

April 28, 2010

A special called meeting of the Council of the City of Martinsville, Virginia, was held on April 28, 2010, in Council Chambers, Municipal Building, at 11:30 AM, with Mayor Kathy Lawson presiding. Council Members present included: Mayor Kathy Lawson, Vice Mayor Kimble Reynolds, Gene Teague, Mark Stroud, Sr., and Danny Turner. Staff present included: Clarence Monday, City Manager, Leon Towarnicki, Brenda Prillaman, Eric Monday, and numerous other city employees, legislators and citizens.

Mayor Lawson welcomed everyone to the meeting and stated Council would be going 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 Kimble Reynolds, seconded by Gene Teague, with the following 5-0 recorded vote: Mrs. Lawson, aye; Mr. Reynolds, aye; Mr. Stroud, aye; Mr. Teague, aye; and Mr. Turner, aye, Council convened in Closed Session, for the purpose of discussing the following matter: (A) A prospective business or industry or the expansion of an existing business or industry where no previous announcement has been made of the business' or industry's interest in locating or expanding its facilities in the community as authorized by Subsection 5.

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 said Session. On a motion by Kimble Reynolds, seconded by Gene Teague, with the following 5-0 recorded vote: Mrs. Lawson, aye; Mr. Reynolds, aye; Mr. Stroud, aye; Mr. Teague, aye; and Mr. Turner, aye, Council returned to Open Session. Upon returning to open session, a motion was made by Danny Turner, seconded by Gene Teague, with a 5-0 vote, to authorize the City Manager to execute the following Performance Agreement with the City of Martinsville, Faneuil, Inc. and the Virginia Tobacco Indemnification and Community Revitalization Commission:

PERFORMANCE AGREEMENT

This Performance Agreement (the "Agreement") is made and entered this 21st day of April, 2010, by and between the Virginia Tobacco Indemnification and Community Revitalization Commission (the "Commission"), a political subdivision of the Commonwealth, the City of Martinsville, Virginia (the "Grantee"), a political subdivision of the Commonwealth, and Faneuil, Inc. (the "Company"), a Delaware <corporation, LLC, partnership> whose Federal Employer Identification Number is 04-3253864.

WITNESSETH:

WHEREAS the Grantee has been selected to receive a grant in the amount of \$590,000 (the "Grant") from the Commission for its use in inducing the Company to build or expand a facility and employ persons in the City of Martinsville (the "Locality"); and

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 capital investment as described herein; and

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 liability of each party hereto in the event of default.

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:

Section 1. Disbursement of the Grant

The Commission shall disburse the Grant to the Grantee within 30 days of the Commission's receipt of (i) this Agreement in fully executed form, and (ii) a written request for disbursement from the Grantee, PROVIDED that the Grantee is not in default on its obligations to the Commission. In the event that the Grantee is in default on its obligations to the Commission, disbursement shall be withheld until such default is cured. If disbursement to the Grantee has not occurred within 180 days from the date of this Agreement, the Grant shall be automatically rescinded.

Unless otherwise agreed in writing, the 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.

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Section 2. Use of the Grant

The Company shall use the Grant for either (1) site improvements to real estate located in the Locality or improvements to the building located thereon (e.g. utility extensions, road or rail construction, grading, drainage, paving, demolition, construction, landscaping, parking lot improvement, painting or any other site improvement required to prepare the site for use by the Company in pursuit of the goals stated herein, or (2) acquisition of machinery or equipment for use by the Company in pursuit of the goals stated herein, or (3) education and training expenses incurred by the Company to prepare its employees for the jobs created in fulfillment of this Agreement.

Section 3. Employment Commitment

The Company shall employ at least 250 persons in the Locality with a quarterly payroll of at least \$1,401,650. Said employment and payroll will be in addition to those already employed and paid during the calendar quarter ending on *March 31, 2010*, hereinafter called the "Base Period". Persons employed by the Company at other locations within the Commonwealth of Virginia and moved to the Locality shall not be counted as progress toward this commitment.

Section 4. Capital Investment Commitment

The Company shall make capital investments in the Locality of at least \$2,400,000 in assets subject to local tax levy, notwithstanding the local taxing authority's election to refund the taxes so levied. Said investments will be in addition to those already made as of the end of Base Period.

