

THE REGULAR MEETING OF THE BRISTOL, VIRGINIA, CITY COUNCIL WAS HELD ON JANUARY 09, 2018, AT 6:00 P.M. AT 300 LEE STREET, BRISTOL, VIRGINIA WITH MAYOR KEVIN MUMPOWER PRISIDING. CONCIL MEMBERS PRESEMT WERE VICE MAYOR KEVIN WINGARD, J. DOUGLAS FLEENOR, WILLIAM HARTLEY, AND ARCHIE HUBBARD, III. INTERIM CITY MANAGER/CITY ATTORNEY, RANDALL EADS WAS ALSO PRESENT.

Mayor Mumpower called for a moment of silence followed by the pledge of allegiance to the flag.

A. Mayor's Minute and Council Comments

Council Member Fleenor entertained a motion to move Item 9. Executive Session to Item 3. Motion was seconded by Council Member Hubbard and carried by the following votes:

AYES: Fleenor, Hartley, Hubbard, Wingard, and Mumpower.

B. City Manager's Comments

Interim City Manager, Mr. Randall Eads, reported that Mr. Berry contacted him informing that Washington County Emergency 911 system was down and Bristol, Virginia Emergency 911 system was covering Washington County until they were in full operation. Mr. Eads reported several staff members worked over the holidays refinancing the city's debt and that City Council will see the audit and resolution presented to refinance the debt. He also stated the city was moving forward in the right direction and looked forward to the upcoming year.

1. Presentation of the City of Bristol, Virginia Financial Audit for the Year Ended June 30, 2017

Gordon Jones and Corbin Stone, CPA from Robinson Farmer, Cox Associates, P.L.L.C., auditors for the City of Bristol, Virginia, presented the audited financial statements for the year ended June 30, 2017. A handout was submitted to the Council Members and retained for recordation.

Council Member Hubbard entertained a motion to accept the audited financial statement presented by Gordon Jones and Corbin Stone, CPA from Robinson, Farmer, Cox associates, P.L.L.C as the city's final audit for the fiscal year. Motion was seconded by Vice Mayor Wingard and carried by the following votes:

AYES: Fleenor, Hartley, Hubbard, Wingard, and Mumpower

Mr. Scott Campbell commented on the audited financial statement.

Ms. Nancy Marney commented on issue of the late submission of the audited financial statements.

2. Public-Private Education and Infrastructure Act (PPEA) Update.

Gary Ritchie, School Board Member for the Bristol Virginia Public Schools, provided an update on the PPEA. Mr. Ritchie reported that they will receive an unsolicited bid to house an elementary school and to replace the deteriorating school buildings. Mr. Ritchie stated that he will give an update if Van Pelt Elementary School is the chosen site for a new building replacement.

3. Executive Session

Mayor Mumpower entertained a motion to enter into Executive Session pursuant to §2.2-3711.A1, Code of Virginia 1950, as amended. Discussion, consideration, or interviews of prospective candidates for employment; assignment, appointment, promotion, performance, demotion, salaries, disciplining, or resignation of specific public officers, appointees, or employees of any public body (personnel).

Council Member Fleenor made the motion to enter into Executive Session pursuant to §2. -3711.A1, Code of Virginia 1950, as amended. Discussion, consideration, or

interviews of prospective candidates for employment; assignment, appointment, promotion, performance, demotion, salaries, disciplining, or resignation of specific public officers, appointees, or employees of any public body (personnel). Motion was seconded by Council Member Hubbard and carried by the following votes:

AYES: Fleenor, Hartley, Hubbard, Wingard, and Mumpower

4. Certify Executive Session

Following the Executive Session, by roll call vote, Council Members certified that only business matters lawfully exempted from open meeting requirements and specified in the motion to convene the Executive Session were discussed.

AYES: Fleenor, Hubbard, Mumpower, Wingard, and Hartley

5. Public Hearing Regarding an Ordinance to Convey Lots 9, 19, and 21 of The Falls Development Project to the Industrial Development Authority

Mayor Mumpower entertained a motion for the Public Hearing Regarding First Reading of an Ordinance to Convey Lots 9, 19, and 21 of the Falls Development Project to the Industrial Development Authority of Bristol, Virginia.

Council Member _____ made the motion for the First Reading of an Ordinance to Convey Lots 9, 19, and 21 of The Falls Development Project to the Industrial Development Authority. Motion was seconded by Council Member _____ and carried by the following votes:

AYES: Fleenor, Hartley, Hubbard, Wingard, and Mumpower

City Attorney, Mr. Randall Eads read the following Ordinance:

ORDINANCE TO CONVEY LOT 9 AS DESCRIBED ON A PLAT ENTITLED "THE FALLS – PHASE I" AND TO CONVEY LOTS 19 AND 21 AS DESCRIBED ON A PLAT ENTITLED "PLAT OF LOTS 20, 21, 22,23,AND 24 THE FALLS - PHASE II AND THE FALLS PUBLIC STORM DRAINAGE EASEMENT LOT 6 – PHASE I" TO THE INDUSTRIAL DEVELOPMENT AUTHORITY OF BRISTOL VIRGINIA

