

December 10, 2013

A called meeting of the Council of the City of Martinsville, Virginia, was held on December 10, 2013, in Council Chambers, Municipal Building, at 9:30 AM, Closed Session beginning at 9:30 AM, with Mayor Kim Adkins presiding. Council Members present included: Mayor Kim Adkins, Vice Mayor Gene Teague, Mark Stroud, Sharon Brooks Hodge and Danny Turner. Staff present included: Leon Towarnicki, City Manager, Brenda Prillaman and Eric Monday.

Mayor Adkins called the meeting to order and advised Council will go into Closed Session. In accordance with Section 2.1-344 (A) of the Code of Virginia (1950, and as amended) and upon a motion by Gene Teague, seconded by Mark Stroud, with the following 5-0 recorded vote: Adkins, aye; Teague, aye; Stroud, aye; Hodge, aye; and Turner, aye, Council convened in Closed Session, for the purpose of discussing the following matters: (A) Discussion of the award of a public contract involving the expenditure of public funds, including interviews of bidders or offerors, and discussion of the terms or scope of such contract, where discussion in an open session would adversely affect the bargaining position or negotiating strategy of the public body as authorized by Subsection 29. (B) Consultation with legal counsel and briefings by staff members, attorneys, or consultants pertaining to actual or probable litigation, or other specific legal matters requiring the provision of legal advice by such counsel, as authorized by Subsection 7.

Council then returned to open session. At the conclusion of Closed Session, each returning member of Council certified that (1) only public business matters exempt from open meeting requirements were discussed in said Closed Session; and (2) only those business matters identified in the motion convening the Closed Session were heard, discussed, or considered during Session. On a motion by Mark Stroud, seconded by Sharon Brooks Hodge with the following recorded 5-0 vote: Adkins, aye; Teague, aye; Stroud, aye; Hodge, aye and Turner, aye, Council returned to Open Session.

Action taken: On a motion by Gene Teague, seconded by Danny Turner, with a 5-0 vote, Council agreed to authorize the City Manager to execute the performance agreement with Solid Stone Fabrics:

