

INTRODUCED: May 22, 2023

AN ORDINANCE No. 2023-172

To authorize the Chief Administrative Officer, for and on behalf of the City of Richmond, to execute a Richmond Riverfront Performing Arts Venue Performance Grant Agreement between the City of Richmond, Richmond Amphitheater, LLC, and the Economic Development Authority of the City of Richmond for the purpose of developing and operating an amphitheater at 470 Tredegar Street.

\_\_\_\_\_  
Patrons – Mayor Stoney and City Council

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

PUBLIC HEARING: JUN 12 2023 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 Richmond Riverfront Performing Arts Venue Performance Grant Agreement between the City of Richmond, Richmond Amphitheater, LLC, and the Economic Development Authority of the City of Richmond for the purpose of developing and operating an amphitheater at 470 Tredegar Street. The Richmond Riverfront Performing Arts Venue Performance Grant 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.

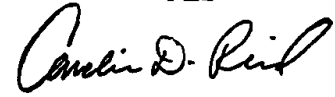
AYES:            9            NOES:            0            ABSTAIN: \_\_\_\_\_

ADOPTED:    JUN 12 2023    REJECTED: \_\_\_\_\_    STRICKEN: \_\_\_\_\_

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

**A TRUE COPY:**

**TESTE:**

A handwritten signature in black ink, appearing to read "Carlin 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:** May 18, 2023

**EDITION:** 1

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

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

**THROUGH:** J.E. Lincoln Saunders, Chief Administrative Officer

**THROUGH:** Sabrina Joy-Hogg, Deputy Chief Administrative Officer, Finance and Administration

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

**THROUGH:** Jason May, Director, Department of Budget and Strategic Planning

**THROUGH:** Sharon Ebert, Deputy Chief Administrative Officer, Planning and Economic Development

**THROUGH:** Chris Frelke, Director, Department of Parks and Recreation

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

**RE:** Approval of the Richmond Riverfront Performing Arts Venue Performance Grant Agreement between the City of Richmond, the Economic Development Authority of the City of Richmond, and Richmond Amphitheater, LLC.

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

**PURPOSE:** To authorize the Chief Administrative Officer, on behalf of the City of Richmond, to execute the Richmond Riverfront Performing Arts Venue Performance Grant agreement between the City of Richmond, Virginia, the Economic Development Authority of the City of Richmond (EDA), and Richmond Amphitheater, LLC for the purpose of developing and operating an amphitheater at 470 Tredegar Street.

**REASON:** Richmond Amphitheater, LLC plans to develop and operate a 7,000-person capacity amphitheater at 470 Tredegar Street. The project:

- Results in developing a tourism related attraction to further elevate Richmond’s image and to continue to delight existing and future residents, employers, and visitors as highlighted in Richmond 300 (Diverse Economy – Goal 12 / Tourism);
- Results in greater activation of the riverfront;
- Enhances General Fund revenue creation; and
- Creates a privately developed unique venue the provides opportunities for the City and other organizations to program events.

**RECOMMENDATION:** Approval is requested by the Administration.

**BACKGROUND:** Richmond Amphitheater, LLC has proposed to develop a 7,000-person capacity amphitheater on the riverfront. The company is entering a 30-year lease for a portion of the parcel at 470 Tredegar Street, commonly known as Gambles Hill as the site for the amphitheater. The amphitheater will host a variety of musical, performing arts, and civic events. The estimated capital investment for the project is \$30.5 million.

Richmond Amphitheater, LLC is a venture led by Red Light Ventures (one of the nation’s largest music management companies, developer and operator of the Ting Music Pavilion in Charlottesville, and co-operator of the Ascend Amphitheater in Nashville), and Live Nation (the nation’s largest promoter of live events).

**FISCAL IMPACT / COST:**

The amphitheater will not have a fiscal impact in FY2023 or FY2024.

To induce the development of the amphitheater and realize the economic development, tourism, and civic benefits it will generate, the City is offering an annual performance grant equal to the new incremental Real Estate Tax revenue and Admissions Tax revenue generated by the amphitheater. Base Real Estate Tax revenue in the amount of \$189,444.00 will continue to go to the General Fund. The performance grant does not utilize any existing City revenues, and it will not be paid if the incremental Real Estate Tax revenue and Admissions Tax revenue do not exceed the amounts paid on the property in FY2023. The total estimated performance grant payments, over the 20-year performance grant period, is \$27.2 million. The maximum amount of the performance grant payments over the 20-year performance grant period is \$37 million.

The project is projected to generate \$12.4 million in direct net new General Fund revenue during the first 20 years of the project.

**FISCAL IMPLICATIONS:** The adoption of this Ordinance will not negatively affect the fiscal status of the City (including the City’s debt capacity, bond rating, or long-term expenditures). Adoption of the Ordinance does result in increased General Fund revenue for the City.

**BUDGET AMENDMENT NECESSARY:** No

**REVENUE TO CITY:** The project is projected to generate \$12.4 million in direct net new General Fund revenue during the first 20 years of the project.

**DESIRED EFFECTIVE DATE:** Upon Adoption.

**REQUESTED INTRODUCTION DATE:** May 22, 2023

**CITY COUNCIL PUBLIC HEARING DATE:** June 12, 2023

**REQUESTED AGENDA:** Consent

**RECOMMENDED COUNCIL COMMITTEE:** Organizational Development Committee

**CONSIDERATION BY OTHER GOVERNMENTAL ENTITIES:** Economic Development Authority of the City of Richmond

**AFFECTED AGENCIES:** Economic Development Authority of the City of Richmond, Department of Economic Development, Department of Parks and Recreation, Department of Budget and Strategic Planning, Department of Finance, and Department of Public Works

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

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

**ATTACHMENTS:** Richmond Riverfront Performing Arts Venue Performance Grant Agreement

**STAFF:**

Leonard L. Sledge, Director, Department of Economic Development - (804) 646-7576

Sam Earl, Senior Management Analyst, Department of Economic Development - (804) 646-4248



