

AGENDA

Tuesday, December 11, 2018
4:00 PM

4:00 CALL MEETING TO ORDER (M. Todd Dishner, Chairman)

CLOSED SESSION

Code of Virginia, Section 2.2- **A.1; Personnel Matters**; Discussion, consideration, or interviews of prospective candidates for employment and contracts; **A.5; Industrial/Business Prospects**; discussion concerning a business or industry considering expansion with no previous announcement being made and **A.7 Legal**; discussion with legal counsel and staff pertaining to actual or probable litigation.

5:00 CALL MEETING TO OPEN SESSION

Invocation and Pledge of Allegiance

ADOPTION OF AGENDA

Adopt the agenda and the additional agenda as presented

MINUTES OF PREVIOUS MEETINGS

Request adoption of the November 14th, 2018 meeting minutes

FINANCIAL STATUS

Michael Carter – Inform the Board of the County's financial status

PAYMENT OF INVOICES

Consideration of appropriations and accounts payable as listed on the additional agenda

5:15 CITIZENS TIME

5:30 Mayville Engineering Company Recognition

(Mr. Frank Castanon will be in attendance to receive recognition and provide an update to the Board)

5:45 Tom Burkett, Smyth County Treasurer

6:00 Emily Viers, Robinson, Farmer, Cox Associates-Audit Presentation

NEW BUSINESS

***Speyside Bourbon Agreements-Jeff Campbell**

***Consideration of Resolution for Broadband Services-Michael Carter**

***Committee Recommendations:**

- **Personnel Committee (No recommendations) Todd Dishner, Chair**


***Supervisor Comment Time**

The Smyth County Board of Supervisors held its regular meeting at 4:00 p.m., **Wednesday, November 14, 2018**. The location of the meeting was in the First-Floor Board Room of the County Office Building, 121 Bagley Circle, Suite 100, Marion, Virginia.

PRESENT: Chairman, Park District Supervisor M. Todd Dishner; Vice Chairman, Rye Valley District Supervisor Rick K Blevins; Saltville District Supervisor Roscoe D Call; North Fork District Supervisor Phil Stevenson; Chilhowie District Supervisor R. Curtis Rhea; Atkins District Supervisor Charles Atkins; Royal Oak District Supervisor Judy Wyant (7)

ABSENT: None.

STAFF: County Administrator Michael Carter; Assistant County Administrator Scott Simpson; County Attorney Jeff Campbell; Administrative Assistant Kelly Woods (4)

 11/14/2018 4:09 PM Chairman, Park District Supervisor M. Todd Dishner called the meeting to order. A motion was made by Rye Valley District Supervisor Rick K. Blevins to enter into closed session under Code of Virginia, Section 2.2-3711 –**A.5; Industrial/Business Prospects**; discussion concerning a business or industry considering expansion with no previous announcement being made, **A.7 Legal**; discussion with legal counsel and staff pertaining to actual or probable litigation. Chilhowie District Supervisor R. Curtis Rhea seconded the motion.

After consideration, the motion PASSED by the following vote:

AYES: Chairman, Park District Supervisor M. Todd Dishner,
Vice Chairman, Rye Valley District Supervisor Rick K. Blevins
Saltville District Supervisor Roscoe D. Call,
North Fork District Supervisor Phil Stevenson,
Atkins District Supervisor Charles Atkins,
Chilhowie District Supervisor R. Curtis Rhea and
Royal Oak District Supervisor Judy Wyant.

NAYS: None.

ABSTAINERS: None.

ABSENT: None.

 11/14/2018 5:03 PM Chairman, Park District Supervisor M. Todd Dishner called the meeting back to order from Closed session.

PRESENT: Chairman, Park District Supervisor M. Todd Dishner; Vice Chairman, Rye Valley District Supervisor Rick K Blevins; Saltville District Supervisor Roscoe D Call; North Fork District Supervisor Phil Stevenson; Chilhowie District Supervisor R. Curtis Rhea; Atkins District Supervisor Charles Atkins; Royal Oak District Supervisor Judy Wyant (7)

ABSENT: None.

STAFF: County Administrator Michael Carter; Assistant County Administrator Scott Simpson; County Attorney Jeff Campbell; Administrative Assistant Kelly Woods (4)

OTHERS: Deputy with the Smyth County Sheriff's Office, Stephanie Porter Nichols with Smyth County News and Messenger, and several citizens.

It was moved by Saltville District Supervisor Roscoe D. Call, seconded by Chilhowie District Supervisor R. Curtis Rhea, to adopt the following resolution certifying the business conducted in closed session as follows:

RESOLUTION

CERTIFICATION OF CLOSED SESSION

WHEREAS, the Smyth County Board of Supervisors has convened in a closed session on this date pursuant to an affirmative recorded vote and in accordance with the provisions of the Virginia Freedom of Information Act; and

WHEREAS, Section 2.2-3712 of the Code of Virginia requires a certification by the Smyth County Board of Supervisors that such a meeting was conducted in conformity with Virginia law;

NOW, THEREFORE, BE IT RESOLVED that the Smyth County Board of Supervisors hereby certifies that, to the best of each member's knowledge, (i) only public business matters lawfully exempted from open meeting requirements by Virginia law were discussed in the

closed meeting to which this certification resolution applies, and (ii) only such public business matters as were identified in the motion convening the closed session were heard, discussed or considered by the Smyth County Board of Supervisors.

After consideration, the motion PASSED by the following vote:


AYES: Chairman, Park District Supervisor M. Todd Dishner,
Vice Chairman, Rye Valley District Supervisor Rick K. Blevins
Saltville District Supervisor Roscoe D. Call,
North Fork District Supervisor Phil Stevenson,
Atkins District Supervisor Charles Atkins,
Chilhowie District Supervisor R. Curtis Rhea and
Royal Oak District Supervisor Judy Wyant.

NAYS: None.

ABSTAINERS: None.

ABSENT: None.

 11/14/2018 5:03 PM Sandy Elswick, Registrar of Voters gave the invocation and Kelly Woods, Administrative Assistant led the Pledge of Allegiance.

 11/14/2018 5:05 PM A motion was made by Saltville District Supervisor Roscoe D. Call, seconded by Chilhowie District Supervisor R. Curtis Rhea to adopt the agenda and additional agenda as presented.

After consideration, the motion PASSED by the following vote:

AYES: Chairman, Park District Supervisor M. Todd Dishner,
Vice Chairman, Rye Valley District Supervisor Rick K. Blevins
Saltville District Supervisor Roscoe D. Call,
North Fork District Supervisor Phil Stevenson,
Atkins District Supervisor Charles Atkins,
Chilhowie District Supervisor R. Curtis Rhea and
Royal Oak District Supervisor Judy Wyant.

NAYS: None.

ABSTAINERS: None.

ABSENT: None.

 11/14/2018 5:05 PM It was moved by Saltville District Supervisor Roscoe D. Call, seconded by Chilhowie District Supervisor R. Curtis Rhea to approve the minutes of the October 9th, 2018 meeting.

After consideration, the motion PASSED by the following vote:

AYES: Chairman, Park District Supervisor M. Todd Dishner,
Vice Chairman, Rye Valley District Supervisor Rick K. Blevins
Saltville District Supervisor Roscoe D. Call,

North Fork District Supervisor Phil Stevenson,
Atkins District Supervisor Charles Atkins,
Chilhowie District Supervisor R. Curtis Rhea and
Royal Oak District Supervisor Judy Wyant.

NAYS: None.

ABSTAINERS: None.

ABSENT: None.

 11/14/2018 5:05 PM Michael Carter, County Administrator presented the Board with information on the current FY2018-2019 Budget and a current month analysis for appropriations.

Royal Oak District Supervisor Judy Wyant questioned the amount recorded by the Treasurer's Office concerning delinquent taxes. Mr. Carter stated he would request Tom Burkett, Treasurer to attend the next Board of Supervisors meeting to address the concern, and allow for other Board members to ask any questions they may have.

 11/14/2018 5:20 PM Chairman, Park District Supervisor M. Todd Dishner opened Citizens time.

Rita Copenhaver, 109 Fairway Drive Marion, presented information concerning the National Women's Monument and informed the Board three (3) women from Smyth County have been recognized. Those women are Laura Copenhaver, Elanor Anderson, and Anna Belle Buchanan.


Jane Williston 5254 Valley Road, Rich Valley, spoke in support of a seven (7) member, district specific Library Board for the Smyth County Public Library.


Robb Farmer, 2221 Hwy 16 Marion, Virginia spoke concerning the Smyth County Public Library and stated he was fortunate the Library was supported with such compassion from members in the Community. Mr. Farmer updated the Board of Supervisors concerning the programs that are currently available at the Library, such as movies, children programs and Holiday programs that are scheduled to take place at each branch.

Cathy Smith, 149 Crestwood Drive, Chilhowie, also spoke in support of a seven (7) member, district specific Board for the Smyth County Public Library.

Marvin Leslie, 184 Keller Lane, Marion, asked the Board to give immediate attention to the requests being made by citizens for a seven (7) member Board for the Smyth County Public Library. Mr. Leslie also presented, Chairman, Park District Supervisor M. Todd Dishner with a petition signed by citizens in support of placing seven (7) members on the Library Board.

Bradley Powers, 1245 S Main Street, Marion, thanked the Board for all the service they are doing within the County and also thanked Mr. Carter, and staff for all of their hard work. Mr. Powers stated he would like to see the County move forward in a positive manner.

 11/14/2018 5:37 PM With no one else wishing to speak, Chairman, Park District Supervisor M. Todd Dishner closed Citizens Time.

 11/14/2018 5:37 PM Conrad Hill, VDOT presented a Resolution as shown below for consideration, which would allow Route 768/Old Eleven Highway to be placed in to the road maintenance system for VDOT. Michael Carter, County Administrator read the resolution for the record.

RESOLUTION FOR THE ADDITION OF A PORTION OF OLD ELEVEN ROAD INTO THE SECONDARY SYSTEM OF STATE HIGHWAYS

WHEREAS, the Abingdon Residency Office of the Virginia Department of Transportation recommends that the street(s) referenced in this Board's resolution be added to the secondary system of state highways as a no-cost rural addition pursuant to Section 33.2-705 and Commonwealth Transportation Board policy, because the street(s) meets current minimum standards, the condition of the existing hard surface is serviceable, the street(s) has provided continuous public service since its establishment in 1846 as part of the Southwest Virginia Turnpike and currently serves no less than ten occupied residential dwellings, and

WHEREAS, the Abingdon Residency Office of the Virginia Department of Transportation confirms that no Department funds are required to improve the street(s) described on the attached addition sketch and form AM-4.3 to meet current minimum design or maintenance standards of the Department, and

NOW, THEREFORE, BE IT RESOLVED, this Board requests the Virginia Department of Transportation to add the street(s) described on the attached sketch and form AM-4.3 to the secondary system of state highways, pursuant to Section 33.2-705, Code of Virginia and the Rural Addition Policy of the Commonwealth Transportation Board of the Virginia Department of Transportation, and

BE IT FURTHER RESOLVED, this Board guarantees a clear and unrestricted right of way, as described on the attached form AM-4.3, and any necessary easements for cuts, fills and drainage, and

BE IT FINALLY RESOLVED, that a certified copy of this resolution be forwarded to the Resident Engineer of the Virginia Department of Transportation.

A COPY TEST:

Michael L. Carter, County Administrator

North Fork District Supervisor Phil Stevenson made a motion to adopt the Resolution as presented. Atkins District Supervisor Charles Atkins seconded the motion.

After consideration, the motion PASSED by the following vote:

AYES: Chairman, Park District Supervisor M. Todd Dishner,
Vice Chairman, Rye Valley District Supervisor Rick K. Blevins
Saltville District Supervisor Roscoe D. Call,
North Fork District Supervisor Phil Stevenson,
Atkins District Supervisor Charles Atkins,
Chilhowie District Supervisor R. Curtis Rhea and
Royal Oak District Supervisor Judy Wyant.


NAYS: None.


ABSTAINERS: None.

ABSENT: None.

Conrad Hill, Virginia Department of Transportation presented an update to the Board on several road projects, as shown attached (#1) that are currently being completed within the County and allowed for any Board member to present concerns they may have within their respective districts.


Several Board members informed Mr. Hill of issues with road within their respective districts.

 11/14/2018 5:51 PM Nate Clark, Hungry Mother State Park, Park Manager presented information to the Board concerning the economic benefits the Park provides for Smyth County. Several Board members thanked Mr. Clark for attending the meeting and always being open to ideas for growth within Smyth County.

 11/14/2018 6:05 PM Michelle Ward, Smyth County Recovery Court Coordinator presented update to the Board concerning the clients that are now in the program and the progress that is being made. Ms. Ward stated the clients that have been approved by the Court system are doing well in the program, and the end goal is to produce rehabilitated, working citizens for Smyth County.

