



MEMORANDUM

TO: Beverly R. Cameron, City Manager
FROM: Bill Freehling, Assistant Director for Economic Development
DATE: May 5, 2016 (for May 10, 2016 meeting)
SUBJECT: Liberty Place TIF incentive

ISSUE

Shall the City of Fredericksburg award an incentive package to the developer of Liberty Place to make the project feasible as currently proposed and to attract sought-after tenants?

RECOMMENDATION

- The City of Fredericksburg should provide an incentive to the developer in the amount of **45 percent of the real estate tax increment for 10 years.**
- The City should collect and retain all other taxes (meals, sales, BPOL, etc.) from Liberty Place businesses.
- The parking agreement should remain the same.

BACKGROUND

Liberty Place is a \$46 million project in the block bordered by Douglas, Winchester, William and Amelia streets in downtown Fredericksburg. It is being developed by an affiliate of Wack General Contractor. Liberty Place will include the following elements:

- Three-level parking facility (one ground level and two underground levels) with a total of 273 parking spaces. 119 of those spaces will be public 24-7, and another 30 will be available to the public on weeknights after 6 p.m. and all day on weekends.
- 44 residential condominiums (Special Use Permit allows up to 51).
- 16,000 square feet of ground-level retail/office space (*Note that this is an increase from the details that City Council heard at the March 8 work session. The developer decided to convert one of the restaurant spaces into retail/office to address concerns of both Council members and nearby residents, and also because of robust demand from companies seeking the Class A downtown office space that Liberty Place offers.*)
- 4,800 square feet of restaurant space (*See above note. The previous plan included about 10,000 square feet of restaurant space. The current plan is for two restaurants instead of three.*)
- 30,000 square feet of office space

The project fits squarely into the goals espoused by both the JumpStart! Fredericksburg plan and the city's Comprehensive Plan. Both call for downtown Fredericksburg being a center of commerce and activity. Liberty Place will bring in residents, workers and visitors, and will

provide the parking infrastructure to handle them all. The JumpStart! plan specifically points to Tax Increment Financing (such as this proposal) to achieve projects such as Liberty Place, and specifically identifies the Liberty Place property as a good candidate for a mixed-use project.

In addition to the public parking that will be part of Liberty Place, the developer plans to spend another \$500,000 on the following infrastructure improvements that will contribute greatly to the appearance of the William Street corridor:

- Burying all overhead utilities
- New storm drain conveyances and inlets
- New curb and gutter
- New brick sidewalks
- New Colonial-style lights
- New landscaping
- Widening Douglas and Winchester streets
- A public plaza along William Street that will feature public benches and a 60-foot-long cascading river to symbolize the city's location at the fall line of the Rappahannock River

Though no tenants have been announced publicly yet at Liberty Place, many deals are close, and the potential tenants are indicative of the increasing popularity of the city and its downtown. Liberty Place will be a very positive project for downtown that will bring in affluent residents and sought-after businesses. It is likely to include about 90-120 office workers, which will provide a significant boost to downtown's daytime and early evening economy, and about 210 employees total. It also represents the city's best opportunity for a parking facility in the increasingly busy William Street corridor.

Because of higher-than-expected project costs, the developer is seeking incentives to make the project viable as currently proposed. The incentives would also allow the developer to reduce rents and thereby recruit desired businesses.

This proposal would allow the developer to receive 45 percent of the incremental real estate tax revenue from Liberty Place for 10 years. Under current projections, that would allow the developer to receive about **\$185,000** per year for 10 years. That is approximately 25 percent of the overall incremental tax revenue expected from Liberty Place. The city would retain the remaining 75 percent (**about \$565,000 annually**), and after 10 years the city would retain 100 percent. The City of Fredericksburg is currently getting approximately **\$30,000** annually in tax revenue from the property (all in real estate tax revenue).

This analysis does not factor in the following elements, which makes it more conservative than it might otherwise be:

- Possible increases in tax revenue over time
- Personal property tax revenue and other smaller tax revenues from Liberty Place
- Indirect tax revenue from Liberty Place's residents and workers
- Effect on nearby development prospects

The City of Fredericksburg anticipates investing approximately \$2 million for the public parking spaces that will be available at Liberty Place (119 during weekdays, 149 on weeknights and weekends), but that investment should not be factored into the details of this proposal. In partnering with the developer in creating the parking facility, the city does not have to acquire land or occupy other property in the area with a parking structure. City Council wants to build a structured parking facility regardless in that area, and there are no other present sites suitable for such a facility.

