

INTRODUCED: October 13, 2014

AN ORDINANCE No. 2014-218-200

To authorize the Chief Administrative Officer, for and on behalf of the City of Richmond, to execute a Stone Brewing Company Performance Agreement between the City of Richmond, the Economic Development Authority of the City of Richmond and Koochenvagner’s Brewing Co., doing business as Stone Brewing Co., for the purpose of stimulating revitalization and promoting tourism in the City.

Patron – Mayor Jones

Approved as to form and legality
by the City Attorney

PUBLIC HEARING: OCT 27 2014 AT 6 P.M.

§ 1. That the Chief Administrative Officer, for and on behalf of the City of Richmond, be and is hereby authorized to execute a Stone Brewing Company Performance Agreement between the City of Richmond, the Economic Development Authority of the City of Richmond and Koochenvagner’s Brewing Co., doing business as Stone Brewing Co., for the purpose of stimulating revitalization and promoting tourism in the City. The Stone Brewing Company Performance Agreement shall be approved as to form by the City Attorney and shall be substantially in the form of the document attached to this ordinance.

§ 2. This ordinance shall be in force and effect upon adoption.

AYES: 8 NOES: 0 ABSTAIN: _____

ADOPTED: OCT 27 2014 REJECTED: _____ STRICKEN: _____



CITY OF RICHMOND

INTRACITY CORRESPONDENCE

O&R REQUEST

DATE: October 7, 2014

EDITION 1

TO: The Honorable Members of City Council

RECEIVED
OCT 13 2014

THROUGH: Dwight C. Jones, Mayor *DCJ*

FROM: Christopher Beschler, Chief Administrative Officer **OFFICE OF CITY ATTORNEY**

FROM: Norm Butts, Deputy Chief Administrative Officer, Finance & Administration *N Butts*

FROM: L. Peter Downey, Director of Economic and Community Development *L Downey*

RE: Performance Agreement by and between the City of Richmond, Economic Development Authority of the City of Richmond, and KoochenVagener's Brewing Co. d/d/a Stone Brewing Co., a California corporation

ORD. OR RES. No. _____

PURPOSE: To authorize the Chief Administrative Officer, on behalf of the City of Richmond, to execute the Performance Agreement between the City of Richmond, and KoochenVagner's Brewing Co. d/d/a Stone Brewing Co., a California corporation ("the Company") for the purpose of (1) attracting new industry, added tax base, new jobs (2) stimulating revitalization and (3) promoting tourism in the City. The EDA will develop the facility ("the Development") in the Greater Fulton Community and lease it back to the Company for up to 25 years.

REASON: In order for the City to enter into the proposed Performance Agreement with the Company, City Council action is required.

RECOMMENDATION: The City Administration recommends adoption of this ordinance.

BACKGROUND: After an eight month site selection process that generated over 250 responses from communities along the eastern seaboard, the Company has chosen the City of Richmond in which to expand their operations. It plans to locate an east coast brewery, distribution and a Bistro in the area of the City known as the Greater Fulton Community.

The City has worked diligently with the Company to identify a suitable location in the City to meet the logistical and operational needs of the Brewery and Bistro, while stimulating revitalization, jobs and tourism in an area of the City that needs private investment. Through that process, the City identified opportunities to partner with the Economic Development Authority to develop the Facility and to assist in achieving key economic development objectives.

The EDA will serve as the developer and owner of the Facility, which will be built in two phases. Phase I will be a 200,000 +/- square foot brewery and distribution facility expected to cost up to \$23 million. The Brewery is scheduled to be open and operational by April 2016 and employ 90 full time employees with an average salary of \$57,024. Within the later of three years of the completion of Phase I or twelve months after the closure of Water Street by the City, the Company and the EDA will commence the construction of Phase II, which is estimated to cost \$8 million and will consist of a bistro-style restaurant and beer garden that will employ approximately 200 employees. The Economic Development Authority will then lease the Facility back to the Company for a period up to 25 years. The debt service on the loan will be repaid through lease revenues, over the lease term.

In addition to the real estate investment, the Company require a minimum of \$41 million investment in machinery and tools and a minimum of \$1.7 million in furniture and fixtures. The restaurant and retail sales are projected to total \$10 million per year.

The Performance Agreement will be between the Company, the City of Richmond and the EDA and sets forth the terms and conditions under which the Company will relocate its east coast operations to Richmond, Virginia.

FISCAL IMPACT / COST: The Performance Agreement stipulates that the City shall provide a \$1,500,000 economic Development Grant and a \$500,000 sustainability Grant to the Company. These payment of these grants shall be funded by the new taxes generated by the project.

FISCAL IMPLICATIONS: The Performance Agreement stipulates that the City will work with the Company and the EDA to finance the development of the production facility and bistro. The transactions enabled by the package of ordinances are expected to generate approximately \$31,000,000 in taxable real estate improvements and investment in the City to include a brewery, distribution facility, Bistro and Beer Garden. The projected investment in machinery and tools in the first five years is a minimum of \$41 million and \$1.7 million for personal property.

BUDGET AMENDMENT NECESSARY: None

REVENUE TO CITY: New taxes generated from the new development, Machinery and Tools taxes, Personal Property taxes, Real Estate taxes, BPOL, Meals taxes, Retail Sales taxes, and DPU PILOT.