 11/14/2018 6:18 PM Chairman, Park District Supervisor M. Todd Dishner called for a ten-minute recess.

 11/14/2018 6:34 PM Chairman, Park District Supervisor M. Todd Dishner called the meeting back to order from recess.

 11/14/2018 6:34 PM Rye Valley District Supervisor Rick K. Blevins explained his reasoning for requesting a reconsideration of the vote taken at the October 9, 2018 meeting concerning the refund

request for the Konnarock Community Center. Mr. Blevins stated that he felt, due to the festival being cancelled due to weather, the refund in the amount of \$62.00 should be refunded to the Konnarock-Green Cove-Laurel Valley Association.

Royal Oak District Supervisor Judy Wyant and Atkins District Supervisor Charles Atkins both expressed their concern this would set a precedent with others and felt more would request a refund.

Rye Valley District Supervisor Rick K. Blevins made a motion to issue a refund in the amount of \$62.00 to the Konnarock Community Center. North Fork District Supervisor Phil Stevenson seconded the motion.


After consideration, the motion PASSED by the following vote:

AYES: Chairman, Park District Supervisor M. Todd Dishner,
Vice Chairman, Rye Valley District Supervisor Rick K. Blevins
Saltville District Supervisor Roscoe D. Call,
North Fork District Supervisor Phil Stevenson,
Chilhowie District Supervisor R. Curtis Rhea.

NAYS: Atkins District Supervisor Charles Atkins and Royal Oak District Supervisor Judy Wyant.

ABSTAINERS: None.

ABSENT: None.

 11/14/2018 6:39 PM Chairman, Park District Supervisor M. Todd Dishner opened the floor for open discussion by the Board concerning requests being made by citizens for a seven (7) member Smyth County Public Library board.

Atkins District Supervisor Charles Atkins stated he was in support of the seven (7) member, district specific Library Board. Mr. Atkins stated each district should have representation on the Smyth County Public Library Board.

Royal Oak District Supervisor Judy Wyant stated she feels the Board of Supervisors has been disrespectful to the citizens who have voiced their opinion concerning the seven (7) member Library Board. Ms. Wyant stated she felt there was no good reason to not appoint seven members to the Library Board.

North Fork District Supervisor Phil Stevenson stated he doesn't agree anyone has been disrespected, and he is not against a seven (7) member Board, however he hasn't received any concerns from constituents within his district. Mr. Stevenson stated he felt that by not having seven (7) members, services were not suffering.

Saltville District Supervisor Roscoe D. Call stated that he had not received any complaints from his district concerning the Library and all services within the Saltville District Library are the same.

Royal Oak Supervisor Judy Wyant spoke concerning the ongoing litigation concerning the Library, asking Mr. Campbell to clarify, stating it is against the Board of Supervisors. Ms. Wyant stated the financial standpoint with the Library is not well and each branch would suffer due to this. Ms. Wyant stated she strongly feels there are a lot of advantages with having a seven (7) member board for the Library.

Chilhowie District Supervisor R. Curtis Rhea stated he felt it is the job of the Board of Supervisors to govern the County and be held accountable for the monies allocated to an agency. Mr. Rhea stated he would like to know why the Library was not in a good financial position.

Royal Oak District Supervisor Judy Wyant requested a review of the financial statements be done by the Board of Supervisors and stated the current level of services cannot be sustained.

Atkins District Supervisor Charles Atkins stated he hasn't seen any financial information from the Library since he has been elected to the Board of Supervisors.

Atkins District Supervisor Charles Atkins made a motion to appoint members needed to have seven (7) district specific members on the Smyth County Public Library Board. Royal Oak District Supervisor Judy Wyant seconded the motion.

After consideration, the motion FAILED by the following vote:

AYES: Atkins District Supervisor Charles Atkins and
Royal Oak District Supervisor Judy Wyant.

NAYS: Chairman, Park District Supervisor M. Todd Dishner,
Vice Chairman, Rye Valley District Supervisor Rick K. Blevins
Saltville District Supervisor Roscoe D. Call,
North Fork District Supervisor Phil Stevenson and
Chilhowie District Supervisor R. Curtis Rhea

ABSTAINERS: None.

ABSENT: None.

Royal Oak District Supervisor Judy Wyant proposed the Board adopt a Resolution stating the Board will not ask for, encourage or support any legislation to remove the requirement to have a Library Board. Atkins District Supervisor Charles Atkins seconded the motion.

Chilhowie District Supervisor R. Curtis Rhea asked Mr. Campbell to clarify the Code of Virginia and what guidelines that Smyth County needs to adhere to regarding the appointment of members to the Library Board moving forward.

County Attorney, Jeff Campbell explained the requirements set forth in the Code of Virginia stating Smyth County is bound to the requirements that govern a Library Board, stating the codes reads there must be at least five (5) members appointed.

After consideration, the motion FAILED by the following vote:


AYES: Atkins District Supervisor Charles Atkins and
Royal Oak District Supervisor Judy Wyant.

NAYS: Chairman, Park District Supervisor M. Todd Dishner,
Vice Chairman, Rye Valley District Supervisor Rick K. Blevins
Saltville District Supervisor Roscoe D. Call,
North Fork District Supervisor Phil Stevenson and
Chilhowie District Supervisor R. Curtis Rhea

ABSTAINERS: None.

ABSENT: None.

Chairman, Park District Supervisor M. Todd Dishner stated as chairman, he was open to discussing this issue at a later date, once the litigation has been settled.

 11/14/2018 6:59 PM Saltville District Supervisor Roscoe D. Call made a motion to approve and appropriate the following disbursements for the Four for Life program. Atkins District Supervisor Charles Atkins seconded the motion.

Agency	Disbursement Amount
Town of Marion Fire & EMS	\$6,873.88
Chilhowie FD/EMS	\$6,873.88
Saltville Rescue Squad	\$6,873.88
Sugar Grove Life Saving	\$6,873.88

These disbursements total \$27,495.52.

After consideration, the motion PASSED by the following vote:

AYES: Chairman, Park District Supervisor M. Todd Dishner,
Vice Chairman, Rye Valley District Supervisor Rick K. Blevins
Saltville District Supervisor Roscoe D. Call,
North Fork District Supervisor Phil Stevenson,
Atkins District Supervisor Charles Atkins,
Chilhowie District Supervisor R. Curtis Rhea and
Royal Oak District Supervisor Judy Wyant.

NAYS: None.

ABSTAINERS: None.

ABSENT: None.

 11/14/2018 7:00 PM Michael Carter, County Administrator brought forward the following recommendations from the Budget Committee.

Item #1: It is the Committee's recommendation to approve the budget transfer as shown below for the Smyth County Sheriff Department in the amount of \$2,189.00.

EXPENSE

From:	To:	Amount:
001-021070-1001 (Salaries)	001-021070-5408 (Vehicle Maint.)	\$2,189.00

After consideration, the motion PASSED by the following vote:

AYES: Chairman, Park District Supervisor M. Todd Dishner,
Vice Chair, Rye Valley District Supervisor Rick K. Blevins,
Saltville District Supervisor Roscoe D. Call,
North Fork District Supervisor Phil Stevenson,
Atkins District Supervisor Charles Atkins,
Chilhowie District Supervisor R. Curtis Rhea and
Royal Oak District Supervisor Judy Wyant.

NAYS: None.

ABSTAINERS: None.

ABSENT: None.

Item #2: It is the Committee's recommendation to amend the budget as requested by the Sheriff's Department. The Sheriff is requesting funds in the amount of \$12,605.00 be placed into Fund 761. These are remaining Abbott Funds distributed to the Sheriff's Department by the Commonwealth Attorney's Office. This will increase the current FY2018-2019 budget from \$87,875,546.00 to \$87,888,151.00.

<u>Expense</u>	<u>Amount</u>
761-010000-0001 (CWA Fed Shared Funds)	\$12,605.00

<u>Revenue</u>	<u>Amount</u>
761-010000-0001 (Federal Money from CA)	\$12,605.00

After consideration, the motion PASSED by the following vote:

AYES: Chairman, Park District Supervisor M. Todd Dishner,
Vice Chair, Rye Valley District Supervisor Rick K. Blevins,
North Fork District Supervisor Phil Stevenson,
Saltville District Supervisor Roscoe D. Call,
Atkins District Supervisor Charles Atkins,
Chilhowie District Supervisor R. Curtis Rhea and
Royal Oak District Supervisor Judy Wyant.

NAYS: None.

ABSTAINERS: None.

ABSENT: None.

Item #3: It is the Committee's recommendation to allow staff a maximum of \$1,500.00 to purchase all weather flags and lights needed to display the flags at the Courthouse and Administration Building as recommended by the VFW during a meeting on November 1, 2018.

Mr. Johnson with the VFW spoke and stated he felt what the County was proposing was adequate and patriotic.


After consideration, the motion PASSED by the following vote:

AYES: Chairman, Park District Supervisor M. Todd Dishner,
Vice Chair, Rye Valley District Supervisor Rick K. Blevins,
North Fork District Supervisor Phil Stevenson,
Saltville District Supervisor Roscoe D. Call,
Atkins District Supervisor Charles Atkins,
Chilhowie District Supervisor R. Curtis Rhea and
Royal Oak District Supervisor Judy Wyant.

NAYS: None.

ABSTAINERS: None.

ABSENT: None.

 11/14/2018 7:15 PM Chilhowie District Supervisor R. Curtis Rhea made a motion to release the special assessment in the amount of \$1,492.73 for the property identified as tax map number 64A-5-116, which is part of the Green Valley Court Revenue Share Project. North Fork District Supervisor Phil Stevenson seconded the motion.

After consideration, the motion PASSED by the following vote:

AYES: Chairman, Park District Supervisor M. Todd Dishner,
Vice Chair, Rye Valley District Supervisor Rick K. Blevins,
North Fork District Supervisor Phil Stevenson,
Saltville District Supervisor Roscoe D. Call,
Atkins District Supervisor Charles Atkins,
Chilhowie District Supervisor R. Curtis Rhea and
Royal Oak District Supervisor Judy Wyant.

NAYS: None.

ABSTAINERS: None.

ABSENT: None.

 11/14/2018 7:16 PM Scott Simpson, Assistant County Administrator brought forward the following recommendation from the Building and Grounds Committee.

It is the Committee's recommendation to allow staff to send a certified mailing to the Riverside Community Center requesting prompt payment of the insurance premium and the discontinuation of the lease.


After consideration, the motion PASSED by the following vote:


AYES: Chairman, Park District Supervisor M. Todd Dishner,
Vice Chair, Rye Valley District Supervisor Rick K. Blevins,
North Fork District Supervisor Phil Stevenson,
Saltville District Supervisor Roscoe D. Call,
Atkins District Supervisor Charles Atkins,
Chilhowie District Supervisor R. Curtis Rhea and
Royal Oak District Supervisor Judy Wyant.

NAYS: None.

ABSTAINERS: None.

ABSENT: None.

 11/14/2018 7:29 PM Atkins District Supervisor Charles Atkins gave an overview of the Ordinance Committee Meeting that took place on Thursday, October 25, 2018, stating the Committee reviewed the Comprehensive Plan for Smyth County, and at this time no changes were being recommended to be made.

 11/14/2018 7:30 PM Saltville District Supervisor Roscoe D. Call brought forward the following recommendations from Water/Sewer Committee.

Item#1: It is the Committee's recommendation to provide 2 credit/debit card terminals in the Water/Sewer office and 1 terminal in the Building Department and for the County to absorb all the in-person fees; and to allow the third-party vendor to charge the customer the convenience fee for online payments. This provides consistency between all departments taking over the counter payments from citizens of Smyth County for services provided.

After consideration, the motion PASSED by the following vote:

AYES: Chairman, Park District Supervisor M. Todd Dishner,
Vice Chair, Rye Valley District Supervisor Rick K. Blevins,
North Fork District Supervisor Phil Stevenson,
Saltville District Supervisor Roscoe D. Call,
Atkins District Supervisor Charles Atkins,
Chilhowie District Supervisor R. Curtis Rhea and
Royal Oak District Supervisor Judy Wyant.

NAYS: None.

ABSTAINERS: None.

ABSENT: None.

Item#2: It is the Committee's recommendation to award the bid to Carter Caterpillar for the purchase of a Sullair 185 air compressor in the amount of \$18,650.00 to be utilized by the Water/Sewer Department, utilizing remaining Rural Development Funds from the Adwolfe Sewer Project.


After consideration, the motion PASSED by the following vote:

AYES: Chairman, Park District Supervisor M. Todd Dishner,
Vice Chair, Rye Valley District Supervisor Rick K. Blevins,
North Fork District Supervisor Phil Stevenson,
Saltville District Supervisor Roscoe D. Call,
Atkins District Supervisor Charles Atkins,
Chilhowie District Supervisor R. Curtis Rhea and
Royal Oak District Supervisor Judy Wyant.

