

INTRODUCED: September 13, 2021

AN ORDINANCE No. 2021-232

To authorize the Chief Administrative Officer, for and on behalf of the City of Richmond, to execute a Performance Agreement between the City of Richmond, Virginia, the Economic Development Authority of the City of Richmond, Virginia, Vytal Companies, LLC, doing business as Vytal Studios, and Manchester Town Center 2, LLC, for the purpose of enabling the Authority to provide an economic development grant to Vytal Companies, LLC, doing business as Vytal Studios, as an incentive to lease, equip, improve, and operate its corporate headquarters, together with studio and production space, in the city of Richmond.

\_\_\_\_\_  
Patron – Mayor Stoney

\_\_\_\_\_  
Approved as to form and legality  
by the City Attorney  
\_\_\_\_\_

PUBLIC HEARING: SEP 27 2021 AT 6 P.M.

THE CITY OF RICHMOND HEREBY ORDAINS:

§ 1. That the Chief Administrative Officer, for and on behalf of the City of Richmond, be and is hereby authorized to execute a Performance Agreement between the City of Richmond, Virginia, the Economic Development Authority of the City of Richmond, Virginia, Vytal Companies, LLC, doing business as Vytal Studios, and Manchester Town Center 2, LLC, for the purpose of enabling the Authority to provide an economic development grant to Vytal Companies, LLC, doing business as Vytal Studios, as an incentive to lease, equip, improve, and operate its

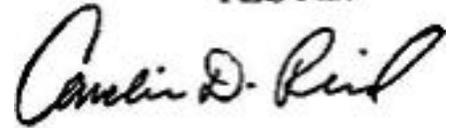
AYES: 9 NOES: 0 ABSTAIN: \_\_\_\_\_

ADOPTED: SEP 27 2021 REJECTED: \_\_\_\_\_ STRICKEN: \_\_\_\_\_

corporate headquarters, together with studio and production space, in the city of Richmond. The 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.

**A TRUE COPY:  
TESTE:**

A handwritten signature in black ink, appearing to read "Camille D. Reed". The signature is written in a cursive style with a large initial "C".

**City Clerk**



# CITY OF RICHMOND

## INTRACITY CORRESPONDENCE

**O&R REQUEST**

**DATE:** August 17, 2021 **EDITION:** 1

**TO:** The Honorable Members of City Council

**THROUGH:** The Honorable Levar M. Stoney, Mayor *Levar M. Stoney*

**THROUGH:** Lincoln Saunders, Acting Chief Administrative Officer *JELS*

**THROUGH:** Sheila White, Director of Finance Department *Sheila White*

**THROUGH:** Jason May, Acting Budget and Strategic Planning Director *Jason May*

**THROUGH:** Reggie Gordon, Deputy Chief Administrative Officer for Human Services *Reggie Gordon*

**THROUGH:** Sharon Ebert, Deputy Chief Administrative Officer for PECD *Sharon Ebert*

**FROM:** Leonard L. Sledge, Director, Department of Economic Development *Leonard L. Sledge*

**RE:** Approval of the Commonwealth Opportunity Fund (COF) performance grant agreement and the City of Richmond's local performance agreement for Vytal Studios.

**ORD. OR RES. No.** \_\_\_\_\_

**PURPOSE:** This O&R request is for an Ordinance to approve (1) the Commonwealth Opportunity Fund (COF) performance grant agreement for Vytal Studios; and (2) the local performance grant and local performance grant agreement for Vytal Studios.

**REASON:** The City of Richmond collaborated with the Virginia Economic Development Partnership and the Greater Richmond Partnership to attract Vytal Studios' corporate headquarters to the City. Vytal Studios' corporate headquarters project will result in the creation of 155 new jobs and \$6,819,275 capital investment. To induce the company's decision, the Commonwealth of Virginia offered the company a performance based \$500,000 Commonwealth Opportunity Fund (COF) Grant. The City of Richmond is required to provide matching funds for the COF Grant.

**RECOMMENDATION:** The City Administration recommends approval to accept the \$500,000 COF Grant from the Commonwealth of Virginia and to execute the COF performance agreement. Further, the City Administration recommends approval of the \$325,000 local per-

formance grant from the City of Richmond to Vytal Studios and to execute the local performance agreement.

**BACKGROUND:** After an extensive site search, Vytal Studios chose the City of Richmond to establish its corporate headquarters in 2021. The Company is locating at 1802 Semmes Avenue. Vytal Studios will create 155 new jobs in the technology industry, invest \$6,262,475 in real estate improvements at its new facility, and invest \$556,800 in tangible business property.

The Performance Agreement between Vytal Studios, the City, the Economic Development Authority of the City of Richmond (EDA), and the Virginia Economic Development Partnership (VEDP) sets forth the terms and conditions under which the \$500,000 COF grant will be disbursed to the Company. The COF Grant is made for the purpose of inducing new jobs and investment to the City. The COF Grant requires a 1:1 local match.

The Performance Agreement between Vytal Studios, the City, and the EDA sets forth the terms and conditions under which the local \$325,000 performance-based cash grant will be disbursed to the Company. This discretionary cash grant was made to the Company for the purpose of inducing new jobs and investment in the City. To meet the required 1:1 local match for the COF Grant, the City has offered in-kind (non-cash) workforce services estimated at \$250,000 from the Office of Community Wealth Building.

**FISCAL IMPACT / COST:** To attract Vytal Studios to the City of Richmond and satisfy the match to the COF, the City has offered a discretionary performance-based cash grant of \$325,000 and in-kind workforce services estimated at \$250,000 from the Office of Community Wealth Building. Therefore, the total potential cash and non-cash value of the local incentive package is \$575,000. The \$325,000 performance-based cash grant was approved in the FY22 budget.

**FISCAL IMPLICATIONS:** The Company will be investing \$6,819,275 and creating 155 new jobs with an average annual salary of at least \$73,425. The investment includes tangible business property and real property improvements and will contribute to the City's tax base. The City is projected to break even in year five of the project.

**BUDGET AMENDMENT NECESSARY:** A budget amendment is required to accept and appropriate the COF Grant of \$500,000 for the current FY22 Budget.

**REVENUE TO CITY:** The project is estimated to generate \$350,025+ in General Fund revenue over the first five years of the project. The revenue estimate does not include BPOL revenue estimates.

**REQUESTED INTRODUCTION DATE:** September 13, 2021

**CITY COUNCIL PUBLIC HEARING DATE:** September 27, 2021

**REQUESTED AGENDA:** Consent

**RECOMMENDED COUNCIL COMMITTEE:** Finance and Economic Development Standing Committee

**CONSIDERATION BY OTHER GOVERNMENTAL ENTITIES:** The \$500,000 COF Grant will be administered by the Economic Development Authority of the City of Richmond.