PERFORMANCE AGREEMENT		
<p>This Performance Agreement (the "Agreement") is made and entered into this <u>27<sup>th</sup></u> day of <u>November</u>, 2013, by and among the <u>Virginia Tobacco Indemnification and Community Revitalization Commission</u> (the "Commission"), a political subdivision of the Commonwealth, the <u>City of Martinsville, Virginia</u> (the "Grantee"), a political subdivision of the Commonwealth, and <u>Solid Stone Fabrics</u> (the "Company"), a Virginia "C" corporation whose Federal Employer Identification Number is <u>20-0169769</u>.</p> <p>WITNESSETH:</p> <p>WHEREAS the Grantee has been selected to receive a grant in the amount of \$ <u>1,000,000</u> (the "Grant") from the Commission for its use in inducing the Company to construct or locate taxable assets and employ persons in the <u>City of Martinsville</u> (the "Locality");</p> <p>WHEREAS the Grantee has indicated its desire to tender the Grant to the Company for its use and benefit, provided that the Company commits to the achievement of certain goals relating to employment and the construction or location of taxable assets in compliance with the terms hereof;</p> <p>WHEREAS the Commission, the Grantee and the Company desire to set forth their understanding and agreement as to the use of the Grant, the obligations of each party hereto, the conditions under which the Grant must be repaid, and the obligations of each party hereto in the event of default;</p> <p>WHEREAS the Commission finds that the Grant serves a valid public purpose and is consistent with the Commission's mission as outlined in Section 3.2-3100, et. seq. of the Code of Virginia.</p> <p>NOW, THEREFORE, in consideration of the foregoing, the mutual benefits and promises of the parties to this Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby covenant and agree as follows:</p> <p><b>Section 1. Disbursement of the Grant</b></p> <p>The deadline for this Agreement to be executed by all parties hereto is 90 days after the date first written above. If this Agreement has not been executed by all parties hereto on or before that date, Grantee's right to the Grant shall automatically terminate. The Commission shall disburse the Grant to the Grantee within 30 days of the Commission's receipt of (i) this Agreement, executed by all parties hereto, and (ii) a written request for disbursement from the Grantee, PROVIDED that the Grantee is not in default on its obligations to the Commission as of the date first written above. In the event that the Grantee is in default on its obligations to the Commission as of the date first written above, disbursement of the Grant shall be withheld until such default is cured.</p>	<p>If disbursement to the Grantee has not occurred within one hundred twenty (120) days from the date of this Agreement, the Grant shall be automatically rescinded. Unless otherwise agreed in writing by the parties hereto, Grantee shall disburse the Grant to the Company, or for the Company's benefit, within 30 days of receipt of the Grant from the Commission or return the money to the Commission.</p> <p><b>Section 2. Use of the Grant</b></p> <p>Under this Agreement, the Commission places no restriction on the use of the Grant proceeds by the Company. Should there be any such restrictions imposed by the Grantee, the same shall be described in Exhibit A, which shall be attached hereto and made a part hereof, but which shall be binding upon the Company only if signed thereon by an authorized Company representative, and not by reference herein. The Grantee shall be responsible for enforcement of any restrictions described in said Exhibit A.</p> <p><b>Section 3. Employment Obligation</b></p> <p>The Company shall employ* at least <u>16</u> persons in the Locality with a quarterly aggregate payroll of at least \$ <u>116,480</u>. Said employment and payroll will be in addition to those already employed in the Locality by the Company and paid during the calendar quarter ending on <u>September 30, 2013</u>, hereinafter called the "Base Quarter." Persons employed by the Company in the Locality shall be counted as employment hereunder only to the extent that they (a) exceed the aggregate number of employees at all Company locations within the Commonwealth of Virginia during the Base Quarter, and (b) are not counted as fulfillment of any other employment obligation made to the Commission by the Company under any other agreement.</p> <p>* for purposes of this Agreement the number of persons "employed" means the number of persons who received pay in any given quarter and is calculated by adding together the number of persons who received pay in each month of the quarter and dividing that sum by three (3).</p> <p><b>Section 4. Obligations Regarding Taxable Assets</b></p> <p>The Company shall locate or construct taxable assets in the Locality having an assessed value of at least \$ <u>1,000,000</u>, as determined by the locality's Commissioner of Revenue ("COR"). If the locality elects to arrange for reimbursement to the Company of all, or any portion of, the tax paid by Company for said taxable assets, or elects to waive all or any portion of such tax liability, Company's aforementioned obligation to locate or construct taxable assets in the Locality shall not be waived or reduced. Company shall receive credit for the value of all taxable assets so determined by the COR, notwithstanding the local taxing authority's election to waive or refund the taxes so levied. Said taxable assets will be in addition to those counted in fulfillment of any other taxable asset or capital investment obligation made to the Commission by the Company under any other agreement. If the Company is exempt from the payment of property taxes on certain assets by state law, the Company shall not be entitled to receive or keep any portion of the Grant allocated to its investment in those certain assets.</p>	<p><b>Section 5. Determination of Performance - Employment</b></p> <p>To earn the Grant, the Company must meet its employment obligations hereunder not later than thirty six (36) months after the end of the Base Quarter. The Company's employment obligations will be deemed to have been fully met when it can document any three (3) consecutive calendar quarters after the Base Quarter in which:</p> <ul style="list-style-type: none"><li>(i) the average number of employees who received pay from the Company during each of those three (3) consecutive quarters* exceeds the average number of employees who received pay in the Base Quarter by at least the number promised in Section 3 above, AND</li><li>(ii) the total wages paid by the Company to employees in each of those three quarters exceed the wages paid by the Company to employees in the Base Quarter by at least the amount promised in Section 3 above, AND</li><li>(iii) all such employees worked in the Locality, AND</li><li>(iv) all Company employees in Virginia have been reported to the Virginia Employment Commission ("VEC") in accordance with VEC regulations. Company's failure to satisfy such requirements shall be a breach hereof, and shall constitute a default hereunder by Company. Employment gains by the Company in the Locality that are offset by employment losses elsewhere in Virginia shall not be counted as employment hereunder.</li></ul> <p>The foregoing shall be based upon reports made by, or on behalf of, the Company to the VEC including but not limited to VEC Form FC-20 Employer's Quarterly Tax Report and O.M.B. Form No 1220-0134 Multiple Worksite Report - BLS 3020 (or any successor forms designated by VEC, or accepted by VEC in lieu thereof). If such tax filings include Company employees who did not work in the Locality, it shall be the duty of the Company to provide additional information sufficient to identify those employees who did work in the Locality. Employees of subsidiary companies, related entities, entities under common ownership or control, or employees of independent contractors hired by the Company shall not be counted as employees of the Company in fulfillment of its promise hereunder UNLESS such entities and their relationship to the Company are disclosed to and approved by the Commission in writing, AND such entities supply the Commission with the same employment documentation as described herein. Employees of temporary employment agencies ("temp") who are assigned to work for the Company in the Locality shall not be counted UNLESS evidenced by letter from the temp agency setting forth the number of man-hours so assigned within the 36 months immediately following the Base Quarter. Such man hours shall be credited to the Company's job-creation obligation at the rate of one job for one quarter for every 520 man hours evidenced by the letter.</p> <p>* the number of persons who received pay in any given quarter is calculated by adding together the number of persons who received pay in each month of the quarter and dividing that sum by three (3).</p> <p><b>Section 6. Intentionally Blank</b></p>

