

INTRODUCED: April 9, 2018

AN ORDINANCE No. 2018-126

As Amended

To authorize the Chief Administrative Officer, for and on behalf of the City of Richmond, to execute a First Amendment to Stone Brewing Company Performance Agreement, Dated November 14, 2014, as amended, between the City of Richmond, Virginia, Stone Brewing Co., LLC, and the Economic Development Authority of the City of Richmond, Virginia for the purpose of revising the definitions of “Existing Building” and “Phase II” to allow the demolition of an existing structure and the construction of a new building.

Patron – Mayor Stoney

Approved as to form and legality
by the City Attorney

PUBLIC HEARING: APR 23 2018 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 First Amendment to Stone Brewing Company Performance Agreement, Dated November 14, 2014, as amended, between the City of Richmond, Virginia, Stone Brewing Co., LLC, and the Economic Development Authority of the City of Richmond, Virginia for the purpose of revising the definitions of “Existing Building” and “Phase II” to allow the demolition of an existing structure and the construction of a new building. The First Amendment to Stone Brewing Company Performance Agreement, Dated November 14,

AYES: _____ NOES: _____ ABSTAIN: _____

ADOPTED: _____ REJECTED: _____ STRICKEN: _____

2014, as amended, 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.



CITY OF RICHMOND
INTRACITY CORRESPONDENCE

O & R REQUEST

MAR 20 2018
4-7631

Office of the
Chief Administrative Officer

O&R REQUEST

DATE: March 19, 2018

TO: The Honorable Members of City Council

THROUGH: Levar M. Stoney, Mayor

FROM: Selena Cuffee-Glenn, Chief Administrative Officer

FROM: L. Peter Downey, Deputy Chief Administrative Office for Planning and Economic and Community Development

RE: Amendment of the Performance Agreement by and between the City of Richmond and KoochenVagner's Brewing Co. d/b/a Stone Brewing Co.

ORD. OR RES. No. _____

PURPOSE: To amend the Stone Brewing Company Performance Agreement ("Performance Agreement") dated November 20, 2014 by and between the City of Richmond, Virginia, the Economic Development Authority of the City of Richmond, Virginia ("EDA") and Koochenvager's Brewing Company d/b/a Stone Brewing Co. for the purpose of revising the definitions of "Existing Building" and "Phase II" to allow for the demolition of the existing structure and construction of a new building.

REASON: An amendment of the Performance Agreement requires City Council approval..

RECOMMENDATION: The City Administration recommends adoption of this ordinance.

BACKGROUND:

The City, EDA, and Stone Brewing Co. entered into the Performance Agreement in 2014. According to Section 1, Definitions, "Existing Facility" is defined as the building located at 3101 East Main Street in the city of Richmond, in its condition on September 30, 2014, which building is to be renovated or rehabilitated.... The definition of "Phase II" refers to "an approximately 30,000 square foot hospitality facility," which square footage is related to renovating or rehabilitating the Intermediate Terminal building. It is requested that the Performance Agreement be amended as requested, which will allow demolition of the existing building and replacing with a new, modern building in which to house the Bistro.

The EDA and Stone have worked for the last year on the design of the Bistro which entailed renovating the existing building located at 3101 E. Main Street. After extensive analysis and design,

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the parties have determined that the existing structure cannot be renovated, as originally contemplated. According to engineering reports prepared by the Timmons Group and GPRS, structural deficiencies prevent the redevelopment of the building for the Bistro. The cost associated with making structural repairs and addressing floodplain issues renders the redevelopment of the building economically and structurally infeasible. Stone and the EDA have evaluated the cost of demolishing the existing structure and building a new building in which to house the Bistro. The new facility is expected to be approximately 12,000 square feet, but will be subject to all conditions of the COF Performance Agreement with respect to investment and new job creation. Therefore, the EDA requests that the Performance Agreement be amended to allow for the demolition of the existing structure and construction of a new, modern building in which to house the Bistro. All other terms and conditions of the Performance Agreement and other related Agreements shall remain in full force and effect.

FISCAL IMPACT / COST: The City has appropriated \$8 million for the Phase 2 Facility, which will serve as the Bistro. This appropriation is included in the FY18 CIP and shall be granted to the EDA, for the construction of the Bistro for Stone Brewing Co. The rental payments made by Stone pursuant to the Lease shall fully repay the debt service associated with said appropriation.