**AFFECTED AGENCIES:** Department of Economic Development, Department of Budget, and the Department of Finance

**RELATIONSHIP TO EXISTING ORD. OR RES.:** N/A

**REQUIRED CHANGES TO WORK PROGRAM(S):** N/A

**ATTACHMENTS:**

Commonwealth Opportunity Fund Performance Agreement  
City of Richmond Performance Agreement  
Performance Guaranty Agreement

**STAFF:** Leonard L. Sledge, Director, Department of Economic Development / (804) 646-7576  
Casey Gilchrist, Senior Manager, Department of Economic Development (804) 646-6737

## **PERFORMANCE AGREEMENT**

This **PERFORMANCE AGREEMENT** (the "Agreement") made and entered this \_\_\_\_ day of \_\_\_\_\_, 2021, by and among the **CITY OF RICHMOND, VIRGINIA** (the "City"), a municipal corporation of the Commonwealth of Virginia; **VYTAL COMPANIES, LLC**, a Virginia limited liability company d/b/a **VYTAL STUDIOS** (the "Company"); **MANCHESTER TOWN CENTER 2, LLC**, a Virginia limited liability company (the "Property Owner"); and the **ECONOMIC DEVELOPMENT AUTHORITY OF THE CITY OF RICHMOND, VIRGINIA** (the "Authority"), a political subdivision of the Commonwealth.

### **RECITALS**

**WHEREAS**, the Company intends to lease, equip, improve, and operate its corporate headquarters, together with studio and production space, at 1802 Semmes Avenue in the city of Richmond (the "Facility"), thereby making a significant Capital Investment and creating and Maintaining a significant number of New Jobs, as such capitalized terms are hereinafter defined;

**WHEREAS**, the City desires to provide to the Company an economic development monetary grant ("Grant") for the purpose of inducing the Company to lease, equip, improve, and operate its corporate headquarters, together with studio and production space, at the Facility;

**WHEREAS**, the City is willing to provide the funds to the Authority with the expectation that the Authority will provide the funds to or for the use of the Company, provided that the Company meet certain criteria relating to the Capital Investment and the New Jobs in accordance with the terms and conditions of this Agreement;

**WHEREAS**, the leasing, equipping, improving, and operating the Company's corporate headquarters, together with studio and production space, at the Facility will entail a Capital Investment in taxable real property of not less than \$8,612,475.00 and in taxable tangible personal property of not less than \$631,800.00;

**WHEREAS**, the leasing, equipping, improving, and operating the Company's corporate headquarters, together with studio and production space, at the Facility will entail the creation of not less than 155 New Jobs by the completion of the Grant Period;

**WHEREAS**, the City, the Authority, and the Company desire to set forth their understanding and agreement as to the payout of the Grant, the use of the Grant Funds, the obligations of the Company regarding the Grant, the Capital Investment, and the New Job creation, and the repayment by the Company of all or part of the Grant under certain circumstances;

**WHEREAS**, the City and the Authority have determined that the Company's leasing, equipping, improving, and operating its corporate headquarters, together with studio and production space, at the Facility 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 tangible personal property tax receipts and job creation;

**WHEREAS**, the stimulation of additional tax revenue and economic activity to be generated by the Capital Investment and New Jobs constitute a valid public purpose for the expenditure of public funds;

**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 Agreement; 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 of Directors and the Richmond City Council, and subject to annual appropriation.

**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 agree as follows.

**Section 1. Definitions.**

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

"Capital Investment" means a capital expenditure by or on behalf of the Company in taxable real property in an amount no less than \$6,260,000 and in taxable Tangible Personal Property in an amount no less than \$556,800 at the Facility. The Capital Investment must be in addition to the capital improvements at the Facility as of February 1, 2021.

"Facility" means the real and personal property located at 1802 Semmes Avenue (Tax Map Parcel No. S000-0301/007T).

"Grant Period" means the period of time beginning February 1, 2021 and ending September 30, 2024.

"Maintain" means that the New Jobs will continue without interruption from the date of creation through the Grant Period. Positions for the New Jobs will be treated as Maintained during periods in which such positions are not filled due to (i) temporary reductions in the Company's employment levels (so long as there is active recruitment for open positions), (ii) strikes, and (iii) other temporary work stoppages.

"New Job" means new permanent full-time employment of an indefinite duration at the Facility for which the standard fringe benefits are provided by the Company for the employee, and for which the Company pays an average annual wage of at least \$73,425. Average annual wage means the average annual salary of full-time positions at the Facility determined by dividing total payroll (of a type included in W-2 compensation) provided to full-time positions at the Facility by the number of full-time positions at the Facility. Each New Job must require a minimum of either (i) 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. Seasonal or temporary positions, positions created when a job function is shifted from an existing location in the Commonwealth, and positions with construction contractors, vendors, suppliers and similar multiplier or spin-off jobs shall not qualify as New Jobs.

"Tangible Personal Property" means all personal property not classified as intangible personal property, merchants capital, or daily rental property as defined by Code of Virginia §§ 58.1-1100 and 58.1-3510 and taxable by the City of Richmond, Virginia.

"Targets" means the Company's obligations to make the Capital Investment at the Facility within the timeframes set forth in this Agreement.

"Year 1" means the first year of the Grant Period and consists of the time period beginning September 30, 2021 and ending September 30, 2022.

## **Section 2. Targets.**

**2.1 Capital Investment.** The Company shall make a minimum Capital Investment of \$3.91 million in taxable real property improvements in Year 1 and a total Capital Investment of not less than \$6.26 million in taxable real property improvements by the end of the Grant Period and a minimum Capital Investment of \$481,800 in Tangible Personal Property in Year 1 and a total Capital Investment of not less than \$556,800 in Tangible Personal Property by the end of the Grant Period.

**2.2 New Jobs.** The Company shall create and Maintain at least 31 New Jobs in Year 1 and shall create and Maintain at least 124 additional New Jobs by the end of the Grant Period, for a total of 155 New Jobs during the Grant Period.

## **Section 3. Disbursement of Grant.**

**3.1 Grant Amount.** The City shall, through the Authority, provide the Company with an incentive in the form of an economic development grant in a total amount of \$325,000 (the "Grant").

**3.2 Payment of Grant.** The City, through the Authority, shall pay the Grant in one lump sum in Year 1 pursuant to this section 3.2.

**3.2.1 Time of Payment.** The Grant will be paid only upon full execution of this Agreement by the duly authorized signatories of the parties and no sooner than August 1, 2021.

**3.2.2 Year 1 Performance Requirements.** Prior to payment of the Grant, the Company must create 31 New Jobs and make a minimum Capital Investment of \$3.91 million in taxable real property improvements and a minimum Capital Investment of \$481,800 in Tangible Personal Property in Year 1.