WHEREAS, the City of Bristol Virginia (hereinafter "the City") acquired a number of parcels of land located on Lee Highway near Exit 5 of Interstate 81 in the City of Bristol, Virginia; and

WHEREAS, the City has partnered with the Industrial Development Authority of Bristol, Virginia and Falls Development, LLC through a Development Agreement for the development of a retail shopping center, commonly referred to as "The Falls;" and

WHEREAS, the City has caused a portion of the property to be subdivided as shown on a plat entitled "The Falls – Phase I" and on a plat entitled "Plat of Lots 20, 21, 22, 23, and 24 The Falls – Phase II and Public Storm Drainage Easement Lot 6 – Phase I" which will be recorded in the office of the Clerk of the Circuit Court for the City of Bristol, Virginia prior to the transfer of any lots located therein; and

WHEREAS, the City wishes to transfer to the Industrial Development Authority of Bristol, Virginia (hereinafter "the IDA") Lots 9, 19, and 21 as described on the aforementioned plat; and

WHEREAS, pursuant to §14 .01 of the Charter of the City of Bristol Virginia, the City expressly waives advertisement and other requirements because this is a transfer of property to be used for economic development.

NOW THEREFORE, BE IT ORDAINED by the City Council for the City of Bristol, Virginia that the City shall transfer to the Industrial Development Authority of Bristol Virginia Lot 9 property as will be more particularly described on a survey entitled "The Falls – Phase I" and Lots 19 and 21 property as will be more particularly described on a survey entitled "Plat of Lots 20, 21, 22, 23, and 24 The Falls – Phase II and Public Storm Drainage Easement Lot 6 – Phase I" to be recorded in the office of the Clerk of the

Circuit Court for the City of Bristol, Virginia prior to the transfer of any lots located therein; and

BE IT FURTHER ORDAINED that the City requests the Industrial Development Authority of Bristol Virginia accept the property and transfer it to Falls Development, LLC in accord with the Parties' Development Agreement, at such time as is to be determined at

the discretion of the IDA and Interstate. Prepared by and return to: Randall A. Eads, Attorney at Law 825 Colonial Road SW Abingdon, VA 24210

Consideration = \$ _____
Assessed Value = \$ _____

Grantor and Grantee are expressly exempt from state and local recording fees pursuant to §58.1-811.3 of the 1950 Code of Virginia, as amended.

DEED

THIS DEED executed and delivered as of this _____ day of _____, 2017, by and between the CITY OF BRISTOL, VIRGINIA, a Virginia municipal corporation (hereinafter together referred to as the "Grantor") and the INDUSTRIAL DEVELOPMENT AUTHORITY OF THE CITY OF BRISTOL, a legal authority in the Commonwealth of Virginia (hereinafter referred to as the "Grantee").

WITNESSETH:

WHEREAS, by Ordinance adopted on _____, 2017, by the City Council of the City of Bristol, Virginia, Grantor approved the transfer to Grantee of Lots 9, 19, and 21 as more particularly described on Exhibit A attached hereto (the "Property"); WHEREAS, Grantee approved the acceptance of said transfer by Resolution dated _____. THAT, for and in consideration of the sum of One Dollar and 00/100 (\$1.00), cash in hand paid, and other good and valuable consideration, the receipt of all of which is hereby acknowledged, Grantor does hereby bargain, sell, grant, and convey unto Grantee, with covenants of General Warranty of Title, the Property,

Tax Map Numbers:

Lot 9: 225-4-9

Lot 19: 226-4-19

Lot 21: 226-4-21

THAT this conveyance is made subject to any and all covenants and restrictions appearing of record in the chain of title, and all visible or recorded easements, and the Property is further subject to the following restrictions, reservation of easement and covenants:

The design and construction of any new signage within the Property shall match the architectural theme of the existing signage for The Falls commercial retail development in Bristol, Virginia ("The Falls"). Reference is hereby made to the existing sign structures located within The Falls on tracts of land designated as Lot 8 and Lot 11 on that certain plat titled "The Falls – Phase I Located in the City of Bristol, Virginia – Lee Highway Industrial Development Authority of the City of Bristol, VA Lee Highway 300 Lee Street, Bristol, VA 24201" prepared by Maxim Engineering, Inc., certified by William C. Wallace, License Number 2294 on May 22, 2014, consisting of 5 Sheets and recorded in the Office of the Clerk of Circuit Court for the City of Bristol, Virginia, in Plat Book 4, pages 515 through 519 and in Slides 264 through 266, and reference is made to said Plat for a more complete metes and bounds description of said Lot 8 and Lot 11. There is also

