



Regular Council Meeting

A G E N D A

June 13, 2023

7:00 p.m.

Administrative

Approval of Minutes
Report of Town Manager
Appearance before Council
Council Comments
Report of Council Committees
Revisions to Agenda

Public Hearings

Consent Agenda (roll call)

Old Business

New Business

- | | |
|----------------|--|
| 1-CC-15-1-6-13 | Resolution – Authorizing Performance Agreement for a Hotel Development (roll call) |
| 2-CC-15-1-6-13 | Presentation – Economic Development Authority |
| 3-CC-15-1-6-13 | Town Code Matters |

Closed Session pursuant to Section 2.2-3711 (a) (5) of the Code of Virginia of 1950, as amended, for discussion concerning a prospective industry where no previous announcement has been made, related to a potential business or industry in the western part of the Town

Closed session pursuant to Section 2.2-3711 (a) (3) of the Code of Virginia of 1950, as amended, for the acquisition or disposition of publicly held real property, where discussion in an open meeting would adversely affect the bargaining position, related to a public park

Citizens may watch the meeting in real time via the Town of Bedford Live Stream website: <https://www.bedfordva.gov/1356/Live-Stream>

**TOWN OF BEDFORD, VIRGINIA
TOWN COUNCIL
ACTION FORM**

ITEM: Resolution – Authorizing Performance Agreement for a Hotel Development

DATE OF COUNCIL MEETING: June 13, 2023

DATE: June 9, 2023

PRESENTATION:

The Town of Bedford through its Economic Development Authority has been working to bring a business-class hotel to the town. After conducting a hotel study in 2021, the study was used to talk with potential hotel developers. One of the respondents has been working with the EDA to locate a selected brand hotel on land owned by the Town. Town Council has also discussed appropriate incentives to leverage toward the project. In order to award these incentives and ensure Town interests are protected in this project, a Performance Agreement is required between the Town Council, Town EDA and the selected developer, DDay Omstay LLC.

The Performance Agreement that was developed defines the minimum brand of hotel that is acceptable, a minimum room count of 75, and a meeting room that will hold 100 people. In exchange for these performance measures, the Town would transfer land to developer. The agreement also provides an incentive structure based on the estimated values of hotel occupancy tax and real property tax improvements on the site. The EDA authorized signing of the Performance Agreement at its meeting on June 9, 2023 pending clear title of property to be conveyed.

ACTION REQUESTED:

Town Council is requested to adopt the attached Resolution authorizing entering into the Performance Agreement.

Attachment:
Resolution

		YES	NO	OTHER	ROUTING	
DATE: _____	BLACK	()	()	()	TOWN ATTY. ()	I.T. ()
	CARSON	()	()	()	COMM. DEV. ()	POLICE ()
APPROVED ()	HAILEY	()	()	()	ELECTRIC ()	PUBLIC SERV. ()
DENIED ()	HARTWICK	()	()	()	ENGINEERING ()	OTHER _____ ()
DEFERRED TO:	JOHANNESSEN	()	()	()	FINANCE ()	
_____	SHOEN	()	()	()	FIRE DEPT. ()	
	STANLEY	()	()	()	H.R. ()	

RESOLUTION

AUTHORIZING TRANSFER OF CERTAIN PROPERTY TO THE ECONOMIC DEVELOPMENT AUTHORITY OF THE TOWN OF BEDFORD, VIRGINIA

WHEREAS, the Town of Bedford, Virginia (the “Town”) has created an authority pursuant to the Industrial Development and Revenue Bond Act, Title 15.2, Chapter 49, Code of Virginia, 1950, as amended (the “Act”), known as the Economic Development Authority of the Town of Bedford, Virginia (the “Authority”), which is a body corporate and politic and a political subdivision of the Commonwealth of Virginia; and

WHEREAS, the Town and the Authority contemplate entering an economic development performance agreement with DDAY OMSTAY LLC (the “Company”), in substantially the form and substance set forth in **Exhibit 1** (the “Agreement”) for the purpose of incentivizing the Company to construct, equip and operate a business-class hotel within the corporate limits of the Town (the “Project”); and

WHEREAS, pursuant to Section 15.2-4917 of the Act and Section 15.2-953 of the Code of Virginia, the Town may authorize transfers and donations of land to the Authority for economic development purposes by resolution without need of a public hearing.

NOW THEREFORE, the Town Council of the Town of Bedford, Virginia, hereby resolves that:

1. The Mayor of the Town is authorized and directed to execute and deliver a deed of transfer of the Property to the Authority, together with customary closing affidavits and signatures, upon behalf of the Town upon final approval as to form by the Town Attorney; and
2. The Town Manager is authorized and directed to execute and deliver the Agreement to the Company and the Authority, upon final approval as to form by the Town Attorney; and
3. This Resolution shall be in effect upon adoption.