**3.2.3 Certification of Year 1 Performance Requirements.** The Company may request payment of the Grant in writing no earlier than August 1, 2021. Such request must include a certification by a Certified Public Accountant licensed in the Commonwealth of Virginia that the Year 1 Capital Investment has been made in accordance with the terms of this Agreement, together with documentation acceptable to the City in the City's sole discretion detailing such Capital Investment. The Company shall also certify and attest to the creation of the creation of 31 New Jobs in Year 1 in a form acceptable to the City in the City's sole discretion. Once the Company's request in writing has been received by the City and the City has approved the certifications and related documentation, the City shall, within 30 days, request the Authority to provide the Company with the Grant.

**3.2.4 Forfeiture of Grant.** Should the Company fail to meet the Year 1 performance requirements contained in section 3.2.2 or to adequately certify or document such performance pursuant to section 3.2.3, the Company will be deemed to have forfeited the Grant. Upon such forfeiture, this Agreement shall terminate and the City and the Authority and the Property Owner will have no obligation to the Company pursuant to this Agreement.

#### **Section 4. Administration of Grant.**

**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 Grant. 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 Grant. Accordingly, Authority does not assume any responsibility or liability whatsoever except as specifically stated herein. If litigation involving the Grant 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 a designee thereof may at any time audit the financial transactions undertaken under this Agreement.

**4.7** The Authority shall not be required to furnish the City with surety.

**Section 5. Representations.**

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

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

**5.3** 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.

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

**5.5** 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.

**Section 6 Company Obligations.**

**6.1 Site Control.** The Company shall lease, occupy, and operate from the entire building located at 1802 Semmes Avenue, identified as Tax Map Parcel No. S000-0301/007T in the 2021 records of the City Assessor for not less than 10 years.

**6.2 Workforce Development Training.** The Company shall, in collaboration with the City's Office of Community Wealth Building, create workforce development training programs within the city of Richmond and available at no cost to participants and enroll a minimum of 300 participants identified by the Office of Community Wealth Building.

**6.3 No Additional City Incentives.** The Company and, solely in regard to its interest in the Facility, the Property Owner acknowledge and agree that so long as the Agreement is in effect neither the City nor the Authority will provide, nor shall the Company or the Property Owner seek or accept or derive benefit from, any abatements, exemptions, subsidies, incentives, rebates, financing, waivers, or any other type of funding or tax relief to the Company or the Property Owner other than the incentives contained in this Agreement and the Commonwealth Opportunity Fund Performance Agreement by and among the Company, the City, the Authority, and the Virginia Economic Development Partnership authorized by Ordinance No. \_\_\_ and dated \_\_\_\_\_, 2021.

**6.4 Minority Business Enterprise, and Emerging Small Business Participation.** In consultation with the City's Office of Minority Business Development, the Company and the Property Owner will make a good faith effort to identify Emerging Small Businesses and Minority Business Enterprises that perform commercially useful functions toward construction activities at the Facility in order to meet a 40% MBE participation goal through the procurement of goods and services required for the construction at the Facility.

**Section 7 Default and Repayment Obligation.**

**7.1 Events of Default.** Each of the following will constitute a default by the Company under this Agreement (each an “Event of Default”):

**7.1.1** Failure to make a minimum Capital Investment of \$3.91 million in taxable real property improvements in Year 1 and a total Capital Investment of not less than \$6.26 million in taxable real property improvements by the end of the Grant Period and a minimum Capital Investment of \$481,800 in Tangible Personal Property in Year 1 and a total Capital Investment of not less than \$556,800 in Tangible Personal Property by the end of the Grant Period.

**7.1.2** Failure to create and Maintain at least 31 New Jobs in Year 1 and shall create and Maintain at least 124 additional New Jobs by the end of the Grant Period, for a total of 155 New Jobs during the Grant Period.

**7.1.3** Failure to lease, occupy, and operate from the entire building located at 1802 Semmes Avenue, identified as Tax Map Parcel No. S000-0301/007T in the 2021 records of the City Assessor for not less than 10 years.

**7.1.4** The Company’s seeking or accepting or deriving benefit from, any abatements, exemptions, subsidies, incentives, rebates, financing, waivers, or any other type of funding or tax relief other than the incentives contained in this Agreement and the Commonwealth Opportunity Fund Performance Agreement by and among the Company, the City, the Authority, and the Virginia Economic Development Partnership authorized by Ordinance No. \_\_\_ and dated \_\_\_\_\_, 2021.

**7.1.5** Any court of competent jurisdiction enters an order, judgment, or decree approving a petition seeking reorganization of the Company or all or a substantial part of the assets of Company or any guarantor of the Company or appointing a receiver, sequestrator, trustee or liquidator of the Company, or any guarantor of the Company or any of their property and such order, judgment or decree continues unstayed and in effect for at least 60 Days.

**7.1.6** The Company (i) makes a general assignment for the benefit of creditors, (ii) is adjudicated as either bankrupt or insolvent, (iii) files a voluntary petition in bankruptcy or a petition or an answer seeking reorganization or an arrangement with creditors, (iv) either (a) takes advantage of any bankruptcy, reorganization, insolvency, readjustment of debt, dissolution or liquidation law or (b) admits the material allegations of a petition filed against the Company in any proceedings under such a law or (v) any guarantor of the Company takes action for the purposes of effecting any item identified in item (iv).

**7.1.7** The Company fails to maintain its corporate existence.

**7.2 Effect of Default.** 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 will have any further obligation relating thereto and the Company will no longer be eligible for the Grant. Notwithstanding the foregoing, the provisions of Section 7.3 will survive the termination of this Agreement until all of the Company’s obligations have been satisfied.

### **7.3 Repayment Obligation.**

**7.3.1** Upon an Event of Default the Company shall repay to the Authority any and all amounts paid to it pursuant to this Agreement as of the date upon which the Event of Default occurs and upon written demand by the Authority to the Company for such repayment.

**7.3.2** The Company shall remit repayment to the Authority within 30 days of the written demand to the Company from the Authority. The Authority shall repay to the City any funds repaid by the Company. The Authority will have no responsibility for the repayment of any funds hereunder unless such funds have been received by the Authority from the Company.

**7.3.3** Notwithstanding the provisions of this section 7, upon an Event of Default the Authority may prorate any amount of repayment due to it following a written request to the City's Chief Administrative Officer and receipt of written authorization from the City's Chief Administrative Officer to so prorate the amount due. Any such proration will be allowed only in the sole discretion of the Authority and the City's Chief Administrative Officer.

### **Section 8 Performance Guaranty and Limitations of Property Owner.**

**8.1** The Company shall secure its obligations of payment and performance under this Agreement by providing the City and the Authority with a performance guaranty agreement substantially in the form of Exhibit A ("Performance Guaranty Agreement"), executed by one of more guarantors acceptable to the City and the Authority in their sole discretion. The Company shall deliver the Performance Guaranty Agreement to the City and the Authority simultaneously with execution of this Agreement.