NAYS: None.

ABSTAINERS: None.

ABSENT: None.

 11/14/2018 7:36 PM Jeff Campbell, County Attorney stated that a request had been made by Speyside Bourbon Cooperage to make some changes to the TROF Agreement with SWIFA and Washington County.

Chilhowie District Supervisor R. Curtis Rhea made a motion to approve the changes being requested upon review and approval by the Tobacco Commission. Rye Valley District Supervisor Rick K. Blevins seconded the motion.


After consideration, the motion PASSED by the following vote:

AYES: Chairman, Park District Supervisor M. Todd Dishner,
Vice Chair, Rye Valley District Supervisor Rick K. Blevins,
North Fork District Supervisor Phil Stevenson,
Saltville District Supervisor Roscoe D. Call,
Atkins District Supervisor Charles Atkins,
Chilhowie District Supervisor R. Curtis Rhea and
Royal Oak District Supervisor Judy Wyant.

NAYS: None.

ABSTAINERS: None.

ABSENT: None.

 11/14/2018 7:49 PM Chilhowie District Supervisor R. Curtis Rhea made a motion to approve agreements for an unidentified business and allow for execution of the documents by the County Attorney and staff as needed.


After consideration, the motion PASSED by the following vote:

AYES: Chairman, Park District Supervisor M. Todd Dishner,
Vice Chair, Rye Valley District Supervisor Rick K. Blevins,
North Fork District Supervisor Phil Stevenson,
Saltville District Supervisor Roscoe D. Call,
Atkins District Supervisor Charles Atkins,
Chilhowie District Supervisor R. Curtis Rhea and
Royal Oak District Supervisor Judy Wyant.

NAYS: None.

ABSTAINERS: None.

ABSENT: None.

 11/14/2018 7:51 PM It was moved by Saltville District Supervisor Roscoe D. Call, seconded by Atkins District Supervisor Charles Atkins to appropriate \$1,650,000.00 from the General Fund. The following is an explanation of the appropriations approved:

General County

Accounts Payable Listing:	\$905,862.74
Payroll:	\$697,735.03
Auto Draft Rural Development:	\$8,974.00
AEP/Century Link Bills:	\$25,000.00
County Administration Fund:	\$5,000.00
Minus Beginning Appropriation:	\$(19,316.34)
New Carryover:	\$26,744.57
Total County Appropriation:	\$1,650,000.00

After consideration, the motion PASSED by the following vote:

AYES: Chairman, Park District Supervisor M. Todd Dishner,
Vice Chair, Rye Valley District Supervisor Rick K. Blevins,
North Fork District Supervisor Phil Stevenson,
Saltville District Supervisor Roscoe D. Call,
Atkins District Supervisor Charles Atkins,
Chilhowie District Supervisor R. Curtis Rhea and
Royal Oak District Supervisor Judy Wyant.

NAYS: None.

ABSTAINERS: None.

ABSENT: None.

It was moved by Atkins District Supervisor Charles Atkins to appropriate \$118,703.70 from Sheriff Department Fund 744 for the purchase of cars. Saltville District Supervisor Roscoe D. Call seconded the motion.

After consideration, the motion PASSED by the following vote:

AYES: Chairman, Park District Supervisor M. Todd Dishner,
Vice Chair, Rye Valley District Supervisor Rick K. Blevins,
North Fork District Supervisor Phil Stevenson,
Saltville District Supervisor Roscoe D. Call,
Atkins District Supervisor Charles Atkins,
Chilhowie District Supervisor R. Curtis Rhea and
Royal Oak District Supervisor Judy Wyant.

NAYS: None.

ABSTAINERS: None.

ABSENT: None.

It was moved by Atkins District Supervisor Charles Atkins, seconded by Saltville District Supervisor Roscoe D. Call to appropriate \$455,000.00 from the General Fund for the Department of Social Services. The following is an explanation of the appropriations approved:

Social Services

(November 14-November 30, 2018)	\$ 395,000.00
(December 1-December 11, 2018)	\$ 60,000.00
Total Social Services:	\$ 455,000.00

After consideration, the motion PASSED by the following vote:

AYES: Chairman, Park District Supervisor M. Todd Dishner,
Vice Chair, Rye Valley District Supervisor Rick K. Blevins,
North Fork District Supervisor Phil Stevenson,
Saltville District Supervisor Roscoe D. Call,
Atkins District Supervisor Charles Atkins,
Chilhowie District Supervisor R. Curtis Rhea and
Royal Oak District Supervisor Judy Wyant.

NAYS: None.

ABSTAINERS: None.

ABSENT: None.

It was moved by Saltville District Supervisor Roscoe D. Call, seconded by Atkins District Supervisor Charles Atkins to appropriate \$4,015,000.00 from the General Fund for the Smyth County School Board Operating Fund. The following is an explanation of the appropriations approved:

Schools-Operating Fund

Instruction	\$ 2,900,000.00
Administration, Attendance, & Health	\$ 115,000.00

Transportation	\$ 195,000.00
Facilities	\$ 325,000.00
School Food Service	\$ 400,000.00
Technology	\$ 80,000.00
Total School Operating Fund:	\$4,015,000.00

After consideration, the motion PASSED by the following vote:

AYES: Chairman, Park District Supervisor M. Todd Dishner,
Vice Chair, Rye Valley District Supervisor Rick K. Blevins,
North Fork District Supervisor Phil Stevenson,
Saltville District Supervisor Roscoe D. Call,
Atkins District Supervisor Charles Atkins,
Chilhowie District Supervisor R. Curtis Rhea and
Royal Oak District Supervisor Judy Wyant.

NAYS: None.

ABSTAINERS: None.

ABSENT: None.

It was moved by Atkins District Supervisor Charles Atkins, seconded by Saltville District Supervisor Roscoe D. Call to appropriate \$907,000.00 from the General Fund for School Debt Service.

After consideration, the motion PASSED by the following vote:

AYES: Chairman, Park District Supervisor M. Todd Dishner,
Vice Chair, Rye Valley District Supervisor Rick K. Blevins,
North Fork District Supervisor Phil Stevenson,
Saltville District Supervisor Roscoe D. Call,
Atkins District Supervisor Charles Atkins,
Chilhowie District Supervisor R. Curtis Rhea and
Royal Oak District Supervisor Judy Wyant.

NAYS: None.

ABSTAINERS: None.

ABSENT: None.

It was moved by Saltville District Supervisor Roscoe D. Call, seconded by Atkins District Supervisor Charles Atkins to appropriate \$16.00 from EDA Fund 4 for an open invoice.

After consideration, the motion PASSED by the following vote:

AYES: Chairman, Park District Supervisor M. Todd Dishner,
Vice Chair, Rye Valley District Supervisor Rick K. Blevins,
North Fork District Supervisor Phil Stevenson,
Saltville District Supervisor Roscoe D. Call,
Atkins District Supervisor Charles Atkins,

Chilhowie District Supervisor R. Curtis Rhea and
Royal Oak District Supervisor Judy Wyant.

NAYS: None.

ABSTAINERS: None.

ABSENT: None.

It was moved by Saltville District Supervisor Roscoe D. Call, seconded by Atkins District Supervisor Charles Atkins to appropriate \$2,018.58 from the Sheriff's Fund 748 for open invoices.

After consideration, the motion PASSED by the following vote:

AYES: Chairman, Park District Supervisor M. Todd Dishner,
Vice Chair, Rye Valley District Supervisor Rick K. Blevins,
North Fork District Supervisor Phil Stevenson,
Saltville District Supervisor Roscoe D. Call,
Atkins District Supervisor Charles Atkins,
Chilhowie District Supervisor R. Curtis Rhea and
Royal Oak District Supervisor Judy Wyant.

NAYS: None.

ABSTAINERS: None.

ABSENT: None.

It was moved by Atkins District Supervisor Charles Atkins, seconded by Saltville District Supervisor Roscoe D. Call to appropriate \$28,730.59 from Fund 749 for Drug Recovery Court open invoices.

After consideration, the motion PASSED by the following vote:

AYES: Chairman, Park District Supervisor M. Todd Dishner,
Vice Chair, Rye Valley District Supervisor Rick K. Blevins,
North Fork District Supervisor Phil Stevenson,
Saltville District Supervisor Roscoe D. Call,
Atkins District Supervisor Charles Atkins,
Chilhowie District Supervisor R. Curtis Rhea and
Royal Oak District Supervisor Judy Wyant.

NAYS: None.

ABSTAINERS: None.

ABSENT: None.

 11/14/2018 7:54 PM Chairman, Park District Supervisor M. Todd Dishner updated the Board on the upcoming Holiday schedule for Thanksgiving.

 11/14/2018 7:55 PM Supervisor Comment Time:

Royal Oak District Supervisor Judy Wyant thanked everyone who attended the meeting, and asked that each Board member respect each other, stating everyone has a right to their opinion.

Rye Valley District Supervisor Rick K. Blevins stated that he appreciated everyone for attending the meeting, and thanked Park District Supervisor M. Todd Dishner for reaching out to the VFW concerning the flags.


North Fork District Supervisor Phil Stevenson thanked Robb Farmer, Director, Smyth County Public Library for his commitment to the Library. Mr. Stevenson stated that he appreciates people with a positive attitude and doesn't believe that a negative mind set solves anything. Mr. Stevenson went on to state the he would like to see the Friends of the Library move on to another subject. Lastly Mr. Stevenson stated that he will continue to voice his opinion regardless of who/what doesn't agree.

Atkins District Supervisor Charles Atkins stated he hoped everyone had a safe trip home.

Chilhowie District Supervisor R. Curtis Rhea stated he appreciated those in attendance of the meeting and stated there are a lot of positive things happening in Smyth County that should be focused on.

Saltville District Supervisor Roscoe D. Call distributed information he received during a seminar he attended at the recent VACO Conference to each Board member concerning school safety and asked that each one take the time to read the information.

Park District Supervisor M. Todd Dishner stated the he, along with other Board members had attended the annual Virginia Association of Counties conference and received good information during the seminars that took place. Mr. Dishner also read aloud thank you notes from the Mel Leaman Free Clinic and the Bridge Students from Marion Senior High School.

 11/14/2018 8:07 PM Meeting Adjourned.

SMYTH COUNTY PROJECT UPDATE 2017-2018

NOVEMBER 8, 2018

PROJECTS COMPLETED 2017

- Route 656 (Stoney Battery Rd) – Bridge deck replacement, Project completed Late Summer 2018, by State Forces.
- Route 661 (Backmeadows Road) – Rural Rustic road improvement, Project completed Fall 2018, by hired equipment contract.
- Route 676 (Twilight Road) – Rural Rustic road improvement, Project completed Fall 2018, by hired equipment contract.
- Route 672 (Slabtown Road) – Rural Rustic road improvement, Project completed Fall 2018, by hired equipment contract.
- Routes that had portions re-paved by contract in 2018: I-81 NB (near Wythe County Line), 107 (Highway 107), U. S. 11 (Lee Highway Chilhowie), SR 91 (Saltville), 602 (Azen Rd.), 610 (Valley Rd.), 617 (Flowing Springs), 622 (Bear Creek Rd.), 658 (Tilley's Bridge Rd.), 660 (Sapwood Dr.), 741 (Page Town Rd.).
- Routes that had portions slurry treated by contract in 2018: 617 (Davis Valley Rd.), 641 (Spring Branch Rd.), 681 (Burgundy Lane), 7683 (Phillippi Hollow Rd.), 718 (Beasley Lane), 749 (Rolling Hills Dr.), 1401 (Highland Circle), 1402 (Center Street), 1403 (Highland Circle).

PROJECTS UNDERWAY

- I-81 Mulberry Lane Bridges. Awarded Summer 2018. Anticipated completion November 2020.

ANTICIPATED PROJECTS FOR 2019

- Route 675 (Lead Mine Rd.) – Rural Rustic road improvement for remainder of road, Project to be completed by Fall 2019, by hired equipment contract.
- Route 674 (Sand Mine Rd.) – Rural Rustic road improvement to Lead Mine Road, project to be completed by Fall 2019, by hired equipment contract.
- Route 769 (Holiday Drive) – Rural Rustic road improvement for entire road, project to be completed by Fall 2019, by hired equipment contract.
- Re-paving routes. See attached lists for routes anticipated to be resurfaced in 2019.