Other proposals

It makes sense to look at this \$46 million project in the context of other incentive deals that have been approved inside and outside Fredericksburg. Here are a few examples of incentive agreements that are more lucrative to the developer than what is proposed at Liberty Place:

Project	Capital investment	Incentives to owner/developer
Liberty Place (Fredericksburg)	\$46 million	45 percent of incremental real estate tax revenue for 10 years (proposed).
Minor League Baseball complex (Fredericksburg)	\$43 million	100 percent of tax revenue generated inside complex for 20 years, incremental meals and lodging tax revenue from outside complex.
Kalahari Resorts (Fredericksburg)	\$225 million	47.5 percent of all local tax revenue generated at complex for 20 years.
Aquia Town Center (Stafford)	\$40 million	75 percent of tax revenue until total equals \$6.25 million (6-8 years expected).
Virginia Beach Field House (Virginia Beach)	\$15 million	100 percent of real estate taxes returned for 10 years.

FISCAL IMPACT

There is no tax revenue coming from the property currently other than real estate tax revenue of approximately \$30,000 a year. The development is expected to generate another approximately \$410,000 in annual real estate revenue. The project would also generate another roughly \$340,000 in tax revenue annually.

Total gross annual incremental tax revenue: **\$750,000**
 Total anticipated annual incentive: **\$185,000**
 Net increase to city for first 10 years: **\$565,000**
 Net increase to city after 10 years: **\$750,000**

ATTACHMENTS

Tax Increment Financing Ordinance
 Tax Increment Financing Performance Agreement



May 10, 2016
Regular Meeting
Ordinance No. 16-__

MOTION:

SECOND:

RE: DESIGNATING THE BLOCK LOCATED BETWEEN WILLIAM, DOUGLAS, AMELIA, AND WINCHESTER STREETS (GPIN#7789-04-0822) AS THE “LIBERTY PLACE DEVELOPMENT PROJECT AREA” AND ADOPTING TAX INCREMENT FINANCING IN THIS AREA

ACTION: ; Ayes: 0; Nays: 0

First read: _____ **Second read:** _____

Sec. I. Introduction.

Liberty Place Partners, LLC., a Virginia limited liability company, proposes to develop a mixed use development including restaurant, retail, office, and residential uses with underground parking, on the block bounded by William, Douglas, Amelia, and Winchester Streets. However, the development of the project is not feasible without a performance grant from the Economic Development Authority.

The 2006 JumpStart! Economic Development Action Plan targets the William Street corridor for an increase in mixed use development, including retail, office, restaurant and residential uses, and for construction of parking garages. The 2006 JumpStart! Action Plan generally encourages public investment and incentives for these desired developments, and identifies tax increment financing as a potential tool for redevelopment of this corridor.

The 2015 Comprehensive Plan Downtown Policies envisions downtown Fredericksburg as a center of commerce and activity.

The City Manager, EDA, and the Company have negotiated a Performance Grant contained in a proposed Performance Agreement dated April 15, 2016 and submitted with this ordinance for approval by City Council.

Sec. II. Designation of the Project Development Area.

NOW, THEREFORE, BE IT ORDAINED that the Fredericksburg City Council does hereby designate a portion of the City located on the block between William, Douglas, Amelia, and Winchester Streets, GPIN #7789-04-0822 as the “Liberty Place Development Project Area,” more particularly described in Exhibit 1. Real estate taxes in the Liberty Place Development Project Area shall be assessed, collected and allocated in the manner provided in this ordinance for so long as any Obligations or Development Project Cost Commitments are outstanding and unpaid.

1. Terms used in this ordinance have the definitions provided in Code of Virginia §58.1-3245 as modified and supplemented in the Performance Agreement, attached as Exhibit 2.
2. The Commissioner of Revenue shall record in the land book the Base Assessed Value of real estate in the Development Project Area as of July 1, 2015.
3. Annually on July 1 during the Incentive Period, the Commissioner of Revenue shall record in the land book both the Base Assessed Value and the Current Assessed Value of the real estate within the Development Project Area. The Commissioner of Revenue shall report the Tax Increment to the Director of Fiscal Affairs.
4. There is hereby established a special-purpose fund called the “Liberty Place Tax Increment Fund.”
5. Annually, for so long as the Development Project Cost Commitment is outstanding and unpaid, the Director of Fiscal Affairs is directed to allocate and pay 45% of the Tax Increment into the Liberty Place Tax Increment Fund.
6. Annually, for so long as the Development Project Cost Commitment is outstanding and unpaid, upon appropriation by the City Council, the Director of Fiscal Affairs shall transfer the funds in the Liberty Place Tax Increment Fund to the EDA Liberty Place Performance Grant Fund.
7. The City’s obligation to transfer the Tax Increment to the Authority shall not be deemed to be a general obligation of the City, shall be payable solely from the Liberty Place Tax Increment Fund, and shall be subject to and dependent on annual appropriations being made by City Council for such purpose.
8. The City Manager is authorized to execute, deliver, and carry out, the Performance Agreement.
9. The Clerk of Council is directed to deliver a certified copy of this ordinance to the Commissioner of Revenue, the Treasurer, and the Director of Fiscal Affairs.

