



County of Louisa

ECONOMIC DEVELOPMENT

Memo

To: Christian R. Goodwin, County Administrator
From: Alexandra Stanley, Deputy Clerk
Date: April 4, 2022
Re: Crossing Pointe Development Performance Agreement Amendment

BACKGROUND

Strategic Initiative I	Capitalize on assets to grow, diversify, and strengthen economic well-being of citizens and businesses	✓
Strategic Initiative II	Focus on County's mission, performing defined roles and government functions effectively, being accountable to citizens	✓
Strategic Initiative III	Commitment to identifying and discussing revenue options and opportunities	✓
Strategic Initiative IV	Positive and interactive relationship with citizens, committed to helping citizens gain a greater understanding of their local government	✓

In accordance with Strategic Initiative I, this item is intended to support the economic well-being of Louisa County. The County's core values of integrity, accountability, transparency, and stewardship are all an integral part of this Initiative. It is Louisa County's intention to employ the healthy mix of assets, location, and heritage to grow, diversify, and strengthen the economic well-being of County citizens and businesses alike.

The practice of good governance is the intention of Strategic Initiative II. This requires that Louisa County's mission statement and seven core values remain the focal point in all decisions made by the Board of Supervisors. This item assists in the accomplishment of this goal and expands upon the objectives already attained in previous resolutions.

Louisa County's future economic prosperity depends upon the commitment to identify and discuss favorable revenue options and opportunities. Strategic Initiative III requires that County leaders recognize favorable circumstances and act upon them in a manner that best suits the County's needs. This item is intended to bolster the vitality of Louisa County's future.

The Louisa County Board of Supervisors must maintain a positive and interactive relationship with County citizens and must be committed to helping citizens gain a greater understanding of their local government. This requires that the Board uphold values of integrity, transparency, and accountability as well as foster an environment where citizens' concerns are a priority. This item supports the goals of Initiative IV in order to strengthen civic partnership in Louisa County.

PERFORMANCE AGREEMENT AMENDMENT

This **PERFORMANCE AGREEMENT AMENDMENT** (this “Agreement”) made and entered as of this ___ day of April, 2022, by and between the **COUNTY OF LOUISA, VIRGINIA** (the “County”) and Crossing Pointe Development, LLC and its members **GET CAPTIVE, LLC and GW & FW Holdings, LLC.** (the “Companies”), Virginia Limited Liability Companies that are qualified to transact business in the Commonwealth.

WITNESSETH:

WHEREAS, the County from time-to-time awards financial incentives to encourage and assist existing real estate development companies to facilitate their capital investments in Louisa County;

WHEREAS, the Companies’ request to rezone 35.6 acres from General Commercial (C-2) to Planned Unit Development (PUD) for a mixed used development called Crossing Pointe was approved by the County on December 16, 2019; and

WHEREAS, the Companies intend to develop 138,000 square feet of commercial property, and 321 dwelling units, creating jobs and revenue for the County; and

WHEREAS, by resolution dated November 2, 2021, the County approved a performance agreement for a tax rebate incentive package in favor of the Companies for an amount equal to \$250,000.00; and

WHEREAS, the County has determined that there are direct public purpose benefits to the County from new tax revenues and increased economic activity created by the Capital Investment and Real Estate Improvements, and has determined that the total amount of the tax rebate is appropriate; and

WHEREAS, the County is willing to increase the maximum rebate to an amount not to exceed \$500,000.00. The Tax Rebates (“Rebates”) in favor of Companies are subject to annual appropriations, as described in the Performance Agreement dated November 10, 2021:

NOW, THEREFORE, in consideration of the foregoing, the mutual benefits, promises and undertakings of the parties to this Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties covenant and agree as this performance agreement amendment as follows:

1. The terms of the Performance Agreement dated November 10, 2021, attached hereto as Exhibit A, are hereby incorporated in their entirety and are only modified as set forth in this amendment.
2. The tax rebate will increase from \$250,000 to an amount not to exceed \$500,000.
3. The tax rebate period shall be for five years or until such time that the Companies have received tax rebates totaling \$500,000.00, whichever occurs first.