# City of Richmond

900 East Broad Street  
2nd Floor of City Hall  
Richmond, VA 23219  
www.rva.gov

## Master

**File Number: Admin-2023-0370**

**File ID:** Admin-2023-0370

**Type:** Request for Ordinance or Resolution

**Status:** Regular Agenda

**Version:** 1

**Reference:**

**In Control:** City Clerk Waiting Room

**File Created:** 05/18/2023

**Subject:**

**Final Action:**

**Title:**

**Internal Notes:**

- The purpose of the O&R is to authorize the Chief Administrative Officer, on behalf of the City of Richmond, to execute the Richmond Riverfront Performing Arts Venue Performance Grant agreement between the City of Richmond, Virginia, the Economic Development Authority of the City of Richmond (EDA), and Richmond Amphitheater, LLC for the purpose of developing and operating an amphitheater at 470 Tredegar Street.
- Richmond Amphitheater, LLC plans to develop and operate a 7,000-person capacity amphitheater at 470 Tredegar Street. The estimated capital investment is \$30.5M. Richmond Amphitheater, LLC is a venture led by Red Light Ventures (one of the nation’s largest music management companies, developer and operator of the Ting Music Pavilion in Charlottesville, and co-operator of the Ascend Amphitheater in Nashville), and Live Nation (the nation’s largest promoter of live events).
- To induce the development of the amphitheater and realize the economic development, tourism, and civic benefits it will generate, the City is offering an annual performance grant equal to the new incremental Real Estate Tax revenue and Admissions Tax revenue generated by the amphitheater. Base Real Estate Tax revenue in the amount of \$189,444.00 will continue to go to the General Fund. The performance grant does not utilize any existing City revenues, and it will not be paid if the incremental Real Estate Tax revenue and Admissions Tax revenue do not exceed the amounts paid on the property in FY2023. The total estimated performance grant payments, over the 20-year performance grant period, is \$27.2 million. The maximum amount of the performance grant payments over the 20-year performance grant period is \$37 million.
- The project is projected to generate \$12.4 million in direct net new General Fund revenue during the first 20 years of the project.

**Agenda Date:** 05/22/2023

**Patron(s):**

**Enactment Date:**

**Attachments:** O&R - Amphitheater Performance Agreement

**Enactment Number:**

**Contact:**

**Introduction Date:**

**Drafter:** Alecia.Blackwell@rva.gov

**Effective Date:**

### Approval History

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Version	Seq #	Action Date	Approver	Action	Due Date
1	1	5/18/2023	Chris Frelke	Approve	5/22/2023
1	2	5/19/2023	Sharon Ebert	Approve	5/22/2023
1	4	5/19/2023	Jason May	Approve	5/23/2023
1	5	5/19/2023	Sheila White	Approve	5/23/2023
1	7	5/19/2023	Sabrina Joy-Hogg	Approve	5/23/2023
1	8	5/19/2023	Lincoln Saunders	Approve	5/23/2023
1	9	5/19/2023	Mayor Stoney	Approve	5/23/2023

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### History of Legislative File

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Ver- sion:	Acting Body:	Date:	Action:	Sent To:	Due Date:	Return Date:	Result:
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**Text of Legislative File Admin-2023-0370**

**RICHMOND RIVERFRONT PERFORMING ARTS VENUE  
PERFORMANCE GRANT AGREEMENT**

This **PERFORMANCE GRANT AGREEMENT** (the “Agreement”) is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2023, but effective the Commencement Date, by and among the **CITY OF RICHMOND, VIRGINIA**, a municipal corporation of the Commonwealth of Virginia (“City”), **RICHMOND AMPHITHEATER, LLC**, a Delaware limited liability company (“Recipient”) and the **ECONOMIC DEVELOPMENT AUTHORITY OF THE CITY OF RICHMOND**, a political subdivision of the Commonwealth of Virginia (“Authority”).

**RECITALS**

- A. Recipient plans to develop and operate a music and performing arts venue with a capacity of not less than 7,000 and as described on Exhibit A attached hereto and by this reference made a part hereof (the “Performing Arts Venue”).
- B. The location of the Performing Arts Venue is on a parcel of land known as 470 Tredegar Street and referred to in the records of the City Assessor as Parcel No. W0000042001 (the “Parcel”), owned by a private entity, Gambles Hill Tredegar LLC (“Owner”), located in the City, and commonly known as Gambles Hill, and the Parcel is comprised of approximately eight and nine tenths (8.9) acres, more or less.
- C. Recipient leases a portion of the Parcel (the “Site”) from Owner for a base term of thirty (30) years, subject to extensions, for the development and operation of the Performing Arts Venue.
- D. Development of the Performing Arts Venue will cause a direct capital investment of approximately \$30,500,000, but in no event less than \$27,500,000 in construction expenditures, which will be financed exclusively by private sources.
- E. The development and operation of the Performing Arts Venue is projected to create a positive fiscal impact for the City, including without limitation the following: (i) it will generate additional food and beverage sales in the City, and (ii) it will add new hotels stays in the City, draw tourists to the City, reduce travel out of the City to attend music events, and expand entertainment industry employment opportunities in the City.
- F. As an amphitheater, the Performing Arts Venue may meet the definition of a “public facility” under Va. Code § 58.1-608.3 and the rules and regulations thereto (the “State Rebate Act”), which may qualify the City or the Authority to receive a portion of certain state sales tax revenues generated by the operation of the Performing Arts Venue (“State Portion of Sales Tax Revenues”) if such rebate is credited to pay the costs of construction of the Performing Arts Venue, all as set forth in such State Rebate Act. The parties estimate the State Portion of Sales Tax Revenue to be in the range of \$2,500,000 over the Performance Grant Period.