Exhibit 1

Performance Agreement

THIS PERFORMANCE AGREEMENT (this “Agreement”) is dated as of the ____ day of _____, 20 __, by and among the **Town of Bedford, Virginia**, a Virginia municipal corporation (the “Town”), the **Economic Development Authority of the Town of Bedford, Virginia**, a political subdivision of the Commonwealth of Virginia under the Industrial Development and Revenue Bond Act (the “Authority”), and **DDAY OMSTAY, LLC**, a Virginia limited liability company (the “Company”), each of the foregoing above a “Party” and collectively the “Parties.” For this Agreement, the Parties state:

Recitals:

WHEREAS, the Company proposes to acquire certain property from the Authority, on which the Company will construct and operate a hotel (the “Site” and the “Project”). The general location and extent of the Site is shown on **Exhibit A**; and

WHEREAS, the Company wishes to construct, equip and operate a flagged hotel, thereby making a capital investment in the approximate amount of \$11,900,000 in taxable real property in the Town (the “Capital Investment”); and

WHEREAS, in making the Capital Investment, the Company will construct and operate the Project, as further set forth herein; and

WHEREAS, the Town wishes to make certain investments in public sewer infrastructure, in part as an incentive for the Company’s locating in the Town and constructing the Project; and

WHEREAS, the Town and the Authority affirmatively find and state that the dominant or animating purpose for entering this Agreement is to serve the public health, safety, general welfare, and prosperity of the inhabitants of the Commonwealth of Virginia by promoting industry and developing trade by inducing manufacturing, industrial, and commercial enterprises to locate in the Town.

Witnesseth:

NOW THEREFORE, in consideration of the above recitals, which are expressly incorporated herein and made a part hereof, and the mutual promises and undertakings contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties mutually covenant and agree as follows:

1. **Local Incentives.** The disbursement of the grant proceeds to the Company will serve as an inducement to the Company to achieve the Targets at the Project. The grant proceeds shall be made available by the Town and received by the Authority and shall be disbursed in multiple payments to the Company as follows:

a. **Transient Occupancy Incentive.** The Authority agrees to make an incentive grant to the Company, as an incentive for it to construct the Project as defined herein, in an

amount equal to the Transient Occupancy Increment, as hereinafter defined, at the following percentages:

Tax Years 1–4: 100% of Transient Occupancy Increment

Tax Years 5–7: 90% of Transient Occupancy Increment

Tax Years 8–10: 80% of Transient Occupancy Increment

Tax Years 11: 70% of Transient Occupancy Tax Increment

Tax Years 12+: 58% of Transient Occupancy Tax Increment

This grant shall be made each year following the calendar year in which the Tax was collected until the total amount of all grants equals \$1,700,000. The final grant may be less than the entirety of the Transient Occupancy Increment for such year, such that the total of all Transient Occupancy Increment grants does not exceed \$1,700,000.

Within 30 days after receipt of the notice and confirmation by the Town Finance Director that the Company is current on all taxes due and payable to the Town and that all other criteria hereof are met, the Town agrees that it will appropriate and make available to the Authority funds in the amount of the Transient Occupancy Increment, if any, due for that year. The Authority will disburse the appropriated funds to the Company within 30 days of receipt of such funds from the Town.

b. Real Estate Investment Incentive. The Authority agrees to make an incentive grant to the Company, as an incentive for it to make the Capital Investment provided herein, in an amount equal to the Real Estate Increment, as hereinafter defined, at the following percentages:

Tax Years 1–4: 100% of Real Estate Increment

Tax Years 5–7: 75% of Real Estate Increment

Tax Years 8–10: 50% of Real Estate Increment

Tax Years 11–12: 25% of Real Estate Increment

Tax Years 13+: 10% of Real Estate Increment

This grant shall be made each year until the total amount of all grants equals \$255,900. The final grant may be less than the entirety of the Real Estate Increment for such year, such that the total of all Real Estate Investment Incentive grants does not exceed \$255,900.

Within 30 days after receipt of the notice and confirmation by the Town Finance Director that the Company is current on all taxes due and payable to the Town and that all other criteria hereof are met, the Town agrees that it will appropriate and make available to the Authority funds in the amount of the Real Estate Increment, if any, due for that year. The Authority will disburse the appropriated funds to the Company within 30 days of receipt of such funds from the Town.

c. Sewer Infrastructure Grant to BRWA. Not later than December 31, 2024, the Town shall make available to the Bedford Regional Water Authority up to \$220,000 for the purpose of upgrades to sanitary sewer infrastructure in the western part of the Town, including the Site.

d. Property Grant. Not later than July 31, 2023, the Authority will grant the Site to the Company for consideration of \$35,000.

e. Conditions for Receipt of Incentives. In order to receive the grants provided for in subsections a. and b. above for any given year, the Company must:

i. Be current on all applicable Town taxes and shared state taxes (e.g., sales tax, if applicable).

ii. Have been in operation (except as may be excused by events of force majeure) for not fewer than 48 weeks out of the previous 12 months, excluding the first year of operation, so long as any such pause in operation does not trigger a default to the franchisor.

iii. Not have made a Substantial Change in Use of the Property following completion of the Project. Notwithstanding the foregoing condition, the Company may contemplate a resubdivision of the Site to include the current contemplated use and an outparcel of a separate use, so long as it obtains prior written consent of the Town and Authority.

iv. Not have sold the property outside of the original ownership of the Company, or members of the Company, that executed this Agreement, unless approved by the Town. Incentives do not convey to a new owner unless approved by the Town. A change in name of the Company does not constitute a sale.

