

INTRODUCED: July 27, 2020

AN ORDINANCE No. 2020-173

To authorize the Chief Administrative Officer, for and on behalf of the City of Richmond, to execute a Governor’s Agriculture & Forestry Industries Development Fund Performance Agreement between the City of Richmond, Virginia, the Economic Development Authority of the City of Richmond, Virginia, and River City Cider, LLC, doing business as Bryant’s Small Batch Cider, for the purpose of enabling the Authority to provide an economic development grant to River City Cider, LLC, doing business as Bryant’s Small Batch Cider, as an incentive to construct and improve a Virginia agricultural products processing facility in the city of Richmond.

Patron – Mayor Stoney

Approved as to form and legality
by the City Attorney

PUBLIC HEARING: SEP 14 2020 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 Governor’s Agriculture & Forestry Industries Development Fund Performance Agreement between the City of Richmond, Virginia, the Economic Development Authority of the City of Richmond, Virginia, and River City Cider, LLC, doing business as Bryant’s Small Batch Cider, for the purpose of enabling the Authority to

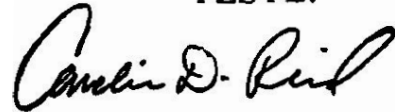
AYES: 8 NOES: 0 ABSTAIN: _____

ADOPTED: SEP 14 2020 REJECTED: _____ STRICKEN: _____

provide an economic development grant to River City Cider, LLC, doing business as Bryant's Small Batch Cider, as an incentive to construct and improve a Virginia agricultural products processing facility in the city of Richmond. The Governor's Agriculture & Forestry Industries Development 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.

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

**A TRUE COPY:
TESTE:**

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

City Clerk



CITY OF RICHMOND

INTRACITY CORRESPONDENCE

O&R REQUEST

DATE: June 15, 2019 **EDITION:** 1

TO: The Honorable Members of City Council

THROUGH: The Honorable Levar M. Stoney, Mayor

THROUGH: Leonora Reid, Acting Chief Administrative Officer *lgr*

THROUGH: John Wack, Director of Finance *JW*

THROUGH: Dr. Jay Brown, Director of Budget *JAB*

THROUGH: Sharon Ebert, Deputy Chief Administrative Officer, Planning and Economic and Community Development *[Signature]*

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

RE: Authorization to execute the Governor's Agriculture & Forestry Industries Development Fund Performance Agreement between the City of Richmond, River City Cider, LLC dba Bryant's Small Batch Cider and the Economic Development Authority of the City of Richmond.

ORD. OR RES. No. _____

PURPOSE: To authorize the Acting Chief Administrative Officer, on behalf of the City of Richmond, to execute a Governor's Agriculture & Forestry Industries Development (AFID) Fund Performance Agreement (Agreement) by and between the City of Richmond, River City Cider, LLC dba Bryant's Small Batch Cider (the Company), a Virginia corporation, and the Economic Development Authority of the City of Richmond, Virginia (Authority).

REASON: The City Of Richmond has been awarded an AFID grant of \$25,000 from the Commonwealth of Virginia for the Company's establishment of a Cidery and supporting operations in the City of Richmond.

RECOMMENDATION: The City Administration recommends adoption of this ordinance.

BACKGROUND: The Company is establishing operations in Shockoe Bottom that will entail a capital expenditure of approximately \$257,000, of which approximately \$170,000 will be invest-

ed in machinery and equipment; approximately \$82,500 will be invested to improve the property and; and approximately \$5,000 will be invested in tangible personal property. In addition the Company will create seven (7) new jobs and one (1) full-time equivalent job.

FISCAL IMPACT / COST: To locate the Company and to match the AFID, the City is offering statutory grants of up to \$25,000 through the local Enterprise Zone and the Commercial Area Revitalization Effort (CARE) programs.

FISCAL IMPLICATIONS: There are no fiscal implications. The local \$25,000 grants are statutory. The \$25,000 AFID cash grant is a pass-through grant awarded to the City and passed through the City to the Authority.

