CITY OF WEST DES MOINES
CITY COUNCIL MEETING COMMUNICATION

ITEM: Approval of the First Amendment of the Private Development Agreement between VAB, LLC and the City of West Des Moines **DATE:** December 18, 2023

RESOLUTION: Approval of the First Amendment to the Private Development Agreement

FINANCIAL IMPACT: The applicant, VAB, LLC (Sam Summers, 500 East Locust Street, Suite 300, Des Moines, IA 50309) has requested an amendment to the completion deadline found within the original approved development agreement. The development agreement with the City included an economic development incentive package for the complete renovation of the Val Air Ballroom that provided for a 10-year 100% property tax rebate with a maximum capped value of $1,110,250, and reimbursement of certain development fees totaling up to $72,000. Total costs of the incentive package will not exceed $1,182,250. All costs would come out of the Val-Gate Urban Renewal Plan and Tax Increment Finance District. The Development Agreement includes a Minimum Assessment Agreement for the project in the amount of $5,500,000 that will guarantee the valuation for twenty (20) years and provides for the creation of at least fourteen (14) full time employees.

The total project costs are estimated at $14,500,000. The base assessed value of the property prior to renovation was $1,430,100 with the building valuation at only $100. Based upon the incremental increase in valuation as a result of the improvements, the development is projected to yield an annual rebate of $111,025 for a total of $1,110,250 over the ten (10) year duration of the agreement.

BACKGROUND: The historically compatible renovation of the 35,000 sq. ft. Val Air Ballroom is well underway and nearing completion, providing a high-quality music and entertainment venue located on 8.5 acres at 301 Ashworth Road in the Val-Gate Urban Renewal Area. The developer has notified staff that supply chain and equipment sourcing issues have caused a minor delay in the completion of the project, which was originally scheduled for December 31st, 2023. To avoid a default scenario in the development agreement, the proposed first amendment revises the required completion deadline to provide a minor extension to February 29, 2024. The amendment also revises the date in which the full-time employee requirement is effective. The first entertainment acts are scheduled to perform at the venue in late February, and the developer expects project completion in the weeks prior to the revised completion deadline in this amendment.

This proposal was originally reviewed by the Finance & Administration Council Subcommittee at their May 18, 2022, meeting and the subcommittee recommended bringing the request to the full Council for action to fund the request through the Property Tax Rebate Program.

On January 3, 2023, the City Council authorized approval of the Development Agreement. The project site is within the Val-Gate Urban Renewal Area. The URA was amended on August 15, 2022, to add this development project.

OUTSTANDING ISSUES: There are no outstanding issues. A Certificate of Completion will be issued upon final project completion, which is anticipated in the first quarter of 2024.

RECOMMENDATION: Staff recommends that the City Council adopt a resolution approving the First Amendment to the Development Agreement and authorizing the Mayor to sign the amended agreement on behalf of the City.

Lead Staff Member: Ryan L. Moffatt, AICP

STAFF REVIEWS

Department Director	Ryan Moffatt, Community and Economic Development Director
Appropriations/Finance	Tim Stiles, Finance Director
Legal	
Agenda Acceptance	

PUBLICATION(S) (if applicable)

Published In		
Date(s) Published		
Letter sent to surrounding property owners		N/A

SUBCOMMITTEE REVIEW (if applicable)

Committee			
Date Reviewed			
Recommendation	Yes	No	Split

ATTACHMENTS:

Exhibit I First Amendment to the Development Agreement
Exhibit II Resolution

FIRST AMENDMENT
TO THE
AGREEMENT FOR PRIVATE DEVELOPMENT
BY AND BETWEEN
THE CITY OF WEST DES MOINES, IOWA
AND
VAB, LLC

THIS FIRST AMENDMENT ("Amendment") to that certain Agreement for Private Development by and between the CITY OF WEST DES MOINES, IOWA ("City") and VAB, LLC, an Iowa limited liability company ("Developer"), dated January 3, 2023 ("Agreement"), is made as of the _____ day of _____, 2024, by and between the City and the Developer.

WITNESSETH:

WHEREAS, the City and the Developer previously executed the Agreement and recorded a Memorandum of the Agreement at Book 19391, Page 164-167, in the records of the Recorder of Polk County, Iowa; and

WHEREAS, pursuant to the Agreement, the Developer agreed to construct certain Minimum Improvements consisting of the renovation of an historic music entertainment venue, together with all related site improvements, on certain real property located within the Val-Gate Urban Renewal Area; and

WHEREAS, the Developer has requested that the deadlines for construction of the Minimum Improvements and employment of employees therein be extended; and

WHEREAS, the City and Developer desire to amend the Agreement as set forth in this Amendment.