DESIRED EFFECTIVE DATE: Upon adoption.

REQUESTED INTRODUCTION DATE: October 13, 2014

CITY COUNCIL PUBLIC HEARING DATE: October 27, 2014

REQUESTED AGENDA: Regular.

RECOMMENDED COUNCIL COMMITTEE: Finance and Economic Development

CONSIDERATION BY OTHER GOVERNMENTAL ENTITIES: The Economic Development Authority must approve the proposed Performance Agreement.

AFFECTED AGENCIES: Chief Administrative Officer; City Attorney; Economic and Community Development; Planning and Development Review; Parks, Recreation and Community Facilities; and Public Works.

RELATIONSHIP TO EXISTING ORD. OR RES.:

REQUIRED CHANGES TO WORK PROGRAM(S): City employees will be assigned to provide the necessary assistance to the Economic Development Authority.

ATTACHMENTS: Performance Agreement

STAFF: Lee Downey, Director, Economic & Community Development, 646-5633
Jane Ferrara, Deputy Director, Economic & Community Development, 646-5633
Christopher Beschler, Chief Administrative Officer, 646-7978.

**STONE BREWING COMPANY
PERFORMANCE AGREEMENT**

This **PERFORMANCE AGREEMENT** is made and entered this 14th day of November, 2014 by and among the **CITY OF RICHMOND, VIRGINIA**, a municipal corporation of the Commonwealth of Virginia (“the City”) and **KOOCHENVAGNER’S BREWING CO. d/b/a STONE BREWING CO.**, a California corporation (“the Company”) authorized to transact business in the Commonwealth, and the **ECONOMIC DEVELOPMENT AUTHORITY OF THE CITY OF RICHMOND, VIRGINIA**, a political subdivision of the Commonwealth of Virginia (“the Authority”).

WITNESSETH:

WHEREAS, the Company plans to establish a production and distribution facility with supporting operations in the City of Richmond, thereby making a significant Capital Investment and creating a significant number of New Jobs; all capitalized terms are hereinafter defined; and

WHEREAS, the City and the Authority have determined that the Company’s construction and operation of its business will result in substantial benefits to the welfare of the City and its inhabitants; is in the public interest; and serves governmental interests, including but not limited to an increase in real estate and personal property tax receipts and job creation; and

WHEREAS, the City desires to provide to the Company economic development monetary grants (“the Grants”) for the purpose of inducing the Company to locate and operate its business in the City of Richmond, thereby making a significant Capital Investment, creating a significant number of New Jobs, engaging in Beer Production, and generating significant Tax Revenues; and

WHEREAS, the City is willing to provide the grant funds to the Authority with the expectation that the Authority will provide the grant funds to or for the use of the Company, provided that the Company meets certain criteria relating to the Capital Investment, New Jobs, and Beer Production; and

WHEREAS, the City is authorized by Section 15.2-953 of the Code of Virginia and other laws, and the Authority is authorized by the Industrial Development and Revenue Bond Act, contained in Chapter 49, Title 15.2 of the Code of Virginia and other laws to perform the activities contemplated in this Performance Agreement; and

WHEREAS, the City, the Authority, and the Company desire to set forth their understanding and agreement as to the payout of the Grants, the use of the Grants funds, the obligations of the Company regarding Capital Investment, New Job creation, Beer Production, and the contribution of Tax Revenues and the repayment by the Company of all or part of the Grants under certain circumstances; and

WHEREAS, the Project will entail capital expenditures in the construction, equipping, and operation of the Facility will entail a capital expenditure of approximately \$73,700,000, of which approximately \$41,000,000 will be invested in machinery and equipment, approximately \$1,700,000 will be invested in furniture, fixtures and equipment, and approximately \$31,000,000 will be invested in the construction of the Facility; which excludes approximately \$4,500,000 to be invested in the purchase of land and existing real property improvements, and

WHEREAS, the location and operation of the Company's business will further entail the creation of not less than 90 New Production Jobs and 198 New Non-Production Jobs; for a total of 288 Total New Jobs created, and

WHEREAS, the stimulation of the additional tax revenue and economic activity to be generated by the Project constitutes a valid public purpose for the expenditure of public funds; and

WHEREAS, this Agreement sets forth the understanding of the parties concerning the Company's obligations, the Authority's obligations, and the incentives offered by the City, subject to the approval of the Authority's Board and the Richmond City Council, and subject to appropriations.

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.

For the purposes of this Agreement, the following terms shall have the following definitions:

"Beer Production" means the Company's production of beer at the Facility during the Grant Period.

"Capital Investment" means a capital expenditure by or on behalf of the Company in taxable real property, taxable tangible personal property, machinery and equipment, any or all, at the Facility, excluding base value of the Land and the Existing Building as of September 30, 2014, but including the investment made to renovate and re-develop the Existing Building and Land for the Project. The Capital Investment must be in addition to the capital improvements at the Facility as of September 30, 2014. A capital expenditure related to a leasehold interest in real property will be considered to be made "on behalf of the Company" if a lease between a developer and the Company is a capital lease, or is an operating lease having a term of at least ten years, and the real property would not have been constructed or improved but for the Company's interest in leasing some or all of the real property. Only the capital expenditures allocated to the portion of the real property to be leased by the Company in Phase I and Phase II will count as "Capital Investment." The purchase or lease of furniture, fixtures, machinery and equipment, including under an operating lease, and expected building up-fit and tenant improvements by or on behalf of the Company will qualify as Capital Investment.

