SUBJECT: Enterprise Zone Grant Program, 260-280 King Street East - Agreement - EZ05/03 (PED09301) (Ward 2)

RECOMMENDATION:

(a) That the Enterprise Zone Grant, as detailed within Report PED09301, be applied to 260-280 King Street East, as the development of the property is complete and the terms and conditions of the program have been satisfied.

(b) That the Mayor and City Clerk be authorized and directed to execute the Agreement attached as Appendix “B” to Report PED09301.

EXECUTIVE SUMMARY:

Report PED09301 relates to the processing of an application under the Enterprise Zone Grant Program for the property located at 260-280 King Street East. A location map is attached as Appendix “A” to Report PED09301. This development represents the eleventh completed Enterprise Zone Program application since the program’s inception in 2002. As such, a program of grant payments as contemplated under the terms of the program are discussed within the report as well as within the Agreement attached as Appendix “B” to Report PED09301. Grant payments to 260-280 King Street East will total approximately $360,669.00 over a nine-year period.
BACKGROUND:

On August 22, 2001, Council approved an amendment to the Downtown and Community Renewal Community Improvement Plan which introduced the “Enterprise Zone Grant Program” (“EZ Program”). Since that time, a number of program refinements have been approved by Council. The EZ Program applies to properties within the Downtown Hamilton Community Improvement Project Area. Under the EZ Program at the time of application for 260-280 King Street East, the terms of the program offered a nine-year grant not to exceed the increase in municipal realty taxes as a direct result of the development/redevelopment of the land and/or building. The grant is not to exceed 100% of the municipal realty tax increase during the first five (5) years, 80% in year six (6), 60% in year seven (7), 40% in year eight (8) and 20% in year nine (9).

City Council at its meeting held March 28, 2007 approved an amendment to the EZ Program reducing the grant from a nine (9) year program to a five (5) year program however the five (5) year program is not applicable to 260-280 King Street East. The program also allows a developer of residential condominium units to pass the grant to first condominium purchasers of each unit.

As applications have been received under the EZ Program since 2002, the Downtown and Community Renewal Division has sought Council’s initial approval of the proposed developments. Once the projects have been completed and reassessment by the Municipal Property Assessment Corporation has occurred, staff submits a final report relating to the proposal recommending a program of grants as contemplated under the terms of the EZ Program.

ANALYSIS/RATIONALE:

The purpose of Report PED09301 is to recommend a program of grants for 260-280 King Street East. The redevelopment of the property represents the eleventh completed and reassessed development submitted under the EZ Program. City Council approved the application as an eligible project under the terms of the EZ Program at its meeting held February 15, 2006. The project included the development of a mixed-use 11 storey, 123 unit apartment building with commercial uses on the ground floor and an internal parking garage. The actual costs incurred in developing the property were $16,000,000.00.
Downtown and Community Renewal staff, in co-operation with staff from the Taxation and Legal Services Divisions, developed the “Agreement” concerning the program of grant payments under the terms of the EZ Program. Appendix “B” to Report PED09301 is the Agreement that specifically relates to the development at 260-280 King Street East. A Signing Officer for Spallacci Contracting Ltd., the owner of the property, has signed the Agreement thereby accepting the terms and conditions outlined therein. The following provides an overview of the grant calculation for 260-280 King Street East as presented in Appendix “B” to Report PED09301.
The Grant shall be calculated according to the following formulas:

Grant Level: 100%
Total Eligible Costs (Maximum): $16,000,000.00

Pre-project AV: $389,000.00 Year: 2005
Municipal Levy: $11,200.18
Education Levy: $7,455.51
Pre-project Property Taxes: $18,655.69

Post-project AV: $4,696,310.00 Year: 2009
Municipal Levy: $62,724.34
Education Levy: $11,834.70
Post-project Property Taxes: $74,559.04

Municipal Tax Increment = Post-project Municipal Taxes (actual) - Pre-project Municipal Taxes