2. **Performance Commitments.**

a. The Company hereby agrees that, not later than July 31, 2025, assuming normal weather patterns, supply chain availability, state permitting timelines and no occurrence of a Force Majeure event (as that term is defined in Section 21 of this Agreement), the Company will have made or cause to be made a Capital Investment of not less than \$11,900,000 at the Site and the Project (the "Capital Investment Target").

b. If the Company has met at least 90% (\$10,710,000) of the Capital Investment Target as of the Performance Date, assuming normal weather patterns, supply chain availability, state permitting timelines and no occurrence of any Force Majeure event to have delayed any development activities, then and thereafter, the Company shall be no longer obligated to repay any portion of the Transient Occupancy Incentive or Real Estate Tax Incentive previously granted to the Company as provided in Section 1. For example only, if, as of the Performance Date for the Capital Investment, the Company has only invested \$8,925,000 (reflecting achievement of 75% of the target), the Company must repay the Authority 25% of the grants paid to it before the Performance Date.

c. The Project shall be Substantially Complete as of the Performance Date. If the Project is not Substantially Complete, then the Transient Occupancy Incentive and the Real Estate Tax Incentive shall immediately cease.

d. Unless the delay is attributed to Force Majeure Events, global supply chain, or permitting outside of the control of Company or its agents, if the Project has not Commenced as of March 31, 2024, the Company shall re-convey the Site to the Authority or the Town, as the Town may direct, for the sum of \$0, with warranty of title in a form acceptable to the Town Attorney and the Authority Counsel, and free and clear of all liens, including mechanics and materialmen's liens, with the exception of statutory liens for taxes and fees not yet delinquent, which shall be prorated as of the date of re-conveyance.

e. The Company shall give the Town and the Authority not less than ninety (90) days' notice of its intent to change the flag affiliation of the Project at any time between the entry of this Agreement and the cessation of the incentives provided in Section 1.a hereof. The Authority or the Town may withhold their consent to such change, and immediately terminate this Agreement, if the proposed flag is not of similar kind and quality to Hampton Inn by Hilton, Fairfield Inn by Marriott or Holiday Inn Express by IHG as of the date of this Agreement.

3. **Compliance with laws.** The Company agrees to comply with all applicable federal, state, and local laws, rules, and regulations in the performance of this Agreement, including but not limited to obtaining and maintaining a Town business license in its name or in the name of its subsidiary or affiliate doing business in the Town, as may be appropriate. The Company must file all appropriate and applicable real estate, personal property, machinery and tools, and other tax returns and notices with the Town, ensure that it has received assessments from the Town for such taxes, and pay all such taxes when due and not claim any exemptions from real estate, personal property, or other local or shared state taxes prior to the final year of the incentive grants provided for in Sections 1.a. and 1.b.

4. **Definitions.** Unless the context otherwise specifies or requires, the following definitions apply to this Agreement:

Base Assessed Value means the assessed real estate tax value of the Site and any improvements thereon, as of January 1, 2023.

Capital Investment means (i) a new investment in taxable real estate, the value of which shall be conclusively determined by the actual sale price for land, or the construction cost value declared on the building permit for construction, or (ii) a new investment in taxable personal property or machinery and tools, the value of which shall be determined by the actual purchase price therefor. Capital Investment shall include payments in soft costs to engineering or other necessary professionals to improve the value of the project up to \$1,000,000.

Commence means that (1) building permits have been issued and (2) actual pouring of footers has occurred or is occurring.

Performance Date means July 31, 2025.

Project means the engineering, design, construction and operation of a business class hotel having no less than 75 rooms with meeting room holding no less than 100 people and limited to the brands of Hampton Inn by Hilton, Fairfield Inn by Marriott or Holiday Inn Express by IHG.

Real Estate Increment means the increase in assessed real estate tax value of the Site as of any given year, as determined by the Commissioner of the Revenue for Bedford County, multiplied by the Town's applicable real estate tax rate.

Substantial Change in Use means a change in the use of the Site such that the essential purposes of the Project and this Agreement are frustrated. A Substantial Change in Use occurs when there is: (1) a change in use such that a new zoning permit and/or site plan is required for all or substantially all of the Site, after full build-out of the Project; (2) an investment in such change in use that exceeds 50% of the Company's investment in the Project, as determined by the construction contract values reported on the building permits therefor; and (3) invocation of this clause by the Town or the Authority within four months following the date of the substantial change in use, making specific reference to this Agreement.

