

A RESOLUTION APPROVING THE AWARD OF  
\$35,000.00 IN ECONOMIC DEVELOPMENT  
INVESTMENT PROGRAM FUNDS TO  
SOLID STRUCTURES DECKS AND FENCES LLC  
AND 1252 JENSEN LLC

WHEREAS, the City of Virginia Beach Development Authority (the "Authority") was created pursuant to Chapter 643 of the Acts of Assembly of 1964, as amended (the "Act");

WHEREAS, one of the primary purposes of the Act is to enable development authorities "to promote industry and develop trade by inducing manufacturing, industrial, governmental and commercial enterprises to locate in or remain in the Commonwealth...";

WHEREAS, pursuant to §6 of the Act, the Authority has the power, *inter alia*, "to sell, exchange, donate and convey any or all of its facilities or other properties whether realty or personalty whenever the Authority shall find any such action to be in furtherance of the purposes for which the Authority was organized";

WHEREAS, pursuant to §7 of the Act, "the Authority may foster and stimulate the development of industry in the area within its jurisdiction... [and] may accept, and expend for the purposes stated above, money from any public or private source....";

WHEREAS, pursuant to §10 of the Act, the City of Virginia Beach (the "City") "is authorized and empowered to make appropriations and to provide funds for the operation of the Authority and to further its purposes";

WHEREAS, the economic development goals and objectives of the City include achieving a higher ratio of nonresidential to residential real estate assessments, investing in land and infrastructure to benefit future economic growth, and maximizing the return of economic development efforts through the development and implementation of programs and strategies that facilitate new business investment and encourage retention and expansion activities, thereby improving the overall quality of life in the City;

WHEREAS, another economic development goal and objective of the City is to encourage the conversion of property in the Accident Potential Zone One around NAS Oceana ("APZ-1") that does not conform to the City's zoning amendments adopted in response to the BRAC Order of December 20, 2005 (the "APZ-1 Ordinance"), to uses that do conform to the APZ-1 Ordinance, including the relocation of nonconforming properties to areas of the City outside the APZ-1 and Clear Zones and the location of conforming properties within the APZ-1 and Clear Zones;

WHEREAS, the City established the Economic Development Investment Program ("EDIP") as part of its overall effort to enhance the City's ability to accomplish these goals and objectives;

WHEREAS, pursuant to the authority and power set forth in §10 of the Act, City Council has authorized the transfer of funds in the EDIP account to the Authority and the award of future EDIP appropriations to the Authority in such instances where the Oceana Land Use Conformity Committee (“OLUCC”) has determined, and has advised the Director of Economic Development, that the development or redevelopment for which EDIP funds will be provided will have the effect of furthering the goals of the Oceana Land Use Conformity Program, including bringing new uses into APZ-1 and Clear Zone areas that conform to the APZ-1 Ordinance, converting nonconforming uses to conforming uses, retaining conforming uses in APZ-1 and Clear Zones, and relocating nonconforming uses in APZ-1 and Clear Zones to other areas of the City where such uses would be consistent with the Comprehensive Plan and the City Zoning Ordinance;

WHEREAS, related entities Solid Structures Decks and Fences LLC, a Virginia limited liability company and 1252 Jensen LLC, a Virginia limited liability company (collectively, the “Recipient”) are relocating its business on a parcel of land within APZ-1 located at 1252 Jensen Drive, Virginia Beach, Virginia (the “Premises”). Recipient’s operations within APZ-1 would be a conforming use under the APZ-1 Ordinance;

WHEREAS, based on the proposed project, there is a recommendation by the staff of the Department of Economic Development to award Recipient \$35,000.00 in EDIP funds to underwrite a portion of the costs associated with the location of its operation in APZ-1;

WHEREAS, Section 9(l) of Part C of the EDIP Policy requires the Oceana Land Use Conformity Committee (“OLUCC”) recommend the award of \$35,000 in EDIP Funds prior to the Authority making an award, accordingly, the award contemplated by this Resolution will be contingent on OLUCC making the required recommendation;

WHEREAS, Recipient has represented in its application and the Director of Economic Development (the “Director”), upon review of the application submitted by Recipient, has determined and has advised the Authority it will meet at least one of the following performance criteria (the “Performance Criteria”) within forty-eight (48) months after the date of this Resolution:

- (a) Tax Revenues: The net amount of direct tax revenues returned to the City as a result of the Recipient’s operation will exceed the amount of EDIP Funds provided in forty-eight (48) months; or
- (b) Capital Investment: For every dollar of EDIP funds received, Recipient shall make a new capital investment of at least Ten and 50/100 Dollars (\$10.50).

WHEREAS, the Director supports the award to Recipient of a \$35,000.00 grant under Part “C” of the EDIP, subject to OLUCC’s recommendation supporting the award; and

WHEREAS, the funding for such award shall be as set forth in Section 6 of Part “C” of the EDIP.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY OF VIRGINIA BEACH DEVELOPMENT AUTHORITY:

1. That the Authority hereby finds that the award of \$35,000.00 in EDIP funds to Solid Structures Decks and Fences LLC, a Virginia limited liability company and 1252 Jensen LLC, a Virginia limited liability company (collectively, the "Recipient") will primarily serve the valid public purpose of fostering and stimulating economic development in the City.

