



County of Prince Edward
Board of Supervisors
Agenda Summary

Meeting Date: December 8, 2009
Item No.: 9
Department: Economic Development Office
Staff Contact: Sharon Carney, Director Economic Development
Issue: Granite Falls Grant Agreement

Summary:

To assist with the financing and development of the Granite Falls Hotel Conference and Training Center, a variety of Tax Incremental Financing (TIF) options are being considered through the utilization of specialty assessments within the newly created CDA district, thus having no impact on properties outside the CDA district. The utilization of TIF options to assist with certain development costs is one of the contingencies of the purchase contract.

The assignment of a portion of the special assessments would be used to cover construction financing costs for infrastructure improvements, the hospitality training center and shared costs between the hotel and conference center. An example of proposed assessments include a meals tax on food and beverage paid by visitors, a transient occupancy tax (already approved but not yet implemented) on lodging paid by hotel guests, and an incremental real property and personal property tax on property within the CDA district. See the attached draft Grant Agreement.

The IDA anticipates numerous benefits to the County and its residents as a result of the development of the Granite Falls Hotel Conference and Hospitality Training Center, including increased tax base for the County, additional employment and training opportunities, promotion of tourism, and enhanced economic strength of the County.

Attachments: Draft Grant Agreement

Recommendation:

Approve the proposed draft Granite Falls Hotel Conference and Hospitality Training Center Grant Agreement and authorize the Chairman of the Prince Edward County Board of Supervisors to sign any and all documents associated with the "Grant Agreement."

Motion _____
Second _____

Fore _____
McKay _____
Ward _____

Gilfillan _____
Moore _____
Wiley _____

Jones _____
Simpson _____

ECONOMIC DEVELOPMENT GRANT AGREEMENT

This ECONOMIC DEVELOPMENT GRANT AGREEMENT dated as of December ____, 2009 (this "Agreement"), by and among PRINCE EDWARD DEVELOPMENT, LLC or an affiliate formed by it (the "Developer"), the COUNTY OF PRINCE EDWARD, VIRGINIA (the "County"), and the INDUSTRIAL DEVELOPMENT AUTHORITY OF PRINCE EDWARD COUNTY, VIRGINIA, (the "Authority").

RECITALS:

The purpose of this Agreement is to describe certain obligations of the Developer and incentives to be provided by the County and the Authority to the Developer in connection with the development of hospitality and conference/training facilities in the County, to be known as the Granite Falls Inn & Conference Center (the "Project").

The County is authorized to execute and deliver this Agreement and to make the grant payments described herein to the Authority pursuant to Section 15.2-953B Code of Virginia of 1950, as amended (the "Virginia Code").

The Authority is authorized to execute and deliver this Agreement fulfill its obligations hereunder pursuant to Sections 15.2-4905(12) and (13) of the Virginia Code.

The County and the Authority anticipate numerous benefits to the County and its residents as a result of the development of the Project, including increased tax base for the County, additional employment and training opportunities, promotion of tourism, and enhanced economic strength of the County.

NOW, THEREFORE, for and in consideration of the mutual promises and covenants contained in this Agreement, the parties agree as follows:

ARTICLE I DEVELOPER'S COMMITMENTS

In consideration of the assistance being provided by the County and the Authority under the terms of this Agreement, the Developer agrees as follows, contingent upon the Developer purchasing certain land in Prince Edward County, Virginia consisting of approximately 92 acres described on Exhibit A hereto (the "Land"). Should the Developer fail to purchase the Land within one year after the date of this Agreement or should the Developer notify the County and the Authority in writing of its intention to not acquire the Land, the obligations of the County and the Authority under this Agreement shall immediately cease and terminate.

1.01. Development of Project.

The Developer agrees to acquire the Land, construct or cause to be constructed, develop or cause to be developed and operate or cause to be operated the Granite Falls Inn & Conference Center consisting of approximately 150 guestrooms, an approximately 5,000 square foot spa, an approximately 59,000 square foot conference and training center and all required public infrastructure in support thereof.

Any material changes to the Project components described above shall be made only with the prior written consent of the County. The facilities described in the paragraph above shall be substantially completed within 3 years from the date of this Agreement.

1.02. Financing of Project.

The Developer shall provide financing for all components of the Project except for the conference/training center whose financing will be provided for by the Authority and certain infrastructure whose financing will be provided for by the Granite Falls Community Development Authority. The County shall not be responsible for issuing any bonds, notes or other financing for the Project. All financings for the Project shall state clearly that such financing is not an obligation of the County and the County has no obligation for the payment of such financing. Any financings to be repaid from proceeds of the Grant (as defined below in Section 2.01) shall be referred to in this Agreement as the "TIF Financings". In the event the County enacts a food & beverage sales tax in the future, the outstanding debt issued by the Granite Falls Community Development Authority and secured by a food & beverage assessment shall be included in the definition of "TIF Financings".