“Grant Payment in Year 1” (first full calendar year after re-valuation of the completed and occupied project by the Municipal Property Assessment Corporation) or the “Initial Grant Payment” = Municipal Tax Increment*100%

Calculation of Grant Payment in Year 1 (Initial Grant)
Pre-project Municipal Taxes = Municipal Levy = $11,200.18
Municipal Tax Increment = $62,724.34 - $11,200.18 = $51,524.16
Grant Payment in Year 1 = $51,524.16 x 1.0 = $51,524.16

EXAMPLE GRANT PAYMENT SCHEDULE
(subject to re-calculation each year and up to the total eligible costs)

<table>
<thead>
<tr>
<th>Year*</th>
<th>Grant Factor (2)</th>
<th>Tax Increment (3)</th>
<th>Grant (2*3)</th>
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<td></td>
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<td>$360,669.12</td>
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</table>
Grant Terms

The Agreement also outlines the terms and conditions of the grant payments over the nine-year period. Key terms and conditions include the following:

- The total grant under the grant program shall not exceed $16,000,000 with respect to 260-280 King Street East.
- Property owners must maintain property taxes in good standing. Properties must have no outstanding work orders and/or orders or requests to comply from any City department or other regulatory authority.
- The grant payment is recalculated annually.
- Annual grant payments after the first grant payment are adjusted downwards in the event the municipal tax increment in any subsequent year has been reduced.
- The property must be maintained in its rehabilitated state.
- If property taxes are owing for more than one (1) full year, the City will have the option, without notice and at its own discretion, to terminate all future Grant payments.
- In the event of the sale, conveyance, transfer or entering into of any agreement of sale or transfer of the title of the Property the City shall have absolute discretion in ceasing any further grant payments.

In addition, on an annual basis, prior to the issuance of a grant payment, the property owner will be required to sign an affidavit attesting to compliance with the terms and conditions outlined within the Agreement.

**ALTERNATIVES FOR CONSIDERATION:**

Report PED09301 recommends a program of grant payments for the development of 260-280 King Street East.

The alternative to the recommendations includes not executing the attached Agreement and subsequent grant payments or to reduce the amount of the annual grant payment. Choosing such an alternative would undermine the principles of the EZ Program and downtown renewal efforts generally and is not recommended.

**FINANCIAL/STAFFING/LEGAL IMPLICATIONS:**

**Financial** – The City is collecting full property taxes on the property and in turn providing a grant for nine (9) years declining each year after the fifth (5th) year by 20% based on the increase in the municipal portion of the taxes attributable to the development of 260-280 King Street East. Following year five (5) of the grant payment, the City will start to realize the positive results of this program from a financial perspective.

**Staffing** – EZ Program applications and subsequent grant payments will continue to be processed by the Downtown and Community Renewal and Taxation Divisions. There are no additional staffing requirements.
Legal – The Agreement attached as Appendix “B” to Report PED09301 has been developed in consultation with staff of Legal Services.

POLICIES AFFECTING PROPOSAL:

Report PED09301 relates to the processing of an application under the Enterprise Zone Grant Program which is contained within the City’s Downtown and Community Renewal Community Improvement Plan. The application for the property is consistent with the policy direction of the plan.

RELEVANT CONSULTATION:

Comments from the Taxation and Legal Services Divisions of the Corporate Services Department have been incorporated within Report PED09301. The recommendations within this report are in a form satisfactory to the City Solicitor.

CITY STRATEGIC COMMITMENT:

By evaluating the “Triple Bottom Line”, (community, environment, and economic implications) we can make choices that create value across all three bottom lines, moving us closer to our vision for a sustainable community, and Provincial interests.

Community Well-Being is enhanced. ☑ Yes ☐ No
Partnerships are promoted.

Environmental Well-Being is enhanced. ☑ Yes ☐ No
Human health and safety are protected.

The rehabilitation of the building stock and the development of properties in the Downtown makes efficient and effective use of City services as well as protecting human health and safety.

Economic Well-Being is enhanced. ☑ Yes ☐ No
Investment in Hamilton is enhanced and supported.