- G. City and Authority have determined that the Performing Arts Venue will promote economic development and tourism in the City and 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 (i) an increase in General Fund revenue; (ii) the addition of the Performing Arts Venue as an amenity to the community; and (iii) the performance space for “Civic Events” described below.
- H. City herein plans to fund a Performance Grant to Recipient calculated as a portion of the tax revenue received by the City attributable to (i) the incremental real estate tax for the Parcel (excluding special assessments or overlay district taxes), and (ii) the admissions tax generated by the Performing Arts Venue (the “Admissions Tax”) , provided, however, that such Performance Grant shall not exceed the amount of Thirty-Seven Million and No/100 Dollars (\$37,000,000.00) over the Performance Grant Period inclusive of the State Portion of Sales Tax Revenues, if authorized (the “Performance Grant”), on such terms and conditions as provided herein. For the avoidance of doubt, Recipient acknowledges that the amount of the Grant will be calculated as a portion and not the entire amount of actual tax revenue received by the City as a direct result of the development and operation of the Performing Arts Venue. Recipient further acknowledges that City makes no guarantee or assurance of the amount the Grant will equal in any year or cumulatively over the life of the arrangement set forth herein or that it will be any minimum amount and it therefore could be zero (\$0) dollars in any year or cumulatively.
- I. The Performance Grant is for the purpose of inducing Recipient to develop and operate the Performing Arts Venue in the City.
- J. The payment of the Performance Grant will be conditioned upon Recipient’s completion of the Performing Arts Venue construction and continued maintenance and operation of the Performing Arts Venue, and therefore the payment of all taxes owed to City by Recipient, a portion of which tax revenue will be used to calculate the Performance Grant, and the funds comprising payments of the Performance Grant will be solely limited to the Incremental Real Estate Tax and the Incremental Admissions Tax generated by the Performing Arts Venue, all as set forth herein.
- K. City is authorized by Va. Code § 15.2-953 and other laws, and 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. Authority is authorized by Va. Code § 15.2-4905(13) to make grants to non-public organizations such as Recipient in furtherance of the purpose of promoting economic development.
- L. The construction of the Performing Arts Venue and the stimulation of the additional tax revenue and economic activity created by the Performing Arts Venue constitute valid public purposes for the expenditure of public funds.

M. This Agreement sets forth the understanding of the parties concerning Recipient's obligations, Authority's obligations, and the Performance Grant offered by City, subject to the approval of Authority's Board and the Richmond City Council and subject to appropriations.

**NOW, THEREFORE**, in consideration of the foregoing, the mutual benefits, promises and undertakings of the parties to this Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties covenant and agree as follows.

**Section 1. Preliminary Provisions**

**1.1 Incorporation of Recitals.** The foregoing recitals are incorporated herein by reference.

**1.2 Definitions.** For the purposes of this Agreement, the following terms shall have the following definitions:

“Base Admissions Tax Revenue” means the amount equal to the admissions tax collected on the parcel in fiscal year 2023. The Base Admissions Tax Revenue is \$0.

“Base Real Estate Tax Revenue” means the amount equal to the real estate taxes levied by the City on the Parcel for the 2023 Assessment Year excluding any special assessment or overlay taxes. The Base Real Estate Tax Revenue is \$189,444.00.

“Cap” means the maximum aggregate amount of Performance Grant Payments and the State Portion of Sales Tax Revenues (if authorized) over the Performance Grant Period, which shall be the amount of Thirty-Seven Million and no/100 Dollars (\$37,000,000.00).

“Certificate of Occupancy” means the Certificate of Occupancy issued to Recipient by City upon the completion of the construction of the Performing Arts Venue.

“City Code” means the Code of the City of Richmond.

“Civic Event” means events by City (such as graduations, debates, parks and recreation programming, etc.), or events organized by 501(c)(3) non-profits in the community, the proceeds of which are all retained by the City or respective non-profits.

“Civic Event Fees” means the reasonably calculated incremental cost to Recipient for the underlying services related to a given Civic Event, such as cleaning, security, ushers, ticketing staff, insurance, utilities and so forth, the fee schedule of which will be provided to the City by no later than 90 days prior to the start of the new Fiscal Year. For clarity, the City or any other Civic Event organizer entering into a Standard Event License Agreement with Recipient may choose to use the contractors of their choice for any of the services required, such as cleaning, security, ushers, ticketing, and so forth, provided all such independent contractors comply with

the insurance and other terms set forth in the Standard Event License Agreement applicable to all independent contractors working for events at the Performing Arts Venue.

“CPI” means the index issued by the Bureau of Labor Statistics, called the All Items Consumer Price Index for All Urban Consumers (CPI-U) for the U.S. City Average, 1982-84=100.

“Fiscal Year” means a fiscal year of City, which currently begins on July 1 of each year.

“Incremental Admissions Tax Revenue” means the Admissions Tax revenue collected at the Performing Arts Venue by the Recipient and paid to the City in a given fiscal year during the Performance Grant Period that exceeds the Base Admissions Tax Revenue.

“Incremental Real Estate Tax Revenue” means the Real Estate Tax revenue paid for the Parcel by the Recipient to the City in a given fiscal year during the Performance Grant Period that exceeds the Base Real Estate Tax Revenue.

“Performance Grant Period” means that certain period commencing the first day of the first Fiscal Year following the calendar year in which Certificate of Occupancy is issued for the Performing Arts Venue, and ending in the twentieth (20<sup>th</sup>) Fiscal Year following commencement or, if earlier, on the last day of the Fiscal Year during which City elects to terminate the Grant Payment provisions of Section 3 pursuant to Section 6.2.

“Major Event” means any ticketed event promoted by Recipient, or its affiliates, in the Performing Arts Venue that (i) is widely advertised to the public and (ii) has a lowest face price ticket that is not less than \$25 per ticket, with such floor price to be increased by the change in the CPI for each year after the date hereof.

“Performance Grant Amount” means, for each applicable Fiscal Year during the Performance Grant period, the Incremental Admissions Tax Revenue and the Incremental Real Estate Tax Revenue, provided all Admissions Tax and Real Estate Tax owed to the City by Recipient with respect to the Performing Arts Venue are paid in full and on time.