OTHER FUTURE PROJECTS OF INTEREST

- McMullen Bridge - This project must be funded from State of Good Repair (SGR) funds. This is a statewide competitive funding source for bridges and major pavement reconstruction projects. The next funding cycle projects will be determined in 2019 and will identify projects for funding in FY25 and FY26. This project has been steadily moving up the priority lists of bridge projects, and **MAY** be funded in the next cycle. As more information is available late next Spring, we will make the information available.
- Route 658 Tilley's Bridge – Bridge is now rated at 3 tons, and expected to be advertised for replacement in 2019. Anticipated completion 2020.
- Route 11/107 intersection improvements (Chilhowie) - Preliminary Engineering ongoing. Expect Public Hearings in 2019.
- Route 11/Railroad Drive intersection improvements (Adwolf) - Preliminary Engineering ongoing. Expect Public Hearings in 2019.

SMYTH COUNTY PAVING 2019

ROUTE	NAML	FROM	TO	DIST	WIDTH	CONTRACT	STATUS	COMME
610	OLD ROCK RD	SR 107	RTE. 773	0.30	18	PM-1F-19		
614	CEDAR SPRINGS RD	RTE. 695	RTE. 676	2.40	18	PM-1F-19		
622	NEBO MTN RD	2.80 MN RTE. 694	RTE. 610	2.90	14	PM-1F-19		
632	CEDAR BRANCH RD	SR 91	RTE. 633	3.49	18	PM-1F-19		
650	SOUTH FORK RD	RTE. 656E	RTE. 656W	3.10	18	PM-1F-19		
	SOUTH FORK RD	RTE. 670	RTE. 656E	1.85	18	PM-1F-19		
81NB	I-81	MM 45.20	MM 47.22	2.02	24	PM-1A-19		
	I-81	MM 39.14	MM 41.39	2.25	24	PM-1A-19		

SMYTH COUNTY LATEX 2019

ROUTE	NAME	FROM	IO	DIST	WIDTH	CONTRACT	STATUS	COMMENTS
42	BLUEGRASS TRAIL	RTE. 91	RTE. 16	9.59	24	LM-1A-19		Deferred from 2018
91	VETERANS RD.	RTE. 42	TAZEWELL CL	0.54	22	LM-1A-19		Deferred from 2018

COMMONWEALTH'S DEVELOPMENT OPPORTUNITY FUND

PERFORMANCE AGREEMENT

This **PERFORMANCE AGREEMENT** ("this Agreement") is made and entered this ____ day of August, 2018, by and among the **COUNTY OF SMYTH, VIRGINIA** (the "Locality"), a political subdivision of the Commonwealth of Virginia (the "Commonwealth"), **SPEYSIDE BOURBON COOPERAGE, INC.** (the "Parent Company"), an Ohio corporation authorized to transact business in the Commonwealth, **SBCIVA INC.**, a Virginia corporation and wholly owned subsidiary of Parent Company (the "Company"), the **SMYTH-WASHINGTON REGIONAL INDUSTRIAL FACILITIES AUTHORITY** (the "Authority"), a political subdivision of the Commonwealth, and the **VIRGINIA ECONOMIC DEVELOPMENT PARTNERSHIP AUTHORITY** ("VEDP"), a political subdivision of the Commonwealth.

WITNESSETH:

WHEREAS, the Locality has been awarded a grant of and expects to receive \$325,000 from the Commonwealth's Development Opportunity Fund (a "COF Grant") through VEDP for the purpose of inducing the Parent Company, through the Company as its wholly owned subsidiary, to renovate, equip, improve, and operate a cooperage 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 the Company, provided that the Company promises to meet certain criteria relating to Capital Investment and New Jobs;

WHEREAS, the Locality, the Authority, the Parent Company, the Company, and VEDP 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 acquisition, renovation, equipping, improvement, and operation of the Facility will entail a capital expenditure by or on behalf of the Company of approximately \$26,000,000, of which approximately \$18,000,000 will be invested in machinery and tools, approximately \$500,000 will be invested in furniture, fixtures and equipment, \$2,075,000 is invested in the purchase of an existing building located at 6373 Lee Highway, Atkins, VA (the "Acquisition Cost"), and approximately \$5,500,000 will be invested in the renovation and up-fit of the building;

WHEREAS, the acquisition, renovation, equipping, improvement, and operation of the Facility will further entail the creation and Maintenance of 125 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 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 machinery and tools or furniture, fixtures, and equipment, including under an operating lease, and the purchase of the building and expected building renovation and up-fit by or on behalf of the Company will qualify as Capital Investment. The Capital Investment must be in addition to the capital improvements at the Facility as of July 1, 2018; provided, however, the Company’s Capital Investment shall include and be credited with the Acquisition Cost which was made by the Company on June 14, 2018.

“Initial Performance Date” means December 31, 2022. Upon the written request of the Company for an extension, if the Locality, in consultation with the Authority and VEDP, deems that good faith and reasonable efforts have been made and are being made by the Company to achieve the Targets, the Locality may request an extension of the Initial Performance Date by up to 15 months. Any extension of the Initial Performance Date shall require the prior approval of the Board of Directors of VEDP (the “Board”). If the Performance Date is extended, the Locality shall send written notice of the extension to the Authority, the Company and VEDP and the date to which the Initial Performance Date has been extended shall be the “Initial Performance Date” for the purposes of this Agreement.

“Maintain” means that the New Jobs will continue without interruption from the date of creation through the Subsequent 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 \$30,173. Average annual wage means the average annual salary of full-time positions at the Facility determined by dividing total payroll (of a type included in W-2 compensation) provided to full-time positions at the Facility by the number of full-time positions at the Facility. 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.

"Subsequent Performance Date" means December 31, 2026, unless the Initial Performance Date has been extended. If the Initial Performance Date has been extended, the Subsequent Performance shall be four years after the new Initial Performance Date. Except as so noted, the Subsequent Performance Date is not subject to extension.

"Targets" means the Company's obligations to make Capital Investments at the Facility of at least \$26,000,000 and to create and Maintain at least 125 New Jobs at the Facility, all as of the Initial Performance Date. Further, "Targets" includes the Company's obligation to Maintain at least 125 New Jobs at the Facility as of the Subsequent Performance Date.

"Virginia Code" means the Code of Virginia of 1950, as amended.

Section 2. Targets; Statutory Criteria.

(a) *Targets:* The Company will acquire, renovate, equip, improve, and operate the Facility in the Locality, make a Capital Investment of at least \$26,000,000, and create and Maintain at least 125 New Jobs at the Facility, all as of the Initial Performance Date. Further, the Company will maintain at least 125 New Jobs at the Facility as of the Subsequent Performance Date.

(c) *Prevailing Wage; Unemployment and Poverty Rates:* The average annual wage of the New Jobs of at least \$30,173 is less than the prevailing average annual wage in the Locality of \$34,227, but is more than 85% of that prevailing average annual wage (\$29,093). The Locality is a high-unemployment locality, with an unemployment rate for 2017, which is the last year for which such data is available, of 5.4% as compared to the 2017 statewide unemployment rate of 3.8%. The Locality is a high-poverty locality, with a poverty rate for 2016, which is the last year for which such data is available, of 18.1% as compared to the 2016 statewide poverty rate of 11.0%.

(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 execution and delivery of this Agreement, the Locality requests that the COF Grant be disbursed to it. VEDP will promptly arrange for the payment of the \$325,000 COF Grant to the Locality.

The disbursement of the COF Grant proceeds to the Company will serve as an inducement to the Company to achieve the Targets.

The COF Grant proceeds shall be retained by the Locality and shall be disbursed in one payment as follows:

Within 90 days after the Initial Performance Date, by completing and filing the report described in Section 5(b), the Company will provide notice and evidence reasonably satisfactory to the Locality, the Authority, and VEDP of the amount of Capital Investments that it has made through the Initial Performance Date and the number of New Jobs created and Maintained through the Initial Performance Date. Such evidence will be subject to verification by the Locality and VEDP.

If the Company has not made Capital Investments of at least \$1,500,000 and created and Maintained at least 15 New Jobs as of the Initial Performance Date, it will not receive any of the proceeds of the COF Grant. These are the statutory minimum requirements for a COF Grant under the Virginia Code for a project located in the Locality.

If the Company has made Capital Investments of at least \$26 million and created and Maintained at least 125 New Jobs as of the Initial Performance Date, it will receive all \$325,000 of the proceeds of the COF Grant.

The COF Grant is to be allocated as 50% (\$162,500) for the Company's Capital Investment Target, and 50% (\$162,500) for the Company's New Jobs Target. If the Company met the statutory minimum requirements set forth in the second prior paragraph, but has not fully achieved the Targets, the Company will not receive that part of the COF Grant that is proportional to the Target or Targets for which there is a shortfall. For example, if as of the Initial Performance Date, only \$19,500,000 of the Capital Investment has been retained (reflecting achievement of 75% of the Capital Investment Target), and only 100 New Jobs have been created and Maintained (reflecting achievement of 80% of the New Jobs Target), the Company will receive \$121,875 (reflecting 75% of the \$162,500 allocated to the Capital Investment Target), *plus* \$130,000 (reflecting 80% of the \$162,500 allocated to the New Jobs Target), for a total of \$251,875. These amounts reflect the percentages of the shortfall from the expected amount of Capital Investment and expected number of New Jobs, each multiplied by the portion of the COF Grant proceeds available to the Company allocated to that Target.

Within 30 days of the verification, if any portion of the COF Grant proceeds has been earned by the Company, the Locality will disburse the amount earned 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.

Within 30 days of the verification, if any portion of the COF Grant proceeds has not been earned by the Company, the Locality shall return to VEDP the amount not earned, for redeposit to the Commonwealth's Development Opportunity Fund.

(b) *Determination of Inability to Comply:* If the Locality or VEDP shall determine at any time prior to the Initial Performance Date (a "Determination Date") that the Company is unable or unwilling to meet and Maintain its Targets by and through the Initial Performance Date, and if the Locality, the Authority or VEDP shall have promptly notified the Company of such determination, the Company will not receive any of the proceeds of the COF Grant, and, within 90 days of the Determination Date, the Locality will repay to VEDP all of the COF Grant proceeds. Such a determination will be based only 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.

(c) *Use of the COF Grant Proceeds:* The Company will use the COF Grant proceeds to pay or reimburse the cost of build-out of a privately owned building for the Facility, as permitted by Section 2.2-115(D) of the Virginia Code.

(d) *Material Reliance on COF Grant:* The Locality, the Authority and the VEDP acknowledge that the COF Grant was a material inducement to the Parent Company's and the Company's decision to locate taxable assets and employ persons in the Locality and notwithstanding anything else to the contrary herein, the Locality, the Authority and the VEDP covenant to promptly disburse the COF Grant upon the terms herein provided. Failure by the Locality, the Authority or the VEDP to disburse the Grant as herein provided, once earned by the Company under this Section 3 of this Agreement, shall constitute an event of default by the Locality, the Authority or the VEDP, as the case may be.

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 Subsequent 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:

Category of Incentive:

Total Amount

COF Grant	\$325,000
Virginia Jobs Investment Program ("VJIP") (Estimated)	87,500
Tobacco Region Opportunity Fund Grant ("TROF")	415,000
Enterprise Zone Real Property Investment Grant ("EZRPIG") (Estimated)	200,000
Enterprise Zone Job Creation Grant ("EZJCG") (Estimated)	457,600

The proceeds of the COF Grant shall be used for the purposes described in Section 3(c). 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 EZRPIG, and the EZJCG may be used by the Company for any lawful purpose.

(b) *Locality-Level Incentives:* The Locality expects to provide the following incentives, as matching grants or otherwise, for the Facility by the Performance Date:

<u>Category of Incentive:</u>	<u>Total Amount</u>
Highlands Business Park Land Donation ("Land Donation") (Estimated)	\$750,000

The value of the Land Donation reflects the Locality's share of the cost of the land owned by the Authority to be transferred to Speyside Bourbon Stave Mill in Virginia at Glade Spring, Inc., a Virginia corporation and wholly owned subsidiary of the Parent Company, by a separate performance agreement, and shall represent a cost savings to the Company.

(c) *Other Incentives:* This Agreement relates solely to the COF Grant. The qualification for, and payment of all other 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. Company Reporting.

(a) *Progress Reporting:* The Company shall provide, at the Company's expense, in the form attached hereto as Exhibit A, 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, 2020, 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.

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, as applicable, shall provide to VEDP a copy of its Virginia income tax form filed with respect to its status as a pass-through entity. VEDP hereby represents 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) *Initial Performance Date Performance Report:* The Company shall provide, at the Company's expense, in the form attached hereto as Exhibit B, detailed verification reasonably satisfactory to the Locality, the Authority and VEDP of the Company's achievement of the Targets as of the Initial Performance Date. The Initial Performance Date Performance Report shall be filed within 90 days after the Initial Performance Date.

(c) *Subsequent Performance Date Performance Report:* The Company shall provide a letter certifying the number of New Jobs Maintained at the Facility as of the Subsequent Performance Date. Such certification shall be filed within 90 days after the Subsequent Performance Date.