Downtown and Community Renewal programs lead to effective partnerships with community stakeholders and the development community. Developers and property owners invest in Downtown properties leading to property assessment increases through the rehabilitation of buildings and properties.

Does the option you are recommending create value across all three bottom lines? ☑ Yes ☐ No

Do the options you are recommending make Hamilton a City of choice for high performance public servants? ☑ Yes ☐ No

Hamilton continues to lead initiatives related to renewal. Such initiatives are professionally stimulating and result in Hamilton being a choice for employment to those interested in bettering community life.

HM:vk
Attachs. (2)
Appendix 'A' to Report PED09301

Location Map

File Name/Number: 260-280 King Street East
Date: October 15, 2009
Appendix "A"
Scale: N.T.S.
Planner/Technician: HM/AL

Subject Property

260 - 280 King Street East

Ward 2 Key Map
Date: October 26, 2009

Property Information

Name of registered property owner: Spallacci Contracting Ltd.
Attention: Rudi Spallacci

Address of property (subject of Grant Program): 260-280 King Street East, Hamilton

Roll Number(s): 02018103160

Mailing Address of Owner (where address is different from address of property)

Spallacci Contracting Ltd.
85 Lancing Drive, Unit Q
Hamilton, Ontario
L8W 2Z9

Attention: Rudi Spallacci

Phone No: (905) 389-6421
Fax No: (905) 389-0820

Grant Calculation

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Grant Terms

1. The actual amount of annual Grant payments is subject to re-calculation of (Municipal Tax Increment*the applicable %) in each and every year.

2. The total value of the sum of the annual Grant payments that may be provided under the Enterprise Zone Program shall not exceed the total eligible costs of the said redevelopment that have been accepted by the City ($16,000,000).

3. Annual Grant payments shall be paid, subject to these terms and conditions, by the City to a maximum of 9 payments. Such payments shall cease when the total amount paid out equals the total eligible cost amount as determined by the City, or after 9 grant payments, whichever comes first.
4. The total value of the eligible Grant provided under this Program shall be reduced by the amount of any property tax arrears in respect of any and all taxes that have been cancelled or reduced on the subject property by the City under any other programs or by relief allowed under any statute.

5. The Grant Payment in Year 1 and subsequent annual Grant payments are calculated based upon changes in property taxes as a result of completion of the accepted eligible works and construction and improvement to the property.

6. If at any point after the original redevelopment of the land, new construction is added to the land that is not part of the original Enterprise Zone Grant application, the Grant will be calculated only in respect of the original eligible costs, original redevelopment works, and original building size contained in the original Enterprise Zone Grant application.

7.1 The initial Grant payment is not payable by the City until each of the following conditions are fulfilled to the satisfaction of the City:

(a) redevelopment of the property is completed in accordance with the proposed redevelopment as specified in the Enterprise Zone Grant application;

(b) the Owner has supplied the City with evidence satisfactory to the City as to the amount of the eligible costs incurred by the Owner;

(c) the Owner has satisfied the City that the total eligible costs, incurred in respect of the redevelopment have been paid in full and that there are no liens, claims or litigation in respect of the Owner's obligation to pay the total eligible costs;

(d) the Owner has satisfied the City that the accepted redevelopment that is subject of the Grant application has not been substantially altered or has not been demolished;

(e) the Owner has satisfied the City that there are no outstanding work orders and/or orders or requests to comply from any City department or other regulatory authority in respect of the redevelopment, the property and the business of the Owner conducted on the land;

(f) the Owner has satisfied the City that the Owner, its redevelopment and property are in full compliance with:

(i) any Agreement(s) relating to the property in favour of the City, including any Agreement relating to: condominium, service, site plan approval, encroachment, joint sewer & water use, easement or other Agreement; and,

(ii) by-laws of the City and provincial and federal legislation and regulations.

