-site infrastructure costs plus the interest cost on the on-site infrastructure costs. Payments would be made semiannually over a 5 year period, using 80% of the TIF generated from the project. If, at the end of 5 years, the TIF revenue has not met the total payment amount due to the developer, the payments would continue for up to an additional 6 years until the full obligation is paid.

Strategic Plan Impact

Policy C.1.6: City government shall be an active participant, facilitator and partner in the creation of large and small business and industrial development opportunities capitalizing upon the unique human and economic resources of the area.

Policy C.2.1: The important economic, tourism, and community image benefits of attractive major travel corridors through the area shall be recognized. Such entryway corridors shall receive priority attention for improved appearance and development standards, including landscaping, signage, tree preservation, underground utilities, streetlights, and sidewalks.

Policy D.4.2: Advanced planning for all infrastructure facilities shall be supported and routinely updated. Facilities benefited by advanced planning shall include, at minimum,

schools, health care, residential areas, roads, water, sewer, storm water management, parks, recreation, and greenways.

Existing Plan Impact

Consistent with the City's Envision 2030 Plan.

Subcommittee or Commission Review / Recommendation

None

Staff Conclusions / Recommendations

Staff recommends approval of the attached development agreement with Triton Plaza, LLC.

Alternatives

The only alternative would be to not approve the attached development agreement, which would prohibit the city from providing TIF incentives. This action could potentially delay, minimize or end the project.

Implementation and Accountability

If approved, staff will execute the attached development agreement with Triton Plaza, Inc. and oversee the compliance with the terms of the agreement.

Signed



Vickie Reeck
Community Development Manager

Approved

David R. Fierke, City Manager

RESOLUTION _____

Resolution Approving Development Agreement with Triton Plaza, LLC,
Authorizing Annual Appropriation Tax Increment Payments and Pledging Certain
Tax Increment Revenues to the Payment of the Agreement

WHEREAS, the City of Fort Dodge, 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 Center City and Industrial Park Urban Renewal Areas (the “Urban Renewal Areas”); and

WHEREAS, this City Council has adopted an ordinance providing for the division of taxes levied on taxable property in the Urban Renewal Areas 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 Areas; and

WHEREAS, a certain development agreement (the “Agreement”) between the City and Triton Plaza, LLC (the “Developer”) has been prepared in connection with the development of certain real property in the Urban Renewal Areas, including the installation of certain public infrastructure improvements and the construction and operation of new commercial facilities thereon, including a national chain hotel (the “Triton Project”); and

WHEREAS, under the Agreement, the City would provide annual appropriation tax increment payments to the Developer in a total amount not exceeding \$550,000; and

WHEREAS, this City Council, pursuant to Section 403.9 of the Code of Iowa, has published notice, has held a public hearing on the Agreement on August 11, 2014, and has otherwise complied with statutory requirements for the approval of the Agreement; and

WHEREAS, Chapter 15A of the Code of Iowa (“Chapter 15A”) declares that economic development is a public purpose for which a City may provide grants, loans, tax incentives, guarantees and other financial assistance to or for the benefit of private persons; and

WHEREAS, Chapter 15A requires that before public funds are used for grants, loans, tax incentives or other financial assistance, a City Council must determine that a public purpose will reasonably be accomplished by the spending or use of those funds; and

WHEREAS, Chapter 15A requires that in determining whether funds should be spent, a City Council must consider any or all of a series of factors;

NOW, THEREFORE, It Is Resolved by the City Council of the City of Fort Dodge, Iowa, as follows:

Section 1. Pursuant to the factors listed in Chapter 15A, the City Council hereby finds that:

(a) The Triton Project will add diversity and generate new opportunities for the Fort Dodge and Iowa economies;

(b) The Triton Project will generate public gains and benefits, particularly in the creation of new jobs, which are warranted in comparison to the amount of the proposed financial incentives.

Section 2. The City Council further finds that a public purpose will reasonably be accomplished by entering into the Agreement and providing the incremental property tax payments to the Developer.

Section 3. The Agreement is hereby approved and the Mayor and City Clerk are hereby authorized and directed to execute and deliver the Agreement on behalf of the City, in substantially the form and content in which the Agreement has been presented to this City Council, and such officers are also authorized to make such changes, modifications, additions or deletions as they, with the advice of bond counsel, may believe to be necessary, and to take such actions as may be necessary to carry out the provisions of the Agreement.

Section 4. All payments by the City under the Agreement shall be subject to annual appropriation by the City Council, in the manner set out in the Agreement. As provided and required by Chapter 403 of the Code of Iowa, the City's obligations under the Agreement shall be payable solely from a subfund (the "Triton Subfund") which is hereby established, into which shall be paid that portion of the income and proceeds of the Urban Renewal Tax Revenue Fund attributable to property taxes derived from the property described as follows:

Certain real property situated in the City of Fort Dodge, County of Webster, State of Iowa legally described as follows:

Lot No. 4, County Auditor's Taxation Plat of the North one-half of the Northwest Quarter lying North of the Chicago, Northwestern Railroad in Section 31, Township 89 North, Range 28, West of the 5th P.M., Webster City, Iowa.