"Commencement Date" means June 1, 2016.

"Existing Building" means the building located at 3101 East Main Street in the city of Richmond, in its condition on September 30, 2014, which building is to be renovated or rehabilitated by the Authority for occupancy and use by the Company in Phase II.

“Expansion Date” means the later to occur of: (i) the date which is three (3) years after the Commencement Date, or (ii) the date which is twelve (12) months after final approval by the City of the closure of Water Street as a public road.

“Facility” means the Company’s business operations at 4300 Williamsburg Road and 3101 East Main Street in the City that will, on completion in accordance with the Lease Agreement, include, but not be limited to, the brewery, distribution and supporting hospitality related business activities including a bistro, a retail outlet, a beer garden and associated parking areas.

“Force Majeure” means an act of God, act of the public enemy, terrorist attack(s), war, blockade, public riot, lightening, fire, storm, flood or other extraordinary act of nature, explosion, reasonably unanticipated unavailability of equipment, reasonably unanticipated delays in obtaining permits or approvals, and any other similar cause, whether of the kind specifically enumerated above or otherwise, which is not reasonably within the control or expectation of the party claiming suspension.

“Grant Period” means the period of time beginning July 1, 2016 and ending June 30, 2022.

“Land” means the real estate assembled and owned by the Authority for purposes of the Project.

“Lease Agreement” means that certain Lease Agreement to be executed between the Authority, as Landlord, and the Company, as Tenant, whereby the Facility will be developed, constructed and/or renovated by the Authority, and the Company will lease the Facility from the Authority.

“New Production Job” means new permanent full-time employment at the Facility for which the standard fringe benefits are paid by the Company for the employee, and for which the Company pays an average annual wage, meaning an average of all full-time positions and including the cash value of fringe benefits, of at least \$57,024. Each of these new production jobs must require a minimum of either (i) an average of 35 hours of an employee’s time per week for the entire normal year of the Company’s operations, which “normal year” must consist of at least 48 weeks, or (ii) 1,680 hours per year.

“New Non-Production Job” means new part-time employment at the Facility paying an average wage of \$13.86 per hour (including the cash value of any fringe benefits), and in determining the number of New Non-Production Jobs that are Maintained in a given year for the purposes of this Agreement, the following formula shall be utilized:

Number of New Non-Production Jobs = Aggregate Part Time Hours Worked divided by 1,392 hours

The parties agree with respect to the foregoing formula that: (i) the term "Aggregate Part Time Hours Worked" for a particular year shall be the total number of all hours worked by part-time employees at the Project; and (ii) 1,392 hours was utilized as the denominator to reflect an average of 29 hours per week for 48 weeks. For example purposes only, if the Aggregate Part Time Hours Worked in 2018 is 278,400 hours, the total New Non-Production Jobs Maintained by the Company in 2018 would be 200.

"Maintain" means that the Total New Jobs created pursuant to this Agreement will continue without interruption from the date of creation of each New Production Job or New Non-Production Job through the end of the Grant Period. Positions for the Total New Jobs will be treated as Maintained during periods in which such positions are not filled due to temporary reductions in the Company's employment levels in connection with recruitment for open positions or strikes and other work stoppages.

"Phase I" means a real estate investment of approximately \$23 million for an approximately 200,000 square foot beer production facility and the creation of 90 New Production Jobs at the Facility.

"Phase II" means a real estate investment of approximately \$8 million for an approximately 30,000 square foot hospitality facility on the property currently known as 3101 E. Main Street ("Phase II Property"), which will include a Bistro, Beer Garden, supporting retail operations and associated parking areas, and the creation of at least 198 New Non-Production Jobs, all at the Facility.

"Project" means both Phase I and Phase II taken together.

"Targets" means the Company's obligations to make a Capital Investment, create New Jobs, engage in Beer Production, and generate Tax Revenues in accordance with Section 2.

"Tax Revenues" means the payment to the City of any and all taxes applicable to, or assessed in connection with, the construction, installation or development work related to the Project, the ownership (leasehold or otherwise) of the Project or any portion or component thereof, or any property or equipment located thereon, and/or Tenant's business operations in connection with the Project, including, but not limited to, Business, Professional and Occupational License taxes, Beer/Wine License fees, property taxes, Machinery and Tools taxes, Meals taxes, sales taxes generated from the construction of Phase I and Phase II, and from retail store sales.

"Total New Jobs" means the combined number of New Production Jobs and New Non-Production Jobs.

"View Shed" means the publically owned land along the James River immediately adjacent to the Phase II Property and the public property immediately adjacent thereto on the northwest.

Section 2. Targets.

In connection with its equipping and operation of the Facility, the Company will make Capital Investments, create New Jobs, engage in Beer Production, and generate Tax Revenues as follows:

2.1 Capital Investment Target. The Company shall make or cause to be made Capital Investments at the Facility of at least \$73,700,000, within eighteen (18) months after the Expansion Date, provided that there are no delays to the completion of Phase I or Phase II that would impact such schedule caused by: (i) Force Majeure, or (ii) a default or breach of the Lease Agreement by the Authority. The base value of the Land and the Existing Buildings, as of September 30, 2014, are not included within the Company's Capital Investment Target.

