

INTRODUCED: April 13, 2015

AN ORDINANCE No. 2015-87-68

To authorize the Chief Administrative Officer, for and on behalf of the City of Richmond, to execute a 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 providing an economic development grant to facilitate the rehabilitation of 201 West Brookland Park Boulevard as a mixed-use development.

Patrons – Mayor Jones and Vice President Hilbert

Approved as to form and legality
by the City Attorney

PUBLIC HEARING: APR 27 2015 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 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 providing an economic development grant to facilitate the rehabilitation of 201 West Brookland Park Boulevard as a mixed-use development. The 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: APR 27 2015 REJECTED: _____ STRICKEN: _____

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



CITY OF RICHMOND
INTRACITY CORRESPONDENCE

O & R REQUEST

APR 08 2015

Chief Administration Office
City of Richmond

RECEIVED

O&R REQUEST

APR 09 2015

DATE: April 7, 2015

OFFICE OF CITY ATTORNEY

TO: The Honorable Members of City Council (The Honorable Christopher A. Hilbert is a Co-Patron)

THROUGH: Dwight C. Jones, Mayor

THROUGH: Christopher L. Beschler, Acting Chief Administrative Officer

THROUGH: Norman Butts, Deputy Chief Administrative Officer for Finance and Administration

FROM: Peter L. Downey, Interim Deputy Chief Administrative Officer for Economic Development and Planning

SUBJECT: 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 execute a Performance Agreement ("the Agreement") by and between the City of Richmond, Dixon/Lee Development Group, LLC ("the Developer"), and the Economic Development Authority of the City of Richmond ("EDA").

REASON: In order to promote economic growth within the Brookland Park Boulevard corridor, this agreement will provide \$200,000 to Dixon/Lee Development Group, LLC to rehabilitate 201 W. Brookland Park Blvd. creating a mixed-use development that will increase real estate tax revenues, provide 15 full-time jobs and 15 part-time jobs and will promote further investment in this distressed area.

In order for the City to enter into the proposed Agreement with the Developer, City Council action is required.

RECOMMENDATION: The City Administration recommends adoption of this ordinance.

BACKGROUND: 201 W. Brookland Park Blvd. is a historic rehabilitative development project along a distressed commercial corridor within the City. The project is located within the Brookland Park Historic District, in Richmond, Virginia. The development involves the historic

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rehabilitation of a one-story building of approximately 2,200 square feet located at 201 W. Brookland Park Blvd. The Property will create approximately 2 market rate apartments, and 2 mixed-use commercial spaces.

This project is located along a commercial corridor of the City that is in need of catalytic, small projects to stimulate new investment in the neighborhood. The proposed project would take an existing structure, and through its rehabilitation, create new life along Brookland Park Blvd. by creating 15 full-time jobs and 15 part-time jobs. The project will create retail life along the corridor, promote entrepreneurial growth through a proposed Business Work Center and an Urban Café and community meeting center.

FISCAL IMPACT: The proposed development will generate an estimated \$6,000/year in new real estate tax revenue for the City. In addition, the Urban Café and Business Work Center will create new sales, property and BPOL taxes for the City.

COST TO CITY: \$200,000

DESIRED EFFECTIVE DATE: Upon adoption.

REQUESTED INTRODUCTION DATE: April 13, 2015

CITY COUNCIL PUBLIC HEARING DATE: April 27, 2015

REQUESTED AGENDA: Consent Agenda

RECOMMENDED COUNCIL COMMITTEE: Finance and Economic Development

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

AFFECTED AGENCIES: Chief Administrative Officer; City Attorney; Economic and Community Development; Planning and Development Review; Budget and Strategic Planning

RELATIONSHIP TO EXISTING ORDINANCES: Ordinance No. 2014-62-99

REQUIRED CHANGES TO WORK PROGRAMS: City employees will be assigned to provide the necessary assistance to the Economic Development Authority.

ATTACHMENTS: Performance Agreement

STAFF: Peter L. Downey, Interim Deputy Chief Administrative Officer for Economic Development and Planning

DCD O&R No.

PERFORMANCE AGREEMENT

This **PERFORMANCE AGREEMENT** is made and entered this ____ day of _____, 2015, by and among 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**, a political subdivision of the Commonwealth of Virginia (“the Authority”).

WITNESSETH:

WHEREAS, the Developer intends to construct and operate a mixed use development at 201 West Brookland Park Boulevard in the City of Richmond, Virginia (“the Project”), and

WHEREAS, the City and the Authority have determined that the Developer’s construction and operation of the Project 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 an increase in real estate tax receipts and job creation; and

WHEREAS, the City desires to provide to the Developer an economic development monetary grant in the amount of \$200,000 (“the Grant”) for the purpose of inducing the Developer to construct and operate the Project in the City of Richmond; and

WHEREAS, the City is willing to provide the funds to the Authority with the expectation that the Authority will provide the funds to or for the use of the Developer, provided that the Developer meets certain criteria; and

WHEREAS, the City is authorized by Section 15.2-953 of the Code of Virginia and other laws, and the 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 Performance Agreement; and

WHEREAS, the City, the Authority and the Developer desire to set forth their understanding and agreement as to the payout of the Grant, the use of the Grant funds, the obligations of the Developer, and the repayment by the Developer of all or part of the Grant under certain circumstances; and

WHEREAS, the stimulation of the additional tax revenue and economic activity to be generated by the Project constitute valid public purposes for the expenditure of public funds; and

WHEREAS, this Agreement sets forth the understanding of the parties concerning the Developer’s obligations, the Authority’s obligations, and the incentives offered by the City, subject to the approval of the 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. Definitions.