ALSO KNOWN AND DESCRIBED AS:

A parcel of land in the Northwest Quarter of Section 31, Township 89 North, Range 28 West of the 5th P.M., Iowa beginning 67.5 feet West of the Northeast corner of the Northwest Quarter of Section 31, said point being on the northerly right of way line of the Chicago Great Western Railroad; thence West 428.6 feet along the North line of the NW 1/4 of Section 31 to a point on the Southerly right of way of primary Road U.S. No. 20, said point being 60 feet normally distant southeasterly from the center of said U.S. 20; thence South 72°42' West along said southerly right of way 1149.6 feet to a point 60 feet normally distant southeasterly from U.S. 20 centerline station 670; thence South 67°53 1/2' West 502.1 feet to a point 100 feet normally distant southeasterly from U.S. 20 centerline station 666+12.5 which equals station 2665+69.1; thence Southwesterly 601.5 feet along a 1810 foot radius curve concave southeasterly to a point 100 feet normally distant southeasterly from U.S. 20 centerline station 2658+15.2; thence South 50°05' West 70.7 feet on a tangent line to the preceding course to a point 100 feet normally

distant southeasterly from U.S. 20 centerline station 2657+44.5, said point being also 165 feet normally distant easterly from primary Road U.S. 169 survey station 1229+39.9; thence South 7°17' West 320 feet along the present easterly ROW line of U.S. 169 to a point on the Northerly ROW line of the Chicago Great Western Railroad; thence Northeasterly 305.8 feet along a 11,510 foot radius curve concave southeasterly, along said northerly ROW; thence North 65°12 1/2' East 2558.6 feet on a tangent line to the preceding course and along said Northerly ROW to the point of beginning.

Section 5. The City hereby pledges to the payment of the Agreement the Triton Subfund and the taxes referred to in Subsection 2 of Section 403.19 of the Code of Iowa to be paid into such Subfund, provided, however, that no payment will be made under the Agreement unless and until monies from the Triton Subfund are appropriated for such purpose by the City Council.

Section 6. After its adoption, a copy of this resolution shall be filed in the office of the County Auditor of Webster County to evidence the continuing pledging of Triton Subfund and the portion of taxes to be paid into such Subfund and, pursuant to the direction of Section 403.19 of the Code of Iowa, the Auditor shall allocate the taxes in accordance therewith and in accordance with the tax allocation ordinance referred to in the preamble hereof.

Section 7. All resolutions or parts thereof in conflict herewith are hereby repealed.

Passed and approved this 25th day of August, 2014.

Ayes: _____

Nays: _____

Other: _____

CITY OF FORT DODGE, IOWA

Matt Bemrich, Mayor

Attest:

Jeff Nemmers, City Clerk

DEVELOPMENT AGREEMENT

This Agreement is entered into between the City of Fort Dodge, Iowa (the "City") and Triton Plaza, LLC (the "Developer") as of the ___ day of _____, 2014 (the "Commencement Date").

WHEREAS, the City has established the Center City and Industrial Park Urban Renewal Areas (the "Urban Renewal Areas"), and has adopted a tax increment ordinance for the Urban Renewal Areas; and

WHEREAS, the Developer owns certain real property which is situated in the City and lies within the Urban Renewal Areas and is more specifically described on Exhibit A hereto (the "Property"); and

WHEREAS, the Developer has proposed to undertake the development of the Property through the installation of certain public infrastructure improvements (the "Public Improvements Project") and the development of new commercial facilities thereon including a national chain hotel (the "Private Project"); and

WHEREAS, the Developer has requested that the City provide financial assistance in the form of incremental property tax payments to be used by the Developer in defraying the costs of carrying out the Public Improvements Project; and

WHEREAS, the base valuation of the Property for purposes of Section 403.19 of the Code of Iowa is \$8,069 (the "Base Valuation"); 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. Developer's Covenants

1. Private Project Construction. The Developer agrees to complete the Private Project on the Property and to subsequently promote the maintenance, development and highest and best use of the Property, throughout the Term, as hereinafter defined. Further the Developer agrees that a nationally recognized hotel with no less than 67 available rooms will serve as the anchor tenant (the "Anchor Tenant") for the Property during the Term. The Developer will submit to the City a detailed site plan (the "Site Plan") for the Private Project including plans for the development of the Property. Upon approval by the City, the Site Plan will be attached hereto as Exhibit B. The Developer agrees to cause the completion of the Private Project in accordance with the Site Plan and to substantially complete such Private Project by no later than June 1, 2016.