2.2 Total New Jobs Target and Maintenance Requirement. The Company shall create and Maintain at least 288 Total New Jobs; 90 of which shall be New Production Jobs created within three years of the Commencement Date, and 198 of which shall be New Non-Production Jobs created within two (2) years of the Expansion Date; provided that there are no delays to the completion of Phase I or Phase II that would impact such schedule caused by: (i) Force Majeure, or (ii) a default or breach of the Lease Agreement by the Authority. The Company must Maintain the Total New Jobs through the Grant Period.

2.3 Beer Production Targets. The Company will produce at the Facility a minimum 120,000 barrels of beer per year by 2017; at least 200,000 barrels of beer per year by 2018; at least 250,000 barrels of beer by 2019; at least 300,000 barrels of beer by 2020; provided that there are no delays to the completion of Phase I that would impact such schedule: (i) caused by Force Majeure, or (ii) caused by a default or breach of the Lease Agreement by the Authority. The Company must Maintain the Total New Jobs through the Grant Period.

2.4 Tax Revenues. If, in any City fiscal year in which the Company receives payment of funds from a Grant in accordance with Section 3 below, the aggregate Tax Revenues for such year are less than the amount of the Grant funds received by the Company in such fiscal year (the "Shortfall"), the Company shall reimburse the City in an amount equal to the Shortfall. For example, in FY 2017, if the Tax Revenues equal \$275,000, the Company must reimburse the City in an amount equal to \$25,000 within thirty (30) days after written demand therefor by the City.

Section 3. Disbursement of Grants.

3.1 Grant Amounts. So long as the Company submits annual reports in accordance with Section 8 of this Agreement demonstrating that the Company is making progress toward meeting its Targets as provided in sections 2.1, 2.2, and 2.3, the City shall, through the Authority, provide the Company with an incentive in the form of a Local Economic Development Grant and a Sustainability Grant in a total amount of up to \$2,000,000 (the "Grants") over the Grant Period, payable as follows:

3.1.1 Local Economic Development (LED). The \$1,500,000 LED Grant will be paid in six annual installments beginning in FY 2017 through FY 2022. The six annual

installments will be paid out in the following manner. For FY 2017 through FY 2020 the annual grant installment will be \$200,000 for each year. For FY 2021 and FY 2022 the annual grant installment will be \$350,000 for each year. The LED Grant proceeds may be used for any lawful purpose in connection with the equipping or operation of the Facility.

3.1.2 Sustainability Grant. The \$500,000 Sustainability Grant will be paid in five annual installments beginning in FY 2017 through FY 2021. The five annual installments will be paid out in the following manner. For FY 2017 through FY 2021 the annual grant installment will be \$100,000 for each year. The Sustainability Grant proceeds may be used for any purpose which would be considered creditable under the U.S. Green Building Council's LEED Building Design & Construction Credit Library (available at <http://www.usgbc.org/credits>).

3.2. Conditional Real Estate Tax Grant. The City, Authority and the Company anticipate that the Company's property interest at the location of the Facility will be subject to the local real property tax as a leasehold pursuant to § 58.1-3203 of the Code of Virginia. In any year during the period of the lease or leases into which the Company and the Authority intend to enter, should the City assess the Company's interest in the Facility pursuant to § 58.1-3200 or § 58.1-3203 of the Code of Virginia and whereby the Company would be treated as the owner of the Facility (either such instance referred to herein as an "Owner Treatment Assessment"), the City shall, through the Authority, provide a Real Estate Grant ("RE Grant") to the Company. The amount of such RE Grant in any given year for which the Company is eligible for the RE Grant pursuant to this section 3.2 will be the difference between the Company's actual real estate tax payment to the City pursuant to the Owner Treatment Assessment, and what would have been its actual real estate tax payment to the City pursuant to an assessment under § 58.1-3203 of the Code of Virginia had Company not been taxed as if it were the owner of the Facility. The Company must request payment of the RE Grant consistent with this Section. Payment of the annual RE Grant can be requested by the Company once the Company has received an Owner Treatment Assessment and has ensured that the City has fully and timely received payment of the Company's real estate taxes based on said assessment. Once the Company's request in writing has been received by the City and the City has received the requisite real estate tax payments as determined by the City in its sole discretion, the City shall, within thirty calendar (30) days, determine the difference between the payment received and the payment the City would have received had the Company's interest been assessed pursuant to § 58.1-3203 and in which Tenant was not assessed as the owner of the Facility. The City, subject to City Council action, including any necessary budget amendment or appropriation of funds, will then request the Authority or other agency to provide the Company with the annual grant installment determined in accordance with and subject to the limits contained herein. Reference herein to Virginia Code sections 58.1-3200 and 58.1-3203 include any amendments made thereto from time to time and to any successor statutes. Should the parties determine that any such amendments or succeeding statutes make it impossible to implement the provisions of this section 3.2, the City, the Authority and the Company agree to collaborate, in good faith, as necessary to determine what action, if any, need be taken in order to put the Company in substantially the same position it was prior to such amendment(s).