reserved and

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hereby established the following perpetual easement for the benefit of Grantor, and its assigns forever: Following the initial installation and construction of a pylon sign within Lot 19 (as described on Exhibit A), Grantor and its assigns, at its sole cost and expense, shall have the right to install, maintain, replace and repair one (1) sign panel on each side of the pylon sign built on Lot 19, in the panel location shown on Exhibit B (the "Lot 19 Sign Panel Easement"). Upon request by Interstate Development Partners, LLC (hereinafter, "Interstate"), Grantor shall transfer and assign the Lot 19 Sign Panel Easement to an owner, occupant or tenant of The Falls, as determined by Interstate, pursuant to a separate written development agreement between Interstate and Grantor. Such transfer of the Lot 19 Sign Panel Easement shall be in writing, shall be perpetual, and shall permit such assignee to further assign or delegate rights to such sign panel area to other successors in title, owners, occupants and/or tenants of The Falls as said assignee(s) may determine. Grantor and its assigns shall, in order to aid and assist Grantor in the full and beneficial use of the Lot 19 Sign Panel Easement herein granted: (1) have the reasonable right of access within Lot 19 to utilize the Lot 19 Sign Panel Easement; and (2) have the right to clear, keep clear and remove from Lot 19 all trees, vegetation, undergrowth and other obstructions that may interfere with visibility, installation, operation or maintenance of the signage panel installed thereon by the Grantor and its assigns.

First Reading: January 09, 2018

Second Reading: _____

Adoption: _____

EXHIBIT A

Legal Description of Property

LOT 9

All of that piece, parcel or tract of land designated as "Lot 9" containing .04 acres, more or less, on that certain plat title "The Falls – Phase 1 Easements Located in the City of Bristol, Virginia – Lee Highway Industrial Development Authority of the City of Bristol, VA Lee Highway 300 Lee Street, Bristol, VA 24201" prepared by Maxim Engineering, Inc. certified by William C. Wallace, License Number 2294 on May 22, 2014, consisting of 5 sheets and recorded in the Office of the Circuit County for the City of Bristol, Virginia in Plat Book 4, pages 517 through 519 and in Slides 264 through 266, and reference is made to said Plat for a more specific metes and bounds description of said Lot.

LOT 19

All of that piece, parcel or tract of land designated as "Lot 19" containing 0.028 acres, more or less, on that certain subdivision plat of record in the office of the Clerk of the Circuit Court for the City of Bristol, Virginia in Plat Book 4, Page 548, Slide 204 and more particularly shown on a survey entitled "Plat of Lots 13-A, 18 and 19 The Falls – Phase II" prepared by Charles C. Brewster, LS No. 2407, dated January 6, 2017, and reference is made to said Plat for a more specific metes and bounds description of said Lot.

LOT 21

All of that piece, parcel or tract of land designated as "Lot 21" containing .033 acres, more or less, on that certain subdivision plat of record in the office of the Clerk of the Circuit Court for the City of Bristol, Virginia in Plat Book 4, Page 550-552, Slide 285 and more particularly shown on a survey entitled "Plat of Lots 20, 21, 22, 23 and 24 The Falls – Phase II and public Storm Drainage Easement Lot 6 – Phase I" prepared by Charles C. Brewster, LS No. 2407, dated May 16, 2017, and reference is made to said Plat for a more specific metes and bounds description of said Lot.

Mayor Mumpower entertained a motion to adopt an Ordinance to amend the zoning map from General Industrial-Conditional (M-2C) to Moderate-Density Residential (R-3) for property described as Map Parcel #297-2-2 located on Gordon Avenue and Island Road.

Council Member Hubbard made the motion to adopt an Ordinance to amend the zoning map from General Industrial-Conditional (M-2C) to Moderate-Density Residential (R-3) for property described as Map Parcel #297-2-2 located on Gordon Avenue and Island Road. Motion was seconded by Vice Mayor Wingard and carried by the following votes:

AYES: Fleenor, Hartley, Hubbard, Wingard, and Mumpower

6. Consider a Resolution Requesting the Virginia Department of Transportation Add Certain Streets or Segments to the City's Urban Highway System and to Revise Streets Currently in the City's Urban Highway System for Municipality Maintenance Payments

Interim City Manager, Randall Eads, reported

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BRISTOL, VIRGINIA REQUESTING THE VIRGINIA DEPARTMENT OF TRANSPORTATION ADD CERTAIN STREETS OR SEGMENTS TO THE CITY'S URBAN HIGHWAY SYSTEM AND TO REVISE STREETS CURRENTLY IN THE CITY'S URBAN HIGHWAY SYSTEM FOR MUNICIPALITY MAINTENANCE PAYMENTS

WHEREAS, §33.2-319 of the Code of Virginia, as amended, authorizes payments to cities and towns for maintenance of certain highways; and

WHEREAS, the Virginia Department of Transportation has established procedures for the addition of certain streets for the purpose of maintenance payments; and

WHEREAS, the City of Bristol has accepted 3.20 moving lane miles of new streets or street segments identified on the attached Form U-1 into the City system of highways for the purpose of maintenance.

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WHEREAS, the City of Bristol has performed an audit of the street(s) currently in the City's urban highway system for municipality maintenance payments, and has identified data and /or mileage revisions that need to be made to existing streets in the urban highway system of the City of Bristol, as indicated on the attached Form U-1; and

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Bristol, Virginia meeting in regular session this 9th day of January, 2017, petitions the Virginia Department of Transportation to add those new streets identified on the attached Form U-1 to the urban highway system and to revise data and /or mileage for those streets in the existing streets urban highway system for the City of Bristol, as identified on the attached Form U-1.

