

RESOLUTION NO. 2011 - 302

A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA, AUTHORIZING THE COUNTY ADMINISTRATOR, OR DESIGNEE, TO EXECUTE AN ECONOMIC DEVELOPMENT GRANT AGREEMENT WITH SILVER CREEK LLLP, ON BEHALF OF ST. JOHNS COUNTY; AND PROVIDING FOR THE EFFECT OF RECITALS; PROVIDING FOR THE CORRECTION OF ERRORS; AND PROVIDING AN EFFECTIVE DATE.

RECITALS

WHEREAS, Silver Creek LLLP (APPLICANT) submitted an application to the St. Johns County Economic Development Agency (AGENCY) requesting business incentives be considered to construct a 157,000+/- square foot Assisted Living/Medical Office Facility (PROJECT) along SR207, just west of Holmes Boulevard in St. Augustine, Florida; and

WHEREAS, the AGENCY prepared a written report and presented the request to the Board of County Commissioners (BOARD) on July 19, 2011; and

WHEREAS, the BOARD approved the incentive request for up to 100% of Impact Fees and Water/Sewer Unit Connection Fees on capital improvements to be constructed for this PROJECT with a value of incentive not to exceed \$619,862; and

WHEREAS, the BOARD directed the County Attorney's office to prepare an Economic Development Grant Agreement; and

WHEREAS, the COUNTY has reviewed the terms, provisions, conditions and requirements of the proposed Economic Development Grant Agreement (attached hereto and incorporated herein), and has determined that accepting the terms of the Economic Development Grant Agreement, and executing said Agreement will serve the interests of the COUNTY.

NOW THEREFORE BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA, THAT:

SECTION 1. Incorporation of Recitals.

The Recitals expressed above are incorporated by reference into the body of this Resolution, and such Recitals are hereby adopted as findings of fact.

SECTION 2. Authorization to Execute.

The County Administrator, or designee, is hereby authorized to execute the Economic Development Grant Agreement on behalf of the County for the purposes mentioned above.

SECTION 3. Correction of Errors.

To the extent that there are typographical and/or administrative errors and/or omissions that do not change the tone, tenor, or context of this Resolution, then this Resolution may be revised without subsequent approval of the Board of County Commissioners.

SECTION 4. Effective Date.

This Resolution shall be effective upon execution by the Chair of the Board of County Commissioners.

PASSED AND ADOPTED by the Board of Board of County Commissioners of St. Johns County, Florida this 18th day of October 2011.

BOARD OF COUNTY COMMISSIONERS OF ST.
JOHNS COUNTY, FLORIDA

By: J. Ken Bryan
J. Ken Bryan--Chair

ATTEST: Cheryl Strickland, Clerk

By: Pam Hatterman
Deputy Clerk



RENDITION DATE 10/19/11

ECONOMIC DEVELOPMENT GRANT AGREEMENT

THIS ECONOMIC DEVELOPMENT GRANT AGREEMENT (“Agreement”) dated this _____ day of _____, 2011, by and between St. Johns County Florida, a political subdivision of the State of Florida, located at 500 San Sebastian View, St. Augustine, Florida, 32084 and **Silver Creek, LLLP** (“Silver Creek”), whose primary place of business is located at 13400 Sutton Park Drive South, Suite 1402 Jacksonville, Florida, 32224.

RECITALS

WHEREAS, Section 125.045, Florida Statutes, declares that a public purpose is served when a County makes economic development grants to private enterprises for the expansion of businesses existing in the County, or the attraction of new businesses to the County; and

WHEREAS, Section 125.045, Florida Statutes, authorizes Counties to spend public funds for economic development activities, including the making of economic development grants; and

WHEREAS, Section 125.045, Florida Statutes, expressly notes that such section of the Florida Statutes, “must be liberally construed in order to effectively carry out the purposes of this section” of the Florida Statutes; and

WHEREAS, consistent with Section 125.045, Florida Statutes, St. Johns County, pursuant to Ordinance 2006-99, *as amended*, adopted and implemented a St. Johns County Business Incentive Program, for the purpose of providing economic development grants for private enterprises (including new industry) which meets the criteria established under Ordinance 2006-99, *as amended*, and receives favorable recommendation for award of an Economic Development Grant by the Board of County Commissioners; and

WHEREAS, Silver Creek seeks to construct a one hundred fifty seven thousand square foot (157,000 sq. ft.) assisted living/medical facility, near State Road 207 (west of Holmes Boulevard) in St. Johns County, Florida; and

WHEREAS, in accordance with Ordinance 2006-99, *as amended*, Silver Creek submitted to the County an application for the award of an Economic Development Grant, seeking incentives to reimburse up to one hundred percent of Impact Fees and certain utility connection fees for capital improvement associated with the project; and

WHEREAS, in accordance with Ordinance 2006-99, *as amended*, the St. Johns County Economic Development Agency (“Agency”) reviewed the application and issued a report evaluating the proposed enterprise.

