Danville-Pittsylvania Regional Industrial Facility Authority

City of Danville, Virginia
County of Pittsylvania, Virginia

REVISED
AGENDA

June 14, 2021

12:00 P.M.

Institute for Advanced Learning and Research
150 Slayton Avenue, Room 206
Danville, Virginia

County of Pittsylvania Members

Ronald S. Scearce, Vice Chairman
Robert W. Warren
Vic Ingram, Alternate

City of Danville Members

Sherman M. Saunders, Chairman
J. Lee Vogler, Jr.
Dr. Gary P. Miller, Alternate

Staff

Kenneth F. Larking, City Manager, Danville
David M. Smitherman, Pittsylvania County Administrator
Christian & Barton, LLP, Legal Counsel to Authority
Susan M. DeMasi, Authority Secretary
Michael L. Adkins, Authority Treasurer

Danville-Pittsylvania Regional Industrial Facility Authority

1. **MEETING CALLED TO ORDER**

2. **ROLL CALL**

3. **PUBLIC COMMENT PERIOD**

   Members of the public who desire to comment on a specific agenda item will be heard during this period. The Chairman/Vice Chairman of the Authority may restrict the number of speakers. Each speaker shall be limited to a total of three minutes for comments. *[Please note that the public comment period is not a question-and-answer session the public and the Authority]*

4. **APPROVAL OF MINUTES OF THE MAY 10, 2021 MEETING**

4.1. CONTINUATION OF OLD BUSINESS

A. Consideration of Resolution No. 2021-06-14-4.1A, authorizing the execution of a Forbearance Agreement with the Tobacco Region Revitalization Commission, the City of Danville, Virginia, Pittsylvania County, Virginia and Harlow Fastech LLC, a Virginia limited liability company for a loan approved on October 15, 2018 used to recruit Harlow Fastech LLC to the Authority's Cyber Park project, located in Danville, Virginia – Corrie Teague Bobe, Director of Economic Development, City of Danville

5. **NEW BUSINESS**

A. Consideration of Resolution No. 2021-06-14-5A, approving and adopting new logo of the Authority – Susan M. DeMasi, Authority Secretary [*No written resolution.*]

B. Consideration of Resolution No. 2021-06-14-5B, further revising the Amended and Restated Bylaws of the Authority adopted August 13, 2007, and last revised March 14, 2016, by amending Paragraph 2 of Article IV ("Member Locality Agreement") in its entirety to authorize the Member Localities, by acting jointly through their City Manager and County Administrator, to incur, on behalf of the Authority, up to $50,000.00 in reasonable expenses for any one item, with an aggregate limit of $100,000.00 in any calendar month, subject to certification by the Authority's Treasurer of designated funds therefor, which may include without limitation funds designated in the Authority's budget as "unassigned, unencumbered general funds" and to reporting of the same to the Board at its next regular meeting –David M. Smitherman, Pittsylvania County Administrator, Michael L. Adkins, Authority Treasurer, and Michael C. Guanzon, Christian & Barton, LLP, legal counsel to the Authority

C. Consideration of Resolution No. 2021-06-14-5C, approving certain procurement guidelines of the Authority without expansion or superseding the authorization of certain Authority's Staff under the Bylaws of the Authority or under a resolution passed by the Board of the Authority, and without waiver of certain exemptions applicable to the Authority under the Virginia Public Procurement Act – Mr. Smitherman

D. Consideration of Resolution No. 2021-06-14-5D, approving that certain Local Performance Agreement with Making Everything Possible, LLC, a Virginia limited liability company, and other Government Parties, under which the Authority would provide certain incentives, including (i) a $250,000.00 industrial enhancement grant, (ii) up to $75,000.00 in base rent at the Institute for Advanced Learning and Research in the Authority's Cyber Park project for a Phase 1 start-up center for molding and machining products in the aerospace and defense industries, (iii) the opportunity to ground lease land for a Phase 2 establishment of a production facility, and (iv) the application for and disbursement of certain state grants and loan, in exchange for capital investments of at least $800,000.00 and the creation of 8 full-time jobs with an average yearly base wage of at least $73,000.00 during Phase 1, and capital investments of at least $6,445,000.00 and the creation of an additional 37 full time jobs with an average yearly base wage of least $62,000.00 during Phase 2, in the Authority's Cyber Park project, located in Danville, Virginia – Ms. Bobe and Matthew D. Rowe, Director of Economic Development, Pittsylvania County

E. Consideration of Resolution No. 2021-06-14-5E, approving that certain Proposal for Professional Engineering and Construction Administration dated April 28, 2021, with Dewberry Engineers Inc., a New York corporation, for Lot 7D in the Authority's Cyber Park project, located in Danville, Virginia, for a lump sum fee of $42,750.00 – Ms. Bobe

F. Consideration of Resolution No. 2021-06-14-5F, authorizing the issuance of its Revenue Bond (Transmission Line Project), Series 2021, in a principal amount not to exceed $4,500,000.00; authorizing the execution and delivery of all financing documents in connection therewith, including without limitation the Financing Agreement, the Bond and the Support Agreements; and authorizing other matters in connection therewith – Mr. Rowe

G. Consideration of Resolution No. 2021-06-14-5G, approving that certain Local Performance Agreement with Walraven Inc., a Michigan corporation, and others, under which the Authority and other Government Parties would provide certain incentives, including the application by the Authority for and disbursement of certain state grants and loan, and the opportunity to lease from the Industrial Development Authority of Danville, certain real property commonly known as 500 Cane Creek Parkway, in the Authority's Cane Creek Centre project located in Pittsylvania County, Virginia, in exchange for capital investments of at least $7,150,000.00 and the creation of 46 full-time jobs with an average yearly base wage of at least $48,913.00 – Ms. Bobe and Mr. Rowe

H. Financial Status Reports as of May 31, 2021 – Mr. Adkins and Henrietta Weaver, CPA, City of Danville, Virginia *[via Conference Line: +1 (646) 558-8656 and Meeting ID: 976 2221 9161.]*

I. Consideration of Resolution No. 2021-06-14-5I, approving the FY 2022 General Expenditures Budget – Mr. Adkins and Ms. Weaver *[No written resolution.]*

J. Consideration of Resolution No. 2021-06-14-5J, ratifying the purchase price under those certain Agreements for Purchase and Sale for an interconnection easement and right-of-way on certain real property in and adjacent to the Authority's Southern Virginia Megasite at Berry Hill, located in Pittsylvania County, Virginia, by and between the Authority and Berry Hill Solar, LLC, a North Carolina limited liability company, pursuant to Resolution No. 2021-04-12-5B and Resolution No. 2021-04-12-5C – Mr. Rowe and Mr. Guanzon

K. Consideration of Resolution No. 2021-06-14-5K, approving the negotiation, execution and delivery of a Memorandum of Understanding - Megasite with the Authority, the County of Pittsylvania, Virginia, and the City of Danville, Virginia, for the provision of water and sewer services for the Authority's Southern Virginia Megasite at Berry Hill, located in Pittsylvania County, Virginia, which will allow the City of Danville, Virginia to take ownership of the infrastructure, allow the City of Danville, Virginia to collect fees, operate and expand the system, and maintain the system; and the City of Danville, Virginia will reimburse Pittsylvania County, Virginia for its cost in installing the infrastructure – Mr. Smitherman

6. CLOSED SESSION

[During the closed session, all matters discussed shall involve receiving advice from legal counsel, and as such all communications during the closed session shall be considered attorney-client privileged.]

A. As permitted by Section 2.2-3711(A)(5) of the Code of Virginia, 1950, as amended ("Virginia Code"), for discussion concerning one or more prospective businesses where no previous announcement has been made of that business's interest in locating its facilities in one or more of the Authority's projects, located in Pittsylvania County, Virginia, and/or Danville, Virginia; and

B. As permitted by Virginia Code § 2.2-3711(A)(39) for discussion or consideration of records excluded under Virginia Code § 2.2-3705.6(3) (including without limitation (i) those certain confidential proprietary records voluntarily provided by private business pursuant to a promise of confidentiality from the Authority, and used by the Authority for business and trade development and (ii) those certain memoranda, working papers, or other information related to businesses that are considering locating or expanding in Virginia, prepared by the Authority, where competition or bargaining is involved and where disclosure of such information would adversely affect the financial interest of the Authority); such information being excluded from mandatory disclosure under Virginia Code § 2.2-3705.1(12) (information relating to the negotiation and award of a specific contract pertaining to the Authority's Southern Virginia Megasite at Berry Hill project, Cyber Park project and/or Cane Creek Centre project, where competition or bargaining is involved and where the release of such information would adversely affect the bargaining power or negotiating strategy of the Authority) and Virginia Code § 2.2-3705.1(8) (appraisals and cost estimates of real property in one or more of the Authority's projects subject to a proposed purchase, sale, or lease, prior to the completion of such purchase, sale, or lease); and

C. As permitted by Virginia Code § 2.2-3711(A)(3) for discussion or consideration of the acquisition and/or the disposition of publicly held real property, where discussion in an open meeting would adversely affect the bargaining position or negotiating strategy of the Authority; and

D. As permitted by Virginia Code § 2.2-3711(A)(8) for consultation with legal counsel employed or retained by a public body regarding specific legal matters requiring the provision of legal advice by such counsel.

E. As permitted by Virginia Code § 2.2-3711(A)(29) for discussion of the award of a public contract involving the expenditures of public funds where discussion in an open session would adversely affect the bargaining position or negotiating strategy of the Authority.

RETURN TO OPEN SESSION

F. Reinstatement/Unmuting of Conference Line *[see Agenda Item 5H above]*.

G. Confirmation of Motion and Vote to Reconvene in Open Meeting.

H. Motion to Certify Closed Meeting.

7. COMMUNICATIONS FROM:

A. Authority Board Members

B. Staff

8. ADJOURN

Danville-Pittsylvania Regional Industrial Facility Authority

Executive Summary

Agenda Item No.:	Item 4
Meeting Date:	06/14/2021
Subject:	Meeting Minutes
From:	Susan M. DeMasi, Authority Secretary

SUMMARY

Attached for the Board's approval are the Meeting Minutes from the Monday, May 10, 2021 Meeting.

ATTACHMENTS

Meeting Minutes – 05/10/2021

DANVILLE-PITTSYLVANIA REGIONAL INDUSTRIAL FACILITY AUTHORITY
Minutes
May 10, 2021

A Meeting of the Danville-Pittsylvania Regional Industrial Facility Authority convened at 12:09 p.m. on the above date at the Institute for Advanced Learning and Research, 150 Slayton Avenue, Room 207, Danville, Virginia. Present were City of Danville Members Chairman Sherman M. Saunders, J. Lee Vogler, Jr., and Alternate Dr. Gary P. Miller. Pittsylvania County Members present were Vice Chairman Ronald S. Scearce, Robert W. Warren, and Alternate Vic Ingram.

City/County staff members attending were: City Manager Ken Larking, Pittsylvania County Administrator David Smitherman, City of Danville Director of Economic Development Corrie Bobe, Christian & Barton Attorney Michael C. Guanzon, and Secretary to the Authority Susan DeMasi. Also present were Shawn Harden and Brian Bradner from Dewberry. *City of Danville Director of Finance/Authority Treasurer Michael Adkins, and City of Danville Accountant Henrietta Weaver, attended the meeting electronically.*

Chairman Sherman M. Saunders presided.

PUBLIC COMMENT PERIOD

No one present desired to be heard.

APPROVAL OF MINUTES OF THE APRIL 12, 2021 MEETING

Upon **Motion** by Mr. Vogler and **second** by Mr. Scearce, Minutes of the April 12, 2021 Meeting were approved as presented. Draft copies had been distributed to Authority Members prior to the Meeting.

NEW BUSINESS

5A. CONSIDERATION OF RESOLUTION NO. 2021-05-10-5A, APPROVING A ONE YEAR LEASE RENEWAL WITH THE OSBORNE COMPANY

Authority Attorney Michael Guanzon explained this was a renewal of the farm pasture lease; it has the same provisions as before for $1,000, for only hay or items like that, for a one year renewal. If RIFA had a recruit that needs this property, then RIFA can terminate the lease. Mr. Guanzon stated the GPINS need to be updated, but that can be taken care of when they get the numbers later this week.

Mr. Warren **moved** for approval of *Resolution No. 2021-05-10-5A, approving a one-year renewal of the lease to The Osborne Company of North Carolina, Inc., a North Carolina corporation, of approximately 100 acres of pastureland in the Authority's Southern Virginia Megasite at Berry Hill project (corrected GPIN: 1367-30-1931), commonly known as 4380 Berry Hill Road, in Pittsylvania County, Virginia; the lease term shall be subject to a right of landlord to show the demised premises upon at least 24-hours notice and the obligation of tenant to keep the identity of any prospective business recruits confidential until a public announcement is made, if ever, or as otherwise required by law; the Authority shall have the right to early terminate the lease with at least 30-days notice; and the lease shall be for the use of harvesting grass hay and incidental uses acceptable to the Authority, at a total rental fee of $1,000.00*.

The Motion was **seconded** by Mr. Vogler and carried by the following vote:

VOTE: 4-0
AYE: Scearce, Warren, Saunders, and Vogler (4)
NAY: None (0)

5B. CONSIDERATION OF RESOLUTION NO. 2021-05-10-5B, AUTHORIZING THE EXECUTION OF A FORBEARANCE AGREEMENT WITH THE TOBACCO COMMISSION

Mr. Warren made a **Motion** to move Item 5B to Item 7B, following the closed session, *Resolution No. 2021-05-10-5B, authorizing the execution of a Forbearance Agreement with the Virginia Tobacco Region Revitalization Commission, the City of Danville, Virginia, Pittsylvania County, Virginia and Harlow Fastech LLC, a Virginia limited liability company for a loan approved on October 15, 2018 used to recruit Harlow Fastech LLC to the Authority's Cyber Park project, located in Danville, Virginia*.

The **Motion** to Move Item 5B was **seconded** by Mr. Scearce and carried by the following vote:

VOTE: 4-0
AYE: Scearce, Warren, Saunders, and Vogler (4)
NAY: None (0)

5C. FINANCIAL STATUS REPORTS AS OF APRIL 30, 2021

Authority Treasurer Michael Adkins gave the Financial Status report as of April 30, 2021 beginning with the Cane Creek Bonds which showed no expenditures for April. General Expenditures for Fiscal Year 2021 show RIFA paid $233 for meals and $61 for monthly Utilities. Funding Other than Bonds for Berry Hill showed no expenditures for April, and Lots 1 and 2 Site Development at Berry Hill show RIFA expended $21,250 to Dewberry for work done under Amendment #30. Under Water and Sewer at Berry Hill, there were no expenditures for April. Rent, Interest and Other Income show RIFA earned $38 in interest, and paid $22,817 to the Institute for the Hawkins' Building Maintenance.

Mr. Vogler **moved** to accept the Financial Report as presented; the Motion was **seconded** by Mr. Scearce and carried by the following vote:

VOTE: 4-0
AYE: Scearce, Warren, Saunders, and Vogler (4)
NAY: None (0)

5D. REPORT ON PROPOSED GROUND LEASE ARRANGEMENT WITH THE INDUSTRIAL DEVELOPMENT AUTHORITY OF DANVILLE, VIRGINIA

City of Danville Director of Economic Development Corrie Bobe noted at the February RIFA meeting, the Board approved a lease with the City of Danville Industrial Development Authority and the Pittsylvania County Industrial Development Authority, to construct a 30,000 square foot shell building in a lot across from the Institute's main campus. Later, Board and staff will discuss whether to relocate that structure; more details will be discussed in Closed Session.

Mr. Vogler made a **Motion** to accept the report as presented; the Motion was **seconded** by Mr. Scearce and carried by the following vote:

VOTE: 4-0
AYE: Scearce, Warren, Saunders, and Vogler (4)
NAY: None (0)

5E. REPORT ON THE AUTHORITY'S PURCHASING POLICIES AND PROCEDURES

City Manager Ken Larking noted he had emailed information to the Board previously, which was revised after input from Michael Guanzon. This was to provide some guidance to staff when making purchasing decisions going forward. There were some basics within the by-laws, but not with this level of detail. Mr. Larking noted he thought it was important that RIFA had a policy for staff to operate with, to have some guidance to follow, and bring purchasing decisions to the Board. Mr. Guanzon explained the law part of it was a little confusing and he would explain that in closed session. The by-laws provide a way for having certain purchases up to $10,000 for a limited purposes, which wasn't exactly the same as the City Manager and County Administrator being able to make expenditures. He hasn't been able to have a dialogue with the staff, but does not think at this time there was enough definite agreement to have this policy put together. He wants to make sure the City and the County were on the same page as to what the by-laws say, and what the Virginia Code says, so that the policy will be helpful in giving the staff clear guidance as to how this Board wants them to operate.

Mr. Warren **moved** to accept the Purchasing Policy report as presented; the Motion was **seconded** by Mr. Vogler and carried by the following vote:

VOTE: 4-0
AYE: Scearce, Warren, Saunders, and Vogler (4)
NAY: None (0)

6. CLOSED SESSION

[During the closed session, all matters discussed shall involve receiving advice from legal counsel, and as such all communications during the closed session shall be considered attorney-client privileged.]

At 12:29 p.m. Mr. Scearce **moved** that the Meeting of the Danville-Pittsylvania Regional Industrial Facility Authority be recessed in a Closed Meeting for the following purposes:

A. As permitted by Section 2.2-3711(A)(5) of the Code of Virginia, 1950, as amended ("Virginia Code"), for discussion concerning one or more prospective businesses where no previous announcement has been made of that business's interest in locating its facilities in one or more of the Authority's projects located in Pittsylvania County, Virginia, and/or Danville, Virginia;

B. As permitted by Virginia Code § 2.2-3711(A)(39) for discussion or consideration of records excluded under Virginia Code § 2.2-3705.6(3) (including without limitation (i) those certain confidential proprietary records voluntarily provided by private business pursuant to a promise of confidentiality from the Authority, and used by the Authority for business and trade development and (ii) those certain memoranda, working papers, or other information related to businesses that are considering locating or expanding in Virginia, prepared by the Authority, where competition or bargaining is involved and where disclosure of such information would adversely affect the financial interest of the Authority); such information being excluded from mandatory disclosure under Virginia Code § 2.2-3705.1(12) (information relating to the negotiation and award of a specific contract pertaining to the Authority's Southern Virginia Megasite at Berry Hill project, Cyber Park project and/or Cane Creek Centre project, where competition or bargaining is involved and where the release of such information would adversely affect the bargaining power or negotiating strategy of the Authority) and Virginia Code § 2.2-3705.1(8) (appraisals and cost estimates of real property in one or more of the Authority's projects subject to a proposed purchase, sale, or lease, prior to the completion of such purchase, sale, or lease); and

C. As permitted by Virginia Code §§ 2.2-3711(A)(3) for discussion or consideration of the acquisition and/or the disposition of publicly held real property, where discussion in an open meeting would adversely affect the bargaining position or negotiating strategy of the Authority.

D. As permitted by Virginia Code § 2.2-3711(A)(8) for consultation with legal counsel employed or retained by a public body regarding specific legal matters requiring the provision of legal advice by such counsel.

E. As permitted by Virginia Code § 2.2-3711(A)(29) for discussion of the award of a public contract involving the expenditures of public funds where discussion in an open session would adversely affect the bargaining position or negotiating strategy of the Authority.

The Motion was **seconded** by Mr. Vogler and carried by the following vote:

VOTE:	4-0
AYE:	Scearce, Warren, Saunders, and Vogler (4)
NAY:	None (0)

<u>RETURN TO OPEN SESSION</u>

On **Motion** by Mr. Scearce and **second** by Mr. Warren and by unanimous vote at 2:45 p.m., the Authority returned to open meeting. **(**Reinstatement/Unmuting of Conference Line.)

Mr. Scearce **moved** for adoption of the following Resolution:

WHEREAS, the Authority convened in Closed Meeting on this date pursuant to an affirmative recorded vote and in accordance with the provisions of the Freedom of Information Act; and

WHEREAS, Section 2.2-3711 of the Code of Virginia, 1950, as amended, requires a Certification by the Authority that such Closed Meeting was conducted in conformity with Virginia Law;

NOW, THEREFORE, BE IT RESOLVED that the Authority hereby certifies that, to the best of each Member's knowledge, (i) only public business matters lawfully exempted by the open meeting requirements of 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 Meeting were heard, discussed, or considered by the Authority.

Mr. Vogler left the meeting at 2:00 p.m.

The Motion was **seconded** by Mr. Warren and carried by the following vote:

VOTE: 3-0
AYE: Saunders, Scearce, Warren (3)
NAY: None (0)

NEW BUSINESS CONTINUED

7A. CONTINUATION OF AGENDA ITEM 5.D – CONSIDERATION OF RESOLUTION 2021-05-10-7A, EXECUTION OF A GROUND LEASE

Mr. Scearce **moved** to **TABLE** Item 7A - Continuation of Agenda Item 5.D – *Resolution 2021-05-10-7A, approving the negotiation, execution and delivery of a Ground Lease with the Industrial Development Authority of Danville, Virginia, a political subdivision of the Commonwealth of Virginia, and the Pittsylvania County Industrial Development Authority, a political subdivision of the Commonwealth of Virginia, for a portion of that certain real property containing approximately 10.17 acres (PIN 78359), commonly known as Lot 10B, in the Authority's Cyber Park project, located in the City of Danville, Virginia, under which the lessee, at its expense, would cause to be installed an approximately 30,000 square feet building an related parking lot and driveway*.

The **Motion** was **seconded** by Mr. Warren and carried by the following vote:

VOTE: 3-0
AYE: Saunders, Scearce, Warren (3)
NAY: None (0)

7B. CONTINUATION OF AGENDA ITEM 5.B - CONSIDERATION OF RESOLUTION 2021-05-10-7B

*Mr. Warren **moved*** that Item 7B*, Resolution 2021-05-10-7B - authorizing the execution of a Forbearance Agreement with the Virginia Tobacco Region Revitalization Commission, the City of Danville, Virginia, Pittsylvania County, Virginia and Harlow Fastech LLC, a Virginia limited liability company for a loan approved on October 15, 2018 used to recruit Harlow Fastech LLC to the Authority's Cyber Park project, located in Danville, Virginia*

Be revised to include an adjustment in the liability of the City and County from $630,000 down to $380,000 due to the additional depreciation in the equipment. The Board does not feel that the City and County should be put in a less collateral position than they already were.

The **Motion** was seconded by Mr. Scearce.

Mr. Warren **Amended** his motion to say that there be a Letter from the Chair. Mr. Scearce seconded the **Amendment** and the **Motion** was carried by the following vote:

VOTE: 3-0
AYE: Saunders, Scearce, Warren (3)
NAY: None (0)

7. COMMUNICATIONS

Mr. Smitherman noted Boardroom 206 had new equipment and suggested staff ask the Institute if the RIFA meetings could be moved back; Ms. DeMasi stated the Institute had sent her an email that the June meeting would be moved to 206, and if RIFA was happy with 206, they could make it permanent.

Meeting adjourned at 2:51 p.m.

APPROVED:

____
Chairman

____
Secretary to the Authority

Danville-Pittsylvania Regional Industrial Facility Authority

Executive Summary

Agenda Item No.:	Item 4.1
Meeting Date:	06/14/2021
Subject:	Resolution 2021-06-14-4.1A
From:	Corrie Teague Bobe Director of Economic Development, City of Danville

SUMMARY

The Board will be asked to consider Resolution 2021-06-14-4.1A Authorizing the Execution of a Forbearance Agreement with the Tobacco Commission

ATTACHMENTS

Resolution

Exhibit

Resolution No. 2021-06-14-4.1A

A RESOLUTION AUTHORIZING THE EXECUTION OF A FORBEARANCE AGREEMENT WITH THE TOBACCO REGION REVITALIZATION COMMISSION, THE CITY OF DANVILLE, VIRGINIA, PITTSYLVANIA COUNTY, VIRGINIA AND HARLOW FASTECH LLC, A VIRGINIA LIMITED LIABILITY COMPANY, FOR A LOAN APPROVED ON OCTOBER 15, 2018 USED TO RECRUIT HARLOW FASTECH LLC TO THE AUTHORITY'S CYBER PARK PROJECT, LOCATED IN DANVILLE, VIRGINIA

WHEREAS, the Danville-Pittsylvania Regional Industrial Facility Authority (the **"Authority"**) is a political subdivision of the Commonwealth of Virginia duly created pursuant to the Virginia Regional Industrial Facilities Act, as amended; and

WHEREAS, the Authority, entered into that certain Performance Agreement (the "**Performance Agreement**"), dated October 15, 2018, with the Virginia Tobacco Region Revitalization Commission, a body corporate and political subdivision of the Commonwealth of Virginia ("**Commission**"), the City of Danville (the "**City**") and the County of Pittsylvania (the "**County**"), both political subdivisions of the Commonwealth of Virginia, and Harlow Fastech LLC, a Virginia limited liability company (the "**Company**") for the purpose of recruiting the Company to construct or locate taxable assets and employ persons in the Authority's Cyber Park project (the "**Cyber Park**"), located in Danville, Virginia; and

WHEREAS, the Commission made a cash loan in the amount of $630,000 (the "**Loan**") to the Authority for the benefit of the Company in exchange for the Company's promise to make certain capital investments and employ a specific number of persons in the City and the County; and

WHEREAS, the Company promised to pay the Commission the principal sum of $630,000 payable in six (6) equal semiannual payments of $105,000 each, due on the first day of February and the first day of August, respectively, with the first Loan payment due on the first semiannual due date to arrive twenty four (24) months after the Loan was disbursed; and

WHEREAS, the Commission fully disbursed the Loan to the Authority as of September 17, 2019 with the first repayment installation due on February 1, 2022; and

WHEREAS, the Company has been negatively impacted by the worldwide pandemic causing a substantial delay in the delivery and installation of a Gefertec 605 3D metal printing machine; and

WHEREAS, at the request of the Company, the Commission is agreeable to forbear from exercising any and all rights and remedies under the Loan for a period of two (2) years with the first Loan repayment installment being due February 1, 2024, on the condition that the Authority execute the forbearance agreement (the "**Forbearance Agreement**"), substantially in the form of **Exhibit A**, attached hereto and incorporated herein by this reference; and

WHEREAS, the Authority has determined (i) that such two (2) year forbearance would adversely and materially affect the value of the Authority's collateral securing the Company performance under the Loan due to the fact that the collateral is specialized equipment with a limited resale market and that the depreciation of the collateral's value would be approximately $250,000 and (ii) that in light of such adverse and material effect from the forbearance and related depreciation of the collateral's value, the Authority should condition its execution of the Forbearance Agreement upon the Commission's agreement to reduce the Authority's exposure to liability to the Commission under the Loan from $630,000 to $____________________ (the "**Loan Exposure Liability Reduction**"); and

WHEREAS, the Authority has determined that it is in the best interests of the Authority, the citizens of the County and the City, and the development of the Cyber Park for the Authority to authorize the execution of the Forbearance Agreement, conditioned on the Loan Exposure Liability Reduction.

NOW, THEREFORE, BE IT RESOLVED, that

1. The Authority hereby authorizes the execution and delivery of the Forbearance Agreement attached hereto as **Exhibit A**, conditioned upon the Loan Exposure Liability Reduction by the Commission, each of the Authority's Chairman and Vice Chairman, in consultation with the other, is authorized to further modify the Forbearance Agreement on such terms and conditions as the Chairman or Vice Chairman, in consultation with the other, determines to be reasonable, appropriate and consistent with this Resolution and hereby authorizes the Chairman and the Vice Chairman, either of whom may act independently of the other, to execute and deliver the Forbearance Agreement on behalf of the Authority, conditioned upon the Loan Exposure Liability Reduction by the Commission, such execution of the Forbearance Agreement by the Chairman (or Vice Chairman as the case may be) to conclusively establish the approval of any modifications as consulted by and between the Chairman and Vice Chairman.

2. The Authority hereby directs the Authority's Chairman to send a letter to the Commission requesting the Loan Exposure Liability Reduction.

3. The Authority hereby authorizes and directs staff and other agents and representatives working on behalf of the Authority to take such actions and to do all such things as are contemplated by the Forbearance Agreement, or as they in their discretion deem necessary or appropriate in order to carry out the intent and purposes of these resolutions.

4. The Authority hereby approves, ratifies and confirms any and all actions previously taken by the Authority, its agents and representatives, in respect to the Forbearance Agreement and the matters contemplated therein.

5. This Resolution shall take effect immediately upon its adoption

- # -

CERTIFICATE

I, the undersigned Secretary of the Danville-Pittsylvania Regional Industrial Facility Authority, hereby certify that the foregoing is a true, correct and complete copy of a Resolution duly adopted by a majority of the directors of the Danville-Pittsylvania Regional Industrial Facility Authority at a regular meeting duly called and held on June 14, 2021, and that such Resolution has not been repealed, revoked, rescinded or amended, but is in full force and effect on the date hereof.

WITNESS my hand as Secretary of the Danville-Pittsylvania Regional Industrial Facility Authority this 14th day of June 2021.

____
SUSAN M. DeMASI, Secretary
Danville-Pittsylvania Regional Industrial Facility Authority

(SEAL)

Resolution No. 2021-06-14-4.1A

<u>Exhibit A</u>

(Forbearance Agreement)

FORBEARANCE AGREEMENT

This FORBEARANCE AGREEMENT (this "Forbearance Agreement"), dated as of February 1, 2021, between the DANVILLE-PITTSYLVANIA REGIONAL INDUSTRIAL DEVELOPMENT AUTHORITY, (the "RIFA") the CITY OF DANVILLE, VIRGINIA (the "City") and the COUNTY OF PITTSYLVANIA, VIRGINIA (the "County"), all political subdivisions of the Commonwealth of Virginia (together the "Debtors") and the Tobacco Region Revitalization Commission, a political subdivision of the Commonwealth of Virginia (the "Commission") recites and provides as follows:

RECITALS

A. The Parties entered into a certain Loan Agreement, dated October 15, 2018 (the "Loan Agreement"), by and among the Debtors, the Commission, and Harlow Fastech LLC ("the Company").

B. Pursuant to the Loan Agreement, (i) the Commission made a cash loan in the amount of $630,000 ("the Loan") to the RIFA for the benefit of the Company in exchange for the Company's promise to make certain capital investments and employ a specific number of persons in the City and County, (ii) the Company promised to pay the Commission the principal sum of $630,000 payable in six (6) equal semi-annual payments of $105,000 due on the first of February and the first of August, respectively, with the first loan payment due on the first semi-annual due date to arrive 24 months after the loan is disbursed.

C. The Commission fully disbursed the Loan to the RIFA for the benefit of the Company by September 17, 2019 and the first semi-annual due date to arrive 24 months after disbursement thereby is February 1, 2022.

D. Subject to the terms herein, the RIFA has requested that the Commission forbear from exercising any and all rights and remedies under the Loan Agreement for a period of two (2) years with the first semi-annual loan payments being due February 1, 2024.

AGREEMENT

NOW, THEREFORE, for and in consideration of the promises, mutual covenants, releases, and agreements herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. **Terms.** Capitalized terms used herein but not defined herein shall have the meanings ascribed to them in the Performance Agreement.

2. **Forbearance.** From and after the execution of this Forbearance Agreement through 5:00 p.m. Eastern Standard Time on January 31, 2024, (the "Forbearance Period"), the Commission will forbear from exercising any and all rights and remedies under the Loan Agreement; however the Forbearance Period shall automatically terminate in the event that the Commission fails to ratify this Forbearance Agreement at its next regular meeting, currently scheduled for May, 2021. During the Forbearance Period, the Commission shall not request, demand, or provide notice of additional

payment requirements, nor shall it withhold from the RIFA any benefit or consideration otherwise due to the RIFA arising from other transactions made in the normal course of Commission business.

3. **No Waiver of Rights or Remedies.** Each of the Parties agree that other than as expressly set forth herein, nothing in this Forbearance Agreement or the performance by the Parties of their respective obligations hereunder constitutes or shall be deemed to constitute a waiver of any of the parties' rights or remedies under the terms of the Performance Agreement or applicable law, all of which are hereby reserved.

4. **Representations and Warranties by Both Parties.** Each of the Parties hereby represents and warrants that each of the following statements is true, accurate, and complete as to such party as of the date hereof:

    a. Such party has carefully read and fully understood all of the terms and conditions of this Forbearance Agreement;

    b. Such party has consulted with, or had a full and fair opportunity to consult with, an attorney regarding the terms and conditions of this Forbearance Agreement;

    c. Such party is freely, voluntarily, knowingly and intelligently entering into this Forbearance Agreement;

    d. In entering into this Forbearance Agreement, such party has not relied upon any representation, warranty, covenant or agreement not expressly set forth herein;

    e. This Forbearance Agreement has been duly authorized and validly executed and delivered by such party and constitutes each such party's legal, valid and binding obligation, enforceable in accordance with its terms; and

    f. Such party has the full power and legal authority to execute this Forbearance Agreement; consummate the transactions contemplated hereby, and perform its obligations hereunder.

5. **Governing Law.** This Forbearance Agreement shall be governed by and construed and interpreted in accordance with the laws of the Commonwealth of Virginia, notwithstanding its conflict of laws principles or any other rule, regulation or principle that would result in the application of any other state's law. Venue for any dispute involving this Forbearance Agreement shall lie in the Circuit Court for the City of Richmond.

6. **Entire Agreement.** This Forbearance Agreement constitutes the entire agreement of the parties hereto with respect to the subject matter hereof and supersedes all prior and contemporaneous agreements.

7. **Modifications.** No part or provision of this Forbearance Agreement may be changed, modified, waived, discharged, or terminated except by an instrument executed under oath, sealed and delivered by the party hereto against whom enforcement of such change, modification, waiver, discharge, or termination is sought.

8. **Successors and/or Assigns.** This Forbearance Agreement shall inure to the benefit of and bind each of the parties and their respective successors and/or assigns.

9. **Counterparts**. This Forbearance Agreement may be executed in counterparts, each of which shall constitute an original and all of which when taken together shall constitute one and the same instrument.

TOBACCO REGION
REVITALIZATION COMMISSION

By:__________________________________

Title: ________________________________

Date: _______________________________

DANVILLE-PITTSYLVANIA REGIONAL
INDUSTRIAL FACILITY AUTHORITY

By:__________________________________

Title:________________________________

Date:________________________________

CITY OF DANVILLE, VIRGINIA

By:__________________________________

Title:________________________________

Date:________________________________

COUNTY OF PITTSYLVANIA, VIRGINIA

By:_________________________________

Title:_______________________________

Date:________________________________

Danville-Pittsylvania Regional Industrial Facility Authority

Executive Summary

Agenda Item No.:	Item 5A
Meeting Date:	06/14/2021
Subject:	Resolution 2021-06-14-5A
From:	Susan M. DeMasi, Authority Secretary

SUMMARY

The Board will be asked to consider Resolution 2021-06-14-5A, approving and adopting a new logo for the Authority

ATTACHMENTS

No written Resolution

Exhibit

DANVILLE PITTSYLVANIA
REGIONAL INDUSTRIAL FACILITY AUTHORITY

TEXT GOES HERE…………☺

427 PATTON STREET, RM 428 • DANVILLE VA 24541 • 434-797-8928 • dprifa@danvilleva.gov

Danville-Pittsylvania Regional Industrial Facility Authority

Executive Summary

Agenda Item No.:	Item 5B
Meeting Date:	06/14/2021
Subject:	Resolution 2021-06-14-5B
From:	David M. Smitherman, Pittsylvania County Administrator Michael L. Adkins, Authority Treasurer Michael C. Guanzon, Legal Counsel to the Authority

SUMMARY

The Board will be asked to consider Resolution 2021-06-14-5B further revising the Amended and Restated By-Laws of the Authority.

ATTACHMENTS

Resolution

Resolution No. 2021-06-14-5B

A RESOLUTION FURTHER REVISING THE AMENDED AND RESTATED BYLAWS OF THE AUTHORITY ADOPTED AUGUST 13, 2007, AND LAST REVISED MARCH 14, 2016, BY AMENDING PARAGRAPH 2 OF ARTICLE IV ("MEMBER LOCALITY AGREEMENT") IN ITS ENTIRETY TO AUTHORIZE THE MEMBER LOCALITIES, BY ACTING JOINTLY THROUGH THEIR CITY MANAGER AND COUNTY ADMINISTRATOR, TO INCUR, ON BEHALF OF THE AUTHORITY, UP TO $50,000.00 IN REASONABLE EXPENSES FOR ANY ONE ITEM, WITH AN AGGREGATE LIMIT OF $100,000.00 IN ANY CALENDAR MONTH, SUBJECT TO CERTIFICATION BY THE AUTHORITY'S TREASURER OF DESIGNATED FUNDS THEREFOR, WHICH MAY INCLUDE WITHOUT LIMITATION FUNDS DESIGNATED IN THE AUTHORITY'S BUDGET AS "UNASSIGNED, UNENCUMBERED GENERAL FUNDS" AND TO REPORTING OF THE SAME TO THE BOARD AT ITS NEXT REGULAR MEETING

WHEREAS, the Danville-Pittsylvania Regional Industrial Facility Authority (the **"Authority"**) is a political subdivision of the Commonwealth of Virginia duly created pursuant to the Virginia Regional Industrial Facilities Act, as amended; and

WHEREAS, Article XIV ("**Amendments**") of the Amended and Restated Bylaws of the Authority Adopted August 13, 2007, and last revised February 9, 2015 (the **"Bylaws"**) provides that the Bylaws "may be amended, repealed, or altered, in whole or in part, by a majority vote of the Board, at any regular meeting of the Board ... , [with] at least one (1) week advance written notice of such proposed amendment, repeal or alteration shall be given the directors and alternate directors"; and

WHEREAS, at least one (1) week advance written notice of such proposed amendments to the Bylaws was given to the Directors of the Board; and

WHEREAS, the Board believes it is in the best interests of the Authority for efficient and expedient operation of the Authority for the Member Localities, by acting jointly through the City Manager and the County Administrator, to incur, on behalf of the Authority, up to Fifty Thousand Dollars ($50,000.00) in reasonable expenses for any one item, with an aggregate limit of One Hundred Thousand Dollars ($100,000.00) in any calendar month, subject to certification by the Authority's Treasurer of the availability of funds designated therefor, which may include without limitation funds designated in the Authority's budget as "unassigned, unencumbered general funds" or its equivalent, and subject to the reporting to the Board of such expenses by the Member Localities and the Authority's Treasurer at the next regular meeting of the Authority, as shown on **<u>Schedule 1</u>**, attached hereto and incorporated herein by this reference.

NOW, THEREFORE, BE IT RESOLVED, that

1. The Authority hereby approves the amendments to the Bylaws as set forth in **<u>Schedule 1</u>**.

2. Except as amended by this Resolution, the Bylaws shall remain unchanged.

3. This Resolution shall take effect immediately upon its adoption.

- # -

CERTIFICATE

I, the undersigned Secretary of the Danville-Pittsylvania Regional Industrial Facility Authority, hereby certify that the foregoing is a true, correct and complete copy of a Resolution duly adopted by a majority of the directors of the Danville-Pittsylvania Regional Industrial Facility Authority at a regular meeting duly called and held on June 14, 2021, and that such Resolution has not been repealed, revoked, rescinded or amended, but is in full force and effect on the date hereof.

WITNESS my hand as Secretary of the Danville-Pittsylvania Regional Industrial Facility Authority as of the 14th day of June 2021.

____
SUSAN M. DeMASI, Secretary
Danville-Pittsylvania Regional Industrial Facility Authority

(SEAL)

SCHEDULE 1

**AMENDED AND RESTATED BYLAWS
OF
DANVILLE-PITTSYLVANIA REGIONAL INDUSTRIAL FACILITY AUTHORITY**

Adopted August 13, 2007
Revised June 14, 2010
Revised August 9, 2010
Revised February 14, 2011
Revised April 11, 2011
Revised January 9, 2012
Revised March 12, 2012
Revised December 10, 2012
Revised February 11, 2013
Revised February 9, 2015
~~Last~~ Revised March 14, 2016
Last Revised June 14, 2021

ARTICLE I. PURPOSES AND POWERS

Danville-Pittsylvania Regional Industrial Facility Authority (the "Authority") shall be organized and operated in accordance with Title 15.2, Chapter 64 of the Code of Virginia, 1950, as amended, also known as the Virginia Regional Industrial Facilities Act (the "Act"), as the same may be amended from time to time. The Authority shall also comply with all lawful directives as may be mutually agreed to between the City of Danville, Virginia (the "City"), and the County of Pittsylvania, Virginia (the "County"). The general purpose of the Authority shall be to enhance the economic base of the City and the County by developing, owning, and operating one or more facilities on a cooperative basis involving such localities (each locality being hereinafter referred to as a "Member Locality" or collectively hereinafter referred to as "Member Localities"), including without limitation the specific purpose to develop The Cyber Park of Danville and Pittsylvania County (as defined in the Agreement (as hereinafter defined)) and to develop one or more parcels in both the City and the County as regional industrial parks and for additional purpose of future development of other industrial properties or other reasons as permitted by the Act and as agreed upon by the Member Localities. The Authority shall have any and all powers under the Act, as the same may be amended from time to time.