Substantially Complete means having obtained a certificate of occupancy for all or substantially all of the Project from the Town Building Official.

Sufficient Documentation means written documentation and/or electronic data that the Company must supply to the Town and the Authority without cost to either the Town or the Authority that will allow the Town and/or the Authority to determine that the Company has met the particular requirements for which the documentation is being submitted and which will be sufficient to allow the Town and the Authority to verify that the contents of such documents and/or electronic data are accurate and correct. The information must be submitted as addenda to the form attached to this Agreement as **Exhibit C**. Furthermore, if the Town and/or the Authority reasonably determine that Sufficient Documentation has not been provided or that additional documentation is needed, either entity may request further documentation from the Company, which shall be provided by the Company within 30 days of receipt of the request for further information. Furthermore, the Company expressly authorizes the Town and the Authority to request, and the Bedford County Commissioner of the Revenue and Treasurer, and the Town Finance Director to release such information to the Authority and the Town, including the Town Department of Economic Development, as they reasonably determine is necessary to verify compliance with this Agreement.

Tax Year means the Town's standard tax year, based upon the valuation of real estate as of January 1 of any given year, as provided by law.

Transient Occupancy Increment means the total amount of transient occupancy tax paid to the Town during any given tax year.

5. **Sovereign Immunity; No Consequential Damages.** No provision herein shall be construed as a waiver of the sovereign immunity of the Town or the Authority. The Parties also agree to waive all claims against one another for any consequential damages that may arise out of or relate to this Agreement. The Parties, each for themselves, agree to waive consequential damages including, but not limited to, loss of use of the Site, any rental expenses incurred, loss of income, profit, or financing, business, costs of overhead and expenses, whether relating to the Site or to other business, or loss of reputation. The provisions of this paragraph also apply to the termination of this Agreement, and will survive such termination.

6. **Integration.** This Agreement, including the exhibits hereto, constitutes the full and complete agreement of the Parties respecting its subject matter, and any prior or contemporaneous agreements or understandings, whether written or oral, are hereby merged into and superseded by the provisions of this Agreement. This Agreement may only be amended or supplemented by a subsequent writing of equal dignity except where expressly set forth herein.

7. **Assignment.** This Agreement may not be assigned by any Party without the prior written consent of the other Parties.

8. **No Covenants of Officials.** No provision of this Agreement shall be deemed a covenant, agreement, or obligation of any present or future, director, officer, employee, or agent of the Authority or the Town in his or her individual capacity, and neither Town officials nor directors of the Authority nor any officer, employee, or agent thereof executing this Agreement or any related instrument shall be liable personally on this Agreement or on such instrument or be subject to any personal liability by reason of the execution and delivery thereof. No director, officer, employee, or agent of the Authority or the Town shall incur any personal liability with respect to any other action taken by him or her pursuant to this Agreement or the Industrial Development and Revenue Bond Act or any of the transactions contemplated hereby or thereby, provided he or she acts in good faith.

9. **Not a Pledge of Full Faith and Credit.** Any obligation of the Town to pay, set aside, or other appropriate funds for the performance of this Agreement shall be construed to be subject to appropriation, and shall not be construed to be general obligations of the Town subject to Article VII § 10(b) of the Virginia Constitution. THE OBLIGATIONS OF THE AUTHORITY UNDER THIS AGREEMENT ARE NOT GENERAL OBLIGATIONS OF THE AUTHORITY BUT ARE LIMITED OBLIGATIONS PAYABLE SOLELY FROM, AND TO BE PERFORMED SOLELY TO THE EXTENT OF, THE REVENUES AND RECEIPTS DERIVED BY THE AUTHORITY FROM THE TOWN PURSUANT TO THIS AGREEMENT. THE OBLIGATIONS OF THE AUTHORITY AND THE TOWN HEREUNDER SHALL NOT BE CONSTRUED OR DEEMED TO CONSTITUTE A PLEDGE OF THE FAITH AND CREDIT OF THE COMMONWEALTH OF VIRGINIA OR ANY POLITICAL SUBDIVISION THEREOF, INCLUDING THE AUTHORITY AND THE TOWN.

10. **Rule of Construction as to Dates.** If any action is required to be performed, or if any notice, consent, or other communication is given, on a day that is a Saturday or Sunday or a legal holiday in the Commonwealth of Virginia, such performance shall be deemed to be required,

and such notice, consent, or other communication shall be deemed to be given, on the first business day following such Saturday, Sunday, or legal holiday. Unless otherwise specified herein, all references in this Agreement to a “day” or “days” refers to calendar days, and not business days.

11. **Notices.** All notices hereunder shall be in writing and given by personal delivery or sent by (i) certified mail return receipt requested, postage prepaid, (ii) nationally recognized courier services, or (iii) electronic means, at the addresses set forth below, unless changed in accordance with this section. Notice will be deemed received on the earlier of (i) actual receipt, (ii) five business days after deposit in the U.S. Mail, (iii) the first business day after deposit with an overnight courier, or (iv) the first business day after transmission by electronic means.

