

INTRODUCED: December 11, 2023

AN ORDINANCE No. 2023-366

To authorize the Chief Administrative Officer, for and on behalf of the City of Richmond, to execute a First Amendment to Stone Brewery Cooperation Agreement, as Amended, Dated March 2, 2015, Between the City of Richmond, Virginia and the Economic Development Authority of the City of Richmond, Virginia, for the purpose of facilitating the use of excess revenues for economic development activities and projects in the city of Richmond.

Patron – Mayor Stoney

Approved as to form and legality
by the City Attorney

PUBLIC HEARING: JAN 8 2024 AT 6 P.M.

§ 1. That the Chief Administrative Officer, for and on behalf of the City of Richmond, be and is hereby authorized to execute a First Amendment to Stone Brewery Cooperation Agreement, as Amended, Dated March 2, 2015, Between the City of Richmond, Virginia and the Economic Development Authority of the City of Richmond, Virginia, for the purpose of facilitating the use of excess revenues for economic development activities and projects in the city of Richmond. The First Amendment to Stone Brewery Cooperation Agreement, as Amended, Dated March 2, 2015, Between the City of Richmond, Virginia and the Economic Development Authority of the City of Richmond, Virginia, shall be approved as to form by the City

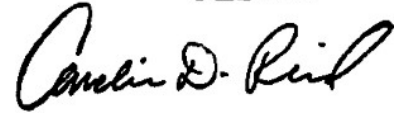
AYES: 9 NOES: 0 ABSTAIN: _____

ADOPTED: JAN 8 2024 REJECTED: _____ STRICKEN: _____

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

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

Master

File Number: Admin-2023-2008

File ID: Admin-2023-2008	Type: Request for Ordinance or Resolution	Status: Regular Agenda
Version: 1	Reference:	In Control: City Clerk Waiting Room
Department: Economic Development	Cost:	File Created: 12/06/2023
Subject:	Final Action:	
Title:		

Internal Notes:

Code Sections:

Agenda Date: 12/11/2023

Indexes:

Agenda Number:

Patron(s): Chief Administrative Office

Enactment Date:

Attachments: Ordinance - First Amendment to Stone Brewery Cooperation Agreement (2023-12-06), Stone Cooperation Agreement - First Amendment (2023-12-05)(3)(AATF for intro), Stone Amended Cooperation Agreement Fully Executed

Enactment Number:

Contact:

Introduction Date:

Drafter: katie.mcconnell@rva.gov

Effective Date:

Related Files:

Approval History

Version	Seq #	Action Date	Approver	Action	Due Date
1	1	12/6/2023	Leonard Sledge	Approve	12/8/2023
1	2	12/6/2023	Sharon Ebert - FYI	Notified - FYI	
1	3	12/6/2023	Sheila White	Approve	12/8/2023
1	4	12/6/2023	Sabrina Joy-Hogg - FYI	Notified - FYI	
1	5	12/6/2023	Jeff Gray - FYI	Notified - FYI	
1	6	12/6/2023	Lincoln Saunders	Approve	12/8/2023
1	7	12/6/2023	Mayor Stoney	Approve	12/26/2023

History of Legislative File

Master Continued (Admin-2023-2008)

Ver- sion:	Acting Body:	Date:	Action:	Sent To:	Due Date:	Return Date:	Result:
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Text of Legislative File Admin-2023-2008

City of Richmond
Intracity Correspondence

O&R Transmittal

DATE: December 3, 2023

TO: The Honorable Members of City Council

THROUGH: The Honorable Mayor

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

THROUGH: Sheila White, Director of Finance

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

RE: To authorize the Chief Administrative Officer, for and on behalf of the City of Richmond, to execute a First Amendment to Stone Brewery Cooperation Agreement as amended between the City of Richmond and the Economic Development Authority of the City of Richmond for the purpose of facilitating the use of excess revenues for economic development activities and projects in the city of Richmond.

ORD. OR RES. No.

PURPOSE: To authorize the Chief Administrative Officer, for and on behalf of the City of Richmond, to execute a First Amendment to Stone Brewery Cooperation Agreement as amended between the City of Richmond and the Economic Development Authority of the City of Richmond for the purpose of facilitating the use of excess revenues for economic development activities and projects in the city of Richmond.

BACKGROUND: The Stone Brewing Facility opened in 2016. Through the EDA's lease agreement for the facility, the EDA receives lease payments from the Company, and in turn, the EDA transfers funds to the City to pay the debt service for the Stone Brewing account. The lease payments made have

exceeded the debt service payments. As of September 30, 2023, the revenue in excess of the debt service equaled \$2.98 million. Per the terms of the Stone Brewery Cooperation Agreement as amended March 2, 2015 (ORD. 2014-254-2015-46), revenue in excess of the debt service cannot be used to advance other economic development activities and projects in the City. With the passage of this ordinance, the EDA will also establish a policy to maintain an appropriate reserve to fulfill its obligations to the Stone Brewing Facilities and Sites.

