INTRODUCED: November 24, 2014

AN ORDINANCE No. 2014-246-231

To authorize the Chief Administrative Officer, for and on behalf of the City of Richmond, to execute a Governor's Development Opportunity Fund 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 establishing and administering performance-based incentives provided pursuant to the Governor's Development Opportunity Fund.

Patron – Mayor Jones

Approved as to form and legality
by the City Attorney

PUBLIC HEARING: DEC 8 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 Governor's Development Opportunity Fund Performance Agreement between the City of Richmond, the Economic Development Authority of the City of and KoochenVagner's Brewing Co., doing business as Stone Brewing Co., for the purpose of establishing and administering performance-based incentives provided pursuant to the Governor's Development Opportunity Fund. The Governor's Development Opportunity Fund 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.

AYES: 7 NOES: 0 ABSTAIN: 2

ADOPTED: DEC 8 2014 REJECTED: ________ STRICKEN: ________

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

CITY OF RICHMOND

INTRACITY CORRESPONDENCE

O & R REQUEST
NOV 19 2014
Chief Administration Office
City of Richmond

O&R REQUEST

RECEIVED
NOV 24 2014
OFFICE OF CITY ATTORNEY

RECEIVED
NOV 19 2014
Mayor's Office City of Richmond

DATE: October 30, 2014 **EDITION**

TO: The Honorable Members of City Council

THROUGH: Dwight C. Jones, Mayor

FROM: Christopher Beschler, Acting Chief Administrative Officer

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

FROM: L. Peter Downey, Interim Deputy Chief Administrative Officer for Economic Development and Planning

FROM: Douglas Dunlap, Interim Director of Economic and Community Development

RE: Governor's Development Opportunity Fund Performance Agreement by and between the City of Richmond, KoochenVagner's Brewing Company (dba Stone Brewing Co.), the Economic Development Authority of the City of Richmond, Virginia and the Commonwealth of Virginia

ORD. OR RES. No. ______________________________

PURPOSE: To authorize the Chief Administrative Officer, on behalf of the City of Richmond, to execute the Governor's Development Opportunity Fund Performance Agreement ("the Agreement") by and between the City of Richmond, KoochenVagner's Brewing Company (dba Stone Brewing Co., and hereinafter referred to as "the Company"), the Economic Development Authority of the City of Richmond ("EDA"), Virginia and the Commonwealth of Virginia.

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

RECOMMENDATION: The City Administration recommends adoption of this ordinance.

BACKGROUND: On October 9, 2014, Governor McAuliffe announced a $5 million grant from the Governor's Opportunity Fund to assist the City of Richmond in attracting Stone Brewing to Virginia. After an eight month site selection process that generated over 250 responses from communities along the eastern seaboard, the Company chose the City of Richmond in which to expand their operations. It plans to locate an east coast brewery, distribution and a beer garden and bistro in the area of the City known as the Greater Fulton Community.

2014110001

The City worked diligently with the Company on a site in the Greater Fulton Community which meets 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.

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 June 2016 and eventually employ 90 full time employees with an average salary of $57,024. Within the later of three years of the Commencement Date 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 restaurant and beer garden that will eventually employ 198 employees.

The construction, equipping and operation of the facility will entail a total capital expenditure of approximately $73,700,000, of which approximately $41,000,000 will be invested in machinery and equipment, and approximately $1,700,000 in furniture, fixtures and equipment.

The Governor's Development Opportunity Fund Performance Agreement is between the Company, the City of Richmond and the EDA and sets forth the terms and conditions under which the Governor's Opportunity Fund (GOF)will be granted to the Economic Development Authority of the City of Richmond, Virginia for the benefit of the Company. The GOF Grant is made for the purpose of inducing the construction and equipping of a brewery, distribution facility, and bistro to be operated in Richmond, Virginia.

The provisions of the Performance Agreement require the locality to match the GOF Grant through either cash payments or in-kind goods and services. The City's match will be met by a combination of a local Economic Development Grant of $1,500,000 paid over five years; a local Sustainability Grant, paid over five years; a reduction in developer fees; lower loan costs, and public infrastructure improvements. The Agreement includes claw backs in the event the company does not meet its performance targets and measures.

FISCAL IMPACT / COST: The GOF Performance Agreement stipulates that the Commonwealth of Virginia shall provide a $5,000,000 Economic Development Grant to the EDA for the benefit of the Company. The City must match the GOF Grant through either cash payments or in-kind goods and services.