To Town: Town of Bedford, Virginia
Attn: Town Manager
215 East Main Street
Bedford, Virginia 24523
bwarner@bedfordva.gov

With a copy to: Attn: Town Attorney
Spilman, Thomas & Battle, PLLC
310 First Street, Suite 1100 (ZIP 24011)
P.O. Box 90
Roanoke, Virginia 24002-0090
mlockaby@bedfordva.gov

To Company: DDay Omstay, LLC
Attn: Amit Patel
1010 Little Apple Drive
Thaxton, Virginia 24174
Amit.puja@gmail.com

With a copy to: OPN Law, PLC
Attn: Compton M. Biddle
110 E. 1st Street
Salem, Virginia 24153

To Authority: Economic Development Authority of the
Town of Bedford, Virginia
Attn: Chairman
215 East Main Street
Bedford, Virginia 24523
jbuttram@bedfordva.gov

With a copy to: Attn: Authority Counsel
Caskie & Frost
2306 Atherholt Road
Lynchburg, Virginia 24501
tcraddock@caskiefrost.com

The addresses at which notice must be given may be amended by giving notice in accordance with this section without need of formal amendment to this Agreement.

12. **Choice of Law.** This Agreement shall be construed according to the laws of the Commonwealth of Virginia without regard to its principles of conflict of laws. The Parties consent to exclusive venue and jurisdiction in any state or federal court of competent jurisdiction for the Town of Bedford, Virginia.

13. **Memorandum.** The Parties shall execute a memorandum in substantially the form set forth in **Exhibit B** for recordation in the land records in the Clerk's Office of the Circuit Court of Bedford County.

14. **Attorney's Fees.** The Parties agree that, except as specifically provided in this Agreement, if any Party pursues legal action to enforce the terms of this Agreement, the American Rule shall apply and each Party shall bear its own attorneys' fees and expert costs and no fee shifting shall occur.

15. **Drafter and Severability.** This Agreement has been jointly drafted by the Parties, and is to be construed as jointly drafted and not to be construed against any of the Parties as the drafter, and is to be given its fair meaning. This Agreement is severable, and if any provision is found to be invalid by any court of competent jurisdiction, the remainder shall survive.

16. **Covenant of Authority.** All Parties warrant that their respective signatories below have full authority, and have undertaken such legal actions as may be necessary to ensure such authority, to bind the entities of which they are representatives to the full extent permitted by law. The Company agrees that, during the term of this Agreement, it will not allow its corporate existence to lapse or its certificate of authority to conduct business in the Commonwealth of Virginia to be revoked or cancelled.

17. **Time of the Essence.** Time is of the essence of all obligations set forth herein for which a time is stated.

18. **Survival.** This Agreement is intended to survive, and shall not merge into, any real estate instrument entered between the Parties unless the instrument makes specific reference to this Agreement's merging therein.

19. **Waiver.** The failure or delay of any Party to insist upon strict compliance with any term of this Agreement shall not be construed to be a waiver of this requirement in any subsequent circumstance.

20. **Counterparts; Electronic Signatures.** This Agreement may be executed in one or more counterparts, each of which shall be construed to be an original and production of all of which shall not be necessary to prove the contents of this Agreement. A signed copy of this Agreement delivered by facsimile, e-mail or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

21. **Force Majeure.** No party shall be liable or responsible to the other party, nor be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement (except for any obligations to make payments to the other party hereunder), when and to the extent such party's (the "Affected Party") failure or delay is caused by or results from the following force majeure events ("Force Majeure Events"): (a) acts of God; (b) flood, fire, earthquake, epidemics, pandemics, or explosion; (c) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot or other civil unrest; (d) government order, law, or action; (e) embargoes or blockades in effect on or after the date of this Agreement; (f) national or regional emergency; (g) strikes, labor stoppages or slowdowns, or other industrial disturbances; (h) shortage of adequate power or transportation facilities; and (i) other similar events beyond the control of the Affected Party.

The Affected Party shall give notice within 10 days of the Force Majeure Event to the other parties, stating the period of time the occurrence is expected to continue. The burden shall be on the Affected Party to prove the existence of a Force Majeure Event. The Affected Party shall use diligent efforts to end the failure or delay and ensure the effects of the Force Majeure Event are minimized. The Affected Party shall resume the performance of its obligations as soon as reasonably practicable after the removal of the cause. If the Affected Party's failure or delay remains uncured for a period of 180 consecutive days following written notice given by it under this Section, the other parties may thereafter terminate this Agreement upon 30 days' written notice.