This 9th day of January, 2018

7. Consider a Resolution Authorizing the Issuance and Sale of Taxable General Obligation Refunding Bonds

8. Consider Economic Development Incentive Awards for American Merchant, Inc.

COMMONWEALTH'S DEVELOPMENT OPPORTUNITY FUND

PERFORMANCE AGREEMENT

This **PERFORMANCE AGREEMENT** made and entered this ____ day of January,

2018, by and among the **CITY OF BRISTOL, VIRGINIA** (the “Locality”) a municipal corporation and political subdivision of the Commonwealth of Virginia (the “Commonwealth”), **MERCHANT HOUSE INTERNATIONAL LIMITED**, an Australian corporation, **PACIFIC BRIDGES ENTERPRISES, INC.**, a Delaware corporation, and **AMERICAN MERCHANT INC.**, a Virginia corporation authorized to transact business in the Commonwealth, (together, jointly and severally, the “Company”), the **INDUSTRIAL DEVELOPMENT AUTHORITY OF THE CITY OF BRISTOL, VIRGINIA** (the “Authority”), a political subdivision of the Commonwealth.

WITNESSETH:

WHEREAS, the Locality has been awarded a grant of and expects to receive \$300,000 from the Commonwealth’s Development Opportunity Fund (a “COF Grant”) through the Virginia Economic Development Partnership Authority (“VEDP”) for the purpose of inducing the Company to purchase and improve a building and equip and operate a manufacturing facility in the Locality (the “Facility”), thereby making a significant Capital Investment and creating and Maintaining a significant number of New Jobs, as such capitalized terms are hereinafter defined;

WHEREAS, the Locality is willing to provide the funds to the Authority with the expectation that the Authority will provide the funds to or for the use of the Company, provided that the Company promises to meet certain criteria relating to Capital Investment and New Jobs;

WHEREAS, the Locality, the Authority and the Company desire to set forth their understanding and agreement as to the payout of the COF Grant, the use of the COF Grant proceeds, the obligations of the Company regarding Capital Investment and New Jobs, and the repayment by the Company of all or part of the COF Grant under certain circumstances;

WHEREAS, the purchase, improvement, equipping and operation of the Facility will entail a capital expenditure by or on behalf of the Company of approximately \$19,908,100, of which approximately \$15,000,000 will be invested in machinery and tools, approximately \$1,900,000 will be invested in the purchase of an existing building, and approximately \$3,008,100 will be invested in the up-fit of the building;

WHEREAS, the purchase, improvement, equipping and operation of the Facility will further entail the creation and Maintenance of 405 New Jobs at the Facility; and

WHEREAS, the stimulation of the additional tax revenue and economic activity to be generated by the Capital Investment and New Jobs constitutes a valid public purpose for the

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expenditure of public funds and is the animating purpose for the COF Grant:

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

Section 1. Definitions.

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

“Capital Investment” means a capital expenditure by or on behalf of the Company in taxable real property, taxable tangible personal property, or both, at the Facility. The purchase or lease of furniture, fixtures and equipment, including under an operating lease, and expected building up-fit by or on behalf of the Company will qualify as Capital Investment.

“Maintain” means that the New Jobs will continue without interruption from the date of creation through the Performance Date. Positions for the New Jobs will be treated as Maintained during periods in which such positions are not filled due to (i) temporary reductions in the Company’s employment levels (so long as there is active recruitment for open positions), (ii) strikes, and (iii) other temporary work stoppages.

“New Job” means new permanent full-time employment of an indefinite duration at the Facility for which the standard fringe benefits are provided by the Company for the employee, and for which the Company pays an average annual wage of at least \$32,664. Each New Job must require a minimum of either (i) 35 hours of an employee’s time per week for the entire normal year of the Company’s operations, which “normal year” must consist of at least 48 weeks, or (ii) 1,680 hours per year. Seasonal or temporary positions, positions created when a job

function is shifted from an existing location in the Commonwealth, and positions with construction contractors, vendors, suppliers and similar multiplier or spin-off jobs shall not qualify as New Jobs.

“Performance Date” means March 31, 2023. The Performance Date will not be subject to extension.

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“Targets” means the Company’s obligations to make Capital Investments at the Facility of at least \$19,908,100 and to create and Maintain at least 405 New Jobs at the Facility, all as of the Performance Date.

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

Section 2. Targets; Statutory Criteria.

(a) *Targets:* The Company will purchase, improve, equip and operate the Facility in the Locality, make a Capital Investment of at least \$19,908,100, and create and Maintain at least 405 New Jobs at the Facility, all as of the Performance Date.

(b) *Encouragement to Offer New Jobs to Residents of the Commonwealth:* The Locality and the Authority hereby strongly encourage the Company to ensure that at least 30% of the New Jobs are offered to “Residents” of the Commonwealth, as defined in Virginia Code Section 58.1-302. In pertinent part, that definition includes natural persons domiciled in Virginia or natural persons who, for an aggregate of more than 183 days of the year, maintained a place of abode within the Commonwealth, whether domiciled in the Commonwealth or not.