FISCAL IMPLICATIONS: The Cooperation Agreement stipulates that the City will grant the funds necessary to complete the development plan to the EDA, which will finance the development of the bistro. The debt service will be repaid to the EDA through lease payments made over a 25 year lease term. The transactions enabled by the package of ordinances are expected to generate approximately \$12 million in taxable real estate improvements and investment in the City. Stone estimates that the Bistro will generate approximately \$10 million in annual food and beverage sales.

BUDGET AMENDMENT NECESSARY: None

REVENUE TO CITY: New taxes generated from the development include Personal Property taxes, Real Estate taxes, Meals taxes and Retail Sales taxes.

DESIRED EFFECTIVE DATE: Upon adoption.

REQUESTED INTRODUCTION DATE: April 9, 2018

CITY COUNCIL PUBLIC HEARING DATE: April 23, 2018

REQUESTED AGENDA: Regular

RECOMMENDED COUNCIL COMMITTEE: Finance and Economic Development

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

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

RELATIONSHIP TO EXISTING ORDINANCE OR RESOLUTION:

Ordinance #: 2015-149-159

Ordinance #: 2014-254-2015-46

Ordinance #: 2014-246-231

Ordinance #: 2014-237-210

Ordinance #: 2014-228-229

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: Draft First Amendment to the Performance Agreement

STAFF: Lee Downey, Director, Economic & Community Development, 646-5633
Jane Ferrara, Deputy Director, Economic & Community Development, 646-5633

30, 2014. A capital expenditure related to a leasehold interest in real property will be considered to be made “on behalf of the Company” if a lease between a developer and the Company is a capital lease, or is an operating lease having a term of at least ten years, and the real property would not have been constructed or improved but for the Company’s interest in leasing some or all of the real property. Only the capital expenditures allocated to the portion of the real property to be leased by the Company in Phase I and Phase II will count as “Capital Investment.” The purchase or lease of furniture, fixtures, machinery and equipment, including under an operating lease, and expected building up-fit and tenant improvements by or on behalf of the Company will qualify as Capital Investment.

D. A new definition of “Company,” which, for the avoidance of doubt, is intended to replace the meaning of the term “Company” as set forth in the introductory paragraph of the Performance Agreement, is hereby added as follows:

“Company” means Stone Brewing Co., LLC, successor to KoochenVagner’s Brewing Co. d/b/a Stone Brewing Co.

E. The [~~Parties desire to delete the~~] definition of “Existing Building” [~~in its entirety and replace it as follows~~] is hereby deleted in its entirety and replaced with the following:

“Existing Building” means the building located at 3101 East Main Street in the city of Richmond, in its condition on September 30, 2014.

F. The definition of “Expansion Date” is hereby deleted in its entirety and replaced with the following:

“Expansion Date” means July 1, 2019.

[2.] G. The [~~Parties desire to delete the~~] definition of “Phase II” is hereby deleted in its entirety and [~~replace it as follows~~] replaced with the following:

“Phase II” means a real estate investment of approximately [~~\$8~~] \$10 million for a hospitality facility on the property currently known as 3101 E. Main Street (“Phase II Property”), which will include a Bistro, Beer Garden, supporting retail operations and associated parking areas, and the creation of at least 198 New Non-Production Jobs, all at the Facility. Phase II includes the Company holding at least three (3) job fairs with a minimum of one (1) in each of the following areas: East End, Northside and Southside.

H. A new definition of “Phase 2 Appropriation” is hereby added as follows:

“Phase 2 Appropriation” has the meaning ascribed to it in that certain Stone Brewery Cooperation Agreement, As Amended, dated March 2, 2015, between the City and the Authority.

I. A new definition of “Project Improvement Costs” is hereby added as follows:

“Project Improvement Costs” means the actual, verifiable costs and expenses paid to third parties, not Affiliates of the Company, for the design, permitting, development, and construction (including any demolition activities on the Phase II Property), purchase or lease of furniture, fixtures, machinery and equipment, including under an operating lease, and expected building up-fit and tenant improvements by the Company of the Phase II Facility, in an amount not less than twenty percent (20%) of the total cost of Phase II such that Company’s Phase II investment (“Company’s Phase II Target”) shall not be less than twenty (20%) percent of the total cost of Phase II.