[Signatures on following pages]

Town of Bedford, Virginia:

By: _____

Name: Tim Black

Title: Mayor

Approved as to legal form:

Michael W.S. Lockaby
Town Attorney

[Signatures continue on next page]

**Economic Development Authority of the Town of
Bedford, Virginia:**

By: _____

Name: Jonathan Buttram

Title: Chair

[Signatures continue on next page]

DDAY OMSTAY LLC:

By: _____

Name: Harivadan Patel

Title: President

Exhibit A

Site Description

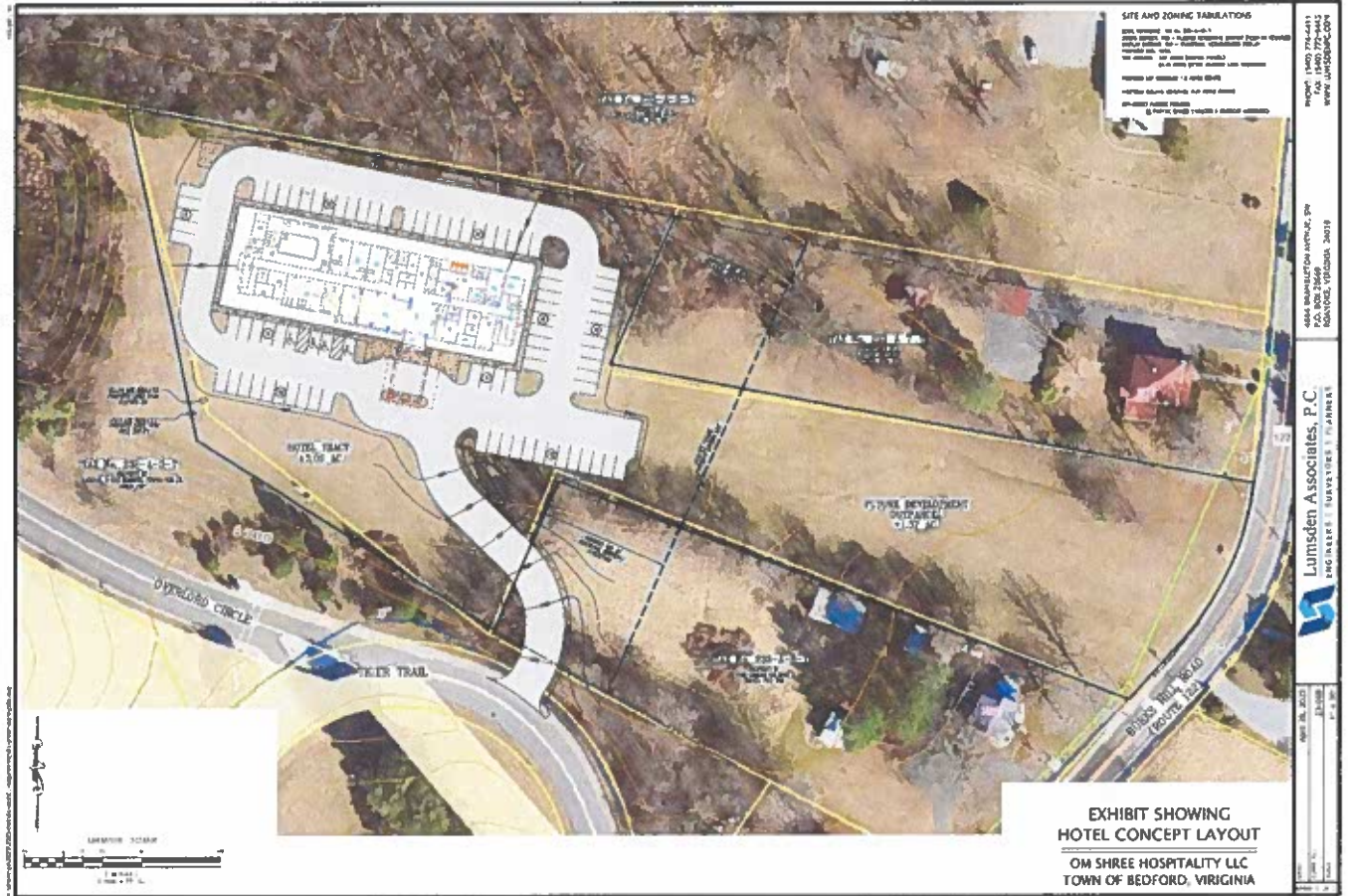


Exhibit B

Prepared by and return to:

Michael W.S. Lockaby
VSB No. 74136
Spilman, Thomas & Battle, PLLC
310 First Street, Suite 1100 (ZIP 24011)
P.O. Box 90
Roanoke, Virginia 24002-0090

Tax Map No. New Parcel Comprising 233-A-19-T (RPC 80503430) and parts of 233-A-7-T (RPC 80503088) and 233-A-8-T (RPC 80503268)

This memorandum is tax-exempt under Section 58.1-811(A)(3), 17.2-266, and 17.1-279(E) of the Code of Virginia, 1950, as amended.