(c) *Prevailing Wage; Unemployment and Poverty Rates:* The average annual wage of the New Jobs of at least \$32,664, is less than the prevailing average annual wage in the Locality of \$36,583, but is more than 85% of that prevailing average annual wage (\$31,095). The Locality is a high-unemployment locality, with an unemployment rate for 2016, which is the last year for which such data is available, of 5.1% as compared to the 2016 statewide unemployment rate of 4.0%. The Locality is a high-poverty locality, with a poverty rate for 2015, which is the last year for which such data is available, of 19.3% as compared to the 2015 statewide poverty rate of 11.2%.

(d) *Disclosure of Political Contributions:* The Company acknowledges that the name of the Company will be shared by VEDP with the Governor of Virginia, and any campaign committee or political action committee associated with the Governor. The Company acknowledges that within 18 months of the date of this Performance Agreement, the Governor, his campaign committee, and his political action committee will submit to the Virginia Conflict of Interest and Ethics Advisory Council a report listing any contribution, gift, or other item with a value greater than \$100 provided by the Company to the Governor, his campaign committee, or his political action committee, respectively, during the period from the date of the Company’s application for the COF Grant through the one-year period immediately after the date of this Agreement.

Section 3. Disbursement of COF Grant.

(a) *Disbursement of the COF Grant:* By no later than March 1, 2018, the Locality will request the disbursement to it of the COF Grant. If not so requested by the Locality by March 1, 2018, this Agreement will terminate. The Locality and the Company will be entitled to reapply for a COF Grant thereafter, based upon the terms, conditions and availability of funds at that time.

The disbursement of the COF Grant proceeds to the Company will serve as an inducement to the Company to achieve the Targets at the Facility. The COF Grant proceeds shall be retained by the Locality and shall be disbursed in two payments as follows:

First Payment: The Company will provide notice and evidence reasonably satisfactory to the Locality, the Authority, and VEDP that it has received a Certificate of Occupancy for the Facility and created and Maintained at least 103 New Jobs at the Facility. Such evidence will be subject to verification by the Locality and VEDP. Within 30 days of the verification, the Locality will disburse \$150,000 of the COF Grant proceeds to the Authority. Within 30 days of its receipt of such COF Grant proceeds, the Authority will disburse such COF Grant proceeds to the Company.

Second Payment: The Company will provide notice and evidence

reasonably satisfactory to the Locality, the Authority, and VEDP that it has made Capital Investments of at least \$19,908,100 and created and Maintained at least an additional 302 New Jobs (for an aggregate of 405 New Jobs) at the Facility. Such evidence will be subject to verification by the Locality and VEDP. Within 30 days of the verification, the Locality will disburse the remaining \$150,000 of the COF Grant proceeds to the Authority. Within 30 days of its receipt of such COF Grant proceeds, the Authority will disburse such COF Grant proceeds to the Company.

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If any COF Grant proceeds have not been disbursed to the Company within 90 days after the Performance Date, the Locality shall return such proceeds to VEDP for redeposit to the Commonwealth's Development Opportunity Fund.

(b) *Use of the COF Grant Proceeds:* The Company will use the COF Grant proceeds to pay or reimburse for the costs of utility extension or capacity development on and off site; installation, extension, or capacity development of high-speed or broadband Internet access, on or off site; road, rail, or other transportation access costs beyond the funding capability of existing programs; and build-out at the Facility, as permitted by Section 2.2-115(D) of the Virginia Code.

Section 4. Break-Even Point; State and Local Incentives.

(a) *State-Level Incentives:* VEDP has estimated that the Commonwealth will reach its "break-even point" by the Performance Date. The break-even point compares new revenues realized as a result of the Capital Investment and New Jobs at the Facility with the Commonwealth's expenditures on incentives, including but not limited to the COF Grant. With regard to the Facility, the Commonwealth expects to provide incentives in the following amounts:

<u>Category of Incentive:</u>	<u>Total Amount</u>
COF Grant	\$ 300,000
Virginia Jobs Investment Program ("VJIP") (Estimated)	210,400
Tobacco Region Opportunity Fund ("TROF") Grant	590,000
Enterprise Zone Job Creation Grant ("EZJCG") (Estimated)	1,118,000
Enterprise Zone Real Property Investment Grant ("EZRPIG") (Estimated)	100,000

The proceeds of the COF Grant shall be used for the purposes described in Section 3(b). The VJIP grant proceeds shall be used by the Company to pay or reimburse itself for recruitment and training costs. The proceeds of the TROF Grant, the EZJCG and the EZRPIG may be used by the Company for any lawful purpose.

(b) *Locality-Level Incentives:* Based on the Locality's annual average unemployment and poverty rates which are above the statewide annual average rates, the Governor has waived \$32,526 of the \$300,000 COF Grant local match requirement. The Locality expects to provide the following incentives, as matching grants or otherwise, for the Facility:

<u>Category of Incentive:</u>	<u>Total Amount</u>
Local Enterprise Zone Program Rehabilitated Real Estate Tax Exemption ("Local Real Estate Tax Exemption") (Estimated)	\$117,474

In addition to providing the Local Real Estate Tax Exemption, the Authority has elected to allocate \$150,000 from the TROF Grant toward the remainder of the Authority's local match for the COF Grant.