J. The definition of “Targets” is hereby deleted in its entirety and replaced with the following:

“Targets” means the Company’s obligations to make a Capital Investment, create New Production Jobs and New Non-Production Jobs, engage in Beer Production, expend Project Improvement Costs, and generate Tax Revenues in accordance with Section 2.

2. Section 2.1 (“Capital Investment Target”) is hereby deleted in its entirety and replaced with the following, including the addition of new sections 2.1.1, 2.1.2, and 2.1.3:

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

2.1.1 The mass and scale of the Bistro Building shall conform to the following requirements:

A. The height of the Bistro Building does not exceed the height permitted by the zoning regulations in effect as of the date of this First Amendment; and

B. The horizontal area of the Bistro Building does not exceed the horizontal area of the Existing Building;

2.1.2 The City's Urban Design Committee has reviewed the exterior design of the Bistro Building and the landscape design on the Phase II Property at a public meeting and has advised the City Planning Commission of its conclusions from such review; and

2.1.3 The Company shall open for regular business operations the hospitality facility on the Phase II Property, known as the Stone Brewing World Bistro and Gardens, no later than 18 months following the Expansion Date.

3. A new Section 2.5 is hereby added as follows:

2.5 Project Improvement Costs. The Company shall fully expend or cause to be expended the Project Improvement Costs within 18 months following the Expansion Date.

4. Section 7.1.2 is hereby deleted in its entirety and replaced with the following:

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

5. A new Section 7.2.4, including subsections numbered 7.2.4.1, 7.2.4.2, and 7.2.4.3, is hereby added as follows:

7.2.4 Project Improvement Costs Target.

7.2.4.1 City's Phase 2 Appropriation. Pursuant to that certain Stone Brewing Cooperation Agreement, As Amended, dated March 2, 2015, between the City and the Authority, the City agreed to make the Phase 2 Appropriation, a grant in the amount of \$8,000,000, to the Authority for the development and construction of the Phase II Facility, subject to certain terms and conditions.

7.2.4.2 Phase 2 Appropriation. The City's Phase 2 Appropriation will be in an amount equal to 80% of the total Project Improvement Costs, not to exceed \$8,000,000. The Company shall contract for the provision of those things that qualify as Project Improvement Costs and require its contractor to submit separate invoices in the amounts of 80 percent of each invoiced cost to the Authority and 20 percent of each invoiced cost to the Company until the total paid

by the Authority reaches \$8,000,000. After the total paid by the Authority reaches \$8,000,000, the Company shall cause all future invoices to be submitted to the Company, and the Company shall be responsible for paying such invoices.

7.2.4.3 Minority Business Enterprise and Emerging Small Business (MBE/ESB) Participation. The City's Phase II Appropriation has a goal of a minimum 40% MBE/ESB participation.

6. The former Section 7.2.4 ("Notice of Repayment Obligation") is hereby deleted in its entirety and replaced with the following, renumbered as Section 7.2.5:

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

7. Except as specifically modified in this First Amendment, all other provisions of the Performance Agreement remain the same. Defined terms used in this [~~amendment~~] First Amendment have the meanings ascribed to them in the Performance Agreement. If any of the terms of this First Amendment conflict with the Performance Agreement, the terms of this First Amendment control.

The duly authorized representatives of the parties have executed this First Amendment to be effective on the date indicated below.

SIGNATURES ON FOLLOWING PAGE

CITY OF RICHMOND, VIRGINIA
a municipal corporation and political subdivision of
the Commonwealth of Virginia

By: _____
Chief Administrative Officer

APPROVED AS TO FORM:

City Attorney

**ECONOMIC DEVELOPMENT AUTHORITY
OF THE CITY OF RICHMOND, VIRGINIA**
a political subdivision of the Commonwealth of
Virginia

By: _____
Chairman

APPROVED AS TO FORM:

Bonnie M. Ashley
General Counsel to the Authority

STONE BREWING CO., LLC, a California limited
liability company

By: _____

Its _____

Approved As To Form



Haskell C. Brown, III
Assistant City Attorney