(g) the Owner has satisfied the City that the assessed value of the subject property has increased as a result of the said redevelopment to the property and that the assessed value was increased for reasons that meet the eligibility requirements of the City's Enterprise Zone Program;
(h) the Owner or the municipality has not appealed said increased assessed value and there exists no other pending appeal which has not been settled completely in respect of the assessed value as of a date which is either in advance of or as of a date, which follows the said redevelopment;

(i) the Owner has satisfied the City that the property taxes for the year during which property taxes were calculated pursuant the said increased assessment and for each of the preceding years, have been paid in full, have not been deferred and there are, at the time of application for payment of the annual Grant payment, no instalments for the current year remaining to be invoiced and paid;

(j) the Owner has satisfied the City that the Owner, as of the date of the proposed Grant payment, has paid in full and not deferred all other charges (where applicable) against the property in favour of the City, including but not limited to: Development Charges, park land dedication fees, special assessments and frontage charges.

7.2 Subsequent annual grants as set out herein will be payable each year upon the written request of the Owner where the Owner has satisfied the City as to the matters set out in paragraphs 7.1 (d), (e), (f), (h), (i) and (j) above.

7.3 The amount of each subsequent grant is equivalent to the Municipal Tax Increment (MTI) for the year in which payment is to be made. The MTI shall be calculated as shown in Section 3 of this Agreement. It is acknowledged that the amount of this grant may vary up or down from year to year during the term of this Agreement. No grant is payable where the MTI is zero or a negative value.

8. The decision of the City regarding the total amount of eligible costs and the calculation of the actual total redevelopment Grant and annual Grant payments is final.

9. Payment of the Grant and the actual amount of the total Grant will be subject to the City’s review and satisfaction with all reports and documentation submitted in support of the application, including but not limited to: documentation of the estimated and actual costs of eligible works. Any and all of these costs may be, where required by the City subject to verification, third party review or independent audit, at the expense of the Owner.

10. Grants are not payable by the City until such time as all taxes eligible for a Grant have been billed by the City, and all outstanding taxes have been paid in full for all years by the Owner. Grant cheques will not be issued if there is an outstanding tax payment.

11. On an annual basis, the City, upon ascertaining that the Owner is in compliance with this Agreement and has met all and any other requirements of the City, shall pay the annual Grant payment.
12. If in the opinion of the City the property is not maintained in its rehabilitated condition, the City may, at its own discretion and without notice, terminate all future Grant payments and require repayment of all Grant payments already paid out by the City to the Owner.

13. The City retains the right at all times not to make any or all of the Grant payments or to delay payment where the City deems that there is non-compliance by the Owner with this Agreement. In particular, without limiting the generality of the foregoing, the Grant is conditional upon periodic reviews satisfactory to the City to there being no adverse change in the redevelopment and to there being compliance on the part of the Owner with all other requirements contained in this Agreement.

14. Where property taxes are in arrears on the subject property for a year or more, the City may, at its discretion and without notice, terminate all future Grant payments.

15. In the event of the sale, conveyance, transfer or entering into of any agreement of sale or transfer of the title of the Property the City shall have absolute discretion in ceasing any further grant payments.

16. Where the Owner is a corporation the Owner covenants and agrees that in the event that:

a) the Owner fails to supply the City, in a form satisfactory to the City such information relating to the ownership of its shares as the City may from time to time require: or

b) without the written consent of the City first had and obtained:

i) the Owner issues or redeems any of its shares or transfers any of its shares;

ii) there is a sale or sales of the shares of the Owner which result in the transfer of the legal or beneficial interest of any of the shares of the Owner; or

iii) the Owner amalgamates, merges or consolidates with any other corporation

and the result of any of the foregoing is a change in the effective control of the majority of the voting shares of the Owner, or the requested information is not provided, then future grant payments under the Program shall cease at the absolute discretion of the City.
IN WITNESS WHEREOF the parties duly execute this Agreement, as follows as of the day and date set out in the date of this Agreement:

Approved As To Form: CITY OF HAMILTON

Legal Services

(1 - )

______________________________
Fred Eisenberger, Mayor

______________________________c/s
Kevin C. Christenson, City Clerk

. OWNER

per: ____________________________

per: ____________________________c/s

I/We have authority to bind the corporation.