FISCAL IMPLICATIONS: 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 a beer garden. The projected investment in machinery and tools in the first five years is not less than $41 million for machinery and equipment 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 and Retail Sales taxes, and DPU PILOT.

DESIRED EFFECTIVE DATE: Upon adoption.

REQUESTED INTRODUCTION DATE: November 24, 2014

CITY COUNCIL PUBLIC HEARING DATE: December 8, 2014

REQUESTED AGENDA: Regular

RECOMMENDED COUNCIL COMMITTEE: Finance and Economic Development

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

AFFECTED AGENCIES: Acting 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.: Ordinance # 2014-237-210;
Ordinance # 2014-218-200

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

ATTACHMENTS: Governor's Development Opportunity Fund Performance Agreement

STAFF: Lee Downey, Interim Deputy Chief Administrative Officer for Economic & Community Development, 646-5633
Jane Ferrara, Deputy Director, Economic & Community Development, 646-5633

GOVERNOR'S DEVELOPMENT OPPORTUNITY FUND

PERFORMANCE AGREEMENT

This **PERFORMANCE AGREEMENT** made and entered this ____ day of November, 2014, by and among the **CITY OF RICHMOND, VIRGINIA** (the "Locality") a municipal corporation of the Commonwealth of Virginia (the "Commonwealth"), **KOOCHENVAGNER'S BREWING CO.**, a California corporation authorized to transact business in the Commonwealth, and doing business as **STONE BREWING CO.** (the "Company"), 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 $5,000,000 from the Governor's Development Opportunity Fund (a "GOF Grant") through the Virginia Economic Development Partnership Authority ("VEDP") for the purpose of inducing the construction and equipping of a brewery, distribution facility and bistro to be operated by the Company in the Locality (the "Facility"), thereby making or causing to be made a significant Capital Investment, creating and Maintaining a significant number of New Jobs and PTEs, and causing compliance with the Beer Production Schedule, as such capitalized terms are hereinafter defined;

WHEREAS, the Locality is willing to provide the proceeds of the GOF Grant 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 promises to meet certain criteria relating to Capital Investment, New Jobs and PTEs, and the Beer Production Schedule;

WHEREAS, the Locality, the Authority and the Company desire to set forth their understanding and agreement as to the payout of the GOF Grant, the use of the GOF Grant proceeds, the obligations of the Company regarding Capital Investment, New Job and PTE creation and Maintenance, and the Beer Production Schedule, and the repayment by the Company of all or part of the GOF Grant under certain circumstances;

WHEREAS, 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 the costs associated with the acquisition of the land and existing improvements thereon;

WHEREAS, the construction, equipping and operation of the Facility will further entail the creation and Maintenance of 90 New Jobs and another 198 PTEs at the Facility;

WHEREAS, the operation of the Facility will further entail the production of sufficient barrels of beer to meet the Beer Production Schedule; and

WHEREAS, the stimulation of the additional tax revenue and economic activity to be generated by the Capital Investment, the New Jobs and PTEs, and the production of sufficient barrels of beer to meet the Beer Production Schedule, constitutes a valid public purpose for the expenditure of public funds and is the animating purpose for the GOF 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:

"Beer Production Schedule" means the cumulative production at the Facility of at least 630,000 barrels of beer by the Performance Date.

"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, excluding the purchase of land and existing improvements. 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 (including the Authority) 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 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. The Capital Investment Target of $73,700,000 reflects the expected capital expenditures of $73,700,000, excluding the costs associated with the acquisition of the land and existing improvements thereon.

"Expansion Date" means the later to occur of (i) June 1, 2019, or (ii) the date which is twelve (12) months after final approval by the Locality of the closure of Water Street as a public road. In no event may the Expansion Date be later than December 31, 2019.

"Force Majeure" means an act of God, act of the public enemy, terrorist attack(s), war, blockade, public riot, lightning, fire, storm, flood or other extraordinary act of nature, explosion, reasonably unanticipated unavailability of equipment, reasonably unanticipated delays in obtaining permits or approvals, failure of the Locality to close Water Street by December 31, 2018, 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.

"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.

"Maintain" means that the New Jobs and PTEs created pursuant to the GOF Grant will continue without interruption from the date of creation of each New Job or PTE, as applicable, through the Performance Date. Positions for the New Jobs and PTEs 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 (meaning a weighted average of all full-time positions and excluding the cash value of fringe benefits received) of at least $57,024. 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.