BUDGET AMENDMENT NECESSARY: No budget amendment is necessary. The City grants are statutory.

REVENUE TO CITY: The project will increase tax revenues to the City for machinery and equipment, real estate, and tangible personal property.

DESIRED EFFECTIVE DATE: Upon adoption.

REQUESTED INTRODUCTION DATE: July 27, 2020

CITY COUNCIL PUBLIC HEARING DATE: September 14, 2020

REQUESTED AGENDA: Consent

RECOMMENDED COUNCIL COMMITTEE: Finance and Economic Development

CONSIDERATION BY OTHER GOVERNMENTAL ENTITIES: None

AFFECTED AGENCIES: Department of Economic Development

RELATIONSHIP TO EXISTING ORD. OR RES.: None

REQUIRED CHANGES TO WORK PROGRAM(S): None

ATTACHMENTS: Governor's Agriculture & Forestry Industries Development Grant Fund Performance Agreement

STAFF: Leonard L. Sledge, Director the Department of Economic Development, 646-7576; Betty-Anne Teter, Program Administrator, 646-1823.

**GOVERNOR'S AGRICULTURE & FORESTRY INDUSTRIES DEVELOPMENT
FUND**

PERFORMANCE AGREEMENT

This **PERFORMANCE AGREEMENT** (the "Agreement") made and entered this ____ day of _____, 2020, by and among the **CITY OF RICHMOND, VIRGINIA** (the "Locality") a political subdivision of the Commonwealth of Virginia (the "Commonwealth"), and **RIVER CITY CIDER, LLC dba BRYANT'S SMALL BATCH CIDER** (the "Company"), a Virginia limited liability corporation authorized to transact business in 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 \$25,000 from the Governor's Agriculture & Forestry Industries Development Fund (an "AFID Grant") through the Virginia Department of Agriculture and Consumer Services ("VDACS") for the purpose of inducing the Company to construct and improve an agriculture and/or forestry processing/value-added facility using Virginia-grown products in the Locality (the "Facility"), thereby making a significant Capital Investment, as hereinafter defined, creating a significant number of New Jobs and FTEs, as hereinafter defined; and purchasing a significant amount of Virginia-grown agricultural and forestal products, as 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 promises to meet certain criteria relating to Capital Investment, New Jobs and FTEs, and purchase of Virginia-grown agricultural and forestal products;

WHEREAS, the Locality, the Authority and the Company desire to set forth their understanding and agreement as to the payout of the AFID Grant, the use of the AFID Grant proceeds, the obligations of the Company regarding Capital Investment, New Job creation, purchase of Virginia-grown agricultural and forestal products, and the repayment by the Company of all or part of the AFID Grant under certain circumstances;

WHEREAS, the construction and operation of the Facility will entail a capital expenditure of approximately \$257,500, of which approximately \$170,000 will be invested in machinery and equipment, approximately \$82,500 will be invested to improve the site and building and approximately \$5,000 will be invested in tangible personal property;

WHEREAS, the construction and operation of the Facility will further entail the creation of seven (7) New Jobs and one (1) Full-Time Job Equivalent (FTE) at the Facility;

WHEREAS, the construction and operation of the Facility will further lead to the purchase of Virginia-grown agricultural and forestal products in the following amount: \$260,400 or 24,490 bushels over the performance period (see Appendix A for details); and

WHEREAS, the stimulation of the additional tax revenue and economic activity to be generated by the Capital Investment, New Jobs, and purchase of Virginia-grown agricultural and forestal products constitutes a valid public purpose for the expenditure of public funds and is the animating purpose for the AFID 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 I. Definitions.

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

“Capital Investment” means a capital expenditure by the Company in taxable real property, taxable tangible personal property, or both, at the Facility excluding the purchase of land or existing real property improvements. The Capital Investment must be in addition to the capital improvements at the Facility as of the date: February 7, 2020. The total capital expenditure of \$257,500 is referred to in this Agreement as the “Capital Investment.”

“Maintain” means that the New Jobs and FTEs created pursuant to the AFID Grant will continue without interruption from the date of creation through the Performance Date. Positions for the New Jobs and FTEs will be treated as Maintained during periods in which such positions are not filled due to temporary reductions in the Company’s employment levels in connection with recruitment for open positions or strikes and other work stoppages.

“New Job” means new permanent full-time employment of an indefinite duration at the Facility for which the standard fringe benefits are paid by the Company for the employee, and for which the Company pays an average annual wage of at least \$44,285.71. 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.

Full-Time Equivalent positions (FTEs), are part-time and seasonal positions created by the project on a predictable, annual basis, which do not meet the definition of New Job, and for which the Company pays an average annual wage of at least \$20,000. For the purposes of the AFID Grant, these positions should be converted into full-time equivalent (FTE) positions based on one FTE equating 1,680 hours per year.

“Performance Date” means March 31, 2023. If the Locality, in consultation with the Authority and the Secretary of Agriculture and Forestry, deems that good faith and reasonable efforts have been made and are being made by the Company to achieve the Targets, the Locality may agree to extend the Performance Date by up to 15 months. If the Performance Date is extended, the Locality shall send written notice of the extension to the Authority, the Company and the Secretary of Agriculture and Forestry and the date to which the Performance Date has been extended shall be the “Performance Date” for the purposes of this Agreement.

“Targets” means the Company’s obligations to make Capital Investments at the Facility of at least \$257,500, to create and Maintain at least seven (7) New Jobs and one (1) FTE at the Facility, and to purchase at least \$260,400 or 24,490 bushels of Virginia-grown agricultural and forestal products as defined in Appendix A, all as of the Performance Date.

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

Section 2. Targets.

The Company will develop and operate the Facility in the Locality, make a Capital Investment of at least \$257,500, create and Maintain at least seven (7) New Jobs and one (1) FTE, and purchase \$260,400 or 24,490 bushels of Virginia-grown agricultural and forestal products (see Appendix A), at the Facility, all as of the Performance Date. If the dollar amount of new purchases of Virginia-grown agricultural and forestal products is not met, the Company can still achieve the purchase target by demonstrating they substantively achieved the same volume of Virginia-grown agricultural and forestal products they proposed in Appendix A.

The average annual wage of the New Jobs will be at least \$44,285.71.

The average annual wage of FTEs will be at least \$20,000.

The average prevailing wage in the locality in 2020 is \$62,259.

Section 3. Disbursement of AFID Grant.

By no later than December 31, 2020, the Locality will request the disbursement to it of the AFID Grant. If not so requested by the Locality by December 31, 2020, this Agreement will terminate. The Locality and the Company will be entitled to reapply for an AFID Grant thereafter, based upon the terms, conditions and availability of funds at that time.

The AFID Grant in the amount of \$25,000 will be paid to the Locality, upon its request. Within 30 days of its receipt of the AFID Grant proceeds, the Locality will disburse the AFID Grant proceeds to the Authority. Within 30 days of its receipt of the AFID Grant proceeds, the Authority will disburse the AFID Grant proceeds to the Company as an inducement to the Company to achieve the Targets at the Facility. The Company will use the AFID Grant proceeds to make building improvements as permitted by Section 3.2-304(C) of the Virginia Code.

Section 4. State and Local Government Incentives.

See Appendix B for definition of “break-even point.” With regard to the Facility, the Commonwealth expects to provide incentives in the following amounts:

<u>Category of Incentive:</u>	<u>Total Amount</u>
AFID Grant	\$25,000

The Locality expects to provide the following incentives, as matching grants or otherwise, for the Facility:

<u>Category of Incentive:</u>	<u>Total Amount</u>
Local Enterprise Zone Incentive	\$8,000
Commercial Area Revitalization Effort (CARE) Program	\$18,500

The Grant award is based on the assumption that the Company will apply for, and receive, local Enterprise Zone Incentives and CARE Program awards for which it is eligible. 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 \$25,000 AFID Grant local match requirement, the Company shall repay the difference to the AFID Fund.