COMMUNITY ENGAGEMENT: N/A

STRATEGIC INITIATIVES AND OTHER GOVERNMENTAL: The Richmond 300, the Strategic Plan for Equitable Economic Development (SPEED), the Greater Scott's Addition Small Area Plan, and the City Center Innovation District Small Area Plan.

FISCAL IMPACT: The passage of the ordinance has no impact on the City's General Fund

DESIRED EFFECTIVE DATE: Upon adoption

REQUESTED INTRODUCTION DATE: December 11, 2023

CITY COUNCIL PUBLIC HEARING DATE: January 8, 2024

REQUESTED AGENDA: Consent

RECOMMENDED COUNCIL COMMITTEE: Finance and Economic Development Standing Committee

AFFECTED AGENCIES: Department of Economic Development, the Economic Development Authority of the City of Richmond

RELATIONSHIP TO EXISTING ORD. OR RES.: ORD. 2014-254-2015-46; ORD. 2014-237-210

ATTACHMENTS: First Amendment to the Stone Brewery Cooperation Agreement; Stone Brewery Cooperation Agreement

STAFF: Leonard L. Sledge, Director, Department of Economic Development - (804) 646-7576
Matthew A. Welch, Senior Policy Advisor Planning & Economic Development - (804)646-5874

**FIRST AMENDMENT TO
STONE BREWERY COOPERATION AGREEMENT, AS AMENDED,
DATED MARCH 2, 2015
BETWEEN THE CITY OF RICHMOND, VIRGINIA AND
THE ECONOMIC DEVELOPMENT AUTHORITY OF THE CITY OF
RICHMOND, VIRGINIA**

This First Amendment to the Stone Brewery Cooperation Agreement (“Cooperation Agreement”), As Amended, dated March 2, 2015, is entered into between the City of Richmond, Virginia, a municipal corporation and political subdivision of the Commonwealth of Virginia (the “City”), and the Economic Development Authority of the City of Richmond, Virginia, a political subdivision of the Commonwealth of Virginia (the “Authority”) pursuant to Section 4.6 of the Cooperation Agreement. The parties, intending to be legally bound and for valuable consideration, agree as follows:

1. The City and the Authority desire to delete Section 3.4.4.4 in its entirety and replace it with the following:

3.4.4.4 Revenues Net of City Investment. Provided the revenues derived by the Authority from the leasing and operation of the Facilities at the Sites by the Company allow the repayment of the City Outlay, in accordance with the provisions of section 3.4.4.2 of this Agreement, all additional revenues received by the Authority, including any interest or income earned on the Project Fund, shall be the property of the Authority to be used only for (i) capital, operating, and administrative costs relating to the Facilities and the Sites, including but not limited to costs associated with acquisition of land or other property interests necessary or desirable for the construction, leasing, and operation of the Facilities at the Sites; (ii) other economic development activities and projects and activities in the City of Richmond; and (iii) staff support for economic development activities and projects.

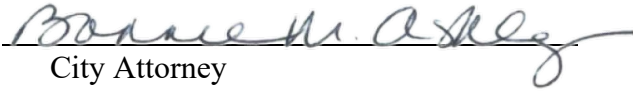
2. Except as specifically modified in this First Amendment, all other provisions of the Cooperation Agreement remain the same. Defined terms used in this amendment have the meanings ascribed to them in the Cooperation Agreement. If any of the terms of this Amendment conflict with the Cooperation Agreement,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

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

By: _____
Chief Administrative Officer

APPROVED AS TO FORM:


City Attorney

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

By: _____
Chairman

APPROVED AS TO FORM:

Bonnie M. Ashley
General Counsel to the Authority

STONE BREWERY COOPERATION AGREEMENT

As Amended

THIS STONE BREWERY COOPERATION AGREEMENT (the "Cooperation Agreement") is dated as of March 2, 2015, and entered into by and between the City of Richmond, Virginia, a municipal corporation and political subdivision of the Commonwealth of Virginia (the "City"), and the Economic Development Authority of the City of Richmond, Virginia, a political subdivision of the Commonwealth of Virginia (the "Authority").