ARTICLE II. OFFICES

1. The principal office of the Authority shall be located within a Member Locality as designated by the Board of Directors of the Authority (the "Board").

2. The title to all property of every kind belonging to the Authority shall be titled in the name of the Authority, which shall hold such title for the benefit of its Member Localities.

3. Except as otherwise required by resolution of the Authority, or as the business of the Authority may require, all of the books and records of the Authority shall be kept at the office to be designated as provided above.

4. The minutes of the Authority shall be open and available for inspection as required by The Virginia Freedom of Information Act, Virginia Code '' 2.2-3700 *et seq.*, as amended. Draft minutes shall be made reasonably available within ten (10) business days of the meeting to which they relate. Final minutes shall be made reasonably available within three (3) business days of approval by the Board.[1]

ARTICLE III. MEMBERSHIP

The Member Localities of the Authority are the City and the County, each of which is a political subdivision of the Commonwealth of Virginia, and each of which is authorized by the Act to participate in the Authority. The membership may, with unanimous approval of the Board, be expanded as may be authorized in the Act.

ARTICLE IV. MEMBER LOCALITY AGREEMENT

1. The Authority shall be governed by the Act, these Bylaws and by the Agreement For Cost Sharing and Revenue Sharing between the City of Danville, Virginia, and Pittsylvania County, Virginia, dated October 2, 2001, executed by the Governing Body of each Member Locality (the "Agreement"). The Agreement establishes the respective rights and obligations of the Member Localities and provides for revenue and economic growth-sharing arrangements with respect to tax revenues and other income and revenues generated by any facility owned by the Authority.

2. Without limiting the provisions of the Agreement, ~~each~~the Member ~~Locality,~~ Localities, acting jointly by and through ~~its~~the city manager~~,~~ and the county administrator ~~or respective designee, is~~, are authorized to incur, on behalf of the Authority, up to ~~an aggregate amount of Ten~~Fifty Thousand Dollars ($~~10~~50,000.00) in reasonable expenses~~, related to, or arising out of, (i) developing or testing the Authority's projects~~ for ~~a particular business prospect or (ii) marketing to a particular business prospect. Prior~~any one item, with an aggregate limit of One Hundred Thousand Dollars ($100,000.00) in any calendar month; however, prior to incurring any such ~~expense~~expenses under this paragraph, the Member

[1] 06/14/2010: Entire paragraph revised.

~~Locality~~Localities shall ~~consult with the other~~obtain the certification from the Treasurer that there are available funds designated therefor, which may include without limitation funds designated in the Authority's budget as "unassigned, unencumbered general funds" or its equivalent. The Member ~~Locality on~~Localities, through the city manager and the county administrator, and the Treasurer shall report such ~~business prospect. Such~~ expenses ~~shall be reported~~ to the Board at its next regular meeting ~~for consideration and ratification~~.[2]

ARTICLE V. BOARD OF DIRECTORS

1. The powers, rights, and duties conferred by the Act upon the Authority shall be exercised by the Board, which shall consist of four (4) members selected as follows: two (2) members shall be appointed by the Governing Body of each Member Locality. In addition to the members of the Board, each Governing Body of each Member Locality shall select one (1) alternate director, to serve in the absence of a director appointed by the Governing Body of such Member Locality, in accordance with the provisions of these Bylaws.

2. Each Member Locality shall appoint to the Board one (1) member from its Governing Body to serve an initial two (2) year term and one (1) member from its Governing Body to serve an initial four (4) year term pursuant to the Act. Each Member Locality shall also appoint one (1) member from its Governing Body to serve an initial four (4) year term as an alternate director. Each appointee of a Governing Body shall be a resident of the Member Locality of that Governing Body. All subsequent terms shall be four (4) year terms[3]. Notwithstanding the foregoing, effective as of January 1, 2015, staggered Board terms shall not be required.[4] Furthermore, notwithstanding the foregoing, so long as a Board member is otherwise qualified to serve in accordance with these Bylaws (i.e., is a member of the appointing Governing Body), such Board member shall hold office

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[2] ~~04/11/2011~~06/14/2021: New paragraph added to change and to clarify how expenses may be incurred on behalf of the Authority ~~for developing business prospects~~and to broaden the authority of the Member Localities acting jointly. Such expenses would be ultimately shared by the Member Localities under the Agreement for Cost Sharing and Revenue Sharing.

[3] 02/11/2013: Deleted term limit of director and alternate director. Each Member Locality shall have the power to determine how many terms its appointed directors and alternate directors should serve.

[4] 02/09/2015: Added this sentence to eliminate, effective as of January 1, 2015, the requirement for staggered Board terms to address the situation where a Board member is not re-elected to the Governing Body of a Member Locality and a replacement must be appointed for a term which could affect the staggered terms.

until a successor is duly appointed by the appropriate Governing Body.[5]

3. In order to remain a director or alternate director of the Authority, such director or alternate director must be a current member of the Governing Body. Once a director or alternate director of the Authority is no longer a member of the Governing Body, the locality will appoint a new director or alternate director, as the case may be, from its Governing Body to fill the unexpired term of the vacating director or alternate director as the case may be. In the event of a vacating director, the alternate director from the same Member Locality shall serve until a replacement director is appointed by the Governing Body of such Member Locality, which shall have the authority to fill any such vacancies.

4. Each director or alternate director of the Board, before entering upon the discharge of the duties of the office, shall take and subscribe to the oath prescribed in Virginia Code ' 49-1, as amended, and shall serve in compliance with the Act, these Bylaws and the Agreement.

5. In the absence of a director appointed by the Governing Body of a Member Locality, the alternate director of the same Member Locality may act in place of such absent director. The alternate director from one Member Locality shall not have the right to vote unless at least one (1) director from the same Member Locality is absent.

6. All powers and duties of the Authority shall be exercised and performed by the Board, acting by simple majority vote of those directors present at a meeting at which a quorum is present, except that no facilities owned by the Authority shall be leased or disposed of in any manner without a majority vote of the Board. A quorum shall consist of three (3) directors (including any alternate director entitled to vote at such meeting) of the Board. For the purposes of determining quorum, an alternate director from one Member Locality shall not be counted unless a director of the same Member Locality is absent. No vacancy in the membership of the Board shall impair the right of a quorum to exercise all the rights and perform all the duties of the Board.

7. Members of the Board shall be reimbursed for actual and reasonable expenses incurred the performance of their duties from funds available to the Authority.

[5] 02/09/2015: Added this sentence to address any gap that may arise between the end of the Board terms and the appointment by the Governing Body of Member Locality of new Board members (e.g., Board term expires December 31, but the appointing Governing Body of a Member Locality does not meet until the following January to appoint new Board members).

ARTICLE VI. OFFICERS

1. The Board shall elect from its directors a Chairman and a Vice Chairman[6]. The director elected to the office of chairman shall alternate each term of office from one Member Locality to another Member Locality, beginning with the County.

2. The term of office for the officers shall be for the calendar year[7] in which they are elected, and shall continue until their successors are elected.

3. The duties of the Chairman shall be to preside at meetings of the Authority; to prepare the agenda for any and all meetings, and to make a copy of such agenda available to the Secretary for the purpose of providing notice of special meetings as hereinafter provided; to call special meetings; to call special elections; to appoint committees as may be deemed appropriate to carry out the intents and purposes of the Authority; to be ex officio a member of all committees; to sign, with the Secretary or any other proper officer of the Authority authorized by the Board, any documents or instruments which the Board has authorized to be executed, except in cases where the signing and execution thereof shall be expressly delegated by the Board or by these Bylaws to some other officer of the Authority, or shall be required by law to be otherwise signed or executed; and in general shall perform all duties incident to the office of chairman and such other duties as may be prescribed by the Board from time to time. The Chairman shall have an equal vote with the other directors, and shall not have a second, tie-breaking vote on any question.

4. The Vice Chairman shall, in the absence or disability of the Chairman, perform the duties imposed upon the Chairman and exercise the powers granted to the Chairman, including without limitation those duties and powers set forth in these Bylaws.[8] The director elected to the office of vice chairman shall not be from the same Member Locality as that of the Chairman.[9]

5. The Board shall appoint a Secretary and a Treasurer from the Authority's staff, which may include staff provided by a Member Locality or other persons employed or contracted by the Authority.[10] The offices of Secretary and Treasurer may be held

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[6] 08/09/2010: Vice Chairman inserted. Offices of Secretary and Treasurer shall be appointed by the Board from the Authority's staff.

[7] 12/10/2012: Officers are elected or appointed at the January regular meeting of the Board.

[8] 08/09/2010: Entire new paragraph added.

[9] 03/14/2016: New sentence added to be consistent with the intent of rotating of the chairman office as provided in paragraph 1 of Article VI ("Officers").

[10] 02/14/2011: The Authority's staff may include staff provided by a Member Locality or other

by the same person.[11,12] If a person serving as Secretary or Treasurer ceases to be staff of a Member Locality, such person shall not be disqualified from serving as Secretary or Treasurer and shall continue to serve the remainder of the term of office unless such person is sooner removed or resigns from such office.[13]

a. The duties of the Secretary shall be to take the minutes of the meetings of the Board; to have custody of all records of the Authority; to have custody of the Seal of the Authority and to ensure that the Seal of the Authority is affixed to all documents or instruments, the execution of which on behalf of the Authority under its Seal is duly authorized by the Board; to sign with the Chairman (or the Vice Chairman, as the case may be)[14] any documents or instruments which the Board has authorized to be executed; to ensure that all notices are duly given as required by law, these Bylaws or by the Board; to call meetings of the Board to order in the absence of the Chairman and the Vice Chairman,[15] and thereupon to conduct an election for a temporary presiding officer for that meeting; and in general to perform all duties incident to the office of Secretary[16] and such other duties as from time to time may be assigned by the Board. In the absence of the Secretary, the Chairman shall appoint a director or alternate director or shall direct a member of the Authority's staff to be[17] responsible for the preparation of detailed minutes of any meeting.

b. The duties and authority of the Treasurer shall include: (a) the duty to keep suitable records of all financial transactions of the Authority; (b) the authority to arrange for the preparation of any audits of the financial records of the Authority, as may be directed by the Board; (c) the duty and authority to have charge and custody of all funds and arrange for their investment and deposit in the name of the Authority when authorized by the Board; (d) the duty and the authority, in the absence of the Secretary, to perform all duties of the Secretary, except for those certain other duties which the

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persons employed or contracted by the Authority.

[11]08/09/2010: Secretary and Treasurer shall by appointed by the Board from the Authority's staff.

[12]02/14/2011: Corrected capitalization of Secretary and Treasurer.

[13]02/14/2011: Added "If a person serving as Secretary or Treasurer ceases to be staff of a Member Locality, such person shall not be disqualified from serving as Secretary or Treasurer and shall continue to serve the remainder of the term of office unless such person is sooner removed or resigns from such office."

[14]08/09/2010: Reference to Vice Chairman added.

[15]08/09/2010: Reference to Vice Chairman added.

[16]12/10/2012: Corrected capitalization of Secretary.

[17]08/09/2010: Reference to the Authority's staff added.

Chairman, under the Bylaws, delegates to a director, alternate director, officer or staff member in the Secretary's absence[18]; and (e) in general, the duty and the authority[19] to perform all the duties incident to the office of Treasurer[20] and such other duties as from time to time may be assigned by the Board. The Treasurer shall give bond in such sum as may be fixed by the Board with surety to be approved by the Board. The cost of such surety shall be paid by the Authority.

ARTICLE VII. ELECTIONS OR APPOINTMENT[21] OF OFFICERS

1. Regular elections or appointment of officers shall be held at the regular meeting of the Board in January of each year.[22]

2. Special elections of officers in order to fill vacancies or to fill newly created offices shall be held (i) at a regular meeting duly called or (ii) at a special meeting designated by the Chairman, but only after notice of such special meeting, as provided in paragraph 3 of Article VIII[23], has been given.[24]

ARTICLE VIII. MEETINGS

1. The Board shall determine the times and places of its regular meetings, but shall meet at least, for its annual meeting, as set forth in Paragraph 2 below. Regular meetings of the Board shall be open to the public (unless otherwise provided under Virginia Code § 2.2-3711, as amended or successor provision).[25] Regular meetings shall be held in the City or in the County, upon call of the Chairman or as otherwise provided in these Bylaws. At a regular meeting, any business may be brought before the Board, whether or not that business is set

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[18] 01/09/2012: Added that in the absence of the Secretary, the Treasurer shall perform all duties of the Secretary, except for those certain other duties which the Chairman, under the Bylaws, delegates to a director, alternate director, officer or staff member in the Secretary's absence (e.g., duties set forth in paragraph 5(a) of Article VI).

[19] 01/09/2012: Added "the duty and the authority" for parallel sentence structure.

[20] 12/10/2012: Corrected capitalization of Treasurer.

[21] 12/10/2012: Added "Appointment" to header because the offices of Secretary and Treasurer are appointed, not elected.

[22] 12/10/2012: Changed election/appointment date from the July regular meeting of the Board to the January regular meeting of the Board.

[23] 12/10/2012: Added cross-reference.

[24] 02/14/2011: Requests for special meetings shall be in writing.

[25] 12/10/2012: Regular meetings are open to the public, unless otherwise permitted by Virginia FOIA. *See* Va. Code § 2.2-3711.

forth in the notice of regular meeting. In the event that the date of any regular meeting determined by the Board is a date on which either the City's administrative offices or the County's administrative offices are closed for business, the regular meeting shall be held on the next date on which both the City's administrative offices and the County's administrative offices are open for business.[26] At the regular meeting of the Board in January, the Board shall elect or appoint its officers to serve for that calendar year.[27]

2. The annual meeting of the Board shall take place at the regular meeting of the Board in July of each year, at such place, time, and date as may be established by the Board or the Chairman. Each Member Locality shall make their appointments prior to such annual meeting so that the membership of the Board will be complete for such annual meeting.[28, 29]

3. Special meetings of the Board may be called by the Chairman at the request of (a) any two (2) directors; (b) two (2) alternate directors; or (c) one (1) director and one (1) alternate director, so long as those two (2) persons requesting the special meeting represent both Member Localities.[30] Such request shall be in writing, which may be by email to the Chairman at the email address of record,[31] and shall specify the time and place of the special meeting and the matters to be considered at the special meeting. No matter not specified in the notice of special meeting shall be considered at such special meeting unless all directors (or an alternate director acting in lieu of an absent director) of the Board are present. Special meetings shall be open to the public (unless otherwise permitted under Virginia Code § 2.2-3711, as amended or successor provision).[32]

4. Notices of both regular and special meetings shall be mailed by the Secretary to each member of the Board not less than three (3) business days before any such meeting; and notices of special meetings shall state the purposes thereof. All notices required herein shall state the date, time, and

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[26] 03/12/2012: Entire new sentence added.

[27] 12/10/2012: Officers are elected or appointed at the January regular meeting of the Board.

[28] 12/10/2012: Deleted election/appointment of officers at the July regular meeting.

[29] 03/12/2012: Entire new sentence added.

[30] 08/09/2010: Clarification that directors or alternate directors representing two Member Localities may request a special meeting.

[31] 02/14/2011: Clarification that the request must be in writing, which may include an email to the Chairman at the email address of record. *See* Va. Code § 1-257.

[32] 12/10/2012: Special meetings are open to the public unless otherwise permitted by Virginia FOIA. *See* Va. Code § 2.2-3711.

location of the meeting and shall be delivered by hand, United States mail, or a private courier service which provides evidence of receipt as part of its service to the address of record of all directors and alternate directors. A notice given hereunder shall be deemed given on the date of hand delivery, deposit with the United States Postal Service properly addressed and postage prepaid, or delivery to a courier service properly addressed with all charges prepaid, as appropriate. Any notice required herein may be waived in writing by the party entitled to such notice, and such waiver may specify that notice may be given to such party electronically (including without limitation by email or access to a website) in lieu of other means of delivery.

At the time that any such notice is given to the directors and alternate directors, a copy of such notice shall be posted (i) in a prominent location at which notices are regularly posted, and (ii) at the office of the clerk of the Authority, currently at 427 Patton Street, Room 428, Danville, Virginia. A copy of any agenda materials or other information included with the notice to the directors and alternate directors (other than materials exempt from disclosure under The Virginia Freedom of Information Act, Virginia Code '' 2.2-3700, *et seq.*, as amended) shall be posted or made available with the copy of such notice. Notice may also be posted electronically on the Authority's website or otherwise, but such posting shall not be required.

At least one (1) copy of the agenda materials or other information given at the meeting to the directors and alternate directors (other than materials exempt from disclosure under The Virginia Freedom of Information Act, Virginia Code '' 2.2-3700, *et seq.*, as amended) shall be made open and available for inspection at the meeting.

Attendance of a director or alternate director at a meeting shall constitute a waiver of notice of such meeting, except where a director or alternate director attends for the express purpose of objecting to the sufficiency of the notice given or to the lack of notice.[33]

5. Formal action shall be taken by the Board only at open meeting sessions, and such sessions[34] **shall be open to the public.**

6. The vote on the adoption of every resolution, any proposals creating a liability, or for the appropriation or expenditure of funds shall be by yeas or nays, and whenever the vote is not unanimous, the names of the directors (or alternate directors, where permitted under these Bylaws) voting for and of

[33] 06/14/2010: Entire paragraph revised.

[34] 12/10/2012: Clarification for open sessions of open meetings.

those voting against such action shall be entered upon the minutes.

7. Unless otherwise provided, procedure at meetings shall follow Robert's Rules of Order as then revised.

8. When approved, all minutes shall be signed by the Secretary and the presiding officer of the particular meeting.

9. All actions of the Board requiring the approval of an expenditure will be accompanied by a budget reference and/or funding source.

10. No item will be added to the agenda of a Board meeting without the unanimous consent of the Board members present.

ARTICLE IX. REQUIRED REPORTS

1. Annual Reports. The Board shall report to the Governing Body of each Member Locality annually, on or before the last March meeting of the Governing Body, on the activities of the Authority. In addition to oral presentation at the meeting, a written annual report shall be provided prior to the meeting and shall contain, at a minimum, the following information:

- a. A financial update through December 31 of the current fiscal year;
- b. After completion of the first fiscal year, an audited financial report showing expenditures and revenues and a statement showing financial condition at the end of the preceding fiscal year;
- c. A written report, approved by the Board, of the activities and accomplishments of the Authority and recommendations regarding future activities of the Authority; and
- d. A list of tenants, purchasers or other persons occupying The Cyber Park of Danville and Pittsylvania County or any other regional industrial facilities developed by the Authority.

2. Special Reports. Upon written request of the Governing Body of any Member Locality, the Board shall report to such Governing Body within thirty (30) days of receipt of such request or within a longer period if so provided in such request. The special report shall describe the activities and financial status of the Authority within the six (6) month period immediately preceding the request, or as otherwise specified in the request and shall be furnished to each Member Locality. A written report shall be provided if requested.

ARTICLE X. FUNDING

Funding of the Authority shall be by appropriation as decided from time to time by the Governing Bodies of the Member Localities and from such other sources as are identified in the Agreement.

ARTICLE XI. STAFF

The Board may hire such employees as are necessary to accomplish the purposes and powers of the Authority.

ARTICLE XII. OFFICIAL SEAL

The Seal of the Authority shall show the name of the Authority, the name of the Commonwealth, and the year of its formation; i.e., "DANVILLE-PITTSYLVANIA REGIONAL INDUSTRIAL FACILITY AUTHORITY - VIRGINIA - 2001."

ARTICLE XIII. FISCAL YEAR

The fiscal year of the Authority shall be from July 1 until June 30 of the following year.

ARTICLE XIV. AMENDMENTS

Except as otherwise provided by law, these Bylaws may be amended, repealed, or altered, in whole or in part, by a majority vote of the Board, at any regular meeting of the Board, or at any special meeting where such action has been announced in the call and notice of such meeting; however, instead of the time frame described in paragraph 3 of Article VIII above, at least one (1) week advance written notice of such proposed amendment, repeal or alteration shall be given the directors and alternate directors.

The undersigned hereby certify that the foregoing are the Amended and Restated Bylaws adopted by the Board of Directors at its monthly meeting held August 13, 2007, revised at its monthly meetings held June 14, 2010, August 9, 2010, February 14, 2011, April 11, 2011, January 9, 2012, March 12, 2012, December 12, 2012, February 11, 2013, ~~and~~ February 9, 2015, and March 14, 2016 and last revised at its monthly meeting held ~~March~~June 14, ~~2016~~2021[35]

[35] 06/14/2010, 08/09/2010, 02/14/2011, 04/11/2011, 01/09/2012, 03/12/2012, 12/10/2012, 02/11/2013, 02/09/2015, 03/14/2016, 06/14/2021: Updated references to monthly meetings.

____
Secretary

** The bracketed footnotes and annotations do not constitute a part of these Bylaws and are provided for convenience only.*[36]

[36]02/14/2011: Footnotes and annotations do not constitute a part of the Bylaws and are for convenience only.

Danville-Pittsylvania Regional Industrial Facility Authority

Executive Summary

Agenda Item No.:	Item 5C
Meeting Date:	06/14/2021
Subject:	Resolution 2021-06-14-5C
From:	Mr. Smitherman

SUMMARY

The Board will be asked to consider Resolution 2021-06-14-5C approving certain procurement guidelines of the Authority.

ATTACHMENTS

Resolution

Exhibit

Resolution No. 2021-06-14-5C

A RESOLUTION APPROVING CERTAIN PROCUREMENT GUIDELINES OF THE AUTHORITY WITHOUT EXPANSION OR SUPERSEDING THE AUTHORIZATION OF CERTAIN AUTHORITY'S STAFF UNDER THE BYLAWS OF THE AUTHORITY OR UNDER A RESOLUTION PASSED BY THE BOARD OF THE AUTHORITY, AND WITHOUT WAIVER OF CERTAIN EXEMPTIONS APPLICABLE TO THE AUTHORITY UNDER THE VIRGINIA PUBLIC PROCUREMENT ACT

WHEREAS, the Danville-Pittsylvania Regional Industrial Facility Authority (the "**Authority**") is a political subdivision of the Commonwealth of Virginia duly created pursuant to the Virginia Regional Industrial Facilities Act, as amended; and

WHEREAS, the Authority's general purpose is to enhance the economic base of the City of Danville, Virginia (the "**City**") and the County of Pittsylvania, Virginia (the "**County**") by developing, owning, and operating one or more facilities on a cooperative basis involving such localities; and

WHEREAS, the Authority's staff ("**RIFA Staff**"), in order to obtain high quality goods and services at reasonable cost and in a manner that is fair and impartial without avoidance of any impropriety or appearance of impropriety, shall endeavor to follow the procurement procedures (the "**Procurement Guidelines**") set forth in Exhibit A, attached hereto and incorporated herein by this reference; and

WHEREAS, the Procurement Guidelines shall not be deemed or construed to expand or to supersede the authorization of certain RIFA Staff under the Bylaws of the Authority or under a resolution passed by the Board of the Authority; and

WHEREAS, the Procurement Guidelines shall not be deemed or construed to be a waiver of Virginia Code § 2.2-4344.B or successor provisions (which exempts the Authority from entering into contracts without competition with respect to any item of cost of its structures, parks or other facilities; and

WHEREAS, the Authority has determined that it is in the best interests of the Authority, the citizens of the County and the City, and the development of the County and the City for the Authority to approve the Procurement Guidelines.

NOW, THEREFORE, BE IT RESOLVED, that:

1. The Authority hereby approves and adopts the Procurement Guidelines attached hereto as Exhibit A.

2. The Authority hereby authorizes and directs staff and other agents and representatives working on behalf of the Authority to take such actions and to do all such things as are contemplated by the Procurement Guidelines, or as they in their discretion deem necessary or appropriate in order to carry out the intent and purposes of these resolutions.

3. This Resolution shall take effect immediately upon its adoption.

CERTIFICATE

I, the undersigned Secretary of the Danville-Pittsylvania Regional Industrial Facility Authority, hereby certify that the foregoing is a true, correct and complete copy of a Resolution duly adopted by a majority of the directors of the Danville-Pittsylvania Regional Industrial Facility Authority at a regular meeting duly called and held on June 14, 2021, and that such Resolution has not been repealed, revoked, rescinded or amended, but is in full force and effect on the date hereof.

WITNESS my hand as Secretary of the Danville-Pittsylvania Regional Industrial Facility Authority this 14th day of June 2021.

____

SUSAN M. DeMASI, Secretary
Danville-Pittsylvania Regional Industrial
Facility Authority

(SEAL)

<u>Exhibit A</u>

(Procurement Guidelines)

PROCUREMENT GUIDELINES

The Danville-Pittsylvania Regional Industrial Facility Authority (the "**Authority**") is a political subdivision of the Commonwealth of Virginia duly created pursuant to the Virginia Regional Industrial Facilities Act (Virginia Code §§ 15.2-6400 *et seq.*) as amended. In order for the Authority to obtain high quality goods and services at reasonable cost and in a manner that is fair and impartial without avoidance of any impropriety or appearance of impropriety, the staff of the Authority ("**RIFA Staff**") shall endeavor to follow the procurement procedures set forth in these guidelines. However, nothing in these guidelines shall be deemed or construed to expand or to supersede the authorization of certain RIFA Staff under the Bylaws of the Authority or under a resolution passed by the Board of the Authority. Moreover, in no event shall these guidelines be deemed or construed to be a waiver of Virginia Code § 2.2-4344.B or successor provisions (which exempts the Authority from entering into contracts without competition with respect to any item of cost of its structures, parks or other facilities ("**Facilities**")).

1. RIFA Staff should seek quotes for all contracts for Goods, Services and Construction (collectively, "**Facility Costs**"). "**Goods**" means all material, equipment, supplies, printing, and automated data processing hardware and software. "**Services**" means any work performed by an independent contractor wherein the service rendered does not consist primarily of acquisition of equipment or materials, or the rental of equipment, materials and supplies. "**Construction**" means building, altering, repairing, improving or demolishing any structure, building or highway, and any draining, dredging, excavation, grading or similar work upon real property.

2. RIFA Staff should solicit at least three quotes for any Facility Costs above $10,000.00, except (A) where RIFA Staff has determined in writing (i) that there is only one source practicably available for that which is to be procured or (ii) there is an emergency affecting the public health, safety, or welfare; or (B) where both the Chairman and the Vice Chairman of the Authority have agreed to less than three quotes.

3. By joint approval by the City Manager and the County Administrator, RIFA Staff may adopt a formal bidding procedure which may or may not have to be identical or similar to any one or more of the procedures set forth in the Virginia Public Procurement Act. However, in no event shall RIFA Staff adopt a procurement procedure that waives or may have the effect of waiving the exemption under Virginia Code § 2.2-4344.B (or successor provisions). RIFA Staff is encouraged to consult with the Authority's legal counsel regarding the inclusion of the following statements (or their equivalent) in bold font type, in the bidding procedure documentation:

    "**The Authority expressly reserves the right to implement any bidding procedure without making itself subject to the Virginia Public Procurement Act. Nothing in this bidding procedure shall be deemed to be a waiver by the Authority of the exemption**

provided under Virginia Code § 2.2-4344.B (or successor provisions) to the Virginia Public Procurement Act."

4. RIFA Staff should endeavor to follow these guidelines as applicable:

(A) prior to presenting a contract for Facility Costs for consideration and approval by the Board of the Authority,

and

(B) after the Board of the Authority has authorized RIFA Staff by board resolution to procure certain Goods, Services or Construction. In the event of any ambiguity or interpretation conflict between a board resolution or these guidelines, the board resolution shall control to the extent reasonably necessary to clarify or reconcile the same.

Adopted 06/14/2021.

Danville-Pittsylvania Regional Industrial Facility Authority

Executive Summary

Agenda Item No.:	Item 5D
Meeting Date:	06/14/2021
Subject:	Resolution 2021-06-14-5D
From:	Ms. Bobe and Matthew D. Rowe, Director of Economic Development, Pittsylvania County

SUMMARY

The Board will be asked to consider Resolution 2021-06-14-5D approving a Local Performance Agreement with Making Everything Possible, LLC.

ATTACHMENTS

Resolution

Exhibit

Resolution No. 2021-06-14-5D

A RESOLUTION APPROVING THAT CERTAIN LOCAL PERFORMANCE AGREEMENT WITH MAKING EVERYTHING POSSIBLE, LLC, A VIRGINIA LIMITED LIABILITY COMPANY, AND OTHER GOVERNMENT PARTIES, UNDER WHICH THE AUTHORITY WOULD PROVIDE CERTAIN INCENTIVES, INCLUDING (I) A $250,000.00 INDUSTRIAL ENHANCEMENT GRANT, (II) UP TO $75,000.00 IN BASE RENT AT THE INSTITUTE FOR ADVANCED LEARNING AND RESEARCH IN THE AUTHORITY'S CYBER PARK PROJECT FOR A PHASE 1 START-UP CENTER FOR MOLDING AND MACHINING PRODUCTS IN THE AEROSPACE AND DEFENSE INDUSTRIES, (III) THE OPPORTUNITY TO GROUND LEASE LAND FOR A PHASE 2 ESTABLISHMENT OF A PRODUCTION FACILITY, AND (IV) THE APPLICATION FOR AND DISBURSEMENT OF CERTAIN STATE GRANTS AND LOAN, IN EXCHANGE FOR CAPITAL INVESTMENTS OF AT LEAST $800,000.00 AND THE CREATION OF 8 FULL-TIME JOBS WITH AN AVERAGE YEARLY BASE WAGE OF AT LEAST $73,000.00 DURING PHASE 1, AND CAPITAL INVESTMENTS OF AT LEAST $6,445,000.00 AND THE CREATION OF AN ADDITIONAL 37 FULL TIME JOBS WITH AN AVERAGE YEARLY BASE WAGE OF LEAST $62,000.00 DURING PHASE 2, IN THE AUTHORITY'S CYBER PARK PROJECT, LOCATED IN DANVILLE, VIRGINIA

WHEREAS, the Danville-Pittsylvania Regional Industrial Facility Authority (the "**Authority**") is a political subdivision of the Commonwealth of Virginia duly created pursuant to the Virginia Regional Industrial Facilities Act, as amended; and

WHEREAS, the Authority, the County of Pittsylvania, Virginia (the "**County**"), and the City of Danville, Virginia (the "**City**"), in order to stimulate economic growth and development of the community by creating jobs and infrastructure have agreed to provide incentives to new and expanding businesses which conduct industrial activity; and

WHEREAS, Making Everything Possible, LLC, a Virginia limited liability company ("**MEP**"), is the U.S. subsidiary of a United Kingdom-based, multi-award manufacturer that specializes in molding and machining for the aerospace and defense industries, and MEP's products are also utilized in motor sports, space, and rail applications; and

WHEREAS, MEP has agreed to establish and to operate its business in the City and/or the County in two phases, Phases I and II. In Phase I, MEP would establish a temporary Start-Up Center within the Main Building of the Institute for Advanced Learning and Research (the "**Institute**"), located in Danville, Virginia. The Phase I Start-Up Center would comprise of approximately 5,500 square feet of office and high bay space. The land upon which the Institute operates is owned by the Authority and is part of the Authority's Cyber Park project (the "**Cyber Park**"). In Phase II, MEP would establish a production facility containing at least 30,000 square feet of space in the Cyber Park; and

WHEREAS, the Authority desires to negotiate, execute and deliver a local performance agreement ("**LPA**") with MEP under which the Authority would provide at a minimum an industrial enhancement grant in the form of annual tax rebates on real estate and tangible personal property for the establishment of a production facility, in exchange for certain minimum performance parameters as those required by the Governor's Office and/or the Tobacco Region Revitalization Commission, among other incentives provided by and/or among the Government Parties (as defined in the LPA), substantially in the form of Exhibit A, attached hereto an incorporated herein by this reference; and

WHEREAS, under the LPA, each of the Authority, the City and the County would agree to provide certain incentives to MEP in exchange for MEP meeting certain performance metrics within the performance period. Such incentives from the Authority, as more particularly described in the LPA, would include, among other things, payment by the Authority of the first twelve (12) months of base rent, up to Seventy Five Thousand and 00/100 Dollars ($75,000.00), under a lease with the Institute, and up to Seventeen Thousand Five Hundred and 00/100 Dollars ($17,500.00) for reimbursement of residential housing expenses of MEP's personnel; and

WHEREAS, the Authority has determined that it is in the best interests of the Authority, the citizens of the County and the City, and the development of the Cyber Park for the Authority to negotiate, execute and to deliver a LPA with MEP.

NOW, THEREFORE, BE IT RESOLVED, that

1. The Authority hereby authorizes and approves the negotiation, execution and delivery of a LPA with MEP, as described in this Resolution and substantially in the form of Exhibit A, each of the Authority's Chairman and Vice Chairman, in consultation with the other, is authorized to further modify a LPA on such terms and conditions as the Chairman or Vice Chairman, in consultation with the other, determines to be reasonable, appropriate and consistent with this Resolution and hereby authorizes the Chairman and the Vice Chairman, either of whom may act independently of the other, to execute and deliver a LPA, and all other related documents to consummate the transaction, on behalf of the Authority, such execution of a LPA, and related documents by the Chairman (or Vice Chairman as the case may be) to conclusively establish his approval of any modifications as consulted by and between the Chairman and Vice Chairman.

2. The Authority hereby authorizes and directs staff and other agents and representatives working on behalf of the Authority to take such actions and to do all such things as are contemplated by a LPA, or as they in their discretion deem necessary or appropriate in order to carry out the intent and purposes of these resolutions; however, such authorization shall be subject to appropriation and budget levels, and the form and the legality of the LPA shall have been approved by legal counsel to the Authority.

3. The Authority hereby approves, ratifies and confirms any and all actions previously taken by the Authority, its agents and representatives, in respect to a LPA and the matters contemplated therein or related thereto on or before the date of this Resolution is adopted.

4. This Resolution shall take effect immediately upon its adoption.

- # -

<u>CERTIFICATE</u>

I, the undersigned Secretary of the Danville-Pittsylvania Regional Industrial Facility Authority, hereby certify that the foregoing is a true, correct and complete copy of a Resolution duly adopted by a majority of the directors of the Danville-Pittsylvania Regional Industrial Facility Authority at a regular meeting duly called and held on June 14, 2021, and that such Resolution has not been repealed, revoked, rescinded or amended, but is in full force and effect on the date hereof.

WITNESS my hand as Secretary of the Danville-Pittsylvania Regional Industrial Facility Authority this 14th day of June 2021.

____
SUSAN M. DeMASI, Secretary
Danville-Pittsylvania Regional Industrial
Facility Authority

(SEAL)

Resolution No. 2021-06-14-5D

Exhibit A

(Local Performance Agreement)

LOCAL PERFORMANCE AGREEMENT

THIS LOCAL PERFORMANCE AGREEMENT (this "**Agreement**"), made and entered into as of the _____ day of __________________________ 2021, by and among **DANVILLE-PITTSYLVANIA REGIONAL INDUSTRIAL FACILITY AUTHORITY**, a political subdivision of the Commonwealth of Virginia ("**RIFA**"); the **INDUSTRIAL DEVELOPMENT AUTHORITY OF DANVILLE, VIRGINIA**, a political subdivision of the Commonwealth of Virginia (the "**City IDA**"); the **CITY OF DANVILLE, VIRGINIA,** a Virginia municipal corporation (the "**City**"); the **INDUSTRIAL DEVELOPMENT AUTHORITY OF PITTSYLVANIA COUNTY, VIRGINIA,** a political subdivision of the Commonwealth of Virginia (the "**County IDA**"); the **COUNTY OF PITTSYLVANIA, VIRGINIA,** a political subdivision of the Commonwealth of Virginia (the "**County**"); and **MAKING EVERYTHING POSSIBLE, LLC,** a Virginia limited liability company (the "**Company**") whose Federal Employer Identification Number is 84-3635255;

W I T N E S S E T H :

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties agree as follows:

Section 1. - Recitals. The parties recite the following facts:

a. RIFA, the City IDA, the City, the County IDA and the County, in order to stimulate economic growth and development of the community by creating jobs and infrastructure have agreed to provide incentives to new and expanding businesses which conduct industrial activity.

b. The Company is the U.S. subsidiary of a U.K. multi-award manufacturer that specializes in molding and machining for the aerospace and defense industries. The Company's products are also utilized in motor sports, space, and rail applications.

c. The Company has agreed to establish and to operate its business in the City and/or the County in two phases, Phases I and II. In Phase I, the Company would establish a temporary Start-Up Center (the "**Phase I Start-Up Center**") within the Main Building of the Institute for Advanced Learning and Research (the "**Institute**"), located in Danville, Virginia. The Phase I Start-Up Center would comprise of approximately 7,000 square feet of office and high bay space. The land upon which the Institute operates is owned by RIFA and is part of RIFA's Cyber Park project. In Phase II, the Company would establish a production facility containing at least 30,000 square feet of space (the "**Phase II Production Facility**") in RIFA's Cyber Park or other RIFA industrial park agreed upon by the parties, in a precise location to be determined by RIFA and the Company.

d. During the Phase I Performance Period described below, the Company plans to make capital investments in the Phase I Start-Up Center of at least Eight Hundred Thousand and 00/100 Dollars ($800,000.00) and to create eight (8) full-time jobs with an average yearly base wage of at least Seventy-Three Thousand and 00/100 Dollars ($73,000.00), as set forth in this Agreement.

e. During the Phase II Performance Period described below, the Company plans to make capital investments to or for the Phase II Production Facility of at least Six Million Four Hundred Forty Five Thousand and 00/100 Dollars ($6,445,000.00) and to create an additional thirty-seven (37) full-time jobs (for a total of forty-five (45) jobs, including the eight (8) jobs created during Phase I to be carried over to work at the Phase II Production Facility), with an average yearly base wage of at least Sixty-Two Thousand and 00/100 Dollars ($62,000.00), as set forth in this Agreement.

f. Each of RIFA, the City IDA, the City, the County IDA and the County is willing to provide those certain incentives to the Company summarized in **Schedule 1(f)**, attached hereto and incorporated herein by this reference, provided that the Company satisfies certain criteria relating to employment projections and capital investment as described below.

g. Each of RIFA, the City IDA, the City, the County IDA and the County finds that the provisions of this Agreement and the commitments of the Company will promote the expansion of industry by inducing industrial development within the Cyber Park, and that such development will promote the safety, health, welfare, convenience and prosperity of the citizens of the City and the County.

Section 2. - Definitions. For the purposes of this Agreement, the following terms shall have the following definitions:

a. ***"Agreement"*** shall mean this Local Performance Agreement and shall have the same meaning as set forth in the header paragraph.

b. ***"Capital Investment"*** means a capital expenditure by or on behalf of the Company in taxable real property, taxable tangible personal property, construction and design costs or a combination thereof, at the Phase I Start-Up Center and/or the Phase II Production Facility. A capital expenditure related to a leasehold interest in real property will be considered to be made "**on behalf of the Company**" if a lease between a developer and the Company is a capital lease, or is an operating lease having a term of at least ten (10) years, and the real property would not have been constructed or improved but for the Company's interest in leasing some or all of the real property. Only the capital expenditures allocated to the portion of the real property to be leased by the Company will count as Capital Investment. The purchase or lease of furniture, fixtures, machinery and equipment, including under an operating lease, will qualify as Capital Investment hereunder.

c. ***"City"*** shall have the same meaning as that term in the header paragraph of this Agreement.

