

7. CONSIDERATION OF A PERFORMANCE AGREEMENT WITH AMAC LEASING, LLC

Attached for your consideration, please find a proposed performance agreement with AMAC Leasing, LLC which, as you know, has acquired twenty (20) acres in the Berlin-Ivor Magisterial District for construction of an asphalt, concrete and cement-treated aggregate processing and production facility.

The Company is contemplating an investment in Southampton County in land, buildings, and equipment of at least Four Million Dollars (\$4,000,000.00), an additional One Million Dollars (\$1,000,000.00) in rolling stock, and creation of twenty six (26) new full-time jobs.

In order to induce and encourage their investment and job creation, the attached performance agreement offers local economic incentives, very similar to those automatically offered to new businesses and industries in the county's defined Enterprise Zone. Because this project is not situated within the state designated Enterprise Zone, the proposed incentives are not automatic and must be consummated in a written agreement.

This agreement offers to the company a 50% rebate on the machinery and tools taxes it pays for the first 5 years, a sliding scale rebate on the electric utility taxes paid by the company over the first 5 years, and a rebate of all permit fees paid by the company. The estimated value of incentives (rebates) is slightly less than \$150,000 over the next five years, while the project is expected to generate approximately \$500,000 in direct tax revenues over the same time period. After the initial 5 years, the project is expected to generate an average of \$40,000 to \$50,000 annually in direct tax revenues, assuming no additional investment.

This agreement is also subject to approval by the Industrial Development Authority of Southampton County.

MOTION REQUIRED:

If the Board is so inclined, a motion is required to authorize the Chairman to execute the attached agreement.

1 **PERFORMANCE AGREEMENT**

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3 This Performance Agreement (the "Agreement") is made and entered into as of the ___th
4 day of January, 2013 by and between Southampton County, Virginia, acting by and through the
5 Board of Supervisors and the Industrial Development Authority (the "County") and AMAC
6 Leasing LLC, a limited partnership, with its principal office located at 7481 Theron Road West
7 Point, Virginia 23181 (the "Company").
8

9 **WHEREAS**, the Company has acquired certain real property from the Ronald L. Parsons
10 located in the Berlin Ivor Magisterial District of Southampton County, Virginia, containing 20
11 acres, more or less, (the "Site"), for the construction of a manufacturing facility (the "Facility")
12 for the processing and production of asphalt, concrete, and cement treated aggregate (the
13 "Project"). The Company contemplates an investment in Southampton County in land,
14 buildings, and equipment of Four Million Dollars (\$4,000,000.00) within thirty-six (36) months
15 of the acquisition of the Site, and further contemplates creation of twenty six (26) new full-time
16 jobs by that time, all with an average annual compensation, excluding benefits, of at least Thirty
17 Thousand Dollars (\$30,000.00), and proposes to maintain such investment and number of jobs
18 for at least ten (10) years; and
19

20 **WHEREAS**, the County has determined that the proposed Project will benefit the
21 residents of Southampton County, Virginia by stimulating local commerce and trade, increasing
22 employment, and providing substantial direct tax revenues; and
23

24 **WHEREAS**, the parties hereto acknowledge that the participation by the County is for
25 the benefit of the residents of the County and therefore the Company recognizes its obligation to
26 employ residents of the County when possible; and
27

28 **WHEREAS**, the parties hereto wish to articulate and pledge their mutual commitments
29 to one another.
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31 **NOW, THEREFORE**, for and in consideration of the mutual covenants contained
32 herein, and other good and valuable consideration, the parties agree as follows:

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ARTICLE I
OBJECTIVES

1.1 The parties hereby agree that, in consideration of the Company undertaking the Project with its employment opportunities, investment, tax revenues and utility revenues in the County, the County intends to provide the respective incentives set forth herein.

1.2 The Company hereby agrees that in consideration of the provision of said incentives, it intends to develop and maintain the Project in the County in accordance with the terms hereof and undertake reasonable efforts to employ residents of Southampton County.

ARTICLE II
THE COMPANY’S COMMITMENTS

2.1 The Company proposes, subject to the performance by the County of their commitments set out in this Performance Agreement, and the successful award of certain other incentives from the Commonwealth of Virginia, to develop the Project on the former Parsons’ Property in Southampton County, Virginia.