RECITALS

- A. The City and the Authority desire to assist in the construction of Facilities, as defined herein, on certain property owned or to be acquired by the Authority, located at the Sites, as defined herein.
- B. The City and the Authority anticipate that the Facilities will consist of an approximately 200,000 square foot industrial facility suitable for a brewery production and distribution center, and a facility for commercial enterprise to include retail food and beverage sales, parking, and ancillary development necessary to accommodate the operations of, and to be leased to, the Company, as defined herein.
- C. The City desires the Authority to undertake certain activities relating to the Facilities and, to provide funding for those activities, desires to make the Appropriations, as defined herein.
- D. The City is authorized by section 15.2-953(B) of the Code of Virginia to make appropriations of money to the Authority for the purpose of promoting economic development.
- E. The Facilities qualify as "Authority facilities" or "Taxable authority facilities" as defined by section 15.2-4902 of the Code of Virginia, and the Authority is authorized by the Industrial Development Authority and Revenue Bond Act, title 15.2, chapter 49 of the Code of Virginia, and other laws to perform the activities contemplated in this Cooperation Agreement.
- F. The City and the Authority are of the opinion that the construction and leasing of the Facilities for the operations of the Company will promote economic development in the areas surrounding the Sites and in the city as a whole.
- G. The City and the Authority desire the Authority to assist in the construction of the Facilities by acquiring the land at the Sites; by entering into contracts for design, construction, and related services for the Facilities; and by entering into long-term leases of the Facilities.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which both parties acknowledge, and in consideration of the mutual covenants hereinafter set forth, the City and the Authority agree as follows:

1.0 **Preliminary Provisions.**

1.1 **Purpose.** The purpose of this Cooperation Agreement is to enable the City and the Authority to work together to facilitate the transactions described herein for the purpose of funding, constructing and leasing the Facilities.

1.2 **Incorporation of Recitals and Exhibits.** The foregoing recitals are true and correct and are incorporated herein by reference.

1.3 **Definitions.** Words, terms and phrases used in this Cooperation Agreement have the meanings ascribed to them by this section below, unless the context clearly indicates that another meaning is intended.

1.3.1 **Appropriations.** “Appropriations” means both the Phase 1 Appropriation and the Phase 2 Appropriation.

1.3.2 **Authority.** “Authority” means the Economic Development Authority of the City of Richmond, Virginia, a political subdivision of the Commonwealth of Virginia.

1.3.3 **Chief Administrative Officer.** “Chief Administrative Officer” means the Chief Administrative Officer of the City of Richmond, Virginia.

1.3.4 **City.** “City” means the City of Richmond, Virginia, a municipal corporation and political subdivision of the Commonwealth of Virginia.

1.3.5 **City Outlay.** “City Outlay” means the Appropriations plus all debt service incurred by the City thereon.

1.3.6 **Company.** “Company” means KoochenVagner’s Brewing Co., d/b/a Stone Brewing Co.

1.3.7 **Cooperation Agreement.** “Cooperation Agreement” means this Stone Brewery Cooperation Agreement.

1.3.8 **Expansion Date.** “Expansion Date” means the date the Company commences design of the Phase 2 Facility, anticipated to be the later of June 1, 2019 or twelve months after the date on which the portion of Water Street necessary for the construction of the Phase 2 Facility is closed and vacated by the City.

1.3.9 **Facilities.** “Facilities” means both the Phase 1 Facility and the Phase 2 Facility.

1.3.10 **Lease.** “Lease” means the agreement to be entered into between the Authority and the Company for the leasing of the Facilities by the Authority to the Company. For purposes

of this Agreement, although singular, "Lease" may refer to more than one agreement if necessary for the Company's use and occupancy of the Facilities.

- 1.3.11 **Phase 1 Appropriation.** "Phase 1 Appropriation" means appropriation of an amount not to exceed \$23,000,000 for the purpose of making a grant to the Authority for the development and construction of the Phase 1 Facility.
- 1.3.12 **Phase 2 Appropriation.** "Phase 2 Appropriation" means appropriation of an amount not to exceed \$8,000,000 for the purpose of making a grant to the Authority for the development and construction of the Phase 2 Facility.
- 1.3.13 **Phase 1 Facility.** "Phase 1 Facility" means improvements to the Phase 1 Site consisting of an approximately 200,000 square foot industrial facility suitable for a brewery production and distribution center, and any ancillary development necessary to accommodate the operations of, and to be leased to, the Company.
- 1.3.14 **Phase 2 Facility.** "Phase 2 Facility" means improvements to the Phase 2 Site, including rehabilitation of an existing 30,000 square foot building known as the Intermediate Terminal Warehouse No. 3, such improvements to constitute a facility for commercial enterprise including retail food and beverage sales, parking, and any ancillary development necessary to accommodate the operations of the Company.
- 1.3.15 **Phase 1 Site.** "Phase 1 Site" means the property owned or to be acquired by the Authority consisting of an assemblage of all or a portion of those properties listed as "Phase 1," and further depicted, on Exhibit A attached hereto and made a part hereof and such other property as may be required for the Phase 1 Facility.
- 1.3.16 **Phase 2 Site.** "Phase 2 Site" means the property owned or to be acquired by the Authority consisting of an assemblage of all or a portion of those properties listed as "Phase 2," and further depicted, on Exhibit A attached hereto and made a part hereof, including property located at 3101 East Main Street, owned by the City subject to an option held by Restaurateur, Inc., and such other property as may be required for the Phase 2 Facility.
- 1.3.17 **Project Fund.** "Project Fund" means the fund established pursuant to section 3.4.1 ("Establishment") of this Cooperation Agreement.
- 1.3.18 **Sites.** "Sites" means both the Phase 1 Site and the Phase 2 Site.
- 1.4 **Duration.** This Cooperation Agreement will be in force and effect beginning on the date written first above and shall expire when all obligations have been performed and all rights have been fully exercised by both the City and the Authority.
- 2.0 **Obligations and Rights of the City.**