- 4. The five year tax rebate period shall begin upon commissioning of the pump station for public use and ownership transfer of the new pump station to the Louisa County Water Authority.
- 5. The Companies shall not be entitled to any portion of the rebate described in paragraph 2 above until the regional wastewater pump station is fully constructed, permitted, and in a completely operational state.
- 6. The Companies shall complete all obligations set forth in paragraph 5 above within 18 months from the date of approval of this amended performance agreement. If these obligations are not completed within 18 months from the date of approval of this amended performance agreement, the Companies shall not be entitled to any tax rebate pursuant to the performance agreement and this amended performance agreement.

Notices.

Formal notices and communications between the Parties shall be given either by (i) personal service, (ii) delivery by a reputable document delivery service that provides a receipt showing date and time of delivery, (iii) mailing utilizing a certified or first class mail postage prepaid service of the United States Postal Service that provides a receipt showing date and time of delivery, or (iv) delivery by facsimile or electronic mail (email) with transmittal confirmation and confirmation of delivery, addressed as noted below. Notices and communications personally delivered or delivered by document delivery service shall be deemed effective upon receipt. Notices and communications mailed shall be deemed effective on the second business day following deposit in the United States mail. Notices and communications delivered by facsimile or email shall be deemed effective the next business day, not less than 24 hours, following the date of transmittal and confirmation of delivery to the intended recipient. Such written notices and communications shall be addressed to:

GET Captive, LLC

Facsimile: _____

Email: _____

Attention: _____

if to the County, to:

County of Louisa
 County Administrator
 1 Woolfolk Avenue
 P.O. Box 160
 Louisa, VA 23093
 (540) 967-3400

GW & FW Holdings, LLC

Facsimile: _____

Email: _____

Attention: _____

with a copy to:

County of Louisa
 Director, Economic Development
 1 Woolfolk Avenue
 P.O. Box 160
 Louisa, VA 23093
 (540) 967-4581

Section 7. Miscellaneous.

(a) *Governing Law; Venue.* This amended performance agreement is made, and intended to be performed, in the Commonwealth and shall be construed and enforced by the laws of the Commonwealth. Jurisdiction and venue for any litigation arising out of or involving this amended performance agreement shall lie in the Circuit Court of the County of Louisa, and such litigation shall be brought only in such court.

(b) *Counterparts.* This amended performance agreement may be executed in one or more counterparts, each of which shall be an original, and all of which together shall be one and the same instrument.

(c) *Severability.* If any provision of this amended performance agreement is determined to be unenforceable, invalid or illegal, then the enforceability, validity and legality of the remaining provisions will not in any way be affected or impaired, and such provision will be deemed to be restated to reflect the original intentions of the parties as nearly as possible in accordance with applicable law.

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Witness the following signatures as of the day and year first above written.

COUNTY OF LOUISA

By _____
Name: Christian R. Goodwin
Title: County Administrator
Date: _____, 2022

CROSSING POINTE DEVELOPMENT, LLC

By _____
Name: _____
Title: _____
Date: _____, 2022

GET CAPTIVE, LLC

By _____
Name: _____
Title: _____
Date: _____, 2022

GW & FW HOLDINGS, LLC

By _____
Name: _____
Title: _____
Date: _____, 2022

Attachment: Performance Agreement Amendment 03.22.2022 (7095 : Crossing Pointe Development Performance Agreement Amendment)

PERFORMANCE AGREEMENT

This **PERFORMANCE AGREEMENT** (this "Agreement") made and entered as of this 10 day of November, 2021, by and between the **COUNTY OF LOUISA, VIRGINIA** (the "County") and **CROSSING POINTE DEVELOPMENT, LLC** and its members **GET CAPTIVE, LLC** and **GW & FW HOLDINGS, LLC**, being all the Members of **CROSSING POINTE DEVELOPMENT, LLC**. (collectively, the "Companies"), a Virginia Limited Liability Company qualified to transact business in the Commonwealth.