**Section 7. Determination of Performance – Taxable Assets**

For purposes of this Agreement, the calendar year that includes the Base Quarter shall be called the "Base Year." The Company agrees to meet its taxable asset obligations hereunder not later than thirty-six (36) months thereafter and agrees that all such assets will be owned or leased by the Company, located in the Locality, subject to taxation, and of record with the COR, all during the aforementioned 36-month period. Company assets located or constructed in the Locality prior to or during the Base Year will not be counted in fulfillment of the Company's taxable asset obligation.

The Company's achievement toward meeting its taxable asset obligation shall be based on asset values assessed by the COR for the Locality and shall be the sum of the following:

- the highest real property assessed value of record for any one of the three years following the Base Year, less and except the assessed value for the Base Year, plus
- the first personal property assessed value for each asset first appearing of record in the Company name during the three calendar years following the Base Year.

The Commission shall rely upon the information described above as the same is reported to the Commission by the COR in writing, without exception.

For purposes of this Agreement, leased assets are defined as those for which the Company is contractually obligated to pay the property taxes thereon during the term of the lease, and evidence of the Company's obligation to pay such property taxes is presented to the Commission.

The Company hereby expressly grants its consent for (a) the COR for the Locality to release to the Tobacco Commission or the Grantee records necessary to disclose the information required in Section 7 hereof, and (b) the Virginia Employment Commission to release to the Tobacco Commission all Company employment records of any kind held by the Virginia Employment Commission.

Taxable assets owned by subsidiary companies, related entities, entities under common ownership or control, shall not be counted as taxable assets of the Company in fulfillment of its promise hereunder UNLESS such entities and their relationship to the Company are disclosed to and approved by the Commission in writing, AND such entities supply the Commission with the same taxable assets documentation as described in this Section.

**Section 8. Repayment Obligation**

In the event that the Company does not meet its obligations hereunder within thirty six (36) months after the end of the Base Quarter, it shall repay to the Grantee the unearned portion of the Grant, which is calculated as follows:

- A minimum increase in taxable assets is required before any portion of the Grant is earned by the Company, hereinafter called the Minimum Investment Requirement. The Minimum Investment Requirement is the greater of (a) \$1.0 million or (b) one-half of the taxable asset obligation described in Section 4 hereof.