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d. ***"City IDA"*** shall have the same meaning as that term in the header paragraph of this Agreement.

e. ***"Company"*** shall have the same meaning as that term in the header paragraph of this Agreement.

f. ***"County"*** shall have the same meaning as that term is used in the header paragraph of this Agreement.

g. ***"County IDA"*** shall have the same meaning as that term in the header paragraph of this Agreement.

h. ***"Danville-Pittsylvania County Industrial Enhancement Grant"*** shall have the same meaning as that term is used in Section 5(b) below.

i. ***"Event of Default"*** shall have the same meaning as that term is used in Section 8 below.

j. ***"Event of Force Majeure"*** shall mean without limitation, any of the following: acts of God; strikes, lockouts or other industrial disturbances; act of public enemies; orders of any kind of the government of the United States of America or of the Commonwealth or any of their respective departments, agencies, political subdivisions or officials, or any civil or military authority; insurrections; riots; epidemics; landslides; lightning; earthquakes; fires; hurricanes; tornadoes; storms; floods; washouts; droughts; arrests; restraint of government and people; civil disturbances; explosions; breakage or accident to machinery, transmission pipes or canals not caused by the Company; partial or entire failure of utilities; or any other cause or event not reasonably within the control of the Company, including without limitation any adverse change, effect, event, occurrence, state of facts or development arising in connection with COVID-19 or the taking of any actions that the Company reasonably determine are necessary or prudent for it to take in connection with the events surrounding any pandemic or public health emergency caused by or arising out of COVID-19, including quarantine, “shelter in place”, “stay at home”, workforce reduction, layoff, furlough, social distancing, shut down, closure, sequester or any other Law, order, directive, guidelines or recommendations issued by any Governmental Authority, from time to time, in connection with or in response to COVID-19. During the Performance Agreement, the Company shall give, on or before the tenth (10th) day of the month, written notice to RIFA, detailing each Event of Force Majeure that occurred in the immediately preceding calendar month.

k. ***"GL Landlord"*** shall mean with respect to the Ground Lease executed by the Company, the landlord or sublandlord thereunder, as the case may be, and shall have the same meaning as that term is used in Section 3(b)(i) below.

l. ***"GL Term"*** shall mean the term of the Ground Lease and shall have the same meaning as that term is used in Section 3(b)(ii) below.

m. ***"Government Party"*** *or* ***"Government Parties"*** shall mean any one or more of RIFA, the City IDA, the City, the County IDA or the County.

n. ***"Ground Lease"*** shall mean that certain fifteen (15) year ground lease or sublease for the Land and/or the Phase II Production Facility, with the Company as tenant or subtenant, and the City IDA, the County IDA or a Third Party Developer as landlord or sublandlord (as the case may be), as more particularly described in Section 3 below.

o. ***"Land"*** shall mean land underneath which the Phase II Production Facility is or will be established, the specific location of which shall be mutually agreed by RIFA and the Company within RIFA's Cyber Park located in Danville, Virginia, or such other industrial park of RIFA. The estimated value of the Land is Five Hundred Thousand and 00/100 Dollars ($500,000.00).

p. ***"Maintain"***, as it pertains to a New Job, shall mean that the New Job will continue without interruption from the date of creation through the 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 not to exceed sixty (60) days.

q. ***"New Job"*** shall mean new permanent full-time employment of an indefinite duration at the Phase I Start-Up Center or the Phase II Production Facility for which the standard fringe benefits are provided by the Company for the employee, and for which the Company pays (i) during Phase I, an average annual wage of at least Seventy-Three Thousand and 00/100 Dollars ($73,000.00), and (ii) during Phase II (including Phase I New Jobs carried over through Phase II), an average annual wage of at least Sixty-Two Thousand and 00/100 Dollars ($62,000.00), excluding standard fringe benefits. Each New Job must require a minimum of either (i) thirty-five (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 forty-eight (48) weeks, or (ii) one thousand six hundred eighty (1,680) hours per year. Seasonal or temporary positions, positions created when a job function is shifted from an existing location in the Commonwealth of Virginia, and positions with construction contractors, vendors, suppliers and similar multiplier or spin-off jobs shall not qualify as New Jobs.

r. ***"Performance Date"*** shall mean the date that is five (5) years after the date of this Agreement.

s. ***"Performance Period"*** shall mean that period of time commencing on the date of this Agreement and ending on the Performance Date.

t. ***"Phase I Performance Date"*** shall mean the date that is two (2) years after the earlier to occur of (i) the date that the Company takes possession of the Phase I Start-Up Center or (ii) the commencement date of the lease or license agreement for the Phase I Start-Up Center.

u. ***"Phase I Performance Period"*** shall mean that two (2) year period of time immediately prior to the Phase I Performance Date.

v. ***"Phase I Start-Up Center"*** shall have the same meaning as that term is used in Section 1(c).

w. ***"Phase II Production Facility"*** shall have the same meaning as that term is used in Section 1(c).

x. ***"Purchase Option"*** shall have the same meaning as that term is used in Section 3(c) below.

y. ***"Recruitment Documents"*** shall mean any one or more of this Agreement, the Ground Lease, any and all performance grant agreements executed by the Company pertaining to State Grants and any other document(s) executed, at the request of RIFA, by the Company in connection with this Agreement.

z. ***"RIFA"*** shall have the same meaning as that term in the header paragraph of this Agreement.

aa. ***"RIFA Land Clawback Option"*** shall mean RIFA's right to purchase the Land (including without limitation the Phase II Production Facility building and any other improvements thereon and appurtenances thereunto belonging), in whole or in part, in the event that the Company no longer owns the Phase II Production Facility, the Company discontinues full-time business for a period of ninety (90) days or more, the Company materially changes the nature of the Company's business, or the Phase II Production Facility is not being used in substantially the same manner as was used on the Performance Date. The RIFA Land Clawback Option shall have a term of ten (10) years beginning on the date that title to the Land is transferred to the Company from the GL Landlord or otherwise (the "**RIFA Land Clawback Option Period**"), and shall be recorded in the land records of the City. The RIFA Land Clawback Option shall only apply if the GL Landlord is or was the City IDA or the County IDA. The purchase price for the Land shall be equal to the fair market value of the Land (including without limitation the improvements thereon and appurtenances thereunto belonging), as established by a qualified written appraisal obtained by RIFA, minus all the cash incentives provided to or for the Company under this Agreement for that phase of construction (excluding, however, those cash incentives paid as a result of the Company's creation of New Jobs, the financing incentives), and minus Five Hundred Thousand and 00/100 Dollars ($500,000.00) in real property incentives. To exercise such option, RIFA must provide written notice to the Company or its permitted assignee on or before the end of the term of the RIFA Land Clawback Option. At the closing of the purchase of the RIFA Land Clawback Option, the seller, at its expense, shall transfer title to the Land and Phase II Production Facility by special warranty deed, free and clear of any monetary liens. The exercise of the RIFA Land Clawback Option shall not be deemed to be an election of remedies by RIFA, and shall be in addition to, and not in lieu of, any rights or other remedies of RIFA under this Agreement or applicable law.

bb. ***"RIFA Land Clawback Option Period"*** shall have the same meaning as that term is used in Section 2(aa) above.

cc. ***"State Grants"*** shall mean the Commonwealth Opportunity Fund Grant; the Tobacco Region Opportunity Fund Grant; the TROF Loan (as hereafter defined) with respect to the interest rate of zero percent (0%), the Virginia State Enterprise Zone Job Creation Grant; the Virginia State Enterprise Zone Real Property Investment Grant; and the Virginia Jobs Investment Program Grant.

dd. ***"Third Party Developer"*** shall mean a real estate developer that leases or subleases the Land and the Phase II Production Facility building to the Company and/or constructs or causes the construction of the Phase II Production Facility building on the Land.

ee. ***"Tobacco Commission"*** shall mean the Virginia Tobacco Region Revitalization Commission, a political subdivision of the Commonwealth of Virginia, as created in Chapter 31 of Title 3.2 of the Code of Virginia, 1950, as amended.

ff. ***"TROF Loan"*** shall have the same meaning as that term is used in Section 5(a)(iii) below.

Section 3. - The Ground Lease.

a. City IDA, County IDA or Third Party Developer as GL Landlord. As of the date of this Agreement, the Land is part of a larger tract of property belonging to RIFA in its Cyber Park located in Danville, Virginia. On or before the end of the Phase I Performance Period, RIFA shall (i) convey to the City IDA or the County IDA the Land for ground lease to the Company as set forth in this Section; (ii) sell to a Third Party Developer the Land for lease to the Company as set forth in this Section or (iii) ground lease the Land to a Third Party Developer for sublease to the Company as set forth in this Section. Any such conveyance, sale or ground lease shall be subject or conditioned upon the GL Landlord's agreement to the Purchase Option (as defined in Section 3(b) below) or such other option to purchase as the Company and the GL Landlord shall agree in advance. The Purchase Option or such other option to purchase shall be evidenced by a duly executed deed, memorandum of lease or other instrument suitable for recordation in the City land records. If the City IDA or the County IDA should be the GL Landlord, the City IDA or the County IDA shall consider applying, but shall not be required to apply, for financing for the construction and closing costs for the Phase II Production Facility for up to Four Million and 00/100 Dollars ($4,000,000.00).

b. Ground Lease – Minimum Terms and Conditions. Within one hundred eighty (180) days after the Company's execution of this Agreement, the Company shall execute a

Ground Lease with the GL Landlord in a form reasonably acceptable to RIFA; however, the Ground Lease, at a minimum, shall provide the following provisions:

i. The Company and the landlord/sublandlord under the Ground Lease ("**GL Landlord**"), at no direct expense to RIFA, shall cause the construction of the Phase II Production Facility building upon the Land on or before the Performance Date, with ground breaking to occur on or before the end of the Phase I Performance Period. In the event that the City IDA or the County IDA is GL Landlord and the Company is in default of this Agreement and all applicable cure periods, if any, have expired, during the Phase I Performance Period, as noticed in writing by RIFA to GL Landlord, the Ground Lease shall immediately terminate.

ii. The term of the Ground Lease shall be fifteen (15) years (the "**GL Term**"), beginning on the date that the Company completes, in full, its obligations for Capital Investment and New Job creation as set forth in Sections 4(a) and 4(b) below. Such completion in full shall be a condition precedent to the Ground Lease. Monthly base rent shall be equal to (i) the repayment amount of the financing for the Phase II Production Facility, accruing annual interest at no more than four percent (4%) or if no such financing is provided by GL Landlord, One Hundred and 00/100 Dollars ($100.00); or (ii) in the case of a Third Party Developer as the GL Landlord, such other rent agreed upon by the Company and the Third Party Developer; however, in such case, the monthly base rent shall be structured in such a reasonable manner for the Company to comply with its obligations to make Capital Investment within the Performance Period. In addition to such base monthly rent, the Company shall pay to the GL Landlord a monthly administrative fee of Two Hundred Fifty and 00/100 Dollars ($250.00).

iii. The Company and GL Landlord shall obtain prior written approval from RIFA of (A) the construction plans for the Phase II Production Facility, and (B) the construction schedule that is reasonably calculated to complete the construction and capital expenditures within the Performance Period.

c. <u>The Company's Purchase Option</u>. At any time during the GL Term after September 1, 2022, or a sooner date that is acceptable to the U.S. Economic Development Administration, the Company shall have the right to purchase the Land from RIFA, the City IDA or the County IDA, as the case may be (should RIFA, the City IDA or the County IDA then be the owner of the Land), for the purchase price equal to the greater of (i) the payoff amount of the Phase II Production Facility construction financing or (ii) One Thousand and 00/100 Dollars ($1,000.00) (the "**Purchase Option**"), conditioned, however, upon the occurrence or satisfaction all of the following:

i. RIFA Land Clawback Option shall have been recorded in the Clerk's Office of the Circuit Court of the City, and shall constitute a first position encumbrance upon the Land, but subordinate to any deed of trust related to the financing of the construction of the Phase II Production Facility. At RIFA's choosing, RIFA Land

Clawback Option may be included as a reservation of rights in the special warranty deed to the Land from RIFA to the Company; and

ii. The Phase II Production Facility have been completed as evidenced by the issuance of all applicable certificates of occupancy, and all of the GL Landlord's construction costs and expenses of the Phase II Production Facility have been paid in full; and

iii. The Company is not then in default of any one or more of the Recruitment Documents.

At the closing of the Purchase Option, RIFA, at its expense, shall prepare and deliver to the Company a special warranty deed to the Land, "**AS IS**", "**WHERE IS**" and "**WITH ALL FAULTS**", and subject to all non-utility easements, conditions, restrictions and agreements of record affecting the Land, including without limitation RIFA Land Clawback Option, but free and clear of any monetary liens. RIFA shall pay any grantor's tax due with respect to the transfer of the Land to the Company. The Company shall pay the Virginia recordation tax on the special warranty deed, the Company's attorneys' fees, title insurance premiums and expenses and all other costs and expenses incurred by the Company in connection with the closing of the Purchase Option. Prepaid items shall be prorated. RIFA and the Company agree to execute and deliver to the other such documents as may be then legally necessary to carry out the terms of this Section 3(c) and to complete the Purchase Option closing in accordance with the custom in the Commonwealth of Virginia for commercial real property transactions.

Section 4. - Capital Investment and New Job Creation by the Company.

a. Phase I: Capital Investment $800,000.00. On or before the earlier to occur of the Phase I Performance Date or the commencement of the GL Term, the Company shall make Capital Investment in the minimum aggregate amount of Eight Hundred Thousand and 00/100 Dollars ($800,000.00) for the Phase I Start-Up Center. Notwithstanding the foregoing, it shall not constitute an Event of Default under Section 8 below if the Company during the Performance Period shall make a Capital Investment of at least Seven Hundred Twenty Thousand and 00/100 Dollars ($720,000.00) on or before the Phase I Performance Date.

b. Phase I: 8 New Jobs. The Company shall create and employ eight (8) New Jobs on or before the Phase I Performance Date and shall Maintain these New Jobs until at least the earlier to occur of the Phase I Performance Date or the commencement of the GL Term. Beginning July 1, 2021, on July 1 and January 1 of each year during the Performance Period, the Company shall produce and deliver to RIFA a New Jobs roster itemizing, at a minimum, each New Job and the base pay (excluding fringe benefits), as described in Section 2(q) above and any other information pertaining to such New Job employees as may be reasonably requested by RIFA. The Company shall redact from the New Jobs roster any personally identifiable information of its employees. The Company hereby authorizes each of the City's Economic Development Director, the County's Economic Development Director and the RIFA Treasurer or his respective designees to obtain and to verify the information contained in the New Jobs roster from the Virginia Employment Commission. Notwithstanding the foregoing, it shall not constitute an Event of Default under Section 8 below if the Company during the Phase I Performance Period shall create and Maintain at least seven (7) New Jobs on or before the Phase I Performance Date.

c. Phase II: Capital Investment $6,445,000.00. On or before the Performance Date, the Company shall make Capital Investment in the minimum aggregate amount of Six Million Four Hundred Forty Five Thousand and 00/100 Dollars ($6,445,000.00) for the Phase II Production Facility. Notwithstanding the foregoing, it shall not constitute an Event of Default under Section 8 below if the Company during the Performance Period shall make a Capital Investment of at least Five Million Eight Hundred Thousand Five Hundred and 00/100 Dollars ($5,800,500.00) on or before the Performance Date.

d. Phase II: 37 Additional New Jobs. The Company shall create and employ an additional thirty-seven (37) New Jobs (for a total forty-five (45) New Jobs, including the eight (8) New Jobs created during Phase I to be carried over to work at the Phase II Production Facility), on or before the Performance Date and shall Maintain these New Jobs (for a total of forty-five (45) New Jobs) until at least the Performance Date. Beginning July 1, 2022, on July 1 and January 1 of each year during the Performance Period, the Company shall continue to produce and deliver to RIFA a New Jobs roster itemizing, at a minimum, each New Job and the base pay (excluding fringe benefits), as described in Section 2(q) above and any other information pertaining to such New Job employees as may be reasonably requested by RIFA. The Company shall redact from the New Jobs roster any personally identifiable information of its employees. The Company hereby authorizes each of the City's Economic Development Director, the County's Economic Development Director and the RIFA Treasurer or his respective designees to obtain and to verify the information contained in the New Jobs roster from the Virginia Employment Commission. Notwithstanding the foregoing, it shall not constitute an Event of Default under Section 8 below if the Company during the Phase I Performance Period shall create and Maintain at least forty (40) New Jobs on or before the Performance Date.

e. Financial Report. On January 1 and July 1 of each year during the Performance Period, the Company shall produce and deliver to RIFA a general financial report on the status of the Company's business since the date of its opening of the Phase I Start-Up Center and the Phase II Production Facility.

Section 5. - Funds Extended to or for the Company.

a. State Grant Applications. As part of the construction of the Phase I Start-Up Center or Phase II Production Facility, RIFA or other Government Parties shall apply for and accept State Grants as follows:

i. Up to $135,000.00 Commonwealth Opportunity Fund Grant. As a condition to and as a part of the application for the Commonwealth

Opportunity Fund Grant, RIFA and the Company shall enter into a performance grant agreement with the Virginia Economic Development Partnership. If the application for such grant is approved, RIFA shall disburse the funds to the Company upon the Company's satisfaction or achievement of certain performance metrics as set forth in such performance grant agreement.

ii. Up to $270,000.00 Tobacco Region Opportunity Fund Grant. As a condition to and as a part of the application for the Tobacco Region Opportunity Fund Grant, RIFA and the Company shall enter into a performance grant agreement with the Tobacco Commission. If the application for such grant is approved, RIFA shall disburse the funds to the Company upon the Company's satisfaction or achievement of certain performance metrics as set forth in such performance grant agreement. However, should this grant be advanced to the Company in the sole discretion of RIFA prior to the satisfaction or achievement of those performance metrics, this grant is subject to recapture by RIFA or any other Government Party in the event the Company fails to make the Capital Investment and/or create and Maintain the New Jobs on or before the Performance Date.

iii. $270,000.00 Interest-Free Tobacco Region Opportunity Fund Loan. On behalf of the Company, RIFA, upon request of the Company, shall apply for a Tobacco Region Opportunity Fund Loan ("**TROF Loan**") in the amount of up to Two Hundred Seventy Thousand and 00/100 Dollars ($270,000.00), interest free, with a loan repayment term of five (5) years. The first payment under the TROF Loan shall be no sooner than twenty-four (24) months after the first disbursement under the TROF Loan. As a condition to and as a part of the application for such loan, the Company shall be required to execute a promissory note payable to the Tobacco Commission and other loan documents required by the Tobacco Commission. In the event of an Event of Default, RIFA shall have the right to demand immediate repayment of the outstanding balance of the TROF Loan as set forth in Section 9(e) below.

iv. $100,000.00 job creation and up to $100,000.00 real property improvement: Virginia State Enterprise Zone Grant. The Land is located in a Virginia Enterprise Zone. RIFA or the City shall apply for a Virginia State Enterprise Zone Grant from the Virginia Department of Housing and Community Development, estimated at up to One Hundred Thousand and 00/100 Dollars ($100,000.00) for job creation and up to One Hundred Thousand and 00/100 Dollars ($100,000.00) for the improvements to the Land (including without limitation the Phase II Production Facility building). If such application for such grant is approved, RIFA or the City shall disburse the grant to the Company according to the terms and conditions of the Virginia State Enterprise Zone program.

v. $14,400.00 Virginia Jobs Investment Program Grant. RIFA shall assist the Company in applying for grants under the Virginia Economic Development Partnership's Virginia Jobs Investment Program, estimated at Fourteen Thousand Four Hundred and 00/100 Dollars ($14,400.00) for job creation of the New Jobs. If such application for such grant is approved, the Virginia Economic Development Partnership (or if allowed by the program, RIFA) shall disburse the grant to the Company according to the terms and conditions of the Virginia Jobs Investment Program.

The Company shall reasonably cooperate with the Government Parties in connection with the applications for the State Grants, including without limitation providing financial information about the Company, the Company's planned Capital Investments, and the creation schedule of the New Jobs.

The Government Parties acknowledge that one or more advances of the State Grants could be made by RIFA or other Government Party applying for such grants, provided that the advanced disbursements are adequately secured in the sole and absolute determination of such applicant Government Party, in the event that the Company does not meet the performance metrics or other requirements for such State Grant.

b. $250,000.00 Danville-Pittsylvania County Industrial Enhancement Grant. RIFA shall pay to or for the Company a Danville-Pittsylvania County Industrial Enhancement Grant in the amount of Two Hundred Fifty Thousand and 00/100 Dollars ($250,000.00) ("**Danville-Pittsylvania County Industrial Enhancement Grant**") to be used for certain Capital Improvements that are approved in advance and in writing by RIFA. This grant shall not be disbursed in advance of the Company's performance of the requirements of such grant. After this grant is disbursed, this grant is subject to recapture by RIFA in the event the Company fails to make the Capital Investment and/or create and Maintain the New Jobs on or before the Performance Date.

c. Up to $80,000.00 Danville-Pittsylvania County Enterprise Zone Grant. The City and the County acknowledge that under the City-County's Enterprise Zone program, the Company's Capital Investment for the New Facility and creation of New Jobs as contemplated in this Agreement could qualify for up to Eighty Thousand and 00/100 Dollars ($80,000.00) in value in the form of cash payments, commercial building permit fee waivers and development fee waivers. The City and the County shall disburse such grant according to the terms and conditions of their Enterprise Zone program. After this grant is disbursed, this grant is not subject to recapture by the City, the County or any other Government Party in the event the Company fails to make the Capital Investment and/or create and Maintain the New Jobs on or before the Performance Date.

d. Up to $17,500.00 Reimbursement of Residential Housing Expenses by the City. So long as there is no Event of Default, the City, during the first twelve (12) months of the Performance Period, shall reimburse the Company up to Seventeen Thousand Five Hundred and 00/100 Dollars ($17,500.00) in expenses in connection with purchasing or leasing residential housing, located in the City, for use by personnel of the Company. Such expenses may include the costs of purchasing or renting housing, including but not limited to mortgage payments, rent, hotel/motel fees, utilities and other services reasonably related to housing, real estate taxes on the rental, insurance premiums on the rental or purchased property, and the rental of decorations and furniture, but shall exclude expenses for the purchase of decorations, furniture or food. As a condition to such reimbursement or payment, the Company shall submit invoices, vouchers and any other documentation reasonably requested by the City. Within sixty (60) days after a request for reimbursement or payment is received and all supporting documentation is verified by the City, the City shall make such reimbursement or payment. After this grant is disbursed, this grant is not subject to recapture by RIFA, the City or any other Government Party in the event the Company fails to make the Capital Investment and/or create and Maintain the New Jobs on or before the Performance Date, provided that the Company made Capital Investment of at least Three Hundred Twenty Two Thousand Two Hundred Fifty and 00/100 Dollars ($322,250.00) to or for the construction and/or operation of the Phase II Production Facility and/or purchase of equipment to be installed and operated therein.

e. Up to $75,000.00 Payment of Base Rent for the Lease for the Phase I Start-Up Center. So long as there is no Event of Default, RIFA shall pay to IALR up to an aggregate Seventy Five Thousand and 00/100 Dollars ($75,000.00) for the first twelve (12) months of base rent under the lease for the Phase I Startup Center. Nothing in this Section 5(e) shall be deemed or construed to create a guaranty relationship or principal-agent relationship between RIFA and the Company. Moreover, in no event shall IALR be deemed or construed to be a third-party beneficiary of this Section 5(e). After these funds are disbursed by RIFA, these funds are not subject to recapture by RIFA in the event the Company fails to make the Capital Investment and/or create and Maintain the New Jobs on or before the Performance Date, provided that the Company has initiated substantial action towards construction of and operations in the Phase II Production Facility including without limitation the Company's execution of the Ground Lease, the making of Capital Investment of at least Three Hundred Twenty Two Thousand Two Hundred Fifty and 00/100 Dollars ($322,250.00) to or for the construction and/or operation of the Phase II Production Facility and/or purchase of equipment to be installed and operated therein, or other actions in the non-arbitrary and non-capricious determination of RIFA. The Company hereby authorizes RIFA to receive information from IALR regarding all aspects of the lease for the Phase I Startup Center.

Section 6. - Capital Investment Report and Unaudited Annual Financial Statements. The Company shall provide a signed report to RIFA annually, beginning January 1, 2022, documenting the Company's progress in Capital Investment and in maintenance of the Capital Investment. The Company further agrees that each of the City's Economic Development Director, the County's Economic Development Director and the RIFA Treasurer or his respective designees is authorized to verify all taxable Capital Investment and related information through the Office of the Commissioner of Revenue for the City (or the County, if the Phase II Production Facility is located in the County). Along with the report in this Section, the Company shall provide to RIFA (i) unaudited financial statements covering the previous twelve (12) month period, prepared under generally accepted accounting principles (GAAP) as used in the United States of America and (ii) documentation or other information reasonably satisfactory to RIFA demonstrating the Company's plans to have sufficient working capital to operate its business for at least the next eighteen (18) months and to meet its required Capital Investment as set forth in this Agreement.

Section 7. - Representations and Warranties of the Company. As of the date of this Agreement and continuing until the Performance Date, the Company hereby represents and warrants to each Government Party the following:

a. The Company is a duly organized limited liability company, validly existing, and in good standing under the laws of the Commonwealth of Virginia, and should the Company assign its rights under this Agreement to a wholly owned subsidiary, the assignee is a duly organized entity in the Commonwealth of Virginia as of the date of such assignment. The Company (or the assignee, as the case may be) is authorized to transact business in the Commonwealth of Virginia and all other jurisdictions in which it is required by law.

b. This Agreement, the transactions contemplated herein, and the other Recruitment Documents to be executed by the Company have been or shall have been approved by all necessary action by the Company; and the persons executing this Agreement and any of the other Recruitment Documents to be executed by the Company have or shall have full and complete authority to execute and deliver the same for and on behalf of the Company.

c. The execution, delivery, and performance by the Company of this Agreement, the other Recruitment Documents, and the consummation of the transactions contemplated hereby and thereby will not violate, conflict with, or result in any default under, or cause any acceleration of any obligation under, any (i) organizational documents of the Company (including without limitation Articles of Incorporation/Organization, bylaws/Operating Agreement, and buy-sell agreement); (ii) any existing contract, agreement, note, or other document to which the Company is a party, or by which the Company is bound; or (iii) any orders, decrees, or laws of any jurisdiction applicable to and binding upon the Company.

d. This Agreement and all other Recruitment Documents constitute the legal, binding and enforceable obligations of the Company in accordance with the terms contained herein or therein.

e. There is no pending or threatened litigation or proceeding against the Company which may materially adversely affect the financial condition, business operations, or business prospects of the Company.

f. The Company is not in material default with respect to any existing indebtedness incurred by it.

g. All financial statements, certificates, resolutions, and other information or documentation furnished to any one or more of the Government Parties prior to the date of this Agreement by the Company are true, correct, and accurate, and no such information fails to disclose or misrepresents any information which could materially or adversely affect the transactions contemplated in this Agreement; and the Company has not failed to disclose any information which could materially and adversely affect the business or financial condition of the Company.

For purposes of this Section 7, the "**Company**" shall, specifically and without limitation, include any assignee of the Company to any one or more of the Recruitment Documents.

Section 8. - Event of Default. It shall be an Event of Default upon the occurrence of any one or more of the following events:

a. Any material default under this Agreement or any other Recruitment Document which is not cured within thirty (30) days after written notice to the Company of such default (or if such default cannot reasonably be cured within such thirty (30) day period, then if the Company fails to substantially begin such cure within such thirty (30) day period or fails thereafter to diligently pursue such cure) occurs;

b. The Company discontinues full-time business for a period of sixty (60) days or more, or materially changes the nature of the Company's business;

c. The Company (i) files a petition or has a petition filed against it under the Bankruptcy Code or any proceeding for the relief of insolvent debtors which is not dismissed within sixty (60) days of such filing; (ii) is subject to the entry of an order for relief by any court of insolvency; (iii) makes an admission of insolvency seeking the relief provided in the Bankruptcy Code or any other insolvency law; (iv) makes an assignment for the benefit of creditors; (v) has a receiver appointed, voluntarily or otherwise, for its property; or (vi) becomes insolvent, however otherwise evidenced;

d. The controlling owner of the Company (i) files a petition or has a petition filed against it under the Bankruptcy Code or any proceeding for the relief of insolvent debtors which is not dismissed within sixty (60) days of such filing; (ii) is subject to the entry of an order for relief by any court of insolvency; (iii) makes an admission of insolvency seeking the relief provided in the Bankruptcy Code or any other insolvency law; (iv) makes an assignment for the benefit of creditors; (v) has a receiver appointed, voluntarily or otherwise, for its property; or (vi) becomes insolvent, however otherwise evidenced;

e. The Company is not in good standing with the Virginia State Corporation Commission after having received at least sixty (60) days written notice from the Commission;

or

f. An officer or controlling owner of the Company (i) is convicted of a felony, or (ii) is convicted of any other crime involving lying, cheating, stealing, fraud, misappropriation, or other similar acts of dishonesty.

For purposes of this Section 8, the "**Company**" shall, specifically and without limitation, include any assignee of the Company to any one or more of the Recruitment Documents.

Section 9. - Upon Occurrence of an Event of Default. In addition to and not in lieu of any other remedies or relief made available to any one or more of the Government Parties under this Agreement, at law or in equity, upon the occurrence of an Event of Default, irrespective of whether any Government Party has terminated this Agreement, each Government Party (as the case may be) may elect any one or more of the following:

a. The Government Party may immediately cease to disburse any further payments to or for the Company under this Agreement or the Recruitment Documents;

b. The Government Party may give written notice to the Company exercising the right to accelerate the Company's obligation to repay any unpaid indebtedness of the Company to that Government Party, declaring the outstanding balance to be immediately due and payable;

c. The Government Party shall have the right to demand the Company to immediately refund the unearned portion of the Commonwealth Opportunity Fund Grant as set forth in Section 5(a)(i) above; however, if the Event of Default is based on the Company's failure to make the Capital Investment and/or to create and Maintain New Jobs as required in this Agreement, the amount of the refund shall be calculated as set forth below in Section 10 below;

d. The Government Party shall have the right to demand the Company to immediately refund the unearned portion of the Tobacco Region Opportunity Fund Grant as set forth in Section 5(a)(ii) above; however, if the Event of Default is based on the Company's failure to make the Capital Investment and/or to create and Maintain New Jobs as required in this Agreement, the amount of the refund shall be calculated as set forth below in Section 10 below;

e. The Government Party shall have the right to demand the Company to repay, and the Company shall immediately repay in full, the outstanding balance of TROF Loan as set forth in Section 5(a)(iii) above, but only if the Event of Default is not based on the Company's failure to make the Capital Investment and/or to create and Maintain New Jobs as required in this Agreement;

f. The Government Party shall have the right to demand the Company to immediately refund the unearned portion of the Virginia State Enterprise Zone Grant as set forth in Section 5(a)(iv) above; however, if the Event of Default is based on the Company's failure to make the Capital Investment and/or to create and Maintain New Jobs as required in this

Agreement, the amount of the refund shall be calculated as set forth below in Section 10 below;

g. The Government Party shall have the right to demand the Company to immediately refund the unearned portion of the Virginia Jobs Investment Program Grant as set forth in Section 5(a)(v) above; however, if the Event of Default is based on the Company's failure to make the Capital Investment and/or to create and Maintain New Jobs as required in this Agreement, the amount of the refund shall be calculated as set forth below in Section 10 below;

h. The Government Party shall have the right to demand the Company to immediately refund the Danville-Pittsylvania County Industrial Enhancement Grant as set forth in Section 5(b) above; however, if the Event of Default is based on the Company's failure to make the Capital Investment and/or to create and Maintain New Jobs as required in this Agreement, the amount of the refund shall be calculated as set forth below in Section 10 below;

i. The Government Party shall have the right to demand the Company to immediately refund the residential housing expenses paid by RIFA under Section 5(d) above; however, if the Event of Default is based on the Company's failure to make the Capital Investment and/or to create and Maintain New Jobs as required in this Agreement, where the Company made Capital Investment of at least Three Hundred Twenty Two Thousand Two Hundred Fifty and 00/100 Dollars ($322,250.00) to or for the construction and/or operation of the Phase II Production Facility and/or purchase of equipment to be installed and operated therein, the amount of the refund shall be calculated as set forth below in Section 10 below;

j. The Government Party shall have the right to demand the Company to immediately refund the base rent expenses paid by RIFA under Section 5(e) above; however, if the Event of Default is based on the Company's failure to make the Capital Investment and/or to create and Maintain New Jobs as required in this Agreement, where the Company initiated substantial action toward construction of and operations in the Phase II Production Facility as set forth in Section 5(e) above, the amount of the refund shall be calculated as set forth below in Section 10 below;

k. Upon giving written notice to the Company, the Government Party shall have the right, but not the obligation, to offset any amounts owed by the Government Party against amounts owed or claimed to be owed by the Company; and/or

l. The Government Party may pursue any and all other remedies available to it under this Agreement, any one or more of the Recruitment Documents or applicable law.

Notwithstanding anything to the contrary contained herein, if the Company repays RIFA all amounts due under Section 10 below in full, any Event of Default due to the Company's failure to make Capital Investment and/or to create and Maintain New Jobs (but due to no other default) shall be deemed cured for the purposes of this Agreement and all other Recruitment Documents and, in such instance, no Government Party shall have the right to exercise its default rights under this Agreement or any of the other Recruitment Documents.

Section 10. - Repayment of Grants for Failure to make the Capital Investment and/or to create and Maintain New Jobs. In the event the Company fails to make the Capital Investment and/or to create and Maintain New Jobs as required under this Agreement and such failure constitutes an Event of Default, the Company shall repay to RIFA portions of certain grants as follows:

a. Failure to make the Capital Investment. In the event the Company fails to make the Capital Investment as required under this Agreement and such failure constitutes an Event of Default, the Company shall repay to RIFA an amount equal to the sum of the following:

i. Repayment of a portion of the Commonwealth Opportunity Fund Grant. An amount equal to fifty percent (50%) of the total amount of the Commonwealth Opportunity Fund Grant actually disbursed as of the Performance Date, minus the following calculation: an amount equal to the Capital Investment actually made by the Company as of the Performance Date multiplied by a fraction, (A) the numerator of which is fifty percent (50%) of the total amount of the Commonwealth Opportunity Fund Grant actually disbursed as of the Performance Date, and (B) the denominator of which is Five Million Eight Hundred Thousand Five Hundred and 00/100 Dollars ($5,800,500.00); plus

ii. Repayment of a portion of the Tobacco Region Opportunity Fund Grant. An amount equal to fifty percent (50%) of the total amount of the Tobacco Region Opportunity Fund Grant actually disbursed as of the Performance Date, minus the following calculation: an amount equal to the Capital Investment actually made by the Company as of the Performance Date multiplied by a fraction, (A) the numerator of which is fifty percent (50%) of the total amount of the Tobacco Region Opportunity Fund Grant actually disbursed as of the Performance Date, and (B) the denominator of which is Five Million Eight Hundred Thousand Five Hundred and 00/100 Dollars ($5,800,500.00); plus

iii. Repayment of a portion of Danville-Pittsylvania County Industrial Enhancement Grant. An amount equal to fifty percent (50%) of the total amount of the Danville-Pittsylvania County Industrial Enhancement Grant actually disbursed as of the Performance Date, minus the following calculation: an amount equal to the Capital Investment actually made by the Company as of the Performance Date multiplied by a fraction, (A) the numerator of which is fifty percent (50%) of the total amount of the Danville-Pittsylvania County Industrial Enhancement Grant actually disbursed as of the Performance Date, and (B) the denominator of which is Five Million Eight Hundred Thousand Five Hundred and 00/100 Dollars ($5,800,500.00); plus

iv. <u>Repayment of a portion of the Residential Housing Expenses Reimbursed</u>. Only if the Company made Capital Investment of less than Three Hundred Twenty Two Thousand Two Hundred Fifty and 00/100 Dollars ($322,250.00) to or for the construction and/or operation of the Phase II Production facility and/or purchase of equipment to be installed and operated therein, an amount equal to fifty percent (50%) of the total amount of the reimbursement amount actually paid to or for the Company as of the Performance Date, minus the following calculation: an amount equal to the Capital Investment actually made by the Company as of the Performance Date (or as of the date of the Event of Default, as the case may be) multiplied by a fraction, (A) the numerator of which is fifty percent (50%) of the total amount of the reimbursement amount actually paid to or for the Company as of the Performance Date (or as of the date of the Event of Default as the case may be), and (B) the denominator of which is Five Million Eight Hundred Thousand Five Hundred and 00/100 Dollars ($5,800,500.00); plus

v. <u>Repayment of a portion of the Base Rent for the Lease for the Phase I Start-Up Center</u>. Only if the Company failed to initiate substantial action toward construction of and operations in the Phase II Production Facility as set forth in Section 5(e) above, an amount equal to fifty percent (50%) of the total amount of the base rent actually paid to IALR as of the date of the Event of the Default, minus the following calculation: an amount equal to the Capital Investment actually made by the Company as of the Performance Date multiplied by a fraction, (A) the numerator of which is fifty percent (50%) of the total amount of base rent actually paid to IALR as of the date of the Event of Default, and (B) the denominator of which is Five Million Eight Hundred Thousand Five Hundred and 00/100 Dollars ($5,800,500.00).

Repayment of the residential housing expenses reimbursement received by RIFA under Section 10(a)(iv) above shall be forwarded to the City.

b. <u>Failure to Create and Maintain New Jobs</u>. In the event the Company fails to create and Maintain New Jobs as required under this Agreement and such failure constitutes an Event of Default, the Company shall repay to RIFA an amount equal to the sum of the following:

i. <u>Repayment of a portion of the Commonwealth Opportunity Fund Grant</u>. An amount equal to fifty percent (50%) of the total amount of the Commonwealth Opportunity Fund Grant actually disbursed as of the Performance Date, minus the following calculation: an amount equal to the New Jobs actually Maintained by the Company as of Performance Date multiplied by a fraction, (A) the numerator of which is fifty percent

(50%) of the total amount of the Commonwealth Opportunity Fund Grant actually disbursed as of the Performance Date, and (B) the denominator of which is forty (40) New Jobs; plus

ii. Repayment of a portion of the Tobacco Region Opportunity Fund Grant. An amount equal to fifty percent (50%) of the total amount of the Tobacco Region Opportunity Fund Grant actually disbursed as of the Performance Date, minus the following calculation: an amount equal to the New Jobs actually Maintained by the Company as of Performance Date multiplied by a fraction, (A) the numerator of which is fifty percent (50%) of the total amount of the Tobacco Region Opportunity Fund Grant actually disbursed as of the Performance Date, and (B) the denominator of which is forty (40) New Jobs; plus

iii. Repayment of a portion of Danville-Pittsylvania County Industrial Enhancement Grant. An amount equal to fifty percent (50%) of the total amount of the Danville-Pittsylvania County Industrial Enhancement Grant actually disbursed as of the Performance Date, minus the following calculation: an amount equal to the New Jobs actually Maintained by the Company as of Performance Date multiplied by a fraction, (A) the numerator of which is fifty percent (50%) of the total amount of the Danville-Pittsylvania County Industrial Enhancement Grant actually disbursed as of the Performance Date, and (B) the denominator of which is forty (40) New Jobs; plus

iv. Repayment of a portion of the Residential Housing Expenses Reimbursed. Only if the Company made Capital Investment of less than Three Hundred Twenty Two Thousand Two Hundred Fifty and 00/100 Dollars ($322,250.00) to or for the construction and/or operation of the Phase II Production facility and/or purchase of equipment to be installed and operated therein, an amount equal to fifty percent (50%) of the total amount of the reimbursement amount actually paid to or for the Company as of the Performance Date, minus the following calculation: an amount equal to the New Jobs actually Maintained by the Company as of the Performance Date multiplied by a fraction, (A) the numerator of which is fifty percent (50%) of the total amount of base rent actually paid to or for the Company as of the date of the Event of Default, and (B) the denominator of which is forty (40) New Jobs; plus

v. Repayment of a portion of the Base Rent for the Lease for the Phase I Start-Up Center. Only if the Company failed to initiate substantial action toward construction of and operations in the Phase II Production Facility as set forth in Section 5(e) above, an amount equal to fifty percent (50%) of the total amount of the base rent actually paid to IALR as of the date of the Event of the Default, minus the following calculation: an amount equal to the New Jobs actually Maintained by the Company as of the Performance Date multiplied by a fraction, (A) the numerator of which is fifty percent (50%) of the total amount of base rent actually paid to IALR as of the date of the Event of Default, and (B) the denominator of which is forty (40) New Jobs.

Repayment of the residential housing expenses reimbursement received by RIFA under Section 10(b)(iv) above shall be forwarded to the City.

c. The Company shall pay the sums described in this Section 10 no later than sixty (60) days after the date on which the Company is given written notice of such Event(s) of Default described in this Section.

d. Notwithstanding the above or anything herein to the contrary, in the event (i) the Company and RIFA are unable to find a willing and able third party developer to finance Phase II, (ii) the City IDA, County IDA and the Company are unable to finance Phase II after diligently pursuing any and all reasonable options for financing, and (iii) the Company is not then in default of its capital investment and/or job creation obligations during the Phase I Performance Period, any funds received by Company for its capital investment and job creation to date shall not be subject to recapture/reimbursement. Further, such failure to obtain financing for Phase II shall not be an "Event of Default" hereunder.

Section 11. - Audit and Guideline Requirements. Upon reasonable prior written request, the Company shall allow each of the City's Economic Development Director, the County's Economic Development Director and the RIFA Treasurer (or his respective designees) reasonable access during regular business hours to all records pertaining to the Company's employment and investment at the Phase I Start-Up Center and the Phase II Production Facility, and the Company shall cooperate with RIFA in any audit of such records by furnishing all information necessary to verify the Company's performance under this Agreement. In return, each of RIFA, the City, the City IDA and the County IDA agrees to maintain the confidentiality of any and all proprietary, confidential and/or sensitive information, including without limitation personal payroll earnings or similar information that those Government Parties or its designees may receive or access.

Section 12. - Force Majeure. Notwithstanding the foregoing, if the Company does not meet the New Job and Capital Investments requirements because of an Event of Force Majeure, the Phase I Performance Date and/or the Performance Date (as the case may be) will be extended day-for-day by the delay in meeting the targets caused by the Event of Force Majeure.

Section 13. - Subject to Annual Appropriations. As provided under Virginia law, the obligations of the Government Parties to pay the cost of performing its obligations under this Agreement are subject to and dependent upon annual appropriations being made from time to time by the governing body of such Government Party, for such purpose.

Section 14. - Non-waiver. No waiver of any term or condition of this Agreement by any party shall be deemed a continuing or further waiver of the same term or condition or a waiver of any other term or condition of this Agreement.

Section 15. - Attorneys' Fees. Each of the parties shall be solely responsible for their respective attorneys' fees in the negotiating, drafting, and execution of this Agreement and any of the transactions contemplated hereby.

Section 16. - Other Documents. The parties agree that they shall execute, acknowledge, and deliver all such further documents as may be reasonably required to carry out and consummate the transactions contemplated by this Agreement.

Section 17. - Default. In the event that a party to this Agreement incurs attorneys' fees and/or costs in pursuing or defending an alleged breach of this Agreement, the non-prevailing party, in addition to any other remedy, shall be responsible for the reasonable attorneys' fees and costs incurred by the prevailing party. The parties retain all rights at law and in equity to enforce the provisions of this Agreement in accordance with applicable law.

Section 18. - Entire Agreement. This Agreement and the schedule hereto contain the entire agreement and understanding of the parties to this Agreement with respect to the transactions contemplated hereby; and this Agreement and the schedule hereto supersede all prior understandings and agreements of the parties with respect to the subject matter hereof.

Section 19. - Headings. The descriptive headings in this Agreement are inserted for convenience only and do not constitute a part of this Agreement.

Section 20. - Notices. Any notice required or contemplated to be given to any of the parties by any other party shall be in writing and shall be given by hand delivery, certified or registered United States mail, or a private courier service which provides evidence of receipt as part of its service, as follows:

If to RIFA:
Danville-Pittsylvania Regional
Industrial Facility Authority
Attn.: Susan M. DeMasi, Authority Secretary
427 Patton Street
P.O. Box 3300 (zip code 24543)
Danville, VA 24541

With a copy to:
Michael C. Guanzon, Esq.
Christian & Barton, LLP
909 E. Main St., Suite 1200
Richmond, VA 23219-3095

<u>If to the City or the City IDA</u>:
Attn.: Corrie T. Bobe
Director of Economic Development
427 Patton Street
P.O. Box 3300 (zip code 24543)
Danville, VA 24541

<u>With a copy to</u>:
W. Clarke Whitfield, Jr., Esq.
City Attorney
427 Patton Street, Room 421
P.O. Box 3300 (zip code 24543)
Danville, VA 24541

<u>If to the County or the County IDA</u>:
Attn.: Matthew D. Rowe
Director of Economic Development
1 Center Street
P.O. Box 426
Chatham, VA 24531

<u>With a copy to</u>:
J. Vaden Hunt, Esq.
County Attorney
1 Center Street
P.O. Box 426
Chatham, VA 24531

<u>If to the Company</u>:
Making Everything Possible, LLC
Attn.: Philip I. Hart, President
Unit BB, St. Michaels Close
The Forstal Estate
Aylesford, Kent ME20 7BU
England, U.K.

<u>With a copy to</u>:
Woods Rogers PLC
Attn.: Autumn R. Visser, Esq.
10 S. Jefferson St., Suite 1800
Roanoke, VA 24011

Any party may change the address to which notices hereunder are to be sent to it by giving written notice of such change in the manner provided herein. A notice given hereunder shall be deemed given on the date of hand delivery, deposit with the United States Postal Service properly addressed and postage prepaid, or delivery to a courier service properly addressed with all charges prepaid, as appropriate. Copies as set forth in this Section are provided as a courtesy and shall not be required to effectuate notice as provided herein.

<u>Section 21. - Governing Law</u>. This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia. The parties hereby submit to the exclusive jurisdiction of the state court located in Danville, Virginia, or the U.S. District Court for the Western District of Virginia (Danville Division), in any action or proceeding arising out of, or related to this Agreement, and the parties hereby agree that all claims in respect of any action or proceeding shall be heard or determined only in either of these courts. The parties agree that a final judgment in any action or proceeding shall, to the extent permitted by applicable law, be conclusive and may be enforced in other jurisdictions by suit on the judgment, or in any other manner provided by applicable law related to the enforcement of judgments. If any ambiguity or question of intent or interpretation arises, this Agreement shall be construed as

if drafted jointly by the parties and no presumptions or burden of proof shall arise favoring or disfavoring any party by virtue of authorship of any of the provisions of this Agreement.

Section 22. - Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors, assigns, and legal representatives.

Section 23. - Amendment, Modification and/or Supplement. The parties may amend, modify, and/or supplement this Agreement in such manner as may be agreed upon by the parties, provided such amendments, modifications, and/or supplement are reduced to writing and signed by the parties or their successors in interest.

Section 24. - Gender and Number. Throughout this Agreement, wherever the context requires or permits, the neuter gender shall be deemed to include the masculine and feminine, and the singular number to include the plural, and vice versa.

Section 25. - Counterparts. This Agreement may be executed in one (1) or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same Agreement. This Agreement may be delivered by portable document format (*.pdf) and upon such delivery, the .pdf signature shall be deemed to have the same effect as if the original signature had been delivered to the other party or parties.

Section 26. - Severability. The invalidity or unenforceability of any particular provision of this Agreement shall not affect the other provisions hereof, and this Agreement shall be construed in all respects as if such invalid or unenforceable provisions were omitted.

Section 27. - Survival. Any termination, cancellation or expiration of this Agreement notwithstanding, provisions which are by their terms intended to survive and continue shall so survive and continue.

Section 28. - No Third-Party Beneficiaries. Nothing in this Agreement is intended, nor will be deemed, to confer any rights or remedies upon any person or legal entity not a party to this Agreement.

[**SIGNATURES ARE ON FOLLOWING PAGES.**]

WITNESS our signature and seal to this **LOCAL PERFORMANCE AGREEMENT** as of the date first above written:

DANVILLE-PITTSYLVANIA REGIONAL INDUSTRIAL FACILITY AUTHORITY, a political subdivision of the Commonwealth of Virginia

By: __________________________________
Sherman M. Saunders, Chairman

(SEAL)

ATTEST:

____
Susan M. DeMasi
Corporate Secretary
Danville-Pittsylvania Regional Industrial Facility Authority

COMMONWEALTH OF VIRGINIA, AT LARGE
CITY/COUNTY OF _________________________, to-wit:

The foregoing instrument was acknowledged before me this _____ day of ________________ 2021, by **SHERMAN M. SAUNDERS**, in his capacity as Chairman of **DANVILLE-PITTSYLVANIA REGIONAL INDUSTRIAL FACILITY AUTHORITY,** a political subdivision of the Commonwealth of Virginia, on behalf of such entity.

My commission expires: __________________________________.

____
Notary Public
Registration No. ______________________

WITNESS our signature and seal to this **LOCAL PERFORMANCE AGREEMENT** as of the date first above written:

CITY OF DANVILLE, VIRGINIA, a Virginia municipal corporation

By: ______________________________
Kenneth F. Larking
City Manager

(SEAL)

ATTEST:

____
Susan M. DeMasi
City Clerk
City of Danville, Virginia

COMMONWEALTH OF VIRGINIA, AT LARGE
CITY/COUNTY OF ______________________, to-wit:

The foregoing instrument was acknowledged before me this _____ day of _______________ 2021, by **KENNETH F. LARKING**, in his capacity as City Manager of **CITY OF DANVILLE, VIRGINIA,** a Virginia municipal corporation, on behalf of such entity.

My commission expires: ______________________________.

____
Notary Public
Registration No. ____________________

{2800646-4, 122568-00001-01}

WITNESS our signature and seal to this **LOCAL PERFORMANCE AGREEMENT** as of the date first above written:

INDUSTRIAL DEVELOPMENT AUTHORITY OF DANVILLE, VIRGINIA, a political subdivision of the Commonwealth of Virginia

By: ________________________________
T. Neal Morris
Chairman

(SEAL)

ATTEST:

____
Susan M. DeMasi
City Clerk
City of Danville, Virginia

COMMONWEALTH OF VIRGINIA, AT LARGE
CITY/COUNTY OF ______________________, to-wit:

The foregoing instrument was acknowledged before me this _____ day of _______________ 2021, by **T. NEAL MORRIS**, in his capacity as Chairman of **INDUSTRIAL DEVELOPMENT AUTHORITY OF DANVILLE, VIRGINIA,** a political subdivision of the Commonwealth of Virginia, on behalf of such entity.

My commission expires: ________________________________.

____
Notary Public
Registration No. ____________________

{2800646-4, 122568-00001-01}

WITNESS our signature and seal to this **LOCAL PERFORMANCE AGREEMENT** as of the date first above written:

INDUSTRIAL DEVELOPMENT AUTHORITY OF PITTSYLVANIA COUNTY, VIRGINIA, a political subdivision of the Commonwealth of Virginia

By: ________________________________
Joey Faucette
Chairman

(SEAL)

ATTEST:

____
Brenda O. Robertson
Clerk
Pittsylvania County, Virginia

COMMONWEALTH OF VIRGINIA, AT LARGE
CITY/COUNTY OF _______________________, to-wit:

The foregoing instrument was acknowledged before me this _____ day of _______________ 2021, by **JOEY FAUCETTE**, in his capacity as Chairman of **INDUSTRIAL DEVELOPMENT AUTHORITY OF PITTSYLVANIA COUNTY, VIRGINIA,** a political subdivision of the Commonwealth of Virginia, on behalf of such entity.

My commission expires: _________________________________.

____
Notary Public
Registration No. ____________________

{2800646-4, 122568-00001-01}

WITNESS our signature and seal to this **LOCAL PERFORMANCE AGREEMENT** as of the date first above written:

COUNTY OF PITTSYLVANIA, VIRGINIA, a political subdivision of the Commonwealth of Virginia

By: ______________________________
Robert W. Warren, Chairman
Board of Supervisors

(SEAL)

ATTEST:

____
David M. Smitherman
Clerk
Pittsylvania County Board of Supervisors

COMMONWEALTH OF VIRGINIA, AT LARGE
CITY/COUNTY OF ______________________, to-wit:

The foregoing instrument was acknowledged before me this _____ day of _______________ 2021, by **ROBERT W. WARREN**, in his capacity as Chairman of the Board of Supervisors of **COUNTY OF PITTSYLVANIA, VIRGINIA,** a political subdivision of the Commonwealth of Virginia, on behalf of such entity.

My commission expires: _______________________________.

____
Notary Public
Registration No. ____________________

{2800646-4, 122568-00001-01}

WITNESS our signature and seal to this **LOCAL PERFORMANCE AGREEMENT** as of the date first above written:

MAKING EVERYTHING POSSIBLE, LLC, a Virginia limited liability company

By: ________________________________
Philip I. Hart, President

(SEAL)

UNITED KINGDOM
TOWN/CITY OF ______________________, to-wit:

The foregoing instrument was acknowledged before me this _____ day of _______________ 2021, by **PHILIP I. HART**, in his capacity as President of **MAKING EVERYTHING POSSIBLE, LLC**, a Virginia limited liability company, on behalf of such entity.

My commission expires: _______________________________.

____
Notary Public

[*OR*]

COMMONWEALTH OF VIRGINIA, AT LARGE
CITY/COUNTY OF ______________________, to-wit:

The foregoing instrument was acknowledged before me this _____ day of _______________ 2021, by **PHILIP I. HART**, in his capacity as President of **MAKING EVERYTHING POSSIBLE, LLC**, a Virginia limited liability company, on behalf of such entity.

My commission expires: _______________________________.

____
Notary Public
Registration No. ____________________

List of Schedules

1(e) - Summary of Incentives

{2800646-4, 122568-00001-01}

Schedule 1(e)

(Summary of Incentives)

Cash Incentives*	**Value or Max. Value**
Commonwealth Opportunity Fund Grant (§5(a)(i))	$135,000.00
Tobacco Region Opportunity Fund Grant (§5(a)(ii))	$270,000.00
TROF Loan – Interest Free (§5(a)(iii)	$270,000.00
Virginia State Enterprise Zone Grant – job creation (§5(a)(iv))	$100,000.00
Virginia State Enterprise Zone Grant – real property improvements (§5(a)(iv))	$100,000.00
Virginia Jobs Investment Program Grant (§5(a)(v))	$14,400.00
Danville-Pittsylvania County Industrial Enhancement Grant (§5(b))	$250,000.00
Danville-Pittsylvania County Enterprise Zone Grant (§5(c))	$80,000.00
Subtotal	$1,219,400.00

Real Property Incentives	**Value or Max. Value**
Land (§3(c))	$500,000.00
Reimbursement of Residential Housing Expenses (§5(d))	$17,500.00
Base Rent for the Lease for the Phase I Start-Up Center (§5(e))	$75,000.00
Subtotal	$592,500.00

Subtotal of Cash Incentives	$1,219,400.00
Subtotal of Real Property Incentives	$592,500.00
TOTAL INCENTIVES	$1,811,900.00

**Any and all advances of cash incentives are to be secured by irrevocable letter of credit or other collateral provided by the Company and acceptable to RIFA, in the event that the Company does not meet the performance metrics or other requirements for such cash incentives.*

{2800646-4, 122568-00001-01}

Danville-Pittsylvania Regional Industrial Facility Authority

Executive Summary

Agenda Item No.:	Item 5E
Meeting Date:	06/14/2021
Subject:	Resolution 2021-06-14-5E
From:	Ms. Bobe

SUMMARY

The Board will be asked to consider Resolution 2021-06-14-5E, approving that certain Proposal for Professional Engineering and Construction Administration dated April 28, 2021 with Dewberry.

ATTACHMENTS

Resolution

Exhibit

Resolution No. 2021-06-14-5E

A RESOLUTION APPROVING THAT CERTAIN PROPOSAL FOR PROFESSIONAL ENGINEERING AND CONSTRUCTION ADMINISTRATION DATED APRIL 28, 2021, WITH DEWBERRY ENGINEERS INC., A NEW YORK CORPORATION, FOR LOT 7D IN THE AUTHORITY'S CYBER PARK PROJECT, LOCATED IN DANVILLE, VIRGINIA, FOR A LUMP SUM FEE OF $42,750.00

WHEREAS, the Danville-Pittsylvania Regional Industrial Facility Authority (the "**Authority**") is a political subdivision of the Commonwealth of Virginia duly created pursuant to the Virginia Regional Industrial Facilities Act, as amended; and

WHEREAS, the Authority has requested a proposal for professional engineering and construction administration services for the grading of Lot 7D in the Authority's Cyber Park project (the "**Cyber Park**") located in the City of Danville, Virginia; and

WHEREAS, the Authority desires to accept that certain Proposal for Professional Engineering and Construction Administration dated April 28, 2021, with Dewberry Engineers Inc., a New York corporation (the "**Lot 7D Proposal**"), a copy of which is set forth on Exhibit A, attached hereto and incorporated herein by this reference, for a lump sum fee of $42,750.00; and

WHEREAS, the Authority's Treasurer, as fiscal agent of the Authority, has determined that the funding for the purchase under the Lot 7D Proposal is available within a line item titled "Cyber Park Site Development"; and

WHEREAS, the Authority has determined that it is in the best interests of the Authority, the citizens of Pittsylvania County, Virginia, and the City of Danville, Virginia, and the improvement of the Cyber Park for the Authority to execute the Lot 7D Proposal.

NOW, THEREFORE, BE IT RESOLVED, that

1. The Authority hereby approves the Lot 7D Proposal as set forth in Exhibit A and as reviewed at this meeting, each of the Authority's Chairman and Vice Chairman, in consultation with the other, is authorized to further modify the Lot 7D Proposal on such terms and conditions as the Chairman or Vice Chairman, in consultation with the other, determines to be reasonable, appropriate and consistent with this Resolution and hereby authorizes the Chairman and the Vice Chairman, either of whom may act independently of the other, to execute and deliver the Lot 7D Proposal, and all other related documents to consummate the transaction, on behalf of the Authority, such execution of the Lot 7D Proposal, and related documents by the Chairman (or Vice Chairman as the case may be) to conclusively establish his approval of any modifications as consulted by and between the Chairman and Vice Chairman.

2. The Authority hereby authorizes and directs staff and other agents and representatives working on behalf of the Authority to take such actions and to do all such

things as are contemplated by the Lot 7D Proposal, or as they in their discretion deem necessary or appropriate in order to carry out the intent and purposes of these resolutions.

3. The Authority hereby approves, ratifies and confirms any and all actions previously taken by the Authority, its agents and representatives, in respect to the Lot 7D Proposal and the matters contemplated therein.

4. This Resolution shall take effect immediately upon its adoption.

- # -

CERTIFICATE

I, the undersigned Secretary of the Danville-Pittsylvania Regional Industrial Facility Authority, hereby certify that the foregoing is a true, correct and complete copy of a Resolution duly adopted by a majority of the directors of the Danville-Pittsylvania Regional Industrial Facility Authority at a meeting duly called and held on June 14, 2021, and that such Resolution has not been repealed, revoked, rescinded or amended, but is in full force and effect on the date hereof.

WITNESS my hand as Secretary of the Danville-Pittsylvania Regional Industrial Facility Authority this 14th day of June 2021.

SUSAN M. DeMASI, Secretary
Danville-Pittsylvania Regional Industrial
Facility Authority

(SEAL)

Resolution No. 2021-06-14-5E

<u>Exhibit A</u>

(The Lot 7D Proposal)

Dewberry

Dewberry Engineers Inc.
551 Piney Forest Road
Danville, VA 24540

434.797.4497
434.797.4341 fax
www.dewberry.com

April 28, 2021

Mr. Sherman M. Saunders
Chairman
Danville-Pittsylvania Regional Industrial Facility Authority (RIFA)
P.O. Box 3300
Danville, Virginia 24543

RE: Professional Engineering and Construction Administration
Cyber Park – Lot 7D Pad Grading

Dear Mr. Saunders,

Dewberry Engineers Inc. (Dewberry) has been assisting the Danville-Pittsylvania Regional Industrial Facility Authority (RIFA) with the development and marketing efforts within the Authority's Industrial Parks since the Authority's formation. Since Dewberry completed the initial masterplan and infrastructure design for the Cyber Park in 2001, we have provided ongoing engineering and architectural services for a multitude of projects to support growth at the park. To better preposition Lot 7D in the Cyber Park for future industrial development, RIFA desires to construct a graded pad and associated stormwater management necessary to support a typical 200,000 SF industrial building with parking and loading areas. The attached conceptual site plan and rendering depict such a scenario on a ±19-acre graded pad.

SCOPE OF SERVICES

Dewberry proposes to provide the following Scope of Services:

Item 1 – Wetlands Review

Dewberry will conduct a site visit to observe if potential jurisdictional wetlands and Waters of the United States (WOUS) are present. It is assumed that the project can be constructed with no WOUS impacts.
FEE: $1,000.00 Lump Sum

Item 2 – Construction Plans and Technical Specifications

Dewberry will prepare detailed construction documents for the grading of ±19 pad acres as generally shown on the conceptual site plan referenced above and attached to this proposal. Existing, available City of Danville GIS mapping will be utilized as base mapping for the project. Plans will include:

- Cover Sheet
- General Notes and Erosion and Sediment Control Notes
- Existing Condition and Clearing Plan
- Phase 1 Overall Erosion and Sediment Control Plan
- Phase 1 Detailed Erosion and Sediment Control Plan

- Phase 2 Overall Erosion and Sediment Control Plan
- Phase 2 Detailed Erosion and Sediment Control Plan
- Overall Grading Plan
- Detailed Grading Plan
- Overall Stormwater Management Plan
- Detailed Stormwater Management Plan (2 Ponds)
- Standard Details Sheets (2 Sheets)
- Erosion and Sediment Control (2 Sheets)

Project specifications will include all upfront bidding documents and technical specifications. The stormwater management program will be designed to meet the Virginia Department of Environmental Quality General Permit for discharges from construction sites. Stormwater quantity calculations and pond sizes will be based on a potential 75% impervious area coverage. Stormwater quality calculations will be based on the graded pad area flowing to each stormwater quality measure. Dewberry will submit the completed plans, specifications, and calculations to RIFA and the City of Danville for review and permit approval. Dewberry will revise the documents per comments received (anticipate minor comments).
FEE: $29,250.00 Lump Sum

Item 3 – Bidding Assistance and Construction Administration Services

Dewberry will provide the following Bidding Assistance and Construction Administration Services (CONA):

- Bidding Assistance:
  - Prepare bidding advertisement for RIFA to place in appropriate publications.
  - Supply two (2) plan rooms with plans and specifications.
  - Supply up to 15 hard copy sets of plans and specifications for prospective bidders.
  - Conduct a pre-bid conference for interested contractors and suppliers.
  - Respond to bidder's questions during the bidding process.
  - Conduct one (1) public bid-opening meeting.
  - Review and tabulate submitted bids.
  - Review all required bonding, license, and insurance requirements.
  - Make award recommendation to RIFA.

- Construction Administration Services:
  - Review Contractor agreement, bonds, insurance, etc.
  - Attend one (1) pre-construction meeting.
  - Prepare and distribute meeting minutes from construction meetings (assume eight (8) meetings).
  - Monthly progress meetings with Contractor until completion (assume eight (8) meetings over an eight (8) month construction duration).
  - Review shop drawings.

- Review monthly pay requests.
- Review and respond to Contractor Requests for Information (RFI's).
- Attend substantial and final completion inspection (2 meetings).

FEE: $12,500.00 Lump Sum

FEE SUMMARY

Below is a summary of fees for the respective services listed above:

1. Item 1 – Wetlands Review .... $1,000.00 Lump Sum
2. Item 2 – Construction Plans and Technical Specifications .... $29,250.00 Lump Sum
3. Item 3 – Bidding Assistance and Construction Administration Services .... $12,500.00 Lump Sum

TOTAL LUMP SUM FEE $42,750.00

Optional Item – Construction Testing and Inspection Services

Dewberry will solicit fees and qualifications from three (3) licensed geotechnical engineering testing firms for required Construction Testing and Inspection Services as a subconsultant to Dewberry. These services will include testing and inspections of earthwork for the Pad Graded Sites and Storm Water Management Installation. The selected testing firm will be onsite as needed to perform required testing and inspections in general accordance with the project documents. The selected testing firm will also collect and test bulk soil samples and aggregate base material samples for the determination of soil compaction properties. It is anticipated that full time testing, and inspection services will be needed for five (5) months of the total estimated eight (8) month construction time period.
FEE: $21,000.00 Budget Estimate

EXCLUSIONS

- Land Surveying Services
- Wetland Delineation and Permitting
- Permitting and Plan Review Fees
- Geotechnical Engineering Services
- Architectural Services
- Retaining Wall Design
- Landscape Design
- Subsurface Utility Engineering (SUE)
- Traffic/Transportation Engineering Services
- Utility Design
- Rezoning, Variances, or Special Use Permits
- Services not specifically identified above.

Dewberry agrees to begin services immediately upon receiving a Notice to Proceed.

This proposal is subject to our Standard Terms and Conditions enclosed herein as Attachment A respectfully.

The return of an executed copy of this proposal will serve as our authorization to proceed. Please do not hesitate to call if you have any questions or wish to discuss the proposal.

Sincerely,

Shawn R. Harden, PE
Senior Associate

Brian K. Bradner, PE
Vice President | Branch Manager

Enclosures:

- Attachment A – Standard Terms and Conditions (Rev. 10.2020)
- Lot 7D Conceptual Site Plan
- Lot 7D Conceptual Site Rendering
- Dewberry Cyber Park Experience

R:\Proposal Letters\Engineering\2021.04.28. Cyber Park Lot 7D grading Pad Grading.docx

The foregoing Proposal of Dewberry Engineers Inc. is accepted:

____

Print (Type) Individual, Firm, or Corporate Name

____

Signature of Authorized Representative Date

____

Print (Type) Name of Authorized Representative and Title

This proposal includes information that shall not be disclosed outside of the CLIENT and shall not be duplicated, used, or disclosed, in whole or in part, for any purpose other than to evaluate this proposal. If, however, a contract is awarded to this offeror as a result of, or in connection with, the submission of this information, CLIENT shall have the right to duplicate, use, or disclose the information to the extent provided in the resulting contract. This restriction does not limit CLIENT's right to use information contained in this information if it is obtained from another source without restriction.

ATTACHMENT A
STANDARD TERMS AND CONDITIONS

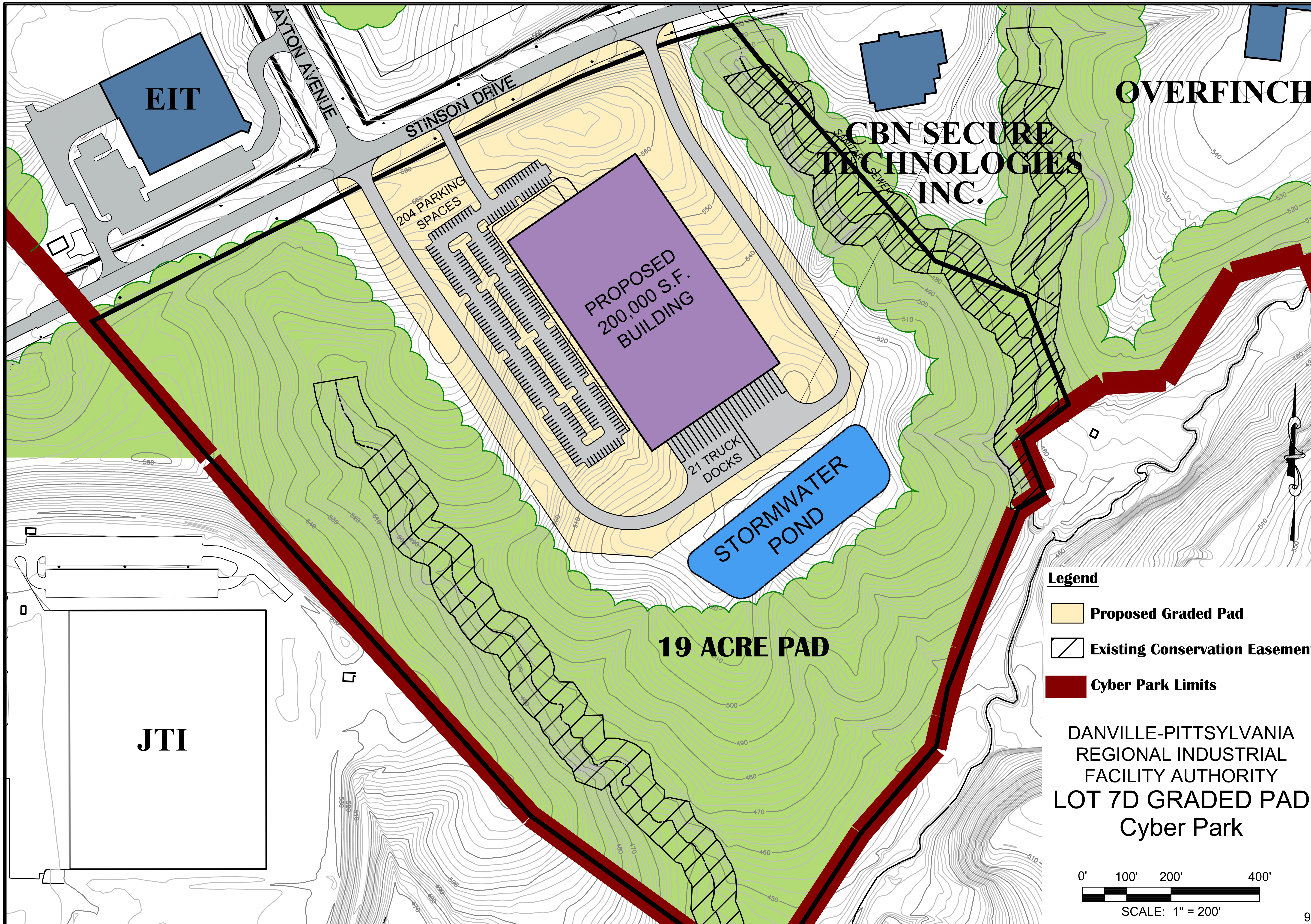
These Standard Terms and Conditions ("STCs") are incorporated by reference into the foregoing agreement or proposal, along with any future modifications or amendments thereto made in accordance with Paragraph 23 below (the "Agreement") between Dewberry ("we" or "us" or "our") and its client ("you" or "your") for the performance of services as defined in our proposal ("Services"). These STCs are fully binding upon you, just as if they were fully set forth in the body of the Agreement, and shall supersede any term or provision elsewhere in the Agreement in conflict with these STCs.

1. **Period of Offer**. Unless we decide, in writing, to extend the period for acceptance by you of our proposal, you have 90 days from our proposal date to accept our proposal. We have the right to withdraw the proposal at any time before you accept. Delivery of a signed proposal—whether original or copy—to us constitutes your acceptance of the proposal, including attachments expressly incorporated into the proposal by reference. The proposal and incorporated attachments shall constitute the entire Agreement between you and us. If you request us to render Services before you deliver a signed proposal to us, and we render Services in accordance with the proposal, you agree that the proposal and these STCs constitute the Agreement between you and us even if you fail to return a signed proposal to us.
2. **Scope of Services**. For the fee set forth in the Agreement, you agree that we shall only be obligated to render the Services expressly described in the Agreement. Our Services shall not be construed as providing legal, accounting, or insurance services. Unless the Agreement expressly requires, in no event do we have any obligation or responsibility for:
   a. The correctness or completeness of any document which was prepared by another entity.
   b. The correctness or completeness of any drawing prepared by us, unless it was properly signed and sealed by a registered professional on our behalf.
   c. Favorable or timely comment or action by any governmental entity on the submission of any construction documents, land use or feasibility studies, appeals, petitions for exceptions or waivers, or other requests or documents of any nature whatsoever.
   d. Taking into account off-site circumstances other than those clearly visible and actually known to us from on-site work.
   e. The actual location (or characteristics) of any portion of a utility which is not entirely visible from the surface.
   f. Site safety or construction quality, means, methods, or sequences.
   g. The correctness of any geotechnical services performed by others, whether or not performed as our subcontractor.
   h. The accuracy of earth work estimates and quantity take-offs, or the balance of earthwork cut and fill.
   i. The accuracy of any opinions of construction cost, financial analyses, economic feasibility projections or schedules for the Project.

   Should shop drawing review be incorporated into the Services, we shall pass on the shop drawings with reasonable promptness. Our review of shop drawings will be general, for conformance with the design concept of the Project to which this Agreement relates ("Project") and compliance with the information given in the construction documents, and will not include quantities, detailed dimensions, nor adjustments of dimensions to actual field conditions. Our review shall not be construed as permitting any departure from contract requirements nor as relieving your contractor of the sole and final responsibility for any error in details, dimensions or otherwise that may exist.
3. **Your Oral Decisions**. You, or any of your directors, officers, partners, members, managers, employees or agents having apparent authority from you, may orally: (a) make decisions relating to Services or the Agreement; (b) request a change in the scope of Services under the Agreement; or (c) request us to render additional Services under the Agreement, subject to our right to require you to submit the request in writing before your decision or request shall be considered to have been effectively made. You may, at any time, limit the authority of any or all persons to act orally on your behalf under this Paragraph 3, by giving us seven 7 days advance written notice.
4. **Proprietary Rights**. The drawings, specifications and other documents prepared by us under this Agreement are instruments of our service for use solely for the Project and, unless otherwise provided, we shall be deemed the author of these documents and shall retain all common law, statutory, and other reserved rights, including the copyright and rights to any Dewberry trademarks. Upon payment in full for our Services, you shall be permitted to retain copies, including reproducible copies of our instruments of service for information and reference for the Project. Our instruments of service shall not be used by you or others on other projects for any reason or for completion or modification of this Project by other professionals, unless you enter into a written agreement with us allowing for such use. Submission or distribution of documents to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication inconsistent with our reserved rights. You shall defend, indemnify and hold us harmless, and release us, from any and all liability, loss, damages, claims and demands for loss, damages, property damages or bodily injury, arising out of any use (including, without limitation, the means or media of transfer, possession, use, or alteration) of our instruments of service by (i) you, if such use is inconsistent with our reserved rights or this Paragraph 4, or (ii) any third party, regardless of the manner of use, if such third party received our instruments of service directly or indirectly from you (including if we or others have transmitted such instruments of service to the third party at your request or direction, for your benefit, or, and without limiting the foregoing, pursuant to a contractual obligation that is directly or indirectly derived (or flowed down) from a contract to which you have privity).
5. **Fees and Compensation**. If you request us to render services not specifically described in the Agreement, or, if we or anyone in our employ, is called upon to be deposed or to testify in a matter in which we are not a named party, that relates to the Project, you agree to compensate us for such services in accordance with the hourly rates as set forth on Attachment A of this Agreement or in any subsequently effective schedule, unless otherwise agreed in writing. If no compensation rate is set forth on Attachment A, or through written agreement between you and us, we shall be compensated for such services at our then current hourly rates. We may unilaterally increase our lump sum or unit billing rates on each anniversary of your acceptance of this Agreement by as much as five percent or the percentage increase in the CPI-W (U.S. Department of Labor Consumer Price Index-Washington), whichever is greater. Hourly rates are subject to periodic revision at our discretion.
6. **Period of Service**. The provisions of this Agreement and the compensation provided for under the Agreement have been established in anticipation of the orderly and continuous progress of the Project. Our obligation to render the Services will extend only for that period which may reasonably be required to complete the Services in an orderly and continuous manner, and we may then, at our sole option, terminate the Agreement.
7. **Reimbursable Expenses**. Unless the Agreement otherwise provides, you shall reimburse us, or our affiliates, for all expenses we incur to render the Services for you under this Agreement, plus fifteen percent. We may submit invoices for reimbursable expenses separately from invoices for Services.
8. **Payment Terms**. We may submit invoices at any time to you for Services and for reimbursable expenses incurred. Invoices are payable within 30 days of the invoice date, and you agree to pay a finance charge of 1½% per month on any unpaid balance not received by us within 30 days of the invoice date. If you require payment via credit card, Dewberry will assess a 3% processing fee on the total amount invoiced. Invoices may be based either upon our estimate of the proportion of the total Services actually completed at the time of billing for lump sum or fixed fee services, or in the case of hourly services, upon rendering of the Services. If any invoice is not paid within 30 days of the invoice date, we shall have the right either to suspend the performance of our Services until all invoices more than 30 days past due are fully paid or to terminate the agreement and to initiate proceedings to recover amounts owed by you. Additionally, we shall have the right to withhold from you the possession or use of any drawings or documents prepared by us for you under this or any other agreement with you until all delinquent invoices are paid in full. You shall not offset payments of our invoices by any amounts due or claimed to be due for any reason.

   If you do not give us written notice disputing an invoice within 20 days of the invoice date, the invoice shall conclusively be deemed correct. All payments made by you should specify the invoice numbers being paid. If we receive payments that do not specify the invoices being paid, you agree that we may apply payments in our sole discretion. Time is of the essence of your payment obligations; and your failure to make full and timely payment shall be deemed a material breach.
9. **Information from You and Public Sources**. You shall furnish us all plans, drawings, surveys, deeds and other documents in your possession, or that come into your possession, which may be related to the Services, and shall inform us in writing about all special criteria or requirements related to the Services (together, "Information"). We may obtain deeds, plats, maps and any other information filed with or published by any governmental or quasi-governmental entity (together, "Public Information"). Unless we are engaged in writing as an additional service to independently verify such, we may rely upon Information and Public Information in rendering Services. We shall not be responsible for errors or omissions or additional costs arising out of our reliance on Information or Public Information. You agree to give prompt notice to us of any development or occurrence that affects the scope or timing of Services, or any defect in the final work submitted by us, or errors or omissions of others as they are discovered. We shall not be responsible for any adverse consequence arising in whole or in part from your failure to provide accurate or timely information, approvals and decisions, as required for the orderly progress of the Services.
10. **Plan Processing**. We may submit plans and related, or other, documents to public agencies for approval. However, it may be necessary, in order to serve your interests and needs, for us to perform special processing, such as attending meetings and conferences with different agencies, hand carrying plans or other documents from agency to agency, and other special services. These special services are not included in the basic fee and shall be performed as additional services on an hourly fee basis in accordance Paragraph 5 above.

11. **Meetings and Conferences**. To the extent the Agreement provides, we will attend meetings and conferences that you, or your representatives, reasonably require. Furthermore, we will meet on an as-needed basis with public agencies that might be involved in the Project. Because we cannot forecast the scope and nature of these meetings and conferences, we will perform meeting and conference services on an hourly fee basis in accordance with our applicable hourly rate schedule.
12. **Your Claims**. You release us from, and waive, all claims of any nature for any and all errors or omissions by us related to our performance under this Agreement, or in the performance of any supplementary services related to this Agreement, unless you have strictly complied with all of the following procedures for asserting a claim, as to which procedures time is of the essence:
    a. You shall give us written notice within 10 days of the date that you discover, or should, in the exercise of ordinary care, have discovered that you have, or may have, a claim against us. If you fail to give us written notice within such 10 days, then such claim shall forever be barred and extinguished.
    b. If we accept the claim, we shall have a reasonable time to cure any error or omission and any damage. This shall be your sole remedy, and you must not have caused the error or omission, or any damage resulting from the error or omission, to be cured, if we are ready, willing and able to do so.
    c. If we reject the claim, we shall give you written notice of our rejection within 30 days of our receipt of your notice of claim. You shall then have 60 days to give us an opinion from a recognized expert in the appropriate discipline, corroborating your claim that we committed an error or omission, and establishing that the error or omission arose from our failure to use the degree of care ordinarily used by professionals in that discipline in the jurisdiction local to the Project. If you fail to give us such an opinion from a recognized expert within 60 days from the date we send you notice of our rejection of the claim, then such claim shall forever be barred and extinguished.
    d. We shall have 60 days from receipt of your expert's written opinion to reevaluate any claim asserted by you. If we again reject such claim, or if the 60-day period from receipt of the written opinion of your expert elapses without action by us, then you may have recourse to such other remedies as may be provided under this Agreement.
13. **Hazardous or Toxic Wastes or Substances, Pollution or Contamination**. You acknowledge that Services rendered under this Agreement may be affected by hazardous or toxic wastes or substances, or pollution or contamination due to the presence of hazardous or toxic wastes or substances. To induce us to enter into this Agreement, you agree to indemnify, defend and hold us harmless from and against any and all liability, loss, damages, claims and demands for loss, damages, property damages or bodily injury, that relate, in any way, to both (a) hazardous or toxic wastes or substances, or pollution or contamination due to the presence of hazardous or toxic wastes or substances, and (b) the performance by us of our obligations under the Agreement, whether or not such performance by us is claimed to have been, or was, or may have been, negligent. Unless otherwise expressly set forth in this Agreement, we shall have no responsibility for searching for, or identifying, any hazardous or toxic wastes or substances, or pollution or contamination due to the presence of hazardous or toxic wastes or substances; but if we discover or suspect the presence of any such wastes, substances, pollution or contamination due to the presence of hazardous or toxic wastes or substances, then we, in our sole discretion, and at any time, may stop work under, or terminate, this Agreement, in which event we will have no further liability to you for performance under this Agreement, and you shall make the payments to us required by Paragraph 14 of the STCs.
14. **Termination**. Either party may terminate the Agreement if the other party materially breaches the Agreement and does not cure the breach within 7 days after receiving notice of the breach from the non-breaching party. You shall immediately pay us for our Services rendered and expenses incurred through the termination date, including fees and expenses that we incur as a result of the termination.
15. **Payment of Other Professionals**. If this Agreement includes continuation of services begun by other architects, engineers, planners, surveyors, or other professionals, we may suspend our Services until you make arrangements satisfactory to such other professionals for payment. If satisfactory arrangements have not been made within a time determined by us to be reasonable, then we may in our sole discretion terminate this Agreement.
16. **Assignment and Third-Party Beneficiaries**. Neither party shall assign or transfer any rights, interests or claims arising under this Agreement without the written consent of the other, provided, however, that we are permitted to (i) employ independent consultants, associates, and subcontractors as we may deem necessary to render the Services, (ii) assign our right to receive compensation under this Agreement, and (iii) transfer the Agreement to an affiliate of ours, in our sole discretion, with written notice to you (an affiliate for purposes of this Paragraph 16 is defined as any other business entity that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, us). This Agreement does not confer any benefit or right upon any person or entity other than the parties, except that our partners, members, managers, directors, officers, employees, agents and subcontractors shall have and be entitled to the protection afforded us under Paragraphs 9, 12, 13, 16, 20 and 22 of this Agreement.
17. **Applicable Law and Forum Selection**. The Commonwealth of Virginia's laws shall govern this Agreement in all respects, including matters of construction, validity, and performance. Except as provided in Paragraph 18, the parties agree that the courts of Fairfax County, Virginia, and the Federal District Court, Eastern District of Virginia, Alexandria Division, (together, "Courts") shall have exclusive jurisdiction over any controversy, including matters of construction, validity, and performance, arising out of this Agreement. The parties consent to the jurisdiction of the Courts and waive any objection either party might otherwise be entitled to assert regarding jurisdiction. The parties irrevocably waive all right to trial by jury in any action, proceeding, or counterclaim arising out of or related to this Agreement.
18. **Arbitration of Our Claims for Compensation**. Instead of proceeding in court, we, in our sole and absolute discretion, may submit any claim for compensation due us under this Agreement to arbitration in Fairfax County, Virginia in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association, and judgment upon the arbitration award may be entered in any court having jurisdiction. You agree not to assert any counterclaim or any defense by way of set-off in such arbitration, and that the arbitrator or panel shall have no authority to consider, or to render, an award based upon any such counterclaim or defense by way of set-off. We shall have the right to withdraw our demand for arbitration at any time before the arbitration hearing starts by giving written notice to the arbitrator or panel and you; and upon the giving of such notice by us, the arbitration shall terminate, no award shall be rendered, and we may then pursue our remedies in accordance with Paragraph 17 above.
19. **Severability**. If any part, term, or provision of this Agreement is held to be illegal or unenforceable, the validity and enforceability of the remaining parts, terms, and provisions of this Agreement shall not be affected, and each party's rights shall be construed and enforced as if the Agreement did not contain the illegal or unenforceable part, term, or provision.
20. **Limitations on Liability**. In recognition of the relative risks and benefits of the Project to you and us, you agree, that our liability for any loss, damages, property damages or bodily injury of or to you caused in whole or in part by us in the performance of this Agreement or any supplementary services in any way related to this Agreement, shall be limited in the aggregate to the amount of fees that you have paid to us for the Services. The parties intend that the foregoing limitation on liability shall apply to all claims, whether sounding in tort, contract, warranty, or otherwise. You release, waive, and shall not seek contribution from, or indemnification by, us for any claims of any nature made against you by any other person who may suffer any loss, damages, property damages or bodily injury in any manner associated with our services, or any supplementary services in any way related to this Agreement. Notwithstanding anything to the contrary elsewhere in the Agreement, we shall not be liable to you, in any event or for any amount, for delays; or for consequential, special or incidental damages; or for punitive or exemplary damages; or for the cost to add an item or component that we omitted from the instruments of service due to our negligence, to the extent that item or component would have otherwise been necessary, or adds value or betterment, to the Project. Should you find the terms of this Paragraph 20 unacceptable, we are prepared to negotiate a modification in consideration of an equitable surcharge to pay our additional insurance premiums and risk.
21. **Payment of Attorney's Fees**. The losing party shall pay the winning party's reasonable attorney's fees and expenses for the prosecution or defense of any cause of action, claim or demand arising under this Agreement in any court or in arbitration.
22. **Indemnification**. You agree to indemnify, defend and hold us harmless from and against any and all liability, loss, damages, claims and demands for loss, damages, property damages or bodily injury, arising out of acts or omissions by you, or your contractor, subcontractor or other independent company or consultant employed by you to work on the Project, or their respective partners, members, managers, directors, officers, employees, agents or assigns; or arising out of any other operation, no matter by whom committed or omitted, for and on behalf of you, or such contractor, subcontractor or other independent company or consultant, whether or not due in part to errors or omissions by us in the performance of this Agreement, or in the performance of any supplementary service in any way related to this Agreement, provided that you are not required to indemnify and hold us harmless under this Paragraph 22 in the event of our sole negligence.
23. **Integration Clause**. The Agreement represents the entire agreement of the parties. No prior representations, statements, or inducements made by either us, you, or the respective agents of either, that is not contained in the Agreement shall enlarge, modify, alter, or otherwise vary the written terms of the Agreement unless they are made in writing and made a part of the Agreement by attachment, incorporated by reference in the Agreement or signed or initialed on behalf of both parties.
24. **Notice**. Any notices issued to us shall be sent to our project manager with a copy sent via email to Notices@dewberry.com or mailed to 8401 Arlington Blvd, Fairfax VA 220131, Attn: Legal Department.



SHEET NO.
EX-1

TITLE
200k S.F. BUILDING EXHIBIT

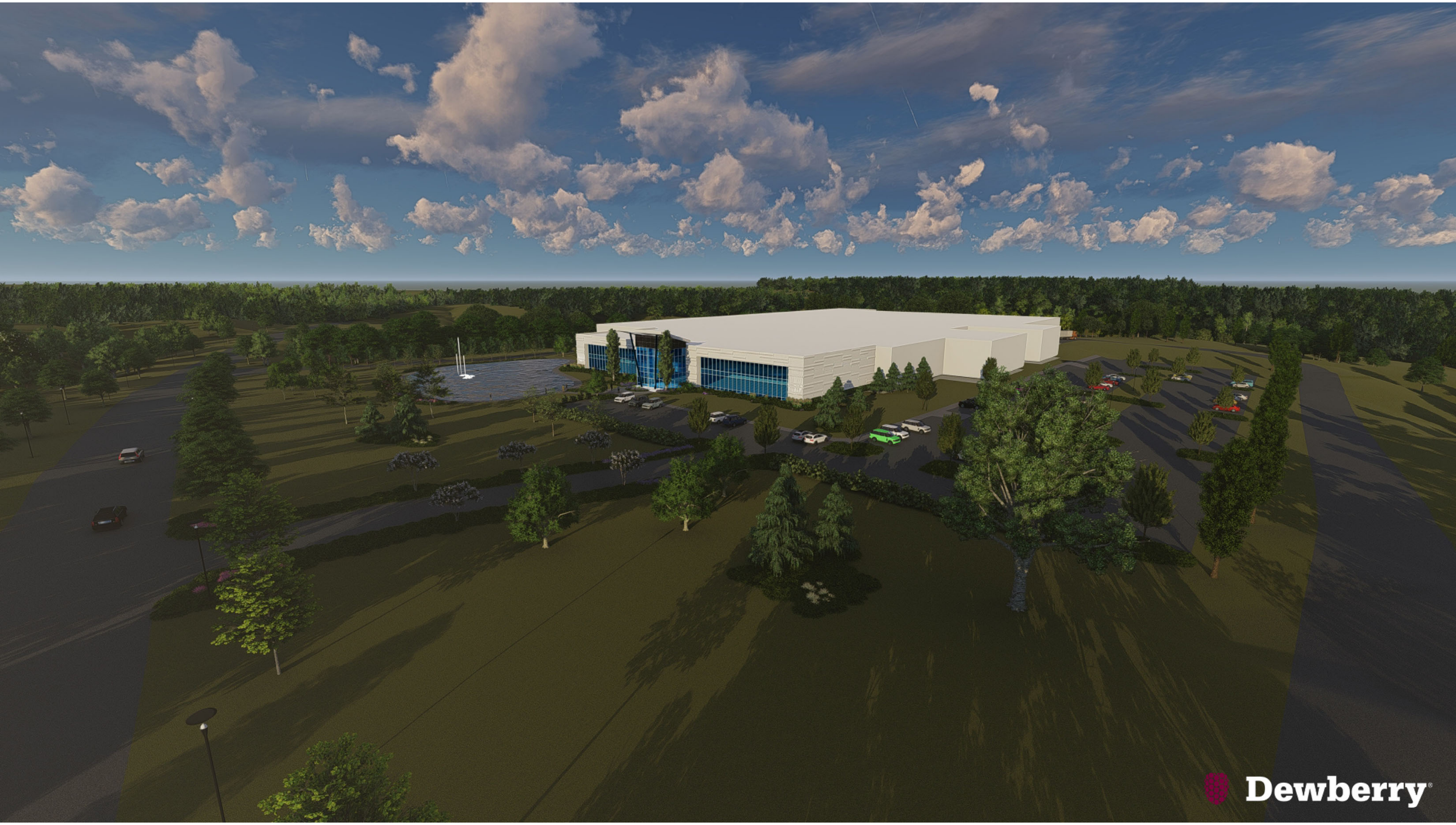
SCALE
1" = 200'

PROJECT
LOT 7D GRADED PAD

DATE
4/27/2021

PROJ. NO.

Dewberry®
Dewberry Engineers Inc.
551 Piney Forest Road
Danville, VA 24540-3353
434.797.4497


Dewberry

Dewberry

CYBER PARK

Danville-Pittsylvania Regional Industrial Facility Authority

Since Dewberry completed the initial masterplan and infrastructure design for the Cyber Park in 2001, we have provided ongoing engineering and architectural services for a multitude of projects to support growth at the park. A sampling of these projects include the Institute for Advanced Learning and Research, Sustainable Energy Technology Center, GoTech Training Lab, Hawkins High Bay, Institute for Advanced Learning and Research Interior Renovations, and the Center for Manufacturing Advancement. **Our knowledge of this park is unparalleled!**

Center for Manufacturing Advancement Rendering

Institute for Advanced Learning & Research

20+ years supporting projects at the Cyber Park

Cyber Park Parcel Exhibit

Danville-Pittsylvania Regional Industrial Facility Authority

Executive Summary

Agenda Item No.:	Item 5F
Meeting Date:	06/14/2021
Subject:	Resolution 2021-06-14-5F
From:	Mr. Rowe

SUMMARY

The Board will be asked to consider Resolution 2021-06-14-5F authorizing the issuance of its Revenue Bond (Transmission Line Project) Series 2021.

ATTACHMENTS

Resolution

Exhibit

Resolution No. 2021-06-14-5F

RESOLUTION OF THE DANVILLE-PITTSYLVANIA REGIONAL INDUSTRIAL FACILITY AUTHORITY AUTHORIZING THE ISSUANCE OF ITS REVENUE BOND (TRANSMISSION LINE PROJECT), SERIES 2021, IN A PRINCIPAL AMOUNT NOT TO EXCEED $4,500,000; AUTHORIZING THE EXECUTION AND DELIVERY OF ALL FINANCING DOCUMENTS IN CONNECTION THEREWITH, INCLUDING WITHOUT LIMITATION THE FINANCING AGREEMENT, THE BOND AND THE SUPPORT AGREEMENTS; AND AUTHORIZING OTHER MATTERS IN CONNECTION THEREWITH

WHEREAS, the Danville-Pittsylvania Regional Industrial Facility Authority (the **"Authority")** is a political subdivision of the Commonwealth of Virginia duly created by the County of Pittsylvania, Virginia (the **"County"**), and the City of Danville, Virginia (the **"City"**), pursuant to the terms of the Virginia Regional Industrial Facilities Act, as amended (the **"Act"**); and

WHEREAS. the Authority, the County and the City have previously developed a "megapark" industrial park known as "Southern Virginia Megasite at Berry Hill" on approximately 3,700 acres of land owned by the Authority (the **"Megapark"**); and

WHEREAS, to facilitate efforts to attract large industrial facilities to the Megapark, and thereby increase employment opportunities and promote economic development within the region, the Authority and Appalachian Power Company (**"APCO"**) have entered into a Performance Agreement dated as of January 13, 2021 (the **"Performance Agreement"**), pursuant to which the Authority has requested APCO to relocate an approximately two-mile portion of an existing 69kV transmission line and to undertake such related work necessary to accomplish such relocation (collectively, the **"Project"**), and APCO has agreed to undertake the Project at an estimated cost of $4,500,000, subject to adjustment as set forth in the Performance Agreement; and

WHEREAS, the Authority has submitted an application to the Virginia Tobacco Region Revitalization Commission (the **"Commission"**) for a loan in the amount of $4,500,000 to finance the costs of the Project and to pay related issuance and financing costs; and

WHEREAS, the Commission has agreed to make such loan pursuant to the terms of a Financing Agreement between the Commission and the Authority (the **"Financing Agreement"**), which shall be evidenced by the Commissions purchase of a revenue bond (the **"Bond"**) to be issued by the Authority; and

WHEREAS, as a condition of making such loan, the Commission has required from each of the City and the County a non-binding undertaking to appropriate from time to time sufficient monies to enable the Authority to repay such loan to the extent that other funds received by the Authority under the Performance Agreement are insufficient therefor, with the City and the County each being responsible for one-half of the loan repayments; and

WHEREAS, the Authority has requested that (a) the City enter into a Support Agreement (the **"City Support Agreement"**), between the City, the Authority and the Commission and (b) the County enter into a Support Agreement (the **"County Support Agreement"**), between the

County, the Authority and the Commission (the County Support Agreement and the City Support Agreement being collectively referred to herein as the **"Support Agreements"**); and

WHEREAS, draft forms of the Financing Agreement, the Bond and the Support Agreements (attached as Exhibit F to the Financing Agreement), attached hereto as Exhibit A and incorporated herein by this reference, have been made available to the Authority at or prior to this meeting.

After careful consideration and in furtherance of the public purposes for which the Authority was created, **NOW, THEREFORE, BE IT RESOLVED THAT:**

1. It is hereby found and determined that the undertaking of the Project and the issuance of the Bond will be in the public interest, will benefit the inhabitants of the County and the City, will lead to an increase in commerce, and will promote the safety, health, welfare, convenience and prosperity of the County and the City and their citizens.

2. The Authority hereby approves the financing of the Project and the issuance of the Bond substantially upon the terms set forth herein and in the Financing Agreement. The Chairman and Vice Chairman of the Authority, in consultation with the other, are each hereby authorized to approve (i) the principal amount of the Bond, so long as the aggregate principal amount of the Bond does not exceed $4,500,000, (ii) the amortization schedule of the Bond, so long as the maturity date for the Bond is no later than December 31, 2036, and (iii) the fixed interest rate on the Bond, so long as the interest rate does not exceed 1.50% per annum (subject to adjustment upon the terms set forth in the Financing Agreement). Such approvals shall be conclusively evidenced by the execution of the Bond by authorized representatives the Authority and delivery of the Bond to the Commission. Notwithstanding anything in this Resolution to the contrary, the Bond shall not be issued unless and until the holder of the Authority's Taxable Revenue Refunding Bond (Cane Creek Project), Series 2019, has provided written evidence of its consent to the issuance of the Bond by the Authority.

3. The Financing Agreement, the Bond and the Support Agreements (together, the **"Authority Documents"**) are hereby approved in substantially the forms submitted to this meeting, with such changes, insertions or omissions (including, without limitation, changes of the dates thereof and therein and changes to reflect the final terms of the Bond as described in paragraph 2 above) as may be approved by the Chairman or the Vice Chairman, in consultation with the other, of the Authority, whose approval thereof shall be evidenced conclusively by the execution and delivery of the Bond and the Authority Documents containing such changes, insertions or omissions.

4. The execution of the Bond and its delivery against payment therefor are hereby authorized and directed. The execution, delivery and performance by officers of the Authority of the Authority Documents are hereby authorized and directed.

5. The Chairman and the Vice Chairman of the Authority, in consultation with the other, are each authorized and directed to execute the Authority Documents on behalf of the Authority, and, if required or requested, the Secretary and the Assistant Secretary of the Authority,

either of whom may act, are each authorized and directed to affix the seal of the Authority to the Authority Documents and to attest such seal.

6. Each officer of the Authority is authorized and directed to execute and deliver on behalf of the Authority such other instruments, documents or certificates and to do and perform such things and acts, as they shall deem necessary or appropriate to carry out the transactions authorized by this Resolution or contemplated by the Authority Documents, and each officer of the Authority is further authorized and directed to execute and deliver on behalf of the Authority such instruments, documents or certificates. All of the foregoing previously done or performed by such officers of the Authority are in all respects approved, ratified and confirmed.

7. The Authority determines that the issuance of the Bond in accordance with the terms of the Authority Documents and all actions of the Authority contemplated thereunder will be in the furtherance of the purposes for which the Authority was organized.

8. All other actions hereafter taken by the officers of the Authority that are in conformity with the purposes and intent of this Resolution and in furtherance of the issuance and sale of the Bond and the financing of the Project are hereby ratified, approved and confirmed.

9. All resolutions or parts thereof in conflict with this Resolution are hereby repealed.

10. This Resolution shall take effect immediately upon its adoption.

- # -

CERTIFICATE

I, the undersigned Secretary of the Danville-Pittsylvania Regional Industrial Facility Authority, hereby certify that the foregoing is a true, correct and complete copy of a Resolution duly adopted by a majority of the directors of the Danville-Pittsylvania Regional Industrial Facility Authority at a meeting duly called and held on June 14, 2021, and that such Resolution has not been repealed, revoked, rescinded or amended, but is in full force and effect on the date hereof.

WITNESS my hand as Secretary of the Danville-Pittsylvania Regional Industrial Facility Authority this 14th day of June 2021.

____
SUSAN M. DeMASI, Secretary
Danville-Pittsylvania Regional
Industrial Facility Authority

(SEAL)

Exhibit A

(Authority Documents)

FINANCING AGREEMENT

dated as of June 1, 2021

between

VIRGINIA TOBACCO REGION REVITALIZATION COMMISSION

and

**DANVILLE-PITTSYLVANIA
REGIONAL INDUSTRIAL FACILITY AUTHORITY**

Loan No. ___________

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EXHIBITS

FINANCING AGREEMENT

THIS FINANCING AGREEMENT (this "**Agreement**") is made as of this first day of June, 2021, between the **VIRGINIA TOBACCO REGION REVITALIZATION COMMISSION**, a public body corporate and a political subdivision of the Commonwealth of Virginia (the "**Commission**"), and the **DANVILLE-PITTSYLVANIA REGIONAL INDUSTRIAL FACILITY AUTHORITY**, a public body corporate and a political subdivision of the Commonwealth of Virginia (the "**Borrower**").

Pursuant to Chapter 31, Title 3.2 of the Code of Virginia (1950), as amended (the "**Act**"), the Commission has the authority from time to time to make loans for the purposes set forth in such chapter in any of the tobacco-dependent communities in the Southside and Southwest regions of Virginia, subject to receiving a written recommendation as to financial viability and feasibility from the Commission's financial viability manager (the "**Loan Servicer**").

The Borrower has requested a loan from the Commission (the "**Loan**") and will evidence its obligation to repay such loan by the Local Bond (as hereinafter defined), which the Borrower will issue and sell to the Commission, together with certain other security granted by the Borrower. The Commission has received a written recommendation from the Loan Servicer as to the financial viability and feasibility of the Loan.

The Borrower will use the proceeds of the Loan from the Commission to finance or refinance that portion of the Project Costs (as defined herein) not being paid from other sources, all as further set forth in the Project Budget.

ARTICLE I
DEFINITIONS

Section 1.1. Definitions. The capitalized terms contained in this Agreement and not defined above shall have the meanings set forth below, unless the context requires otherwise, or shall have the meaning assigned to such terms in the Act:

"Additional Payments" means the payments required by Section 6.2.

"Agreement" means this Financing Agreement between the Borrower and the Commission, together with any amendments or supplements hereto.

"APCO" means Appalachian Power Company, a Virginia public service corporation.

"Authorized Representative" means any director or officer of the Borrower authorized by resolution, ordinance or other official act of the governing body of the Borrower to perform the act or sign the document in question.

"City" means the City of Danville, Virginia.

"Closing Date" means the date of the delivery of the Local Bond to the Commission.

"Collateral" means any property of the Borrower, including but not limited to the Revenues, in which the Commission is granted a lien to secure repayment of the Local Bond.

"County" means the County of Pittsylvania, Virginia.

"Default" means an event or condition the occurrence of which would, with the lapse of time or the giving of notice or both, become an Event of Default.

"**Default Rate**" has the meaning set forth in Section 6.1.

"Event of Default" shall have the meaning set forth in Section 11.1.

"Fiscal Year" means the period of twelve months established by the Borrower as its annual accounting period.

"Loan" has the meaning set forth in the preamble to this Agreement.

"Loan Servicer" has the meaning set forth in the preamble to this Agreement. Pursuant to a Letter Agreement dated November 17, 2020, the Virginia Resources Authority serves as the Loan Servicer with respect to the Loan.

"**Local Bond**" means the bond in substantially the form attached to this Agreement as **Exhibit A** issued by the Borrower to the Commission pursuant to this Agreement.

"Local Bond Proceeds" means the proceeds of the sale of the Local Bond to the Commission pursuant to this Agreement.

"Local Resolution" means, collectively, all resolutions adopted by the governing body of the Borrower, approving the transactions contemplated by and authorizing the issuance and sale of the Local Bond and the execution and delivery of this Agreement.

"Opinion of Counsel" means a written opinion of recognized bond counsel to the Borrower, acceptable to the Commission.

"Performance Agreement" means the Performance Agreement, dated January 13, 2021, between APCO and the Borrower, as the same may be amended or modified from time to time.

"Project" means the particular project described in **Exhibit B**, the costs of the undertaking of which are to be financed or refinanced in whole or in part with the Local Bond Proceeds.

"Project Budget" means the budget for the financing or the refinancing of the Project, a copy of which is attached to this Agreement as **<u>Exhibit C</u>**, with such changes therein as may be approved in writing by the Commission.

"Project Costs" means the costs of the undertaking of the Project, as further described in the Project Budget, and such other costs as may be requested by the Borrower and approved in writing by the Commission, provided such costs are permitted by the Act.

"Revenues" means all of the Borrower's right, title and interest in and to any and all (i) revenues, receipts, sale proceeds, accounts, accounts receivable, general intangibles and income derived from or with respect to the Project, including any payments made to the Borrower pursuant to the Performance Agreement, (ii) amounts that may be appropriated for and paid to the Borrower by the County or the City under the Support Agreements, and (iii) any other income from other sources pledged by the Borrower to the payment of the Local Bond.

"Support Agreements" means the Support Agreements, dated as of the date hereof, among the Borrower, the Commission and the County, and among the Borrower, the Commission and the City, substantially in the form of **<u>Exhibit F</u>** hereto, as the same may be amended, modified or replaced from time to time.

Section 1.2. <u>Rules of Construction</u>. The following rules shall apply to the construction of this Agreement unless the context requires otherwise:

(a) Singular words shall connote the plural number as well as the singular and vice versa.

(b) All references in this Agreement to particular Sections or Exhibits are references to Sections or Exhibits of this Agreement unless otherwise indicated.

(c) The headings and table of contents as used in this Agreement are solely for convenience of reference and shall not constitute a part of this Agreement nor shall they affect its meaning, construction or effect.

ARTICLE II
<u>REPRESENTATIONS</u>

Section 2.1. <u>Representations by Borrower</u>. The Borrower makes the following representations as the basis for its undertakings under this Agreement:

(a) The Borrower is a duly created and validly existing a public body corporate and a political subdivision of the Commonwealth of Virginia and is vested with the rights and powers conferred upon it by Virginia law.

(b) The Borrower has full right, power and authority to (i) adopt the Local Resolution and execute and deliver this Agreement, the Support Agreements and the other documents related thereto, (ii) issue, sell and deliver the Local Bond to the Commission, (iii) undertake the Project (as described in **Exhibit B**) and finance or refinance the Project Costs by borrowing money for such purpose pursuant to this Agreement and the issuance of the Local Bond, (iv) pledge the Revenues to the payment of the Local Bond and (v) carry out and consummate all of the transactions contemplated by the Local Resolution, this Agreement, the Support Agreements and the Local Bond.

(c) The Borrower has found that the issuance of the Local Bond will serve the purposes of the Virginia Regional Industrial Facilities Act, Chapter 64 of Title 15.2 of the Code of Virginia of 1950, as amended.

(d) To the best of Borrower's knowledge, none of the directors of the Borrower has a personal interest (as defined in Section 2.2-3101 of the Code of Virginia of 1950, as amended) in the Financing Agreement, the Support Agreements, the Local Bond, or in any transaction contemplated thereby, or is an officer or employee of the Commission.

(e) This Agreement, the Support Agreements and the Local Bond were duly authorized by the Local Resolution and are in substantially the same form as presented to the governing body of the Borrower at its meeting at which the Local Resolution was adopted.

(f) All authorizations and approvals required to have been obtained as of the date of the delivery of this Agreement have been obtained by or on behalf of the Borrower for (i) the Borrower's adoption of the Local Resolution, (ii) the execution and delivery by the Borrower of this Agreement, the Support Agreements and the Local Bond, and (iii) the performance and enforcement of the obligations of the Borrower thereunder.

(g) This Agreement and the Support Agreements have been executed and delivered by duly authorized officials of the Borrower and constitute legal, valid and binding limited obligations of the Borrower enforceable against the Borrower in accordance with their respective terms.

(h) When executed and delivered in accordance with the Local Resolution and this Agreement, the Local Bond will have been executed and delivered by duly authorized officials of the Borrower and will constitute a legal, valid and binding limited obligation of the Borrower enforceable against the Borrower in accordance with its terms.

(i) The issuance of the Local Bond and the execution and delivery of this Agreement and the Support Agreements and the performance by the Borrower of its obligations thereunder are within the powers of the Borrower and will not conflict with, or constitute a breach or result in a violation of, (i) to the best of the Borrower's knowledge, any Federal or Virginia constitutional or statutory provision, (ii) any agreement or other instrument to which the Borrower is a party or by which it is bound or (iii) any order, rule, regulation, decree or ordinance of any court, government or governmental authority having jurisdiction over the Borrower or its property.

(j) The Borrower is not in default in the payment of the principal of or interest on any of its indebtedness for borrowed money and is not in default under any instrument under and subject to which any indebtedness for borrowed money has been incurred. To the best of Borrower's knowledge, no event or condition has happened or existed, or is happening or existing, under the provisions of any such instrument, including but not limited to this Agreement, which constitutes, or which, with notice or lapse of time, or both, would constitute, an event of default thereunder.

(k) The Borrower (i) to the best of the Borrower's knowledge, is not in violation of any existing law, rule or regulation applicable to it in any way which would have a material adverse effect on its financial condition or its ability to perform its obligations under this Agreement, the Support Agreements or the Local Bond and (ii) is not in default under any indenture, mortgage, deed of trust, lien, lease, contract, note, order, judgment, decree or other agreement, instrument or restriction of any kind to which the Borrower is a party or by which it is bound or to which any of its assets is subject, which would have a material adverse effect on its financial condition or its ability to perform its obligations under this Agreement, the Support Agreements or the Local Bond. The execution and delivery by the Borrower of this Agreement, the Support Agreements or the Local Bond and the compliance with the terms and conditions thereof will not conflict with or result in a breach of or constitute a default under any of the foregoing.

(l) There are not pending nor, to the best of the Borrower's knowledge, threatened against the Borrower, any actions, suits, proceedings or investigations of a legal, equitable, regulatory, administrative or legislative nature (i) affecting the creation, organization or existence of the Borrower or the title of its officers to their respective offices, (ii) seeking to prohibit, restrain or enjoin the approval, execution, delivery or performance of the Local Resolution, this Agreement, the Support Agreements or the Local Bond or the issuance of the Local Bond, (iii) in any way contesting or affecting the validity or enforceability of the Local Resolution, this Agreement, the Support Agreements, the Local Bond or any agreement or instrument relating to any of the foregoing, (iv) in which a judgment, order or resolution may have a material adverse effect on the Borrower or its business, assets, condition (financial or otherwise), operations or prospects or on its ability to perform its obligations under the Local Resolution, this Agreement, the Support Agreements, or the Local Bond, (v) in any way affecting or contesting the undertaking of the Project, or (vi) contesting or challenging the power of the Borrower to pledge the Revenues to the payment of the Local Bond.

(m) There is no other indebtedness of the Borrower secured by or payable from a pledge of Revenues or a lien on the Collateral.

(n) No Event of Default or Default has occurred and is continuing.

ARTICLE III
ISSUANCE AND DELIVERY OF THE LOCAL BOND

Section 3.1. Loan to Borrower and Purchase of the Local Bond. The Borrower agrees to borrow from the Commission, and the Commission agrees to lend to the Borrower, the principal amount equal to the sum of the principal disbursements made pursuant to Section 4.1, but not to exceed $4,500,000, for the purposes herein set forth. The Borrower's obligation shall be evidenced by the Local Bond, which shall be in substantially the form of **Exhibit A** attached hereto and made a part hereof and delivered to the Commission on the Closing Date. The Local Bond shall be in the original principal amount of the Loan and shall mature, bear interest, and be payable as hereinafter provided.

Section 3.2. Conditions Precedent to Loan. The Commission shall not be required to make the Loan to the Borrower unless the Commission shall have received the following, all in form and substance satisfactory to the Commission:

(a) The Local Bond and the Support Agreements.

(b) A certified copy of the Local Resolution.

(c) A closing certificate from the Commission certifying that the financing of the Project has been authorized and that the Loan Servicer has provided the Commission its written recommendation as to the financial viability and feasibility of the Loan.

(d) A certificate of appropriate officers of the Borrower as to the matters set forth in Section 2.1 and such other matters as the Commission may reasonably require.

(e) Evidence satisfactory to the Commission that the Borrower has obtained or has made arrangements satisfactory to the Commission to obtain any funds or other financing for the Project as contemplated in the Project Budget.

(f) Evidence satisfactory to the Commission that the Borrower has performed and satisfied all of the terms and conditions contained in this Agreement to be performed and satisfied by it as of such date.

(g) An Opinion of Counsel, substantially in the form of **Exhibit D**, that the Local Bond has been validly authorized and issued by the Borrower, subject to customary exceptions, addressed to the Commission.

(h) An opinion of general counsel to the Borrower in form and substance reasonably satisfactory to the Commission.

(i) Such other documentation, certificates and opinions with respect to the Borrower and the financing of the Project as the Commission may reasonably require, including an opinion from counsel acceptable to the Commission that the Support Agreements are valid and enforceable obligations against the Borrower, subject to usual and customary qualifications.

ARTICLE IV
USE OF LOCAL BOND PROCEEDS

Section 4.1. **Application of Proceeds**. Pursuant to the Performance Agreement, the Borrower agrees to apply the Local Bond Proceeds solely and exclusively to the payment, or the reimbursement of the Borrower for the payment, of Project Costs and further agrees to exhibit to the Commission and the Loan Servicer receipts, vouchers, statements, bills of sale or other evidence of the actual payment of such Project Costs, including evidence of APCO's application of such Local Bond Proceeds to the Project Costs. The Loan Servicer shall disburse money on behalf of the Commission to or for the account of the Borrower upon receipt by the Commission and the Loan Servicer of a requisition (upon which the Commission and the Loan Servicer shall be entitled to rely) signed by an Authorized Representative and containing all information called for by, and otherwise being in the form of, **Exhibit E** to this Agreement.

ARTICLE V
PLEDGE OF REVENUES; COLLATERAL

Section 5.1. **Pledge of Revenues**. The Borrower hereby grants to the Commission a lien on and pledge of Revenues to secure the payment of the principal of the Local Bond and the payment and performance of the Borrower's obligations under this Agreement. This pledge shall be valid and binding from and after the execution and delivery of this Agreement. The Revenues, as received by the Borrower, shall immediately be subject to the lien of this pledge without any physical delivery of them or further act. The lien of this pledge shall have priority over all other obligations and liabilities of the Borrower, and the lien of this pledge shall be valid and binding against all parties having claims of any kind against the Borrower regardless of whether such parties have notice of this pledge.

ARTICLE VI
PAYMENTS

Section 6.1. **Payment of Local Bond**. (a) The Local Bond shall be dated the date of its delivery to the Commission. Interest on the Local Bond shall be computed on the disbursed principal balance thereof from the date of each disbursement at the rate of one and fifty one-hundredths percent (1.50%) per annum.

(b) Interest only on all amounts disbursed under the Local Bond may be capitalized until the first of the following events to occur: (1) APCO pays to the Borrower an amount equal to or greater than $4,500,000 pursuant to the Performance Agreement, or (2) January 13, 2031, the tenth (10th) anniversary of the effective date of the Performance Agreement. After the interest-only period, and continuing semi-annually thereafter on __________ 1 and __________ 1 in each year, principal and interest due under the Local Bond shall be payable in installments as set forth in Schedule I, with a final installment due and payable on _________ 1, 20[36], when if not sooner paid, all amounts due hereunder and under the Local Bond shall be due and payable in full. Each installment shall be applied first to payment of interest accrued and unpaid to the payment date and then to principal. If any installment of principal of or interest on the Local Bond is not paid within ten (10) days after its due date, the Borrower agrees to pay to the Commission a late payment charge in an amount equal to five percent (5.0%) of the overdue installment.

(c) Upon the occurrence of an Event of Default set forth in Section 11.1(a), including failure to pay upon mandatory prepayment or at final maturity, the outstanding principal balance of the Local Bond shall, at the Commission's option, bear interest at a rate of four percentage points (4%) per annum (the "**Default Rate**").

Section 6.2. Payment of Additional Payments. In addition to the payments of principal of and interest on the Local Bond, the Borrower agrees to pay on demand of the Commission the following Additional Payments:

(1) The costs of the Commission in connection with the enforcement of this Agreement including the reasonable fees and expenses of any attorneys or consultants used by any of them; and

(2) All expenses, including reasonable attorneys' fees, relating to any amendments, waivers, consents or collection or enforcement proceedings pursuant to the provisions hereof.

The Borrower agrees to pay, but solely from Revenues, interest on any Additional Payments enumerated in (1) or (2) above not received by the Commission within ten (10) days after demand therefor at the Default Rate on the overdue installment from its due date until the date it is paid.

ARTICLE VII
PREPAYMENTS

Section 7.1. Prepayment of Local Bond. Upon at least five (5) days' prior written notice, the Borrower may prepay the Local Bond at any time, in whole or in part and without penalty. Such written notice shall specify the date on which such prepayment shall occur and whether the Local Bond will be prepaid in full or in part, and if in part, the principal amount to be prepaid. Notwithstanding the forgoing, the Borrower shall promptly prepay any and all amounts received from or on behalf of APCO pursuant to the Performance Agreement or otherwise, without penalty, no later than five (5) days upon receipt of such amounts. Any such partial prepayment shall be applied against the principal amount outstanding under the Local Bond but shall not postpone the due date of any subsequent payment on the Local Bond, unless the Borrower and the Commission agree otherwise in writing.

ARTICLE VIII
<u>RESERVED</u>

ARTICLE IX
<u>RESERVED</u>

ARTICLE X
<u>SPECIAL COVENANTS</u>

Section 10.1 <u>Maintenance of Existence</u>. The Borrower shall maintain its existence as a public body corporate and a political subdivision of the Commonwealth of Virginia and, without consent of the Commission, shall not dissolve or otherwise dispose of all or substantially all of its assets or consolidate or merge with or into another entity. Notwithstanding the foregoing, the Borrower may consolidate or merge with or into, or sell or otherwise transfer all or substantially all of its assets to a political subdivision of the Commonwealth of Virginia, and the Borrower thereafter may dissolve, if the surviving, resulting or transferee political subdivision, if other than the Borrower, assumes, in written form acceptable to the Commission, all of the obligations of the Borrower contained in the Local Bond and this Agreement, and there is furnished to the Commission an Opinion of Counsel acceptable to the Commission subject to customary exceptions and qualifications, to the effect that such assumption constitutes the legal, valid and binding obligation of the surviving, resulting or transferee political subdivision enforceable against it in accordance with its terms.

Section 10.2 <u>Performance Agreement Covenants</u>. The Borrower shall not amend or modify the Performance Agreement without the prior written consent of the Commission. The Borrower shall perform under and shall enforce the terms of the Performance Agreement and use its best efforts to ensure that the Performance Agreement remains in full force and effect during the term of this Agreement. The Borrower shall give prompt written notice to the Commission and Loan Servicer of any default or termination of the Performance Agreement.

Section 10.3. <u>Inspection of Borrower's Books and Records</u>. Without limiting the Commission's rights under the Collateral, the Commission and its authorized representatives and agents shall have the right at all reasonable times and upon reasonable prior notice to the Borrower to examine and copy the books and records of the Borrower insofar as such books and records relate to the Project as may be necessary to determine whether the Borrower is in compliance with the requirements of this Agreement.

Section 10.4. <u>Further Assurances</u>. The Borrower shall to the fullest extent permitted by law, pass, make, do, execute, acknowledge and deliver such further resolutions, acts, deeds, conveyances, assignments, transfers and assurances as may be necessary or desirable for the better assuring, conveying, granting, assigning and confirming the rights granted or assigned by this Agreement, or as may be required to carry out the purposes of this Agreement. The Borrower shall at all times, to the fullest extent permitted by law, defend, preserve and protect all rights of the Commission under this Agreement against all claims and demands of all persons.

Section 10.5. RESERVED.

Section 10.6. Assignment by Borrower. The Borrower may not assign its rights under this Agreement without the prior written consent of the Commission. If the Borrower desires to assign its rights under this Agreement to another political subdivision of the Commonwealth of Virginia, the Borrower shall give notice of such fact to the Commission. If the Commission consent to the proposed assignment, the Borrower may proceed with the proposed assignment, but such assignment shall not become effective until the Commission is furnished (i) an assumption agreement in form and substance satisfactory to the Commission by which the assignee agrees to assume all of the Borrower's obligations under the Local Bond and this Agreement, and (ii) an Opinion of Counsel to the assignee, subject to customary exceptions and qualifications, that the assumption agreement, the Local Bond and this Agreement constitute legal, valid and binding obligations of the assignee enforceable against the assignee in accordance with their terms and that the assignment and assumption comply in all respects with the provisions of this Agreement. Notwithstanding the foregoing, the assignment of the rights of the Borrower under the Local Bond and this Agreement or the assumption of the obligations thereunder by the assignee shall in no way be construed as releasing the Borrower's obligations.

Section 10.7 Additional Indebtedness and Liens. The Borrower shall not incur any indebtedness or issue any bonds, notes or other evidences of indebtedness secured by or payable from the pledge of Revenues or a lien on the Collateral, without the prior written consent of the Commission. Borrower shall not, directly or indirectly, create, incur, assume or suffer to exist any mortgage, pledge, security interest, lien, charge, encumbrance or claim on or with respect to the pledge of Revenues or a lien on the Collateral, without the prior written consent of the Commission.