2. Public Improvements Project Construction and Costs. The Developer agrees to cause the construction of the Public Improvements Project in accordance with the timeline and specifications set forth on Exhibit C hereto. Prior to constructing the Public Improvements

Project, the Developer will submit copies of all engineering documents related to the proposed Public Improvements Project. The City may request reasonable changes in such documents, to ensure compliance with any applicable ordinances or regulations.

The City shall retain all rights to inspect the Public Improvements Project for quality of work and full compliance with City Code. Nothing in this subsection shall be interpreted as limiting the City's rights to not accept the work if the Public Improvements Project is not completed to the satisfaction of the City.

Upon completion of the Public Improvements Project, provided that (i) such improvements are of the type ordinarily dedicated to the City; (ii) the City confirms to the Developer in writing that such completed improvements meet City requirements; and (iii) the City accepts such Public Improvements Project in accordance with State law, the Developer will provide the City with either a deed or permanent easement to the improvements and related right-of-way comprising the Public Improvements Project, which shall thereafter be maintained by the City.

Furthermore, upon completion of the Public Improvements Project, the Developer agrees to provide documentation, in such form as may be requested by the City, of the costs incurred in the completion thereof (the "Public Improvements Costs"). Such costs may include all infrastructure-related land acquisition costs, cost of designing and constructing the street improvements, sanitary sewer and water system improvements, landscaping and grading all land for public improvements, interest expense and other costs of financing, and other reasonably related costs of carrying out the Public Improvements Project, including legal fees as provided for in this Agreement. The Public Improvements Costs shall not include such cost as are incurred in the completion of the Private Project.

Each documentation of the Public Improvements Costs made under this Section will be accompanied by invoices, and such other documentation as is reasonably requested by the City, confirming that the costs detailed in such documentation were in fact incurred in the installation of the Public Improvements Project and that such costs are of an amount reasonably to have been expected with respect to such installation. Upon acceptance of such demonstrated costs, the City shall record a summary of the date, amount and nature of the costs on the Summary of Accepted Infrastructure Costs attached hereto as Exhibit D, and such summary shall be the official record of the Public Improvement Costs for purposes of tallying the maximum amount of Payments (as hereinafter defined) allowed to the Developer under this Agreement.

3. Property Taxes. The Developer agrees to cause timely payment of all property taxes as they come due with respect to the Property throughout the Term, as hereinafter defined, and to submit a receipt or cancelled check in evidence of each such payment.

4. Property Use Certifications. The Developer agrees to submit documentation to the satisfaction of the City by no later than October 15 during the Term, as hereinafter defined, commencing October 15, 2016, demonstrating that the Anchor Tenant continues operating on the Property. Furthermore, the Developer agrees to submit documentation to the City demonstrating the current tenants on the Property and how the Property is being used by such tenants.

5. Property Tax Payment Certifications. Furthermore, the Developer agrees to certify to the City by no later than October 15 of each year, commencing October 15, 2017, an amount (the “Developer’s Estimate”) equal to the estimated Incremental Property Tax Revenues anticipated to be paid in the fiscal year immediately following such certification with respect to the taxable valuation of the Property factored by the Annual Percentage (as hereinafter defined). In determining such Developer’s Estimate, the Developer will complete and submit the worksheet attached hereto as Exhibit E. The City reserves the right to review and request revisions to each such Developer’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 Developer in formulating the annual estimates required under this Section A.5.

6. Low and Moderate Income Housing Assistance. The Developer agrees that if at any time during the Term of this Agreement a future judicial or legislative determination is made, resulting in the City being required to satisfy the “low and moderate income assistance” requirement, as set forth in Section 403.22 of the Code of Iowa, with respect to the Private Project, then the Developer shall be liable to the City for the provision of an amount equal to the then-required low and moderate income assistance amount (the “LMI Amount”). In satisfaction of this liability, the City shall first withhold an amount equal to LMI Amount from the Incremental Property Tax Revenues available from the Property prior to making any Payments (as hereinafter defined”) remaining to be made hereunder before seeking cash payment from the Developer. Any cash payment required to be made under this Section will be due and owing within 30-days of notification by the City to the Developer of the requirement Payment. The City will be required to provide evidence to the Developer of the judicial or legislative determination requiring the Payment of the LMI Amount prior to payment becoming due.

7. Legal and Administrative Fees. The Developer hereby agrees to cover the legal fees and administrative costs incurred by the City in connection with the drafting, negotiation and authorization of this Agreement, including the prerequisite amendment to the urban renewal plan, up to an amount not in excess of \$4,500. The Developer agrees to remit payment to the City within 30-days of the submission of reasonable documentation by the City to the Developer evidencing such costs.