**8.2** Regardless of any language contained herein to the contrary, the Property Owner's obligations are limited solely to these listed in sections 6.3 and 6.4 of this Agreement.

### **Section 9 Company Reporting.**

After the certification of the Year 1 performance requirements in accordance with section 3.2.3 the Company shall provide, at the Company's expense, the same certifications with supporting documentation regarding the Company's Capital Investment and New Job creation and maintenance. Additionally, the Company shall provide reporting, at the Company's expense and in a form satisfactory to the City and the Authority, verifying in detail its fulfillment of the obligations contained in section 6 of this agreement. The Company shall provide such reports quarterly through the remainder of the Grant Period and at such other times as the City or the Authority may require.

### **Section 10 Notices.**

All notices, demands or other communications under this Agreement shall be in writing and shall be sent to each other party, at its address specified below (or such other address as a party may from time to time specify to the other parties by notice given in accordance with this

Agreement), and shall be deemed to have been duly given when actually received by the addressee or when served (a) personally; (b) by independent, reputable, overnight commercial carrier; or (c) by deposit in the United States mail, postage and fees fully prepaid, registered or certified mail, with return receipt requested, addressed as follows:

*If to the City:*

Chief Administrative Officer  
900 East Broad Street, Suite 201  
Richmond, Virginia 23219

*with a copy to:*

City Attorney  
900 East Broad Street, Suite 400  
Richmond, Virginia 23219

*If to the Authority:*

Economic Development Authority  
1500 East Main Street, Suite 400  
Richmond, VA 23219  
*Attn:* John Molster, Chairman

*with a copy to:*

Economic Development Authority  
1500 East Main Street, Suite 400  
Richmond, VA 23219  
*Attn:* Carla Childs, Management Analyst

*with a copy to:*

City Attorney  
900 East Broad Street, Suite 400  
Richmond, Virginia 23219

*If to the Guarantor:*

VYTAL STUDIOS, llc  
1802 Semmes Ave  
Richmond Va. 23225  
*Attn:* James Smith, CEO

*with a copy to:*

Vytal Studios  
1802 Semmes Ave  
Richmond, VA 23225  
Attn: Slade Cutter, General Counsel

*If to the Company:*

Vytal Studios  
1802 Semmes Ave  
Richmond, VA 23225  
Attn: Slade Cutter, General Counsel

*with a copy to:*

Vytal Studios  
1802 Semmes Ave  
Richmond, VA 23225  
Attn: Zacharia Ali, Chairman

*With a copy to:*

Williams Mullen  
200 S. 10<sup>th</sup> St. Suite 1600  
Richmond, VA 23219  
Attn: Joseph Noble, ESQ

*If to the Property Owner:*

Manchester Town Center 2, LLC  
5607 Grove Avenue  
Richmond, VA 23226  
Attn: Will Allen

*with a copy to:*

Spotts Fain  
411 E. Franklin Street, Suite 600  
Richmond, VA 23219  
Attn: Meade A. Spotts, Esq.

**Section 11    General Terms and Conditions.**

**11.1 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.

**11.2 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.

**11.3 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. This Agreement is signed when a party's signature is delivered by facsimile, email, or other electronic medium. These signatures must be treated in all respects as having the same force and effect as original signatures.

**11.4 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.

**11.5 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.

**11.6 Public Disclosure.**

**11.6.1 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.

**11.6.2 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.

**11.7 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.

**11.8 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.

**11.9 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.

**11.10 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, the Property Owner, 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.

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

**11.13 Authorization to Act.** The Chief Administrative Officer of the City of Richmond, Virginia or a designee thereof and the Chairman of the Economic Development Authority of the City of Richmond, Virginia are authorized to act on behalf of the City and the Authority, respectively, under this Agreement.

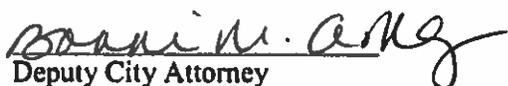
**SIGNATURES ON FOLLOWING PAGE**

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

**CITY OF RICHMOND, VIRGINIA**

By \_\_\_\_\_  
J. E. Lincoln Saunders  
Acting Chief Administrative Officer  
Date: \_\_\_\_\_, 2021

Approved as to form:

  
Deputy City Attorney

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

By \_\_\_\_\_  
John S. Molster  
Chairman  
Date: \_\_\_\_\_, 2021

**VYTAL COMPANIES, LLC, a Virginia  
limited liability company d/b/a VYTAL  
STUDIOS**

By \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_, 2021

**MANCHESTER TOWN CENTER 2,  
LLC, a Virginia limited liability company**

By \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_, 2021

**PERFORMANCE GUARANTY AGREEMENT**  
**Repayment Obligation**  
**(City of Richmond Performance Agreement – Vytal Studios)**

**THIS GUARANTY dated this \_\_\_\_ day of \_\_\_\_\_, 2021.**

**From: James P. Smith, Jr. (The “Guarantor”)**

**To: City of Richmond, Virginia and The Economic Development Authority of the City of Richmond, Virginia (“Grantors”)**

**Re: Vytal Companies, LLC, a Virginia limited liability company d/b/a Vytal Studios (the “Company”)**

**IN CONSIDERATION OF the Grantors’ provision of an economic development incentive grant in the amount of Three Hundred Twenty-Five Thousand dollars (\$325,000) to the Company plus other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Guarantor guarantees the prompt, full and complete performance of any and all present and future duties, obligations and indebtedness (the “Repayment Obligation”) due to the Grantors by the Company, up to a limit of \$325,000, under the terms of that certain Performance Agreement dated as of \_\_\_\_\_, 2021 by and among the Grantors, the Company, and Manchester Town Center 2, LLC (the “Performance Agreement”). The Performance Agreement is hereby incorporated by reference herein. The Guarantor guarantees the Repayment Obligation under the following terms and conditions:**

- 1. The Guarantor guarantees that Company will promptly pay the full amount of the Repayment Obligation as and when the same will, in any manner, be or become due, according to the terms and conditions provided in section 7.3 of the Performance Agreement;**
- 2. The Guarantor agrees not to pledge, hypothecate, mortgage, sell or otherwise transfer all or substantially all of the Guarantor’s assets without the prior written consent of the Grantors; and**
- 3. To the extent permitted by law, the Guarantor waives all defenses, counterclaims or offsets that are legally available to the Guarantor with respect to the Repayment Obligation.**

**This Performance Guaranty Agreement shall be construed exclusively in accordance with, and governed by, the laws of the Commonwealth of Virginia and jurisdiction and venue for any litigation arising out of or involving this Performance Guaranty Agreement shall lie in the Circuit Court of the City of Richmond, and such litigation shall be brought only in such court. This Performance Guaranty Agreement embodies the entire promise of Guarantor to personally guarantee Company’s Repayment Obligation and supersedes all prior agreements and understanding relating to the guarantee of the Repayment Obligation, whether oral or in writing. This Performance Guaranty Agreement may not be assigned or transferred without a written document, signed by the Guarantor, Company, and Grantors, permitting such assignment or transfer.**

Dated this \_\_\_\_ day of \_\_\_\_\_, 2021.