"PTE" means new permanent part-time jobs of an indefinite duration at the Facility paying an average annual wage of at least $19,293.12 (reflecting $13.86 per hour for 29 hours per week for 48 weeks (or 1,392 hours per year), excluding the cash value of fringe benefits (if any) received. The Company need not provide fringe benefits for PTEs.

The number of PTEs will be an amount equal to the lower of the quotients obtained utilizing the following two (2) formulas:

(i) The number of PTEs equals the aggregate number of hours worked by all part-time employees at the Facility divided by 1,392 hours.

or

(ii) The number of PTEs equals the aggregate amount of wages (excluding the cash value of fringe benefits, if any, received) earned by part-time employees at the Facility divided by $19,293.12.

"Performance Date" means the date which is twenty-four months after the Expansion Date. The Performance Date may not be extended.

"Targets" means the Company's obligations, by the Performance Date, (A) to make or cause to be made Capital Investments at the Facility of at least $73,700,000 (the "Capital Investment Target"), (B) to create and Maintain at least 90 New Jobs and an additional 198 PTEs at the Facility (the "New Jobs Target" and the "PTEs Target," respectively, and the "New Jobs and PTEs Target," together), and (C) to meet the Beer Production Schedule (the "Beer Production Schedule Target").

"Virginia Code" means the Code of Virginia of 1950, as amended.

Section 2. <u>Targets; Statutory Criteria</u>.

The Company will cause the construction and equipping, of the Facility, and will operate the Facility.

As of the Performance Date, the Company (A) will make or cause to be made Capital Investments at the Facility of at least $73,700,000, (B) will create and Maintain at least 90 New Jobs and 198 PTEs at the Facility, and (C) will meet the Beer Production Schedule.

The Locality and the Authority hereby strongly encourage the Company to ensure that at least 30% of the New Jobs and PTEs 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.

The average annual wage of the New Jobs of at least $57,024 is more than the prevailing average annual wage in the Locality of $54,892. The Locality is a high-unemployment locality, with an unemployment rate for 2013 which is the last year for which such data is available, of 6.9% as compared to the 2013 statewide unemployment rate of 5.5%. The Locality is a high-poverty locality, with a poverty rate for 2012, which is the last year for which such data is available, of 26.2% as compared to the 2013 statewide poverty rate of 11.8%.

Section 3. <u>Disbursement of GOF Grant</u>.

Concurrent with its execution of this Agreement, the Locality is requesting the disbursement to it of the GOF Grant.

The GOF Grant in the amount of $5,000,000 will be paid to the Locality, upon its request. Promptly, but no later than 30 days of its receipt of the GOF Grant proceeds, the Locality will disburse the GOF Grant proceeds to the Authority.

Promptly, but no later than 30 days of its receipt of the GOF Grant proceeds, the Authority will disburse $4,000,000 of the GOF Grant proceeds to the Company as an inducement to the Company to achieve the Targets at the Facility. The remaining $1,000,000, plus 2nd Installment Interest (as defined below) on the GOF Grant proceeds (together, the "GOF 2nd Installment") will be disbursed by the Authority to the Company within 30 days after the earlier of: (i) the date that the Company opens the bistro portion of the Facility for regular operations, or (ii) the date that the Company begins paying rent on the bistro portion of the Facility (either, a "2nd Installment Payment Event"). If the remaining $1,000,000 of the GOF Grant proceeds are not paid to the Company by the Performance Date, because neither 2nd Installment Payment Event has occurred (as opposed to, for example, a default by the Authority in making such payment) the $1,000,000 shall be returned to VEDP for redeposit to the Governor's Development Opportunity Fund.

Immediately after receipt of the GOF Grant, the Authority will invest the GOF 2nd Installment in a federally insured, interest bearing account or such other investment vehicle reasonably agreed by the Authority and the Company until disbursement of the GOF 2nd Installment is required in accordance with the terms hereof, and all investment earnings on the GOF 2nd Installment (the "2nd Installment Interest") shall be paid to the Company as part of the GOF 2nd Installment. The Authority shall invest the funds as agreed with the Company and provide periodic statements evidencing cumulative investment earnings thereon.