If, by the Performance Date, the value of the Local Real Estate Tax Exemption and the proceeds of the TROF Grant disbursed or committed to be disbursed by the Locality to the Company total less than the \$267,474 COF Grant local match requirement, the Locality, subject to appropriation, will make an additional grant to the Company of the difference at the Performance Date, so long as the Company has met its Targets.

The value of the Local Real Estate Tax Exemption shall reflect cost savings to the Company. The proceeds of the TROF Grant may be used by the Company for any lawful purpose.

(c) *Other Incentives:* This Agreement relates solely to the COF Grant. The qualification for, and payment of all State-Level Incentives and Locality-Level Incentives, except for the COF Grant, will be governed by separate arrangements between the Company and the entities offering the other incentives.

Section 5. Repayment Obligation.

(a) *If Statutory Minimum Eligibility Requirements are Not Met:* Section 2.2-115 of the Virginia Code requires that the Company make a Capital Investment of at least \$1,500,000 in the Facility and create and Maintain at least 15 New Jobs at the Facility in order to be eligible for the COF Grant. Failure by the Company to meet either of these statutory minimum eligibility requirements by the Performance Date shall constitute a breach of this Agreement and the Company must repay to the Authority all of the COF Grant proceeds previously disbursed to the Company. In such event, the Locality will repay to VEDP all of the COF Grant proceeds not previously disbursed to the Company.

(b) *Allocation of COF Proceeds:* For purposes of repayment under subsection (c), the COF Grant is to be allocated as 50% (\$150,000) for the Company's Capital Investment Target, and 50% (\$150,000) for the Company's New Jobs Target.

(c) *If Statutory Minimum Eligibility Requirements are Met:* The provisions of this subsection (c) shall become applicable only if the Company has met the statutory minimum eligibility requirements set forth in subsection (a). If the Company has met at least 90% of both of the Targets at the Performance Date, then and thereafter the Company is no longer obligated to repay any portion the COF Grant. If the Company has not met at least 90% of either or both of its Targets as the Performance Date, the Company shall repay to the Authority that part of the COF Grant previously disbursed to the Company that is proportional to the Target or Targets for which there is a shortfall. For example, if as of the Performance Date, the Company has received all of the COF Grant proceeds, but the Capital Investment is only \$14,931,075 (reflecting achievement of 75% of the Capital Investment Target) and only 304 New Jobs have been created and Maintained (reflecting achievement of 75% of the New Jobs Target), the Company shall repay to the Authority 25% of the moneys allocated to the Capital Investment Target (\$37,500) and 25% of the moneys allocated to the New Jobs Target (\$37,500). In such event, the Locality will repay to VEDP all of the COF Grant proceeds not previously disbursed to the Company.

(d) *Determination of Inability to Comply:* If the Locality or VEDP shall determine at any time prior to the Performance Date (a "Determination Date") that the Company is unable or unwilling to meet and Maintain its Targets by and through the Performance Date, and if the Locality, the Authority or VEDP shall have promptly notified the Company of such determination, the Company must repay to the Authority all of the COF Grant proceeds previously disbursed to the Company. In such event, the Locality will repay to VEDP all of the COF Grant proceeds not previously disbursed to the Company. Such a determination will be based on such circumstances as a filing by or on behalf of the Company under Chapter 7 of the U.S. Bankruptcy Code, the liquidation of the Company, an abandonment of the Facility by the Company or other similar significant event that demonstrates that the Company will be unable or is unwilling to satisfy the Targets for the COF Grant.

(e) *Repayment Dates:* ***Such repayment shall be due from the Company to the Authority within ninety days of the Performance Date or the Determination Date, as applicable.*** Any moneys repaid by the Company to the Authority hereunder shall be repaid by the Authority to the Locality and shall be repaid by the Locality promptly to VEDP for redeposit into the Commonwealth's Development Opportunity Fund. The Locality and the Authority shall use their best efforts to recover such funds, including legal action for breach of this Agreement. Neither the Locality nor the Authority shall have any responsibility for the repayment of any sums payable by the Company hereunder unless said sums have been received by the Authority from the Company.

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Section 6. Company Reporting.

(a) *Progress Reporting:* The Company shall provide, at the Company's expense, detailed verification reasonably satisfactory to the Locality, the Authority and VEDP of the Company's progress on the Targets. **Such progress reports will be provided annually, starting at March 31, 2019 and covering the period through the prior December 31.** Further, the Company shall provide such progress reports at such other times as the Locality, the

Authority or VEDP may reasonably require. A final progress report will be due by June 30, 2023 covering the period through the March 31, 2023 Performance Date. Although not required, the report may be in the form attached hereto as Exhibit A.

With each such progress report, the Company shall report to VEDP the amount paid by the Company in the prior calendar year in Virginia corporate income tax or related pass-through taxes paid by its members. VEDP has represented to the Company that it considers such information to be confidential proprietary information that is exempt from public disclosure under the Virginia Freedom of Information Act and that such information will be used by VEDP solely in calculating aggregate return on invested capital analyses for purposes of gauging the overall effectiveness of economic development incentives.