James P. Smith, Jr.

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COMMONWEALTH OF VIRGINIA  
COUNTY/CITY OF \_\_\_\_\_, to wit:

The foregoing instrument was acknowledged before me on \_\_\_\_\_, by James P. Smith, Jr.  
(personally known to me or having provided satisfactory identification).

---

Notary Public

---

Print Name of Notary

in and for the State of Virginia

My Commission Expires \_\_\_\_\_

## **COMMONWEALTH'S DEVELOPMENT OPPORTUNITY FUND**

### **PERFORMANCE AGREEMENT**

This **PERFORMANCE AGREEMENT** (the "Agreement") made and entered this \_\_\_\_\_ day of May, 2021, by and among the **CITY OF RICHMOND, VIRGINIA** (the "Locality"), a municipal corporation of the Commonwealth of Virginia (the "Commonwealth"), **VYTAL COMPANIES, LLC**, a Virginia limited liability company (the "Company"), the **VIRGINIA ECONOMIC DEVELOPMENT PARTNERSHIP AUTHORITY ("VEDP")**, a political subdivision of the Commonwealth, and the **ECONOMIC DEVELOPMENT AUTHORITY OF THE CITY OF RICHMOND, VIRGINIA** (the "Authority"), a political subdivision of the Commonwealth.

#### **WITNESSETH:**

WHEREAS, the Locality has been awarded a grant of and expects to receive \$500,000 (the "COF Grant") from the Commonwealth's Development Opportunity Fund (the "Fund") through VEDP for the purpose of inducing the Company to lease, equip, improve, and operate in the Locality its corporate headquarters, together with studio and production space (the "Facility"), thereby making a significant Capital Investment, and creating and Maintaining a significant number of New Jobs, as such capitalized terms are hereinafter defined;

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

WHEREAS, the Locality, the Authority, the Company, and VEDP desire to set forth their understanding and agreement as to the payout of the COF Grant, the use of the COF Grant proceeds, and the obligations of the Company regarding Capital Investment and New Jobs;

WHEREAS, the leasing, equipping, improvement, and operation of the Facility will entail a capital expenditure by or on behalf of the Company of approximately \$6,819,275, of which approximately \$556,800 will be invested in furniture, fixtures and business personal property, and approximately \$6,262,475 will be invested in the improvement and up-fit of the building space for the Facility;

WHEREAS, the leasing, equipping, improvement, and operation of the Facility will further entail the creation and Maintenance of 155 New Jobs at the Facility; and

WHEREAS, the stimulation of the additional tax revenue and economic activity to be generated by the Capital Investment and New Jobs constitutes a valid public purpose for the expenditure of public funds and is the animating purpose for the COF Grant:

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:

“Capital Investment” means a capital expenditure by or on behalf of the Company in taxable real property, taxable tangible personal property, or both, at the Facility. The purchase or lease of furniture, fixtures, and business personal property, including under an operating lease, and expected building improvement and up-fit by or on behalf of the Company will qualify as Capital Investment. The Capital Investment must be in addition to the capital improvements at the Facility as of February 1, 2021.

“Capital Investment Target” means that the Company has made or caused to be made and retained Capital Investments of at least \$6,819,275.

“Fund” means the Commonwealth’s Development Opportunity Fund.

“Grant Year” means the period from October 1 of one calendar year through September 30 of the next calendar year, except that the first Grant Year means the period from February 1, 2021 through September 30, 2022.

“Maintain” means that the New Jobs will continue without interruption from the date of creation through the testing date, including the Performance Date. Positions for the New Jobs will be treated as Maintained during periods in which such positions are not filled due to (i) temporary reductions in the Company’s employment levels (so long as there is active recruitment for open positions), (ii) strikes, and (iii) other temporary work stoppages.

“New Job” means new permanent full-time employment of an indefinite duration at the Facility for which the standard fringe benefits are provided by the Company for the employee, and for which the Company pays an average annual wage of at least \$73,425. Average annual wage means the average annual salary of full-time positions at the Facility determined by dividing total payroll (of a type included in W-2 compensation) provided to full-time positions at the Facility by the number of full-time positions at the Facility. Each New Job must require a minimum of either (i) 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. Seasonal or temporary positions, positions created when a job function is shifted from an existing location in the Commonwealth, and positions with construction contractors, vendors, suppliers and similar multiplier or spin-off jobs shall not qualify as New Jobs.

“New Job Target” means that the Company has created and maintained at least 155 New Jobs.

“Performance Date” means September 30, 2024. If the Locality, in consultation with VEDP, deems that good faith and reasonable efforts have been made and are being made by the Company to achieve the Targets, on or before the Performance Date the Locality may request an extension of the Performance Date by up to 15 months. Any extension of the Performance Date shall require the prior approval of the Company and the Board of Directors of VEDP (the “Board”). If the Performance Date is extended, the Locality shall send written notice of the extension to the Authority, the Company and VEDP and the date to which the Performance Date has been extended shall be the “Performance Date” for the purposes of this Agreement.

“Performance Report” means a report to be filed by the Company in accordance with Section 5. The “Final Performance Report” is to be filed within 90 days after the Performance Date. As noted in Section 5, the Locality, the Authority and VEDP may each request a Performance Report at other dates prior to the Performance Date.

“Statutory Minimum Requirements” means the statutory minimum requirements for a COF Grant in the Locality: (1) making and retaining a Capital Investment of at least \$1,500,000 and (2) creating and maintaining at least 15 New Jobs.

“Targets” means the Capital Investment Target and the New Jobs Target, all to be achieved as of the Performance Date.

“Virginia Code” means the Code of Virginia of 1950, as amended.

## **Section 2. Targets; Statutory Criteria.**

(a) *Targets:* The Company will lease, equip, improve, and operate the Facility, and achieve the Targets.

(b) *Encouragement to Offer New Jobs to Residents of the Commonwealth:* The Locality, the Authority, and VEDP hereby strongly encourage the Company to ensure that at least 30% of the New Jobs are offered to “Residents” of the Commonwealth, as defined in Virginia Code Section 58.1-302. In pertinent part, that definition includes natural persons domiciled in Virginia or natural persons who, for an aggregate of more than 183 days of the year, maintained a place of abode within the Commonwealth, whether domiciled in the Commonwealth or not.