“Standard Event License Agreement” means the agreement Recipient requires of all third-party users of the Performing Arts Venue, which will include minimum requirements of security, insurance, sound limitations, cleaning, staffing and similar matters to assure a quality event, as amended from time to time in accordance with best practices of the live event industry. The Standard Event License Agreement will be modified for the City and the Authority to ensure the legality of its provisions when used by governmental entities, provided such changes do not substantively change the economics (which term expressly excludes any concepts of indemnification), security, cleaning and sound limitation responsibilities or insurance requirements (including both liability insurance and insurance for damage to property) of such Agreement. The Recipient understands that when the City is a party to a Standard Event License Agreement it cannot have an indemnity obligation, and therefore the Recipient will be relying on the insurance the City will be required to provide as a condition to its use of the Performing Arts Venue under any Standard Event License Agreement the City enters into.

“Standard Local Promoter Event License Agreement” means the agreement Recipient requires of all local promoters for use of the Performing Arts Venue which will include the terms of the Standard Event License Agreement and will also include a charge to the local promoter of a reasonable estimate of the all-in costs per night to use the Performing Arts Venue, including the cost of building and maintaining the facility, the fee schedule of which will be provided to the City by no later than January 31 of each year. Such agreement may be amended from time to time in accordance with best practices of the live event industry.

“State Portion of Sales Tax Revenue” means the amount, if any, received by the City or the Authority from the Commonwealth of Virginia pursuant to Virginia Code § 58.1-608.3 and paid by the City or the Authority to the benefit of Recipient by application of such revenue to the repayment of any bonds issued or financing to fund construction of the Performing Arts Venue. (See Section 2.2.4.1 herein).

## **Section 2. Recipient’s Obligations**

### **2.1 Completion of Project Construction; Timeline**

**2.1.1 Completion of Performing Arts Venue Construction.** Recipient shall complete the Performing Arts Venue within three years of the date of execution of this Agreement. The completion shall be evidenced by the issuance of Certificate(s) of Occupancy from the City for the Performing Arts Venue.

**2.1.2 Failure to Comply.** If Recipient fails to timely comply with any of the provisions of this Section 2.1 then City’s Chief Administrative Officer (“CAO”) and the Authority’s Executive Director, in their joint discretion, may either extend the time by which Recipient must comply with the corresponding requirement or provide written notice of the City’s and the Authority’s intent to terminate this Agreement. If Recipient fails to cure its failure to comply within 30 days of such written notice then this Agreement, including all rights and obligations herein, shall, upon the City’s and the Authority’s election, terminate and neither City nor Authority shall have any further obligation to Recipient and Recipient shall no longer be eligible for any Performance Grant Payments hereunder.

### **2.2 Obligations of Recipient**

**2.2.1 Continued Ownership of the Performing Arts Venue by Recipient.** Recipient shall continue to own the Performing Arts Venue until completion of Performing Arts Venue construction pursuant to Section 2.1.1 and thereafter until expiration of the Performance Grant Period. Recipient may not transfer the ownership interest in the Performing Arts Venue to a third party or assign this Agreement, without the prior written consent of the City and the Authority which shall be given only after submission by Recipient to the City and the Authority of all documents related to such

transfer, assignment, either or both. The consent of the City and the Authority will not be unreasonably withheld, conditioned, or delayed.

**2.2.2 Continued Maintenance and Operation of the Performing Arts Venue.** Following Recipient's completion of Performing Arts Venue construction as set forth in Section 2.1.1, Recipient (or its permitted successor) shall continue to maintain and operate the Performing Arts Venue in a manner that is commensurate with other similar high quality amphitheater venues until the expiration of the Performance Grant Period.

**2.2.3 Covenants of Recipient**

In addition to the other agreements herein, Recipient agrees to the following:

**2.2.3.1 Wages:** Recipient agrees that Recipient's contractors constructing the Performing Arts Venue will pay their employees a minimum of \$18.00 per hour or the prevailing wage for the City (whichever is higher) as determined by the U.S. Secretary of Labor under the provisions of the Davis-Bacon Act, 40 U.S.C. § 276 et. seq., as amended to each laborer, worker, and mechanic employed on the construction of the Performing Arts Venue, and to the extent permitted by applicable Law and without establishing preferences for Virginia residents over non-Virginia residents the Recipient shall use commercially reasonable efforts to hire employees for construction jobs and the ongoing operation of the Performing Arts Venue from the City of Richmond.

**2.2.3.2 Civic Events:** During the Performance Grant Period in each calendar year, City shall have the right to utilize the Performing Arts Venue for Civic Events when it is available and then on the favorable terms described herein.

**2.2.3.2.1. Use Fees.** For the use of the Performing Arts Venue for Civic Events, the organizer will pay to Recipient the Civic Event Fee plus the fee for any support services provided by Recipient that the organizer of the Civic Event chooses to use, in accordance with the support services fee schedule provided to the City by January 31 of each year. For avoidance of doubt, The Civic Events Fees shall not include the cost of building and maintaining the facility.

**2.2.3.2.2 Scheduling Priority.** At all times, Recipient shall have the right of first choice on the dates for Major Events and may reserve dates for a prospective Major Event. The City recognizes that Recipient needs to retain scheduling flexibility as much as possible to capture opportunities when they arise, some of which may occur on short notice. Without limiting the preceding two sentences, Recipient and City each covenant and agree to work together in good faith using commercially reasonable efforts to coordinate the scheduling of Major Events and Civic Events. For the purposes of illustration of availability of dates for Civic

Events, Recipient anticipates that the Performing Arts Venue will be widely available for Civic Events as follows (i) outside of the music touring season (this would typically be November through March); and (ii) on short term notice for dates that are not already booked. If at the time the City requests a date for a Civic Event to be held within 42 calendar days of the date of the request and on the date of the request there is no conflicting booking on the Performing Arts Venue calendar maintained by Recipient and no active discussion with a potential event at that time for the desired Civic Event date, then the Recipient will hold the date for five (5) business days in which time the parties can finalize and execute a Standard Event License Agreement for such Civic Event on such date and such Standard Event License Agreement will not reserve to Recipient the right to reschedule the event. Similarly, if a Civic Event was conditionally scheduled more than 42 calendar days in advance and has a clause in its Standard Event License Agreement that allows Recipient to require that the event be rescheduled, the City can contact the Recipient on a date that is within 42 calendar days of the scheduled date and ask if the clause that permits the Recipient to reschedule the event be removed and Recipient will agree to remove it subject to the guidelines above as if the City were asking for the date. Subject to the scheduling priority set forth herein, there is no cap on the number of Civic Events.