- 2.1 **Payment of Appropriations.** The City shall pay over to the Authority the Appropriations, without any rights of set-off, recoupment or counterclaim, in accordance with the provisions of this section. The City and the Authority acknowledge that, to the extent the Appropriations involve any funding in the form of grants or loans from the U.S. Department of Housing and Urban Development, certain federal requirements may apply and that any such funds and requirements would be the subject of a separate agreement or agreements.
- 2.1.1 **Phase 1 Appropriation.** The City shall pay the Phase 1 Appropriation to the Authority as soon as is possible after the City is able to make the draw from a line of credit with a financial institution, or to obtain funding from such other source or sources as may be necessary and available, as contemplated to finance the Appropriation.
- 2.1.2 **Phase 2 Appropriation.** The City shall pay the Phase 2 Appropriation as soon as is practicable after the Expansion Date.
- 2.2 **Administrative Assistance.**
- 2.2.1 **Authority's Agent.** It is the intent of the City and the Authority that the various contracts anticipated by this Agreement, including the Lease and contracts for design, construction, and related services for the Facilities will be administered at no cost to or liability upon the Authority beyond the amount of the Appropriation and any rents received by the Authority pursuant to the terms of the Leases. To that end, the Chief Administrative Officer shall designate no more than one City employee each for the administration of any contract for which the Authority identifies the need for administrative assistance. Upon the identification by the Authority of such need, the Chief Administrative Officer shall submit the name and contact information of the Chief Administrative Officer's designee or designees as the Authority's agent or agents to the Authority for the Authority's approval. If the Authority rejects one or more of the Chief Administrative Officer's designees, the Chairman of the Authority and the Chief Administrative Officer will confer and agree on a City employee or employees whom the Chief Administrative Officer and the Authority will approve as the Authority's agent.
- 2.2.2 **Duties of Agent.** The City employee serving as the Authority's agent for the administration of a contract shall be responsible for performing all functions of the Authority under that contract and shall have the power to exercise all of the rights of the Authority under that contract. The intent of designating no more than one agent for each contract is intended to enable all activities concerning that contract to be coordinated through a single person. The City employee serving as the Authority's agent shall work with other City staff and resources as needed to perform the functions required of the Authority under the contract. The City employee serving as the Authority's agent shall attend a board meeting of the Authority at least once each quarter to provide updates and answer questions about the administration of the contract. The City employee serving as the Authority's agent shall provide to, or make available for inspection by, as mutually agreed upon by the City employee and the requester, the Authority or any of its members, such documentation as the Authority or its members may reasonably request.