(c) *Prevailing Wage; Unemployment and Poverty Rates:* The average annual wage of the New Jobs of at least \$73,425 is more than the prevailing average annual wage in the Locality of \$68,015. The Locality is a high-unemployment locality, with an unemployment rate for 2019, which is the last year for which such data is available, of 3.3% as compared to the 2019 statewide unemployment rate of 2.8%. The Locality is a high-poverty locality, with a poverty rate for 2019, which is the last year for which such data is available, of 19.2% as compared to the 2019 statewide poverty rate of 9.9%.

(d) *Disclosure of Political Contributions:* The Company acknowledges that the name of the Company will be shared by VEDP with the Governor of Virginia, and any campaign committee or political action committee associated with the Governor. The Company

acknowledges that within 18 months of the date of this Agreement, the Governor, his campaign committee, and his political action committee will submit to the Virginia Conflict of Interest and Ethics Advisory Council a report listing any contribution, gift, or other item with a value greater than \$100 provided by the Company to the Governor, his campaign committee, or his political action committee, respectively, during the period from the date of the Company's application for the COF Grant through the one-year period immediately after the date of this Agreement.

(e) *Support for Virginia's and Locality's Economic Development Efforts:* Recognizing that it is in the best interest of all parties for the Commonwealth and the Locality to achieve sustained economic growth, the parties will periodically engage with one another to advise on economic development strategies and initiatives for the Commonwealth and the Locality, such as promoting the attributes of the Commonwealth and the Locality as places to do business, or highlighting important industry trends and/or business development opportunities that the Commonwealth or the Locality may wish to pursue. Such engagement would include the Company's participation in occasional business retention and expansion visits from VEDP personnel, as deemed appropriate based on the project parameters and nature of the incentives provided to the Company.

**Section 3. Disbursement of COF Grant.**

(a) *General Provisions:* The disbursement of the COF Grant proceeds to the Company will serve as an inducement to the Company to achieve the Targets.

The COF Grant is to be allocated as 7.95% (\$39,750) for the Company's Capital Investment Target, and 92.05% (\$460,250) for the Company's New Jobs Target.

The COF Grant proceeds shall be retained in the Fund until needed for disbursement or the COF Grant is withdrawn in accordance with the terms of this Agreement.

(b) *Disbursement of the Portion of the COF Grant to be disbursed for New Jobs:*

(A) Grant Year Ending September 30	(B) New Jobs Expected at End of Grant Year	(C) Expected Grant Payment for Grant Year to be Disbursed for New Jobs	(D) Maximum Cumulative Grant Payment Available through Grant Year for New Jobs
2022	31	\$ 54,250	\$ 54,250
2023	77	134,750	189,000
2024	155	271,250	460,250

If the verified Performance Report for the Grant Year ending September 30, 2022 indicates that the Company has achieved the Statutory Minimum Requirements, the Company will qualify for a disbursement of the COF Grant equal to \$1,750 per New Job created and

Maintained as of September 30, 2022, but not for more than 31 New Jobs (no more than \$54,250). If the Company has qualified for less than \$54,250, the amount not paid (the “2022 Grant Rollover Amount”) will be rolled over to, and available for disbursement in, the next year.

The \$134,750 Expected Grant Payment for the Grant Year ending September 30, 2023, plus the 2022 Grant Rollover Amount (if any) from the 2022 Grant Year is the “Grant Amount Available for 2023.” If the verified Performance Report for the Grant Year ending September 30, 2023 indicates that the Company has achieved the Statutory Minimum Requirements, the Company will qualify for a disbursement of the COF Grant equal to \$1,750 per New Job created and Maintained as of September 30, 2023, up to the Grant Amount Available for 2023. If the Company has qualified for less than the Grant Amount Available for 2023, the amount not paid (the “2023 Grant Rollover Amount”) will be rolled over to, and available for disbursement in, the next year.

The \$271,250 Expected Grant Payment for the Grant Year ending September 30, 2024, plus the 2023 Grant Rollover Amount (if any) from the 2023 Grant Year is the “Grant Amount Available for 2024.” If the verified Final Performance Report for the Grant Year Ending September 30, 2024 indicates that the Company has achieved the Statutory Minimum Requirements, the Company will qualify for a disbursement of the COF Grant equal to \$1,750 per New Job created and Maintained as of September 30, 2024, up to the Grant Amount Available for 2024.

Any disbursements to the Company under this subsection (b) will be considered to be earned when paid, and will not be subject to any repayment or claw back.

(c) *Disbursement of the Portion of the COF Grant to be disbursed for Capital Investment:* If the verified Final Performance Report for the Grant Year ending September 30, 2024 indicates that the Company has achieved the Statutory Minimum Requirements, and has achieved the \$6,819,275 Capital Investment Target, the Company will qualify for a disbursement of COF Grant equal to \$39,750. If the verified Final Performance Report for the Grant Year ending September 30, 2024 indicates that the Company has achieved the Statutory Minimum Requirements, but has not achieved the \$6,819,275 Capital Investment Target, the Company will qualify for a reduced disbursement of the COF Grant allocated to the Capital Investment which is proportional to the shortfall. For example, if as of the Performance Date, only \$5,455,420 of the Capital Investment has been made and retained (reflecting achievement of 80% of the Capital Investment Target), the Company will receive \$31,800 (reflecting 80% of the \$39,750 allocated to the Capital Investment Target).

Any disbursements to the Company under this subsection (c) will be considered to be earned when paid, and will not be subject to any repayment or claw back.

(d) *Disbursement:* Within 30 days after verification of the Performance Report or Final Performance Report, if any amount of COF Grant proceeds are available for disbursement to the Company, as determined in accordance with the foregoing calculations, VEDP will disburse that amount to the Locality. Within 30 days after receipt of such amount, “receipt” meaning both acceptance of the COF Grant proceeds by the City Council of the City of Richmond, Virginia

(“Council”) and the appropriation by Council of such COF Grant proceeds to the Authority, the Locality will disburse such COF Grant proceeds to the Authority. Within 30 days after receipt of such amount, the Authority will disburse such COF Grant proceeds to the Company.

If any amount of COF Grant proceeds have not been earned by the Company, the amount not disbursed will be retained in the Fund and will be available for other economic development projects.

(e) *Use of the COF Grant Proceeds:* The Company will use the COF Grant proceeds to pay or reimburse the cost of construction or build-out of publicly or privately owned buildings for the Facility, as permitted by Section 2.2-115(D) of the Virginia Code.

**Section 4. Break-Even Point; State and Local Incentives.**

(a) *State-Level Incentives:* VEDP has estimated that the Commonwealth will reach its “break-even point” by the Performance Date. The break-even point compares new revenues realized as a result of the Capital Investment and New Jobs at the Facility with the Commonwealth’s expenditures on discretionary incentives, including but not limited to the COF Grant. With regard to the Facility, the Commonwealth expects to provide discretionary incentives in the following amounts:

<u>Category of Incentive:</u>	<u>Total Amount</u>
COF Grant	\$500,000
Enterprise Zone Real Property Investment Grant (“EZRPIG”) (Estimated)	100,000
Enterprise Zone Job Creation Grant (“EZJCG”) (Estimated)	541,600
Virginia Jobs Investment Program (“VJIP”) (Estimated)	124,000

The proceeds of the COF Grant shall be used for the purposes described in Section 3(e). The EZRPIG and EZJCG proceeds may be used by the Company for any lawful purpose. The VJIP grant proceeds shall be used by the Company to pay or reimburse itself for recruitment and training costs.