**2.2.3.2.3 License Agreement.** Each Civic Event will require execution by the Authority or other Civic Event organizer of the Standard Event License Agreement with respect to such Civic Event. Once a Civic Event is scheduled and the Standard Event License Agreement is executed for a specific date, and so long as the Civic Event party is not in default thereof, Recipient shall not unilaterally cancel or reschedule such Civic Event or reserve the date or dates for any other event unless such change is permitted under the applicable Standard Events License Agreement.

**2.2.3.3 Parking:** During the Performance Grant Period through customer education, signage, and where necessary, agreements with adjacent parking facility owners, Recipient will take reasonable efforts to avoid any of Recipient's events causing attendees to use street parking in primarily single-family residential neighborhoods. At all times in connection with its operation of the Performing Arts Venue, Recipient covenants and agrees to use commercially reasonable efforts to direct event attendees to the locations of available off-street parking in proximity to the Site outside of such single-family residential neighborhoods. Recipient shall provide the City with a final parking plan, which may be amended from time to time, no later than 90 days before the issuance of the Certificate of Occupancy for the Performing Arts Venue and no later than 90 days before the start of each subsequent Fiscal Year.

**2.2.3.4 Restrooms:** Recipient will license the two "Family Restrooms" at the Performing Arts Venue as public restrooms during daylight hours on days other

than days a ticketed event is being held at the Performing Arts Venue. The foregoing shall be expressly subject to City providing mutually acceptable cleaning, security and insurance pursuant to the terms of a license agreement in a form approved by City and Recipient. This section 2.2.3.4 will survive expiration or termination of this Performance Grant Agreement

**2.2.3.5 Inclusive and Diverse Programing:** Recipient will use commercially reasonable efforts to program entertainment events at the Performing Arts Venue that attract attendance from all corners of the community. This section 2.2.3.5 will survive expiration or termination of this Performance Grant Agreement.

**2.2.3.6 Complementary Tickets:** During the Performance Grant Period the Authority may request, and Recipient will provide to the Authority (i) up to ten (10) premium fixed seat or pit area tickets (the Recipient will choose whether it is pit area or fixed seat tickets on a show-by-show availability basis) and (ii) up to twenty (20) lawn tickets (the “Comp Tickets”) for each Major Event. The Authority shall provide to Recipient the name of the user (who may be picking up for more than one person) of each Comp Ticket in writing not less than five (5) business days prior to the applicable Major Event, whereupon Recipient shall make such Comp Ticket available for pick-up by the user or group at the Will Call area of the Performing Arts Venue pursuant to Recipient’s standard ticketing procedures. A City or Authority representative can make arrangement to pick up tickets on the day of the event if necessary due to the Authority having a special quest or group coming to the event. Failure of Recipient to receive timely notice of a Comp Ticket user or group shall forfeit the Authority’s right of use of such Comp Ticket and allow marketing of the same by Recipient to the general public. At all times the City and Authority shall designate an individual to be their designated contact to interact with the Recipient in regards to all ticket requests by the Authority under this Section. Such designation may be updated by the City and the Authority from time to time.

**2.2.3.7 Local Promoter Events:** During the Performance Grant Period live music promoters from the Richmond community will be allowed to rent the Performing Arts Venue for a Major Event as follows (a “Local Promoter Event”): (i) up to two (2) nights per calendar year if Recipient schedules up to twenty-nine (29) Major Events in a calendar year, or (ii) up to three (3) nights per calendar year if Recipient schedules thirty (30) or more Major Events in that year.

**2.2.3.7.2. Scheduling Priority.** At all times, Recipient shall have the right of first choice on the dates for Major Events and may reserve dates for a prospective Recipient Major Event. Without limiting the preceding sentence, Recipient and City each covenant and agree to work together in good faith using commercially reasonable efforts to coordinate the scheduling of Major Events and Local Promoter Events for each calendar year.

**2.2.3.7.3. License Agreement.** Each Local Promoter Event will require execution by the local promoter of the Standard Local Promoter Event License Agreement with respect to such Local Promoter Event. Once a Standard Local Promoter Event License Agreement is executed for a specific date, and so long as the Local Promoter is not in default thereof, Recipient shall not unilaterally cancel or reschedule such Local Promoter Event for a Major Event or reserve the date or dates for a Major Event.

**2.2.3.8 Community Benefit Ticket Fee.** Throughout the Performance Grant Period Recipient will charge or cause to be charged a community benefit fee of One and No/100 Dollars (\$1.00) for each ticket sold for all events, except Civic Events and other events the City asks to be excluded from this requirement, at the Performing Arts Venue (the “Community Benefit Ticket Fees”). The gross amount of the Community Benefit Fees collected by Recipient shall be paid to City annually.

**2.2.3.9 Benefit Concert.** In the first year of operations, Recipient will hold one benefit concert at the Performing Arts Venue from which Recipient will contribute the net proceeds after its reasonable expenses to a community-oriented beneficiary selected by Recipient in its sole discretion following consultation with City.

**2.2.3.10 Internships.** No later than the April 30, 2025 Recipient will develop a summer program offering internships to individuals with interest in pursuing a career in the live music entertainment industry. Priority shall be given to graduates of Richmond Public Schools who are pursuing post-secondary degrees or are over twenty-one (21) years of age. The program shall operate throughout the Performance Grant Period.