Section 6. Verification of Targets.

(a) *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, in the sole discretion of the Locality, the Authority, or VEDP, the Locality, the Authority, or VEDP, may each require such other documentation, including invoices, or audits as may be reasonably required to properly verify the Capital Investment.

(b) *Verification of New Jobs and Wages:* The Company must submit a copy of its four most recent Employer's Quarterly Tax Report (Form FC-20) with the Virginia Employment Commission with the reports filed for the Initial Performance Date and the Subsequent Performance Date, as described in Sections 5(b) and (c). The forms shall be marked and considered confidential and proprietary and shall be used by VEDP solely for verifying satisfaction of the New Jobs Target. 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.

The Company agrees that it will report to the Virginia Employment Commission with respect to its employees at a facility-level, rather than at the company-level.

In addition to the verification data described above, in the sole discretion of the Locality, the Authority, or VEDP, the Locality, the Authority or VEDP, may each require such other documentation or audits as may be reasonably required to properly verify the New Jobs.

Section 7. Repayment Obligation.

(a) *Further Performance Target for the Maintenance of the New Jobs:* If, pursuant to Section 3(a), the Company received all \$162,500 of the COF Grant allocated to the New Jobs Target, the Company may have a repayment obligation if it has not Maintained the New Jobs from the Initial Performance Date through the Subsequent Performance Date. If the Company has received all of the proceeds of the COF Grant allocated to the New Jobs Target, but has not Maintained at least 113 New Jobs (90.4% of 125 the New Jobs Target) through the Subsequent Performance Date, the Company shall repay to the Authority that part of COF Grant that is proportional to the shortfall from the 125 New Jobs Target. For example, if at the Subsequent Performance Date, only 75 New Jobs have been Maintained (reflecting achievement of 60% of the New Jobs Target), the Company shall repay to the Authority \$65,000, reflecting 40% of the COF Grant proceeds that it received allocated to the New Jobs Target.

(b) *Repayment:* The Company shall be liable for any repayment of all or a portion of the COF Grant, as described in this Section 7. ***Such repayment shall be due from the Company to the Authority within ninety days of the Subsequent Performance Date.*** 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. The Locality shall reimburse the Authority for any and all costs the Authority incurs in any such recovery effort, including without limitation reasonable attorneys and consultants fees. 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.

(c) *Failure to Repay:* If any repayment due pursuant to this Section 7 is not made by the Company when due, the Board of Directors of VEDP (the "Board") may determine that further collection action is required, and the Board may refer the matter to the Office of the Attorney General (the "OAG") for collection pursuant to Section 2.2-518 of the Virginia Code. In such event, by their signatures below, the Locality and the Authority will be deemed to have assigned to the Commonwealth all of their rights, title and interest in and to this Section 7. In any matter referred to the OAG for collection, the Company shall be liable to pay interest, reasonable attorney fees and applicable court filing fees associated with said OAG collection efforts. Interest on any outstanding repayment referred to the OAG shall accrue at the rate set forth in Section 6.2-301 A. of the Virginia Code (currently 6.0% per year) for the period from the Subsequent Performance Date until paid.

Section 8. 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 Parent Company, to:

Speyside Bourbon Cooperage, Inc.
P. O. Box 509
960 East Main Street
Jackson, Ohio 45640
Email: dwhitmer@speysidebci.com
Attention: Darren Whitmer, Vice
President and General Manager

with a copy to:

Snyder & Snyder, PLC
P.O. Drawer 635
316 Commercial Avenue
Clifton Forge, VA 24422
Facsimile: (540) 862-5703
Email: meade@snyderplc.com
Attention: R. Meade Snyder, Esq.

if to the Company, to:

SBCIVA INC.
P. O. Box 509
960 East Main Street
Jackson, Ohio 45640
Email: dwhitmer@speysidebci.com
Attention: Darren Whitmer, Vice
President

with a copy to:

Snyder & Snyder, PLC
P.O. Drawer 635
316 Commercial Avenue
Clifton Forge, VA 24422
Facsimile: (540) 862-5703
Email: meade@snyderplc.com
Attention: R. Meade Snyder, Esq.

if to the Locality, to:

County of Smyth, Virginia
121 Bagley Circle, Suite 100
Marion, Virginia 24354
Facsimile: 276.783.9314
Email: mcarter@smythcounty.org
Attention: Michael L. Carter, County
Administrator

with a copy to:

Jeffrey L. Campbell, Esq.
Campbell Law Firm
117 N. Park Street
Marion, VA 24354
jeff@campbelllawfirmva.com

if to the Authority, to:

Smyth-Washington Regional Industrial
Facilities Authority
1021 Terrace Drive
Marion, VA 24354
Facsimile: 276.783.6949
Email: asizemore@mrpd.org
Attention: Aaron Sizemore

with a copy to:

Thomas Dene, Esq.
DENE & DENE, P.C.
138 Court Street, NE
Abingdon, VA 24210
dene.dene.pc@gmail.com

if to VEDP, to:

Virginia Economic Development Partnership
One James Center, Suite 900
901 East Cary Street
Richmond, Virginia 23219
Facsimile: 804.545.5611
Email: moret@vedp.org
Attention: President and CEO

with a copy to:

Virginia Economic Development Partnership
One James Center, Suite 900
901 East Cary Street
Richmond, Virginia 23219
Facsimile: 804.545.5611
Email: smcninch@vedp.org
Attention: General Counsel

Section 9. Guaranty by Parent Company.

Parent Company hereby guaranties the timely and completed performance of the covenants, agreements, duties and obligations of the Company under this Agreement, provided however, that Parent Company's obligations shall only arise following the default by the Company in its performance of said covenants, agreements, duties and obligations. In the event of any such default by the Company, the Company and Parent Company shall be jointly and severally liable for the duties and obligations of the Company under this Agreement.

Section 10. 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. 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; provided, however, in the event VEDP, the Locality and the Authority elect, jurisdiction and venue for any litigation arising out of or involving this Agreement shall lie in the Circuit Court of the Smyth County, and, in the event of such election, such litigation shall be brought only in the Circuit Court of Smyth County.

(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:* Except as provided in Section 7(c), 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.

COUNTY OF SMYTH, VIRGINIA

By _____
Name: _____
Title: _____
Date: _____

**SMYTH-WASHINGTON INDUSTRIAL
FACILITIES AUTHORITY**

By _____
Henry Snodgrass, Chairman
Board of Directors
Date: _____

Speyside Bourbon Cooperage, Inc.

By _____
Name: _____
Title: _____
Date: _____

SBCIVA INC.

By _____
Name: _____
Title: _____
Date: _____

**VIRGINIA ECONOMIC
DEVELOPMENT PARTNERSHIP
AUTHORITY**

By _____
Name: _____
Title: _____
Date: _____

Exhibit A: Annual Progress Report Form
Exhibit B: Final Report Form

ANNUAL PROGRESS REPORT COMMONWEALTH'S DEVELOPMENT OPPORTUNITY FUND

PROJECT SUMMARY:

Project	
Location	
Amount of Grant	
Performance Reporting Period	
Performance Date	

PROJECT PERFORMANCE:

Performance Measurement	Target	As of _____	% Complete
New Jobs (over 0 baseline) ¹			
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 type="checkbox"/>
Standard Fringe Benefits (check one)	Yes <input type="checkbox"/>	No <input type="checkbox"/>	N/A
Virginia Corporate Income Tax Paid in Prior Calendar Year ³	\$		

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 or Building Upfit	\$
Production Machinery and Tools	\$
Furniture, Fixtures and Equipment	\$
Other	
Total	\$

COMMENTS:

Discuss project status, including the current level of new jobs 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 the 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: _____

Submitted By: _____
Signature of Official

Name: _____
Print Name

Title: _____

Date: _____

Please return to:

Kim Ellett, Incentives Coordinator, Virginia Economic Development Partnership, 804-545-5618, kellett@vedp.org

FINAL REPORT COMMONWEALTH'S DEVELOPMENT OPPORTUNITY FUND

PROJECT SUMMARY:

Project	
Location	
Amount of Grant	
Performance Date	

PROJECT PERFORMANCE:¹

Performance Measurement	Target	As of March 1, 2021	% Complete
New Jobs (over 0 baseline) ²			
Capital Investment (provide breakdown below) ³			
Average Annual Wage			N/A
Standard Fringe Benefits			
Virginia Corporate Income Tax Paid in Prior Calendar Year ⁴	\$		

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

¹Final, actual performance will be reported on VEDP's public reporting website.

² Attach the company's four most recent Quarterly Tax Report (Form FC-20) filed with the Virginia Employment Commission.

³ Data will be verified using records from the Commissioner of the Revenue and invoices.

⁴This confidential information is protected from disclosure pursuant to § 2.2-3705.6 of FOIA

LOCAL MATCH:

Goal	
Actual	

COMMENTS:

Discuss Project status or the important of the Project to the locality and region.

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: _____

Submitted By: _____
Signature of Official

Name: _____
Print Name

Title: _____

Date: _____

Please return to:

Kim Ellett, Incentives Coordinator, Virginia Economic Development Partnership, 804-545-5618, kellett@vedp.org

TOBACCO REGION REVITALIZATION COMMISSION

SPEYSIDE BOURBON STAVE MILL IN VIRGINIA AT GLADE SPRING, INC. PERFORMANCE AGREEMENT

This Performance Agreement (this “Agreement”) is made and entered into this 1st day of _____, 2018, (“Effective Date”) by and among the TOBACCO REGION REVITALIZATION COMMISSION, a body corporate and political subdivision of the Commonwealth of Virginia (the “Commission”), the SMYTH-WASHINGTON REGIONAL INDUSTRIAL FACILITIES AUTHORITY (the “Authority”), a political subdivision of the Commonwealth, SPEYSIDE BOURBON COOPERAGE, INC., an Ohio corporation, (the “Parent Company”) whose Federal Employer Identification Number is 47-3309055 and SPEYSIDE BOURBON STAVE MILL IN VIRGINIA AT GLADE SPRING, INC., a Virginia corporation and wholly owned subsidiary of Parent Company (the “Company”) whose Federal Employer Identification Number is 83-2701009, SMYTH COUNTY, VIRGINIA (“Smyth”), a political subdivision of the Commonwealth of Virginia, and WASHINGTON COUNTY, VIRGINIA (“Washington”), a political subdivision of the Commonwealth of Virginia.

WITNESSETH:

WHEREAS, the Authority has been selected to receive a grant in the amount of \$95,000 (the “Grant”) from the Commission for the Authority’s use in inducing the Parent Company, through the Company as its wholly owned subsidiary, to construct or locate taxable assets and employ persons in the Glade-Highlands Regional Industrial Park (the “Park”), which is located in Washington County, Virginia, and which is owned by the Authority and generates tax revenue that is shared equally between Smyth and Washington pursuant to the Regional Industrial Facility Authority Agreement for Cost Sharing and Revenue Sharing between Smyth County, Virginia and Washington County, Virginia (August 8, 2000) (the “SWIFA Agreement”); and

WHEREAS, the Authority 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; and

WHEREAS, the Commission, the Authority, the Parent Company, the Company, Smyth, and Washington 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 (as defined herein); and

WHEREAS, the Commission has determined that the approval and funding of the Grant constitutes a valid public purpose for the expenditure of public funds and is consistent with and in furtherance of the Commission’s public purposes as outlined in Section 3.2-3100, *et. seq.* of the *Code of Virginia* of 1950, as amended;

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 hereto hereby represent, warrant, covenant, and agree as follows:

Section 1. Disbursement of the Grant

After receipt by the Commission of this Agreement fully executed by all parties hereto, and provided that the Authority is not in default on its obligations to the Commission as of the date first written above, the Commission shall disburse the Grant to the Authority on the following schedule:

Disbursement Schedule – In Arrears. Not more than two (2) installments as requested by the Authority in writing as hereinafter provided, subject to the reasonable approval of the Commission. The amount of each disbursement shall be limited to that portion of the Grant which has been earned by the Company based upon information described in Section 5, 6, and 7 of this Agreement, as applicable, when the same is delivered to and approved by the Commission in its sole discretion.

Allocation – Fifty percent (50%) of the Grant is allocated for the Company's taxable asset obligation set forth in Section 4 of this Agreement and fifty percent (50%) of the Grant is allocated for the Company's employment obligation set forth in Section 3 of this Agreement. Unless otherwise agreed to in writing by all parties to this Agreement, the Authority shall disburse all Grant proceeds to the Company, or for the Company's benefit if so requested by Company, within 30 days of receipt of Grant proceeds from the Commission or return the undisbursed proceeds to the Commission.