(b) *Verification of Capital Investment:* The Company hereby authorizes the Locality, including the Locality's Commissioner of the Revenue and Treasurer, to release to VEDP the Company's real estate tax, business personal property tax and machinery and tools tax information. Such information shall be marked and considered confidential and proprietary and shall be used by VEDP solely for verifying satisfaction of the Capital Investment Target. If the Locality, the Office of the Commissioner of the Revenue or the Office of the Treasurer should require additional documentation or consents from the Company to access such information, the Company shall promptly provide, at the Company's expense, such additional documentation or consents as the Locality, the Authority or VEDP may request. In accordance with Virginia Code Section 58.1-3122.3, VEDP is entitled to receive the Company's real estate tax, business personal property tax and machinery and tools tax information from the Locality's Commissioner of the Revenue.

In addition to the verification data described above, the Locality, the Authority and VEDP may request such other documentation or audits as may be required to properly verify the Capital Investment.

(c) *Verification of New Jobs and Wages:* If requested by VEDP or the Locality, the Company shall provide to VEDP copies of the Company's quarterly filings with the Virginia Employment Commission covering the period from the date of this Agreement through the Performance Date. In accordance with Virginia Code Section 60.2-114, VEDP is entitled to receive the Company's employment level and wage information from the Virginia Employment Commission.

Should the Company ever have more than one business location in the Commonwealth, the Company agrees that its reports to the Virginia Employment Commission with respect to its employees at the Facility will be reported at the Facility-level and not at the Company-level.

In addition to the verification data described above, the Locality, the Authority and VEDP may request such other documentation or audits as may be required to properly verify the New Jobs.

Section 7. Notices.

Formal notices and communications between the Parties shall be given either by (i) personal service, (ii) delivery by a reputable document delivery service that provides a receipt showing date and time of delivery, (iii) mailing utilizing a certified or first class mail postage prepaid service of the United States Postal Service that provides a receipt showing date and time of delivery, or (iv) delivery by facsimile or electronic mail (email) with transmittal confirmation and confirmation of delivery, addressed as noted below. Notices and communications personally delivered or delivered by document delivery service shall be deemed effective upon receipt. Notices and communications mailed shall be deemed effective on the second business day following deposit in the United States mail. Notices and communications delivered by facsimile or email shall be deemed effective the next business day, not less than 24 hours, following the date of transmittal and confirmation of delivery to the intended recipient. Such written notices and communications shall be addressed to:

if to the Company, to:

with a copy to:

American Merchant Inc.
750 Old Abingdon Highway
Bristol VA 24201
Email: jmb@lorettalee.com.hk
Attention: John Maxwell Bleakie, Jr., President

if to the Locality, to:

with a copy to:

City of Bristol, Virginia
300 Lee Street
Bristol VA 24201
Facsimile: (276) 645-7345
Email: _____
Attention: Randall C. Eads, Interim City Manager

City of Bristol, Virginia
300 Lee Street
Bristol VA 24201
Facsimile: _____
Email: _____
Attention: _____

if to the Authority, to:

with a copy to:

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if to VEDP, to:

with a copy to:

Virginia Economic Development Partnership
One James Center, Suite 900
901 East Cary Street
Post Office Box 798 (zip: 23218-0798)
Richmond, Virginia 23219
Facsimile: 804.545.5611
Email: smoret@yesvirginia.org
Attention: President and CEO

Virginia Economic Development Partnership
One James Center, Suite 900
901 East Cary Street
Post Office Box 798 (zip: 23218-0798)
Richmond, Virginia 23219
Facsimile: 804.545.5611
Email: smcninch@yesvirginia.org
Attention: General Counsel

Section 8. Miscellaneous.

(a) *Entire Agreement; Amendments:* This Agreement constitutes the entire agreement among the parties hereto as to the COF Grant and may not be amended or modified, except in writing, signed by each of the parties hereto and consented to by VEDP. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. The Company may not assign its rights and obligations under this Agreement without the prior written consent of the Locality, the Authority and VEDP.

(b) *Governing Law; Venue:* This Agreement is made, and is intended to be performed, in the Commonwealth and shall be construed and enforced by the laws of the Commonwealth. Jurisdiction and venue for any litigation arising out of or involving this Agreement shall lie in the Circuit Court of the City of Richmond, and such litigation shall be brought only in such court.

(c) *Counterparts:* This Agreement may be executed in one or more counterparts, each of which shall be an original, and all of which together shall be one and the same instrument.

(d) *Severability:* If any provision of this Agreement is determined to be unenforceable, invalid or illegal, then the enforceability, validity and legality of the remaining provisions will not in any way be affected or impaired, and such provision will be deemed to be restated to reflect the original intentions of the parties as nearly as possible in accordance with applicable law.

(e) *Attorney's Fees:* Attorney's fees shall be paid by the party incurring such fees.

[THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

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

CITY OF BRISTOL, VIRGINIA

By _____
Name: _____
Title: _____
Date: _____

**INDUSTRIAL DEVELOPMENT
AUTHORITY OF THE CITY OF
BRISTOL, VIRGINIA**

By _____
Name: _____
Title: _____
Date: _____

**PACIFIC BRIDGE ENTERPRISES,
INC.**

By _____
Name: _____
Title: _____
Date: _____

**MERCHANT HOUSE
INTERNATIONAL LIMITED**

By _____
Name: _____
Title: _____
Date: _____
AMERICAN MERCHANT INC.

By _____
Name: _____
Title: _____
Date: _____

Exhibit A

**ANNUAL PROGRESS REPORT
COMMONWEALTH'S DEVELOPMENT OPPORTUNITY FUND**

As required by Section 6 of the Commonwealth's Development Opportunity Fund (COF) performance agreement, companies are required to report annually towards their progress in meeting the outlined COF targets for capital investment, average annual wage, and job creation.

PROJECT SUMMARY:

Project	American Merchant, Inc.
Location	Bristol
Amount of Grant	\$300,000
Performance Reporting Period	March 31, 20[]
Performance Date	March 31, 2023

PROJECT PERFORMANCE:

Performance Measurement	Target	As of _____	% Complete
New Jobs¹			
Confidence level target will be reached by Performance Date shown above (check one)	High <input type="checkbox"/>	Moderate <input type="checkbox"/>	Low <input type="checkbox"/>
Capital Investment (provide breakdown below) ²			
Confidence level target will be reached by Performance Date shown above (check one)	High <input type="checkbox"/>	Moderate <input type="checkbox"/>	Low <input type="checkbox"/>
Average Annual Wage			N/A
Confidence level target will be reached by Performance Date shown above (check one)	High <input type="checkbox"/>	Moderate <input type="checkbox"/>	Low <input checked="" type="checkbox"/>
Virginia Corporate Income Tax Paid in Prior Calendar Year³	\$		

¹Data will be verified using Virginia Employment Commission records.

²Data will be verified with locality records.

³This confidential information is protected from disclosure pursuant to § 2.2-3705.6 of FOIA.

Capital Investment Breakdown	Amount
Land	\$
Land Improvements	\$
New Construction or Expansion	\$
Renovation	\$
Production Machinery and Tools	\$
Other Furniture, Fixtures and Equipment	\$
Total	\$

COMMENTS:

Discuss project status, including current employment and capital investment, progress on targets, changes or likely changes in project’s nature that may impact achievement of targets, and other information relevant to project performance. If project is not on track to meet targets, please provide an explanation.

TO BE CERTIFIED BY AN OFFICER OF THE COMPANY:

I certify that I have examined this report and to the best of my knowledge and belief, it is true, correct, and complete.

Company: AMERICAN MERCHANT INC.

Submitted By: _____
Signature of Official

Name: _____
Print Name

Title: _____

Date: _____

Send to:

Kim Ellett
Incentives Coordinator
Virginia Economic Development Partnership
804-545-5618

CONSENT AGENDA

- 8.1 Consider Street Closure Request for Martin Luther King Celebration - January 15, 2018.
- 8.2 Consider Purchase Requisitions: Total Amount – \$50,000.00
- 8.3 Consider Approval of Minutes: Called Meeting – December 2, 2017
Called Meeting – December 6, 2017
Regular Meeting – December 12, 2017
Regular Meeting – December 19, 2017
- 8.4 Consider Appropriating \$139,798 to the FY18 Budget per the Items Listed Below:

Police Department

Appropriate a donation to Operating Supplies & Materials

Expenditure	4-001-31010-6014	Operating Supplies & Materials	\$300
Revenue	3-001-18040-0001	Donations & Gifts-Police Dept	\$300

Appropriate the proceeds from the sale of firearms to Other Equipment
 Expenditure 4-001-31010-8101 Other Equipment
 \$82,100

Revenue 3-001-18020-0005 Sale of Equipment
 \$82,100

Fire Department

Appropriate remaining balance of Fire Programs ATL funds

Expenditure 4-001-32030-5850 Fire Programs Fund
 \$48,916

Revenue 3-001-24020-0012 Fire Program Fund-Aid to Locality
 \$48,916

Fire Department

Appropriate donation to Fire Department

Expenditure	4-001-32010-6014	Operating Supplies & Materials	\$5,000
Revenue	3-001-18040-0002	Donations & Gifts-Fire Dept	\$5,000

Hazardous Materials Emergency Department

Appropriate reimbursement to hazardous materials

Expenditure	4-001-35050-6014	Operating Supplies & Materials	\$3,482
Revenue	3-001-24010-0046	Dept of Emergency Management	\$3,482

Vice Mayor Wingard entertained a motion to approve consent agenda items 8.1, 8.2 and 8.3 as presented.

Vice Mayor Wingard made a motion to approve consent agenda items 8.1, 8.2 and 8.3 as presented. Motion was seconded by Council Member Hartley and carried by the following votes:

AYES: Fleenor, Hubbard, Mumpower, Wingard, and Hartley

C. Matters to be Presented by Members of the Public – Non-Agenda Items

D. Adjournment

There being no further business, the meeting was adjourned.

 **

 **

*

 City Clerk

 Mayor