The Company will use the GOF Grant proceeds, or cause the GOF Grant proceeds to be used, for public and private utility extension or capacity development on and off the Facility site; public and private installation, extension, or capacity development of high-speed or broadband internet access, whether on or off the Facility site; road, rail, or other transportation access costs beyond the funding capability of existing programs to serve the Facility site; grading, drainage, paving, and any other activity required to prepare the Facility site for construction; the construction or build-out of the Facility (which the parties acknowledge includes costs, expenses and fees to purchase and install production, processing or manufacturing equipment or machinery, as well as office furniture, fixtures and equipment); or training, all as permitted by Section 2.2-115(D) of the Virginia Code or Item 101 A. 3. of Chapter 2 of the 2014 Special Session I Acts of Assembly.

Section 4. <u>Break-Even Point; State and Local Incentives</u>.

(a) *State Incentives:* VEDP has estimated that the Commonwealth will reach its "break-even point" by the Performance Date. The break-even point compares the expected new revenues to be realized as a result of the development and operation of the Facility with the Commonwealth's expenditures on incentives, including but not limited to the GOF Grant. With regard to the Facility, the Commonwealth expects to provide incentives in the following amounts:

<u>Category of Incentive:</u>	<u>Total Amount</u>
GOF Grant	$5,000,000
Virginia Jobs Investment Program ("VJIP") (Estimated)	132,000
Enterprise Zone Job Creation Grant ("EZJCG") (Estimated)	317,600
Enterprise Zone Real Property Improvement Grant ("EZRPIG") (Estimated)	200,000
Agriculture and Forestry Industries Development Grant ("AFID")	250,000

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

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

Category of Incentive:	Total Amount
Local Economic Development Grant	$1,500,000
Sustainability Grant	500,000
Infrastructure Improvements (Costs to close Water Street and demolish Lehigh Cement Silos) (Estimated)	1,000,000
Local Enterprise Zone Incentives	15,000
Waste Water Surcharge Reductions (Estimated)	1,555,430
Wharf Improvements (Estimated)	500,000
Waiver of Development Fee for Developing Facility (Costs not recouped in Lease Agreement)	320,000
Public/Private Interest Rate Differential (Unknown Value)	
Conditional Real Estate Cash Grant (Conditional / Unknown Value)	

If, by the Performance Date, the value of the funds and other local incentives disbursed or committed to be disbursed by the Locality to the Company total less than the $5,000,000 GOF Grant local match requirement, the Locality, subject to appropriation, will make an additional grant to the Company of the difference at the Performance Date, so long as the Company has met its Targets.

The proceeds of the Locality's Local Economic Development Grant and its Local Enterprise Zone Incentives may be used by the Company for any lawful purpose in connection with the equipping or operation of the Facility. The Locality's Sustainability Grant may be used by the Company for any purpose which would be considered creditable under the U.S. Green Building Council's LEED Building Design & Construction Credit Library. The Locality's Waste Water Surcharge Reductions will reduce the Company's operating costs at the Facility. The Infrastructure Improvements and Wharf Improvements will directly benefit the Facility through improved availability of infrastructure and access to the James River. The Waiver of Development Fee and Public / Private Interest Rate Differential will reduce the Company's costs with respect to leasing the Facility.

Section 5. <u>Repayment Obligation</u>.

(a) *If Statutory Minimum Eligibility Requirements are Not Met:* Section 2.2-115 of the Virginia Code requires that the Company make or cause to be made a Capital Investment of at least $1,500,000 in the Facility and create and Maintain at least 15 New Jobs at the Facility in order to be eligible for the GOF Grant. Failure by the Company to meet either of these statutory minimum eligibility requirements by the Performance Date shall constitute a breach of this Agreement and the entire GOF Grant must be repaid by the Company to the Authority.

(b) *If Statutory Minimum Eligibility Requirements are Met:* The provisions of this subsection (b) shall become applicable only if the Company has met the statutory minimum eligibility requirements set forth in subsection (a). For purposes of repayment, the GOF Grant is to be allocated as $1,750,000 (35%) for the Company's Capital Investment Target, $1,750,000 (35%) for the Company's New Jobs and PTEs Target and $1,500,000 (30%) for its Beer Production Schedule Target. Additionally, the $1,750,000 of the GOF Grant allocated to the New Jobs and PTEs Target is to be further divided as $1,312,500 (75%) for the New Jobs Target and $437,500 (25%) for the PTEs Target.