The Commission and the Authority acknowledge that the Grant was a material inducement to the Parent Company's and the Company's decision to locate taxable assets and employ persons in the Park. Notwithstanding anything else to the contrary herein, the following terms shall apply. Within 30 days of the Authority's receipt of notice from the Company that it has earned the Grant under Section 5 or 6 herein, together with any documentation to be provided by the Company as described in Sections 5 and 6 for verification of performance pursuant to this Agreement, the Authority shall submit such documentation to the Commission and shall request the Commission to disburse the Grant proceeds in accordance with the Disbursement Schedule stated herein. The Commission shall promptly review such request and documentation to determine whether the Grant has been earned by the Company as provided in Sections 5, 6 and 7 of this Agreement, and within 30 days : (i) from the submission of such request and documentation verifying that the Grant has been earned; or (ii) if so requested by the Commission within said initial 30 day period, from the Company's provision of any supplemental verification documentation as may be reasonably required under this Agreement by the Commission to verify that the Grant has been earned, the Commission shall disburse such Grant funds to the Authority. The Authority shall promptly disburse to the Company the Grant proceeds received from the Commission within 30 days of its receipt of such proceeds from the Commission. Failure by the Commission or the Authority to disburse the Grant once earned by the Company as provided in this Agreement shall constitute an event of default by the Commission or Authority as the case may be.

Section 2. Grant Restrictions and Conditions

Under this Agreement, the Commission places no restriction on the use of the Grant proceeds by the Company, and imposes no conditions beyond those described herein. Should any such restrictions or conditions be imposed by the Authority, 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 representative of the Company. The Authority shall be responsible for enforcement of any restrictions or conditions described in said **Exhibit A**.

Section 3. Employment Obligation

The Company shall employ at least 35 persons in the Park with a quarterly aggregate payroll of at least \$287,788. Said employment and payroll will be in addition to those already employed in the Park by the Company and paid during the calendar quarter ending on September 30, 2018, hereinafter called the "Base Quarter." Persons employed by the Company in the Park shall be counted as employed 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.

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).

Section 4. Obligations Regarding Taxable Assets

The Company shall locate or construct taxable assets in the Park having an assessed value of at least \$9,000,000, as determined by Washington's Commissioner of Revenue ("COR"). If Washington or the Authority elects to arrange for reimbursement to the Company of all, or any portion of, the tax paid by the Company on said taxable assets, or elects to waive all or any portion of such tax liability, the Company's aforementioned obligation to locate or construct taxable assets in the Park shall not be waived or reduced. The 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.

Section 5. Determination of Performance - Employment

In order 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:

- (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
- (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
- (iii) all such employees worked in the Park, AND
- (iv) all Company employees in Virginia have been reported to the Virginia Employment Commission ("VEC") in accordance with VEC regulations.

The Company's failure to satisfy such requirements shall be a breach hereof, and shall constitute an Event of Default hereunder by the Company. Employment gains by the Company in the Park that are offset by employment losses elsewhere in Virginia shall not be counted as employment hereunder.

The number of persons who received pay in any given quarter shall be calculated by adding together the number of persons who received pay in each month of the quarter and dividing that sum by three (3).

All determinations of performance made under this Section 5 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 Park, it shall be the duty of the Company to provide additional information sufficient to identify those employees who did work in the Park. Employees of control affiliates (e.g., subsidiary companies, parent companies, 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 ("temps") who are assigned to work for the Company in the Park shall not be counted UNLESS evidenced by letter from the temporary employment agency setting forth the number of work-hours so assigned during the Base Quarter and the 36 months immediately following the Base Quarter. Such work-hours shall be credited to the Company's job-creation obligation at the rate of one job for one quarter for every 520 work-hours evidenced by such letter. The parties hereto acknowledge that the Company and Parent Company are related entities and the employees of either such entity shall be counted as employees of the Company, provided that both entities supply the Commission with the employment documentation as described herein.

Section 6. Determination of Performance – Taxable Assets

In order to earn the Grant, the Company must meet its taxable asset obligations hereunder not later than thirty-six (36) months after the Base Quarter. Company assets located, constructed, or leased in the Park prior to the Base Year will not be counted in fulfillment of the Company's taxable asset obligation. For purposes of this Agreement, the calendar year that includes the Base Quarter shall be called the "Base Year."

Leased assets not on record with the COR in the name of the Company will be counted in fulfillment of the Company's taxable asset obligation only if a copy of the lease is submitted to the Commission indicating that the asset(s) under lease meet the other requirements listed above and were not leased from the Authority or its control affiliates at a substantial discount from market rates.

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

- a. the highest real property assessed value of record for any one of the three years, less and except the assessed value prior to the Base Year, PLUS
- b. the first personal property assessed value for each asset first appearing of record during the three calendar years following to 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.

Provided that the Company constructs or locates its taxable asset obligations within the time period specified within the first paragraph of this Section 6., the Company's achievement of its taxable asset obligations hereunder shall be credited with any and all assessments by the COR for such assets, even if the COR's assessment first becomes available after the time periods specified herein.

Taxable assets owned by subsidiary companies, related entities, or entities under common ownership or control shall not be counted as taxable assets of the Company in fulfillment of its taxable asset obligation hereunder UNLESS such entities and their relationships 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 herein. The parties hereto acknowledge that the Company and Parent Company are related entities and the taxable assets of either such entity shall be counted as taxable assets of the Company, provided that both entities supply the Commission with the taxable assets documentation as described herein.

Section 7. Verification of Performance

Until all performance obligations pursuant to this Agreement have been satisfied or this Agreement has otherwise been terminated as provided herein, the Company hereby expressly grants its consent for (a) the COR to release to the Commission and the Authority records of all local tax assessments made to the Company for all tax periods including and after January 1, 2018, and (b) the Virginia Employment Commission to release to the Commission and the Authority all Company employment records of any kind held by the Virginia Employment Commission including and after January 1, 2018.

If any of the taxable assets described in Section 4 have been acquired or improved 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 acquired or improved by the lessor on behalf of the Company.

Notwithstanding any other provision of this Agreement, once Company earns the Grant as provided in Sections 5. and 6. herein, Company and Parent Company shall have no further obligations under this Agreement.

Section 8. 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:

- a. The Company or Parent 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 or Parent Company as bankrupt or insolvent or approving a petition seeking reorganization of the Company or Parent Company or appointing a receiver, trustee or liquidator of the Company or Parent 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 Company or Parent Company ceases to be of record and in good standing with the Virginia State Corporation Commission, and such failure is not cured within sixty (60) days from notice thereof, unless Company obligations hereunder have been assumed by another entity and that assumption was approved by the Commission and the Authority;
- c. The Company fails, for reasons other than an Event of Force Majeure (as defined herein), 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;
- d. The Company’s employment level is less than 75% of that found in the Base Quarter in more than 2 calendar quarters following the Base Quarter;
- e. The Company fails to provide verification to the Commission as described in Section 7, within sixty (60) days from a written request from the Commission; or
- f. After opening for business in the Locality following the completion of its facility construction, the Company closes its business in the Locality for a period of more than ninety (90) days during the thirty-six (36) months following the Base Quarter.

Section 9. Revenue Sharing Addendum

Smyth and Washington are parties to this Agreement solely due to the Revenue Sharing Addendum, attached hereto as Exhibit C, that relates to this Agreement. Exhibit C is hereby incorporated by reference as if fully set out herein.

Section 10. 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, or an Event of Default occurs, the Company shall repay to the Authority the unearned portion of the Grant that has been received by the Company, which is calculated as follows:

- a. 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 (a) \$1.0 million if the taxable asset obligation described in Section 4 hereof is higher than \$1.0 million **or** (b) one-half of the taxable asset obligation described in Section 4 hereof when listed as lower than \$1.0 million.
- b. Subject to the terms of Section 10.c. 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 promised in Section 3.
- c. The method of computation set forth in Paragraph 10.b. above will be used only if the average of the quarterly aggregate payroll for the three consecutive quarters described in Section 5 divided by the average number of employees receiving pay during said period equals or exceeds \$8,222.50, and if less than said amount then, the number of qualifying employees shall be reduced in proportion to the shortfall in quarterly aggregate payroll on a per employee basis and the reduced number of employees shall be used to determine whether Company has satisfied its employment obligation hereunder.
- d. 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 attested to by the COR under Sections 6 and 7 above by the taxable assets promised in Section 4.
- e. All unearned portions of the Grant shall be repaid by the Company to the Authority not later than thirty (30) days after the date on which the Company is notified of the unearned amount. The Authority agrees to remit the same to the Commission. Any refund owed by the Company to the Authority hereunder shall immediately constitute an obligation of the Authority to repay the Commission and such Authority's obligation shall **not** be contingent upon successful collection of any amount from the Company. **The Authority 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 Authority has received repayment from the Company as further certified on Exhibit B attached hereto.**
- f. Interest shall accrue on unpaid balances at the rate of three percent (3%) per annum beginning on the 31st day after the Company is notified of the amount due.
- g. If the Company does not meet its employment obligations or taxable asset obligations hereunder by the date which is thirty-six (36) months after the end of the Base Quarter because of: (i) an

Event of Force Majeure (as defined herein),), or (ii) the COR assessment for taxable assets constructed or located in the Locality within thirty-six (36) months after the end of the Base Quarter not becoming available until after the end of said period, 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 or for such COR assessment to become available. "Event of Force Majeure" means any of the following: acts of God, strikes, lockouts, crime, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, hurricanes, tornadoes, storms, floods, washouts, draughts, or explosions.

- h. In the event the Commission is required to take legal action under this Agreement, the Authority and the Company, jointly and severally, shall be liable for all of the Commission's costs expended for the administration and enforcement of this Agreement, including but not limited to reasonable attorney's fees and court costs.
- i. In the event of a repayment obligation pursuant this Section, any payments that the Commission has received from Smyth or Washington or both pursuant to the Addendum, Exhibit C, shall be deducted from any repayment obligation the Authority owes to the Commission.

Section 11. Guaranty by Parent Company

Parent Company hereby guaranties the timely and completed performance of the covenants, agreements, duties and obligations of the Company under this Agreement, provided however, that Parent Company's obligations shall only arise following the default by the Company in its performance of said covenants, agreements, duties and obligations. In the event of any such default by the Company, the Company and Parent Company shall be jointly and severally liable for the duties and obligations of the Company under this Agreement.

Section 12. Acknowledgment and Notice

The Company and the Authority each acknowledge and agree to its respective repayment obligation in accordance with 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 pre-paid or by overnight courier (refusal shall mean return of certified mail, undelivered) and addressed as follows:

if to the Parent Company, to:

NAME: SPEYSIDE BOURBON COOPERAGE, INC.
ADDRESS: 960 E. Main Street
Jackson, OH 45640
Attention: Darren Whitmer, Vice President and General Manager

With a copy to:

NAME: Snyder & Snyder, PLC
ADDRESS: P.O. Drawer 635
316 Main Street
Clifton Forge, VA 24422
Attention: R. Meade Snyder, Esq.

if to the Company, to:

NAME: SPEYSIDE BOURBON STAVE MILL IN VIRGINIA AT GLADE SPRING, INC.
ADDRESS: 960 E. Main Street
Jackson, OH 45640
Attention: Darren Whitmer, Vice President

With a copy to:

NAME: Snyder & Snyder, PLC
ADDRESS: P.O. Drawer 635
316 Main Street
Clifton Forge, VA 24422
Attention: R. Meade Snyder, Esq.

if to the Authority, to:

NAME: SMYTH-WASHINGTON REGIONAL INDUSTRIAL FACILITIES AUTHORITY
ADDRESS: 1021 Terrace Drive
Marion, VA 24354
Attention: Mr. Henry Snodgrass

if to the Commission, to:

NAME: TOBACCO REGION REVITALIZATION COMMISSION
ADDRESS: 701 East Franklin Street, Suite 501
Richmond, VA 23219
Attention: Evan Feinman, Executive Director

if to Smyth, to:

NAME: SMYTH COUNTY, VIRGINIA
ADDRESS: 121 Bagley Circle, Suite 100
Marion, Virginia 24354
Attention: County Administrator

if to Washington, to:

NAME: WASHINGTON COUNTY, VIRGINIA
ADDRESS: Government Center, Suite A
1 Government Center Place
Abingdon, Virginia 24210
ATTN: County Administrator
COPY TO: County Attorney

Section 13. General terms and conditions

- a. Entire agreement, successors, & assigns. 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 Authority and the Commission; provided that the Company shall have the right, without the consent of the Authority 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.
- b. Controlling law and venue. 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 of Washington County, Virginia and such litigation shall be brought only in such court.
- c. Severability at discretion of Commission. 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.
- d. Good standing of Company and Parent Company. The Company and Parent Company hereby warrant that from the date of this Agreement until all obligations hereunder have been satisfied that they are, and will remain, registered and in good standing with the Virginia State Corporation Commission and that the Parent Company is, and will remain, legally authorized to conduct business in the Commonwealth of Virginia.
- e. Survival. The provisions of this Agreement are intended to and shall survive closing, the delivery of any deed or other instrument, and any other event. If this Agreement has not been executed by all parties hereto and returned to the Commission within 90 days from the date hereof, the Authority's and the Company's rights to the Grant Proceeds shall automatically terminate.
- f. Counterparts and electronic certification. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument. Facsimile signatures or signed copies sent by portable document format (PDF) shall be deemed originals.