WITNESSETH:

WHEREAS, the County from time-to-time awards financial incentives to encourage and assist existing real estate development companies to facilitate their capital investments in Louisa County;

WHEREAS, the Companies' request to rezone 35.6 acres from General Commercial (C-2) to Planned Unit Development (PUD) for a mixed used development called Crossing Pointe was approved by the County on December 16, 2019; and

WHEREAS, the Companies intend to develop 138,000 square feet of commercial property, and 321 dwelling units, creating jobs and revenue for the County; and

WHEREAS, the County has approved a tax rebate incentive package in favor of the Companies for an amount equal to \$250,000.00, based upon the following terms and conditions, for the purpose of inducing the Company to make such Capital Investment; and

100% tax rebates on new capital investments and real estate improvements related to the Companies' PUD project, for an amount not to exceed \$250,000.00.

WHEREAS, the County has determined that there are direct public purpose benefits to the County from new tax revenues and increased economic activity created by the Capital Investment and Real Estate Improvements, and has determined that the total amount of the tax rebate is appropriate; and

WHEREAS, the County is willing to provide the Tax Rebates ("Rebates") to the Companies subject to annual appropriations, as described in Section 4 below:

NOW, THEREFORE, in consideration of the foregoing, the mutual benefits, promises and undertakings of the parties to this Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties covenant and agree as follows:

Section 1. Definitions.

The following terms shall have the following meanings in this Agreement, unless the context otherwise requires:

“*Base Tax*” means the existing “as is” taxable value of the property at the time this agreement is ratified. The County will establish the base tax as means to measure the qualifying tax rebates for taxes paid by the Companies over and above the base tax.

“*Capital Investment*” means a capital expenditure by or on behalf of the Companies in taxable real property, taxable tangible personal property, or both, at the Crossing Pointe development.

“*Payment Period*” starts the date when the first tax rebate is issued to the Companies’ and ends when the County has rebated the Companies’ taxes in an amount equal to \$250,000.00.

Section 2. Companies Performance; Reporting; Notifications.

- (a) *Performance:* The Companies will undertake the development, improvements, and manage the project development of Crossing Pointe.
- (b) *Initial Company Notification:* The Companies will provide a written certification to the County 90 days prior to starting the site development of Crossing Pointe, identifying improvements that will trigger qualifying tax rebates as described in this agreement, with a letter executed by senior executives of the Companies, certifying the projected net new amount of Capital Investment/Improvements to be made, and for which projects.
- (c) *Reporting:* Prior to disbursement of annual rebate payments, the Companies’ will provide to the County an Annual Progress Report (Exhibit A) with the following information, (i) prior year capital improvements made within the Crossing Pointe Development, (ii) taxable value of the capital improvements, (iii) County tax receipts justifying the amount of the requested rebate amount.

As noted in Section 4 below, if the ownership of the Crossing Pointe development changes, the Companies shall provide immediate notice to the County.

Section 3. Verification of Tax Rebates.

Verification of Tax Rebates: The Companies hereby authorize the County’s Commissioner of the Revenue and Treasurer, to release to County staff the Companies’ real estate tax, business personal property tax and all other applicable tax information to verify qualifying rebate amounts due to the Companies in accord with the terms of this agreement. Such information shall be marked and considered confidential and proprietary. If the Office of the Commissioner of the Revenue or the Office of the Treasurer should require additional documentation or consents from the Companies to access such information, the Companies shall promptly provide, at the Companies’ expense, such additional documentation or consents as the County may request.

In addition to the verification data described above, in the sole discretion of the County, the County may require such other documentation, including invoices, or audits as may be reasonably required to properly verify the Companies' requested tax rebates.

Section 4. Incentives Payout.

Tax Rebate Payout.

The County shall make annual Rebate payments to the Companies in an amount equal to the qualifying annual taxes paid by the Companies to the County over and above the Base Tax. The total Rebate amount is \$250,000.00, subject to appropriations.

The rebate payments shall be made by the County to the Company in the, but not later than the end of the first quarter of the next calendar year. **(All applicable taxes are due to the County on December 5 each calendar year).**