MEMORANDUM OF PERFORMANCE AGREEMENT

THIS MEMORANDUM OF PERFORMANCE AGREEMENT (“Memorandum”) is entered into effective as of the ____ day of _____, 20____, by and between the **ECONOMIC DEVELOPMENT AUTHORITY OF THE TOWN OF BEDFORD, VIRGINIA**, a political subdivision of the Commonwealth of Virginia (the “Authority”), the **TOWN OF BEDFORD, VIRGINIA**, a Virginia municipal corporation (the “Town”), and **DDAY OMSTAY, LLC**, a Virginia limited liability company (the “Company”).

RECITALS

WHEREAS, the Company has entered into a performance agreement with the Town and the Authority relating to certain property situate in the Town of Bedford (the “Property”), and described in **Attachment 1**, which the Company contemplates acquiring from the Authority; and

WHEREAS, the Company expects to make substantial new investments and open a new hotel in the Town of Bedford; and

WHEREAS, under the performance agreement, the Company has committed to attain certain performance targets upon purchase of the Property, and the Town and the Authority are obligated to make certain incentives available to the Company; and

WHEREAS, the animating purpose for the Agreement is the stimulation of additional tax revenue and economic activity through the increase of commerce and the promotion of the public safety, health, welfare, convenience, and prosperity.

MEMORANDUM

NOW, THEREFORE, the parties provide the following information concerning the Performance Agreement:

1. Parties to the Performance Agreement are: the Town of Bedford, Virginia, the Economic Development Authority of the Town of Bedford, Virginia, and DDAY OMSTAY LLC.

2. The Performance Agreement is dated as of _____, 2023. In substance it provides that:

- a. The Company will invest not less than \$11,900,00 in the Town and operate a hotel within the Town, as set forth therein.
- b. In return, the Authority will provide incentive grants, including grants based on a percentage of transient occupancy tax and real estate tax paid, a grant to the Bedford Regional Water Authority in order to increase sewer capacity and availability, and of the Property to the Company for a discounted price.

3. The terms of the Performance Agreement bind the successors and assigns of the parties.

4. The Property is more particularly described in the attached Attachment 1.

5. Notices regarding the Agreement and this Memorandum should be given to:

To Company: DDay Omstay, LLC
 Attn: Amit Patel
 1010 Little Apple Drive
 Thaxton, Virginia 24174
 Amit.puja@gmail.com

With a copy to: OPN Law, PLC
 Attn: Compton M. Biddle
 110 E. 1st Street
 Salem, Virginia 24153

To Town: Town of Bedford, Virginia
 Attn: Town Manager
 215 East Main Street
 Bedford, Virginia 24523
 bwarner@bedfordva.gov

With a copy to: Attn: Town Attorney
 Spilman, Thomas & Battle, PLLC
 310 First Street, Suite 1100 (ZIP 24011)
 P.O. Box 90

Roanoke, Virginia 24002-0090
mlockaby@bedfordva.gov

To Authority: Economic Development Authority of the
Town of Bedford, Virginia
Attn: Chairman
215 East Main Street
Bedford, Virginia 24523
jbuttram@bedfordva.gov

With a copy to: Attn: Authority Counsel
Caskie & Frost
2306 Atherholt Road
Lynchburg, Virginia 24501
tcraddock@caskiefrost.com

6. This Memorandum is not intended to be used to vary, interpret, limit, extend, or otherwise in any manner affect the terms of the Performance Agreement. The purpose of this Memorandum is solely to alert all persons of the existence of an economic development Performance Agreement relating to the Property and certain other matters related thereto. In the event of any difference or discrepancy between this Memorandum and the Performance Agreement, the Performance Agreements shall control in all respects.

[Signatures on following pages]

TOWN OF BEDFORD, VIRGINIA:

Tim Black, Mayor

COUNTY OF BEDFORD,

COMMONWEALTH OF VIRGINIA, to wit:

The foregoing instrument was acknowledged before me this _____, 20___, by Tim Black, Mayor, on behalf of the Town of Bedford, Virginia.

My commission expires: _____

Notary registration number: _____

Notary Public

Approved as to legal form:

Michael W.S. Lockaby
Town Attorney

Signatures Continue on Next Page

ECONOMIC DEVELOPMENT AUTHORITY OF
THE TOWN OF BEDFORD, VIRGINIA:

Jonathan Buttram, Chairman

COUNTY OF BEDFORD,

COMMONWEALTH OF VIRGINIA, to wit:

The foregoing instrument was acknowledged before me this _____,
20___, by Jonathan Buttram, Chair, on behalf of the Economic Development Authority of the
Town of Bedford, Virginia.

My commission expires: _____

Notary registration number: _____

Notary Public

Signatures Continue on Next Page

DDAY OMSTAY LLC

Harivadan Patel, President

CITY/COUNTY OF _____,

STATE/Commonwealth of _____, to wit:

The foregoing instrument was acknowledged before me this _____, 2023, by Harivadan Patel, President, on behalf of DDAY OMSTAY LLC.