3.3. Appropriations Required. The City's and the Authority's obligation to provide the annual Grant installments or any RE Grants to the Company is subject to and contingent upon the appropriation of all necessary funds by the Richmond City Council for such purposes and upon action of the Authority's Board of Directors.

Section 4. Administration of Grants

4.1 The City agrees to transfer to the Authority, as and when appropriated by the City Council, the funds necessary for the Authority to meet its obligations under the Agreement relating to the Grants. No administrative fees or expenses shall be paid by the City.

4.2 The Authority's obligation to undertake the activities herein is specially conditioned upon the City providing funding on a timely basis; provided, however, the City's obligation is subject to appropriation by the City Council and availability of funds.

4.3 The Authority agrees to provide the City's Chief Administrative Officer, or the designee thereof, with copies of all documents related to this Agreement and will keep the Chief Administrative Officer fully and timely informed of all matters related to the Agreement.

4.4 The Authority agrees that all funds transferred by the City to the Authority for the Grant shall be deposited by the Authority within a Project Fund, to be used only to satisfy the obligations contained in this Agreement related to the Grants.

4.5 It is the intent of the parties not to impose upon the Authority any responsibility, duty or obligation other than what may be required to implement the Grants. Accordingly, Authority does not assume any responsibility or liability whatsoever except as specifically stated herein. If litigation involving the Grants is initiated or expected to be filed against the Authority, the Authority shall immediately notify the City Attorney and Chief Administrative Officer.

4.6 The Authority shall keep records of its financial transactions, if any, related to the Agreement in accordance with generally accepted accounting principles. The City Auditor or his designee may at any time audit the financial transactions undertaken under this Agreement. The Authority shall cooperate to ensure that the City Auditor is granted reasonable access on a timely basis to all books and records of the Authority necessary to complete such audits.

4.7 The Authority shall not be required to furnish the City a blanket corporate fidelity bond with surety.

Section 5. City Obligations

5.1 In addition to the Grants, the City will: (i) close Water Street and (ii) make infrastructure improvements appropriate for the Project and in accordance with the City's Capital Improvement Plan, which shall include, but not be limited to: (x) the completion of the Virginia Capital Trail to the city limits; (y) improvements to Main Street; and (z) the demolition of the Lehigh Cement Silos.

5.2 The parties intend, with regard to the Phase II improvements and their connectivity with the James River, without taking or damaging private property interests for public use within the meaning of Article I, section 11 of the Constitution of Virginia, to afford legally permissible protections to the View Shed for the benefit of the public and the Company. The City agrees not to make or allow improvements or other structures on public property in the View Shed in a manner inconsistent with the Riverfront Master Plan as adopted by City Council on November 26, 2012, subject to all other applicable laws, rules and regulations.

5.3 The City will work with the Company on a plan to cooperate in the operations and programming of the intermediate terminal site for the mutual benefit of the public and the Company, including, without limitation, considering, in good faith, the possibilities of entering into an encroachment agreement or other similar agreement enabling the Company to operate and program the space from the Beer Garden up to a certain required setback on the James River for docking operations.

5.4 The Company projects the Facility production as set forth in the following table, with a projected average daily wastewater flow of 172,220 gallons per day once the Facility is at maximum production:

Year	Beer Production Barrels (bbl / yr)	Daily Wastewater Flow (gal/d)	Daily Avg Wastewater Flow (gal/min)	Peak Daily flow (gal/min)
1	100,000	17,222	12	35.9
2	130,000	22,389	15.5	46.6
3	169,000	29,105	20.2	60.6
4	219,700	37,837	26.3	78.8
5	285,610	49,188	34.2	102.5
6	371,293	63,944	44.4	133.2
7	482,681	83,127	57.7	173.2
8	627,485	108,065	75	225.1
...	800,000	137,776	95.7	287
...	1,000,000	172,220	119.6	358.8

Subject to all applicable legal requirements, permit conditions, and reasonable connection and treatment fees, upon the Company's application, the City will issue the Company an industrial pretreatment permit to discharge the Facility's wastewater effluent to the City's wastewater treatment system reflecting the production based tiered flows above, up to a daily average wastewater flow of 172,220 gallons per day.

5.5 Subject to the public procurement laws and all applicable federal, state, and local laws, rules and regulations, the City and the Company understand the City to be a market for Lauter Tun “drip” that is generated from the Company's manufacturing process and that is an equivalent source for simple carbon, for a period of up to 20 years.

Section 6. Representations

6.1 Representations of the Company.

(a) The Company is empowered to enter into this Agreement, to be bound hereby, and to perform according to the terms hereof.

(b) Any and all actions necessary to enable the Company to enter into this Agreement, and to be bound hereby, have been duly taken.

(c) The person or persons executing or attesting the execution of this Agreement on behalf of the Company has or have been duly authorized and empowered to so execute or attest.

(d) The execution of this Agreement on behalf of the Company will bind and obligate the Company to the extent provided by the terms hereof.

(e) There exists no litigation pending against the Company or to the Company's actual knowledge threatened, which if determined adversely, would materially and adversely affect the ability of the Company to carry out its obligations under this Agreement or the transactions contemplated hereunder.