**2.2.3.11 Pursuit of the Virginia Sales Tax Rebate.** Recipient has identified that the Performing Arts Venue should be eligible under the State Rebate Act for a partial rebate of the sales tax payable by Recipient to the Commonwealth of Virginia arising from the operations of the Performing Arts Venue. So long as such rebate will be received by the City or the Authority to be used for repayment of the bonds issued by the City or the Authority, and the proceeds from the sale of such bonds funded a portion of the costs of construction of the Performing Arts Venue per the State Rebate Act the Recipient together with the City and the Authority will consult with the State to confirm the simplest structure and documentation that will allow for the payment of the State Portion of Sales Tax Revenues with respect to the Performing Arts Venue. Assuming such structure and proposed documentation is acceptable to the City and the Authority in their sole discretion, the Recipient commits to collaborate with the City and the Authority to apply for the State Portion of the Sales Tax Revenue. If the Recipient fails to collaborate with the City and the Authority to apply for the State Portion of the Sales Tax Revenue, the Cap will be reduced from \$37,000,000 to \$34,500,000. Such reduction in the Cap does not occur if the State Rebate Act is



repealed by the Commonwealth of Virginia; or the Commonwealth of Virginia denies the application from the City or the Authority with respect to the Performing Arts Venue; or the City or the Authority fail to perform any required role under the State Rebate Act necessary to allow the State Portion of the Sales Tax Revenue to be paid to the City or the Authority under the State Rebate Act.

#### **2.2.4 Covenants of City**

In addition to the other agreements herein, City agrees to the following:

**2.2.4.1 Cooperation on the State Portion of Sales Tax Revenues.** The City and Authority will apply to receive the State Portion of Sales Tax Revenues in accordance with the State Rebate Act for the benefit of financing the construction of the Performing Arts Venue and in a manner that uses the simplest financing structure that qualifies and pays the direct cost for the Authority's role in the financing of the construction of the Performing Arts Venue through the sale of bonds. As stated in Section 2.2.3.1, the Recipient will cooperate with the City and the Authority to apply for State Portion of the Sales Tax Revenues. The credit of the State Portion of the Sales Tax Revenues to pay financing costs (debt service) for the construction of the Performing Arts Venue will be credited to the Cap dollar for dollar. In consideration for such cooperation, the Authority will receive the minimum ownership interest in the Performing Arts Facility sufficient to qualify it for the State Portion of the State Sales Tax Revenue.

**2.2.4.2 Cooperation on Permitting.** City will assign a project expeditor to ensure that various City departments respond to submittals made by the Recipient in connection with the construction and development of the Performing Arts Venue in a timely manner.

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

**3.1 Grant.** Beginning with the first Fiscal Year of the Performance Grant Period and each Fiscal Year thereafter until the Performance Grant Period terminates, City shall pay to Recipient through Authority, the Performance Grant Payments for such Fiscal Year subject to the provisions of this Section 3.

**3.2. Request for Performance Grant Payment.** As of the beginning of the Performance Grant Period, and following full and timely payment of all Real Estate Taxes, Admissions Taxes, and all other applicable taxes and fees owed to the City for the Performing Arts Venue, prior to the date thereof, Recipient shall request in writing the Performance Grant Payments for the prior Fiscal Year (and in the case of the first request only, for the period from the opening of the Performing Arts Venue through to the end of the Prior Fiscal Year). Recipient's written request shall include (i) documentation, acceptable to the City in the City's sole discretion, showing its full and timely payment of the Real Estate Taxes on the Parcel and the total Admissions Taxes paid for the prior Fiscal Year, (ii) the cumulative amount of prior Performance Grant Payments and (iii) the amount of the requested Performance Grant Payment and an explanation of the

calculation thereof, which shall specifically include sufficient verifiable detail to demonstrate that Recipient's request will not cause the Grant Payment to exceed the Cap. Recipient shall submit each request for payment to the Authority's Executive Director, with copies to the City, and the Office of the City Attorney.

**3.3. Disbursement of Grant Payment.** Upon receipt of a Performance Grant Payment request from Recipient, Authority shall review and verify the accuracy of the request. Authority shall not make a Performance Grant Payment if Recipient, or Recipient and Owner, did not make full and timely payment of the Real Estate Taxes of the Parcel, the Admissions Taxes, and any other taxes and fees owed by Recipient for the applicable Fiscal Year and shall not make a Performance Grant Payment if Recipient is delinquent in payment of any other taxes payable to the City by Recipient. Within twenty (20) business days of receipt of Recipient's Performance Grant Payment request, Authority shall notify Recipient either that (i) Authority denies the request and will not make a Performance Grant Payment for the foregoing reasons, (ii) Authority approves the request and intends to make a Performance Grant Payment in the amount requested, or (iii) Authority approves making a Performance Grant Payment to Recipient but in a different amount than the amount requested because the amount requested is inconsistent with this Agreement, in which case Authority shall indicate the correct Performance Grant Payment amount it intends to make and how it was calculated. Notwithstanding the foregoing, Authority's failure to respond within twenty (20) business days shall not constitute approval of a requested Performance Grant Payment and Recipient shall not be entitled to any such payment due solely to Authority's failure to timely respond. Subject to any necessary City Council action, including any necessary budget amendment or appropriation of funds, City agrees to, within twenty (20) business days of Authority's approval of any Performance Grant Payment, transfer the funds for the Performance Grant Payment to Authority. Authority agrees, subject to any necessary approvals by its Board of Directors, to pay the Performance Grant Payment to Recipient within twenty (20) business days of receipt of the funds from City.

**3.4 Recipient's Relief.** Should Recipient believe City or Authority failed to comply with Section 3.3, Recipient may seek relief in accordance with Section 9.2; provided, however, Recipient's sole remedy shall be to receive payment for a Performance Grant Payment to which it was entitled (subject to the restrictions set forth in this Performance Agreement, including, but not limited to, Section 3.3 and Section 9.5) and for which it did not receive payment.

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

**4.1** City agrees to transfer to Authority, as and when appropriated by the City Council, the funds necessary for Authority to meet its obligations under the Agreement relating to the Performance Grant.