- 2.3 **Subject-to-Appropriations.** All payments and other performances by the City under this Cooperation Agreement are subject to approval by the City Council and annual or periodic appropriations therefor by the City Council. It is understood and agreed between the City and the Authority that the City shall be bound hereunder only to the extent of the funds available or which may hereafter become available for the purposes of performing this Cooperation Agreement. Under no circumstances shall the City's total liability under this Cooperation Agreement exceed the total amount of the funds appropriated by the City Council for the City's performance of this Cooperation Agreement.
- 3.0 **Obligations and Rights of the Authority.**
- 3.1 **Acquisition of Sites and Leasing of Facilities.**
- 3.1.1 **Phase 1 Site.** Upon agreement as to terms between the Authority and the owners of the Phase 1 Site and subject to approval by the Authority's Board of Directors and approval as to form by Counsel to the Authority, the Authority shall enter into such contracts and other agreements as may be necessary to acquire, and shall acquire, the Phase 1 Site.
- 3.1.2 **Phase 2 Site.** The City shall endeavor to convey unencumbered title to the Phase 2 Site to the Authority. The Performance Agreement dated November 14, 2014 ("Performance Agreement"), among the City, the Authority, and the Company refers to the "Phase II Property" of "the Project," both as defined therein. If the development of the Phase II Property as defined in the Performance Agreement has not commenced upon the later to occur of December 31, 2021, or 36 months after completion of the "City Obligations" as set forth in Section 5.1 of the Performance Agreement, including without limitation the City's closure of Water Street, the City shall have the right to require that the Authority convey title to the Phase II Site back to the City, and the Authority shall forthwith execute and deliver a deed and any other documents necessary to convey the property to the City.
- 3.2 **Construction of Facilities.** Upon the acquisition of the Sites by the Authority, which the City and the Authority understand will be in accordance with any schedules necessary to accommodate the timing of construction for the Phase 1 Facility and the Phase 2 Facility the Authority shall enter into any contracts the Authority deems necessary to design, construct and otherwise provide for the Facilities. The Authority acknowledges that the City desires that 40 percent of all expenditures for the design and construction of the Facilities be spent with minority business enterprises or emerging small businesses, either or both, as those terms are defined in section 74-4 of the Code of the City of Richmond, that perform commercially useful functions with regard to the design and construction of the Facilities, and the Authority agrees that, to the extent permitted by law, the Authority will endeavor to achieve such 40 percent goal.
- 3.3 **Lease.** The Authority shall enter into the Lease and such other agreements as may be necessary with the Company as the Authority deems appropriate for the Company's use and occupancy of the Facilities. Any such Lease shall require payment of rent or other

monies from the Company in an amount which, in the aggregate over the life of this Agreement, is at least equal to the full amount of the City Outlay and provide for any additional costs involved in the design, construction and leasing of the Facilities.

3.4 Project Fund.

3.4.1 Establishment. The Authority shall establish a fund in its accounting and budgetary structure, into which the Authority shall deposit all funds received pursuant to this Cooperation Agreement and all revenue derived from the Facilities, and from which the Authority shall make all disbursements required for the design, construction and leasing of the Facilities.

3.4.2 Bank Account. The Authority may deposit all such funds received into one interest-bearing checking account, or more than one account, if necessary to secure Federal Deposit Insurance Corporation protection, at a financial institution selected by the Authority.

3.4.3 Accounting. The Authority shall prepare financial reports and statements of all financial activity relating to the Project Fund in accordance with generally accepted accounting principles, or such other or additional method mutually agreeable to the City and the Authority. The Authority may use its accountant to prepare the reports and statements if it chooses, and the Authority may include these reports and statements in its regular reports and statements on other activities of the Authority.

3.4.4 Disposition.

3.4.4.1 Use of Appropriation. The City and the Authority intend that the Authority expend the Appropriation for the design, construction and other preparations for use and occupancy of the Facilities by the Company.

3.4.4.2 Application of Revenues. Revenues in the Project Fund (whether from the residue of the Appropriation, provided any use of such residue complies with any applicable laws or bond covenants, including any restrictions on the use of such residue for other than capital expenditures; the rents or other revenues from the Lease; or any other source arising from the Facilities and received by the Authority) shall first be applied to the payment of the costs of constructing and leasing the Facilities and shall then be paid to the City, subject to the provisions of section 3.4.4.3 below, in a manner and on a schedule acceptable to the City's Chief Administrative Officer or a designee thereof and the Chairman of the Authority or a designee thereof, in an amount or amounts, which, in the aggregate over the life of this Agreement, are equal to the full amount of the City Outlay.

3.4.4.3 City Outlay. It is the intent of the City and the Authority that, to the extent funds are available in the Project Fund and not obligated to pay any contractual arrangements requested by the City or authorized to be undertaken by the Authority pursuant to this Cooperation Agreement, the City Outlay shall be paid back to the City but subject to reserves as may be commercially reasonable. The Authority shall not be required to

expend any funds derived from any source other than revenues from the Facilities to pay back the City Outlay. The City and the Authority acknowledge that the Authority has no legal obligation to return the City Outlay other than to the extent funds are available in the Project Fund in accordance with this Cooperation Agreement, as the City provides the Appropriation to the Authority as an appropriation pursuant to section 15.2-953(B) of the Code of Virginia and not as a loan.

3.4.4.4 Revenues Net of City Investment. Provided the revenues derived by the Authority from the leasing and operation of the Facilities at the Sites by the Company allow the repayment of the City Outlay, in accordance with the provisions of section 3.4.4.2 of this Agreement, all additional revenues received by the Authority, including any interest or income earned on the Project Fund, shall be the property of the Authority to be used only for economic development projects and activities, including staff support, pursuant to a cooperation agreement concerning such project or activity between the City and the Authority. Notwithstanding the foregoing, the Authority may, in its sole discretion, use such additional revenues for capital, operating, and administrative costs relating to the Facilities and the Sites, including but not limited to costs associated with acquisition of land or other property interests necessary or desirable for the construction, leasing, and operation of the Facilities at the Sites.