ARTICLE XI
DEFAULTS AND REMEDIES

Section 11.1. Events of Default. Each of the following events shall be an "**Event of Default**":

(a) The failure to pay when due any payment of principal or interest due hereunder or to make any other payment required to be made under the Local Bond or this Agreement;

(b) The Borrower's failure to perform or observe any of the other covenants, agreements or conditions of the Local Bond, the Performance Agreement, the Support Agreements or this Agreement and the continuation of such failure for a period of thirty (30) days after the Commission gives the Borrower written notice specifying such failure and requesting that it be cured, unless the Commission shall agree in writing to an extension of such time prior to its expiration; provided, however, if the failure stated in the notice is correctable but cannot be corrected within the applicable period, the Commission will not unreasonably withhold its consent to an extension of such time if corrective action is instituted by the Borrower within the applicable period and diligently pursued until the Default is corrected;

(c) Any warranty, representation or other statement by or on behalf of the Borrower contained in this Agreement or in any instrument furnished in compliance with or in reference to this Agreement or in connection with the issuance and sale of the Local Bond is false or misleading in any material respect;

(d) The occurrence of a default by the Borrower under the terms of any other indebtedness secured by a pledge of Revenues or a lien on the Collateral, and the failure to cure such default or obtain a waiver thereof within any period of time permitted thereunder;

(e) Any proceeding shall be instituted, with the Borrower's consent or acquiescence, for the purpose of effecting a composition between the Borrower and its creditors or for the purpose of adjusting the claims of such creditors, pursuant to any federal or state statute now or hereafter enacted, if the claims of such creditors are under any circumstances secured by a pledge of Revenues or lien on the Collateral; or

(f) Any bankruptcy, insolvency or other similar proceeding shall be instituted by or against the Borrower under any federal or state bankruptcy or insolvency law now or hereinafter in effect and, if instituted against the Borrower, is not dismissed within sixty (60) days after filing.

Section 11.2. Notice of Default. The Borrower agrees to give the Commission prompt written notice if any order, decree or proceeding referred to in Section 11.1(e) or (f) is entered or instituted against the Borrower or of the occurrence of any other event or condition which constitutes a Default or an Event of Default immediately upon becoming aware of the existence thereof.

Section 11.3. Remedies on Default. Whenever any Event of Default referred to in Section 11.1 shall have happened and be continuing, the Commission shall, in addition to any other remedies provided herein or by law, have the right, at its option without any further demand or notice, to take one or both of the following remedial steps:

(a) Declare immediately due and payable all payments due or to become due on the Local Bond and under this Agreement, and upon notice to the Borrower, the same shall become immediately due and payable by the Borrower without further notice or demand; and

(b) Take whatever other action at law or in equity may appear necessary or desirable to collect the payments then due and thereafter to become due on the Local Bond and under this Agreement, to enforce any other of the Commission's rights under this Agreement, or to enforce performance by the Borrower of its covenants, agreements or undertakings contained herein or in the Local Bond, which the Borrower hereby agrees are assigned to the Commission upon the occurrence of an Event of Default.

Section 11.4. Delay and Waiver. No delay or omission to exercise any right or power accruing upon any Default or Event of Default shall impair any such right or power or shall be construed to be a waiver of any such Default or Event of Default or acquiescence therein, and every such right or power may be exercised from time to time and as often as may be deemed expedient. No waiver of any Default or Event of Default under this Agreement shall extend to or shall affect any subsequent Default or Event of Default or shall impair any rights or remedies consequent thereto.

ARTICLE XII
MISCELLANEOUS

Section 12.1. Successors and Assigns. This Agreement shall be binding upon, inure to the benefit of and be enforceable by the parties and their respective successors and permitted assigns.

Section 12.2. Amendments. The Borrower and the Commission shall have the right to amend from time to time any of the terms and conditions of this Agreement, provided that all amendments shall be in a writing and shall be signed by the Borrower and the Commission; provided, however, that the written consent of the Loan Servicer shall be required for the Commission and the Borrower to amend this Agreement.

Section 12.3. Limitation of Borrower's Liability. No covenant, agreement or obligation contained in this Agreement or the Local Bond shall be deemed to be a covenant, agreement or obligation of any present or future director, officer, employee or agent of the Borrower in his or her individual capacity, and neither the directors of the Borrower nor any officer, employee or agent thereof executing this Agreement or the Local Bond shall be liable personally on such Agreement or Local Bond or be subject to any personal liability or accountability by reason of the issuance thereof. No director, officer, employee or agent of the Borrower shall incur any personal liability with respect to any other action taken by him or her pursuant to this Agreement or the Local Bond or the Virginia Regional Industrial Facilities Act (Section 15.2-6400 et seq. of the Code of Virginia of 1950, as amended) or any of the transactions contemplated thereby provided he or she acts in good faith.

THE OBLIGATIONS OF THE BORROWER UNDER THIS AGREEMENT AND THE LOCAL BOND ARE NOT GENERAL OBLIGATIONS OF THE BORROWER BUT ARE LIMITED OBLIGATIONS PAYABLE SOLELY FROM THE REVENUES AND RECEIPTS DERIVED BY THE BORROWER PURSUANT TO THIS AGREEMENT, WHICH REVENUES AND RECEIPTS HAVE BEEN PLEDGED AND ASSIGNED TO SUCH PURPOSES. THE OBLIGATIONS OF THE BORROWER HEREUNDER SHALL NOT BE DEEMED TO CONSTITUTE A DEBT OR A PLEDGE OF THE FAITH AND CREDIT OF THE COMMONWEALTH OF VIRGINIA OR ANY POLITICAL SUBDIVISION THEREOF, INCLUDING THE BORROWER, THE COUNTY, AND THE CITY. NEITHER THE COMMONWEALTH OF VIRGINIA NOR ANY POLITICAL SUBDIVISION THEREOF, INCLUDING THE BORROWER, THE COUNTY, AND THE CITY, SHALL BE OBLIGATED TO PAY THE OBLIGATIONS HEREUNDER OR OTHER COSTS INCIDENT

THERETO EXCEPT FROM THE REVENUES, RECEIPTS AND PAYMENTS PLEDGED THEREFOR, AND NEITHER THE FAITH AND CREDIT NOR THE TAXING POWER OF THE COMMONWEALTH OF VIRGINIA OR ANY POLITICAL SUBDIVISION THEREOF, INCLUDING THE BORROWER, THE COUNTY, AND THE CITY, IS PLEDGED TO THE PAYMENT OF THE LOCAL BOND.

Section 12.4. Applicable Law. This Agreement shall be governed by the applicable laws of the Commonwealth of Virginia.

Section 12.5. Severability. If any clause, provision or section of this Agreement shall be held illegal or invalid by any court, the illegality or invalidity of such clause, provision or Section shall not affect the remainder of this Agreement which shall be construed and enforced as if such illegal or invalid clause, provision or section had not been contained in this Agreement. If any agreement or obligation contained in this Agreement is held to be in violation of law, then such agreement or obligation shall be deemed to be the agreement or obligation of the Borrower and the Commission, as the case may be, only to the extent permitted by law.

Section 12.6. Notices. Unless otherwise provided for herein, all demands, notices, approvals, consents, requests, opinions and other communications under the Local Bond or this Agreement shall be in writing and shall be deemed to have been given when delivered in person, mailed by first class registered or certified mail, postage prepaid, or sent by recognized national overnight courier, addressed as follows:

Commission:	Tobacco Region Revitalization Commission 701 East Franklin Street, Suite 501 Richmond, VA 23219 Attention: Executive Director
Borrower:	Danville-Pittsylvania Regional Industrial Facility Authority Institute for Advanced Learning and Research 150 Slayton Avenue, Room 206 Danville, VA 24540 Attention: Chairman
Loan Servicer:	Virginia Resources Authority 1111 East Main Street, Suite 1920 Richmond, VA 23219 Attention: Executive Director

A duplicate copy of each demand, notice, approval, consent, request, opinion or other communication given by any party named in this Section 12.5 shall also be given to each of the other parties named. The Commission and the Borrower may designate, by notice given hereunder, any further or different addresses to which subsequent demands, notices, approvals, consents, requests, opinions or other communications shall be sent or persons to whose attention the same shall be directed.

Section 12.7. Right to Cure Default. If the Borrower shall fail to make any payment or to perform any act required by it under the Local Bond or this Agreement, the Commission without prior notice to or demand upon the Borrower and without waiving or releasing any obligation or default, may (but shall be under no obligation to) make such payment or perform such act. All amounts so paid by the Commission and all costs, fees and expenses so incurred shall be payable by the Borrower solely from Revenues as an additional obligation under this Agreement, together with interest thereon at the Default Rate until paid. The Borrower's obligation under this Section shall survive the payment of the Local Bond.

Section 12.8. Headings. The headings of the several articles and sections of this Agreement are inserted for convenience only and do not comprise a part of this Agreement.

Section 12.9. Term of Agreement. This Agreement shall be effective upon its execution and delivery, provided that the Local Bond previously or simultaneously shall have been executed and delivered. Except as otherwise specified, the Borrower's obligations under the Local Bond and this Agreement shall expire upon payment in full of the Local Bond and all other amounts payable by the Borrower under this Agreement.

Section 12.10. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be an original and all of which together shall constitute but one and the same instrument.

[Remainder of Page Intentionally Left Blank]

WITNESS the following signatures, all duly authorized.

VIRGINIA TOBACCO REGION REVITALIZATION COMMISSION

By: ____

Its: ____

DANVILLE-PITTSYLVANIA
REGIONAL INDUSTRIAL FACILITY AUTHORITY

By: ____

Its: ____

EXHIBIT A

FORM OF LOCAL BOND
DANVILLE-PITTSYLVANIA
REGIONAL INDUSTRIAL FACILITY AUTHORITY
LOAN NO. ____

[To Be Provided]

EXHIBIT B

PROJECT DESCRIPTION
DANVILLE-PITTSYLVANIA
REGIONAL INDUSTRIAL FACILITY AUTHORITY
LOAN NO. ____

The Project includes financing the relocation of an approximately two-mile portion of an existing 69kV transmission line at the Southern Virginia Megasite, together with related expenses.

EXHIBIT C

PROJECT BUDGET
DANVILLE-PITTSYLVANIA
REGIONAL INDUSTRIAL FACILITY AUTHORITY
LOAN NO. ____

[To Be Provided]

EXHIBIT D

OPINION OF BORROWER'S BOND COUNSEL
DANVILLE-PITTSYLVANIA
REGIONAL INDUSTRIAL FACILITY AUTHORITY
LOAN NO. ____

[To Be Provided]

EXHIBIT E

REQUISITION FOR DISBURSEMENT
DANVILLE-PITTSYLVANIA
REGIONAL INDUSTRIAL FACILITY AUTHORITY
LOAN NO. ____

[LETTERHEAD OF BORROWER]

[Date]

Tobacco Region Revitalization Commission
701 East Franklin Street, Suite 501
Richmond, VA 23219
Attention: Executive Director

Virginia Resources Authority, as Loan Servicer
1111 East Main Street, Suite 1920
Richmond, Virginia 23219
Attention: Executive Director

Re: Danville-Pittsylvania Regional Industrial Facility Authority
Loan No. _____

Dear Mr./Ms. __________:

This requisition, Number 1, is submitted by the Danville-Pittsylvania Regional Industrial Facility Authority (the "Borrower") in connection with the Financing Agreement, dated as of June 1, 2021 (the "Agreement"), between the Virginia Tobacco Region Revitalization Commission and the Borrower. Unless otherwise defined in this requisition, all capitalized terms used herein shall have the meanings set forth in Article I of the Agreement. The undersigned hereby requests disbursement of Local Bond Proceeds under the Agreement in the amount of $4,500,000, for the purposes of payment of the Project Costs as set forth in Schedule 1 attached hereto.

The undersigned certifies that (a) the amounts requested by the requisition will be applied solely and exclusively to the payment, or to the reimbursement of the Borrower for the payment, of Project Costs, (b) the amounts requested by the requisition have not been the basis for a prior requisition of the Borrower or APCO with respect to the Project, and (c) any materials, supplies or equipment covered by this requisition are not subject to any lien or security interest or such lien or security interest will be released upon payment of the requisition.

Very truly yours,

DANVILLE-PITTSYLVANIA REGIONAL INDUSTRIAL FACILITY AUTHORITY

By:__________________________

Its:___________________________

SCHEDULE 1
VIRGINIA TOBACCO REGIONAL REVITALIZATION COMMISSION
FORM TO ACCOMPANY REQUEST FOR DISBURSEMENT

REQUISITION # __________

BORROWER: DANVILLE-PITTSYLVANIA REGIONAL INDUSTRIAL FACILITY AUTHORITY

LOAN NUMBER: LOAN NO. ____

CERTIFYING SIGNATURE: ______________________________

BORROWER REPRESENTATIVE TITLE:____

Cost Category	Amount Budgeted	Previous Disbursements	Expenditures This Period	Total Expenditures To Date	Net Balance Remaining

Total Loan Amount $4,500,000
Previous Disbursements $0
This Request $4,500,000
Local Bond Proceeds Remaining $0

EXHIBIT F

SUPPORT AGREEMENTS
DANVILLE-PITTSYLVANIA
REGIONAL INDUSTRIAL FACILITY AUTHORITY
LOAN NO. ____

THIS SUPPORT AGREEMENT is made as of the first day of June, 2021, by and among the [**BOARD OF SUPERVISORS OF PITTSYLVANIA COUNTY, VIRGINIA** (the "Board"), acting as the governing body of the County of Pittsylvania, Virginia (the "County")] [**CITY COUNCIL OF DANVILLE, VIRGINIA** (the "Council"), acting as the governing body of the City of Danville, Virginia (the "City")], the **DANVILLE-PITTSYLVANIA REGIONAL INDUSTRIAL FACILITY AUTHORITY**, a public body corporate and a political subdivision of the Commonwealth of Virginia (the "Borrower"), and the **VIRGINIA TOBACCO REGION REVITALIZATION COMMISSION**, a public body corporate and a political subdivision of the Commonwealth of Virginia (the "Commission"), as purchaser of the Local Bond, as hereinafter defined, pursuant to a Financing Agreement dated as of the date hereof (the "Financing Agreement"), between the Borrower and the Commission.

RECITALS:

WHEREAS, the Borrower has determined that it is in its best interest to issue and sell a revenue bond in an original aggregate principal amount not to exceed $4,500,000 (the "Local Bond") to the Commission pursuant to the terms of the Financing Agreement in order to finance the Project; and

WHEREAS, the [Board][Council] adopted on June __, 2021, a resolution authorizing, among other things, the execution of an agreement providing for a non-binding obligation of the [Board][Council] to consider certain appropriations in support of the Local Bond and the Project.

AGREEMENT

NOW, THEREFORE, for and in consideration of the foregoing and of the mutual covenants herein set forth, the parties hereto agree as follows:

1. Unless otherwise defined, each capitalized term used in this Support Agreement shall have the meaning given it in the Financing Agreement.

2. The Borrower shall issue the Local Bond and to use the proceeds thereof to pay the Project Costs.

3. No later than May 15 of each year, beginning May 15, 2022, the Borrower shall notify the [Board][Council] of an amount that constitutes fifty percent (50%) the amount by which the Borrower reasonably expects the Revenues to be insufficient to pay (i) the debt service obligations under the Financing Agreement and the Local Bond, and (ii) the Additional Payments in full as and when due during the [County's][City's] fiscal year beginning the following July 1 (the "Annual Deficiency Amount") .

4. The [County Administrator of the County (the "County Administrator")][City Manager of the City (the "City Manager")] shall include the Annual Deficiency Amount in his or her budget submitted to the [Board][Council] for the following fiscal year as an amount to be appropriated to or on behalf of the Borrower. The [County Administrator/City Manager] shall deliver to the Commission within ten days after the adoption of the [County][City]'s budget for each fiscal year, but not later than July 15 of each year, a certificate stating whether the [Board][Council] has appropriated to or on behalf of the Borrower an amount equal to the Annual Deficiency Amount.

5. If at any time Revenues shall be insufficient to make any of the payments referred to in paragraph 3 hereof, the Borrower shall notify the [County Administrator/City Manager] of the amount of such insufficiency and the [County Administrator/City Manager] shall request a supplemental appropriation from the [Board/Council] in the amount necessary to make such payment.

6. The [County Administrator/City Manager] shall present each request for appropriation pursuant to paragraph 5 above to the [Board/Council], and the [Board/Council] shall consider such request, at the [Board/Council]'s next regularly scheduled meeting at which it is possible to satisfy any applicable notification requirement. Promptly after such meeting, the [County Administrator/City Manager] shall notify the Commission as to whether the amount so requested was appropriated. If the [Board/Council] shall fail to make any such appropriation, the [County Administrator/City Manager] shall add the amount of such requested appropriation to the Annual Deficiency Amount reported to the [County/City] by the [County Administrator/City Manager] for the [County/City]'s next fiscal year.

7. The [Board/Council] hereby undertakes a non-binding obligation to appropriate such amounts as may be requested from time to time pursuant to paragraphs 4 and 5 above, to the fullest degree and in such manner as is consistent with the Constitution and laws of the Commonwealth of Virginia. The [Board/Council], while recognizing that it is not empowered to make any binding commitment to make such appropriations in future fiscal years, hereby states its intent to make such appropriations in future fiscal years, and hereby recommends that future [Boards of Supervisors/City Councils] do likewise.

8. Nothing herein contained is or shall be deemed to be a lending of the credit of the [County/City] to the Borrower, the Commission, APCO or to any holder of the Local Bond or to any other person, and nothing herein contained is or shall be deemed to be a pledge of the faith and credit or the taxing power of the [County/City], nor shall anything herein contained legally bind or obligate the [Board/Council] to appropriate funds for the purposes described herein.

9. Any notices or requests required to be given hereunder shall be deemed given if sent by registered or certified mail, postage prepaid, addressed (i) if to the [County/City], to _____________, Attention: [County Administrator/City Manager], (ii) if to the Borrower, to the Institute for Advanced Learning and Research, 150 Slayton Avenue, Room 206, Danville, VA 24540, Attention: Chairman, and (iii) if to the Commission, to 701 East Franklin Street, Suite 501, Richmond, Virginia, 23219, Attention: Executive Director. Any party may designate any other address for notices or requests by giving notice.

10. It is the intent of the parties hereto that this Agreement shall be governed by the laws of the Commonwealth of Virginia.

11. This Agreement shall remain in full force and effect until the Local Bond and all other amounts payable by the Borrower under the Financing Agreement have been paid in full.

12. This Agreement may be executed in any number of counterparts, each of which shall be an original and all of which together shall constitute but one and the same instrument.

[Signature page follows]

IN WITNESS WHEREOF, the parties hereto have each caused this Agreement to be executed in their respective names as of the date first above written.

[BOARD OF SUPERVISORS OF PITTSYLVANIA COUNTY, VIRGINIA/CITY COUNCIL OF THE CITY OF DANVILLE, VIRGINIA]

By: ____

Title: ____

DANVILLE-PITTSYLVANIA REGIONAL INDUSTRIAL FACILITY AUTHORITY

By: ____

Title: ____

VIRGINIA TOBACCO REGION REVITALIZATION COMMISSION

By: ____

Title: ____

SCHEDULE I

DEBT SERVICE SCHEDULE
DANVILLE-PITTSYLVANIA
REGIONAL INDUSTRIAL FACILITY AUTHORITY
LOAN NO. ____

[To Come]

VRA Virginia Resources Authority

PRELIMINARY

Locality: Danville-Pittsylvania Regional Industrial Facility Authority
Loan Number: TBD
Loan Amount: $ 4,500,000
Interest Rate 1.50%
Mandatory Prepayment upon Refunding of Final Costs
Assumed Closing Date June 22, 2021
End of Capitalization Period January 1, 2031

PMT. #	DATE DUE	LOAN BALANCE AT START OF PERIOD	PAYMENT DUE	INTEREST PORTION	PRINCIPAL PORTION	CAPITALIZED INTEREST	LOAN BALANCE AT END OF PERIOD
1	1/1/2022	$ 4,500,000.00	$ -	$ 35,437.50	$ -	$ 35,437.50	$ 4,535,437.50
2	7/1/2022	4,535,437.50	-	34,015.78	-	34,015.78	4,569,453.28
3	1/1/2023	4,569,453.28	-	34,270.90	-	34,270.90	4,603,724.18
4	7/1/2023	4,603,724.18	-	34,527.93	-	34,527.93	4,638,252.11
5	1/1/2024	4,638,252.11	-	34,786.89	-	34,786.89	4,673,039.00
6	7/1/2024	4,673,039.00	-	35,047.79	-	35,047.79	4,708,086.79
7	1/1/2025	4,708,086.79	-	35,310.65	-	35,310.65	4,743,397.44
8	7/1/2025	4,743,397.44	-	35,575.48	-	35,575.48	4,778,972.92
9	1/1/2026	4,778,972.92	-	35,842.30	-	35,842.30	4,814,815.22
10	7/1/2026	4,814,815.22	-	36,111.11	-	36,111.11	4,850,926.33
11	1/1/2027	4,850,926.33	-	36,381.95	-	36,381.95	4,887,308.28
12	7/1/2027	4,887,308.28	-	36,654.81	-	36,654.81	4,923,963.09
13	1/1/2028	4,923,963.09	-	36,929.72	-	36,929.72	4,960,892.81
14	7/1/2028	4,960,892.81	-	37,206.70	-	37,206.70	4,998,099.51
15	1/1/2029	4,998,099.51	-	37,485.75	-	37,485.75	5,035,585.26
16	7/1/2029	5,035,585.26	-	37,766.89	-	37,766.89	5,073,352.15
17	1/1/2030	5,073,352.15	-	38,050.14	-	38,050.14	5,111,402.29
18	7/1/2030	5,111,402.29	-	38,335.52	-	38,335.52	5,149,737.81
19	1/1/2031	5,149,737.81	-	38,623.03	-	38,623.03	5,188,360.84
20	7/1/2031	5,188,360.84	540,477.92	38,912.71	501,565.21	[redacted]	4,686,795.63
21	1/1/2032	4,686,795.63	540,477.92	35,150.97	505,326.95	[redacted]	4,181,468.67
22	7/1/2032	4,181,468.67	540,477.92	31,361.02	509,116.90	[redacted]	3,672,351.77
23	1/1/2033	3,672,351.77	540,477.92	27,542.64	512,935.28	[redacted]	3,159,416.48
24	7/1/2033	3,159,416.48	540,477.92	23,695.62	516,782.30	[redacted]	2,642,634.18
25	1/1/2034	2,642,634.18	540,477.92	19,819.76	520,658.16	[redacted]	2,121,976.02
26	7/1/2034	2,121,976.02	540,477.92	15,914.82	524,563.10	[redacted]	1,597,412.91
27	1/1/2035	1,597,412.91	540,477.92	11,980.60	528,497.32	[redacted]	1,068,915.59
28	7/1/2035	1,068,915.59	540,477.92	8,016.87	532,461.05	[redacted]	536,454.54
29	1/1/2036	536,454.54	540,477.95	4,023.41	536,454.54	[redacted]	-
			$ 5,404,779.26	$ 904,779.26	$ 5,188,360.84	$ 688,360.84	

Interest on this bond is intended by the issuer thereof to be included in gross income for federal income tax purposes.

REGISTERED **REGISTERED**

No. R-1 **June [22], 2021**

DANVILLE- PITTSYLVANIA REGIONAL INDUSTRIAL FACILITY AUTHORITY (VIRGINIA)

TAXABLE REVENUE BOND (UTILITY RELOCATION PROJECT) SERIES 2021

The Danville-Pittsylvania Regional Industrial Facility Authority, a political subdivision of the Commonwealth of Virginia (the "Authority"), for value received, promises to pay, solely from the sources and in the manner described in this Bond, to the **Virginia Tobacco Region Revitalization Commission** (the "Commission"), the principal sum of FOUR MILLION FIVE HUNDRED THOUSAND AND XX/100 DOLLARS ($4,500,000.00) and to pay interest on the outstanding principal of this Bond from its dated date until payment of such principal sum has been made or provided for in full. Principal shall be due in installments on the dates and in the amounts set forth on Schedule 1 attached hereto, subject to prior redemption, with a final installment due on January 1, 2036. Interest on this Bond shall be due at the rate of 1.50% per annum (subject to adjustment as described below), computed on the basis of a 360-day year of twelve 30-day months, payable on each January 1 and July 1, commencing January 1, 2022.

If any installment of principal of and interest on this Bond is not paid to the Commission within ten (10) days after its due date, the Authority shall pay to the Commission a late payment charge in an amount equal to five percent (5.0%) of the overdue installment.

Upon the occurrence of an Event of Default under Section 11.1(a) of the Financing Agreement (as hereinafter defined), including failure to pay upon mandatory prepayment or at final maturity, the outstanding principal balance of this Bond shall, at the Commission's option, bear interest at a rate of four percentage points (4.0%) per annum (the "Default Rate") on the overdue installment from its due date until the date it is paid. The Authority will also pay, but solely from Revenues (as defined in the hereinafter defined Financing Agreement), interest on any Additional Payments not received by the Commission within ten (10) days after demand therefor at the Default Rate on the overdue installment from its due date until the date it is paid.

Principal and interest shall be paid in any coin or currency of the United States of America which, at the time of payment, is legal tender for the payment of public and private debts. Principal and interest shall be paid by wire transfer or by check or draft mailed to the Commission at its address as shown on the registration books of the Secretary of the Authority as Bond Registrar.

In case the date fixed for the payment of principal of or interest on this Bond is not a Business Day, then payment of the principal and interest need not be made on such date, but may be made on the next succeeding date which is not such a date, and if made on such next succeeding date, additional interest shall accrue for the period after such date of maturity or payment.

This Bond is issued under and pursuant to the Constitution and laws of the Commonwealth of Virginia, particularly Chapter 64, Title 15.2 of the Code of Virginia, as amended and in effect from time to time (the "Act"), a resolution duly adopted by the Board of Directors of the Authority on June ___, 2021, and a Financing Agreement dated as of [June 1], 2021 (the "Financing Agreement"), between the Commission and the Authority. Capitalized terms used but not otherwise defined herein have the meanings given to them in the Financing Agreement.

This Bond and the interest on it shall not be deemed to constitute or to create in any manner a debt, liability or obligation of the Commonwealth of Virginia or of any political subdivision or any agency thereof, including the Authority, or a pledge of the faith and credit of the Commonwealth of Virginia or any such political subdivision or any such agency, but shall be limited obligations of the Authority payable solely from the revenues and other funds pledged therefor and shall not be payable from any assets or funds of the Authority other than the revenues and other funds pledged therefor, and neither the faith and credit nor the taxing power of the Commonwealth of Virginia or any political subdivision or any agency thereof is pledged to the payment of the principal of, redemption premium, if any, or the interest on this Bond or other costs incident hereto.

This Bond has been issued in order to provide funds for the Authority to relocate an approximately two-mile portion of an existing 69kV transmission line located in the "megapark" industrial park known as "Southern Virginia Megasite at Berry Hill" on approximately 3,700 acres of land owned by the Authority, and to undertake such related work necessary to accomplish such relocation (collectively, the "Project").

This Bond is a limited obligation of the Authority and is payable solely from the Revenues, including, but not limited to, payments made to the Authority under the terms of the Performance Agreement and amounts that may be appropriated for and paid to the Authority by the County or the City under the Support Agreements, which revenues and other moneys have been pledged pursuant to the Financing Agreement and the Resolution to secure payment hereof. This Bond shall not be payable from any assets or funds of the Authority other than the revenues and other funds pledged therefor.

Reference is made to the Financing Agreement and the Support Agreements for a description of the provisions, among others, with respect to the terms on which this Bond is issued, the nature and extent of the security for this Bond, the rights, duties and obligations of the Authority and the rights of the holder of this Bond.

This Bond is subject to optional and mandatory prepayment on the terms set forth in the Financing Agreement.

If an Event of Default occurs, all payments due or to become due on this Bond may be declared immediately due and payable by the holder by written notice to the Authority.

Notwithstanding anything in this Bond to the contrary, in addition to the payments of the principal provided for by this Bond, the Authority shall also pay, but solely from the revenues and other funds pledged therefor, such Additional Payments, if any, which may be necessary to provide for payment in full of all amounts due under the Financing Agreement.

This Bond is transferable by the Registered Owner hereof or its duly authorized attorney at the office of the Secretary of the Authority as Bond Registrar, in Danville, Virginia, upon surrender of this Bond, accompanied by a duly executed instrument of transfer in form satisfactory to the Bond Registrar, subject to such reasonable regulations as the Authority or the Bond Registrar may prescribe, and upon payment of any tax or other governmental charge incident to such transfer. Upon any such transfer, a new Bond registered in the name of the transferee or transferees in the same aggregate principal amount as the principal amount of this Bond will be issued to the transferee. Except as set forth in this Bond and as otherwise provided in the Financing Agreement, the person in whose name this Bond is registered shall be deemed the owner hereof for all purposes, and neither the Authority nor the Bond Registrar shall be affected by any notice to the contrary.

This Bond shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia.

All acts, conditions and things required to happen, exist or be performed precedent to and in connection with the issuance of this Bond have happened, exist and have been performed in due time, manner and form as required.

[THE REST OF THIS PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the Danville-Pittsylvania Regional Industrial Facility Authority has caused this Bond to be executed with the manual signature of its Chairman or Vice Chairman and its official seal to be impressed or imprinted hereon and attested by the manual signature of its Secretary or Assistant Secretary, all as of the date shown above.

DANVILLE-PITTSYLVANIA REGIONAL INDUSTRIAL FACILITY AUTHORITY

By: ______________________________
[Vice] Chairman

[SEAL]

ATTEST:

____
[Assistant] Secretary

SCHEDULE 1

DEBT SERVICE SCHEDULE

[*TO COME***]**

EXHIBIT F

SUPPORT AGREEMENTS
DANVILLE-PITTSYLVANIA
REGIONAL INDUSTRIAL FACILITY AUTHORITY
LOAN NO. ____

THIS SUPPORT AGREEMENT is made as of the first day of June, 2021, by and among the [**BOARD OF SUPERVISORS OF PITTSYLVANIA COUNTY, VIRGINIA** (the "Board"), acting as the governing body of the County of Pittsylvania, Virginia (the "County")] [**CITY COUNCIL OF DANVILLE, VIRGINIA** (the "Council"), acting as the governing body of the City of Danville, Virginia (the "City")], the **DANVILLE-PITTSYLVANIA REGIONAL INDUSTRIAL FACILITY AUTHORITY**, a public body corporate and a political subdivision of the Commonwealth of Virginia (the "Borrower"), and the **VIRGINIA TOBACCO REGION REVITALIZATION COMMISSION**, a public body corporate and a political subdivision of the Commonwealth of Virginia (the "Commission"), as purchaser of the Local Bond, as hereinafter defined, pursuant to a Financing Agreement dated as of the date hereof (the "Financing Agreement"), between the Borrower and the Commission.

RECITALS:

WHEREAS, the Borrower has determined that it is in its best interest to issue and sell a revenue bond in an original aggregate principal amount not to exceed $4,500,000 (the "Local Bond") to the Commission pursuant to the terms of the Financing Agreement in order to finance the Project; and

WHEREAS, the [Board][Council] adopted on June __, 2021, a resolution authorizing, among other things, the execution of an agreement providing for a non-binding obligation of the [Board][Council] to consider certain appropriations in support of the Local Bond and the Project.

AGREEMENT

NOW, THEREFORE, for and in consideration of the foregoing and of the mutual covenants herein set forth, the parties hereto agree as follows:

1. Unless otherwise defined, each capitalized term used in this Support Agreement shall have the meaning given it in the Financing Agreement.

2. The Borrower shall issue the Local Bond and to use the proceeds thereof to pay the Project Costs.

3. No later than May 15 of each year, beginning May 15, 2022, the Borrower shall notify the [Board][Council] of an amount that constitutes fifty percent (50%) the amount by which the Borrower reasonably expects the Revenues to be insufficient to pay (i) the debt service obligations under the Financing Agreement and the Local Bond, and (ii) the Additional Payments in full as and when due during the [County's][City's] fiscal year beginning the following July 1 (the "Annual Deficiency Amount") .

4. The [County Administrator of the County (the "County Administrator")][City Manager of the City (the "City Manager")] shall include the Annual Deficiency Amount in his or her budget submitted to the [Board][Council] for the following fiscal year as an amount to be appropriated to or on behalf of the Borrower. The [County Administrator/City Manager] shall deliver to the Commission within ten days after the adoption of the [County][City]'s budget for each fiscal year, but not later than July 15 of each year, a certificate stating whether the [Board][Council] has appropriated to or on behalf of the Borrower an amount equal to the Annual Deficiency Amount.

5. If at any time Revenues shall be insufficient to make any of the payments referred to in paragraph 3 hereof, the Borrower shall notify the [County Administrator/City Manager] of the amount of such insufficiency and the [County Administrator/City Manager] shall request a supplemental appropriation from the [Board/Council] in the amount necessary to make such payment.

6. The [County Administrator/City Manager] shall present each request for appropriation pursuant to paragraph 5 above to the [Board/Council], and the [Board/Council] shall consider such request, at the [Board/Council]'s next regularly scheduled meeting at which it is possible to satisfy any applicable notification requirement. Promptly after such meeting, the [County Administrator/City Manager] shall notify the Commission as to whether the amount so requested was appropriated. If the [Board/Council] shall fail to make any such appropriation, the [County Administrator/City Manager] shall add the amount of such requested appropriation to the Annual Deficiency Amount reported to the [County/City] by the [County Administrator/City Manager] for the [County/City]'s next fiscal year.

7. The [Board/Council] hereby undertakes a non-binding obligation to appropriate such amounts as may be requested from time to time pursuant to paragraphs 4 and 5 above, to the fullest degree and in such manner as is consistent with the Constitution and laws of the Commonwealth of Virginia. The [Board/Council], while recognizing that it is not empowered to make any binding commitment to make such appropriations in future fiscal years, hereby states its intent to make such appropriations in future fiscal years, and hereby recommends that future [Boards of Supervisors/City Councils] do likewise.

8. Nothing herein contained is or shall be deemed to be a lending of the credit of the [County/City] to the Borrower, the Commission, APCO or to any holder of the Local Bond or to any other person, and nothing herein contained is or shall be deemed to be a pledge of the faith and credit or the taxing power of the [County/City], nor shall anything herein contained legally bind or obligate the [Board/Council] to appropriate funds for the purposes described herein.

9. Any notices or requests required to be given hereunder shall be deemed given if sent by registered or certified mail, postage prepaid, addressed (i) if to the [County/City], to ______________, Attention: [County Administrator/City Manager], (ii) if to the Borrower, to the Institute for Advanced Learning and Research, 150 Slayton Avenue, Room 206, Danville, VA 24540, Attention: Chairman, and (iii) if to the Commission, to 701 East Franklin Street, Suite 501, Richmond, Virginia, 23219, Attention: Executive Director. Any party may designate any other address for notices or requests by giving notice.

10. It is the intent of the parties hereto that this Agreement shall be governed by the laws of the Commonwealth of Virginia.

11. This Agreement shall remain in full force and effect until the Local Bond and all other amounts payable by the Borrower under the Financing Agreement have been paid in full.

12. This Agreement may be executed in any number of counterparts, each of which shall be an original and all of which together shall constitute but one and the same instrument.

[Signature page follows]

IN WITNESS WHEREOF, the parties hereto have each caused this Agreement to be executed in their respective names as of the date first above written.

[BOARD OF SUPERVISORS OF PITTSYLVANIA COUNTY, VIRGINIA/CITY COUNCIL OF THE CITY OF DANVILLE, VIRGINIA]

By: ______________________________

Title: ______________________________

DANVILLE-PITTSYLVANIA REGIONAL INDUSTRIAL FACILITY AUTHORITY

By: ______________________________

Title: ______________________________

VIRGINIA TOBACCO REGION REVITALIZATION COMMISSION

By: ______________________________

Title: ______________________________

Danville-Pittsylvania Regional Industrial Facility Authority

Executive Summary

Agenda Item No.:	Item 5G
Meeting Date:	06/14/2021
Subject:	Resolution 2021-06-14-5G
From:	Ms. Bobe and Mr. Rowe

SUMMARY

The Board will be asked to consider Resolution 2021-06-14-5G approving that certain Local Performance Agreement with Walraven Inc.

ATTACHMENTS

Resolution

Exhibit

Resolution No. 2021-06-14-5G

A RESOLUTION APPROVING THAT CERTAIN LOCAL PERFORMANCE AGREEMENT WITH WALRAVEN INC., A MICHIGAN CORPORATION, AND OTHERS, UNDER WHICH THE AUTHORITY AND OTHER GOVERNMENT PARTIES WOULD PROVIDE CERTAIN INCENTIVES, INCLUDING THE APPLICATION BY THE AUTHORITY FOR AND DISBURSEMENT OF CERTAIN STATE GRANTS AND LOAN, AND THE OPPORTUNITY TO LEASE FROM THE INDUSTRIAL DEVELOPMENT AUTHORITY OF DANVILLE, CERTAIN REAL PROPERTY COMMONLY KNOWN AS 500 CANE CREEK PARKWAY, IN THE AUTHORITY'S CANE CREEK CENTRE PROJECT LOCATED IN PITTSYLVANIA COUNTY, VIRGINIA, IN EXCHANGE FOR CAPITAL INVESTMENTS OF AT LEAST $7,150,000.00 AND THE CREATION OF 46 FULL-TIME JOBS WITH AN AVERAGE YEARLY BASE WAGE OF AT LEAST $48,913.00

WHEREAS, the Danville-Pittsylvania Regional Industrial Facility Authority (the "**Authority**") is a political subdivision of the Commonwealth of Virginia duly created pursuant to the Virginia Regional Industrial Facilities Act, as amended; and

WHEREAS, the Authority, the County of Pittsylvania, Virginia (the "**County**"), and the City of Danville, Virginia (the "**City**"), in order to stimulate economic growth and development of the community by creating jobs and infrastructure have agreed to provide incentives to new and expanding businesses which conduct industrial activity; and

WHEREAS, Walraven Inc., a Michigan corporation ("**Walraven**"), is an operating subsidiary of J. van Walraven Holding B.V., a private limited company organized under the laws of the Netherlands, which has over 78 years of experience designing, manufacturing and assembling high-performance installation and construction brackets, supports, and bespoke solutions; and

WHEREAS, Walraven has agreed to establish and to operate its U.S. headquarters, sales office, and manufacturing facilities upon that certain real property containing approximately 36.31 acres of land owned by the Industrial Development Authority of Danville, Virginia (the **"City IDA") ,** commonly known as 500 Cane Creek Parkway, Ringgold, Virginia, Tax GPIN 2347-24-2335, Lot 5 (the **"Property"**), located within RIFA's Cane Creek Centre Industrial Park ("**Cane Creek**") located in Pittsylvania County, Virginia. Upon the Property, the City IDA owns a 40,000 square foot building; and

WHEREAS, the Authority desires to negotiate, execute and deliver a local performance agreement ("**LPA**") with Walraven under which the Authority would provide at a minimum an industrial enhancement grant in the form of annual tax rebates on real estate and tangible personal property for the establishment of a production facility, in exchange for certain minimum performance parameters as those required by the Governor's Office and/or the Tobacco Region Revitalization Commission, among other incentives provided by and/or among the Government Parties (as defined in the LPA), substantially in the form of Exhibit A, attached hereto an incorporated herein by this reference; and

WHEREAS, under the LPA, each of the Authority, the City and the County would agree to provide certain incentives to Walraven in exchange for Walraven meeting certain performance metrics within the performance period. Such incentives from the Authority, as more particularly described in the LPA, would include, among other things, an Enterprise Zone grant for the creation of New Jobs of up to Twenty Three Thousand and 00/100 Dollars ($23,000.00), and up to Twenty Five Thousand and 00/100 Dollars ($25,000.00) for Capital Investment for the New Facility in value in the form of commercial building permit fee waivers and development fee waivers; and

WHEREAS, the Authority has determined that it is in the best interests of the Authority, the citizens of the County and the City, and the development of Cane Creek Centre for the Authority to negotiate, execute and to deliver a LPA with Walraven.