2.2 In consideration of the performance by the County of their Commitments set out in Article III, the Company proposes that the Project will result in the following:

(i) An investment in land, buildings, and equipment of not less than Four Million Dollars (\$4,000,000.00) within thirty-six (36) months of acquisition of the site and maintenance of such land, buildings and equipment for a period of ten (10) years (the “Maintenance Period”) commencing on the date of issuance of the Certificate of Occupancy for The Facility, and

(ii) An investment in rolling stock of not less than One Million Dollars (\$1,000,000.00) licensed in Southampton County within thirty-six (36) months of acquisition of the site and maintenance of such for a period of ten (10) years (the “Maintenance Period”) commencing on the date of issuance of the Certificate of Occupancy for The Facility.

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66 2.3 The Company proposes to comply in all material respects with all federal, state and local
67 requirements related to the Project, including the provision of financial and other documentation
68 in connection with all incentive programs as described in this Performance Agreement.

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70 2.4 The Company acknowledges that there are applications and other forms to be completed
71 and statutory and guideline requirements to be met for the Company to qualify for various
72 incentives set out herein and that there may be penalties for failure to perform.

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74 2.5 The Company acknowledges that if its Commitments contained in Article II, 2.2 of this
75 Performance Agreement are not met, all or a portion of the incentives proposed by the County
76 for the Project pursuant to Article III of this Agreement may be forfeited as set out in Article IV.

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78 **ARTICLE III**
79 **THE COUNTY'S COMMITMENTS**

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81 3.1 The County, acting by and through the Board of Supervisors and the Industrial
82 Development Authority, acknowledges that certain commitments are hereby made to the
83 Company to induce it to develop the Project in Southampton County, Virginia.

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85 3.2 The County, pursuant to statutory authority, proposes to provide the following assistance
86 in support of the Project:

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88 (i) Provide an annual economic incentive grant for five (5) years, pursuant to Section
89 15.2-4905 of the Code of Virginia, equivalent to a specified percentage of the tax on machinery
90 & tools paid by the Company to the County. The aforesaid taxes shall be annually due and
91 payable on or before December fifth and the annual grant shall be remitted to the Company by
92 the County not more than sixty days thereafter. This grant may be withheld by the County in the
93 event that any local taxes or fees owed by the Company to the County are more than sixty days
94 past due. The percentage(s) are as follows:

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96 YEAR 1 – 50%

97 YEAR 2 – 50%
98 YEAR 3 – 50%
99 YEAR 4 – 50%
100 YEAR 5 – 50%

101
102 Based upon an initial investment of \$3,500,000.00 in machinery & tools by the
103 Company, the value of this incentive is estimated at One Hundred and Twenty Six Thousand
104 Dollars (\$126,000.00);

105
106 (ii) Provide an annual economic incentive grant for five (5) years, pursuant to Section
107 15.2-4905 of the Code of Virginia, equivalent to a specified percentage of the tax on electrical
108 utility service paid by the Company to the County. The Company shall agree to provide the
109 County copies of its electric utility bills for the preceding twelve (12) month period no later than
110 January tenth each year and the annual grant shall be remitted to the Company by the County not
111 more than sixty days thereafter. This grant may be withheld by the County in the event that any
112 local taxes or fees owed by the Company to the County are more than sixty days past due. The
113 annual grant shall be equivalent to the following percentages:

114	Year 1	100%
115	Year 2	80%
116	Year 3	60%
117	Year 4	40%
118	Year 5	20%

119 The value of this incentive over the five year period is estimated at Five Thousand
120 Dollars (\$5,000.00);

121
122 (iii) Provide a one-time economic incentive grant, pursuant to Section 15.2-4905 of
123 the Code of Virginia, equivalent to the sum of all Administrative Land Development Fees paid
124 by the Company to the County including Erosion and Sediment Control fees, Stormwater
125 Management fees, and all fees associated with administration and enforcement of the Virginia
126 Uniform Statewide Building Code. The grant may be withheld by the County in the event that
127 any local taxes or fees owed by the Company to the County are more than sixty days past due.
128 The grant shall be remitted to the Company by the County not more than sixty days following

129 the issuance of the Certificate of Occupancy for the Facility. The value of this incentive is
130 estimated at Ten Thousand Dollars (\$10,000.00);

131
132 (iv) Provide in-kind services for fast-track review of the Company's plans. County
133 staff will meet with the Company's design professional to perform a fast track review of the
134 project's site plan and provide written comments in not more than seven working days. The in-
135 kind value of this incentive is estimated at Ten Thousand Dollars (\$10,000.00.);

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137 3.3 The County acknowledges that the Company's acquisition of the Site for the Facility
138 shall be subject to obtaining all zoning, subdivision and building approvals required to permit the
139 Company's intended uses of the Site and the construction of the Project.

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141 3.4 The County acknowledges that the Company's acquisition of the Site is subject to
142 completion of its inspections including but not limited to title, survey, environmental,
143 geotechnical and cultural resources and the Company's satisfaction with all aspects thereof in its
144 sole discretion.

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146 **ARTICLE IV**
147 **REMEDIES FOR FAILURE TO PERFORM**

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149 4.1 Upon request of the County, the Company will provide reasonable verification of its
150 compliance with the maintenance commitment and the investment commitment as set out in
151 Article II, Section 2.2 herein.

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153 4.2 If the Company defaults on its investment obligation at any time during the Maintenance
154 Period as set out in Article II, 2.2(i) and (ii) of this Performance Agreement, then the County
155 shall provide the Company with a written notice of default after which the Company will be
156 given ninety (90) days following receipt of such notice to cure such default. If the default has
157 not been cured by the end of the ninety (90) day period, the Company shall forfeit a percentage
158 of the Economic Incentive Grants provided by the County pursuant to 3.2 (iv) and (v) of this
159 Performance Agreement. If the total taxable investment is at least Four Million Dollars
160 (\$4,000,000.00) no forfeiture is necessary. If the total taxable investment is between Two

161 Million Five Hundred Thousand Dollars (\$2,500,000.00) and Four Million Dollars
162 (\$4,000,000.00), the Company shall forfeit fifty percent (50%) of the remaining economic
163 incentive grants awarded. If the total taxable investment is less than Two Million Five Hundred
164 Thousand Dollars (\$2,500,000.00) then the Company shall forfeit ninety percent (90%) of the
165 remaining economic incentive grants awarded.

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ARTICLE V
MISCELLANEOUS

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170 5.1 The parties agree to execute and deliver such additional instruments and documents,
171 provide such additional financial or technical information, and to act with due diligence and
172 good faith to comply with the terms of this Performance Agreement, and to work together in a
173 mutually supportive manner to accomplish the realization of the Project.

174

175 5.2 The terms of this Performance Agreement shall be subject to the approval of the County's
176 Board of Supervisors, the Directors of the County's Industrial Development Authority, and the
177 Company's Board of Directors.

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179 5.3 All communications and notices regarding this Performance Agreement shall be
180 delivered by registered first class mail, postage prepaid, or by nationally recognized courier for
181 delivery on the next business day, or by telecopy (with such telecopy to be promptly confirmed
182 in writing sent by mail or overnight courier as aforesaid) as follows:

183

184 SOUTHAMPTON COUNTY

County Administrator
26022 Administration Center Drive
P. O. Box 400
Courtland, VA 23837
Fax: 757-653-0227
mjohnson@southamptoncounty.org

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192 AMAC Leasing LLC

193 _____
194 _____
195 _____
196 _____

197
198 IN WITNESS WHEREOF, the Company has caused its name to be hereunto subscribed
199 by its _____, and the County has caused its name to be hereunto
200 subscribed by the Chairman of the Board of Supervisors, the Chairman of the Industrial
201 Development Authority and the Clerk of the Board, as of the date hereinafter written.

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203
204 SOUTHAMPTON COUNTY, VIRGINIA
205 INDUSTRIAL DEVELOPMENT AUTHORITY

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207
208
209 _____ BY: _____
210 DATE E. Beale Carter, Jr.
211 Chairman

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213 ATTESTED BY:
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215
216 _____
217 Secretary

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221 SOUTHAMPTON COUNTY, VIRGINIA
222 BOARD OF SUPERVISORS

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By: _____

226 DATE

Chairman

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229 ATTESTED BY:

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233 Clerk to the Board

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AMAC Leasing LLC

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BY: _____

240 DATE

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242 ATTESTED BY:

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