(f) The Company will make commercially reasonable efforts to make all New Production Jobs and New Non-Production Jobs available to residents of the city of Richmond by notifying the City's Center for Workforce Innovation ("CWI") of employment openings. The CWI will work with the Company to post the job openings locally and throughout the region's Workforce Development Network including the Virginia Employment Commission, the local Workforce Investment Board, and all partner agencies and entities. The Company further agrees to work with the CWI to develop and validate training and certification programs to prepare job seekers with the knowledge, skills, abilities, and experience to be competitive applying for the company's jobs. The Company will annotate successful completion of the CWI workforce training programs in the participants' job applications for employment by the company. The parties intend this goal to help create opportunities for city residents to gain employment. The Company retains the right to only hire employees that, in the company's sole opinion, are the most qualified and capable. Nothing in this Agreement will be construed as interfering with the Company's hiring decisions or its existing hiring policies.

(g) The Company acknowledges that, to the extent the Project involves any funding in the form of grants or loans from the U.S. Department of Housing and Urban Development, certain hiring practices and reporting procedures may be required, including but

not limited to availability of jobs to low- to moderate income individuals, and that any such requirements will be the subject of a separate agreement or agreements entered into by the parties.

6.2 Representations of the City and Authority.

(a) Each of the City and the Authority is empowered to enter into this Agreement, to be bound hereby, and to perform according to the terms hereof.

(b) Any and all actions necessary to enable the City and the Authority to enter into this Agreement, and to be bound hereby, have been duly taken.

(c) The person or persons executing or attesting the execution of this Agreement on behalf of the City and the Authority has or have been duly authorized and empowered to so execute or attest.

(d) The execution of this Agreement on behalf of the City and the Authority will bind and obligate the City and the Authority, as applicable, to the extent provided by law and by the terms hereof.

(e) There exists no litigation pending against the City or the Authority or to the City's and Authority's actual knowledge threatened, which if determined adversely, would materially and adversely affect the ability of the City or the Authority to carry out its respective obligations under this Agreement or the transactions contemplated hereunder.

Section 7. Default and Repayment Obligation.

7.1 Events of Default.

7.1.1 Each of the following events (hereinafter called an "Event of Default") shall be a default hereunder by the Company as described:

7.1.1.1 The failure by the Company to submit an annual progress report in accordance with Section 8 of this Agreement, which demonstrates the Company's progress toward meeting its Targets, and such failure shall continue for a period of thirty (30) days after the Company's receipt of written notice identifying such failure. Additionally, if in the applicable progress report the Company provides a reasonable explanation for its failure to make progress toward meeting its Targets and provides reasonable further assurances that it will make up any shortfall during the next reporting period, then such failure will not be deemed to be an Event of Default.

7.1.1.2 The failure by the Company to meet all of the Targets identified in Section 2 of this Agreement, subject to Section 7.1.3 below.

7.1.1.3 The failure by the Company to Maintain the Total New Jobs through the Grant Period.

7.1.1.4 The failure by the Company to complete, or cause to complete, Phase II of the Project; except to the extent any such failure is a result of a breach or default by the Authority under the Lease Agreement. In the event of a default under this section 7.1.1.4, the Company shall reimburse the Authority for the Authority's reasonable costs incurred related to Phase II. These costs shall include, but not necessarily be limited to, property acquisition, due diligence, design fees, construction, and any debt service (including interest), taxes and maintenance costs incurred by the Authority in connection with owning, financing or maintaining the Phase II land or improvements. The provisions of this Section 7.1.1.4 shall survive the termination of this Agreement.

7.1.1.5 The default by the Company under the Lease Agreement beyond any applicable notice and cure period under the Lease Agreement.

7.1.2 In the case of an occurrence of an Event of Default, the Grant provisions of Section 3 of this Agreement shall terminate immediately and neither the City nor the Authority shall have any further obligation relating thereto and the Company shall no longer be eligible for any Grant payments hereunder. Notwithstanding the foregoing, the provisions of Section 7 below shall survive the termination of this Agreement until all of the Company's obligations under this Agreement have been satisfied.

7.1.3 Notwithstanding anything herein to the contrary, if the City, in consultation with the Authority, in the exercise of its good faith discretion, deems that good faith and reasonable efforts have been made and are being made by Company to achieve the Targets, the City will extend the applicable Target deadlines set forth in Section 2 by up to 15 months. If the Grant Period is extended, the City shall send written notice of the extension to the Authority and Company.

7.2 Remedies.

7.2.1 For the purposes of this Section only, the Grants are to be allocated to the Company's Targets as follows: 40% (\$800,000.00) for the Company's Total New Jobs Target, and 60% (\$1,200,000.00) for the Company's Capital Investment Target.

7.2.2 *Total New Jobs Target:* If the Company has met at least 80% of its Total New Jobs Target by the end of the Grant Period, then and thereafter the Company is no longer obligated to repay any portion of the \$800,000.00 portion of the Grants allocated to the New Jobs Target. If the Company has not met at least 80% of its Total New Jobs Target at the end of the Grant Period, the Company shall repay to the Authority that part of the \$800,000.00 of the Grants allocated to the Total New Jobs Target that is proportional to the shortfall. For example, if at the end of the Grant Period, the Company has created only 172 Total New Jobs (reflecting achievement of 60% of the Total New Jobs Target), the Company shall repay to the Authority 40% of the \$800,000.00 of the Grants allocated to the Total New Jobs Target ($\$800,000.00 \times 40\% = \$320,000.00$).