8. Contingency of Agreement. The Developer hereby acknowledges that the performance by the City of the obligations set forth under Section B of this Agreement shall be contingent upon the approval by the Iowa Department of Transportation of (i) the Highway 926 jurisdictional transfer now proposed by the City; and (ii) the corresponding payment of funds in an amount not less than \$9,000,000 in connection with such transfer.

9. Remedy. The Developer 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, until such time as the Developer has demonstrated, to the satisfaction of the City, that it has cured such non-compliance.

B. City's Obligations

1. Payments. In recognition of the Developer's obligations set out above, the City agrees to make twenty-two (22) semiannual economic development tax increment payments (the "Payments") to the Developer during the Term, 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 the lesser of (i) the Public Improvement Costs, or (ii) \$550,000 (the "Maximum Aggregate Payments"), 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 Webster County Treasurer attributable to the taxable valuation of the Property.

Each Payment shall not exceed an amount which represents 80% (the "Annual Percentage") of the Incremental Property Tax Revenues available to the City with respect to the Property during the Six (6) months immediately preceding each Payment date.

It is assumed that the new valuation from the Project will go on the tax rolls as of January 1, 2017. Accordingly, the Payments will be made on December 1 and June 1 of each fiscal year, beginning on December 1, 2018 and continuing to, and including, June 1, 2029, or until such earlier date upon which total Payments equal to the Maximum Aggregate Payments 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, 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 Developer's Estimate.

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 Developer 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 Developer shall make the next succeeding submission of the Developer's Estimate as called for in Section A.5 above, provided however that no Payment shall be made under this Agreement after June 1, 2029.

3. Payment Amounts. Each Payment shall be in 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 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 Webster County Treasurer attributable to the taxable valuation of the Property.

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 Webster County Auditor an amount equal to the most recently obligated Appropriated Amount.

C. Administrative Provisions

1. Amendment and Assignment. This Agreement may not be amended or assigned by either party without the written consent of the other party. However, the City hereby gives its permission that the Developer's rights to receive the Payments hereunder may be assigned by the Developer to a private lender, as security on a credit facility taken with respect to 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 June 1, 2029 or on such earlier date upon which the aggregate sum of Payments made to the Developer equals the Maximum Aggregate Payments.

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 Developer 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 FORT DODGE, IOWA

By: _____
Matt Bemrich, Mayor

Attest:

Jeff Nemmers, City Clerk

TRITON PLAZA, LLC

By: _____

EXHIBIT A
LEGAL DESCRIPTION OF THE PROPERTY

Lot No. 4, County Auditor's Taxation Plat of the North One-half of the Northwest Quarter Lying North of the Chicago, Northwestern Railroad in Section 31, Township 89 North, Range 28, West of the 5th P.M., Webster County, Iowa:

ALSO KNOWN AND DESCRIBED AS

A parcel of land in the Northwest Quarter of Section 31, Township 89 North, Range 28 West of the 5th P.M., Iowa beginning 67.5 feet West of the Northeast corner of the Northwest Quarter of Section 31, said point being on the northerly right of way line of the Chicago Great Western Railroad; thence West 428.6 feet along the North line of the NW 1/4 of Section 31 to a point on the Southerly right of way of primary Road U.S. No. 20, said point being 60 feet normally distant southeasterly from the center of said U.S. 20; thence South 72°42' West along said southerly right of way 1149.6 feet to a point 60 feet normally distant southeasterly from U.S. 20 centerline station 670; thence South 67°53 1/2' West 502.1 feet to a point 100 feet normally distant southeasterly from U.S. 20 centerline station 666+12.5 which equals station 2665+69.1; thence Southwesterly 601.5 feet along a 1810 foot radius curve concave southeasterly to a point 100 feet normally distant southeasterly from U.S. 20 centerline station 2658+15.2; thence South 50°05' West 70.7 feet on a tangent line to the preceding course to a point 100 feet normally distant southeasterly from U.S. 20 centerline station 2657+44.5, said point being also 165 feet normally distant easterly from primary Road U.S. 169 survey station 1229+39.9; thence South 7°17' West 320 feet along the present easterly ROW line of U.S. 169 to a point on the Northerly ROW line of the Chicago Great Western Railroad; thence Northeasterly 305.8 feet along a 11,510 foot radius curve concave southeasterly, along said northerly ROW; thence North 65°12 1/2' East 2558.6 feet on a tangent line to the preceding course and along said Northerly ROW to the point of beginning.

EXHIBIT B
SITE PLAN FOR PRIVATE PROJECT

EXHIBIT C
Timeline and Specifications for Infrastructure Project

EXHIBIT E
ANNUAL TIF WORKSHEET
DEVELOPER'S ESTIMATE

- (1) Date of Preparation: October 1, 2014
- (2) Assessed Valuation of Property as of January 1, 20____:
\$_____.
- (3) Base Valuation of Property:
\$9,036
- (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) Estimate = \$_____ x .80 = \$_____