2. That the Authority hereby finds that the proposed provision of EDIP funds to the Recipient is in furtherance of the purposes for which the Authority was created.

3. That the Authority hereby finds that without the stimulus of the EDIP award, it is unlikely that the property would be developed to the extent proposed.

4. That as of the date of this action by the Authority, the expansion of Recipient's business in APZ-1 has not yet commenced.

5. That the Authority hereby further finds that, based on the direct benefits to the City of Virginia Beach and its citizens resulting from the increase in tax revenues and new capital investment to be generated by the Recipient, the award of \$35,000.00 in EDIP funds to the Recipient will only incidentally enure to the benefit of private interests.

6. That the Authority hereby finds that, based on the Recipient's representation that it will develop property in an area of the City designated as APZ-1, the City of Virginia Beach and its citizens will benefit from the Recipient's development project and Recipient's operations within the City of Virginia Beach.

7. That the Authority hereby finds that the proposed development is consistent with the City's Comprehensive Plan, the City's Economic Development Strategy, and the City's APZ-1 Ordinance, and that it will serve to influence redevelopment and additional capital investment in adjacent or nearby properties.

8. That based on these findings, the Authority hereby approves the award of \$35,000.00 in EDIP funds to the Recipient to underwrite a portion of the expenses associated with the location of Recipient's operation onto APZ-1.

9. That the Director may require the Recipient to enter into a Recapture Agreement approved by the Director. Such Recapture Agreement shall provide for the repayment by the Recipient of that portion of EDIP funds disbursed should it be determined by a court of competent jurisdiction that the Recipient's use of the Premises is inconsistent with uses allowed by easements in favor of the United States Navy encumbering the Premises, and shall contain certain other provision as may be determined or required by the Director.


10. The appropriate officers of the Authority are authorized to execute and deliver the documents necessary to evidence the award of EDIP funds to the Recipient as set forth herein, so long as such documents are in a form acceptable to the Chair and the City Attorney.

11. The Authority may terminate this award and decline to pay any unpaid funds if the recipient has not requested the full \$35,000.00 within forty-eight (48) months of the date of this Resolution.

12. This award shall not become effective unless and until OLUCC has endorsed in writing the award of EDIP funds as proposed by this Resolution.

Adopted this 16<sup>th</sup> day of November, 2021, by the City of Virginia Beach Development Authority.

CITY OF VIRGINIA BEACH  
DEVELOPMENT AUTHORITY

By   
Secretary/Assistant Secretary

APPROVED AS TO CONTENT:

  
Economic Development

APPROVED AS TO LEGAL  
SUFFICIENCY:

  
City Attorney

RESOLUTION APPROVING THE EXECUTION OF  
THE FIRST AMENDMENT TO THE DOME SITE  
DEVELOPMENT AGREEMENT

WHEREAS, on behalf of the City of Virginia Beach (the "City") and the City of Virginia Beach Development Authority (the "VBDA"), the City Manager and City staff have engaged in extensive negotiations with representatives of Atlantic Park, Inc., a Virginia corporation ("Developer"), in connection with the development of a mixed-use project (the "Project") on and around the VBDA-owned property commonly known as the "Dome Site";

WHEREAS, on November 19, 2019, the City Council and the VBDA each adopted resolutions approving the terms and conditions for the development of the Project, as set forth in a comprehensive agreement between the parties (the "Development Agreement");

WHEREAS, as the parties have proceeded with due diligence and pre-development activities as contemplated by the Development Agreement, they have determined that certain modifications to the Development Agreement are necessary and appropriate to achieve the successful completion of the Project, and a summary of such modifications are set forth in the Summary of Modified Terms, attached hereto as Exhibit A;

WHEREAS, to assist in financing the obligations of the parties with respect to the Project, prior to the execution of the Development Agreement, the parties requested that the General Assembly authorize the use of sales and use tax revenues for the Project as contemplated by §15.2-5928, et. seq. of the Code of Virginia ("Knight-Wagner");

WHEREAS, Knight-Wagner requires submission of a revised report to the General Assembly prior to the execution of an amendment to the Development Agreement; and

WHEREAS, the VBDA is of the opinion that approval of the First Amendment will be beneficial to the residents of the City and the Commonwealth of Virginia, and is in the best interests of the City and in furtherance of the mission of the VBDA.

NOW THEREFORE, BE IT RESOLVED BY THE CITY OF VIRGINIA BEACH, VIRGINIA DEVELOPMENT AUTHORITY:

1. That the VBDA finds the foregoing actions and approvals related to the Project at the Dome Site will promote the trade, commerce, and industry of the City and its residents, give publicity to the City's resources and advantages, and further the City's efforts to reinvigorate a portion of the City designated by the City Council in December 2009 as a recovery zone.