(i) *Capital Investment Target:* If the Company has met at least 90% of its Capital Investment Target at the Performance Date, then and thereafter the Company is no longer obligated to repay any portion of the $1,750,000 of the GOF Grant allocated to the Capital Investment Target. If the Company has not met at least 90% of its Capital Investment Target at the Performance Date, the Company shall repay to the Authority that part of the $1,750,000 of the GOF Grant allocated to the Capital Investment Target that is proportional to the shortfall. For example, if at the Performance Date, the Capital Investment is only $58,960,000 (reflecting achievement of 80% of the Capital Investment Target), the Company shall repay to the Authority 20% of the $1,750,000 of the GOF Grant allocated to the Capital Investment Target ($1,750,000 x .20 = $350,000).

(ii) *New Jobs Target:* If the Company has met at least 90% of its New Jobs Target at the Performance Date, then and thereafter the Company is no longer obligated to repay any portion of the $1,312,500 of the GOF Grant allocated to the New Jobs Target. If the Company has not met at least 90% of its New Jobs Target at the Performance Date, the Company shall repay to the Authority that part of the $1,312,500 of the GOF Grant allocated to the New Jobs Target that is proportional to the shortfall. For example, if at the Performance Date, the Company has created and Maintained only 45 New Jobs (reflecting achievement of 50% of the New Jobs Target), the Company shall repay to the Authority 50% of the $1,312,500 of the GOF Grant allocated to the New Jobs Target ($1,312,500 x .50 = $656,250).

(iii) *PTEs Target:* If the Company has met at least 90% of its PTEs Target at the Performance Date, then and thereafter the Company is no longer obligated to repay any portion of the $437,500 of the GOF Grant allocated to the PTEs Target. If the Company has not met at least 90% of its PTEs Target at the Performance Date, the Company shall repay to the Authority that part of the $437,500 of the GOF Grant allocated to the PTEs Target that is proportional to the shortfall. For example, if at the Performance Date, the Company has created and Maintained only 99 PTEs (reflecting achievement of 50% of the PTEs Target), the Company shall repay to the Authority 50% of the $437,500 of the GOF Grant allocated to the PTEs Target ($437,500 x .50 = $218,750).

(iv) *Beer Production Schedule Target:* If the Company has met at least 90% of its Beer Production Schedule Target at the Performance Date, then and thereafter the Company is no longer obligated to repay any portion of the $1,500,000 of the GOF Grant allocated to the Beer Production Schedule Target. If the Company has not met at least 90% of its Beer Production Schedule Target at the Performance Date, the Company shall repay to the Authority that part of the $1,500,000 of the GOF Grant allocated to the Beer Production Schedule Target that is proportional to the shortfall. For example, if at the Performance Date, the Company has produced only 378,000 barrels of beer (reflecting achievement of 60% of the Beer Production Schedule Target), the Company shall repay to the Authority 40% of the $1,500,000 of the GOF Grant allocated to the Beer Production Schedule Target ($1,500,000 x .40 = $600,000).

(c) *Determination of Inability to Comply:* If the Company files or is otherwise subject to a Chapter 7 filing under the U.S. Bankruptcy Code, the Company is liquidated as a result of its inability to pay its debts, or the Company permanently abandons the Facility at any time prior to the Performance Date (the date of any such event hereinafter referred to as a "Determination Date"), then upon written demand from the Authority or VEDP, the Company must repay the entire GOF Grant to the Authority.

(d) *Adjustments:* The calculations made in this Section 5 assume that the entire $5,000,000 GOF Grant has been distributed to or for the benefit of the Company. If, in accordance with the provisions of Section 3, the Authority has not distributed $1,000,000 of the GOF proceeds to the Company, the calculations shall be adjusted proportionately to reflect a GOF Grant of $4,000,000, rather than $5,000,000. If a Determination Date occurs before the $1,000,000 has been distributed to the Company, the Authority shall repay the $1,000,000 to VEDP and will retain as the Authority's property any investment earnings thereon.

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 Locality, the Authority and VEDP shall take such reductions into account in determining the extent to which the Company has achieved the Capital Investment Target. Additionally, 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, 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 Facility, 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.

(e) *Repayment Dates:* ***Any repayment due from the Company under this Section 5 shall be due from the Company to the Authority within ninety days of the Performance Date or the Determination Date, as applicable.*** Any moneys repaid by the Company to the Authority hereunder shall be repaid by the Authority to the Locality and shall be repaid by the Locality promptly to VEDP for redeposit into the Governor's Development Opportunity Fund. The Locality and the Authority shall use commercially reasonable efforts to recover such funds, including legal action for breach of this Agreement. Neither the Locality nor the Authority shall have any responsibility for the repayment of any sums hereunder unless said sums have been received by the Authority from the Company, except for the $1,000,000 in GOF Grant proceeds to be retained by the Authority, until it is paid to the Company.