- For purposes of repayment, fifty percent (50%) of the Grant is allocated for the Company's taxable assets obligation and fifty percent (50%) for its employment obligation.
- Subject to the terms of Section 8.d. below, after exceeding the Minimum Investment Requirement, the fraction of the Grant allocated to employment that is earned by the Company is determined by dividing the average number of employees receiving pay during the three consecutive quarters as determined in Section 5 above with the highest employee count by the number of jobs remained in Section 3.
- The method of computation set forth in Paragraph 8.c. above will be used only if the quarterly aggregate payroll for the three consecutive quarters described in Section 5 equals or exceeds that promised in Section 3. If that quarterly aggregate payroll is less than that promised in Section 3, the number of qualifying employees shall be reduced in proportion to the shortfall in quarterly aggregate payroll and the reduced number of employees shall be used to determine whether Company has satisfied its employment obligation hereunder.
- After exceeding the Minimum Investment Requirement, the fraction of the Grant allocated to taxable assets that is earned by the Company is determined by dividing the greatest value of assets attained to by the COR under Section 7 above by the taxable assets promised in Section 4 above.
- All unearned portions of the Grant shall be repaid by the Company to the Grantee not later than thirty days after the date on which the Company is notified of the unearned amount. The Grantee agrees to remit the same to the Commission. Any refund owed by the Company to the Grantee hereunder shall immediately constitute an obligation of the Grantee to repay the Commission and such Grantee's obligation shall not be contingent upon successful collection of any amount from the Company. **The Grantee shall be liable for repayment to the Commission that portion of the Grant determined by the Commission to be due under the terms of this Section and hereby agrees to make such repayment without regard to whether Grantee has received repayment from the Company.**
- Interest shall accrue on unpaid balances at the rate of 3% per annum beginning on the 31<sup>st</sup> day after the Company is notified of the amount due.
- Monies due to the Locality pursuant to this agreement, if any, shall be considered to be owed to the Treasurer for the Locality and subject to the Treasurer's statutory powers provided for in the Code of Virginia.
- If the Company does not meet its employment obligations or taxable asset obligations hereunder by the date which is 36 months after the end of the Base Quarter because of an "Event of Force Majeure" (as defined herein), the date by which a requirement to meet such commitments shall be extended day-for-day for a period equal to the time elapsed during the Event of Force Majeure. "Event of Force Majeure" means without limitation any of the following: acts of God; strikes, lockouts or other industrial disturbances; acts of public enemies; orders or any kind of the government of the United States of America or of the Commonwealth of Virginia or any of their respective departments, agencies, political subdivisions or officials, or any civil or military authority; insurrections; riots; epidemics; landslides; lightning; earthquakes; fires; hurricanes; tornadoes; storms; floods; washouts; draughts; arrests; restraint of government and people; civil disturbances; explosions; breakage or accident to machinery, transmission pipes or canals not caused by the

Company; partial or entire failure of utilities; or any other cause or event not reasonably within the control of the Company.

**Section 9. Events of Default**

If any of the following should occur within the thirty six (36) month period after the end of the Base Quarter, it shall constitute an event of default and the Commission may, at its election, accelerate the Company's obligation to repay the portion of the Grant that has not been earned as of the date of the event of default:

- The Company applies for or consents to the appointment of a receiver, trustee or liquidator of all or a substantial part of its assets, files a voluntary petition of bankruptcy, makes a general assignment for the benefit of creditors, files a petition or an answer seeking reorganization or arrangement with creditors, or if an order, judgment or decree shall be entered by any court of competent jurisdiction, on the application of a creditor, adjudicating the Company as bankrupt or insolvent or approving a petition seeking reorganization of the Company or appointing a receiver, trustee or liquidator of the Company or of all or a substantial part of its assets which remains undismissed, undischarged or unstayed for a period of forty-five (45) days.
- The Company ceases to be of record and in good standing with the Virginia State Corporation Commission, and such failure is not cured within 60 days from notice thereof, unless Company obligations hereunder have been assumed by another entity and that assumption approved by the Commission and the Grantee.
- The Company fails, for reasons other than an Event of Force Majeure, to fulfill at least twenty five percent (25%) of either its employment obligation described in Section 3 above or its taxable asset obligation described in Section 4 above within eighteen (18) months after the end of the Base Quarter.
- Failure to provide verification to the Commission as described in Section 10, below, within 60 days from a written request from the Commission.
- The Company closes its business in the Locality for a period of more than 30 days.