NOW THEREFORE, the County and Silver Creek (collectively "Parties") hereto for, and in consideration of, the mutual covenants and conditions hereinafter set forth, do hereby agree as follows:

Section 1. Effect of Recitals.

The Recitals expressed above are incorporated by reference into the body of this Agreement, and such Recitals shall be adopted as Findings of Fact.

Section 2. Project Details/Parameters.

The Project shall be restricted to the specific details and/or parameters contained in Silver Creek's Application for Economic Development Grant ("Application"), which was submitted to the County on **June 29, 2011**, attached hereto and incorporated herein by this reference.

Section 3. Duration.

This Agreement shall be effective from _____, 20____, until 11:59 p.m., Eastern Standard Time, _____, 20____.

Section 4. Definitions.

The following terms shall be defined as follows:

- a) *Board* means the Board of County Commissioners of St. Johns County, Florida.
- b) *County* means St. Johns County, a political subdivision of the State of Florida.
- c) *County Administrator* means the County Administrator of St. Johns County, and/or authorized designees of the County Administrator.
- d) *County Fiscal Year* means and shall reference the period time from October 1 of one calendar year, up to and including September 30 of the following calendar year.
- e) *County Ordinance 2006-99* means St. Johns County Ordinance 2006-99, *as amended*, which among other things, adopted and implemented a County Business Incentive Program, created a Public Economic Development Agency, and authorized expenditure of County Funds for Economic Development Grants.
- f) *Full-time Equivalent Jobs* means full-time equivalent positions, as such terms are consistent with terms used by the Florida Department of Labor and Employment Security, and the United States Department of Labor for purposes of unemployment compensation tax administration, and employment estimation, resulting directly for a Project in the County. This term shall no include temporary construction jobs involved in construction of facilities for the Project, or any jobs which have previously been included in any application for tax refunds under Sections 228.1045 and/or 288.106, Florida Statutes.
- g) *Grant Agreement* means a written agreement between the County and Silver Creek that establishes the details of an Economic Development Grant, and this is

- a pre-condition to Silver Creek being able to submit a claim for an Economic Development Grant Payment.
- h) *Program* means the St. Johns County Business Incentive Program, in accordance with County Ordinance 2006-99, *as amended*.
 - i) *Project* means construction of a one fifty seven thousand square foot (157,000 sq. ft.) assisted living/medical office facility near State Road 207 (west of Holmes Boulevard) in St. Johns County, Florida as more specifically described in the Application.
 - j) *Public Agency* means the Public Economic Development Agency that is created by County Ordinance 2006-99, *as amended*.

Section 5. Total Number of New Full-Time Equivalent Jobs.

The Number of New Full-Time Equivalent Jobs was not a factor relied upon by the County with respect to entering into this Agreement. Consequently, the average wage of the New Full-Time Equivalent Jobs in the County shall not be considered a condition associated with Silver Creek submitting a claim for, or receiving, any County Economic Development Grant payment(s).

Section 6. Average Wage of Full-Time Equivalent Jobs.

The average wage of the New Full-Time Equivalent Jobs was not a factor relied upon by the County with respect to entering into this Agreement. Consequently, the average wage of the New Full Time Equivalent Jobs in the County shall not be considered a condition associated with Silver Creek submitting a claim for, or receiving, any County Economic Development Grant payment(s).

Section 7. Payment Fees and/or Taxes Prior to Claim Submission.

In each eligible County Fiscal Year, prior to submitting a claim for Economic Development Grant payment(s), Silver Creek shall pay to the County a total amount equal to the general County portion of County Ad Valorem Taxes. It is expressly understood by the parties that the total amount of County Ad Valorem Taxes (to the extent not adjusted by increased/decreased property values) shall be paid by Silver Creek prior to Silver Creek applying for, and/or receiving any County Economic Development Grant payment(s) in any eligible County Fiscal Year.

Section 8. Authority of the Board to Review, Verify Records.