NOW, THEREFORE, BE IT RESOLVED, that

1. The Authority hereby authorizes and approves the negotiation, execution and delivery of a LPA with Walraven, as described in this Resolution and substantially in the form of Exhibit A, each of the Authority's Chairman and Vice Chairman, in consultation with the other, is authorized to further modify a LPA on such terms and conditions as the Chairman or Vice Chairman, in consultation with the other, determines to be reasonable, appropriate and consistent with this Resolution and hereby authorizes the Chairman and the Vice Chairman, either of whom may act independently of the other, to execute and deliver a LPA, and all other related documents to consummate the transaction, on behalf of the Authority, such execution of a LPA, and related documents by the Chairman (or Vice Chairman as the case may be) to conclusively establish his approval of any modifications as consulted by and between the Chairman and Vice Chairman.

2. The Authority hereby authorizes and directs staff and other agents and representatives working on behalf of the Authority to take such actions and to do all such things as are contemplated by a LPA, or as they in their discretion deem necessary or appropriate in order to carry out the intent and purposes of these resolutions; however, such authorization shall be subject to appropriation and budget levels, and the form and the legality of the LPA shall have been approved by legal counsel to the Authority.

3. The Authority hereby approves, ratifies and confirms any and all actions previously taken by the Authority, its agents and representatives, in respect to a LPA and the matters contemplated therein or related thereto on or before the date of this Resolution is adopted.

4. This Resolution shall take effect immediately upon its adoption.

- # -

Resolution No. 2021-06-14-5G

CERTIFICATE

I, the undersigned Secretary of the Danville-Pittsylvania Regional Industrial Facility Authority, hereby certify that the foregoing is a true, correct and complete copy of a Resolution duly adopted by a majority of the directors of the Danville-Pittsylvania Regional Industrial Facility Authority at a regular meeting duly called and held on June 14, 2021, and that such Resolution has not been repealed, revoked, rescinded or amended, but is in full force and effect on the date hereof.

WITNESS my hand as Secretary of the Danville-Pittsylvania Regional Industrial Facility Authority this 14th day of June 2021.

____

SUSAN M. DeMASI, Secretary
Danville-Pittsylvania Regional Industrial
Facility Authority

(SEAL)

Resolution No. 2021-06-14-5G

Exhibit A

(Local Performance Agreement)

LOCAL PERFORMANCE AGREEMENT

THIS LOCAL PERFORMANCE AGREEMENT (this "**Agreement**"), made and entered into as of the ____ day of May 2021, by and among **DANVILLE-PITTSYLVANIA REGIONAL INDUSTRIAL FACILITY AUTHORITY**, a political subdivision of the Commonwealth of Virginia ("**RIFA**"); the **COUNTY OF PITTSYLVANIA, VIRGINIA,** a political subdivision of the Commonwealth of Virginia (the "**County**"); the **CITY OF DANVILLE, VIRGINIA**, a political subdivision of the Commonwealth of Virginia (the "**City**"); the **INDUSTRIAL DEVELOPMENT AUTHORITY OF DANVILLE, VIRGINIA**, a political subdivision of the Commonwealth of Virginia (the "**City IDA**"); and **WALRAVEN INC.**, a Michigan corporation (the "**Company**");

W I T N E S S E T H :

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties agree as follows:

Section 1. - Recitals. The parties recite the following facts:

a. In order to stimulate economic growth and development of the community by creating jobs and infrastructure, RIFA, the County and the City IDA have agreed to provide incentives to new and expanding businesses which conduct industrial activity.

b. The Company is an operating subsidiary of J. van Walraven Holding B.V., a private limited company organized under the laws of the Netherlands, which has over 78 years of experience designing, manufacturing and assembling high-performance installation and construction brackets, supports, and bespoke solutions.

c. The Company desires to establish its U.S. headquarters, sales office, and manufacturing facilities (the "**New Facility**") upon that certain real property containing approximately 36.31 acres of land owned by the City IDA, commonly known as 500 Cane Creek Parkway, Ringgold, Virginia, Tax GPIN 2347-24-2335, Lot 5 (the "**Property**"), located within RIFA's Cane Creek Centre Industrial Park in Pittsylvania County, Virginia ("**Cane Creek**"). Upon the Property, the City IDA owns a 40,000 square foot building (the "**Building**"). The Property, the Building and all other improvements to the Property shall be collectively referred to as the "**Project Site**".

d. During the Performance Period (as defined below), the Company plans to make capital investments of at least Seven Million One Hundred Fifty Thousand and 00/100 Dollars ($7,150,000.00) to or for the New Facility and to create forty-six (46) full-time jobs with an average yearly base wage of at least Forty Eight Thousand Nine Hundred Thirteen and 00/100

Dollars ($48,913.00), as set forth in this Agreement.

e. Each of RIFA, the County, the City and the City IDA is willing to provide those certain incentives to the Company summarized in **Schedule 1(e)**, attached hereto and incorporated herein by this reference, provided that the Company satisfies certain criteria relating to employment projections and capital investment as described below.

f. Each of RIFA, the County, the City and the City IDA finds that the provisions of this Agreement and the commitments of the Company will promote the expansion of industry by inducing industrial development within Cane Creek, and that such development will promote the safety, health, welfare, convenience and prosperity of the citizens of the County and the City of Danville, Virginia.

Section 2. - Definitions. For the purposes of this Agreement, the following terms shall have the following definitions:

a. "***Agreement***" shall mean this Local Performance Agreement and shall have the same meaning as set forth in the header paragraph.

b. "***Affiliated Entity***" shall have the same meaning as in Section 3(c).

c. "***Building***" shall have the same meaning as that term in Section 1(c) above.

d. "***Cane Creek***" shall have the same meaning as that term in Section 1(c).

e. "***Capital Investment***" means a capital expenditure by the Company or by an Affiliated Entity on behalf of the Company in taxable real property, taxable tangible personal property, or both, at or for use at the New Facility. A capital expenditure related to a leasehold interest in real property will be considered to be made "**on behalf of the Company**" if a lease between the City IDA (or a third party developer) and the Company is a capital lease, or is an operating lease having a term of at least ten (10) years, and the real property would not have been constructed or improved but for the Company's interest in leasing some or all of the real property. Only the capital expenditures allocated to the portion of the real property to be leased by the Company will count as Capital Investment. The purchase or lease of furniture, fixtures, machinery and equipment, including under an operating lease for use at the New Facility, will qualify as Capital Investment hereunder.

f. "***City***" shall have the same meaning as that term in the header paragraph of this Agreement.

g. "***City IDA***" shall have the same meaning as that term in the header paragraph of this Agreement.

h. “***Company***” shall have the same meaning as that term in the header paragraph of this Agreement.

i. “***County***” shall have the same meaning as that term in the header paragraph of this Agreement.

j. “***Event of Default***” shall have the same meaning as that term in Section 8 below.

k. “***Event of Force Majeure***” shall mean without limitation, any of the following: acts of God; strikes, lockouts or other industrial labor disturbances; act of public enemies; orders of any kind of the government of the United States of America or of the Commonwealth or any of their respective departments, agencies, political subdivisions or officials, or any civil or military authority; insurrections; riots; epidemics; pandemics; landslides; lightning; earthquakes; fires; hurricanes; tornadoes; storms; floods; washouts; droughts; arrests; restraint of government and people; civil disturbances; terrorism; explosions; breakage or accident to machinery, transmission pipes or canals not caused by the Company; partial or entire failure of utilities; or any other cause or event not reasonably within the control of the Company. The provisions of the Section shall not operate to excuse the Company from the prompt payment of any sums owed to any Government Party under the terms of this Agreement and shall not operate to extend the Performance Date. Delays or failures to perform resulting from lack of funds shall not be deemed delays beyond the reasonable control of the Company.

l. “***Government Party***” *or* “***Government Parties***” shall mean any one or more of RIFA, the County, the City and the City IDA.

m. “***Landlord***” shall have the same meaning as that term is used in Section 5 below.

n. “***Maintain***”, as it pertains to a New Job, shall mean that the New Job will continue without interruption from the date of creation through the 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 not to exceed sixty (60) days.

o. “***New Facility***” shall have the same meaning as that term is used in Section 1(c) above.

p. “***New Facility Completion Date***” shall mean the Commencement Date as such term is defined under the New Facility Lease.

q. "***New Facility Lease***" shall have the same meaning as that term is used in Section 5 below.

r. "***New Job***" shall mean new permanent full-time employment of an indefinite duration at the New 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 Forty Eight Thousand Nine Hundred Thirteen and 00/100 Dollars ($48,913.00), excluding standard fringe benefits. Each New Job must require a minimum of either (i) thirty-five (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 forty-eight (48) weeks, or (ii) one thousand six hundred eighty (1,680) hours per year. Seasonal or temporary positions, positions created when a job function is shifted from an existing location in the Commonwealth of Virginia, and positions with construction contractors, vendors, suppliers and similar multiplier or spin-off jobs shall not qualify as New Jobs.

s. "***Performance Date***" shall mean the date that is five (5) years after the New Facility Completion Date .

t. "***Performance Period***" shall mean that period of time commencing the New Facility Completion Date and ending on the Performance Date.

u. "***Property***" shall have the same meaning as that term in Section 1(c) above.

v. "***Project Site***" shall have the same meaning as that term in Section 1(c) above.

w. "***Recruitment Documents***" shall mean any one or more of this Agreement, the New Facility Lease, any and all performance grant agreements executed by the Company pertaining to State Grants and any other document(s) executed, at the request of RIFA, by the Company in connection with this Agreement.

x. "***RIFA***" shall have the same meaning as that term in the header paragraph of this Agreement.

y. "***State Grants***" shall mean the Commonwealth Opportunity Fund Grant; the Tobacco Region Opportunity Fund Grant; the Virginia State Enterprise Zone Grants; and the Virginia Jobs Investment Program Grant.

z. "***Tobacco Commission***" shall mean the Virginia Tobacco Region Revitalization Commission, a political subdivision of the Commonwealth of Virginia, as created in Chapter 31 of Title 3.2 of the Code of Virginia, 1950, as amended.

Section 3. - Capital Investment; New Job Creation; and Virginia Domestication/New

Entity Formation by the Company.

a. $7.15M Capital Investment. On or before the Performance Date, the Company plans to make Capital Investment in the minimum aggregate amount of Seven Million One Hundred Fifty Thousand and 00/100 Dollars ($7,150,000.00) to or for the New Facility.

(i) The Company, at its expense, shall arrange for or cause the installation of the New Facility to be completed on or before the New Facility Completion Date, as evidenced by the receipt of a temporary or permanent certificate of occupancy.

(ii) The Company shall obtain prior written approval from RIFA of (A) the construction (including upfit renovation) plans for the New Facility, and (B) the schedule that is reasonably calculated to complete the construction (including upfit renovation) and capital expenditures within the Performance Period.

b. 46 New Jobs. The Company plans to create and Maintain forty-six (46) New Jobs on or before the Performance Date. Beginning December 1, 2021, on December 1 and June 1 of each year during the Performance Period, the Company shall produce and deliver to RIFA a New Jobs roster itemizing, at a minimum, each New Job and the base pay (excluding fringe benefits), as described in Section 2(r) above and any other information pertaining to such New Job employees as may be reasonably requested by RIFA. The Company shall redact from the New Jobs roster any personally identifiable information of its employees. The Company hereby authorizes each of the County's Economic Development Director, the City Economic Development Director and the RIFA Treasurer or his respective designees to obtain and to verify the information contained in the New Jobs roster from the Virginia Employment Commission.

c. Qualification in Virginia; Establishment of an Affiliated Entity. Within ninety (90) days after the date of this Agreement, the Company shall qualify as a foreign corporation in the Commonwealth of Virginia or establish an affiliated entity controlled by the Company and organized under the laws of the Commonwealth of Virginia (the "**Affiliated Entity**"). The Affiliated Entity, if any, shall support the Company's operations at the New Facility on such terms and conditions as the Company and the Affiliated Entity shall agree. Within thirty (30) days after such organization, the Company shall cause the Affiliated Entity, if any, to execute a joinder certificate in the form reasonably satisfactory to RIFA's counsel, under which the Affiliated Entity joins this Agreement as a party and agrees to be bound by the same terms and conditions of this Agreement to the same extent as the Company is bound. The Company and the Affiliated Entity, if any, shall be in good standing with the Virginia State Corporation Commission and authorized to transact business in Virginia throughout the balance of the Performance Period.

d. Progress Report. Beginning on the first day of the month that is at least six (6) months after the New Facility Completion Date and annually thereafter during the Performance Period, the Company shall produce and deliver to RIFA the form attached hereto as **Schedule 3(d)**, with verification reasonably satisfactory to the RIFA, the Company's progress on the New Jobs and Capital Investment.

Section 4. - Funds Extended to or for the Company.

a. State Grant Applications. As part of the construction (including upfit renovation as defined in the New Facility Lease) of the New Facility, RIFA or other Government Parties shall apply for and accept State Grants as follows:

i. $100,000.00 Commonwealth's Development Opportunity Fund Grant. As a condition to and as a part of the application for the Commonwealth's Development Opportunity Fund Grant, RIFA and the Company shall enter into a performance grant agreement with the Virginia Economic Development Partnership. After receipt of the funds, RIFA shall disburse the funds to the Company upon the Company's satisfaction or achievement of certain performance metrics as set forth in such performance grant agreement.

ii. $46,500.00 Tobacco Region Opportunity Fund Grant. As a condition to and as a part of the application for the Tobacco Region Opportunity Fund Grant, RIFA and the Company shall enter into a performance grant agreement with the Tobacco Commission. After receipt of the funds, RIFA shall disburse the funds to the Company upon the Company's satisfaction or achievement of certain performance metrics as set forth in such performance grant agreement.

iii. $46,500.00 Tobacco Region Opportunity Fund Loan, 5-Year Term at 0% interest. As a condition to and as a part of the application for the Tobacco Region Opportunity Fund Loan, RIFA and the Company shall enter into a loan agreement with the Tobacco Commission for Forty Six Thousand Five Hundred and 00/100 Dollars ($46,500.00), with a five (5) year loan term at no interest, and upon such other terms and conditions as each of RIFA, the Company, and the Tobacco Commission, in their respective discretion, shall then agree. After receipt of the loan funds, RIFA shall disburse the loan funds to the Company upon the Company's satisfaction or achievement of certain performance metrics as set forth in such loan agreement.

iv. $119,200.00 for job creation and up to $100,000.00 for real property improvements: Virginia State Enterprise Zone Grant. The Project Site is located in a Virginia Enterprise Zone. RIFA, the County or the City IDA shall apply or apply with the Company for a Virginia State Enterprise Zone Grant from the Virginia Department of Housing and Community Development, for One Hundred Nineteen Thousand Two Hundred and 00/100 Dollars ($119,200.00) for job creation of the New Jobs and up to One Hundred Thousand and 00/100 Dollars ($100,000.00) for the improvements to the Project Site. If such application for such grant is approved, RIFA, the County or the City IDA shall disburse the grant to the Company according to the terms and conditions of the Virginia Enterprise Zone program.

v. $18,750.00 Virginia Jobs Investment Program Grant. RIFA shall reasonably assist the Company in applying for grants under the Virginia Economic Development Partnership's Virginia Jobs Investment Program, for Eighteen Thousand Seven Hundred Fifty and 00/100 Dollars ($18,750.00) for job creation of the New Jobs. Under the program, the Virginia Economic Development Partnership (or if allowed by the program, RIFA) shall disburse the grant to the Company according to the terms and conditions of the Virginia Jobs Investment Program but no later than the Performance Date.

The Company shall reasonably cooperate with the Government Parties in connection with the applications for the State Grants, including without limitation providing financial information about the Company, the Company's planned Capital Investments, and the creation schedule of the New Jobs.

b. $23,000.00 for job creation and up to $25,000.00 for permit fee waivers: County Enterprise Zone Grant. The County acknowledges that under the County's Enterprise Zone program, the Company is eligible for Twenty Three Thousand and 00/100 Dollars ($23,000.00) for the creation of New Jobs as contemplated in this Agreement, and up to Twenty Five Thousand and 00/100 Dollars ($25,000.00) for Capital Investment for the New Facility in value in the form of commercial building permit fee waivers and development fee waivers during the Performance Period. The County shall disburse such grant according to the terms and conditions of its Enterprise Zone program. After this grant is disbursed, this grant is not subject to recapture by the County or any other Government Party in the event the Company fails to make the Capital Investment and/or create and Maintain the New Jobs on or before the Performance Date.

c. $73,063.00 Danville-Pittsylvania County Industrial Enhancement Grant. For a period of five (5) years beginning after the New Facility Completion Date, the County shall disburse this grant to the Company in the form of a fifty percent (50%) rebate on taxes paid by the Company imposed on machinery and tools used in manufacturing (excluding office equipment, furniture or fixtures) and on real property taxes (or as applicable, Additional Rent paid to the City IDA under the New Facility Lease) on the Project Site. In no event shall this grant exceed fifty percent (50%) of the aggregate amount of actual taxes paid to the County (and Additional Rent for taxes to the City IDA, as the case may be).

d. Manufacturing Sales and Use Tax Exemptions. The Company shall be eligible for manufacturing sales and use tax exemptions in an amount estimated to be Two Hundred Sixty Five Thousand and 00/100 Dollars ($265,000.00), in accordance with applicable state law.

e. Capital Investment and New Jobs Below Requirements. If, as of the Performance Date, the Company has achieved both of seventy five percent (75%) of the Capital Investment and New Jobs, but has not achieved the full Capital Investment and the full New Jobs, the Company will receive not less than fifty percent (50%) of the local incentives provided in this Agreement.

Section 5. - New Facility Lease of the Project Site. Concurrently with the execution of this Agreement, the Company shall execute and deliver to the City IDA, a New Facility Lease of the Project Site between the City IDA (or its assignee which may be a third party developer acceptable to the Company), as landlord ("**Landlord**"), and the Company, as tenant (the "**New Facility Lease**"), in the form reasonably acceptable to RIFA, the City IDA and the Company substantially in the form attached hereto as **Schedule 5**, attached hereto and incorporated herein by this reference.

Section 6. - Capital Investment Report and Annual Financial Statements. The Company shall provide a signed report to RIFA annually, beginning on the first day of the month that is at least twelve (12) months after the opening of the New Facility (as determined by the date that a certificate of occupancy for the New Facility is received by the Company or the Affiliated Entity), documenting the Company's (or as applicable, the Affiliated Entity's) progress in Capital Investment and in maintenance of the Capital Investment. The Company further agrees that each of the County's Economic Development Director, the City Economic Development Director and the RIFA Treasurer or his respective designees are authorized to verify all taxable Capital Investment and related information through the Office of the Commissioner of Revenue for the City. Along with the report in this Section, the Company shall provide to RIFA financial statements covering the previous twelve (12) month period, and documentation or other information reasonably satisfactory to RIFA demonstrating the Company's plans to have sufficient working capital for it (or its Affiliated Entity, as the case may be) to operate its business at the New Facility for at least the next eighteen (18) months and to meet its required Capital Investment as set forth in this Agreement. Such financial statements need not be certified or prepared by a certified public accountant.

Section 7. - Representations and Warranties of the Company. As of the date of this Agreement and continuing until the Performance Date, the Company hereby represents and warrants to each Government Party the following:

a. As of the date of this Agreement, the Company is a corporation duly organized, validly existing and in good standing under the laws of the State of Michigan.

b. Within ninety (90) days after the date of this Agreement, the Company will be qualified to do business as a foreign corporation in the Commonwealth of Virginia or otherwise is authorized to transact business in the Commonwealth of Virginia and all other jurisdictions in which it is required by law to be qualified.

c. This Agreement, the transactions contemplated herein, and the other Recruitment Documents to be executed by the Company have been or shall have been approved by all necessary corporate action by the Company; and the persons executing this Agreement and any of the other Recruitment Documents to be executed by the Company have or shall have full and complete authority to execute and deliver the same for and on behalf of the Company.

d. The execution, delivery, and performance of this Agreement, the other Recruitment Documents, and the consummation of the transactions contemplated hereby and thereby by the Company will not violate, conflict with, or result in any default under, or cause any acceleration of any obligation under, any (i) organizational documents of the Company (including without limitation Articles of Incorporation, shareholder agreements, and buy-sell agreement, or other organizational documents of the Company); (ii) any existing contract, agreement, note, or other document to which the Company is a party, or by which the Company is bound; or (iii) any orders, decrees, or laws of any jurisdiction applicable to and binding upon the Company.

e. This Agreement and all other Recruitment Documents constitute the legal, binding and enforceable obligations of the Company in accordance with the terms contained herein or therein.

f. There is no pending or threatened litigation or proceeding against the Company, which is reasonably expected to materially and adversely affect the financial condition, business operations, or business prospects of the Company.

g. The Company is not in material default with respect to any existing indebtedness incurred by it.

h. All financial statements, certificates, resolutions, and other information or documentation furnished to any one or more of the Government Parties prior to the date of this Agreement by the Company are true, correct, and accurate, and no such information fails to disclose or misrepresents any information which could materially or adversely affect the transactions contemplated in this Agreement; and the Company has not failed to disclose any information which could materially and adversely affect the business or financial condition of the Company.

For purposes of this Section 7, the "**Company**" shall, specifically and without limitation, include the Affiliated Entity, if any, and any permitted assignee of the Company to any one or more of the Recruitment Documents.

Section 8. - Event of Default. It shall be an Event of Default upon the occurrence of any one or more of the following events:

a. The occurrence of any material default under this Agreement that is not cured within thirty (30) days after written notice to the Company of such default (or if such default cannot reasonably be cured within such thirty (30) day period, then if the Company fails to substantially begin such cure within such thirty (30) day period or fails thereafter to diligently pursue such cure). The cure period in this Section 8(a) shall specifically not apply to any Event of Default in Sections 8(d) through (g), inclusive below;

b. The occurrence of any default under any of the Recruitment Agreements and all applicable cure periods, if any, under that Recruitment Agreement have expired;

c. The Company is not in good standing with the Virginia State Corporation Commission after having received at least sixty (60) days written notice from the Commission;

d. The Company discontinues full-time business for a period of sixty (60) days or more during the Performance Period;

e. The Company (i) files a petition or has a petition filed against it under the Bankruptcy Code or any proceeding for the relief of insolvent debtors which is not dismissed within sixty (60) days of such filing; (ii) is subject to the entry of an order for relief by any court of insolvency; (iii) makes an admission of insolvency seeking the relief provided in the Bankruptcy Code or any other insolvency law; (iv) makes an assignment for the benefit of creditors; (v) has a receiver appointed, voluntarily or otherwise, for its property; or (vi) becomes insolvent, however otherwise evidenced;

f. The controlling owner of the Company (i) files a petition or has a petition filed against it under the Bankruptcy Code or any proceeding for the relief of insolvent debtors which is not dismissed within sixty (60) days of such filing; (ii) is subject to the entry of an order for relief by any court of insolvency; (iii) makes an admission of insolvency seeking the relief provided in the Bankruptcy Code or any other insolvency law; (iv) makes an assignment for the benefit of creditors; (v) has a receiver appointed, voluntarily or otherwise, for its property; or (vi) becomes insolvent, however otherwise evidenced; or

g. An officer or controlling owner of the Company (i) is convicted of a felony, or (ii) is convicted of any other crime involving lying, cheating, stealing, fraud, misappropriation, or other similar acts of dishonesty.

For purposes of this Section 8, the "**Company**" shall, specifically and without limitation, include the Affiliated Company or any assignee of the Company to any one or more of the Recruitment Documents.

Section 9. - Upon Occurrence of an Event of Default. In addition to and not in lieu of any other remedies or relief made available to any one or more of the Government Parties under this Agreement, at law or in equity, upon the occurrence of an Event of Default, irrespective of whether any Government Party has terminated this Agreement, each Government Party (as the case may be) may elect any one or more of the following:

a. The Government Party may immediately cease to disburse any further payments to or for the Company under this Agreement or the Recruitment Documents;

b. The Government Party may give written notice to the Company exercising the right to accelerate the Company's obligation to repay any advances or other unpaid indebtedness of the Company to that Government Party, declaring the outstanding balance to be immediately due and payable;

c. Upon giving written notice to the Company, the Government Party shall have the right, but not the obligation, to offset any amounts owed by the Government Party against amounts owed or claimed to be owed by the Company; or

d. The Government Party may pursue any and all other remedies available to it under this Agreement, any one or more of the Recruitment Documents or applicable law.

The Parties also agree to waive all claims against one another for any consequential damages that may arise out of or relate to this Agreement. The provisions of this paragraph also apply to the termination of this Agreement, and will survive such termination.

Section 10. - Audit and Guideline Requirements. Upon reasonable prior written request, the Company shall allow each of the County's Economic Development Director, the City Economic Development Director and the RIFA Treasurer (or his respective designees) reasonable access during regular business hours to all records pertaining to the Company's employment and investment at the New Facility, and the Company shall cooperate with RIFA in any audit of such records by furnishing all information necessary to verify the Company's performance under this Agreement. In return, each of RIFA, the County and the City agrees to maintain the confidentiality of any and all proprietary, confidential and/or sensitive information, including without limitation personal payroll earnings or similar information that those

Government Parties or its designees may receive or access.

Section 11. - Force Majeure. Notwithstanding the foregoing, if the Company does not meet the New Job and Capital Investments requirements because of an Event of Force Majeure, the Performance Date will be extended day-for-day by the delay in meeting the targets caused by the Event of Force Majeure.

Section 12. - Subject to Annual Appropriations. As provided under Virginia law, the obligations of the Government Parties to pay the cost of performing its obligations under this Agreement are subject to and dependent upon annual appropriations being made from time to time by the governing body of such Government Party, for such purpose.

Section 13. - Non-waiver. No waiver of any term or condition of this Agreement by any party shall be deemed a continuing or further waiver of the same term or condition or a waiver of any other term or condition of this Agreement.

Section 14. - Attorneys' Fees. Each of the parties shall be solely responsible for their respective attorneys' fees in the negotiating, drafting, and execution of this Agreement and any of the transactions contemplated hereby.

Section 15. - Other Documents. The parties agree that they shall execute, acknowledge, and deliver all such further documents as may be reasonably required to carry out and consummate the transactions contemplated by this Agreement.

Section 16. - Default. In the event that a party to this Agreement incurs attorneys' fees and/or costs in pursuing or defending an alleged breach of this Agreement, the non-prevailing party, in addition to any other remedy, shall be responsible for the reasonable attorneys' fees and costs incurred by the prevailing party. The parties retain all rights at law and in equity to enforce the provisions of this Agreement in accordance with applicable law.

Section 17. - Entire Agreement. This Agreement and the schedule hereto contain the entire agreement and understanding of the parties to this Agreement with respect to the transactions contemplated hereby and the subject matter hereof.

Section 18. - Headings. The descriptive headings in this Agreement are inserted for convenience only and do not constitute a part of this Agreement.

Section 19. - Notices. Any notice required or contemplated to be given to any of the parties by any other party shall be in writing and shall be given by hand delivery, certified or registered United States mail, or a private courier service which provides evidence of receipt as part of its service, as follows:

If to RIFA:
Danville-Pittsylvania Regional
Industrial Facility Authority
Attn.: Susan M. DeMasi, Authority Secretary
427 Patton Street
P.O. Box 3300 (zip code 24543)
Danville, VA 24541

With a copy to:
Michael C. Guanzon, Esq.
Christian & Barton, LLP
901 E. Cary Street, Suite 1800
Richmond, VA 23219-4037

If to the County:
Attn.: Matthew D. Rowe
Director of Economic Development
1 Center Street
P.O. Box 426
Chatham, VA 24531

With a copy to:
J. Vaden Hunt, Esq.
County Attorney
1 Center Street
P.O. Box 426
Chatham, VA 24531

If to the City IDA:
Attn.: Corrie T. Bobe
Director of Economic Development
427 Patton Street
P.O. Box 3300 (zip code 24543)
Danville, VA 24541

With a copy to:
W. Clarke Whitfield, Jr., Esq.
City Attorney
427 Patton Street, Room 421
P.O. Box 3300 (zip code 24543)
Danville, VA 24541

If to the Company:
Walraven Inc.
Attn.: John Mann, President
2605 East Oakley Park Road
Walled Lake, MI 48390

With a copy to:
Herschel Keller, Esq.
Gentry Locke
801 Main Street, 11th Floor
Lynchburg, Virginia 24504

Any party may change the address to which notices hereunder are to be sent to it by giving written notice of such change in the manner provided herein. A notice given hereunder shall be deemed given on the date of hand delivery, deposit with the United States Postal Service properly addressed and postage prepaid, or delivery to a courier service properly addressed with all charges prepaid, as appropriate. Copies as set forth in this Section 19 are provided as a courtesy and shall not be required to effectuate notice as provided herein.

Section 20. - Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia. The parties hereby submit to the exclusive jurisdiction of the state court located in Pittsylvania County, Virginia, or the U.S. District Court for the Western District of Virginia (Danville Division), in any action or proceeding arising out of, or related to this Agreement, and the parties hereby agree that all claims in respect of any action or proceeding shall be heard or determined only in either of these courts. The parties agree that a final judgment in any action or proceeding shall, to the extent permitted by applicable law, be conclusive and may be enforced in other jurisdictions by suit on the judgment, or in any other manner provided by applicable law related to the enforcement of judgments. If any ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties and no presumptions or burden of proof shall arise favoring or disfavoring any party by virtue of authorship of any of the provisions of this Agreement.

Section 21. - Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors, assigns, and legal representatives.

Section 22. - Amendment, Modification and/or Supplement. The parties may amend, modify, and/or supplement this Agreement in such manner as may be agreed upon by the parties, provided such amendments, modifications, and/or supplement are reduced to writing and signed by the parties or their successors in interest.

Section 23. - Gender and Number. Throughout this Agreement, wherever the context requires or permits, the neuter gender shall be deemed to include the masculine and feminine, and the singular number to include the plural, and vice versa.

Section 24. - Counterparts. This Agreement may be executed in one (1) or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same Agreement. A facsimile or scanned copy (*.pdf) signature to this Agreement shall have the same effect as an original for all purposes.

Section 25. - Severability. The invalidity or unenforceability of any particular provision of this Agreement shall not affect the other provisions hereof, and this Agreement shall be construed in all respects as if such invalid or unenforceable provisions were omitted.

Section 26. - Survival. Any termination, cancellation or expiration of this Agreement notwithstanding, provisions which are by their terms intended to survive and continue shall so survive and continue.

Section 27. - No Third-Party Beneficiaries. Except as expressly stated in this Agreement, this Agreement is not intended, nor will be deemed, to confer any rights or remedies upon any person or legal entity not a party to this Agreement.

[SIGNATURES ARE ON FOLLOWING PAGES.]

WITNESS our signature and seal to this **LOCAL PERFORMANCE AGREEMENT** as of the date first above written:

DANVILLE-PITTSYLVANIA REGIONAL INDUSTRIAL FACILITY AUTHORITY, a political subdivision of the Commonwealth of Virginia

By: ________________________________
Sherman M. Saunders, Chairman

(SEAL)

ATTEST:

____
Susan M. DeMasi
Corporate Secretary
Danville-Pittsylvania Regional Industrial Facility Authority

COMMONWEALTH OF VIRGINIA, AT LARGE
CITY/COUNTY OF ________________________, to-wit:

The foregoing instrument was acknowledged before me this _____ day of _____________________ 2021, by **SHERMAN M. SAUNDERS**, in his capacity as Chairman of **DANVILLE-PITTSYLVANIA REGIONAL INDUSTRIAL FACILITY AUTHORITY,** a political subdivision of the Commonwealth of Virginia, on behalf of such entity.

My commission expires: _________________________________.

____
Notary Public
Registration No. ____________________

WITNESS our signature and seal to this **LOCAL PERFORMANCE AGREEMENT** as of the date first above written:

COUNTY OF PITTSYLVANIA, VIRGINIA, a political subdivision of the Commonwealth of Virginia

By: ______________________________
Robert W. Warren, Chairman
Board of Supervisors

(SEAL)

ATTEST:

____
David M. Smitherman
Clerk
Pittsylvania County Board of Supervisors

COMMONWEALTH OF VIRGINIA, AT LARGE
CITY/COUNTY OF ______________________, to-wit:

The foregoing instrument was acknowledged before me this _____ day of ____________________ 2021, by **ROBERT W. WARREN**, in his capacity as Chairman of the Board of Supervisors of **COUNTY OF PITTSYLVANIA, VIRGINIA,** a political subdivision of the Commonwealth of Virginia, on behalf of such entity.

My commission expires: ______________________________.

____
Notary Public
Registration No. ____________________

WITNESS our signature and seal to this **LOCAL PERFORMANCE AGREEMENT** as of the date first above written:

CITY OF DANVILLE, VIRGINIA, a Virginia municipal corporation

By: ________________________________
Kenneth F. Larking
City Manager

(SEAL)

ATTEST:

____
Susan M. DeMasi
City Clerk
City of Danville, Virginia

COMMONWEALTH OF VIRGINIA, AT LARGE
CITY/COUNTY OF ________________________, to-wit:

The foregoing instrument was acknowledged before me this _____ day of _______________ 2021, by **KENNETH F. LARKING**, in his capacity as City Manager of **CITY OF DANVILLE, VIRGINIA,** a Virginia municipal corporation, on behalf of such entity.

My commission expires: ________________________________.

____
Notary Public
Registration No. ____________________

WITNESS our signature and seal to this **LOCAL PERFORMANCE AGREEMENT** as of the date first above written:

INDUSTRIAL DEVELOPMENT AUTHORITY OF DANVILLE, VIRGINIA, a political subdivision of the Commonwealth of Virginia

By: ______________________________
T. Neal Morris
Chairman

(SEAL)

ATTEST:

____
Susan M. DeMasi
City Clerk
City of Danville, Virginia

COMMONWEALTH OF VIRGINIA, AT LARGE
CITY/COUNTY OF ______________________, to-wit:

The foregoing instrument was acknowledged before me this _____ day of ____________________ 2021, by **T. NEAL MORRIS**, in his capacity as Chairman of the **INDUSTRIAL DEVELOPMENT AUTHORITY OF DANVILLE, VIRGINIA,** a political subdivision of the Commonwealth of Virginia, on behalf of such entity.

My commission expires: ________________________________.

____
Notary Public
Registration No. ____________________

WITNESS our signature and seal to this **LOCAL PERFORMANCE AGREEMENT** as of the date first above written:

WALRAVEN INC., a Michigan corporation

By: ___________________________________
John Mann
President

(SEAL)

STATE OF ____
CITY/COUNTY OF ________________________, to-wit:

The foregoing instrument was acknowledged before me this _____ day of ________________ 2021, by **JOHN MANN**, in his capacity as President of **WALRAVEN INC.,** a Michigan corporation, on behalf of such entity.

My commission expires: __________________________________.

____
Notary Public
Registration No. _______________ (if in VA only)

List of Schedules
1(e) - Summary of Incentives

Schedule 1(e)
(Summary of Incentives)

Cash Incentives*	**Value or Maximum Value**
Commonwealth Development Opportunity Fund Grant (§4(a)(i))	$100,000.00
Danville-Pittsylvania County Industrial Enhancement Grant – tax rebates (§4(c))	$73,063.00
Local Enterprise Zone Jobs Grant (§4(b))	$23,000.00
Local Enterprise Zone: Permit Fee Waivers Value (§4(b))	$25,000.00
Tobacco Region Opportunity Fund Grant (§4(a)(iii))	$46,500.00
Virginia Jobs Investment Program Grant (§4(a)(v))	$18,750.00
Virginia State Enterprise Zone Grant – job creation (§4(a)(iv))	$119,200.00
Virginia State Enterprise Zone Grant – real property improvements (§4(a)(iv))	$100,000.00
TOTAL CASH INCENTIVES	$505,513.00

Financing Incentives	
New Facility Construction (including upfit renovation)	
Tobacco Region Opportunity Fund **Loan**: 5-year term, interest-free (§4(a)(iii))	$46,500.00
TOTAL FINANCING INCENTIVES	$46,500.00

Purchase Option Incentive under New Facility Lease	
New Facility value as of the date of this Agreement (excluding upfit renovations to be determined) less base Purchase Price (excluding upfit renovations to be determined) under the Purchase Option: $2,400,000.00 - $2,200,000.00	$200,000.00
PURCHASE OPTION INCENTIVE	$200,000.00

**If applicable, any and all advances of cash incentives are to be secured by irrevocable letter of credit or other collateral provided by the Company to, and acceptable in the sole discretion of, RIFA, in the event that the Company does not meet the performance metrics or other requirements for such cash incentives.*

<u>Schedule 3(d)</u>
Progress Report

ANNUAL PROGRESS REPORT

Companies are required to report annually towards their progress in meeting the outlined targets for capital investment, average annual wage, and job creation.

PROJECT SUMMARY:

Project	
Location	
Amount of Grant	
Performance Reporting Period	
Performance Date[1]	

[1]Requests to extend a company's performance date must be submitted prior to the performance date.

PROJECT PERFORMANCE:

Performance Measurement	Target	As of 12/31/20	% Complete
New Jobs[2]			
Confidence level target will be reached by Performance Date shown above (check one)	High ☐	Moderate ☐	Low ☐
Capital Investment (provide breakdown below)[3]			
Confidence level target will be reached by Performance Date shown above (check one)	High ☐	Moderate ☐	Low ☐
Average Annual Wage			N/A
Confidence level target will be reached by Performance Date shown above (check one)	High ☐	Moderate ☐	Low ☐
Standard Fringe Benefits (check one)	Yes ☐	No ☐	N/A
Virginia Corporate Income Tax Paid in Prior Calendar Year[4]			

[2]Data will be verified using Virginia Employment Commission records.
[3]Data may be verified with locality records.
[4]This 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 Title

Name: ____
Print Name

Date: ________________________

Please return to:

Danville-Pittsylvania Regional Industrial Facilities Authority
Attn.: Susan M. DeMasi, Authority Secretary
P.O. Box 3300 (Zip Code 24540-3300)
427 Patton Street
Danville, VA 24541

Schedule 5

New Facility Lease

See attached.

Danville-Pittsylvania Regional Industrial Facility Authority

Executive Summary

Agenda Item No.:	Item 5H
Meeting Date:	June 14, 2021
Subject:	Financial Status Reports – May 31, 2021
From:	Michael L. Adkins, Authority Treasurer

SUMMARY

A review of the financial status reports through May 31, 2021 will be provided at the meeting. The financial status reports as of May 31, 2021 are attached for the DPRIFA Board's review.

RECOMMENDATION

Staff recommends approving the financial status reports as of May 31, 2021 as presented.

ATTACHMENTS

Financial Status Reports

Danville - Pittsylvania Regional Industrial Facility Authority

Financial Status

Table of Contents

Danville-Pittsylvania Regional Industrial Facility Authority

$7,300,000 Bonds for Cane Creek Centre - Issued in August 2005 [7]

As of May 31, 2021

	Funding	Budget / Contract Amount	Expenditures	Encumbered	Unexpended / Unencumbered
Funding					
Funds from bond issuance	$7,300,000.00				
Issuance cost	(155,401.33)				
Refunding cost [7]	(52,500.00)				
Bank fees	(98.25)				
Interest earned to date	486,581.70				
Cane Creek Parkway [3]		$3,804,576.00	$3,724,241.16	$ -	
Swedwood Drive [2]		69,414.00	69,414.00	-	
Cane Creek Centre entrance [3]		72,335.00	53,878.70	-	
Financial Advisory Services		9,900.00	9,900.00	-	
Dewberry contracts [1]		69,582.50	69,582.50	-	
Dewberry contracts not paid by 1.7 grant [4, 5]		76,986.46	50,001.62	26,984.84	
Land		-	2,792,945.57	-	
Demolition services		71,261.62	71,261.62	-	
Legal fees		-	247,837.83	-	
CCC - Lots 3 & 9 project - RIFA Local Share [6]		142,190.00	112,464.98	-	
Other expenditures		-	347,194.30	-	
Total	$ 7,578,582.12	$ 4,316,245.58	$ 7,548,722.28	$ 26,984.84	**$ 2,875.00**

Notes:

[1] Dewberry Contracts consist of wetland, engineering, surveying and site preparation

[2] Funds being used to cover City and County matching contributions for a VDOT grant for Swedwood Drive

[3] Project completed under budget

[*] In September 2008 the outstanding principal balance of $6,965,000 on the Series 2005 Cane Creek Project Revenue Bonds was tendered and not remarketed. These bonds were converted to bank bonds and are now subject to the Credit and Reimbursement agreement the Authority has with Wachovia Bank. The remarketing agent will continue its attempt to remarket these bonds in order to convert them back to Variable Rate Revenue Bonds. As a result, it is likely that the City and County will have to contribute additional funds in order to make future interest payments on the letter of credit attached to these bonds.