NOW THEREFORE, it is agreed by the City and the Developer:

1. Definitions. All capitalized words used herein and not specifically defined shall have the same definitions as in the Agreement.

2. Change to Minimum Improvements Completion Deadline. The construction completion deadline of December 31, 2023 for the Minimum Improvements set forth in Section 3.1 (b) and Exhibit B-1 of the Agreement is hereby extended to and replaced with the following date: **February 29, 2024**.

3. Change to Employment Deadline. The deadline of November 1, 2023 for Developer to employ 14 Full -Time Equivalent Jobs in its operation on the Development Property set forth in Section 6.6 of the Agreement is hereby extended to and replaced with the following date: **May 1, 2024**. As such, the first annual certification to be provided by Developer on October 15, 2024 pursuant to Section 6.7 of the Agreement shall include employment numbers from May 1, 2024 through October 1, 2024, and the Monthly Average of Full Time Equivalent Employees

referenced in Section 6.6 shall be calculated using those six (6) months with respect to that certification only.

4. Reduction of First Grant. Developer shall pay to the City an amount equal to the actual costs incurred by the City in connection with the negotiation, drafting and adoption of this Amendment, including, but not limited to, publication fees for legal notices, actual costs associated with City Council meetings, and reasonable legal fees of the City. Payment by Developer of such costs will be made by the Developer to the City within 30 days of the date on which the City presents a statement to the Developer demonstrating such costs, or if not previously paid, the costs shall be deducted from the first Economic Development Grant.

5. No Further Modifications. Except as modified by this Amendment, all covenants, agreements, terms, and conditions of the Agreement shall remain in full force and effect and are hereby in all respects ratified and affirmed. For the avoidance of doubt and without limiting the generality of the preceding sentence, the City and Developer hereby agree that although the Minimum Improvements will not be fully completed by December 31, 2023, the Minimum Improvements shall be assessed as of January 1, 2024 consistent with the terms of the Minimum Assessment Agreement, and the Economic Development Grant schedule set forth in Section 8.1 and the conditions to payment of the Economic Development Grants set forth in Section 8.2 shall remain unchanged by this Amendment. Nothing in this Amendment shall be interpreted as extending the duration of the Economic Development Grant schedule or this Agreement.

6. Counterparts. This Amendment may be executed in two or more counterparts, each of which together shall be deemed an original, but all of which together shall constitute one and the same instrument. In the event that any signature is delivered by facsimile transmission or by e-mail delivery of a "pdf" format data file, such signature shall create a valid and binding obligation of the party executing (or on whose behalf such signature is executed) with the same force and effect as if such facsimile or "pdf" signature page were an original thereof.

IN WITNESS WHEREOF, the City has caused this Amendment to be duly executed in its name and behalf by its Mayor and its seal to be hereunto duly affixed and attested by its City Clerk, and Developer has caused this Amendment to be duly executed in its name and behalf by its authorized representatives, all on or as of the day first above written.

CITY OF WEST DES MOINES, IOWA,
an Iowa municipal corporation

_____
Russ Trimble
Mayor

ATTEST:

_____
Ryan T. Jacobson
City Clerk

STATE OF IOWA)
) ss:
COUNTY OF POLK)

On this ____ day of _____, 2024, before me a Notary Public in and for said County, personally appeared Russ Trimble and Ryan T. Jacobson, to me personally known, who being duly sworn, did say that they are the Mayor and City Clerk, respectively of the City of West Des Moines, Iowa, a municipal corporation, created and existing under the laws of the State of Iowa and that said record was signed on behalf of said municipal corporation by authority and resolution of its City Council as contained in Roll Call No. _____, passed on the _____ day of _____, 2023, and said Mayor and City Clerk acknowledged said record to be the free act and deed of said municipal corporation by it voluntarily executed.

_____
Notary, State of Iowa

[Signature page to Amendment – City of West Des Moines]

DEVELOPER:
VAB, LLC,
an Iowa limited liability company

By:_____
Sam Summers, Manager

STATE OF _____)
) ss
COUNTY OF _____)

This record was acknowledged before me on _____, 2024, by Sam Summers as Manager of VAB, LLC, an Iowa limited liability company, on behalf of whom the record was executed.