(b) *Local-Level Incentives:* The Locality and the Authority expect to provide the following incentives, as matching grants or otherwise, for the Facility by the Performance Date:

<u>Category of Incentive:</u>	<u>Total Amount</u>
Local Performance Based Grant	\$325,000
Training Services through the Office of Community Wealth Building Services	250,000

If, by the Performance Date, the total value of all Local-Level Incentives disbursed or provided, or committed to be disbursed or provided, by the Locality to the Company is less than the \$500,000 COF Grant local match requirement, the Locality, subject to appropriation, will make

an additional grant to the Company of the difference promptly after Performance Date, so long as the Company has met its Targets.

The proceeds of the Local Performance Based Grant shall be used by the Company for capital costs for improvement and up-fit of the building space for the Facility. The value of the Training Services will reflect cost savings to the Company. The training services are to consist of the identification by the City's Office of Community Wealth Building, using its existing resources, of city of Richmond residents who are eligible to participate in training programs provided at no cost to the participants by the Company's Foundation. The goal is for the City's Office of Community Wealth Building to identify 300 eligible candidates over the first three years of Company's operation in the city. Notwithstanding anything contained in this Agreement to the contrary, the Company and VEDP acknowledge and agree that the value of the training services are based upon the estimated value of the availability of that incentive to the Company and is in an "up to" or "not to exceed" amount. The Company and VEDP further acknowledge and agree that so long as such incentive is made available to the Company, the Locality shall be deemed to have met its obligations related thereto and met its local match requirement in the amount corresponding thereto, regardless of whether the Company avails itself of the incentive, in whole or in part.

(c) *Other Incentives:* This Agreement relates solely to the COF Grant. The qualification for, and payment of all State-Level Incentives and Local-Level Incentives, except for the COF Grant, will be governed by separate arrangements between the Company and the entities offering the other incentives.

#### **Section 5. Company Reporting.**

(a) *Performance Reporting:* The Company shall provide, at the Company's expense, in the form attached hereto as Exhibit A, detailed Performance Reports satisfactory to the Locality, the Authority and VEDP of the Company's progress on the Targets. The Performance Reports are due by each January 1, commencing January 1, 2022, reflecting the Company's progress toward the Targets as of the prior September 30. Further, the Company shall provide such Performance Reports at such other times as the Locality, the Authority or VEDP may require.

(b) *Final Performance Report:* The Company shall provide, at the Company's expense, in the form attached hereto as Exhibit B, a detailed Final Performance Report satisfactory to the Locality, the Authority and VEDP of the Company's achievement of the Targets as of the Performance Date. This Performance Date Report shall be filed within 90 days after the Performance Date.

Should the Company be unable to file the Final Performance Report within the 90-day timeframe, the Company may request a 60-day delay in filing the Final Performance Report. VEDP will require a \$3,000 fee, payable to VEDP, to process the request for the filing delay. Should the Company not file the Final Performance Report within the 90-day window nor request a filing delay (including payment of the required fee), or if the Company requests a filing delay

but does not file the Final Performance Report prior to the new filing deadline, VEDP will withhold any COF Grant payment that might otherwise be due and all rights of the Company under this Agreement will automatically terminate.

(c) *Virginia Corporate Income Tax Information:* With each such Performance Report or Final Performance Date Report, the Company shall report to VEDP the amount paid by the Company (or for a pass-through entity, by its shareholders, members or partners) in the prior calendar year in Virginia corporate (or for a pass-through entity, personal) income tax. VEDP hereby represents to the Company that it considers such information to be confidential proprietary information that is exempt from public disclosure under the Virginia Freedom of Information Act and that such information will be used by VEDP solely in calculating aggregate return on invested capital analyses for purposes of gauging the overall effectiveness of economic development incentives.

#### **Section 6. Verification of Targets.**

(a) *Verification of Capital Investment:* The Company hereby authorizes the Locality, including the Locality's Department of Finance, to release to VEDP the Company's real estate tax, business personal property tax and machinery and tools tax information. Such information shall be marked and considered confidential and proprietary and shall be used by VEDP solely for verifying satisfaction of the Capital Investment Target. If the Locality or the Locality's Department of Finance should require additional documentation or consents from the Company to access such information, the Company shall promptly provide, at the Company's expense, such additional documentation or consents as the Locality or VEDP may request. In accordance with Virginia Code Section 58.1-3122.3, VEDP is entitled to receive the Company's real estate tax, business personal property tax and machinery and tools tax information from the Locality's Department of Finance.

(b) *Verification of New Jobs and Wages:* The Company must submit a copy of its four most recent Employer's Quarterly Tax Reports (Form FC-20) with the Virginia Employment Commission with each Performance Report and the Final Performance Report. The forms shall be marked and considered confidential and proprietary and shall be used by VEDP solely for verifying satisfaction of the New Jobs Target. In accordance with Virginia Code Section 60.2-114, VEDP is entitled to receive the Company's employment level and wage information from the Virginia Employment Commission.

The Company agrees that it will report to the Virginia Employment Commission with respect to its employees at a facility-level, rather than at the company-level.

(c) *Additional Documentation:* In addition to the verification data described above, in the sole discretion of the Locality, the Authority or VEDP, the Locality, the Authority or VEDP, may each require such other documentation or audits as may be required to properly verify the Capital Investment or New Jobs.

#### **Section 7. Possible Termination of this Agreement and Redeployment of COF Grant Proceeds.** If the Locality, the Authority or VEDP shall determine at any time prior to the

Performance Date that the Company is unable or unwilling to meet and Maintain its Targets by and through the Performance Date, and if the Locality, the Authority or VEDP shall have promptly notified the Company of such determination, this Agreement will be terminated, no further disbursements of the COF Grant proceeds will be made to the Company, and the amount not disbursed will be retained in the Fund and made available for other economic development projects. Such a determination will be based on such circumstances as a filing by or on behalf of the Company under Chapter 7 of the U.S. Bankruptcy Code, the liquidation of the Company, an abandonment of the Facility by the Company or other similar significant event that demonstrates that the Company will be unable or is unwilling to satisfy the Targets for the COF Grant.