7.2.3 Capital Investment Target: If the Company has met at least 90% of its Capital Investment Target by the end of the Grant Period, then and thereafter the Company is no longer obligated to repay any portion of the \$1,200,000.00 portion of the Grants allocated to the Capital Investment Target. Subject to the last sentence of this Section 7.2.3, if the Company has not met at least 90% of its Capital Investment Target at the end of the Grant Period, the Company shall repay to the Authority that part of the \$1,200,000.00 of the Grants allocated to the Capital Investment Target that is proportional to the shortfall. For example, if at the end of the Grant Period, the Capital Investment is only \$ 51,590,000 (reflecting achievement of 70% of the Total Capital Investment Target), the Company shall repay to the Authority 30% of the \$1,200,000.00 of the Grants allocated to the Capital Investment Target ($\$1,200,000.00 \times 30\% = \$360,000.00$). Notwithstanding anything herein to the contrary, the parties agree that when determining any shortfall with respect to the Capital Investment Target applicable to the projected \$31,000,000 spend on the construction of the Facility:

(a) If the Company's shortfall with respect to the Capital Investment Target is a result of good faith and commercially reasonable value engineering decisions made with respect to the design and construction of the Project, the Capital Investment Target shall be equitably adjusted, as determined and agreed by the parties in their good faith and reasonable discretion, to account for such value engineering decisions.

(b) The expectations regarding the Capital Investment Target were based upon market pricing available as of the date of this Agreement. If market pricing is reduced substantially, such that the same capital expenditure items included in the expectations cost significantly less than expected, the City and the Authority shall reasonably take such reductions into account in determining the extent to which the Company has achieved the Capital Investment Target.

7.2.4 Notice of Repayment Obligation. If pursuant to this Section the Company owes a repayment, the Authority shall submit a written demand to the Company. Repayment shall be due from the Company to the Authority within thirty days of the date of the written demand to the Company from the Authority. Any moneys repaid by the Company to the Authority hereunder shall be repaid by the Authority to the City. The Authority shall have no responsibility for the repayment of any sums hereunder unless said sums have been received by the Authority from the Company.

Section 8. Company Reporting.

The Company shall provide, at the Company's expense, detailed verification reasonably satisfactory to the City and the Authority of the Company's progress toward meeting each of the Targets, and the parties shall mutually agree, in their reasonable discretion, on the forms required in connection with such reporting. Such progress reports will be provided annually, starting June 1, 2017 and covering the period through the prior calendar year. Each progress report should document the progress the Company is making towards fulfilling each of its Targets. Further, the Company shall provide such progress reports at such other times as the Authority may

reasonably require. If the Company wishes to count as Capital Investments the capital expenditures made on its behalf by a lessor or developer of the Facility (including by the Authority under the Lease Agreement, which is authorized), the Company is responsible for assembling and distributing the documentation necessary to verify the capital expenditures made on behalf of the Company, and the Authority hereby agrees to provide the same to the Company with respect to any Capital Investment made by the Authority as Landlord under the Lease Agreement.

Section 9. Notices.

Any notices required or permitted under this Agreement shall be given in writing, and shall be deemed to be received upon receipt or refusal after mailing of the same in the United States Mail by certified mail, postage fully pre-paid or by overnight courier (refusal shall mean return of certified mail or overnight courier package not accepted by the addressee):

if to the Company, to:

KoochenVagner's Brewing Co.
d/b/a Stone Brewing Co.
1999 Citracado Parkway
Escondido, CA 92029
Attention: Mr. R. Craig Spitz

with a copy to:

KoochenVagner's Brewing Co.
d/b/a Stone Brewing Co.
1999 Citracado Parkway
Escondido, CA 92029
Attention: Mr. Pat Tiernan

and to:

Ms. Ann Marie Collins
Managing Director
JLL
45 South 7th
Minneapolis, MN 55402

if to the City, to:

Richmond Department of Economic and
Community Development
Main Street Station
1500 East Main Street, Suite 400
Richmond, VA 23219
Attention: Director

with a copy to:

City of Richmond
900 East Broad Street, Suite 201
Richmond, Virginia 23219
Attention: Chief Administrative Officer

if to the Authority, to:

Economic Development Authority of the
City of Richmond, Virginia
501 East Franklin Street, First Floor

with a copy to:

City of Richmond
Office of the City Attorney
900 East Broad Street, Room 300

Richmond, VA 23219
Attention: Chairman

Richmond, Virginia 23219
Attention: City Attorney

Section 10. General Terms and Conditions.

10.1 Entire Agreement; Amendments. This Agreement constitutes the entire agreement among the parties hereto 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 Company may not assign its rights and obligations under this Agreement without the prior written consent of the City and the Authority.

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

10.3 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.

10.4 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.

10.5 Subject-to-Appropriations. All payments and other performances by the City and the Authority under this Agreement are subject to City Council approval, Authority Board approval and annual appropriations by the City Council. It is understood and agreed among the parties that the City and the Authority shall be bound hereunder only to the extent of the funds available or which may hereafter become available for the purpose of this Agreement. Under no circumstances shall the City's or the Authority's total liability under this Agreement exceed the total amount of funds appropriated by the City Council for the payments hereunder for the performance of this Agreement.