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

<p>TOBACCO REGION REVITALIZATION COMMISSION</p> <p>_____</p> <p>By: Evan Feinman, Its, Executive Director</p> <p>Date: _____</p>	<p>SPEYSIDE BOURBON COOPERAGE, INC.</p> <p>_____</p> <p>By Its, _____</p> <p>Date: _____</p>
<p>SMYTH-WASHINGTON REGIONAL INDUSTRIAL FACILITIES AUTHORITY</p> <p>_____</p> <p>By: Henry Snodgrass Its: Chairman _____</p> <p>Date: _____</p>	<p>COUNTY OF WASHINGTON, VIRGINIA</p> <p>—</p> <p>_____</p> <p>By: Saul Hernandez, Its: Chairman of the Board of Supervisors</p> <p>Date: _____</p>
<p>SPEYSIDE BOURBON STAVE MILL IN VIRGINIA AT GLADE SPRING, INC.</p> <p>_____</p> <p>By Its, _____</p> <p>Date: _____</p>	<p>COUNTY OF SMYTH, VIRGINIA</p> <p>_____</p> <p>By: M. Todd Dishner Its: Chairman of the Board of Supervisors</p> <p>Date: _____</p>

Grant Restrictions

None.

Authority Certification

The SMYTH-WASHINGTON REGIONAL INDUSTRIAL FACILITIES AUTHORITY (the "Authority"), a political subdivision of the Commonwealth, hereby certifies that (a) it unconditionally guarantees the Company's performance under and pursuant to the Performance Agreement (this "Agreement") dated as of December __, 2018, by and among the TOBACCO REGION REVITALIZATION COMMISSION, a body corporate and political subdivision of the Commonwealth of Virginia (the "Commission"), the SMYTH-WASHINGTON REGIONAL INDUSTRIAL FACILITIES AUTHORITY (the "Authority"), a political subdivision of the Commonwealth, SPEYSIDE BOURBON COOPERAGE, INC., a Ohio corporation, (the "Parent Company") whose Federal Employer Identification Number is 83-1050842, SPEYSIDE BOURBON STAVE MILL IN VIRGINIA AT GLADE SPRING, INC., a Virginia corporation and wholly owned subsidiary of Parent Company (the "Company"), SMYTH COUNTY, VIRGINIA ("Smyth"), a political subdivision of the Commonwealth of Virginia, and WASHINGTON COUNTY, VIRGINIA ("Washington"), a political subdivision of the Commonwealth of Virginia, and (b) it holds collateral security from the Company sufficient to provide a secondary source of repayment in the event that the Company cannot or will not repay the unearned portion of the Grant (as defined in the Agreement) to the Commission. Such collateral security is described as follows:

_____.

The Authority hereby acknowledges that the sufficiency of the collateral security for the Grant is the sole responsibility of the Authority.

SMYTH-WASHINGTON REGIONAL INDUSTRIAL FACILITIES AUTHORITY

By: _____

Title: _____

Date: _____

Revenue Sharing Addendum

1. Localities' revenue sharing obligation with Commission.

The counties of Smyth and Washington, Virginia, (for purposes of this Addendum, the "Localities"), political subdivisions of the Commonwealth, hereby guarantee to pay the TOBACCO REGION REVITALIZATION COMMISSION (the "Commission"), a body corporate and a political subdivision of the Commonwealth of Virginia, an annual amount equal to 5% of all Local Tax Revenue generated by the Grant described in the Performance Agreement (the "Agreement") dated as of August 1, 2018, by and among the Localities, the Smyth-Washington Regional Industrial Facilities Authority (the "Authority"), the Commission, SPEYSIDE BOURBON COOPERAGE, INC., an Ohio corporation duly registered to conduct business in the Commonwealth of Virginia, (the "Parent Company"), and SPEYSIDE BOURBON STAVE MILL IN VIRGINIA AT GLADE SPRING, INC., a Virginia corporation and wholly owned subsidiary of Parent Company (the "Company"). The total amount of Local Tax Revenue provided to the Commission shall be limited to 105% of the Grant amount.

2. Definitions.

"Local Tax Revenue" means the amount of taxes that are annually assessed and collected by Washington County, Virginia, from the Company under Title 58.1, Subtitle II of the *Code of Virginia*, including, but not limited to, real property taxes, machinery and tools taxes, and tangible personal property taxes and that are shared equally by Washington County, Virginia and Smyth County, Virginia pursuant to the Regional Industrial Facility Authority Agreement for Cost Sharing and Revenue Sharing between Smyth County, Virginia and Washington County, Virginia (August 8, 2000) (the "SWIFA Agreement"). Washington County alone shall determine the rate at which Local Tax Revenue is taxed and the due date for such taxes.

"Generated by the Grant" means real property taxes, machinery and tools taxes, and tangible personal property taxes resulting from assets and activity of the Company in performance of its obligations in Section 3 and Section 4 of the Agreement, which are shared equally between the Localities. The Company is a new business in Washington County; therefore, "Generated by the Grant" shall mean all applicable taxes generated by the Company.

"Commission Revenue Share Amount" means the portion of Local Tax Revenue that the Localities shall pay to the Commission pursuant to this Agreement.

"Locality Revenue Share Amount" means the portion of Local Tax Revenue that each Locality receives pursuant to the SWIFA Agreement.

3. Contingency.

The payment obligation of the Localities under this Addendum is contingent upon Washington County's receipt of tax payments from the Company. In the event the Company ceases operations in the Glade-Highlands Regional Industrial Park in Washington County, Virginia, all rights and obligations pursuant to this Addendum shall terminate and none of the parties hereto shall have any further rights or obligations pursuant to this Addendum.

4. Payment schedule.

Pursuant to the SWIFA Agreement, Washington County makes Local Revenue Share Amount payments to Smyth County within 60 days of Washington County's receipt of such payments from the Company. Smyth County hereby authorizes the Washington County Treasurer to send Smyth County's portion of the Commission Revenue Share Amount directly to the Commission. The Washington County Treasurer will report each remittal to Smyth County for its records. Washington County shall make Commission Revenue Share Amount payments to the Commission within 60 days after it receives such payments from the Company. Extensions to the date that the Commission Revenue Share Amount payment is due to the Commission may be made at the sole discretion of the Commission.

5. Tax delinquencies.

In the event tax delinquencies occur, Washington County shall be responsible for pursuing collection of such delinquencies, and Smyth County will pay for one-half the cost of such collection activities, as provided in the SWIFA Agreement. The Commission shall not receive any portion of penalties and interest accrued and paid by the Company as a result of delinquent payments.

6. Repayment obligation.

In the event of a repayment obligation pursuant to Section 9 of the Agreement, any payments that the Commission has received from the Localities pursuant to this Addendum shall be deducted from any repayment obligation the Authority owes to the Commission, and all obligation pursuant to this Addendum Agreement for payment of Commission Revenue Share Amount shall terminate and none of the parties hereto shall have any further rights or obligations pursuant to this Addendum.

7. Modification.

Modifications to this Addendum shall be made only by written agreement certified on behalf of all parties hereto.



Smyth County Board of Supervisors

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Michael L. Carter
County Administrator

Scott R. Simpson, P.E.
Assistant County Administrator

A RESOLUTION APPROVING THE FILING OF A GRANT APPLICATION WITH THE TOBACCO REGIONAL REVITALIZATION COMMISSION

WHEREAS, The Tobacco Region Revitalization Commission (TRRC) will accept applications for a second round of Last Mile Broadband (LMB) funding in Spring 2019 for up to \$5 million and will be made available for assisting in the construction of "last-mile" broadband telecommunications infrastructure in the unserved areas of the tobacco region. Guidelines for the grant applications were posted in November of 2018 and the deadline for pre-applications has been set for December 21, 2018; and

WHEREAS, the program guidelines for grant applications, requires a government entity as the applicant with a qualified and experienced private sector broadband provider as the co-applicant; and

WHEREAS, Comcast Corporation has recently discussed its plans to rebuild parts of its system in the eastern end of the Smyth County. This project will bring high speed internet to the selected portion of Smyth County and could involve areas of reconstruction and or reconstruction.

NOW THEREFORE BE IT RESOLVED, the Board of Supervisors of the County of Smyth does hereby approve the submittal of a grant pre-application to the Tobacco Region Revitalization Commission to assist in constructing "last-mile" broadband telecommunications infrastructure in a portion of the unserved areas of the tobacco region.

AND FURTHER IT BE RESOLVED, by adoption of this resolution, the Board of Supervisors of Smyth County authorizes the County Administrator to take such action necessary to file the grant pre-application with the Tobacco Commission identifying the co-applicant as Comcast Corporation.

ADOPTED this 11th day of December, 2018.

Recorded Vote
Moved by:
Seconded by:
Yeas:
Nays:

A COPY TEST:

Michael L. Carter, County Administrator

Saltville District
Roscoe D Call

North Fork District
Phil Stevenson

Chilhowie District
R. Curtis Rhea

Park District
M Todd Dishner

Atkins District
Charles Atkins

Royal Oak District
Judy Wyant

Rye Valley District
Rick K Blevins



TRRC Last-Mile Broadband

Call for Proposals & Program Guidelines

(Pre-applications due 12/21/18; Full applications 3/1/19)

Program Background

The Tobacco Region Revitalization Commission (TRRC) has long recognized and directed significant funding to address the “digital divide” that has existed between telecommunications infrastructure and service in its largely rural footprint, and that which exists in more urbanized areas of the Commonwealth. Since the inception of the Commission, in excess of \$140 million has been granted to construct robust broadband fiber infrastructure in every Tobacco Region locality. Those historic investments have generated substantial dividends, including the construction of several large data centers such as the nearly \$2 billion Microsoft facility in Mecklenburg, significant high-paying employment opportunities for residents in IT careers, increased access to secondary and post-secondary educational content for residents, expanded access to healthcare services delivered via telemedicine, and increased local and state tax revenues which in turn fund essential government services such as education and public safety. The Commission’s investments have also leveraged tens of millions of matching investments from other sources, primarily federal broadband funding programs. However, despite these investments over the past 15+ years by the Commission and its funding partners in fiber backbone and middle-mile broadband infrastructure, there continues to be a pronounced lack of “last-mile” service to premises including residents, businesses, institutions and others within the Region, as evidenced by mapping of broadband availability across the Region and Commonwealth.

Program Objectives

In 2017 the TRRC Research & Development Committee recommended, and the Commission approved setting aside \$10 million as a multi-year commitment to assist in constructing “last-mile” broadband telecommunications infrastructure in unserved areas of the Region. In March 2018 the Commission approved an initial round of funding to nine projects for \$11 million, leveraging an additional \$16 million of matching project funds to serve 31,500 premises in parts of 13 Tobacco Regional counties.

In this second round of funding, the R&D Committee will use up to \$5 million of budgeted funds as grant and loan incentives to localities and qualified experienced private sector broadband providers working in partnership to provide new or expanded service to unserved Tobacco Region premises. Projects may include fiber-to-the-premise, fixed wireless or some combination thereof, assuming greater than 10/1 Mbps service can be provided, with a preference for higher speeds. However, expansion or upgrade of Digital Subscriber Line (DSL) service will not be a funding priority. Projects will be awarded funding in a competitive process, and TRRC reserves the right to make awards in whole or in part, based on the quality and quantity of proposals received. Proposals which do not receive funding are generally eligible to re-apply in a future funding round.

The primary objective of the Last-Mile funding is to provide one-time financial assistance to supplement construction costs by private sector broadband service providers, in partnership with local units of government, to extend greater than 10/1 Mbps or higher service to areas that presently are unserved by any broadband provider. Should a locality demonstrate need and be unable to find a qualified private-sector partner, commission staff may consider that project, but such projects will be lower-priority relative to public-private partnerships.

Eligible Applicants

As required in all TRRC proposals, applications must be submitted by a unit of government within the Tobacco Region (Towns, Cities, Counties, EDA/IDA, Broadband/Wireless Authorities, Planning District Commissions, etc.). Along with an eligible government, a qualified and experienced private sector provider should be included as a co-applicant. While IRS-designated nonprofits are generally eligible applicants for TRRC funds, it is not anticipated that non-profit organizations (e.g. community associations) will be preferred as lead applicants on Last-Mile projects.