_____
Notary Public in and for said State

[Signature page to Amendment – VAB, LLC]

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RESOLUTION NO. _____

RESOLUTION APPROVING AND AUTHORIZING EXECUTION OF AMENDMENT NO. 1 TO THE PRIVATE DEVELOPEMNT AGREEMENT BETWEEN THE CITY OF WEST DES MOINES AND VAB, LLC

WHEREAS, by Resolution No. 14-09-22-11, adopted September 22, 2014, this Council found and determined that certain areas located within the City are eligible and should be designated as an urban renewal area under Iowa law, and approved and adopted the Val-Gate Urban Renewal Plan (the "Plan" or "Urban Renewal Plan") for the Val-Gate Urban Renewal Area (the "Area" or "Urban Renewal Area") described therein, which Plan is on file in the office of the Recorder of Polk County, and which Plan has been amended by an Amendment No. 1 to the Plan adopted on August 15, 2022; and

WHEREAS, it is desirable that properties within the Area be redeveloped as part of the overall redevelopment area covered by said Plan; and

WHEREAS, the City of West Des Moines, Iowa ("City") and VAB, LLC ("Developer"), previously entered into an Agreement for Private Development ("Agreement") on January 3, 2023, pursuant to which, among other things, the Developer would agree to construct certain Minimum Improvements (as defined in the Agreement) on certain real property located within the Urban Renewal Area as defined and legally described in the Agreement (the "Development Property") and consisting of the historically compatible renovation of an existing music and entertainment venue, together with all related site improvements, as outlined in the proposed Agreement; and

WHEREAS, the City and Developer desire to amend the Agreement pursuant to proposed Amendment No. 1 to the Agreement (the "Amendment") to: (1) extend the deadline for construction of the improvements and other deadlines impacted thereby, and (2) correct an error to the terms related to the date in which fourteen (14) full time employees are required to be employed at the development, pursuant to the terms and conditions of the Amendment; and

WHEREAS, Chapters 15A and 403, Code of Iowa, authorize cities to make grants for economic development in furtherance of the objectives of an urban renewal project and to appropriate such funds and make such expenditures as may be necessary to carry out the purposes of said Chapters, and to levy taxes and assessments for such purposes; and

WHEREAS, the Council has determined that the Agreement is in the best interests of the City and the residents thereof and that the performance by the City of its obligations thereunder is a public undertaking and purpose and in furtherance of the Plan and the Urban Renewal Law and, further, that the Agreement and the City's performance thereunder is in furtherance of appropriate economic development activities and objectives of the City within the meaning of Chapters 15A and 403, Code of Iowa, taking into account any or all of the factors set forth in Chapter 15A, Code of Iowa, to wit:

a. Businesses that add diversity to or generate new opportunities for the Iowa economy should be favored over those that do not.

b. Development policies in the dispensing of the funds should attract, retain, or expand businesses that produce exports or import substitutes, or which generate tourism-related activities.

c. Development policies in the dispensing or use of the funds should be targeted toward businesses that generate public gains and benefits, which gains and benefits are warranted in comparison to the amount of the funds dispensed.

d. Development policies in dispensing the funds should not be used to attract a business presently located within the state to relocate to another portion of the state unless the business is considering in good faith to relocate outside the state or unless the relocation is related to an expansion which will generate significant new job creation. Jobs created as a result of other jobs in similar Iowa businesses being displaced shall not be considered direct jobs for the purpose of dispensing funds; and

WHEREAS, pursuant to notice published as required by law, this Council has held a public meeting upon the proposal to approve and authorize execution of the Agreement and has considered the extent of objections received from residents or property owners as to said proposed Agreement; and, accordingly the following action is now considered to be in the best interests of the City and residents thereof.

NOW THEREFORE, BE IT RESOLVED, BY THE CITY COUNCIL OF THE CITY OF WEST DES MOINES IN THE STATE OF IOWA:

That the performance by the City of its obligations under the Agreement, including but not limited to making of grants to the Developer in connection with the development of the Development Property under the terms set forth in the Agreement, be and is hereby declared to be a public undertaking and purpose and in furtherance of the Plan and the Urban Renewal Law and, further, that the Agreement and the City's performance thereunder is in furtherance of appropriate economic development activities and objectives of the City within the meaning of Chapters 15A and 403, Code of Iowa, taking into account the factors set forth therein.

That the form and content of the Agreement, the provisions of which are incorporated herein by reference, be and the same hereby are in all respects authorized, approved and confirmed, and the Mayor and the City Clerk be and they hereby are authorized, empowered and directed to execute, attest, seal and deliver the Agreement for and on behalf of the City in substantially the form and content now before this meeting, but with such changes, modifications, additions or deletions therein as shall be approved by such officers, and that from and after the execution and delivery of the Agreement, the Mayor and the City Clerk are hereby authorized, empowered and directed to do all such acts and things and to execute all such documents as may be necessary to carry out and comply with the provisions of the Agreement as executed.

PASSED AND APPROVED this 18th day of December, 2023.

Russ Trimble, Mayor

ATTEST:

Ryan T. Jacobson, City Clerk