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

**4.3** Authority agrees to provide the CAO, or the designee thereof, with copies of all documents related to this Performance Agreement and will keep the CAO fully and timely informed of all matters related to the Performance Agreement.

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

**4.6** 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 her or his designee may at any time audit the financial transactions undertaken under this Agreement. Authority shall cooperate to ensure that the City Auditor is granted reasonable access on a timely basis to all books and records of Authority necessary to complete such audits.

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

**Section 5. Representations of Recipient**

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

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

**5.3** The person or persons executing or attesting the execution of this Performance Agreement on behalf of Recipient has or have been duly authorized and empowered to so execute or attest.

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

**5.5** There exists no litigation pending or, to Recipient's knowledge, threatened against Recipient which, if determined adversely, would materially and adversely affect the ability of Recipient to carry out its obligations under this Performance Agreement or the transactions contemplated hereunder.

**5.6** Recipient has and will maintain throughout the Performance Grant Period control of the Site (unless transferred solely as permitted by this Performance Agreement) sufficient to meet all of Recipient's obligations in this Performance Agreement.

**5.7** Recipient is and will remain the party responsible for paying real estate taxes on the Site and Recipient and Owner will continue to have the authority to ensure payment of real estate taxes on the Parcel.

**Section 6. Default.**

**6.1 Events of Default.** Each of the following events shall be a default hereunder by Recipient if not first cured to City's satisfaction within thirty (30) days following the City's notice to Recipient of such occurrence (each an "Event of Default"):

**6.1.1** Failure by Recipient to maintain its corporate existence or the declaration of bankruptcy by Recipient.

**6.1.2** The failure of Recipient to comply with Sections 2.1 or 2.2 of this Performance Agreement.

**6.1.3** The failure of Recipient to comply with Section 9.12 of this Performance Agreement;

**6.1.4** The failure of Recipient to pay all taxes, and applicable penalties and interest owed by Recipient to the City, or failure of the Owner to pay all real estate taxes and applicable penalties and interest owed by the Owner to the City with respect to the Parcel.

**6.1.5** Transfer or assignment in violation of the terms of this Performance Agreement;

**6.1.6** The failure of Recipient to maintain control of the Site (unless transferred solely as permitted by this Performance Agreement; and

**6.1.7** The inaccuracy of any representation made by Recipient in Section 5 of this Performance Agreement.

**6.2 Effect of Event of Default.** In the case of an occurrence of an Event of Default, the Performance Grant Payment provisions of Section 3 shall, at City's option, terminate, and neither City nor Authority shall have any further obligation relating thereto and Recipient shall no longer be eligible for any Performance Grant Payments hereunder. Notwithstanding the foregoing, Recipient's obligations hereunder will remain in force and effect throughout the Performance Grant Period and City shall be entitled to any remedies available at law and equity, including, but not limited to, specific performance. In the event of non-appropriation of the applicable funds by the City as required herein, or nonpayment by the Authority, of a payment required of the Authority herein, the Recipient's obligations under Sections 2.2.3.6 and 2.2.3.7, herein shall pause until such default by the City and/or Authority is fully cured.

**Section 7. Recipient Reporting.**

Recipient shall provide, at Recipient's expense, quarterly reports no later than January 15<sup>th</sup>, April 15<sup>th</sup>, July 15<sup>th</sup>, and October 15<sup>th</sup> of each Fiscal Year commencing the first quarter immediately following the approval and signing of this Performance Agreement through the issuance of the Certificate of Occupancy for the Performing Arts Venue, and thereafter annually on each December 31 of each year, satisfactory to City of Recipient's progress regarding completion of the Performing Arts Venue's construction and, following the Performing Arts Venue's construction, of Recipient's continued compliance with Section 2.2.

**Section 8. 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 Recipient, to:

Richmond Amphitheater, LLC  
455 2<sup>nd</sup> Street SE, Suite 500  
Charlottesville, Virginia 22902

with a copy to:

Philip Goodpasture, Esq.  
Williams Mullen  
200 S. 10<sup>th</sup> Street, Suite 1600  
Richmond, Virginia 23219

Live Nation  
325 N. Maple Drive  
Beverly Hills, CA 90210  
Attn: Chief Counsel

if to City, to:

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

with a copy to:

Department of Economic Development  
City of Richmond, Virginia  
1500 East Main Street, Suite 400  
Richmond, Virginia 23219  
Attention: Director of Economic  
Development

City Attorney's Office  
City of Richmond, Virginia  
900 East Broad Street, Suite 400  
Richmond, Virginia 23219

if to Authority, to:

Economic Development Authority of the City  
of Richmond, Virginia  
1500 East Main Street, Suite 400  
Richmond, Virginia 23219

with a copy to:

Economic Development Authority of  
the City of Richmond, Virginia  
1500 East Main Street, Suite 400  
Richmond, Virginia 23219

Attention: Chairman

Attention: Executive Director

**Section 9. General Terms and Conditions.**

**9.1 Entire Agreement; Amendments; Assignments.** This Performance 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 Performance Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns; provided, however, that in no event may this Performance Agreement or any of the rights, benefits, duties, or obligations of the parties hereto be assigned, transferred or otherwise disposed of without the prior written consent of the other, which consent no party shall be obligated to give. Notwithstanding anything to the contrary herein, (a) Recipient shall have the right to assign to any future owner of the Performing Arts Venue provided it first shall have complied with the requirements set forth in Section 2.2.1 of this Agreement and shall have submitted to City the form of all instruments by which it purports to make such assignment and shall have obtained City's prior written approval thereof, which approval shall not be unreasonably withheld, conditioned, or delayed; and (b) Recipient shall have the right to grant to a lender a security interest in, and assignment of, Recipient's rights hereunder as collateral for the loan to be provided by a lender providing funds for the development of the Performing Arts Venue, and any action taken by such lender to realize on such security interest or assignment and performance thereafter shall be deemed permitted under this Agreement, provided Recipient first shall have submitted to City the form of all instruments by which it purports to grant such security interest and assignment and shall have obtained City's prior written approval thereof, which approval shall not be unreasonably withheld, conditioned, or delayed but no such consent shall be required to the exercise by lender or any assignee of lender of its right to perform Recipient's obligations hereunder after a default by Recipient under the applicable loan documents. City agrees that the lender shall not have any liability for any act or omission of Recipient hereunder and shall only be liable hereunder for obligations arising during such time as it is the owner of the Performing Arts Venue pursuant to foreclosure, deed in lieu of foreclosure or otherwise.