10.6 Public Disclosure.

10.6.1 Applicable Law. The parties to this Agreement acknowledge that records maintained by or in the custody of the City and the Authority are subject to the provisions of the Virginia Public Records Act, Va. Code §§ 42.1-76 through 42.1-90.1, and the Virginia Freedom of Information Act, Va. Code §§ 2.2-3700 through 2.2-3714 and thus are subject to the records retention and public disclosure requirements set forth in those statutes.

10.6.2 Challenges to Nondisclosure. If a party submitting records to the City or the Authority requests that those records not be disclosed under applicable law and the City or the Authority consequently denies a request for disclosure of such records based on the submitting party's request, and the City's or the Authority's denial of a request for disclosure of records is challenged in court, the submitting party shall indemnify, hold harmless and defend the City or the Authority, their respective officers and employees from any and all costs, damages, fees and penalties (including attorney's fees and other costs related to litigation) relating thereto.

10.7 No Waiver. Neither failure on the part of the City or the Authority to enforce any covenant or provision contained in this Agreement nor any waiver of any right under this Agreement shall discharge or invalidate such covenant or provision or affect the right of the City or the Authority to enforce the same right in the event of any subsequent default.

10.8 Effective Date of the Agreement. The effective date of this Agreement shall be the date upon which it has been fully executed by the parties following approval by City Council and by the Authority's Board of Directors.

10.9 No Partnership or Joint Venture. It is mutually understood and agreed that nothing contained in this Agreement is intended or shall be construed in any manner or under any circumstance whatsoever as creating and establishing the relationship of copartners or creating or establishing a joint venture between or among any of the parties or as designating any party to the Agreement as the agent or representative of any other party to the Agreement for any purpose.

10.10 No Third Party Beneficiaries. Notwithstanding any other provision of this Agreement, the parties agree that (i) no individual or entity shall be considered, deemed or otherwise recognized to be a third-party beneficiary of this Agreement; (ii) the provisions of this Agreement are not intended to be for the benefit of any individual or entity other than the City, the Authority, or the Company; (iii) no other individual or entity shall obtain any right to make any claim against the City, the Authority, or the Company under the provisions of this Agreement; and (iv) no provision of this Agreement shall be construed or interpreted to confer third-party beneficiary status on any individual or entity.

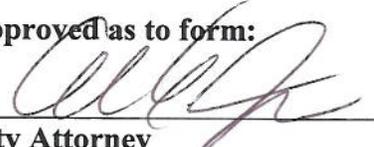
10.11 Dispute Resolution. In the event of any dispute, controversy, or claim of any kind or nature arising under or in connection with this Agreement (including disputes as to the creation, validity, or interpretation of this Agreement) (a "Dispute"), then upon the written request of any party, each of the parties will appoint a designated senior executive whose task it will be to meet for the purpose of endeavoring to resolve the Dispute. The designated executives will meet as often as the parties reasonably deem necessary in order to gather and furnish to the other all information with respect to the matter in issue which the parties believe to be appropriate and germane in connection with its resolution. Such executives will discuss the Dispute and will negotiate in good faith in an effort to resolve the Dispute without the necessity of any formal proceeding relating thereto. The specific format for such discussions will be left to the discretion of the executives but may include the preparation of agreed upon statements of fact or written statements of position furnished to the other parties. No formal proceedings for the

resolution of the Dispute may be commenced until the earlier to occur of (a) a good faith mutual conclusion by the executives that amicable resolution through continued negotiation of the matter in issue does not appear likely or (b) the 90th day after the initial request to negotiate the Dispute. If the resolution of the Dispute requires any party to take, or cause to be taken or cease taking, some action, such party shall be provided a reasonable period of time, not to exceed ninety (90) calendar days, to take, to cause, or to cease taking, such action.

10.12 Attorney's Fees. Each party will bear its own attorney's fees.

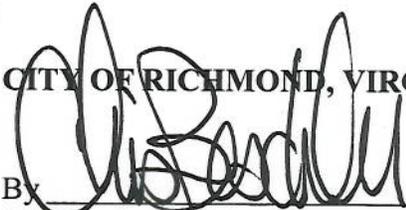
IN WITNESS WHEREOF, the parties hereto have executed this Performance Agreement as of the date first written above.

Approved as to form:



City Attorney

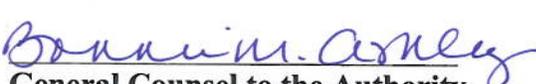
CITY OF RICHMOND, VIRGINIA

By 

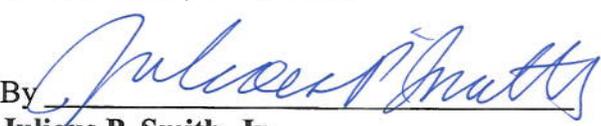
Christopher L. Beschler
Acting Chief Administrative Officer
Ordinance No. 2014-218-200

**ECONOMIC DEVELOPMENT
AUTHORITY OF THE CITY OF
RICHMOND, VIRGINIA**

Approved as to form:



General Counsel to the Authority

By 

Julius P. Smith, Jr.
Chairman

**KOOCHENVAGNER'S BREWING CO.
d/b/a STONE BREWING, CO.**

By 

Name: R Craig Spitz
Title: CFO
Date: 3/11/15