Eligible Requests and Uses of Funds

Funds may be requested as a grant for up to 50% of the costs, or a loan of up to 80% of costs, to design, construct, equip, and put into service broadband infrastructure that serves residential and commercial subscribers in Tobacco Region project areas that are designated as unserved.

Projects seeking loan assistance from the Commission shall in all cases be preferred to those seeking grant funds. TRRC loans shall be negotiated at interest rates that are, in all cases, lower than and preferable to other potential lenders, public or private, with forbearance of principal payments during construction and initial year(s) of broadband service offering. For additional information on TRRC loans please contact Staff or visit <https://www.revitalizeva.org/grant-loan-program/loan-programs/>.

Proposals that request ongoing operating support to subsidize delivery of broadband to subscribers shall not be funded by this program. Middle mile fiber that is necessary to extend last mile service to end users can be considered, however, requests that seek to build backbone or middle-mile fiber without directly providing service to unserved customers shall not be funded. It is suggested that any backbone or middle mile project expenses be funded from the required matching funds.

Applicants are strongly encouraged to review the Funding Policies for Grant Awards: Information for Grantees and Applicants (Revised May 2016) document available on the TRRC website.

Projects Must Only Address Unserved Areas

TRRC will award funding to applicants to provide service to unserved areas of the Tobacco Region. Unserved areas are defined as having broadband speeds of less than or equal to 10 Mbps download and 1 Mbps upload. Projects may include fiber-to-the-premise, fixed wireless or some combination thereof, assuming greater than 10/1 Mbps service can be provided. However, expansion or upgrade of Digital Subscriber Line (DSL) service will not be a funding priority.

Broadband Internet Speed(s)

This program is designed to provide unserved areas of the Region access to broadband speeds of greater than 10 Mbps download and 1 Mbps per second upload. Projects proposing higher speeds may receive greater consideration, however, the objective is to serve as many project areas and premises as possible, rather than providing superior service to a few areas. In each case, the co-applicant will be required to demonstrate how their proposed technology solution will deliver the promised speeds in the proposed area once operational.

Outcome Measures

When the co-applicant is a private sector broadband provider, the co-applicant must own, operate, and maintain the network and the application must indicate the provider's managerial, financial and technological ability to do so. When the co-applicant is a public broadband provider, the co-applicant is expected to describe and be prepared to measure the anticipated ROI (e.g. capital investment, numbers and types of customers subscribing to service, etc.) in relation to proposed Commission investments.

Pre-application (required) and Proposal Due Dates

In this second round of funding a Last Mile Pre-Application must be submitted to TRRC using the format posted on the Commission's website. Pre-applications must be submitted to the Commission website by **December 21, 2018** and will be reviewed by the Commission's R&D Committee at a public meeting in January 2019.

Full Proposals are to be submitted via the Commission's online application portal by **March 1, 2019**.

Evaluation Criteria

The Full Proposals will be evaluated on factors including but not limited to:

- the documented need for greater than 10/1 Mbps or higher broadband service in the project area;
- numbers of premises to be provided service, and anticipated take rates;
- unserved community anchor institutions and services, including schools, libraries, public safety, etc.;
- experienced private broadband provider(s) partnering on the project;
- reasonable industry-standard costs of construction and monthly subscriber service packages;
- project readiness, as demonstrated by planning, preliminary engineering, committed matching funds, etc.

Applicants Must Demonstrate Suitable Fiscal Standing and Management Capabilities

To participate in the program, the Local applicant and private co-applicant must demonstrate suitable fiscal standing and management capabilities. To determine whether applicants meet these criteria, applicants and private sector partner(s), must submit the following documents and/or attest to each of the following:

1. Documentation that proposed project area is unserved based on program criteria;
2. Private Service Provider (the Co-Applicant) must provide proof that they have filed an FCC

Form 477 for two years prior to submission of application.

3. Projects must be fully-financed, through a combination of the total requested TRRC funds, committed funds from the Applicant or Co-Applicant or other non-TRRC sources;
4. Public or private Co-applicants must provide the Summary Statement of an audited annual financial report for the most-recently concluded fiscal year, which should be marked "Confidential and Proprietary";
5. Applicant and Co-Applicant(s) must be in good standing in performance of any and all existing Commonwealth of Virginia contracts, and compliance with all federal, State, and local laws.

Multiple Applications and/or Service Areas

An applicant may designate separate Service Areas through a single or multiple applications where: (1) the applicant proposes to serve geographic areas that do not share a contiguous boundary AND are wholly-located in different localities, OR (2) the applicant is proposing the use of different technology solutions for each area.

- A. Applications proposing Service Areas that span more than one locality will be considered regional, will have greater funding consideration, and must provide documentation of the support and participation of the localities served.
- B. Applications that propose use of more than one technology may be filed in the same application (e.g. wired and wireless solutions).

Project Budget and Required Matching Funds

There is no minimum or maximum amount for requests or total project budgets, although requests that seek a majority of the \$5 million available in this funding round will receive lesser consideration. Per statutory requirements and Commission funding policies, TRRC grant funding shall not exceed fifty-percent of the total project cost. Matching funds may come from any public or private non-TRRC source, including but not limited to state or federal funds, private provider investments, local government funds or any other non-TRRC source. Awards will be contingent on the commitment of required matching funds, prior to use of TRRC funds.

Required Budget Documents for Funding Request

Supporting documents with line-item details on the use of grant funds are required. Requests for the acquisition, construction or equipping of long-lived physical assets must include:

- **Construction Budget** – A detailed, itemized construction budget is required.
- **Equipment List** – An itemized equipment list is required.

Other Program Guidelines/Requirements

Additional information in the form of attachments is required to provide details critical to the evaluation of the full application. Failure to submit all required information may result in a recommendation of no award.

- **Operating budget** – Applicants are required to submit an operating budget to demonstrate how operating costs will be supported and how the project will be sustained beyond a start-up period.
- **Marketing Plan** – A marketing plan to describe the project's target market and the plan to capture that market must be described in the application.
- **Cash Flow Analysis** – For expansions of existing networks, applicants must provide a detailed cash flow analysis that shows the effect of this project on revenues and expenditures. The analysis should include a baseline of current operations and demonstrate how the TRRC funded infrastructure will impact revenues and expenditures.
- **Rate Structure** – A rate structure and other relevant terms and conditions of service for proposed customers must be provided.
- **Construction Documents** - Additional supporting documents including Preliminary Engineering Reports or designs etc. should also be submitted with the application.
- **Real estate acquisitions** – If real estate is to be acquired or leased with Commission funds or proposed as matching funds, the applicant must provide an independent appraisal completed within the previous year.
- **Letters of Support** – Applicants are asked to provide letters from project partners, beneficiaries and others that demonstrate the commitment of resources to the project or document the project's need.
- **Multiple & Multi-faceted proposals** – Multiple proposal submissions and proposals that involve multiple projects should provide a priority ranking of the initiatives so that the Commission may focus its primary consideration on the applicant's stated #1 priority.

Review and Award Process

Projects will be selected through a competitive application process, with review of proposals by TRRC Staff, the TRRC Research & Development Committee, and approval by the full Commission. Application questions will be centered on the applicant's broadband needs, and project(s) needing financial assistance to supplement construction costs. The applicant must demonstrate a readiness to proceed with the project in a timely manner within the Commission's standard project period of three years.

Grant Agreement and Terms

All responsible participants in the project, including the Locality and Private Co-Applicant (and its affiliated LLC, if applicable), must be parties to the Grant Agreement that shall be executed prior to release of TRRC funds. The Grant Agreement stipulates that the Commission retains a security interest in all TRRC-funded assets for the useful life of those assets, which can not be leased, sold, transferred, disposed of or otherwise encumbered without Commission approval. In such cases, the Commission shall assert its interest to recover its share of the value of the asset.

Challenge Process

The Commission will post electronic copies of all submitted applications to the agency website after

the deadline for application submissions has passed and before project approval. Any private sector service provider wishing to request that Commission deem a proposed project area as ineligible for the Last Mile Program must submit a challenge with the information required in this section no later than 5:00 p.m. on March 31, 2019. The Commission will have 30 business days to validate a challenge.

Applicants will be notified if their proposed project area is being challenged. Applicants will have 15 business days from notification of a challenge to provide any additional information to the Commission. Providers choosing to challenge a submitted application must provide an affidavit including the following:

1. Submit their current FCC Form 477 or equivalent
2. The incumbent provider's minimum/max speeds provided by their company in the proposed project area
3. Percentage of serviceable units that they provide the speed within normal service interval.
4. Provide the number of actual customers receiving service within the normal service interval for the proposed project area. Provide the speeds those customers are able to receive. Proposed or planned service to a proposed project area will not demonstrate service for the purpose of a challenge to a proposed project.
5. The Commission must receive all of the information referenced above or the challenge will be deemed invalid. The Commission shall evaluate challenges that submit all of the information referenced above and determine if the challenger has demonstrated that a significant portion of the project area is currently served. This determination shall be at the sole discretion of the Commission and such determinations shall be final.
6. The Commission shall notify the applicant and challenger in writing if a challenge is deemed valid or invalid. All applications will remain in consideration until the received challenge evaluation has been completed.

Project Period

Applicants must demonstrate that their projects will be completed well within the Commission's standard three-year project period. Greater emphasis will be placed on projects that can deliver the required service levels in the most immediate timeframe. Proposals must detail major project milestones and deliverables and timing of anticipated achievement of each milestone/deliverable.

Start Date

It is anticipated that the Commission will make final funding decisions at its meeting in May 2019. Commission policies do not allow use of grants funds for project expenses prior to approval, so TRRC-funded activities should not start prior to June 1, 2019.

Definitions

Connect America Fund (CAF) – a Federal Communications Commission (FCC) program that supports the deployment of Internet access in Unserved areas at speeds of 10/1 Mbps (download/upload)

Digital Subscriber Line (DSL) - A technology for bringing high- bandwidth information to homes and small businesses over ordinary copper telephone lines

Eligible Project Costs – Expenses eligible for reimbursement under the TRRC grant

Fiber-to-the-Home (FTTH) – A network that delivers internet service over optical fiber directly to an end-user home, business, or other Unit

Fixed Wireless – Wireless devices or systems that are situated in fixed locations

Hybrid Fiber Coaxial (HFC) - A broadband network combining optical fiber and coaxial cable

Last-Mile – Components of a network that provide broadband service to end-user premises or devices through an intermediate point of aggregation (*e.g.*, remote terminal, fiber node, wireless tower, or other equivalent access point)

Middle Mile – Network components that provide broadband service from one or more centralized facilities (*e.g.*, the central office, the cable head-end, the wireless switching station, or other equivalent centralized facilities) to an Internet point of presence

Service Area – Refers to the geographic territory in which an applicant has proposed to provide service

Unserved – An area where broadband service is not available from a wireline or wireless facilities-based provider at advertised speeds of at least 10 Mbps download /1 Mbps upload

A meeting of the Smyth County Personnel Committee was held at the County Office Building on Tuesday, November 4, 2018 at 3:30 P.M.

Committee Members Present: Park District Supervisor M. Todd Dishner, Chairman
Saltville District Supervisor Roscoe D. Call
North Fork District Supervisor Phil Stevenson

Staff Present: Michael Carter, County Administrator

Chairman, Park District Supervisor M. Todd Dishner called the meeting to order at 3:31 P.M.

A motion was made by North Fork District Supervisor Phil Stevenson, seconded by Saltville District Supervisor Roscoe D. Call to enter into closed session under Code of Virginia, Section 2.2-3711 – **A.1; Personnel Matters**; Discussion, consideration, or interviews of prospective candidates for employment and contract; promotion, performance, demotion, salaries, disciplining, or resignation of specific public officers, appointees, or employees of any public body. All agreed unanimously.

It was moved by Saltville District Supervisor Roscoe D. Call, seconded by North Fork District Supervisor Phil Stevenson to adopt the following resolution certifying the business conducted in closed session as follows. All agreed unanimously.

**RESOLUTION
CERTIFICATION OF CLOSED SESSION**

WHEREAS, the Smyth County Board of Supervisors has convened in a closed session on this date pursuant to an affirmative recorded vote and in accordance with the provisions of the Virginia Freedom of Information Act; and

WHEREAS, Section 2.2-3712 of the Code of Virginia requires a certification by the Smyth County Board of Supervisors that such a meeting was conducted in conformity with Virginia law;

NOW, THEREFORE, BE IT RESOLVED that the Smyth County Board of Supervisors hereby certifies that, to the best of each member's knowledge, (i) only public business matters lawfully exempted from open meeting requirements by Virginia law were discussed in the closed meeting to which this certification resolution applies, and (ii) only such public business matters as were identified in the motion convening the closed session were heard, discussed or considered by the Smyth County Board of Supervisors.

With nothing further to discuss, the meeting was adjourned at 5:18 P.M.