**9.2 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.

**9.3 Counterparts.** This Performance 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.

**9.4 Severability.** If any provision of this Performance 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.

**9.5 Subject-to-Appropriations.** All payments and other performances by City and Authority under this Performance 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 City and Authority shall be bound hereunder only to the extent of the funds available or which may hereafter become available for the purpose of this Performance Agreement. Under no circumstances shall City's or Authority's total liability under this Performance Agreement exceed the total amount of funds appropriated by the City Council for the payments hereunder for the performance of this Performance Agreement.

**9.6 Public Disclosure.**

**9.6.1 Applicable Law.** The parties to this Performance Agreement acknowledge that records maintained by or in the custody of City and 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.

**9.6.2 Challenges to Nondisclosure.** If a party submitting records to City or Authority requests that those records not be disclosed under applicable law and City or Authority consequently denies a request for disclosure of such records based on the submitting party's request, and City's or Authority's denial of a request for disclosure of records is challenged in court, the submitting party shall indemnify, hold harmless and defend City or 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.

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

**9.8 Effective Date of the Agreement.** The effective date of this Performance Agreement shall be the date upon which it has been fully executed by the parties following approval by City Council and by Authority's Board of Directors (the "Commencement Date").

**9.9 No Partnership or Joint Venture.** It is mutually understood and agreed that nothing contained in this Performance 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 Performance Agreement as the agent or representative of any other party to the Performance Agreement for any purpose.

**9.10 No Third-Party Beneficiaries.** Except as otherwise provided in Section 9.1, the parties agree that (i) no individual or entity shall be considered, deemed or otherwise recognized to be a third-party beneficiary of this Performance Agreement; (ii) the provisions of this Performance Agreement are not intended to be for the benefit of any individual or entity other

than City, Authority, or Recipient; (iii) no other individual or entity shall obtain any right to make any claim against City, Authority, or Recipient under the provisions of this Performance Agreement; and (iv) no provision of this Performance Agreement shall be construed or interpreted to confer third-party beneficiary status on any individual or entity.

**9.11 Authority to Act.** Except as specifically otherwise set forth in this Performance Agreement, the CAO or the designee thereof may provide any authorization, approvals, and notices contemplated herein on behalf of City. Except as specifically otherwise set forth in this Performance Agreement, the Executive Director or the designee thereof may provide any authorization, approvals, and notices contemplated herein on behalf of Authority.

## **9.12 Additional Recipient Commitments**

**9.12.1 Employment.** All opportunities for employment in connection with the development of the Performing Arts Venue shall be communicated to the City’s Office of Community Wealth Building, and Recipient shall encourage all initial users and tenants of the Performing Arts Venue to coordinate employment recruitment efforts with the Office of Community Wealth Building.

### **9.12.2 MBE/ESB Participation.**

**a. Goal.** Recipient agrees to good faith efforts to diligently work towards a goal that, where capacity, capability and competitive pricing exists, 40% (and a minimum 25%) of all expenditures for those construction costs of the Performing Arts Venue that will be paid to third-party subcontractors unaffiliated with Recipient will be spent with minority business enterprises and emerging small businesses that perform commercially useful functions with regard to the prosecution and completion of the Performing Arts Venue. The terms “minority business enterprise” and “emerging small business” have the meanings ascribed to them by the City Code. Recipient shall include this goal in its contracts with all assignees, contractors and subcontractors who provide any portion of the Performing Arts Venue.

**b. Reporting.** To enable City to measure the achievements of Recipient and its assignees, contractors and subcontractors with regard to the participation goals set forth above, Recipient shall submit a quarterly report detailing all expenditures with minority business enterprises and emerging small businesses, showing, at a minimum, (i) the name of the business, (ii) an itemization of what the business provided, (iii) the amount paid for each item, (iv) the total amount of spending to date with minority business enterprises and (v) the percentage of total expenditures for the quarter spent with minority business enterprises and emerging small businesses. If City chooses, Recipient shall submit these reports on forms prescribed by City. City will use these reports in evaluating the good faith minority business enterprise participation efforts of Recipient and its assignees, contractors and subcontractors which compete for City contracts.

**9.13 Force Majeure.** Each party’s obligations herein are subject to reasonable delay in the events of a Force Majeure Event. As used herein, the terms “Force Majeure Event” shall



mean any prevention, delay or stoppage due to strikes; lockouts; labor disputes; acts of God; inability to obtain labor or materials or reasonable substitutes therefor [from normally available sources]; judicial orders; enemy or hostile governmental action; civil commotion; acts of terrorism; fire or other casualty; war and other declared national emergency; any government mandated restrictions or closures arising from pandemic or epidemic that adversely impact the general availability of labor or supplies, materials or products and other causes (except financial) beyond the reasonable control of the party obligated to perform and shall excuse the performance by that party for a period equal to the prevention, delay or stoppage.

**SIGNATURE PAGE TO FOLLOW**


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

**CITY OF RICHMOND, VIRGINIA**  
a municipal corporation of the  
Commonwealth of Virginia

By: \_\_\_\_\_  
Lincoln Saunders Date  
Chief Administrative Officer

Authorized by Ordinance No. \_\_\_\_\_

Approved as to Form:

By:   
City Attorney's Office

**RICHMOND AMPHITHEATER, LLC,** a  
Delaware limited liability company

By: \_\_\_\_\_  
Date

Name: \_\_\_\_\_  
Title: \_\_\_\_\_

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

By: \_\_\_\_\_  
Chairman Date

Approved as to Form:

By: \_\_\_\_\_  
General Counsel to Authority

EXHIBIT A

# Exhibit A