(a) The Board (or when duly authorized, the Board's designee) specifically and explicitly reserves the right to review, inspect, examine and verify the financial and personnel records of Silver Creek's in order to determine the degree of Silver Creek's compliance with this Agreement, as well as Silver Creek's compliance with County Ordinance 2006-99, *as amended*.

(b) The Board (or when duly authorized, the Board's designee) further specifically and explicitly reserves the right to review, inspect, examine and verify any and all data, information, correspondence and documents, regardless of form or format, of Silver Creek's in order to determine the degree of Silver Creek's compliance with this Agreement, as well as Silver Creeks compliance with County Ordinance 2006-99, *as amended*.

Section 9. Timely Filed Claims; Consequences for Failure to File Timely Claims.

(a) In accordance with County Ordinance 2006-99, *as amended*, the first County Economic Development Grant payment shall be available to Silver Creek, and may be distributed, during the eligible County Fiscal Year in which the requisite capital investment/capital investments is/are recognized on the County's Ad Valorem Tax roll.

(b) For each County Fiscal Year in which Silver Creek is eligible for an Economic Development Grant payment by the County, Silver Creek shall submit a claim to the County for such payment by prior to the end of that particular County Fiscal Year.

(c) In the event Silver Creek fails to timely submit a claim to the County for Economic Development Grant payment during any eligible County Fiscal Year, then Silver Creek shall waive its right to such payment for that particular eligible County Fiscal Year. Any such waiver during any particular County Fiscal Year shall not affect Silver Creek's ability or right to seek County Economic Grant payments in any other particular County Fiscal Year.

(d) Upon written request by Silver Creek, the Board, at its sole discretion, may grant Special Relief to Silver Creek to consider and approve an untimely claim for County Economic Development Grant payment in an eligible County fiscal year. Such Special Relief shall be granted no more than once during the term of this Agreement.

Section 10. Conditions of Compliance; Consequence for Failure to Comply.

(a) In order to remain eligible for County Economic Development Grant payment(s), Silver Creek must abide by and comply with the provisions set forth in this Agreement, any incorporated attachments/exhibits, any amendments hereto and any applicable provisions of County Ordinance 2006-99, *as amended*.

(b) Silver Creek shall complete the Project by no later than 11:59 p.m., Eastern Standard Time, _____, 20____.

(c) Should the Board determine that Silver Creek has failed to comply with the conditions noted above, then the Board shall promptly notify Silver Creek of such non-compliance (and in any event, no later than thirty (30) days after the Board makes such a determination of non-compliance) . Upon the date of such notification, Silver Creek shall be granted thirty (30) days in which to

submit to the County a written report that sufficiently documents Silver Creek's compliance with the conditions set forth above, or that sufficiently details all corrective action taken by Silver Creek in order to come into compliance with the conditions set forth above.

- (d) In the event that Silver Creek fails to sufficiently establish its compliance with the conditions set forth above within thirty (30) days after notification of non-compliance, then the County may terminate this Agreement with no further notice to Silver Creek, and shall be released from any further obligations as provided herein.

Section 11. Conditions Associated with Economic Development Grant Payment(s).

- (a) Each Economic Development Grant payment shall be based upon the total amount of County Ad Valorem Taxes paid by Silver Creek in each eligible County Fiscal Year.
- (b) Silver Creek shall submit each Claim for Economic Development Grant Payment to the County Administrator.
- (c) As noted elsewhere in this Agreement, each Claim for Economic Development Grant Payment must be filed during the eligible County Fiscal Year.
- (d) Each Claim for Economic Development Grant Payment shall include a copy of all receipts or other relevant data and/or documentation related to the achievement of each applicable performance condition specified in this Agreement.
- (e) The amount requested by Silver Creek in each Claim for Economic Development Grant Payment shall not exceed the general County portion of County Ad Valorem Taxes paid by Silver Creek in the eligible County Fiscal Year.
- (f) The first Claim for Economic Development Grant Payment by Silver Creek shall include Silver Creek's authorization to deliver this Agreement to the County Administrator and to disclose the contents of this Agreement to the public.
- (g) Upon receipt of each Claim for Economic Development Grant Payment by Silver Creek, the County Administrator shall review, evaluate and determine: (1) if Silver Creek has met and complied with all applicable terms and conditions of this Agreement; and (2) if the Board has appropriated adequate funds necessary to make the Economic Development Grant Payment. Upon determination that Silver Creek has complied with the terms and conditions of this Agreement, and that the Board has appropriated adequate funding, the County Administrator shall approve each Claim for Economic Development Grant Payment.