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

“Existing Development” means the real property located at 201 West Brookland Park Boulevard (Tax Map No. N000-0887/001).

“Expanded Development” means the Existing Development together with all improvements thereon and rehabilitation thereto, consisting of first floor commercial space and second floor residential units.

“Maintain” means that the New Jobs created pursuant to the Grant will continue without interruption for the duration of the Repayment Period. Positions for the New Jobs will be treated as Maintained during periods in which such positions are not filled due to temporary reductions in employment levels in connection with recruitment for open positions or strikes and other work stoppages.

“Milestones” means the deadlines for development as set forth in section 2.1 of this Agreement.

“New Jobs” means a total of not fewer than 15 New Permanent Jobs and not fewer than 15 New Part Time Jobs at the Expanded Development. New Permanent Jobs consist of new permanent full-time jobs of an indefinite duration at the Expanded Development for which the standard fringe benefits are paid by the employer for the employee. Each permanent New Job must require a minimum of either (i) 35 hours of an employee’s time per week for the entire normal year of the employer’s operations, which “normal year” must consist of at least 48 weeks, or (ii) 1,680 hours per year, and (iii) must pay not less than \$11.33/hour. The number of New Part Time Jobs will be calculated using the following formula:

Aggregate Part Time Hours Worked divided by 1,392 hours

The parties agree with respect to the foregoing formula that: (i) the term “Aggregate Part Time Hours Worked” for a particular year shall be the total number of all hours worked by part-time employees at the Expanded Development; and (ii) 1,392 hours was utilized as the denominator to reflect an average of 29 hours per week for 48 weeks. For example purposes only, if the Aggregate Part Time Hours Worked in 2016 is 20,880 hours, the total New Non-Production Jobs Maintained by the Company in 2016 would be 15.

For the avoidance of doubt, multiple positions with similar or the same job titles shall each be considered a New Job assuming the foregoing requirements are met for such position.

“Financing Sources” means those sources of funds for the Project other than the Grant and consisting of not less than \$426,000.

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

Section 2. Developer's Obligations.

2.1 Milestones. The Developer shall complete 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 November 1, 2015. The Developer shall complete construction of the Expanded Development, as evidenced by a Certificate of Occupancy, no later than May 1, 2016.

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 December 1, 2016. The Developer shall create, or cause to be created, at least 15 New Part Time Jobs at the Expanded Development no later than July 1, 2017.

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

Section 3. Disbursement of Grant.

3.1 Grant Amount. The City shall, through the Authority, provide the Developer with an incentive in the form of an economic development grant in a total amount of up to \$200,000.00 (the "Grant"), payable as follows:

3.2 Payment. An initial payment of \$75,000, to be used by the Developer solely for land acquisition and predevelopment costs, will be authorized upon full execution of this Agreement. Thereafter, payment of the remaining \$125,000 can be requested by the Developer once the Developer has secured the Financing Sources, as evidenced by an unconditional bank commitment letter. 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.

3.3 Appropriations Required. The City's and the Authority's obligation to provide the Grant to the Developer is subject to and contingent upon the appropriation of all necessary funds by the Richmond City Council for such purposes and upon action of the Authority's Board of Directors.

Section 4. Administration of Grant

4.1 The City agrees to transfer to the Authority, as and when appropriated by the City Council, the funds necessary for the Authority to meet its obligations under the Agreement relating to the Grant. No administrative fees or expenses shall be paid by the City.

4.2 The Authority's obligation to undertake the activities herein is specially 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.

4.3 The Authority agrees to provide the City's Chief Administrative Officer, or the designee thereof, with copies of all documents related to this Agreement and will keep the Chief Administrative Officer fully and timely informed of all matters related to the Agreement.

4.4 The Authority agrees that all funds transferred by the City to the Authority for the Grant shall be deposited by the Authority within a Project Fund, to be used only to satisfy the obligations contained in this Agreement related to the Grant.

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

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

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

Section 5. Representations of the Developer

5.1 The Developer is empowered to enter into this Agreement, to be bound hereby, and to perform according to the terms hereof.

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

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

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

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

Section 6. Default and Repayment Obligation.

6.1 Events of Default.

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 The failure by the Developer to create or cause to be created the New Permanent Jobs at the Expanded Development no later than December 1, 2016;

6.1.1.4 The failure by the Developer to create or cause to be created the New Part Time Jobs at the Expanded Development no later than July 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 an unconditional 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.