Section 5. Determination of Performance - Employment

The Company shall meet its employment obligations hereunder not later than 36 months after the end of the Base Period. The Company's employment obligation will be deemed to have been fully met when it can document any three consecutive calendar quarters after the Base Period in which (i) the total wages paid by the Company in each quarter exceed the wages paid by the Company in the Base Period by at least the amount promised in Section 3 above, AND (ii) the number of employees who received pay from the Company during each of those three consecutive quarters* exceeds the number of employees who received pay in the Base Period by at least the number promised in Section 3 above, AND (iii) all such employees worked in the Locality. The foregoing shall be based upon payroll tax filings made by, or on behalf of, the Company to the Virginia Employment Commission (now/formerly made on Form VEC FC-20 or facsimile 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.

** 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.*

Section 6. Determination of Performance - Capital Investment

The Company shall meet its capital investment obligations hereunder not later than 36 months after the end of the Base Period. The Company's capital investment obligation shall be deemed to have been fully met when

(1) the Grantee submits to the Commission a letter from the Commissioner of Revenue for the Locality attesting to:

(a) the highest assessed value of all real property acquired or leased by the Company during the 36 months after the end of the Base Period and owned or leased without interruption until 36 months after the end of the Base Period, notwithstanding the Locality's election to refund taxes levied on such property, and

(b) the original cost of all personal property subject to taxation and acquired or leased by the Company during the 36 months after the end of the Base Period and owned or leased without interruption until 36 months after the end of the Base Period, notwithstanding the Locality's election to refund taxes levied on such property. In the event that the original cost is not known to the Commissioner of Revenue, the assessed value shall be reported in lieu thereof, and

(2) the sum of items 1(a) and (b) above equals or exceeds the amount promised in Section 4.

The Company hereby expressly grants its consent for the Commissioner of Revenue for the Locality to release Company property assessment values to the Grantee and to the Commission for the purposes stated above.

Section 7. Repayment Obligation

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

- a. A minimum capital investment of \$1.0 million is required before any portion of the Grant is earned by the Company, hereinafter called the Minimum Investment Requirement.
- b. For purposes of repayment, fifty percent (50%) of the Grant is allocated for the Company's capital investment commitment and fifty percent (50%) for its employment commitment.

- c. 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 number of employees receiving pay during the three consecutive quarters* with the highest employee count by the number of jobs promised in Section 3 notwithstanding the total wages paid by the employer.
- d. After exceeding the Minimum Investment Requirement, the fraction of the Grant allocated to capital investment that is earned by the Company is determined by dividing the greatest value of assets attested to by the Commissioner of Revenue under Section 6 above by the capital investment promised in Section 4.
- e. 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 obligation shall not be contingent upon successful collection of any amount from the Company. **The Grantee shall be liable for repayment to the Commission of 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.**
- f. Interest shall accrue on unpaid balances at the rate of 3% per annum beginning on the 31st day after the Company is notified of the amount due.

Section 8. Events of Default

If any of the following should occur within the 36-month period after the end of the Base period, a refund of the entire grant is due immediately:

- a. 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.
- b. the number of employees in any calendar quarter is less than 75% of the number of employees at the end of the Base Period.

Section 9. Verification of Performance

The Company shall provide, at the Company's expense, detailed verification satisfactory to the Commission and the Grantee, of the Company's progress toward meeting the capital

investment and employment goals stated herein. Such verification includes, but is not limited to, Company's payroll tax filings, property tax filings, machinery and tools tax filings, and internal documents in support thereof. Such progress reports will be provided at such time(s) as the Commission or the Grantee may require and failure to provide the same shall constitute default under this Agreement and the entire Grant will then become immediately due and payable.

Section 10. 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 not accepted by the addressee) and addressed as follows:

if to the Company, to:

NAME: Faneuil, Inc.
ADDRESS: 2 Eaton Street; Suite 1002
Hampton, Virginia 23669
Attention: Anna Van Buren, President & CEO

if to the Grantee, to:

NAME: City of Martinsville
ADDRESS: P.O. Box 1112
Martinsville, Virginia 24114
Attention: Clarence Monday, 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: Executive Director

This Agreement constitutes the entire agreement between the parties hereto as to the subject matter contained herein and may not be amended or modified, except in writing, signed by each of the parties hereto. 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.

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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 in effect as if such unenforceable provisions were not included therein.

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: _____
Executive Director

Date: _____

CITY OF MARTINSVILLE

By: Clarence C. Monday

Title: City Manager

Date: 4-28-10

FANEUIL, INC.

By: Anna Van Buren

Title: President / CEO

Date: 4/27/10

There being no further business, Mayor Lawson adjourned the meeting at 12:10 PM. Following the Council meeting an official announcement of the new jobs was held in Council Chambers with Lt. Gov. Bill Bolling and company officials.

Clarence C. Monday, Clerk of Council

Kathy C. Lawson, Mayor