**Section 8. Notices.** Formal notices and communications between the parties shall be given either by (i) personal service, (ii) delivery by a reputable document delivery service that provides a receipt showing date and time of delivery, (iii) mailing utilizing a certified or first class mail postage prepaid service of the United States Postal Service that provides a receipt showing date and time of delivery, or (iv) delivery by electronic mail (email) with transmittal confirmation and confirmation of delivery, addressed as noted below. Notices and communications personally delivered or delivered by document delivery service shall be deemed effective upon receipt. Notices and communications mailed shall be deemed effective on the second business day following deposit in the United States mail. Notices and communications delivered by email shall be deemed effective the next business day, not less than 24 hours, following the date of transmittal and confirmation of delivery to the intended recipient. Such written notices and communications shall be addressed to:

If to the Company, to:

with a copy to:

Vytal Companies, LLC  
2819 Semmes Ave  
Richmond, Va 23225

Email: matt@vytalstudios.com  
Attention: Matt Woolman

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Email: \_\_\_\_\_  
Attention: \_\_\_\_\_

If to the Locality, to:

with a copy to:

City of Richmond, Virginia  
900 E. Broad St., Suite 201  
Richmond, Virginia 23219  
Email: rvamayor@richmondgov.com  
Attention: Mayor

City of Richmond, Virginia  
900 E. Broad St., Suite 400  
Richmond, Virginia 23219  
Email: bonnie.ashley@richmondgov.com  
Attention: City Attorney

If to the Authority, to:

with a copy to:

Economic Development Authority of the City  
of Richmond, Virginia  
1500 East Main Street  
Suite 400

Economic Development Authority of the  
City of Richmond, Virginia  
1500 East Main Street  
Suite 400

Richmond, Virginia 23219  
Email: John.Molster@truist.com  
Attention: Chair, Board of Directors

Richmond, Virginia 23219  
Email: carla.childs@richmondgov.com  
Attention: Management Analyst, Senior

If to VEDP, to:

with a copy to:

Virginia Economic Development Partnership  
One James Center, Suite 900  
901 East Cary Street  
Richmond, Virginia 23219  
Email: moret@vedp.org  
Attention: President and CEO

Virginia Economic Development Partnership  
One James Center, Suite 900  
901 East Cary Street  
Richmond, Virginia 23219  
Email: smcninch@vedp.org  
Attention: General Counsel

**Section 9. Miscellaneous.**

(a) *Entire Agreement; Amendments:* This Agreement constitutes the entire agreement among the parties hereto as to the COF Grant 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 Locality, the Authority and VEDP.

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

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

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

(e) *Attorney's Fees:* Attorney's fees shall be paid by the party incurring such fees.

(f) *Force Majeure:* Notwithstanding the foregoing provisions of this Agreement, if the Company does not achieve a Target or take any action required under this Agreement because of an "Event of Force Majeure" (as defined below), the time for achieving the applicable Target or taking such action will be extended day-for-day by the delay in meeting the applicable Target or taking such action caused by the Event of Force Majeure. "Event of Force Majeure" means without limitation, any of the following: acts of God; strikes, lockouts or other industrial disturbances; act of public enemies; orders of any kind of the government of the United States of America or of the Commonwealth or any of their respective departments, agencies, political

subdivisions or officials, or any civil or military authority; insurrections; riots; epidemics; pandemics; landslides; lightning; earthquakes; fires; hurricanes; tornadoes; storms; floods; washouts; droughts; arrests; restraint of government and people; civil disturbances; explosions; breakage or accident to machinery, transmission pipes or canals not caused by the Company; partial or entire failure of utilities; or any other cause or event not reasonably within the control of the Company.

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

**CITY OF RICHMOND, VIRGINIA**

APPROVED AS TO FORM  
*Bennett Ashley*  
Deputy City Attorney

By \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

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

By \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**VYTAL COMPANIES, LLC**

By *James P Smith Jr*  
Name: James P Smith Jr  
Title: CEO  
Date: 06/24/2021

**VIRGINIA ECONOMIC  
DEVELOPMENT PARTNERSHIP  
AUTHORITY**

By \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

- Exhibit A: Performance Report Form
- Exhibit B: Final Performance Report Form

**PERFORMANCE REPORT  
COMMONWEALTH'S DEVELOPMENT OPPORTUNITY FUND**

**PROJECT SUMMARY:**

Project	
Location	
Amount of Grant	
Performance Reporting Period	
Performance Date	

**PROJECT PERFORMANCE<sup>4</sup>:**

Performance Measurement	Target	As of	% Complete
<b>New Jobs (over baseline)<sup>1</sup></b>			
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"/>
<b>Capital Investment (provide breakdown below)<sup>2</sup></b>			
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"/>
<b>Average Annual Wage</b>			N/A
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"/>
<b>Standard Fringe Benefits (check one)</b>	Yes <input type="checkbox"/>	No <input type="checkbox"/>	N/A
<b>Virginia Corporate Income Tax Paid in Prior Calendar Year<sup>3</sup></b>	\$		

<sup>1</sup>Data will be verified using Virginia Employment Commission records. Attach the company's four most recent Quarterly Tax Reports (Form FC-20) filed with the Virginia Employment Commission.

<sup>2</sup>Data will be verified with locality records.

<sup>3</sup>This confidential information is protected from disclosure pursuant to § 2.2-3705.6 of FOIA.

<sup>4</sup>Final, actual performance will be reported on VEDP's public reporting website.

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	
<b>Total</b>	<b>\$</b>

**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: \_\_\_\_\_

Please return to:

Kim Ellett, Incentives Compliance Manager, Virginia Economic Development Partnership,  
804.545.5618, kellett@vedp.org

**FINAL PERFORMANCE REPORT  
COMMONWEALTH'S DEVELOPMENT OPPORTUNITY FUND**

**PROJECT SUMMARY:**

Project	
Location	
Amount of Grant	
Performance Date	

**PROJECT PERFORMANCE:<sup>1</sup>**

Performance Measurement	Target	As of _____, 20	% Complete
New Jobs (over baseline) <sup>2</sup>			
Capital Investment (provide breakdown below) <sup>3</sup>			
Average Annual Wage			N/A
Standard Fringe Benefits			
Virginia Corporate Income Tax Paid in Prior Calendar Year <sup>4</sup>	\$		

<sup>1</sup>Final, actual performance will be reported on VEDP's public reporting website.

<sup>2</sup> Attach the company's four most recent Quarterly Tax Reports (Form FC-20) filed with the Virginia Employment Commission.

<sup>3</sup> Data will be verified using records from the Commissioner of the Revenue and invoices.

<sup>4</sup>This confidential information is protected from disclosure pursuant to § 2.2-3705.6 of FOIA

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	
<b>Total</b>	<b>\$</b>

**LOCAL MATCH:**

Goal	
Actual	

**COMMENTS:**

Discuss Project status or the importance of the Project to the locality and region.

**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: \_\_\_\_\_

Please return to:

Kim Ellett, Incentives Compliance Manager, Virginia Economic Development Partnership,  
804.545.5618, [kellett@vedp.org](mailto:kellett@vedp.org)