The Rebate payments shall be conditioned, based upon the following: (i) the amount of each annual rebate shall be equal to the net new taxes the Companies pay to the County each calendar year, over and above the base tax, (ii) qualifying tax rebates shall only apply to taxable, Capital Investment improvements owned by the Companies, (iii) if the ownership of and/or specific Capital Investment improvements within the Crossing Pointe development changes, the Companies shall provide immediate notice to the County, (iv) ownership changes to Capital Investment improvements shall void future tax rebates when the ownership is different than the Companies, specifically, this Agreement terminates immediately upon the Companies conveying all of their interests in the PUD Project to a third party or parties, (v) if the property ownership changes for Capital Investment improvements, where the Companies and/or signatories to this agreement are partial owners of a newly created entity owning the Capital Investment improvements, any qualifying rebate payments shall be made based upon the ownership interests of the Companies and/or signatories to this agreement, in the newly formed ownership entity, (vi) prior to annual rebate payments by the County to the Companies, the Companies shall provide to the County Articles of Incorporation for any newly created entity, clearly identifying the ownership groups(s) of, and ownership interests in, the specific development improvements for which tax rebate payments are being requested; and, (vii) the construction, commissioning, and transfer of ownership and operations of a new regional wastewater pump station by the Companies, to the Louisa County Water Authority ("LCWA"). Specifically, no third party or parties shall be entitled to a tax rebate pursuant to this Agreement.

Although payments to the Companies under this Agreement are subject to appropriations by the Louisa County Board of Supervisors, the County agrees to exercise diligence in seeking the necessary funding for this Agreement and to include such funding in the appropriate budget requests for the appropriate fiscal years.

Section 5. Consequences of Failure of Full Compliance; Reductions.

Failure of Full Performance. No rebate payment shall be paid if the project development improvements do not substantially remain in the Companies' name. If, for example, ownership of the project development improvements changes during the third year of the rebate payment period,

no further rebate payments shall be made, but the Companies shall not be required to repay any Rebate payments previously made.

Section 6. Notices.

Formal notices and communications between the Parties shall be given either by (i) personal service, (ii) delivery by a reputable document delivery service that provides a receipt showing date and time of delivery, (iii) mailing utilizing a certified or first class mail postage prepaid service of the United States Postal Service that provides a receipt showing date and time of delivery, or (iv) delivery by facsimile or electronic mail (email) with transmittal confirmation and confirmation of delivery, addressed as noted below. Notices and communications personally delivered or delivered by document delivery service shall be deemed effective upon receipt. Notices and communications mailed shall be deemed effective on the second business day following deposit in the United States mail. Notices and communications delivered by facsimile or email shall be deemed effective the next business day, not less than 24 hours, following the date of transmittal and confirmation of delivery to the intended recipient. Such written notices and communications shall be addressed to:

Crossing Pointe Development, LLC

200 Carlton Road
P.O. Box 1607
Charlottesville, VA 22902
Email: suttong@tigerfuel.com
Attention: Gordon Sutton

if to the County, to:

County of Louisa
County Administrator
1 Woolfolk Avenue
P.O. Box 160
Louisa, VA 23093
(540) 967-3400

with a copy to:

County of Louisa
Director, Economic Development
1 Woolfolk Avenue
P.O. Box 160
Louisa, VA 23093
(540) 967-4581

Section 7. Miscellaneous.

(a) *Entire Agreement; Amendments.* This Agreement constitutes the entire agreement between the parties hereto as to the Rebate incentives and may not be amended or modified, except in writing, signed by each of the parties hereto. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. The Companies may not assign its rights and obligations under this Agreement without the prior written consent of the County.

(b) *Governing Law; Venue.* This Agreement is made, and intended to be performed, in the Commonwealth and shall be construed and enforced by the laws of the Commonwealth. Jurisdiction and venue for any litigation arising out of or involving this Agreement shall lie in the Circuit Court of the County of Louisa, and such litigation shall be brought only in such court.

(c) *Counterparts.* This Agreement may be executed in one or more counterparts, each of which shall be an original, and all of which together shall be one and the same instrument.

(d) *Severability.* If any provision of this Agreement is determined to be unenforceable, invalid or illegal, then the enforceability, validity and legality of the remaining provisions will not in any way be affected or impaired, and such provision will be deemed to be restated to reflect the original intentions of the parties as nearly as possible in accordance with applicable law.

[THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

Witness the following signatures as of the day and year first above written.



