

INTRODUCED: February 8, 2016

AN ORDINANCE No. 2016-028

To authorize the Chief Administrative Officer, for and on behalf of the City of Richmond, to execute the First Amendment to Performance Agreement between the City of Richmond, the Economic Development Authority of the City of Richmond and Dixon/Lee Development Group, LLC, for the purpose of modifying certain payment requirements and milestone dates.

Patron – Mayor Jones

Approved as to form and legality
by the City Attorney

PUBLIC HEARING: FEB 22 2016 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 the First Amendment to Performance Agreement between the City of Richmond, the Economic Development Authority of the City of Richmond and Dixon/Lee Development Group, LLC, for the purpose of modifying certain payment requirements and milestone dates. The First Amendment to Performance Agreement shall be approved as to form by the City Attorney and shall be substantially in the form of the document attached to this ordinance.

AYES: 9 NOES: 0 ABSTAIN: _____

ADOPTED: FEB 22 2016 REJECTED: _____ STRICKEN: _____

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



CITY OF RICHMOND

INTRACITY CORRESPONDENCE

O&R REQUEST

DATE: February 8, 2016

EDITION: 2

TO: The Honorable Members of City Council

THROUGH: Dwight C. Jones, Mayor

THROUGH: Selena Cuffee-Glenn, Chief Administrative Officer

FROM: Peter L. Downey, Deputy Chief Administrative Officer – Economic & Community Development

RE: First Amendment to Performance Agreement by and between the City of Richmond, Dixon/Lee Development Company, and the Economic Development Authority of the City of Richmond

ORD. or RES No.

PURPOSE: To authorize the Chief Administrative Officer, on behalf of the City of Richmond, to executive the First Amendment to the Performance Agreement (“the Agreement”) by and between the City of Richmond, Dixon/Lee Development Company, and the Economic Development Authority of the City of Richmond

REASON: The First Amendment removes the qualifying word “unconditional” from the section referencing the bank commitment letter. Other changes were made to reflect revised milestone dates.

RECOMMENDATION: City Administration recommends approval.

BACKGROUND: Ordinance No. 2015-87-68, adopted on April 27, 2015 authorized the execution of the initial Performance Agreement.

FISCAL IMPACT/COST: The proposed development will generate an estimated \$6,000/year in new real estate tax revenue for the City.

FISCAL IMPLICATIONS: N/A.

BUDGET AMENDMENT NECESSARY: No.

REVENUE TO CITY: N/A

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FEB 08 2016

OFFICE CITY ATTORNEY

DESIRED EFFECTIVE DATE: Upon Adoption.

REQUESTED INTRODUCTION DATE: February 8, 2016

CITY COUNCIL PUBLIC HEARING DATE: February 22, 2016

REQUESTED AGENDA: Consent Agenda.

RECOMMENDED COUNCIL COMMITTEE: Finance & Economic Development

CONSIDERATION BY OTHER GOVERNMENTAL ENTITIES: None.

AFFECTED AGENCIES: Department of Economic & Community Development, Department of Planning & Development Review

RELATIONSHIP TO EXISTING ORD. OR RES.: Ord. No. 2015-73-84.

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

ATTACHMENTS: Draft First Amendment to Performance Agreement

STAFF: Peter L. Downey, Deputy Chief Administrative Officer – Economic & Community Development

FIRST AMENDMENT TO PERFORMANCE AGREEMENT

This First Amendment to the Performance Agreement by and among the City of Richmond, Virginia, Dixon/Lee Development Group, LLC, and the Economic Development Authority of the City of Richmond, Virginia is entered into by the City of Richmond, Virginia, a municipal corporation of the Commonwealth of Virginia ("the City"), Dixon/Lee Development Group, LLC, a Virginia limited liability company ("the Developer"), and the Economic Development Authority of the City of Richmond, Virginia, a political subdivision of the Commonwealth of Virginia ("the Authority") (collectively "the Parties") pursuant to Section 9.1 of the Performance Agreement. The parties, intending to be legally bound and for valuable consideration, agree as follows:

1. The Parties desire to delete the definition of "Repayment Period" in its entirety and replace it as follows:

"Repayment Period" means July 1, 2017 through December 31, 2022.

2. The Parties desire to delete section 2 in its entirety and replace it as follows:

Section 2. Developer's Obligations.

2.1 Milestones. The Developer represents and warrants that it completed acquisition of the Existing Development no later than May 19, 2015. The Developer shall obtain all necessary permits, obtain all land use approvals, and begin construction no later than October 1, 2016. The Developer shall complete construction of the Expanded Development, as evidenced by a Certificate of Occupancy, no later than March 1, 2017.

2.2 New Jobs. The Developer shall create, or cause to be created, at least 15 New Permanent Jobs at the Expanded Development no later than April 1, 2017. The Developer shall create, or cause to be created, at least 15 New Part Time Jobs at the Expanded Development no later than November 1, 2017.

2.3 Financing Sources. The Developer shall secure the Financing Sources.

3. The Parties desire to delete section 3.2 in its entirety and replace it as follows:

3.2 Payment. The Developer represents and warrants that it received an initial payment of \$75,000, and that the Developer used the payment solely for land acquisition and predevelopment costs. Payment of the remaining \$125,000 can be requested by the Developer once the Developer has secured the Financing Sources, as evidenced by a Bank Commitment Letter. For purposes of this Performance Agreement, "Bank Commitment Letter" means an assurance by a lender to make money available to the Developer on specific terms in return for a fee. Once the Developer's request in writing has been received by the City and the City has received confirmation of funding from the Financing Sources, such confirmation to be determined adequate by the City in its sole discretion, the

City shall, within thirty (30) days, request the Authority or other agency to provide the Developer with the remaining Grant funds of \$125,000.

4. The Parties desire to delete section 6.1.1 and replace it as follows:

6.1.1 Each of the following events (hereinafter called an "Event of Default") shall be a default hereunder by the Developer as described:

6.1.1.1 Failure by the Developer to meet the Milestones.

6.1.1.2 Failure by the Developer to maintain its corporate existence or the declaration of bankruptcy by the Developer.

6.1.1.3 Failure by the Developer to create or cause to be created the New Permanent Jobs at the Expanded Development no later than April 1, 2017.

6.1.1.4 Failure by the Developer to create or cause to be created the New Part Time Jobs at the Expanded Development no later than November 1, 2017.

6.1.1.5 Use by the Developer of the initial \$75,000 for any purpose other than land acquisition and predevelopment costs.

6.1.1.6 Failure by the Developer to secure a Bank Commitment Letter guaranteeing its Financing Sources.

6.1.1.7 Failure by the Developer to close on its Financing Sources and to use the Financing Sources thereafter to fund the Project.

6.1.1.8 Failure by the Developer to Maintain the New Jobs for the duration of the Repayment Period.

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

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

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

By: _____
Name: Selena Cuffee-Glenn
Title: Chief Administrative Officer
Date:

APPROVED AS TO FORM

By: _____
Deputy City Attorney

DIXON/LEE DEVELOPMENT GROUP, LLC,
a Virginia limited liability company

By: _____
Name:
Title:
Date: