INCENTIVES AND LOANS COMMITTEE

AGENDA

INCENTIVES & LOANS COMMITTEE

The Sessions Hotel
833 State Street, Bristol, VA 24201
Thursday, May 12, 2022
9:30 A.M.

In accordance with §2.2-3708.2.D.2 of the Code of Virginia, the public may witness and participate in this meeting remotely (only audio participation will be utilized). **The meeting number is: 2630 485 7439 and the password is: 56978797. If participating via phone, dial: 1-408-418-9388 (toll)** utilizing the above meeting number and passcode. If joining remotely, utilize the following link:

https://virginiatobaccocommission.my.webex.com/virginiatobaccocommission.my/j.php?MTID=m926386995f30aae6963c1aade6df44f1

If you experience problems calling in or transmission, please call: 804-894-9652 or email at JButler@revitalizeva.org. Any person needing accommodations in order to participate in the meeting should contact Ms. Joyce Knight, at 804-894-9651 at least (5) five days prior to the meeting, so that suitable arrangements can be made. In accordance with §30-179 of the Code of Virginia, the public may provide comment on their experience with this electronic meeting format. A copy of the comment form may be found here: http://foiacouncil.dls.virginia.gov/sample%20letters/reporting_reqs.htm.

Welcome and Call to Order	*The Honorable Danny Marshall, Chair*
Call of the Roll	*Andy Sorrell, Deputy Director*
Approval of the *1/7/22* Minutes	*(published on website)*
Public Comments	
Extensions & Modifications	*David Bringman, Database & Performance Metrics Manager*
Other Business	*Andy Sorrell, Deputy Director*
Public Comments	
Adjournment	

Incentives & Loans Committee

May 12, 2022

The Incentives and Loans Committee is meeting on Thursday, May 12th at 9:30 a.m. to consider three requests for performance extensions or other project modifications. The following provide staff overview and comment on all the projects mentioned above.

EXTENSIONS AND MODIFICATIONS

1. Wise County, Virginia IDA
DP Facilities, Inc. (#3266)
Request to Modify Base Year from 2016 to 2015.

Staff Overview & Comment: This Tobacco Region Opportunity Fund (TROF) grant was awarded to the Wise County Industrial Development Authority (the "Wise IDA") and DP Facilities, Inc. (the "Company") in March 2017 in the amount of $350,000 with funding fully disbursed prior to performance. The original 36-month performance period ended 12/31/2019. The executed performance agreement required the company to employ 40 persons with an average annual wage of $40,000. The taxable asset obligation during the performance period was $32,000,000.

In January 2022, staff approved an administrative extension for fourth year of performance through December 31, 2020. This has permitted the Company to better meet the employment portion of the performance obligation. The Company is working to gather employment data on temporary employees that may also be utilized to better meet the employment obligation as permitted by the performance agreement.

Through the end of the extended performance period, the Company has met 63% of their employment obligation (after a small job reduction based on the wages provided, which was below promised). Of the 50% of the grant devoted to employment ($175,000) the Company has earned $110,023.99 and $64,976.01 remains unearned. The amount of capital investment earned remains at 78% of promised or $135,825.70 and $39,174.30 being unearned. In total, $104,150.31 remain unearned of the $350,000 grant.

At the January 2022 meeting, the Commission considered the Company's request for allowing the investments made in the base year of 2016 be considered. The Commission did not approve this request. The Company has requested the Commission reconsider permitting investments made in the base year be included so that more of the TROF grant incentive may be earned. As noted in the January 2022, staff stated the following:

> "The performance agreement states that only ***"…those assets owned, or leased by the Company all during the 36-month period following the Base Year shall be counted (emphasis added)*** in fulfilment of the Company's taxable asset obligation." Additionally, "***Company assets located, constructed, or leased in the Locality prior to the Base Year will not be counted in fulfilment of the Company's taxable asset obligation" (emphasis added)*** in (Section 6 of Performance Agreement). According to the performance agreement, since the base year is 2016, and only assets following the base year are allowed to be included,

investments made in 2016 cannot be included. The Company and Locality contend that there was a delay when the project was awarded and when the project began making investments. Staff notes the TROF incentive was awarded on March 6, 2017, the initially application was received February 24, 2017 and an incentive estimate was provided on January 26, 2017. Staff concurs that from the overall project perspective, investments made in 2016 were part of the project the TROF was incenting."

While the situation has not changed since January, the Company desired the opportunity to more fully address the uniqueness of the situation and how the original intention of the project was to incent all the capital investments made as part of the projects construction which started in 2016. The Company was fortunate to be able use their own employees to construct the facility which allowed them to complete a portion of their investment prior to what the performance agreement anticipated. Because a portion of the construction for this overall project did occur in 2016, with the support of the County, the Company requests the Commission consider permitting the base year to be 2015 which would allow investment made in 2016 to be included. Not including improvements from 2016 the Company has provided $24,836,700 of the $32 million of capital investment promised. If the Commission is willing to grant such request, it will likely allow the Company to come much closer to meeting their capital investment obligations.

As staff noted in January, the time to consider modifications to the period of performance that may have already occurred prior to the agreement being executed would have been prior the agreement's execution. At that point the incentive award could have been reduced proportionally to the investments that were to be made after 2016 or being modified to have the base year be 2015.

While staff understands the circumstances, staff continues to believe that the base year should not be modified as the executed performance agreement is clear. However, staff also concurs that because of the uniqueness of the timing of the project's construction, the Commission may feel a variance to the base year is warranted. As recommended in January 2022, staff continues recommends establishing a mutually agreeable repayment agreement between all parties to repay the portion of the grant that remains unearned.

Staff recommends the Base Year for TROF # 3266 remain unchanged and if necessary, negotiate a mutually agreeable repayment agreement between all parties to repay any portion of the grant that remains unearned.

2. Greensville County, Virginia
Oran Safety Glass, Inc (#3295)
Request for a Performance Extension through June 30, 2023.

Staff Overview & Comment: This is a Tobacco Region Opportunity Fund (TROF) that was awarded to Greensville County (the "County") and Oran Safety Glass Inc. (the "Company") with a performance period that started in March 2017 with a grant amount of $235,000 and a loan amount of $117,500 for a total incentive award of $352,500. The original performance period ended March 31, 2020 and was administratively extended to March 31, 2021. The executed performance agreement required the Company to employ 55 persons with an average annual salary of $43,000 and provide new private taxable assets of $4,450,000. Both the grant and loan incentives were fully disbursed prior to performance in September 2017.

Regarding the grant incentive, through the extended performance date, the Company fully met their capital investment obligation fully earning the portion of the grant devoted to capital investment. The Company has been able to deliver 42% of their job promise (after a small job reduction based on the wages provided, which was below promised) and therefore have not earned $67,922.19 relating to the employment obligation of the grant.

The Company notes (**Attachment A**) that the pandemic has had a significantly impacted their ability to meet their employment objectives and also to retain and attract new employees. In order to increase their employment, the Company has implemented several measures to attract new employees such as pay and benefit increases as well as connecting with staff agencies and local correctional facilities. Additionally, the Company has committed to hosting job fairs, referral bonuses and other means to attract employees. With the support of the County, the Company requests a performance extension through June 30, 2023.

Regarding the loan incentive, the Company had made regular loan payments towards their loan balance having repaid a total of $105,750 of the original $117,500 loan. The loan balance remains at $11,750 to be repaid to the Commission. The Company is up-to-date on its TROF loan payments with the last regularly scheduled payment in the amount being received in February, 2022. One payment remains to fully repay the loan amount. If the Commission approves a performance extension as requested, the Company should be able to fully repay the balance of the loan during the performance period requiring no further loan repayments. If the Commission is not inclined to approve a performance extension, 5% interest must be added to the remaining loan balance due.

Staff believes the Company is doing as much as they can to attract and retain employees to meet their employment obligations and has a solid plan for meeting their obligations. Other state funders (such as VEDPs Commonwealth Opportunity Fund) have approved a performance extension through the end of June 2023 and staff feels this is an appropriate length of time for a final performance extension for this project. If full performance has not been achieved by June 30, 2023, the Commission will pursue repayment of all unearned funds.

Staff recommends approval of a final performance extension through June 30, 2023.

3. Pittsylvania County, Virginia
Eastern Panel Manufacturing, Inc. (#3404)
Request to Accept Reported Value vs. Assessed Value of Certain Taxable Assets

Staff Overview & Comment: This is a Tobacco Region Opportunity Fund (TROF) grant for $30,000 that was awarded to Pittsylvania County (the "County") and Eastern Panel Manufacturing Inc. (the "Company"). The performance period started December 2017 and ended December 31, 2020. The executed performance agreement required the company to employ 15 persons with an average annual salary of $25,000 and provide new private taxable assets of $1,000,000. The grant was to be disbursed post-performance and the grant funds remain available for disbursement.

The performance agreement required a minimum investment of $500,000 before any of the grant was earned. Staff has reviewed information from the local Commissioner of Revenue (COR) that notes the assessed value of the capital investment during the performance period to be $305,240. Using the assessed value of capital investment as required by the performance agreement does not allow the Company to earn the grant.

The executed performance agreement notes that the Commission requires "The Company's achievement toward meeting its taxable asset obligation ***shall be based on asset values assessed by the COR*** for the Locality…" ***(emphasis added).***

As noted in the attached letter from the Locality (**Attachment B**), the County has requested the Commission consider using the original reported costs of Machinery & Tools and Personal Property rather than the assessed values the County uses. For M&T and PP assessed values, the County applies an assessment ratio that significantly reduces the assessed value. The executed performance agreement requires the Commission to utilize assessed values of capital investment as reported by the Commissioner of Revenue in writing. If the Commission were to consider utilizing the original reported costs of the M&T and PP, the Company's total capital investment would be $1,093,111 which would allow them to meet the minimum investment requirement and fully earn the portion of the grant devoted to capital investment or $15,000. The Company has provided 4 of the 15 jobs promised so a portion of the grant devoted to employment would be earned.

Staff notes that significant revisions were made to the TROF performance agreement template in 2020 to bring it more in-line with VEDP's COF performance agreement. Therefore, situations such as this are avoided since the agreement defines "Capital Investment" in part as "…a capital expenditure by or on behalf of the Company in taxable real property, taxable tangible personal property, or both, at the Facility." Such definition does not require the Commission to solely base the amount of capital investment on what the locality's assessed value of the assets.

In this case, while staff certainly understands that the reported value of capital investments are higher than the assessed value, the executed performance agreement clearly states that the determination of performance for capital investment is based upon assessed value of taxable assets, and this should have been considered before the performance agreement was executed by the Locality in 2017. By executing the performance agreement, the Locality and Company agreed to the terms of the existing performance agreement with the wording related to utilizing the assessed value of assets. Therefore. Staff does not recommend accepting the reported costs as requested by the County.

Staff recommends no action be taken and the existing performance agreement remain unchanged.

OSG
VISION THROUGH GLASS

Attachment A

March 2, 2022

Greensville County
1781 Greensville County Circle
Emporia, Virginia 23847
Attn: Natalie Slate, Director of Economic Development

RE: COF Performance Agreement

Dear Mrs. Slate,

I am responding today regarding obligations as outlined in the Virginia Tobacco Commission Performance Agreement that OSG has been unable to meet and respectfully request an extension due to Force Majeure. While OSG has remained fully committed to meeting the terms of the agreement, there have been circumstances, due to the COVID-19 pandemic, outside of our control that have hindered our compliance. We have fulfilled the capital investment obligation and a portion of the employee obligation as agreed upon.

OSG has implemented the following:

1. *Increase starting pay for employees twice. Once from $8.50 to $10.00 and from $10.00 to $13.50.*
2. *Moved to ADP Total Source and offer better benefits to include Short Term, Long Term Disability and also Life Insurance.*
3. *Utilized all available staffing agencies from Petersburg to Emporia.*
4. *Participated in all local job fairs.*
5. *Communicated with the local correctional facilities with the hope to utilize inmates as part of the laborforce; however, this was not an option due to COVID-19.*

OSG will continue to move forward on the following:

1. *Increase starting pay for employees to $16.00.*
2. *Increase the Employee Referral Bonus from $100.00 to$ 500.00.*
3. *Host a job fair onsite at OSG.*
4. *Continue to utilize local recruiting agencies.*
5. *Collaborate with the local high schools to recruit graduates.*

OSG is an essential workforce that has proudly remained compliant to remain operational since the beginning of the pandemic. However, on March 23, 2020, the OSG management issued a Notice of Force Majeure to all customers due to the effects of the pandemic on the business operations such as labor shortages and supply chain issues. The challenge continues in filling the open positions at OSG; we currently have 25-30 open positions that need to be filled at the plant and it would be helpful to receive assistance from your agency to aid in the recruiting process at OSG. In light of the global labor shortage, and the local abor shortage in particular, OSG did maintain a total headcount of 119 employees at the year-end of 2021.

At this time, I respectfully request that you consider granting OSG an extension to comply with the terms of the Performance Agreement.

Karen Atkins

Karen Atkins
Vice President of Finance

PITTSYLVANIA
COUNTY,VIRGINIA

ECONOMIC DEVELOPMENT
P.O. Box 426 . 1 Center Street
Chatham, Virginia 24531
Phone (434) 432-1979

David Bringman
Virginia Tobacco Commission

Attachment
B

RE: Project 3404: Eastern Panel Manufacturing – Taxable Investment Calculation

David:

Thank you for the opportunity to share what we perceive to be an issue (and our concern) with the Tobacco Commission's acknowledgement of acceptable reported capital investments for performance regarding this and other projects in Pittsylvania County. The issue we're highlighting is not time specific (it's our understanding that recent Tobacco Commission performance agreements reference investment dollars rather than Commissioner of Revenue assessments) and is instead based upon how the County "assesses" taxes on machinery and tools, and other business personal property. Per the County Code, *"Business personal property (furniture, fixtures, and hand tools) is assessed at a percentage of the cost ranging from 30-5% depending on the year acquired"*; this means that a Company's new investment is depreciated 70% for assessment purposes. Companies are required to report their business personal property / machinery and tools assets owned as of January 1st annually in an itemized list – the cumulative total value is then subject to the depreciation factor reference above. The value that should be of relevance to the Tobacco Commission is the Company reported value which dictates the actual amount of taxation – NOT the locality specific process of how the County and its Commissioner of Revenue derives its assessment for taxes.

The stance taken by the Tobacco Commission is problematic for Project 3404: Eastern Panel Manufacturing and establishes a faulty precedent for other projects in the County – both announced and unannounced. The County's Commissioner of Revenue has provided a letter confirming that the Company's reported cost of Machinery and Tools / Business Personal Property is $1,333,285 as of January 2021; the local and State performance agreements commitment was for an investment of at least $1,000,000. However, when the County's locality specific assessment ratio is applied, the value that is subject to the County's tax rate of $4.50 per $100.00 is $133,330. Based upon the Tobacco Commission's current practice regarding its understanding of local assessed value, this Company would have to invest and report a value of over $10,000,000 to meet its Tobacco Commission related agreement provisions – while its local and State performance agreement commitment was only $1,000,000 which has been successfully met and verified by Staff via a site visit. Finally, this practice becomes extremely problematic and further magnified on large capital-intensive projects. For example, another recently announced project committed to $100,000,000+ of business personal property / machinery and tools. The tax specialists and legal team for this Company saw the issue being raised by this letter and required that Tobacco Commission Staff accept the Company's documented and reported investments as being adequate for meeting performance metrics – otherwise, they would locate in other State. The Tobacco Commission Staff thankfully agreed to this understanding, to which we are extremely appreciative and grateful. However, if the same principle was being equally applied to this Company that is currently being applied to Eastern Panel Manufacturing, then that Company would have been required to invest and report over $1 billion in business personal property / machinery and tools value which then would go through the locality specific assessment and tax rate process – which would be unreasonable.

ECONOMIC DEVELOPMENT
P.O. Box 426 . 1 Center Street
Chatham, Virginia 24531
Phone (434) 432-1979

In conclusion, we are requesting that for projects in Pittsylvania County that the Tobacco Commission focus on the Company reported investment and value for business personal property / machinery and tools which is the ultimate basis for the County's taxation value – which is a locality specific process laid out in the County's Code. Otherwise, Companies are unreasonably penalized when they have, in reality, met or substantially met performance. This then potentially places the County and State in an awkward position of awarding their incentives to the Company for performance, while having to explain that they cannot receive their earned incentives from the Tobacco Commission due to a procedural error. We sincerely hope that this issue can be rectified and correct for not only Eastern Panel Manufacturing, but for other active grant agreement clients too. We understand the need for the Tobacco Commission to detail and verify performance, but there needs to be flexibility that accommodates how different locales "assess" value and ultimately derive their taxes through their locality specific and defined processes – which are outside the purview of the Tobacco Commission.

Thank you for your consideration of our respectful request. We are most appreciative of the Tobacco Commission's involvement and partnership in important and impactful projects in our community.

Respectfully,

Matthew D. Rowe

Matthew D. Rowe
Economic Development Director
Pittsylvania County