10. The City Attorney is directed to record a certified copy of this ordinance with the Clerk of the Circuit Court of the City of Fredericksburg.

11. This ordinance is effective immediately.

Votes:

Ayes:

Nays:

Absent from Vote:

Absent from Meeting:

Approved as to form:

Kathleen Dooley, City Attorney

Clerk's Certificate

I, the undersigned, certify that I am Clerk of Council of the City of Fredericksburg, Virginia, and that the foregoing is a true copy of Ordinance No. 16-__ duly adopted at a meeting of the City Council meeting held Date, 2016 at which a quorum was present and voted.

Tonya B. Lacey, CMC
Clerk of Council

**EXHIBIT 1 –
DESCRIPTION OF ALL REAL ESTATE IN THE LIBERTY PLACE DEVELOPMENT PROJECT AREA**

**EXHIBIT 2 –
PERFORMANCE AGREEMENT**

**PERFORMANCE AGREEMENT
CITY OF FREDERICKSBURG, VIRGINIA
FREDERICKSBURG ECONOMIC DEVELOPMENT EDA
LIBERTY PLACE PARTNERS, LLC**

This Performance Agreement is dated _____, 2016, and is between the City of Fredericksburg, Virginia, a political subdivision of the Commonwealth of Virginia ("City"); the Economic Development Authority of the City of Fredericksburg, a political subdivision of the Commonwealth of Virginia ("EDA"); and Liberty Place Partners, LLC, a Virginia Limited Liability Company ("Company").

RECITALS

- A. Code of Virginia §15.2-4905 authorizes the EDA to make grants for the purpose of promoting economic development, under conditions set forth therein.
- B. Code of Virginia Title 58.1 Chapter 32 Article 4.1 (the "TIF Act"), authorizes the City to use tax increment financing to fund an economic development undertaking, including the funding of the EDA to enable it to make grants to promote the economic development of the City.
- C. The Company proposes to develop a mixed use development including restaurant, retail, office, and residential uses with underground parking, on the block bounded by William, Douglas, Amelia, and Winchester Streets.
- D. The 2006 JumpStart! Economic Development Action Plan targets the William Street corridor for an increase in mixed use development, including retail, office, restaurant and residential uses, and for construction of parking garages. The 2006 JumpStart! Action Plan generally encourages public investment and incentives for these desired developments, and identifies tax increment financing as a potential tool for redevelopment of this corridor.
- E. The 2015 Comprehensive Plan Downtown Policies envisions downtown Fredericksburg as a center of commerce and activity.
- F. The City and the EDA have agreed to offer, and Company has agreed to accept, the incentives contained in this agreement, in exchange for the parties' mutual performance of their obligations in this agreement.
- G. The City Council adopted Ordinance 16-__, creating the TIF zone and authorizing the City Manager to execute, deliver, and carry out this agreement, at its regular meeting on April 26, 2016.
- H. The EDA adopted Resolution 16-__, authorizing its Chairman or Vice Chairman to execute this agreement, at its regular meeting on May 9, 2016.

- I. Thomas J. Wack, Manager, is authorized to execute this Agreement on behalf of Liberty Place Partners, LLC in accordance with the Operating Agreement of Liberty Place Partners, LLC dated February 20, 2015.

AGREEMENT

The parties agree as follows.