The proceeds of the AFID Grant shall be used for the purposes described in Section 3. The proceeds of the Locality's Enterprise Zone and CARE Program awards may be used by the Company for any lawful purpose.

Section 5. Repayment Obligation.

(a) *Determination of Inability to Comply:* If the Locality or the Secretary of Agriculture and Forestry (the "Secretary") determines at any time before the Performance Date (a "Determination Date") that the Company is unlikely to meet and Maintain at least fifty (50) percent of its Targets by and through the Performance Date (i.e., by making a Capital Investment of at least \$128,750 in the Facility, to creating and Maintaining at least 3 New Jobs and 0.5 FTE at the Facility, or purchasing at least \$130,200 or 12,245 bushels of Virginia-grown agricultural and forestal products by the Performance Date), and if the Locality or the Secretary shall have promptly notified the Company of such determination, the entire AFID Grant must be repaid by the Company to the Authority. Such a determination by the Locality or the Secretary 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 the Company will be unable or is unwilling to satisfy the Targets for the AFID Grant.

(b) *Repayment of AFID Grant:* For purposes of repayment, the AFID Grant is to be allocated as \$8,333 (33%) for the Company's Capital Investment Target, \$8,333 (33%) for its New Jobs and FTEs Target, and \$8,334 (33%) for its purchase of Virginia-grown agricultural and forestal products. If the Company has met at least ninety percent (90%) of each of the three Targets at the Performance Date, then and thereafter the Company is no longer obligated to repay any portion of the AFID Grant. If the Company has not met at least ninety percent (90%) of each of the three of its Targets at the Performance Date, the Company shall repay to the Authority that part of the AFID Grant that is proportional to the Target or Targets for which there is a shortfall. For example, if at the Performance Date, the Capital Investment is only \$193,125, only 5 New Jobs and 0.75 FTE have been created and Maintained, and only \$195,300 or 18,367 bushels of Virginia-grown agricultural and forestal products have been purchased, the Company shall repay to the Authority twenty-five percent (25%) of the moneys allocated to the Capital Investment Target (\$2,083), twenty-five percent (25%) of the moneys allocated to the New Jobs and FTE Target (\$2,083), and twenty-five percent (25%) of the moneys allocated to the purchase of Virginia-grown agricultural and forestal products Target

(\$2,083). Whether the New Jobs and FTE Target has been met will be determined by comparing the anticipated payroll (seven (7) New Jobs at an average annual wage of at least \$44,285.71 and one (1) FTE at an average annual wage of \$20,000) to the actual number of New Jobs and FTEs and the actual average annual wage reported at the Performance Date.

(c) *Repayment Dates:* Such repayment shall be due from the Company to the Authority within thirty 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 VDACS for redeposit into the AFID fund. The Locality and the Authority shall use their best efforts to recover all such funds, including legal action for breach of this Agreement. The Locality shall assume primary responsibility for filing and prosecuting any such legal action, and the Authority shall cooperate with the Locality's efforts. 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.

Section 6. Company Reporting.

The Company shall provide, at the Company's expense, detailed verification reasonably satisfactory to the Locality, the Authority and VDACS of the Company's progress on the Targets. Such progress reports will be provided annually, starting April 30, 2021, and at such other times as the Locality, the Authority or VDACS may reasonably require. The first progress report will cover the period from February 7, 2020 to March 31, 2021, the second progress report will cover the period from April 1, 2021 to March 31, 2022, and the third and final progress report will cover the period from April 1, 2022 to March 31, 2023.