- (h) Upon approval by the County Administrator, a check shall be made payable to Silver Creek in the amount of the approved Claim for Economic Development Grant Payment.
- (i) No Economic Development Grant payment shall be made unless, and until, Silver Creek submits a Claim for Economic Development Grant Payment, and such claim is approved by the County Administrator in the manner set forth in County Ordinance 2006-99, *as amended*.

Section 12. Acknowledgment of Compliance as a Condition Precedent to Payment and Consequences for Failure to Comply.

- (a) By executing this Agreement, Silver Creek hereby acknowledges, understands and agrees that compliance with all applicable terms, conditions, provisions and requirements contained in this Agreement shall be a condition precedent to Silver Creek receiving any Economic Development Grant Payment(s).
- (b) By executing this Agreement, Silver Creek further acknowledges, understands and agrees that failure by Silver Creek to comply with all applicable terms, conditions, provisions and requirements contained in this Agreement shall result in Silver Creek losing its eligibility to receive Economic Development Grant Payment(s) in the County Fiscal Year of such non-compliance.

Section 13. Requisite Notice Regarding Grant Payment(s) to Silver Creek.

Pursuant to County Ordinance 2006-99, *as amended*, the following notice is set forth, and incorporated herein:

This Economic Development Grant Agreement is neither a general obligation of St. Johns County, nor is it backed by the full faith and credit of St. Johns County. Payment of each Economic Development Grant Payment is conditioned upon, and subject to, specific annual appropriations by the Board of County Commissioners of St. Johns County of monies sufficient to pay the Economic Development Grant Payment(s) due that year.

Section 14. Effect of Short Fall and/or Unavailability of Funds.

- (a) The County makes no express commitment to provide Economic Development Grant funds any given County Fiscal Year. Moreover, it is expressly noted that Silver Creek cannot demand that the County provide any such funds in any given County Fiscal Year.
- (b) It is specifically noted that if Economic Development Grant Funds are unavailable in one or more County Fiscal Years, Silver Creek is not entitled to receive one or more Economic Development Grants payments in a succeeding County Fiscal

Year in order to make up such short-fall and/or unavailability of funds, unless the Board specifically and expressly authorizes such payment by County Resolution (which shall also be noted in an amendment to this Agreement).

Section 15. Total Amount of Economic Development Grant; Re-calculation of Total Amount Permitted.

- (a) Consistent with, and based upon, the methodology set forth in County Ordinance 2006-99, *as amended*, and all Exhibits attached to and incorporated herein, the total amount of the Economic Development Grant payment(s) (which is referenced throughout this Agreement) represents the annual general County portion of Ad Valorem tax, and the annual tangible person property tax (if applicable).
- (b) It is expressly noted that the actual amount of the Economic Development Grant payment(s) may fluctuate in any given County Fiscal Year based upon periodic increases in property values.
- (c) The Economic Development Grant payment(s) shall be distributed to Silver Creek in annual installments over a maximum period of up to ten (10) years.

Section 16. Eligible County Fiscal Years.

For purposes of this Agreement, the following represent eligible County Fiscal Years:

- | | | | |
|-----|------|------|------|
| (1) | 2014 | (6) | 2019 |
| (2) | 2015 | (7) | 2020 |
| (3) | 2016 | (8) | 2021 |
| (4) | 2017 | (9) | 2022 |
| (5) | 2018 | (10) | 2023 |

Section 17. Economic Development Grant Payment(s) for Each Eligible Fiscal Year.

- (a) As provided elsewhere in this Agreement and subject to Silver Creek's compliance with County Ordinance 2006-99, *as amended*, and the terms and conditions of this Agreement, the amount of Economic Development Grant Payment(s) for each eligible County Fiscal Year is estimated to be an average of approximately \$140,000.
- (b) In any given eligible County Fiscal Year, the amount of an Economic Development Grant payment paid to Silver Creek may be adjusted to reflect an increase in property values.
- (c) Notwithstanding any other provision contained in this Agreement and/or County Ordinance 2006-99, *as amended*, the maximum economic development incentive

available in Economic Development Grant payment(s) to Silver Creek shall not exceed \$619,682, unless otherwise approved by the Board.

Section 18. Notices.