1. Definitions.

- 1.1. "Base Assessed Value" means the assessed value of real estate within the Development Project Area as shown upon the land book records of the Fredericksburg Commissioner of Revenue on July 1, 2015.
- 1.2. "Current Assessed Value" means the annual assessed value of real estate in the Development Project Area as recorded on the land book records of the Fredericksburg Commissioner of Revenue.
- 1.3. "Development Project Area" means property located on the block bounded by William Street, Winchester Street, Amelia Street and Douglas Street in the City of Fredericksburg, GPIN 7789-04-0822, shown on the "Plat Showing Right-of-Way Dedication and Vacation on the lands of Liberty Place Partners LLC" by Bowman Consulting, dated May 8, 2014, recorded as Instrument #1x-_____ in the office of the Clerk of the Fredericksburg Circuit Court.
- 1.4. "Development Project Cost Commitment" means the EDA's commitment to pay the Performance Grant to the Company.
- 1.5. "Force Majeure Event" means any event, whether foreseen or unforeseen, that
 - 1.5.1. prevents a party, in whole or in part, from (A) performing its obligations under this agreement, or (B) satisfying any conditions to the performing party's obligations under this agreement; and
 - 1.5.2. is beyond the reasonable control of and not the fault of the non-performing party; and
 - 1.5.3. the non-performing party has been unable to avoid or overcome by the exercise of due diligence.
- 1.6. "Incentive Period" means the period of time beginning on the July 1 following Substantial Completion of the Project, and ending September 30 ten years thereafter.
- 1.7. "Performance Grant" means the EDA grant described in paragraph 3 of this agreement.
- 1.8. "Plan" means the Master Condominium entitled "Liberty Place," by mv+a, architect, comprising 13 pages, Project Number 14067.01, dated _____, attached as Attachment1.

- 1.9. “Project” means the mixed use development on property located in the City of Fredericksburg identified as GPIN #7789-04-0822, substantially in accordance with the Plan.
- 1.10. “Substantial Completion” means the date on which the Project is sufficiently complete so that it may be used for all of its intended uses, as evidenced by the issuance of certificates of occupancy for 75% of the total Project square footage, not including the underground portion.
- 1.11. “Tax Increment” means the amount by which the current assessed value exceeds the base assessed value.
- 1.12. “TIF Ordinance” means Ordinance 16-__ “Designating the block located between William Douglas, Amelia and Winchester Streets (GPIN#7789-04-0822) as the ‘Liberty Place Development Project Area’ and adopting Tax Increment Financing in this area” adopted by City Council on April 26, 2016.

2. Eligibility.

- 2.1. In order to be eligible for the Performance Grant, the Company shall achieve Substantial Completion of the Project by September 1, 2019.
- 2.2. If a *Force Majeure* Event prevents Company from meeting the deadline for Substantial Completion of the Project, then the deadline for Substantial Completion shall be extended on a day-for-day basis for so long as the *Force Majeure* Event continues, up to a maximum of 90 days.
- 2.2.1. No later than two working days after becoming aware of the occurrence of a *Force Majeure* Event, the Company shall give the City and the EDA a written report describing the particulars of the occurrence, including an estimate of its expected duration and probable impact on the performance of the Company’s obligations under this agreement.
- 2.2.2. If the suspension of performance continues for a period of more than 90 days as a result of a *Force Majeure* Event, any party is entitled to terminate this agreement by giving written notice to the other parties.

3. Performance Grant.

- 3.1. If the Company is eligible for the Performance Grant under section 2 above, then, during the Incentive Period, it shall receive an annual Performance Grant from the EDA.
- 3.2. The Performance Grant shall be in an amount equal to 45% of the Tax Increment.
- 3.3. The EDA shall pay the Performance Grant annually on September 1.

4. Obligation.

- 4.1. The EDA hereby establishes the “EDA Liberty Place Performance Grant Fund.” All amounts received by the EDA from the City constituting the Performance Grant shall be deposited by the EDA into the EDA Liberty Place Performance Grant Fund and used solely to make Performance Grant payments to the Company. The EDA may appoint the City as its fiscal agent to administer the EDA Liberty Place Performance Grant Fund.
- 4.2. The EDA, as security for the payment of its Obligation, hereby pledges the moneys on deposit in the EDA Liberty Place Performance Grant Fund. The EDA Liberty Place Performance Grant Fund shall be expended for no purpose other than Performance Grant payments to Company as provided in this agreement.
- 4.3. Expenditure by the EDA of the EDA Liberty Place Performance Grant Fund for any purpose other than the Performance Grant shall constitute a default under this agreement. Upon any such default, Company shall have all remedies available at law or in equity, including, without limitation, payment by the EDA of all of Company's costs, including reasonable attorneys’ fees and expenses, incurred in exercising its rights under this agreement.