3.5 Limitations on Authority's Obligations.

3.5.1 Authority Bond. The Authority shall not be required to furnish the City with a fidelity bond covering all officers or employees of the Authority capable of authorizing disbursements of funds or handling funds received from the City or any other party or disbursed by the Authority to any other party pursuant to this Cooperation Agreement.

3.5.2 Authority Liability. It is the intent of the parties not to impose upon the Authority any responsibility other than what may be required to consummate the transactions contemplated by and perform the obligations specified in this Cooperation Agreement. Accordingly, the Authority does not assume any responsibility or liability whatsoever except as specifically stated herein. Should any liability accrue to the Authority which is not specifically addressed in this Cooperation Agreement, the Authority shall not be required to expend funds the Authority derives from sources other than those provided for by this Cooperation Agreement to discharge such liability. If a lawsuit involving the subject matter of this Cooperation Agreement is filed or expected to be filed against the Authority, the Authority shall immediately notify the City Attorney and Chief Administrative Officer.

3.5.3 Availability of Funds. The Authority's obligation to undertake and perform the activities required of the Authority herein is specifically conditioned on the availability of funds in the Project Fund for the Authority to perform the Authority's obligations hereunder. The Authority shall not be required to expend funds the Authority derives from sources other than those provided for by or described in this Cooperation Agreement for the performance of the Authority's obligations under this Cooperation Agreement. The Authority's obligation to undertake the activities herein is specifically

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

4.0 **Miscellaneous Provisions.**

4.1 **Audit.** Pursuant to section 2-224(c) of the Code of the City of Richmond, the Authority shall be subject to periodic audits by the City Auditor, at the City's expense, on demand and without notice of its finances and expenditures of the Project Fund. In addition, the Authority shall afford the City access to all records relating to the expenditure of the Project Fund, wherever located, for such examination and audit by the City as the City may desire. The Authority shall afford the City the opportunity to make copies of any records that the City has the rights under this Cooperation Agreement to access, examine, and audit.

4.2 **Captions.** All section titles or captions in this Cooperation Agreement are for convenience of reference only. They should not be deemed to be part of this Cooperation Agreement or to in any way define, limit, extend, or describe the scope or intent of any provisions of this Cooperation Agreement.

4.3 **Counterparts.** This Cooperation Agreement may be executed by the City and the Authority in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute but one and the same Cooperation Agreement.

4.4 **Entire Agreement.** This Cooperation Agreement contains the entire understanding between the City and the Authority and supersedes any prior understandings and written or oral agreements between them respecting this subject matter. There are no representations, agreements, arrangements, or understandings, oral or written, between the City and the Authority relating to the subject matter of this Cooperation Agreement that are not fully expressed in this Cooperation Agreement.

4.5 **Governing Law and Forum Choice.** All issues and questions concerning the construction, enforcement, interpretation and validity of this Cooperation Agreement, or the rights and obligations of the City and the Authority in connection with this Cooperation Agreement, shall be governed by, and construed and interpreted in accordance with, the laws of the Commonwealth of Virginia, without giving effect to any choice of law or conflict of laws rules or provisions, whether of the Commonwealth of Virginia or any other jurisdiction, that would cause the application of the laws of any jurisdiction other than those of the Commonwealth of Virginia. Any and all disputes, claims and causes of action arising out of or in connection with this Cooperation Agreement, or any performances made hereunder, shall be brought, and any judicial proceeding shall take place, only in the Circuit Court of the City of Richmond, Virginia. Each party shall be responsible for its own attorneys' fees in the event this Cooperation Agreement is subject to litigation.