6.1.2 In the case of an occurrence of an Event of Default, the Grant provisions of Section 3 of this Agreement shall terminate immediately and neither the City nor the Authority shall have any further obligation relating thereto and the Developer shall no longer be eligible for any grant payments hereunder. Notwithstanding the foregoing, the provisions of Section 6.2 below shall survive the termination of this Agreement until all of the Developer's obligations have been satisfied.

6.2 Repayment Obligation.

6.2.1 Upon an Event of Default the Developer shall repay to the Authority any and all amounts paid to it pursuant to this Agreement as of the date upon which the Event of Default occurs and upon written demand by the Authority or the City to the Developer for such repayment.

6.2.2 Repayment shall be due from the Developer to the Authority within thirty days of the date of the written demand to the Developer from the Authority or the City. Any moneys repaid by the Developer to the Authority hereunder shall be repaid by the Authority to the City. The Authority shall have no responsibility for the repayment of any sums hereunder unless said sums have been received by the Authority from the Developer.

6.2.3 Notwithstanding the foregoing, upon an Event of Default the Authority may prorate any amount of repayment due to it following a written request to the City, and receipt of written authorization from the City, to so prorate the amount due. Any such proration shall be allowed only in the sole discretion of the City.

Section 7. Company Reporting.

The Developer shall provide, at the Developer's expense, detailed verification reasonably satisfactory to the City, in the City's sole discretion, of fulfillment of the Developer's obligations as set forth in section 2 of this Agreement.

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 the 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 and
Community Development
City of Richmond, Virginia
1500 East Main Street
Richmond, Virginia 23219
Attention: Director

if to the Developer, to:

Dixon/Lee Development Group, LLC
2906 West Clay Street, Unit #35
Richmond, Virginia 23230
Attention: Lamar E. Dixon

if to the Authority, to:

Economic Development Authority of
the City of Richmond, Virginia
501 East Franklin Street, First Floor
Richmond, Virginia 23219
Attention: Chairman

with a copy to:

City Attorney
City of Richmond, Virginia
900 East Broad Street, Room 300
Richmond, Virginia 23219

Section 9. General Terms and Conditions.

9.1 Entire Agreement; Amendments. This 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 Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. The Developer may not assign its rights and obligations under this Agreement without the prior written consent of the City and the Authority.

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 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 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 the City and the Authority under this Agreement are subject to City Council approval, Authority Board approval and annual appropriations by the City Council. It is understood and agreed among the parties that the City and the Authority shall be bound hereunder only to the extent of the funds available or which may hereafter become available for the purpose of this Agreement. Under no circumstances shall the City's or the Authority's total liability under this Agreement exceed the total amount of funds appropriated by the City Council for the payments hereunder for the performance of this Agreement.

9.6 Public Disclosure.

9.6.1 Applicable Law. The parties to this Agreement acknowledge that records maintained by or in the custody of the City and the 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 the City or the Authority requests that those records not be disclosed under applicable law and the City or the Authority consequently denies a request for disclosure of such records based on the submitting party's request, and the City's or the Authority's denial of a request for disclosure of records is challenged in court, the submitting party shall indemnify, hold harmless and defend the City or the 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 the City or the Authority to enforce any covenant or provision contained in this Agreement nor any waiver of any right under this Agreement shall discharge or invalidate such covenant or provision or affect the right of the City or the Authority to enforce the same right in the event of any subsequent default.

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

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

9.10 No Third Party Beneficiaries. Notwithstanding any other provision of this Agreement, the parties agree that (i) no individual or entity shall be considered, deemed or otherwise recognized to be a third-party beneficiary of this Agreement; (ii) the provisions of this Agreement are not intended to be for the benefit of any individual or entity other than the City, the Authority, or the Developer; (iii) no other individual or entity shall obtain any right to make any claim against the City, the Authority, or the Developer under the provisions of this Agreement; and (iv) no provision of this Agreement shall be construed or interpreted to confer third-party beneficiary status on any individual or entity.

9.11 Hiring. By entering into this Agreement, the Developer agrees, for itself and its contractors and subcontractors, to work diligently towards a goal to employ city of Richmond residents as at least 51% of the workforce on this development and its construction.

9.12 MBE/ESB Participation. By entering into this Agreement, the Developer agrees, for itself and its contractors and subcontractors, to diligently work towards a goal that, where capacity exists, 40 percent of all expenditures for those construction costs of the Project will be spent with minority business enterprises and emerging small businesses, either or both, that perform commercially useful functions with regard to the prosecution and completion of the development. For purposes of this section, the terms “minority business enterprise” and “emerging small business” have the meanings ascribed to them by section 74-4 of the Code of the City of Richmond. The Developer shall include this goal in its contracts with all contractors and subcontractors who will be providing any portion of the development.

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: _____
Christopher L. Beschler
Acting Chief Administrative Officer
Ordinance No. 2014-176-168

Approved as to Form:

By: _____
Deputy City Attorney

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

By: _____
Name: _____
Title: _____

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

By: _____
Chairman

Approved as to Form:

By: _____
General Counsel to the Authority