My commission expires: _____

Notary registration number: _____

Notary Public

Attachment 1

The following parcels are consolidated by virtue of that certain subdivision plat entitled “RESURVEY OF 3.866 ACRES PROPERTY OF TOWN OF BEDFORD PART AND PARCEL SURVEY OF 0.283 ACRE PROPERTY OF JEFFERY PERSINGS PART AND PARCEL SURVEY OF 0.303 ACRE PROPERTY OF BURTON CONRAD HOLDINGS, LLC TOWN OF BEDFORD, VA.”, dated March 30, 2023, made by W. G. Yaeger, Land Surveyor, said plat being of record in the Clerk’s Office of the Circuit Court for Bedford County, Virginia, at Plat Book 65, page 130. However, their derivation of title is set forth below for the purposes of clarity.

TAX MAP NO. 233-A-19-T

All that certain tract or parcel of land, together with any improvements thereon, and the privileges and appurtenances thereunto belonging, situation, lying, and being in the Town of Bedford, in Bedford County, Virginia, containing 3.866 acre, more or less, being shown and designated as “168401 S.F. 3.866 Ac. ORIGINAL TAX ID. NO. 233-A-19 T”, upon a plat entitled “RESURVEY OF 3.866 ACRES PROPERTY OF TOWN OF BEDFORD PART AND PARCEL SURVEY OF 0.283 ACRE PROPERTY OF JEFFERY PERSINGS PART AND PARCEL SURVEY OF 0.303 ACRE PROPERTY OF BURTON CONRAD HOLDINGS, LLC TOWN OF BEDFORD, VA.”, dated March 30, 2023, made by W. G. Yaeger, Land Surveyor, said plat being of record in the Clerk’s Office of the Circuit Court for Bedford County, Virginia, at Plat Book 65, page 130.

PORTION OF TAX MAP NO. 233-A-8-T

All that certain tract or parcel of land, together with any improvements thereon, and the privileges and appurtenances thereunto belonging, situate, lying, and being in the Town of Bedford, in Bedford County, Virginia, containing 0.303 acre, more or less, being shown and designated as “P&P 2 13193 S.F. 0.303 Ac.”, upon a plat entitled “RESURVEY OF 3.866 ACRES PROPERTY OF TOWN OF BEDFORD PART AND PARCEL SURVEY OF 0.283 ACRE PROPERTY OF JEFFERY PERSINGER PART AND PARCEL SURVEY OF 0.303 ACRE PROPERTY OF BURTON CONRAD HOLDINGS, LLC TOWN OF BEDFORD, VA.”, dated March 30, 2023, made by W. G. Yaeger, Land Surveyor, said plat being of record in the Clerk’s Office of the Circuit Court for Bedford County, Virginia, at Plat Book 65, page 130.

And being that same property acquired by the Town of Bedford, Virginia, from Burton Conrad Holdings, L.L.C., by deed dated June 1, 2023, and of record in the Clerk’s Office aforesaid as Instrument No. 230004415.

The aforesaid conveyance and the warranty and covenants contained in the said deed are made subject to all easements, conditions, reservations and restrictions, if any, which are of record and are now binding upon the subject property.

PORTION OF TAX MAP NO. 233-A-7-T

All that certain tract or parcel of land, together with any improvements thereon, and the privileges and appurtenances thereunto belonging, situate, lying, and being in the Town of Bedford, in Bedford County, Virginia, containing 0.283 acre, more or less, being shown and designated as “P&P 1 12330 S.F. 0.283 Ac.” upon a plat entitled “RESURVEY OF 3.866 ACRES PROPERTY OF TOWN OF BEDFORD PART AND PARCEL SURVEY OF 0.283 ACRE PROPERTY OF JEFFERY PERSINGER PART AND PARCEL SURVEY OF 0.303 ACRE PROPERTY OF BURTON CONRAD HOLDINGS, LLC TOWN OF BEDFORD, VA.”, dated March 30, 2023, made by W. G. Yaeger, Land Surveyor, said plat being of record in the Clerk’s Office of the Circuit Court for Bedford County, Virginia, at Plat Book 65, page 130.

And being that same property acquired by the Town of Bedford, Virginia, from Jeffery Persinger, a natural person, by deed dated June 1, 2023, and of record in the Clerk’s Office aforesaid as Instrument No. 230004416.

The aforesaid conveyance and the warranty and covenants contained in the said deed are made subject to all easements, conditions, reservations and restrictions, if any, which are of record and are now binding upon the subject property.

Exhibit C

PROJECT SUMMARY:

Project	
Location	
Amount of Grant	
Performance Reporting Period	
Performance Date	

PROJECT PERFORMANCE:

Performance Measurement	Target	As of	% Complete
Capital Investment (provide breakdown below)			
Confidence level target will be reached by Performance Date shown above (check one)	High <input type="checkbox"/>	Moderate <input type="checkbox"/>	Low <input type="checkbox"/>

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

COMMENTS:

Discuss project status, including the current level of new jobs and capital investment, progress on targets, changes or likely changes in project's nature that may impact achievement of targets, and other information relevant to project performance. If the project is not on track to meet targets, please provide an explanation.

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: _____

Date: _____