COUNTY OF LOUISA

Christian R. Goodwin
Name: Christian R. Goodwin
Title: County Administrator
Date: _____, 2021

CROSSING POINTE DEVELOPMENT, LLC

David G. Sutton, Jr.
David G. "Gordon" Sutton, Jr.
Title: Manager
Date: 10 NOV, 2021

GET CAPTIVE, LLC

David G. Sutton, Jr.
David G. "Gordon" Sutton, Jr.
Title: Manager
Date: 10 NOV, 2021

GW & FW HOLDINGS, LLC

Frayser F. White
Frayser F. White
Title: Manager
Date: 10 NOV, 2021

Attachment: Ratified Performance Agreement (Exhibit A) 11.10.2021 (7095 : Crossing Pointe Development Performance Agreement

Exhibit A:

COUNTY OF LOUISA ANNUAL PROGRESS REPORT

PROJECT SUMMARY:

Project	
Location	
Amount of Rebate Requested	
Performance Reporting Period	
Performance Date	

Capital Investment Breakdown	Amount
Land	\$
Land Improvements	\$
New Construction or Expansion	\$
Renovation or Building Up-fit	\$
Production Machinery and Tools (If Applicable)	\$
Furniture, Fixtures and Equipment	\$
Other	\$
Total	\$

Projected New Taxable Value with Improvements: \$

Prior Year Taxable Value: \$

COMMENTS:

Discuss project status, including the current level of new job creation (direct/indirect) and capital investment/improvements, changes or likely changes in project’s ownership that may impact annual rebate payments, and other information relevant to project.

TO BE CERTIFIED BY AN OFFICER OF THE COMPANY:

I certify that I have examined this report and to the best of my knowledge and belief, it is true, correct, and complete.

Company: _____

Submitted By: _____
Signature of Official

Name: _____
Print Name

Title: _____

Please return to:

Andy Wade, Economic Development Director, County of Louisa, awade@louisa.org; (540) 967-4581.

Attachment: Ratified Performance Agreement (Exhibit A) 11.10.2021 (7095 : Crossing Pointe Development Performance Agreement

(ID # 7101)

**BOARD OF SUPERVISORS
COUNTY OF LOUISA
RESOLUTION**

At a regular meeting of the Board of Supervisors of the County of Louisa held in the Louisa County Public Meeting Room at 5:00 PM on the 4th day of April 2022, at which the following members were present, the following resolution was adopted by a majority of all members of the Board of Supervisors, the vote being recorded in the minutes of the meeting as shown below:

A RESOLUTION TO REFER AMENDMENTS TO THE LOUISA COUNTY ZONING ORDINANCE TO THE PLANNING COMMISSION FOR ADVERTISEMENT, PUBLIC HEARING AND RECOMMENDATION

WHEREAS, Louisa County Code Chapter 86, Article I. Division 5, governs Conditional Use Permits in Louisa County which includes how said permits shall be subject to such conditions as the governing body deems necessary to carry out the intent of that chapter;

WHEREAS, Louisa County Code Chapter 86, Article I. Division 2, lists performance standards and decommissioning requirements for Solar Generation Facilities in Louisa County;

WHEREAS, a committee of the Board of Supervisors was formed to review ordinances regarding solar generation facilities in Louisa County, and on December 21, 2021, the solar committee reported its recommendations for modifications to these ordinances to the Board, and the solar committee report was approved unanimously by the Board;

WHEREAS, staff prepared amendments to the zoning ordinance, Chapter 86 of the Louisa County Code in accordance with the solar committee report and presented said amendments to the Board;

WHEREAS, the proposed amendments will modify Conditional Use Permit requirements, conditions, and procedures;

WHEREAS, the proposed amendments will modify performance standards and decommissioning requirements; and

WHEREAS, the Board is required to refer proposed amendments to the zoning ordinance, Chapter 86 of the Louisa County Code to the Planning Commission for its recommendations pursuant to Va. Code § 15.2-2285(B).

NOW, THEREFORE, BE IT RESOLVED on this 4th day of April, 2022, that the Louisa County Board of Supervisors hereby refers the proposed amendments to Chapter 86, Article I Division 5 and Article IV Division 2 with the addition of conditional use permit requirements, conditions, and procedures; as well as the addition of performance standards and

decommissioning requirements to the Planning Commission for its recommendations.

A Copy, teste:

Christian R. Goodwin, Clerk
Board of Supervisors
Louisa County, Virginia