2. That the VBDA hereby authorizes the Chair or Vice-Chair to enter into a First Amendment to the Development Agreement so long as it is consistent with the Summary of Modified Terms attached hereto as Exhibit A, and in legal form acceptable to the City Attorney.

3. That the VBDA authorizes the City Manager to submit on its behalf a detailed written report ("Knight-Wagner Report") to the General Assembly that provides the First Amendment and any changes or amendments to the report caused by the First Amendment.

4. That the Chair or Vice-Chair is hereby authorized to execute the First Amendment not less than thirty (30) days from the date the Knight-Wagner Report was submitted to the General Assembly.

Adopted by the City of Virginia Beach Development Authority, on the 16th day of November, 2021.


CITY OF VIRGINIA BEACH  
DEVELOPMENT AUTHORITY

By:   
Secretary / Assistant Secretary

APPROVED AS TO CONTENT:

  
Economic Development

APPROVED AS TO LEGAL  
SUFFICIENCY:

  
City Attorney

## EXHIBIT A

### SUMMARY OF MODIFIED TERMS

1. The Project will be constructed in two phases. The first phase will be constructed on the Project area north of 18<sup>th</sup> Street (the "Phase I Land") and will consist of (i) two parking garages with a total of approximately 1,459 spaces, (ii) the surf lagoon, (iii) approximately 100,000 sq. ft. of experiential retail, (iv) a 3,500-seat entertainment venue, and (v) 300+/- apartments. The scope and location of Phase II will be determined after Phase I is under construction.
2. Of the planned \$7,500,000 in streetscapes appropriated for the Project, \$6,000,000 will be allocated to Phase I. Although the scope and exact layout of Phase II is to be determined, the First Amendment will include deadlines and processes for the development of that phase.
3. The Performance Grant, which is currently a maximum of \$5,000,000 of Project-generated revenues, will be divided between the phases, with \$3,000,000 allocated to Phase I and \$2,000,000 allocated to Phase II.
4. The Pre-Development Phase for Phase I will be extended from September 23, 2021 until May 1, 2022, with a revised design budget providing for \$3,087,964.92 in previously appropriated design costs being authorized in the Pre-Development phase instead of in the Construction Documents Phase. No additional funds are being appropriated for design costs by this action.
5. The Outside Financing Commitment Date for Phase I will be extended from December 31, 2021 until June 1, 2022. This extension will allow the Developer to obtain more complete plans for its elements and more accurate pricing. Closing on the Developer's financing shall not occur sooner than thirty (30) days after the date the Developer delivers its financing commitment to the City.
6. Garage Operations and Maintenance Costs will be shared by the parties on a pro-rata basis (public v. private use), with the Developer responsible for its share of actual costs during the first year, subject to adjustment to reflect any cost increases to be capped at five percent (5%) per year. If funds are not available, the garages will be managed to meet the available budget.
7. The acquisition cost of each parking space will be fixed at \$30,000 per space.
8. The closing of Phase I under the Development Agreement will be bifurcated. At the initial closing (expected to occur around June 1, 2022), the Developer will (i) close on its construction loan on the Northwest and North Blocks and contribute \$10,000,000 in equity to the project, and (ii) subject the Phase I Land to the lease and the condominium regime, and (iii) make a pro rata contribution towards construction of the private elements based on overall cost of improvements (anticipated to be

approximately 2/3 public and 1/3 private), and the VBDA will contribute up to \$3,000,000 on a pay as you go basis for the start of construction of Phase I (the Entertainment Venue and two parking garages)

9. On or before December 31, 2022, the second closing of Phase I will occur. At that time the Developer will sell bonds to finance the Surf Park, the CDA will issue its Phase I bonds, the VBDA will make the City Contribution (amount needed to finish construction of the garages, less the up to \$3,000,000 spent after the initial closing), and the City will contribute \$6,000,000 for streetscapes. If the second closing does not occur, the parties will have the right to unwind the transaction without recouping amounts spent on construction occurring after the first closing.
10. To provide for the construction of certain off-site public infrastructure, the City proposes to establish CIP #100606 (as described on Exhibit B, the "Offsite Infrastructure"). The appropriation of \$17,729,147 will be to the FY 2021-22 Operating Budget and transferred to the Capital Improvement Program as pay-go funding. Such funds from CIP #100606 would be loaned to the Atlantic Park Community Development Authority (the "CDA") to construct the Offsite Infrastructure. Such amounts constitute CDA debt for purposes of the applicable state law, and accordingly, the obligation for repayment will be included in the debt issuance by the CDA in the second closing of Phase I. The CDA would authorize a contract for the construction of the Offsite Infrastructure, using a cost-participation model where possible. The funds from CIP #100606 would be repaid to the City over time from CDA proceeds, after the retirement of the bonds issued by the CDA for the Project, or from excess proceeds after debt service on the bonds.
11. The First Amendment also contains numerous technical changes to implement the above concepts, such as amended definitions to allow for Phase I and Phase II to proceed on separate tracks.