**Section 10. Verification of Performance**

If the Commission is unable to verify the Company's progress towards meeting its taxable asset and employment obligations herein using the information available pursuant to Sections 5 and 6, the Company shall provide, at the Company's expense, detailed verification to the Commission and the Grantee, of the Company's progress toward meeting its taxable asset and employment obligations. Such verification shall be limited to the Company's payroll tax filings and property tax filings, together with such other supporting documentation about the payroll and property tax filings as the Commission may request, but any such request shall be no more often than annually.

If any of the taxable assets described in Section 4 have been made on behalf of the Company by a lessor, the Company shall be responsible for gathering and reporting to the Commission information regarding the taxable assets made by the lessor on behalf of the Company.

**Section 11. Acknowledgment and Notice**

The Company and the Grantee each acknowledge and agree to its respective repayment obligation in accordance with Section 7 of this Agreement. 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 prepaid or by overnight courier (refusal shall mean return of certified mail, undelivered) and addressed as follows:

if to the Company, to:

NAME: Solid Stone Fabrics  
 ADDRESS: 26 FRYETTE ST.  
 MARTINSVILLE, VA 24112  
 Attention: David Stone, President & CEO

if to the Grantee, to:

NAME: City of Martinsville  
 ADDRESS: P.O. Drawer 1112  
 Martinsville, VA 24114  
 Attention: Leon Towarnicki, City Manager

if to the Commission, to:

NAME: Tobacco Indemnification and Community Revitalization Commission  
 ADDRESS: 701 East Franklin Street, Suite 501  
 Richmond, Virginia 23219  
 Attention: Tim Pfobl, Interim Executive Director

This Agreement constitutes the entire agreement between the parties hereto and 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 or obligations under this Agreement without the prior written consent of the Grantee and the Commission; provided that the Company shall have the right, without the consent of the Grantee or the Commission, to assign its rights (not its obligations) under this Agreement to any entity that controls, is controlled by, or is under common control with, the Company.

This Agreement is made, and intended to be performed, in the Commonwealth and shall be construed and enforced by the laws of that state. Jurisdiction and venue for any litigation arising out of or involving this Agreement shall lie in the Circuit Court located nearest to the Locality and such litigation shall be brought only in such court.

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. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. If any provision of this Agreement is determined to be unenforceable, then the remaining provisions of this Agreement shall, in the sole discretion of the Commission, be voidable by the Commission or interpreted as if such unenforceable provisions were not included therein.

The Company hereby warrants that from the date of this agreement until all obligations hereunder have been satisfied that it is, and will remain, registered and in good standing with the Virginia State Corporation Commission and that the Company is, and will remain, legally authorized to conduct business in the Commonwealth of Virginia.

The provisions of this Agreement are intended to and shall survive closing, the delivery of any deed or other instrument, and any other event.

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

TOBACCO INDEMNIFICATION AND  
 COMMUNITY REVITALIZATION  
 COMMISSION  
 By: [Signature]  
 Title: Executive Director  
 Date: 12/8/14

CITY OF MARTINSVILLE  
 By: [Signature]  
 Title: City Manager  
 Date: 1/3/14

SOLID STONE FABRICS  
 By: [Signature]  
 Title: PRESIDENT/CEO  
 Date: 1/3/14

There being no further business, the Council meeting adjourned at 10:00 AM for a press conference regarding the Solid Stone Fabrics expansion.

Brenda Prillaman  
 Clerk of Council

Kim Adkins  
 Mayor