All Official Notices to the **County** shall be delivered either by hand (receipt of delivery required), or by certified mail to:

County Administrator
500 San Sebastian View
St. Augustine, Florida 32084

With a copy to the Office of County Attorney:

Office of County Attorney
500 San Sebastian View
St. Augustine, Florida 32084

All Official Notices to Silver Creek shall be delivered either by hand (receipt of delivery required), or by certified mail to:

Silver Creek, LLLP
13400 Sutton Park Drive South
Suite 1402
Jacksonville, Florida 32224

Section 19. Timeframe for Silver Creeks' Approval, Acceptance and Execution of this Agreement; Consequences for Failure to Comply.

- (a) Consistent with County Ordinance 2006-99, *as amended*, Silver Creek shall, within thirty (30) days of the date that this Agreement is approved by the Board, execute and deliver two (2) copies of this Agreement to the Public Agency.
- (b) Consistent with County Ordinance 2006-99, *as amended*, in the event that Silver Creek fails to timely execute and deliver two (2) copies of this Agreement to the Public Agency within the thirty (30) day time frame set forth above, the effect of such failure on the part of Silver Creek shall result in the automatic termination of the Board's Approval of this Agreement.
- (c) The automatic termination as set forth above shall be deemed a rejection of this Agreement by the Board, and shall therefore render this Agreement null, void and having no further effect. Upon the occurrence of such circumstances, neither the County nor the Board shall be required to provide Silver Creek any notice, official or otherwise of such rejection of the Agreement.

Section 20. Amendments to this Agreement.

Both the County and Silver Creek acknowledge that this Agreement constitutes the complete agreement and understanding of the parties.

Further, both the County and Silver Creek acknowledge that any change, amendment, modification, revision, or extension of this Agreement (other than termination, as noted elsewhere in this Agreement) shall be in writing, and shall be executed by duly authorized representatives of both the County, and Silver Creek.

Section 21. Termination.

This Agreement is automatically terminated should Silver Creek fail to abide by or comply with any term, condition, provision or requirement stated in this Agreement, including any amendments hereto, for which adherence to or compliance with is mandated or required (under County Ordinance 2006-99, *as amended*, or this Agreement and any amendment hereto).

This Agreement may be terminated by the County should the Board determine that Silver Creek is not in compliance with or adhering to any term, condition, provision or requirement of this Agreement (and any amendment hereto) that is necessary for Silver Creek to maintain its eligibility to receive Economic Development Grant payment(s) in any County Fiscal Year for the Duration of this Agreement.

Section 22. Expedited Processing of Local Permits and Licenses.

- (a) To the extent necessary, and in accordance with local, state and federal law, the County Administrator may, upon written request by Silver Creek, direct County staff to expedite the County's permitting/licensing process in order to facilitate progress of the Project as specifically described in the Application.
- (b) It is expressly understood that no term, condition or provision contained in this Agreement shall constitute a waiver by the County of any applicable land development provision, rule, regulation and/or ordinance.

Section 23. Assignment.

In light of the scope and rationale for this Agreement, Silver Creek may not assign, transfer or sell any rights noted in this Agreement. Any attempts to assign, transfer or sell any rights noted in this Agreement by Silver Creek, or any affiliate, subsidiary or parent company of Silver Creek is strictly prohibited. Should Silver Creek or any affiliate, subsidiary or parent company of Silver Creek assign, transfer or sell any rights noted in this Agreement, such action or attempted action shall constitute cause for automatic termination of this Agreement with no further notice to Silver Creek.

Section 24. Severability.

If any word, phrase, sentence, part, provision, section, subsection, article exhibit or other portion of this Agreement, or any application thereof, to any person or circumstance is declared void, unconstitutional, or otherwise invalid for any reason by a court of competent jurisdiction, then such word, phrase, sentence, part, provision, section, subsection, article exhibit or other portion of this Agreement, or proscribed application thereof, shall be severable and all applications thereof not having been declared void, unconstitutional or invalid shall remain in full force and effect.

Section 25. Authority to Execute.

Each party covenants to the other party that it has the lawful authority to enter into this Agreement and has authorized the execution of this Agreement by the party's authorized representative.

IN WITNESS WHEREOF, the parties have set their hand and seals as of the _____ day of _____, 2011.

**ST. JOHNS COUNTY, FLORIDA
BOARD OF COUNTY COMMISSIONERS**
By: _____
County Administrator

ATTEST: CHERYL STRICKLAND, CLERK
By: _____

SILVER CREEK, LLLP
By: _____

WITNESS AS TO:
By: _____
Print: _____