- 4.6 **Modifications.** This Cooperation Agreement may be amended, modified and supplemented only by the written consent of both the City and the Authority preceded by all formalities required as prerequisites to the signature by each party of this Cooperation Agreement.
- 4.7 **No Assignment.** This Cooperation Agreement shall be binding upon and shall inure to the benefit of the successors and permitted assigns of the parties hereto; provided, however, that in no event may this Cooperation 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 neither party shall be obligated to give.
- 4.8 **No Individual Liability.** No director, officer, employee or agent of the City or the Authority shall be personally liable to another party hereto or any successor in interest in the event of any default or breach under this Cooperation Agreement or on any obligation incurred under the terms of this Cooperation Agreement.
- 4.9 **No Third-Party Beneficiaries.** Notwithstanding any other provision of this Cooperation Agreement, the City and the Authority hereby agree that: (i) no individual or entity shall be considered, deemed or otherwise recognized to be a third-party beneficiary of this Cooperation Agreement; (ii) the provisions of this Cooperation Agreement are not intended to be for the benefit of any individual or entity other than the City or the Authority; (iii) no individual or entity shall obtain any right to make any claim against the City or the Authority under the provisions of this Cooperation Agreement; and (iv) no provision of this Cooperation Agreement shall be construed or interpreted to confer third-party beneficiary status on any individual or entity. For purposes of this section, the phrase "individual or entity" means any individual or entity, including, but not limited to, individuals, contractors, subcontractors, vendors, sub-vendors, assignees, licensors and sub-licensors, regardless of whether such individual or entity is named in this Cooperation Agreement.
- 4.10 **Notices.** All notices, offers, consents, or other communications required or permitted to be given pursuant to this Cooperation Agreement shall be in writing and shall be considered as properly given or made if delivered personally, by messenger, by recognized overnight courier service or by registered or certified U. S. mail with return receipt requested, and addressed to the address of the intended recipient at the following addresses:

A. To Authority:

Chairman
Economic Development Authority of the City of Richmond, Virginia
501 East Franklin Street, 1st Floor
Richmond, Virginia 23219

With a copy to

General Counsel to the Economic Development Authority
900 East Broad Street, Room 300
Richmond, Virginia 23219

B. To the City:

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

With a copy to

City Attorney
900 East Broad Street
Richmond, Virginia 23219

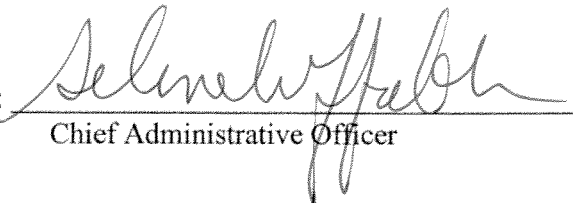
Either party may change any of its address information given above by giving notice in writing stating its new address to the other party.

- 4.11 **Public Records.** The City and the Authority acknowledge and agree that this Cooperation Agreement and any other records furnished, prepared by or in the possession of the City or the Authority may be subject to the retention and disposition requirements of the Virginia Public Records Act and the public disclosure requirements of the Virginia Freedom of Information Act.


SIGNATURES ON FOLLOWING PAGE

IN WITNESS WHEREOF, the parties have executed this Cooperation Agreement as of the day and year first written above.

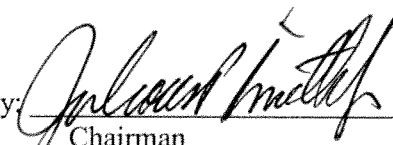
CITY OF RICHMOND, VIRGINIA
a municipal corporation and political subdivision of
the Commonwealth of Virginia

By: 
Chief Administrative Officer


APPROVED AS TO FORM:

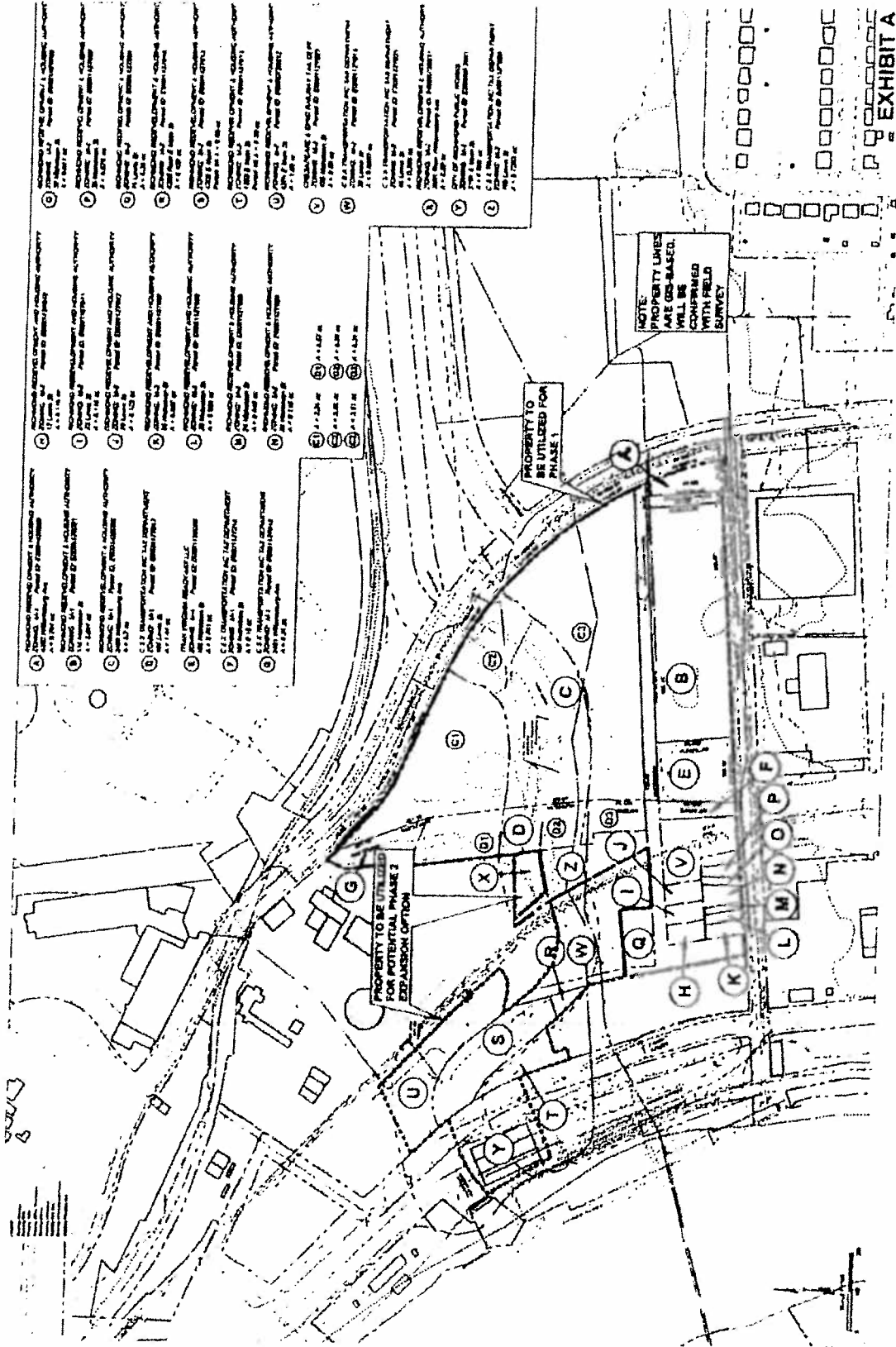

City Attorney

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

By: 
Chairman

APPROVED AS TO FORM:


Bonnie M. Ashley
General Counsel to the Authority



- ① RECORDING INSTRUMENT, FUTURE EASEMENT AUTHORITY
2/11/2010
① RECORDING INSTRUMENT, FUTURE EASEMENT AUTHORITY
2/11/2010
② RECORDING INSTRUMENT, FUTURE EASEMENT AUTHORITY
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㉕ RECORDING INSTRUMENT, FUTURE EASEMENT AUTHORITY
2/11/2010

NOTE:
PROPERTY LINES
ARE GIS-BASED
WILL BE
COMPARED
WITH FIELD
SURVEY

PROPERTY TO BE UTILIZED FOR
PHASE 1

PROPERTY TO BE UTILIZED
FOR POTENTIAL PHASE 2
EXPANSION OPTION

Phase I:

	Parcel ID	Mailing Address	Acreage
A	E0001430030	4300 Williamsburg Ave	0.207
B	E0001128001	116 Nicholson St	2.887
C	E0001429003	3409 Williamsburg Ave	8.7
D	E0001127017	104 Lewis St	1.44
E	E0001128060	108 Nicholson St	0.741
F	E0001127019	104 Nicholson St	0.19
G	E0001127018	3401 Williamsburg Ave	0.31
H	E0001127010	17 Lewis St	0.115
I	E0001127011	23 Lewis St	0.115
J	E0001127012	29 Lewis St	0.123
K	E0001127007	16 Nicholson St	0.087
L	E0001127006	20 Nicholson St	0.059
M	E0001127005	24 Nicholson St	0.042
N	E0001127004	28 Nicholson St	0.118
O	E0001127003	32 Nicholson St	0.047
P	E0001127002	36 Nicholson St	0.076
Q	E0001127001	16 Lewis St	0.28
V	E0001127025	100 Nicholson St	0.59
Z	E0001127020	100 Lewis St	0.7283
			16.8553

Phase II:

W	E0001127014	32 Lewis St	0.8252
	E0001127031	40 Lewis St	0.385
R	E0001127016	4303 Rear E Main St	0.152
S	E0001127013	4303 E Main St	0.9
T	E0001127013	4303 E Main St	0.3
U	E0000738012	4301 E Main St	1.5
Y	E0000817001	*3101 E Main St	*4.985
X	E0000738011	3301 Rear Williamsburg Ave	0.22
			4.2822

*Total site acreage, only a portion of this site will be used

Note: Right of way is included in estimated acreage total