Section 6. Company Reporting.

The Company shall provide, at the Company's expense, detailed verification reasonably satisfactory to the Locality, the Authority and VEDP of the Company's progress on the Targets. Such progress reports will be provided annually, starting at April 1, 2015 and covering the period through the prior December 31. Further, the Company shall provide such progress reports at such other times as the Locality, the Authority or VEDP may reasonably require. If the Company wishes to count as Capital Investments the capital expenditures made on its behalf by a lessor or a developer of the Facility, the Company is responsible for assembling and distributing the documentation necessary to verify the capital expenditures made on behalf of the Company.

With each such progress report, the Company shall report to VEDP the amount paid by the Company in the prior calendar year in Virginia corporate income tax. VEDP has represented 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 7. Notices.

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

if to the Company, to:

KoochenVagner's Brewing Co.
d/b/a Stone Brewing Co.
1999 Citracado Parkway
Escondido, CA 92029
Email: craig.spitz@stonebrewing.com
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
Email: pat.tiernan@stonebrewing.com
Attention: Mr. Pat Tiernan

with an additional copy to:

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

if to the Locality, to:

City of Richmond
900 E. Broad St., Room 201
Richmond, VA 23219
Facsimile: 804.646.7970
Attention: Chief Administrative Officer

with a copy to:

City of Richmond
900 E. Broad St., Room 300
Richmond, VA 23219
Facsimile: 804.646.6653
Attention: City Attorney

if to the Authority, to:

Economic Development Authority of the City of Richmond, Virginia
c/o City of Richmond Department of Economic and Community Development
Main Street Station
1500 East Main Street, Suite 400
Facsimile: 804.646.6793
Attention: Chair

with a copy to:

Economic Development Authority of the City of Richmond, Virginia
c/o City Attorney
900 E. Broad St., Room 300
Richmond, VA 23219
Facsimile: 804.646.6653
Attention: General Counsel

if to VEDP, to:

Virginia Economic Development Partnership
901 East Byrd Street, 19th Floor
Post Office Box 798 (zip: 23218-0798)
Richmond, Virginia 23219
Facsimile: 804.545.5611
Email: mbriley@yesvirginia.org
Attention: President and CEO

with a copy to:

Virginia Economic Development Partnership
901 East Byrd Street, 19th Floor
Post Office Box 798 (zip: 23218-0798)
Richmond, Virginia 23219
Facsimile: 804.545.5611
Email: smcninch@yesvirginia.org
Attention: General Counsel

Section 8. <u>Dispute Resolution</u>.

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 90^{th} 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 to cease taking, some action, such party shall be provided a reasonable period of time, not to exceed ninety (90) days, to take, to cause, or to cease taking, such action.

Section 9. <u>Miscellaneous</u>.

(a) *Entire Agreement; Amendments*: This Agreement constitutes the entire agreement among the parties hereto as to the GOF 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. Notwithstanding the preceding sentence, the Company shall have the right, without the consent of any party hereto or VEDP, to assign its rights and responsibilities under this Agreement to: (x) any entity that owns 100% of its issued and outstanding capital stock or any entity controlled by it, (y) any entity into which the Company merges or consolidates, or (z) any entity that acquires all or substantially all of the assets of the Company, provided that (i) the Company shall remain liable for the performance by any such assignee of its obligations under this Agreement, (ii) the Company shall provide written notice of such assignment to the Locality, the Authority and VEDP, and (iii) such assignee shall assume all of the obligations of the Company under this Agreement.

(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, if the Company does not meet the Targets or if any party does not comply with the other terms and conditions contained in this Agreement because of an event of Force Majeure, the date by which such Target or term or condition must be met will be extended day-for-day by the delay caused by the event of Force Majeure.

[THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

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

____
City Attorney

By ______________________________
Name: __________________________
Title: __________________________
Date: ____________________________

ECONOMIC DEVELOPMENT AUTHORITY OF THE CITY OF RICHMOND, VIRGINIA

Approved as to form

____
General Counsel to the Authority

By ______________________________
Name: __________________________
Title: __________________________
Date: ____________________________

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

By ______________________________
Name: __________________________
Title: __________________________
Date: ____________________________