1.03. Application of Grant Proceeds.

The Developer shall use proceeds of the Grant and proceeds of any TIF Financing to pay a portion of the costs of constructing, equipping, renovating or re-equipping the Project described in Section 1.01 above and shall not use any portion of the Grant or TIF Financings to pay for any other costs.

1.04. Reporting.

The Developer will provide to the County and the Authority such information as the County or the Authority may reasonably request with respect to the financing, acquisition and construction of the Project, including copies of documentation relating to the TIF Financings and a debt service schedule for the TIF Financings. The Developer will provide the County with no less than annual reports setting forth the amount and purpose of expenditures of Grant proceeds and/or TIF Financing proceeds.

**ARTICLE II
COUNTY'S AND AUTHORITY'S COMMITMENTS**

In consideration of the benefits to the County as a result of the Developer's performance under this Agreement, the County and the Authority agree as follows:

2.01. Grant.

The County agrees to make payments to the Authority (the "Grant") of certain incremental tax revenues (the "Incremental Tax Revenues") as described below on the terms and subject to the limitations set forth in this Agreement:

- (a) 80% of the incremental increase in real estate and personal property tax revenues collected with respect to the Project in any calendar year in excess of the amount of such taxes collected in calendar year 2009; and
- (b) 80% of the transient occupancy taxes collected in any calendar year from the Project in excess of the amount of such taxes collected in calendar year 2009; and
- (c) 95% of food and beverage sales taxes collected, if any, in any calendar year from the Project.

2.02. Subject to Appropriation.

Payments by the County of the Grant to the Authority shall be subject to annual appropriation by the Board of Supervisors and shall not constitute a debt or general obligation of the County. The County Administrator, or other officer responsible for preparing the County's budget, will include each year in the County's budget an appropriation of the Grant to the Authority; however, payment of the Grant shall be subject to appropriation each fiscal year by the Board of Supervisors.

2.03. Limitation on Amount.

The amount of Grant paid to the Authority each year shall not exceed the Incremental Tax Revenues. Payments of the Grant shall not exceed the amount of Incremental Tax Revenues actually collected by the County.

2.04. Expiration of Grant.

Payment of the Grant shall terminate on the earlier to occur of (i) payment in full of the TIF Financings or (ii) December 31, 2036.

2.05. Authority's Obligations.

The Authority will apply amounts received pursuant to this Agreement to the payment of the TIF Financings. The Authority agrees to assign its rights to payment of the Grant to the lender or trustee for the TIF Financings. The Authority's obligations hereunder shall be limited to amounts paid to it by the County under this Agreement.

**ARTICLE III
INDEMNIFICATION; PAYMENT OF EXPENSES**

The Developer shall indemnify, protect, and save the County, the Authority, and each of their respective officers, directors and employees harmless from all liability, obligations, losses,

claims, damages, actions, suits, proceedings, costs, and expenses, including reasonable attorneys' fees, arising or resulting directly from the issuance of the TIF Financing. The Developer agrees to pay the costs, fees and expenses of the County and the Authority, including reasonable attorneys' fees, incurred by the County or the Authority in connection with this Agreement and the administration of the Grant. The indemnification arising under this Article III shall survive the termination of this Agreement.

ARTICLE IV TERMINATION OF THE COUNTY'S AND THE AUTHORITY'S OBLIGATIONS

Should any of the following circumstances occur or exist (each an "Event of Default"), the obligation of the County and the Authority to provide the Grant, as described herein, to the Developer shall cease and terminate:

- (a) The Developer fails to substantially complete construction of the Project components described in Section 1.01 within three years after the date of this Agreement;
- (b) The Developer assigns its rights hereunder without the consent of the County; or
- (c) The Developer ceases to operate or cause the Project to be operated substantially as described herein for a period of 12 months.

The provisions of this Article IV are subject to the following limitation: if by reason of *force majeure* the Developer is unable in whole or in part to carry out this Agreement, the Developer shall not be deemed in default during the continuance of such inability. The term "*force majeure*" as used herein shall mean, without limitation, the following: acts of God; strikes, lockouts or other industrial disturbances; acts of public enemies; orders or restraints of any kind of the government of the United States of America or of the Commonwealth or any of their departments, agencies or officials, or any civil or military authority; insurrections; riots; landslides; earthquakes; fires; storms; droughts; floods; explosions; breakage or accidents to machinery, transmission lines, pipes or canals; or any other cause or event not reasonably within the control of the Developer.

ARTICLE V TERMINATION OF AGREEMENT

This Agreement shall terminate upon the earlier of (i) payment in full of the TIF Financing or (ii) December 31, 2036.

**ARTICLE VI
ASSIGNMENTS**

No party may sell or assign any interest in or obligation under this Agreement without the prior written consent of all of the parties.