5. Performance Grant Funding. The City will fund the Performance Grant as follows:

- 5.1. Upon the effective date of the TIF Ordinance, the City shall establish the City Liberty Place Tax Increment Fund.
- 5.2. During the Incentive Period, the City’s Director of Fiscal Affairs shall deposit 45% of the Tax Increment into the City Liberty Place Tax Increment Fund to meet the City's commitments in this agreement, and as provided in the TIF Ordinance.
- 5.3. Subject to Section 5.6, the City shall transfer funds on deposit in the City Liberty Place Tax Increment Fund to the EDA Liberty Place Performance Grant Fund each August 1 during the Incentive Period.
- 5.4. The City will not expend funds on deposit in the City Liberty Place Tax Increment Fund except for transfer to the EDA as provided in this agreement.
- 5.5. Expenditure by the City of the City Liberty Place Performance Grant Fund for any purpose other than appropriation to the EDA Liberty Place Performance Grant Fund shall constitute a default under this agreement. Upon any such default, Company shall have all remedies available at law or in equity, including, without limitation, payment by the City of all of Company's costs, including reasonable attorneys’ fees and expenses, incurred in exercising its rights under this agreement.
- 5.6. The City's obligation to make payments to the EDA of the Performance Grant shall not be deemed to be a general obligation of the City, and shall be subject to and dependent

on annual appropriations being made of the Performance Grant by the City Council for such purpose.

5.7. The City Manager shall include the Performance Grant payment to the EDA in his recommended City budget for each fiscal year during the Incentive Period. The City Manager shall deliver to the EDA and to Company on or before each August 1 during the Incentive Period a written notice specifying the amount of the Performance Grant appropriated or to be appropriated for the fiscal year beginning on the immediately preceding July 1.

6. Dispute resolution.

6.1. The parties shall first endeavor to resolve any disputes, claims or other matters in question between them through direct negotiations, and if such direct negotiations fail, by non-binding mediation, with the site of the mediation being the City of Fredericksburg, Virginia, which is agreed to be the sole and exclusive venue.

6.2. Any agreement reached in mediation must be reduced to writing and executed by the parties; upon such execution, the same shall be enforceable as a settlement agreement.

6.3. Should the dispute, claim, or other matter in question remain unresolved after completion of such negotiation and mediation, but in no event more than ninety (90) days after mediation is requested by a party, either party may then institute a lawsuit in the Circuit Court for the City of Fredericksburg, which shall be the exclusive forum for any litigation arising under the terms of this agreement.

6.4. The laws of the Commonwealth of Virginia govern this agreement.

7. Miscellaneous.

7.1. The Company acknowledges that the City and EDA will not award any additional economic incentives to the Project or to Project tenants for the duration of the Incentive Period.

7.2. Each party giving notice under this agreement shall do so in writing and shall use one of the following methods for delivery: (i) personal delivery, (ii) certified mail, or (iii) nationally recognized overnight courier, with all fees prepaid.

7.2.1. Notice to the City shall be given to:

City Manager
715 Princess Anne Street
Fredericksburg, Virginia

7.3.2 Notice to the Company shall be given to:

Thomas J. Wack, Manager
Liberty Place Partners, LLC
400 Charles Street
Fredericksburg, Virginia 22401

7.3.3 Notice to the EDA shall be given to:

- 7.3. This agreement may be signed in one or more counterparts each of which constitutes an original, and all of which, collectively, constitute only one agreement. The signatures of all of the parties need not appear on the same counterpart, and delivery of an executed counterpart signature page by facsimile is as effective as executing and delivering this agreement in the presence of the other parties to this agreement. This agreement is effective upon delivery of one executed counterpart from each party to the other parties.
- 7.4. The Company acknowledges that the City and the EDA are induced to enter into this agreement by, among other things, the Company's business qualifications and experience. Neither this agreement nor any right or obligation herein may be assigned in whole or in part to another person, partnership, business, or entity of any nature without the prior written approval of the City and the EDA.
- 7.5. The laws of the Commonwealth of Virginia govern all matters arising out of or relating to this agreement and all of the transactions it contemplates. Any legal proceeding against a party arising out of this agreement shall be brought in the Circuit Court of the City of Fredericksburg.
- 7.6. This agreement constitutes the entire agreement between the parties and may not be amended or modified, except in writing, signed by each of the parties.

The parties are signing this agreement on the date included in the introductory clause.

CITY OF FREDERICKSBURG

By: _____
Beverly R. Cameron, City Manager

FREDERICKSBURG ECONOMIC DEVELOPMENT AUTHORITY

By: _____
P. Christopher Hornung, Chair

LIBERTY PLACE PARTNERS, LLC, a Virginia limited liability company

By: Thomas J. Wack
Thomas J. Wack, Manager

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