With each such progress report, the Company shall report to VDACS the amount paid by the Company in the prior calendar year in Virginia corporate income tax. The Company hereby authorizes the Commissioner of the Revenue, the Treasurer and the Director of Finance for the Locality to release to the Authority and the Locality the Company's confidential tax information and data so that the Authority may verify the payments made. VDACS 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 VDACS solely in calculating aggregate return on invested capital analyses for purposes of gauging the overall effectiveness of economic development incentives.

With each progress report, the Company shall report to VDACS the number of New Jobs and FTEs created and Maintained during the reporting period. The information provided will be verified by VDACS with the Virginia Employment Commission. For FTEs, the Company is responsible for assembling and distributing the documentation necessary to verify such positions, including individuals' names, hours worked, and salaries. If requested by VDACS, the Company shall provide to VDACS copies of the Company's quarterly filings with the Virginia Employment Commission covering the period from the date of this Agreement through the Performance Date. In accordance with the Virginia Code Section 60.2-114, VDACS is entitled to receive the Company's employment level and wage from the Virginia Employment Commission.

With each progress report, the Company shall also report to VDACS the amount purchased and the purchase price paid by the Company, or the fair market value of the Virginia-Grown Agricultural or Forestal Products utilized, through the prior year.

The Locality and Company agree to retain all books, records, data and other documents relative to this agreement for a period of three (3) years after the end of this agreement, or until audited by the Commonwealth of Virginia, whichever is sooner. VDACS and its authorized agents, and/or state auditors (both the Auditor of Public Accounts and/or VDACS Internal Auditor) shall have full access to and the right to examine any of said materials and records relating to this agreement during this period.

Section 7. Notices.

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

if to the Company, to:

Attention: _____

with a copy to:

Attention: _____

if to the Locality, to:

Attention: _____

with a copy to:

Attention: _____

if to the Authority, to:

Attention: _____

with a copy to:

Attention: _____

if to VDACS, to:

Secretary of Agriculture and Forestry
Office of Governor
Commonwealth of Virginia
1111 East Broad Street

with a copy to:

Chauntele D. Taylor
AFID Compliance Coordinator
Va Dept. of Agriculture & Consumer Services
102 Governor St., Room 353

Richmond, Virginia 23219
Attention: AFID

Richmond, Virginia 23219
Attention: AFID

Section 8. Miscellaneous.

(a) *Entire Agreement; Amendments:* This Agreement constitutes the entire agreement among the parties hereto as to the AFID 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 the Secretary of Agriculture and Forestry.

(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 Locality 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) *Subject to Appropriations:* With regard to the City of Richmond matching grant funds, including Enterprise Zone, CARE Program, and General Fund 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 will be bound hereunder only to the extent of the funds available or which may hereafter become available for the purposes 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 City Council for payments hereunder for the performance of this Agreement.

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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

By _____
Name: _____
Title: _____
Date: _____


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

By _____
Name: _____
Title: _____
Date: _____

Approved as to form



**RIVER CITY CIDER, LLC dba
BRYANT'S SMALL BATCH CIDER**

By  _____
Name: Jeremy W. Thompson
Title: Owner
Date: 6/18/2021

APPENDIX A

Purchases of Virginia-grown Products:

PROJECTED AGRICULTURE PURCHASES								
	Year 1 \$ Value	Year 1 Volume (Bushels)	Year 2 \$ Value	Year 2 Volume (Bushels)	Year 3 \$ Value	Year 3 Volume (Bushels)	Net New \$ Value	Net New Volume (Bushels)
Total Virginia Ag Products Purchase	\$55,800	5,248	\$93,000	8,746	\$111,600	10,496	\$260,400	24,490
Apples (Bushels)	\$55,800	5,248	\$93,000	8,746	\$111,600	10,496	\$260,400	24,490
Percentage that is Virginia-grown	100%	100%	100%	100%	100%	100%	100%	100%

APPENDIX B

Break-Even Point Definition:

VDACS 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 incentives, including but not limited to the AFID Grant.