**ARTICLE VII
LIMITED OBLIGATIONS OF THE COUNTY AND THE AUTHORITY**

NO PROVISION OF THIS AGREEMENT SHALL BE CONSTRUED OR INTERPRETED AS CREATING A PLEDGE OF THE FAITH AND CREDIT OF THE COUNTY OR THE AUTHORITY WITHIN THE MEANING OF ANY CONSTITUTIONAL DEBT LIMITATION. NO PROVISION OF THIS AGREEMENT SHALL BE CONSTRUED OR INTERPRETED AS A DONATION OR A LENDING OF THE CREDIT OF THE COUNTY OR THE AUTHORITY WITHIN THE MEANING OF THE VIRGINIA CONSTITUTION. THIS AGREEMENT SHALL NOT DIRECTLY OR INDIRECTLY OR CONTINGENTLY OBLIGATE THE COUNTY OR THE AUTHORITY TO MAKE ANY PAYMENTS BEYOND THOSE APPROPRIATED IN THE SOLE DISCRETION OF THE COUNTY FOR ANY FISCAL YEAR IN WHICH THIS AGREEMENT SHALL BE IN EFFECT. THE AUTHORITY SHALL BE UNDER NO OBLIGATION TO MAKE ANY PAYMENTS HEREUNDER EXCEPT FROM MONIES PROVIDED TO IT BY THE COUNTY PURSUANT TO THIS AGREEMENT. THE AUTHORITY SHALL BE UNDER NO OBLIGATION TO MAKE ANY INVESTIGATION OR DETERMINATION AS TO ANY MATTERS THAT WOULD CONSTITUTE AN EVENT OF DEFAULT HEREUNDER AND THE AUTHORITY SHALL BE ENTITLED TO RELY ON INSTRUCTIONS PROVIDED BY THE COUNTY AS TO SUCH MATTERS.

**ARTICLE VIII
MISCELLANEOUS**

8.01. Governing Law.

This Agreement shall be governed in all respects by the laws of the Commonwealth of Virginia. Any litigation with respect thereto shall be filed solely in the Circuit Court of Prince Edward County, Virginia. The Developer hereby waives the right, if any, to remove any case to federal court.

8.02. Notices.

- (a) All notices required or permitted to be given pursuant to this Agreement shall be effective only if the same shall be in writing and sent by first class mail with postage prepaid, return receipt requested, or by a nationally recognized next day courier delivery service, addressed as follows:

If to the Developer:

Prince Edward Development, LLC
P.O. Box 385
Farmville, Virginia 23901

If to the County:

111 South Street
Farmville, VA 23901
Attention: County Administrator

If to the Authority:

c/o Eric A. Tinnell, Esquire
P.O. Box 919
Farmville, VA 23901

Notice shall be deemed given when deposited with the United States Postal Service by first class mail, postage prepaid or when received, if by next day courier delivery service.

- (b) Any addressee may designate additional or different addresses for communications by notice given under this Section to each other.

8.03. Severability.

If any term, covenant, or condition of this Agreement or the application thereof to any person or circumstance shall to any extent be invalid or unenforceable, the remainder of this Agreement, or the application of such term, covenant or condition to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and in lieu of each term, covenant or condition that is found to be invalid or unenforceable, a provision may be added as a part of this Agreement that is mutually agreeable to County and the Developer and is as similar to the invalid or unenforceable term, covenant or condition as may be possible and be valid and enforceable.

8.04. Waiver.

Any party to this Agreement may waive any right or remedy hereunder, if permitted by law, provided that no such waiver shall be deemed to exist unless such waiver is in writing. No such waiver shall be deemed to constitute a waiver of other rights and remedies provided pursuant to this Agreement. The failure to enforce any particular provision of this Agreement on any particular occasion shall not be deemed a waiver by either party of any of its rights hereunder, nor shall it be deemed to be a waiver of that party's rights for any subsequent or continuing breach of such provision.

8.05. Liability of Officers and Agents.

No officer, agent, or employee of the County or the Authority shall be subject to any personal liability or accountability by reason of the execution of this Agreement or any other documents related to the transactions contemplated hereby. Such officers, agents, or employees shall be deemed to execute such documents in their official capacities only, and not in their individual capacities. This Section shall not relieve any such officer, agent, or employee from the performance of any official duty required by law.

8.06. Counterparts.

This Agreement may be executed in several counterparts, including separate counterparts, and each shall constitute the same instrument.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized officers, all as of the date above written.

PRINCE EDWARD DEVELOPMENT, LLC

By: _____
Robert D. Fowler, Managing Member

COUNTY OF PRINCE EDWARD, VIRGINIA

By: _____
County Administrator

APPROVED AS TO FORM:

_____, County Attorney

**INDUSTRIAL DEVELOPMENT AUTHORITY
OF PRINCE EDWARD COUNTY, VIRGINIA**

By: _____
_____, Chairman

EXHIBIT A

DESCRIPTION OF THE LAND