[4] These contracts were originally to be paid by the $1.7M Special Projects Grant, this grant has expired and the TIC did not issue an extension. The remaining amounts of the contract will be paid using bond funds.

[5] The budget amount decreased $71,279.61 from the 9/30/2010 reports. This amount represented the remaining budget amount carried from the $1.7 SP grant upon its expiration for the following contracts: Wetland Delineation, Wetland Bank Plan Rev., Stream Concept Plan, & Stream Attribute Plan. Per Shawn Harden of Dewberry, these contracts are complete and finished under budget. The only contract that remains open is for Wetland Monitoring and the budget, expended, and encumbered amounts included here are only for this contract.

[6] This line item represents the amount of expenditures on the "CCC - Lots 3 & 9" budget sheet that is covered by bond funds. RIFA's local share of 5% of these project costs is being covered by these bond funds. Project finished under original budget.

[7] The $7.3 million bonds were refunded on 8/1/2013 with the issuance of refunding bonds in the amount of $5,595,000.

Road Summary-Cane Creek Parkway:	
English Contract-Construction	$ 5,363,927.00
Change Orders	165,484.50
Expenditures over contract amount	3,579.50
(Less) County's Portion of Contract	(935,207.00)
(Less) Mobilization Allocated to County	(9,718.00)
Portion of English Contract Allocated to RIFA	4,588,066.00
Dewberry Contract-Engineering	683,850.00
Total Road Contract Allocated to RIFA	**$ 5,271,916.00**

Funding Summary - Cane Creek Parkway	
VDOT	$ 1,467,340.00
Bonds	3,804,576.00
	$ 5,271,916.00

Danville-Pittsylvania Regional Industrial Facility Authority

General Expenditures for Fiscal Year 2021
As of May 31, 2021

	Funding	Budget	Expenditures	Encumbered	Unexpended / Unencumbered
Funding					
City Contribution	$ 25,000.00				
County Contribution	25,000.00				
Carryforward from FY2020	(50,019.37)				
Transfer from Unrestricted Fund Balance	200,000.00				
Reimbursement from Dominion Energy	35,905.00				
Contingency					
Miscellaneous contingency items		$ 25,905.00	$ 11,360.05	$ -	$ 14,544.95
SVM at Berry Hill - grading for sign placement		$ 20,000.00		$ 20,000.00	-
Total Contingency Budget		45,905.00	11,360.05	20,000.00	14,544.95
Legal		160,080.63	60,384.50	-	99,696.13
Accounting		22,400.00	22,400.00	-	-
Postage & Shipping		100.00		-	100.00
Meals		4,000.00	2,425.19	-	1,574.81
Utilities		400.00	307.00	-	93.00
Insurance		3,000.00	2,353.00	-	647.00
Total	$ 235,885.63	$ 235,885.63	$ 99,229.74	$ 20,000.00	**$ 116,655.89**

Danville-Pittsylvania Regional Industrial Facility Authority
Southern Virginia Megasite at Berry Hill - Funding Other than Bond Funds
As of May 31, 2021

Funding	**Funding**	**Budget / Contract Amount**	**Expenditures**	**Encumbered**	**Unexpended / Unencumbered**
City contribution	$ 134,482.50				
County contribution	134,482.50				
City advance for Klutz, Canter, & Shoffner property [1, 4]	10,340,983.83				
Tobacco Commission FY09 SSED Allocation	3,370,726.00				
Tobacco Commission FY10 SSED Allocation - Engineering Portion	407,725.00				
Tobacco Comm. FY10 SSED Allocation - Eng. Portion Deobligated	(244,797.00)				
Local Match for TIC FY10 SSED Allocation - Engineering Portion [5]	76,067.61				
Additional funds allocated by RIFA Board on 1/14/2013 [6]	11,854.39				
TIC #2264 - Phase II Land and Engineering	3,700,000.00				
VA Economic Development Partnership MEI Grant Funds	577,503.14				
Land					
Klutz property		$ 8,394,553.50	$ 8,394,553.50	$ -	
Canter property [2]		1,200,000.00	1,200,000.00	-	
Adams property		37,308.00	37,308.00	-	
Carter property		5,843.00	5,843.00	-	
Jane Hairston property		1,384,961.08	1,384,961.08	-	
Bill Hairston property		201,148.00	201,148.00	-	
Shoffner Property		1,872,896.25	1,872,896.25	-	
401 Buford Road		246,082.96	246,082.96	-	
Off State Road 1055		181,890.19	181,890.19	-	
604 Buford Road		361,896.60	361,896.60	-	
Other					
Dewberry & Davis		28,965.00	28,965.00	-	
Dewberry & Davis[3]		990,850.00	987,879.29	2,970.71	
Consulting Services - McCallum Sweeney [7]		115,000.00	103,796.85	-	
Dewberry Engineers (related to #2264)		160,500.00	160,500.00	-	
Dewberry Engineers		421,250.00	415,675.00	5,575.00	
Appalachian Power Company		1,655,000.00	678,500.00	976,500.00	
Banister Bend Farm, LLC		199,064.00	199,064.00	-	
Transfer available funds to "Berry Hill Mega Park - Lot 4 Site Development" Project [8]		-	11,203.15	-	
Total	$ 18,509,027.97	$ 17,457,208.58	$ 16,472,162.87	$ 985,045.71	**$ 1,051,819.39**

[1] This figure does not include the interest the City lost from the uninvested funds, which was paid to the City 1/3/2012 and totaled $144,150.41.

[2] Settlement fees were drawn from bonds issued for the Berry Hill project 12/1/2011.

[3] This contract was originally for $814,500, but has been amended to include a traffic impact analysis, and a cemetery survey. $740,000 was covered by the FY09 Tobacco Allocation. $162,928 was covered by the FY10 Tobacco Allocation. $87,922 will be covered with RIFA Funds.

[4] RIFA paid the City back for all advances on 1/3/2012.

[5] The RIFA Board approved to utilize the remaining funds from the Mega Park bond funds and approximately $65,000 of the 'Funds Available for Appropriation' towards the local match for the engineering portion of Tobacco Commission grant #1916 for the Berry Hill Mega Park.

[6] Due to the expiration of the Tobacco Comission FY10 SSED Allocation, the RIFA Board approved on 1/14/2013 to utilize $11,854.39 of the 'Funds Available for Appropriation' to cover the funding shortfall for the budgeted Dewberry & Davis contract.

[7] Unencumbered the remaining $11,203.15 due to termination of contract.

[8] As approved by RIFA Board on 10/16/2014

Danville-Pittsylvania Regional Industrial Facility Authority

Southern Virginia Megasite at Berry Hill - Lots 1&2 Site Development

As of May 31, 2021

	Funding	Budget / Contract Amount	Expenditures	Encumbered	Unexpended / Unencumbered
Funding					
TIC #3358 Site Improvements					
Tobacco Commission Grant	$ 2,624,800.00				
Expenditures					
Dewberry Engineers Inc.		379,300.00	214,800.00	164,500.00	
Total	$ 2,624,800.00	$ 379,300.00	$ 214,800.00	$ 164,500.00	**$ 2,245,500.00**

Danville-Pittsylvania Regional Industrial Facility Authority

Southern Virginia Megasite at Berry Hill - Water & Sewer

As of May 31, 2021

	Funding	Budget / Contract Amount	Expenditures	Encumbered	Unexpended / Unencumbered
Funding					
TIC #2641 Phase I Sanitary Sewer					
Tobacco Commission Grant 2641	$ 4,840,977.86				
Local Match for Contractual Services	274,926.43				
Local Match for Property & Imp.	262,960.00				
TIC #3011 Water System Improvements Phase II					
Tobacco Commission Grant 3011	2,241,567.00				
Local Match for Property & Imp.	224,160.00				
City of Danville Utilities	3,839,130.76				
Expenditures					
Dewberry Engineers Inc.		1,019,764.99	743,689.99	276,075.00	
Haymes Brothers, Inc. - Phase I Sanitary Sewer		5,092,668.30	5,092,668.30	-	
Haymes Brothers, Inc. - Phase I Sanitary Sewer (City)		3,225,090.76	2,790,314.14	434,776.62	
C.W. Cauley & Son - Phase 1 Water		1,843,540.00	950,565.25	892,974.75	
Norfolk Southern Railway Company		22,300.00	22,300.00	-	
Pittsylvania County Service Authority		1,475.00	1,475.00	-	
Treasurer of Virginia		7,900.00	7,900.00	-	
AECOM		5,000.00	5,000.00	-	
BH Media Group, Inc.		296.00	296.00	-	
Danville Register & Bee		600.00	600.00	-	
Total	$ 11,683,722.05	$ 11,218,635.05	$ 9,614,808.68	$ 1,603,826.37	**$ 465,087.00**

Danville-Pittsylvania Regional Industrial Facility Authority

Rent, Interest, and Other Income Realized for Fiscal Year 2021

As of May 31, 2021

Source of Funds	Carryforward from FY2020	Funding: Receipts Current Month	Funding: Receipts FY2021	Expenditures FY2021	Unexpended / Unencumbered
Carryforward	$ 1,034,570.10				
Current Lessees					
Institute for Advanced Learning and Research (IALR) [1]		$ 45,634.10	$ 263,435.76		
RealtyLink Investments, LLC		10,500.00	10,500.00		
Mountain View Farms of Virginia, L.C.		-	1,200.00		
Osborne Company of North Carolina, Inc.		1,000.00	1,000.00		
Total Rent		$ 57,134.10	$ 276,135.76		
Interest Received [2]		$ 30.01	$ 536.92		
Miscellaneous Income		$ -	$ 781,441.60		
Expenditures					
Hawkins Research Bldg. Property Mgmt. Fee				$ 240,618.71	
Hawkins Research Bldg. Repairs & Maintenance				$ 868.36	
Transfer to General Expenditures budget				$ 200,000.00	
Disbursements for Gerfertec incentives				$ 16,917.36	
Disbursements for Harlow Fastech incentives				$ 365,000.00	
Totals	$ 1,034,570.10	$ 57,164.11	$ 1,058,114.28	$ 823,404.43	$ 1,269,279.95

Restricted [1]	$ 335,643.75
Unrestricted	$ 36,636.20
Committed	$ 897,000.00

[1] *Please note that rent proceeds must be used in accordance with the U.S. Economic Development Administration's (EDA) Standard Terms and Conditions*

[2] *Please note that this is only interest received on RIFA's general money market account.*

Danville-Pittsylvania Regional Ind. Facility Authority
Check Detail
May 2021

Check Number	Date	Vendor Name	Paid Amount
2407	05/10/2021	Haymes Brothers, Inc	267,069.00
2409	05/10/2021	Dewberry Engineers Inc.	35,010.00
2410	05/10/2021	IALR	22,817.05
2411	05/10/2021	IALR	232.81
2412	05/10/2021	Banister Bend Farm, LLC	4,780.00
2413	05/10/2021	Haymes Brothers, Inc	225,527.98
WIRE	05/20/2021	City of Danville, VA	30.70
2414	05/20/2021	Treasurer of Pitts County	120.00

Danville-Pittsylvania Regional Industrial Facility Authority

Statement of Net Position [1, 2]

May 31, 2021*

		Unaudited FY 2021
Assets		
Current assets		
Cash - checking	$	683,071
Cash - money market		456,486
Accounts receiveable		1,339,272
Total current assets		2,478,829
Noncurrent assets		
Restricted cash - project fund CCC bonds		36,360
Restricted cash - debt service fund CCC bonds		23,907
Capital assets not being depreciated		24,560,850
Capital assets being depreciated, net		22,136,588
Construction in progress		19,115,392
Total noncurrent assets		65,873,097
Total assets		68,351,926
Liabilities		
Current liabilities		
Unearned income		1,475
Economic development payable - current portion		147,000
Bonds payable - current portion		465,000
Total current liabilities		613,475
Noncurrent liabilities		
Bonds payable - less current portion		1,210,000
Total noncurrent liabilities		1,210,000
Total liabilities		1,823,475
Net Position		
Net investment in capital assets		64,174,190
Restricted - debt reserves		23,907
Unrestricted		2,330,354
Total net position	$	66,528,451

[1] Please note this balance sheet does not include the Due to/Due from between the County and the City since it nets out and only changes at fiscal year-end.

[2] Please note this balance sheet does not include all general accounts receivable or accounts payable at the month-end date. This is because information regarding accrued receivables/payables is not available at the time of statement preparation.

Danville-Pittsylvania Regional Industrial Facility Authority
Statement of Revenues and Expenses and Changes in Fund Net Position
May 31, 2021*

		Unaudited FY 2021
Operating revenues		
Virginia Tobacco Commission Grants		349,339
Rental income		278,136
Other Income		366,992
Total operating revenues		994,467
Operating expenses [4]		
Mega Park expenses [3]		3,381,713
Cane Creek Centre expenses [3]		49,713
Cyber Park expenses [3]		284,442
Professional fees		50,432
Other operating expenses		8,389
Total operating expenses		3,774,689
Operating income (loss)		(2,780,222)
Non-operating revenues (expenses)		
Interest income		537
Total non-operating expenses, net		537
Net income (loss) before capital contributions		(2,779,685)
Capital contributions		
Contribution - City of Danville		3,448,277
Contribution - Pittsylvania County		293,164
Total capital contributions		3,741,441
Change in net position		961,756
Net position at July 1, 2020		65,566,695
Net position at May 31, 2021	$	66,528,451

[3] A portion or all of these expenses may be capitalized at fiscal year-end.

[4] Please note that most non-cash items, such as depreciation and amortization, are not included here until year-end entries are made.

Danville-Pittsylvania Regional Industrial Facility Authority
Statement of Cash Flows
*May 31, 2021**

		Unaudited FY 2021
Operating activities		
Receipts from grant reimbursement requests	$	281,419
Receipts from leases		276,136
Other receipts		795,905
Payments to suppliers for goods and services		(5,313,854)
Net cash used by operating activities		(3,960,394)
Capital and related financing activities		
Capital contributions		3,741,441
Interest paid on bonds		(37,496)
Principal repayments on bonds		(445,000)
Net cash provided by capital and related financing activities		3,258,945
Investing activities		
Interest received		537
Net cash provided by investing activities		537
Net increase (decrease) in cash and cash equivalents		(700,912)
Cash and cash equivalents - beginning of year (including restricted cash)		1,900,736
Cash and cash equivalents - through May 31, 2021 (including restricted cash)	$	1,199,824
Reconciliation of operating loss before capital contributions to net cash used by operating activities:		
Operating income (loss)	$	(2,780,222)
Changes in assets and liabilities:		
Change in other receivables		360,993
Change in accounts payable		(1,186,821)
Change in unearned income		(354,344)
Net cash used by operating activities	$	(3,960,394)

Components of cash and cash equivalents at May 31, 2021:		
American National - Checking	$	683,071
American National - General money market		456,486
Wells Fargo - $7.3M Bonds CCC Debt service fund		23,907
Wells Fargo - $7.3M Bonds CCC Project fund		36,360
	$	1,199,824

Danville-Pittsylvania Regional Industrial Facility Authority

Executive Summary

Agenda Item No.:	Item 5I
Meeting Date:	June 14, 2021
Subject:	Proposed Fiscal Year 2022 General Expenditures Budget
From:	Michael Adkins, Authority Treasurer

SUMMARY

The RIFA Board approves a budget for the general expenditures of RIFA each fiscal year.

BACKGROUND

Attached is the proposed General Expenditures budget for fiscal year 2022. The sheet also displays the fiscal year 2021 General Expenditures data as of May 31, 2021 for comparison purposes.

Staff will review the proposed fiscal year 2022 General Expenditures budget at the meeting.

RECOMMENDATION

Staff recommends the RIFA Board approve the proposed fiscal year 2022 General Expenditures budget.

ATTACHMENTS

Proposed General Expenditures Budget for FY 2022 Compared to FY 2021

Danville-Pittsylvania Regional Industrial Facility Authority
Proposed General Expenditures Budget for Fiscal Year 2022 Compared to Fiscal Year 2021

	FY 2021 (as of 5/31/2021)			FY 2022	
	Funding	**Budget**	**Expenditures**	**Proposed Funding**	**Proposed Budget**
Funding					
City Contribution	$ 25,000.00			$ 75,000.00	-
County Contribution	25,000.00			75,000.00	-
Carryforward from prior fiscal year [1]	(50,019.37)			-	-
Transfer from Unrestricted Funds	200,000.00			-	-
Other	35,905.00			-	-
Contingency					
Miscellaneous contingency items		$ 45,905.00	$ 11,360.05		$ 4,425.00
Total Contingency Budget		$ 45,905.00	$ 11,360.05		$ 4,425.00
Legal		160,080.63	60,384.50		115,000.00
Accounting		22,400.00	22,400.00		23,075.00
Postage & Shipping		100.00	-		100.00
Meals		4,000.00	2,425.19		4,000.00
Utilities		400.00	307.00		400.00
Insurance		3,000.00	2,353.00		3,000.00
Total	$ 235,885.63	$ 235,885.63	$ 99,229.74	$ 150,000.00	$ 150,000.00

[1] If there is a carryforward from the prior fiscal year, the funds will be budgeted toward any line item with a projected shortage.

See definitions provided for each budget line item on the following page.

Danville-Pittsylvania Regional Industrial Facility Authority

Proposed General Expenditures Budget for Fiscal Year 2022 Compared to Fiscal Year 2021

Budget Definitions

Funding = Represents sources of incoming funds to support general expenditures of RIFA.

Contingency = Represents a provision for expenditures that cannot be predicted with certainty during the budget process. It includes, but is not limited to, project-specific expenditures necessary as a project develops for which there is no other funding source to cover the expenditure.

Legal = Represents expenditures for general legal services provided to RIFA.

Accounting = Represents expenditures for the required annual audit of the RIFA financial statements.

Postage & Shipping = Represents expenditures for mailing documents for RIFA business.

Meals = Represents expenditures for meals provided while conducting RIFA business.

Utilities = Represents expenditures for electric service at RIFA properties.

Insurance = Represents the annual premium paid for RIFA's insurance coverage, currently with VML Insurance Programs.

Danville-Pittsylvania Regional Industrial Facility Authority

Executive Summary

Agenda Item No.:	Item 5J
Meeting Date:	06/14/2021
Subject:	Resolution 2021-06-14-5J
From:	Mr. Rowe and Mr. Guanzon

SUMMARY

The Board will be asked to consider Resolution 2021-06-14-5J, ratifying the purchase price between the Authority and Berry Hill Solar.

ATTACHMENTS

Resolution

Resolution No. 2021-06-14-5J

A RESOLUTION RATIFYING THE PURCHASE PRICE UNDER THOSE CERTAIN AGREEMENTS FOR PURCHASE AND SALE FOR AN INTERCONNECTION EASEMENT AND RIGHT-OF-WAY ON CERTAIN REAL PROPERTY IN AND ADJACENT TO THE AUTHORITY'S SOUTHERN VIRGINIA MEGASITE AT BERRY HILL, LOCATED IN PITTSYLVANIA COUNTY, VIRGINIA, BY AND BETWEEN THE AUTHORITY AND BERRY HILL SOLAR, LLC, A NORTH CAROLINA LIMITED LIABILITY COMPANY, PURSUANT TO RESOLUTION NO. 2021-04-12-5B AND RESOLUTION NO. 2021-04-12-5C

WHEREAS, the Danville-Pittsylvania Regional Industrial Facility Authority (the "**Authority**") is a political subdivision of the Commonwealth of Virginia duly created pursuant to the Virginia Regional Industrial Facilities Act, as amended; and

WHEREAS, the Authority, the City of Danville, Virginia (the "**City**"), and the County of Pittsylvania County, Virginia (the "**County**"), in order to stimulate economic growth and development of the community by creating jobs and infrastructure have agreed to provide incentives to new and expanding businesses which conduct industrial activity; and

WHEREAS, pursuant to Resolution Nos. 2021-04-12-5B and 2021-04-12-5C, the Authority authorized the negotiation, execution and delivery of two agreements for purchase and sale with Berry Hill Solar, LLC, a North Carolina limited liability company ("**BHS**") for: (i) a right-of-way ("**PSA-ROW**") for a public connector road over certain portions of real property adjacent to the Authority's Southern Virginia Megasite at Berry Hill project ("**SVM**"), located in the County; and (ii) an interconnection easement ("**PSA-Easement**"; PSA-ROW and PSA-Easement collectively, the "**PSAs**") over certain portions of real property in SVM; and

WHEREAS, the total compensation under the PSAs is to be of equal value based on the total acreage of applicable real property as more fully described in the PSAs; and

WHEREAS, the Authority and BHS have finalized the real property acreage calculations and the resulting purchase price under the PSAs will be equal to Eight Hundred Thousand Thirty One Thousand Six Hundred Thirty and 25/100 Dollars ($831,630.25) (the "**Purchase Price**"); and

WHEREAS, the Authority determined that the Purchase Price under the PSAs is reasonable and consistent with fair market value; and

WHEREAS, the Authority's Board of Directors has determined that it is in the best interests of the Authority and the citizens of the City and the County for the Authority to ratify the PSAs with the Purchase Price.

NOW, THEREFORE, BE IT RESOLVED, that

1. The Authority hereby finds that the PSAs, including but not limited to the Purchase Price, with BHS are reasonable, appropriate and within the authority of Resolutions 2021-04-12-5B and 2021-04-12-5C.

2. The Authority hereby approves, ratifies and confirms any and all actions previously taken by the Authority, its agents and representatives, in respect to the approval of the PSAs, including but not limited to the Purchase Price, and the matters contemplated in this Resolution.

3. This Resolution shall take effect immediately upon its adoption.

- # -

CERTIFICATE

I, the undersigned Secretary of the Danville-Pittsylvania Regional Industrial Facility Authority, hereby certify that the foregoing is a true, correct and complete copy of a Resolution duly adopted by a majority of the directors of the Danville-Pittsylvania Regional Industrial Facility Authority at a regular meeting duly called and held on June 14, 2021, and that such Resolution has not been repealed, revoked, rescinded or amended, but is in full force and effect on the date hereof.

WITNESS my hand as Secretary of the Danville-Pittsylvania Regional Industrial Facility Authority as of the 14th day of June 2021.

____

SUSAN M. DeMASI, Secretary
Danville-Pittsylvania Regional Industrial
Facility Authority

(SEAL)

Danville-Pittsylvania Regional Industrial Facility Authority

Executive Summary

Agenda Item No.:	Item 5K
Meeting Date:	June 14, 2021
Subject:	MOU – MEGASITE
From:	David Smitherman, County Administrator, Pittsylvania County

SUMMARY

The City of Danville and Pittsylvania County have agreed to have the City serve as the water and sewer provider in the Southern Virginia Megasite at Berry Hill. The attached memorandum of understanding was approved by the City and the County. RIFA is a party to this agreement, since the construction of utilities within the industrial park have been undertaken by RIFA. RIFA's approval will allow the City to take ownership of the infrastructure, which would allow it to collect fees, operate and expand the system, and maintain the system. Per this agreement, the City will reimburse Pittsylvania County for their cost in installing the infrastructure.

ATTACHMENTS

Resolution

MOU-MEGASITE

Resolution No. 2021-06-14-5K

A RESOLUTION APPROVING THE NEGOTIATION, EXECUTION AND DELIVERY OF A MEMORANDUM OF UNDERSTANDING - MEGASITE WITH THE AUTHORITY, THE COUNTY OF PITTSYLVANIA, VIRGINIA, AND THE CITY OF DANVILLE, VIRGINIA, FOR THE PROVISION OF WATER AND SEWER SERVICES FOR THE AUTHORITY'S SOUTHERN VIRGINIA MEGASITE AT BERRY HILL, LOCATED IN PITTSYLVANIA COUNTY, VIRGINIA, WHICH WILL ALLOW THE CITY OF DANVILLE, VIRGINIA TO TAKE OWNERSHIP OF THE INFRASTRUCTURE, ALLOW THE CITY OF DANVILLE, VIRGINIA TO COLLECT FEES, OPERATE AND EXPAND THE SYSTEM, AND MAINTAIN THE SYSTEM; AND THE CITY OF DANVILLE, VIRGINIA WILL REIMBURSE PITTSYLVANIA COUNTY, VIRGINIA FOR THE COST IN INSTALLING THE INFRASTRUCTURE

WHEREAS, the Danville-Pittsylvania Regional Industrial Facility Authority (the "**Authority**") is a political subdivision of the Commonwealth of Virginia duly created pursuant to the Virginia Regional Industrial Facilities Act, as amended; and

WHEREAS, in connection with the formation of the Authority, the City of Danville, Virginia (the "**City**"), and the County of Pittsylvania, Virginia (the "**County**"), entered into that certain Agreement for Cost Sharing and Revenue Sharing dated October 2, 2001, as amended (the "**Cost/Revenue Sharing Agreement**"). Under Paragraph 6.D of the Cost/Revenue Sharing Agreement, each of the City and the County "will be responsible for the cost of utility installation, separate from this [Cost/Revenue Sharing] Agreement, for industrial facilities within its service jurisdiction in accordance with its established policies and procedures and the cost for such utility extensions will not be used to compute any dissolution, described herein"; and

WHEREAS, the Authority's Southern Virginia Megasite at Berry Hill ("**SVM**") is located in the County and sits on the northern side of the state border between Virginia and North Carolina; and

WHEREAS, the County's Public Works Department, under the Virginia Water and Sewer Authorities Act, provides water and sewer service for all areas of the County, outside the towns of Chatham, Hurt and Gretna, Virginia. The County's contracts with the City, Henry County Public Service Authority, the Town of Chatham and the Town of Hurt to purchase bulk water to serve its customers. The County does not own or operate water or sewer treatment facilities. Although the County's service jurisdiction includes SVM's location in the County, the County is not obligated to construct or otherwise to install water and sewer infrastructure; and

WHEREAS, the City and the City of Eden, a municipal corporation in Rockingham County, North Carolina (the "**City of Eden**"), entered into (i) that certain Agreement dated July 31, 2020 (the "**2020 Eden Water Agreement**"), under which the City of Eden will be the City's primary source, but not necessarily the sole source, of potable water for distribution by the City within SVM for the term thereunder; and (ii) that certain Agreement dated July 31, 2020 (the "**2020 Eden Wastewater Treatment Agreement**"), under which the City of Eden will be the sole source of wastewater treatment for Pittsylvania County Service Authority's ("**PCSA**") service to SVM; and

WHEREAS, the purpose of the Memorandum of Understanding (the "**MOU**") attached hereto as Exhibit A and incorporated herein by this reference, is to outline in reasonable detail the mutual obligations of the Parties regarding providing water and sewer service in SVM; and

WHEREAS, under the MOU, the City, at its expense, would, as project manager, assume the completion of the water and sewer infrastructure construction to serve SVM; pay or reimburse the County, RIFA and PCSA as described in the MOU for the project expenses incurred; and accept assignment of PCSA's rights and obligations under the 2020 Eden Water Agreement and the 2020 Eden Wastewater Treatment Agreement on such terms and conditions as set forth in the MOU; and

WHEREAS, the Authority has reviewed and desires to execute and to enter into the MOU, substantially in the form of Exhibit A, to facilitate the further development of SVM with water and sewer infrastructure; and

WHEREAS, the Authority has determined that it is in the best interests of the Authority, the citizens of the County and the City, and in furtherance of the development of the Authority's SVM project, for the Authority to approve, to negotiate, to execute and to deliver the MOU, as applicable, consistent with this Resolution.

NOW, THEREFORE, BE IT RESOLVED, that

1. The Authority hereby approves the negotiation, execution and delivery of the MOU attached hereto as **Exhibit A**, each of the Authority's Chairman and Vice Chairman, in consultation with the other, is authorized to further modify the MOU on such terms and conditions as the Chairman or Vice Chairman, in consultation with the other, determines to be reasonable, appropriate and consistent with this Resolution and hereby authorizes the Chairman and the Vice Chairman, either of whom may act independently of the other, to execute and deliver the MOU on behalf of the Authority, such execution of the MOU by the Chairman (or Vice Chairman as the case may be) to conclusively establish the approval of any modifications as consulted by and between the Chairman and Vice Chairman.

2. The Authority hereby authorizes and directs staff and other agents and representatives working on behalf of the Authority to take such actions and to do all such things as are contemplated by the MOU, or as they in their discretion deem necessary or appropriate in order to carry out the intent and purposes of these resolutions.

3. The Authority hereby approves, ratifies and confirms any and all actions previously taken by the Authority, its agents and representatives, in respect to the MOU and the matters contemplated therein.

4. This Resolution shall take effect immediately upon its adoption.

CERTIFICATE

I, the undersigned Secretary of the Danville-Pittsylvania Regional Industrial Facility Authority, hereby certify that the foregoing is a true, correct and complete copy of a Resolution duly adopted by a majority of the directors of the Danville-Pittsylvania Regional Industrial Facility Authority at a meeting duly called and held on June 14, 2021, and that such Resolution has not been repealed, revoked, rescinded or amended, but is in full force and effect on the date hereof.

WITNESS my hand as Secretary of the Danville-Pittsylvania Regional Industrial Facility Authority this 14th day of June 2021.

____
SUSAN M. DeMASI, Secretary
Danville-Pittsylvania Regional Industrial
Facility Authority

(SEAL)

Resolution No. 2021-06-14-5K

Exhibit A

(Memorandum of Understanding)

MEMORANDUM OF UNDERSTANDING - MEGASITE

This **MEMORANDUM OF UNDERSTANDING – MEGASITE** (**"MOU"**) is hereby made and entered, by and among the County of Pittsylvania, Virginia (the **"County"**), the City of Danville, Virginia (the **"City"**), , and the Danville-Pittsylvania Regional Industrial Facility Authority (**"RIFA"**) (singularly the **"Party,"** collectively the **"Parties"**).

A. RECITALS AND PURPOSE:

1. In connection with the formation of RIFA, the City and the County entered into that certain Agreement for Cost Sharing and Revenue Sharing dated October 2, 2001, as amended (the **"Cost/Revenue Sharing Agreement"**). Under Paragraph 6.D of the Cost/Revenue Sharing Agreement, each of the City and the County "will be responsible for the cost of utility installation, separate from this *[Cost/Revenue Sharing]* Agreement, for industrial facilities within its service jurisdiction in accordance with its established policies and procedures and the cost for such utility extensions will not be used to compute any dissolution, described herein."

2. RIFA's Southern Virginia Megasite at Berry Hill (**"MEGASITE"**) is located in the County and sits on the northern side of the state border between Virginia and North Carolina.

3. Pittsylvania County's Public Works Department, under the Virginia Water and Sewer Authorities Act, provides water and sewer service for all areas of the County, outside the towns of Chatham, Hurt and Gretna, Virginia. The County's contracts with the City, Henry County Public Service Authority, the Town of Chatham and the Town of Hurt to purchase bulk water to serve its customers. The County does not own or operate water or sewer treatment facilities. Although the County's service jurisdiction includes the MEGASITE's location in the County, the County is not obligated to construct or otherwise to install water and sewer infrastructure.

4. The City of Danville and the City of Eden, a municipal corporation in Rockingham County, North Carolina (the **"City of Eden"**) entered into (i) that certain Agreement dated July 31 2020 (the **"2020 Eden Water Agreement"**), under which the City of Eden will be the City of Danville's primary source, but not necessarily the sole source, of potable water for distribution by the City of Danville within the MEGASITE for the term thereunder; and (ii) that certain Agreement dated July 31, 2020 (the **"2020 Eden Wastewater Treatment Agreement"**), under which the City of Eden will be the sole source of wastewater treatment for PCSA's service to the MEGASITE.

5. The purpose of this MOU is to outline in reasonable detail the mutual obligations of the Parties regarding providing water and sewer service in the MEGASITE.

B. COMMENCEMENT/TERMINATION OF THIS MOU:

This MOU shall be in full force and legal effect immediately upon execution by the last Party to the MOU, and shall remain in full force and effect until the sooner to occur of the following: (i) the MEGASITE is fully served by water and sewer infrastructure as determined by RIFA in a writing delivered to the other Parties; or (ii) RIFA no longer owns any land in the MEGASITE and all local performance agreements concerning the MEGASITE, to which RIFA is a party, has been fully performed, as may be evidenced by a writing from RIFA delivered to the other Parties.

C. TERMS, CONDITIONS, AND OBLIGATIONS:

The Parties to this MOU hereby agree to be fully legally bound in all aspects to the below terms, conditions, and obligations contained in this MOU:

1. RIFA and the County hereby consent and transfer to the City the right and responsibility of (i) utility installation to the MEGASITE as contemplated in Paragraph 6.D in the Cost/Revenue Sharing Agreement and (ii) providing water and sewer service to the MEGASITE (collectively, the "**Project**").

2. The City shall adhere to all the requirements of the Eden Agreements, unless otherwise agreed to by the City of Eden. The County and the City shall use their good faith efforts to have the County released by the City of Eden from further obligations under the Eden Agreements. Prior to such assignment, County and the City shall endeavor to negotiate amendments to the Eden Agreements that prior to the expiration or nonrenewal of the term of either of the Eden Agreements, the City of Eden would be obligated to give at least two (2) years prior written notice to the City.

3. The City shall only serve water and sewer customers with direct service connections onto the lines the City acquires/constructs leading to and within the MEGASITE unless otherwise approved by the Pittsylvania County Board of Supervisors. Nothing in this MOU shall grant permission, and the Pittsylvania County Board of Supervisors does not grant permission, for the City to extend water and sewer mains off the lines connecting the City and City of Eden's systems to the MEGASITE in order to serve other areas of the County.

4. Water and sewer service rates within the MEGASITE shall be set by the City Council after recommendation from the Danville Utilities Commission.

5. The City shall serve all water and sewer customers according to the City ordinances and policies that currently exist for all those customers, and as may be amended from time to time by the City Council in its sole discretion, as permitted under applicable law.

6. The City shall receive the benefit of all County and RIFA work products necessary to serve the MEGASITE for water and sewer infrastructure ("**SVM Project Work Products**"), and shall reimburse the County and RIFA for their respective construction, engineering, and related grant-matching costs and contributions. The SVM Project Work Products include without limitation infrastructure already constructed and owned by the County the water in the Project supplied/purchased by the County and infrastructure owned and/or under construction by RIFA. For those portions of the SVM Project Work Products paid in part

or in whole with grants, the City will reimburse the County for the actual local match paid in connection with such grant, instead of the costs expended for that particular SVM Project Work Product. Specifically, some of the SVM Project Work Products were funded by the following Tobacco Region Revitalization Commission grants: #3011, #2641, #1581, and #2198. The local match of the County paid in connection with these grants, which shall be reimbursed by the City under this MOU, totals **<u>$792,617.93</u>**. For those SVM Project Work Products owned by the County, the City will reimburse the County at their depreciated value as of the date of this MOU. The unpaid balance of the reimbursements under this paragraph shall not accrue interest. Reimbursement payments hereunder by the City shall be made in annual installments of $200,000.00 each, until paid in full; however, the portion of each such installment to be received by the County and RIFA, respectively, shall be adjusted pro rata, based on each Party's total reimbursement due from the City, relative to the total reimbursement due from the City to all Parties. The first annual reimbursement payment shall be made within ninety (90) days after execution of this MOU.

7. The City will have final approval of the water and wastewater infrastructure design within the MEGASITE. . In such case, The City shall reimburse RIFA and the County for all costs of this work, consistent with Paragraph C.6 above, as the work progresses; however, prior to the commencement of the work, the City, the County and RIFA shall agree upon the specific reimbursement payment schedule.

8. The City, in consultation with RIFA, will determine whether capacity charges are necessary for future recruitment prospects locating in the MEGASITE. The Parties intend for the funds generated from such capacity charges to be used to buy down infrastructure costs within the MEGASITE.

9. If the County uses its Tobacco Commission Southside Allocation to receive grants/loans toward the cost of the Project, a mechanism to pay back that allocation shall be formulated at a future date once the Project produces a positive margin (profit), as determined by the City's Biennial Rate Study.

D. <u>MISCELLANEOUS</u>:

1. **<u>MODIFICATION</u>.** Modifications of the MOU shall be made only by mutual consent of the Parties, by the issuance of a written modification, signed and dated by all Parties, prior to any modifications being made.

2. **<u>PRINCIPAL CONTACTS</u>.**

<u>County</u>:
David M. Smitherman, County Administrator

<u>City</u>:
Kenneth F. Larking, City Manager

<u>RIFA</u>:
Sherman Saunders, Chairman

3. **GOVERNING LAW; VENUE.** This MOU shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia. If legal action by any Party is necessary for or with respect to the enforcement of any or all of the terms and conditions hereof, then exclusive venue therefore shall lie in Danville, Virginia. If any ambiguity or question of intent or interpretation arises, this MOU shall be construed as if drafted jointly by the parties and no presumptions or burden of proof shall arise favoring or disfavoring any party by virtue of authorship of any of the provisions of this MOU.

4. **MEDIATION.**

(a) Good faith mediation shall be a condition precedent to the filing of any litigation in law or equity by any Party against the other Party or Parties relating to this MOU. The Party initiating mediation hereunder (the "**Initiating Party**") shall give written notice to the other Party (or Parties) (the "**Responding Party**", whether one or more) that the Initiating Party believes that an event of default or impasse under this MOU may have occurred, specifying the circumstances constituting the event of default or impasse. The Responding Party shall prepare and serve a written response thereto within ten (10) business days of receipt of such notice. A meeting shall be held within ten (10) business days after the response between the Parties to attempt in good faith to negotiate a resolution of the dispute or impasse.

(b) If the Parties are unable to resolve the dispute through the process in this Paragraph D.4, the Parties shall attempt to resolve the controversy by engaging a single mediator, experienced in the subject matter, to mediate the dispute. The mediator shall be mutually selected by the Parties to the controversy; however, should the Parties be unable to agree upon a single mediator within five (5) business days of the written response of the Responding Party, the Parties jointly, shall agree upon the selection of a neutral third-party agreed upon by the Parties, to appoint a mediator, experienced and knowledgeable in the matters which are the subject of the dispute or impasse. The costs of the mediator and the mediation shall be shared equally by the Parties to the dispute.

Within two (2) business days of selection, the mediator shall be furnished copies of the notice, this MOU, response, and any other documents exchanged by the Parties. The mediator shall conduct mediation at a location to be agreed upon by the Parties or absent such agreement, by the mediator.

If the Parties and the mediator are unable to effect a settlement within thirty (30) days from selection or such other time as the Parties agree, the mediator shall make a written recommendation as to the resolution of the dispute. Each Party, in its sole discretion, shall accept or reject such recommendation in writing within ten (10) business days after receipt. Failure by a Party to give such a writing within such period of time shall be deemed to be a rejection by that Party.

Party to give such a writing within such period of time shall be deemed to be a rejection by that Party.

(c) Notwithstanding the preceding subparagraphs of this Paragraph D.4, the Parties reserve the right to file suit or pursue litigation after good faith mediation. The Parties consent to selection of a mediator by any Court shall not constitute consent to jurisdiction of such court or waiver of defenses as to venue or jurisdiction.

5. **LEGAL FEES/COSTS.** At all times under this MOU, each Party shall be responsible for its own legal fees and costs.

6. **NO CONSEQUENTIAL DAMAGES**. Notwithstanding any other provision set forth in this MOU, in no event (including without limitation any termination of this MOU with or without cause) will any Party be liable to the other Party or Parties for any indirect, special or consequential damages whatsoever (including without limitation lost profits), arising out of or relating to this MOU or any Party's performance under this MOU.

7. **SEVERABILITY; HEADINGS**. The invalidity or unenforceability of any particular provision of this MOU shall not affect the other provisions hereof, and this MOU shall be construed in all respects as if such invalid or unenforceable provisions were omitted. The descriptive headings in this MOU are inserted for convenience only and do not constitute a part of this MOU.

8. **NON WAIVER**. No waiver of any term or condition of this MOU by any Party shall be deemed a continuing or further waiver of the same term or condition or a waiver of any other term or condition of this MOU.

9. **COUNTERPARTS**. This MOU may be executed in one (1) or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same MOU. This MOU may be delivered by portable document format (*.pdf) and upon such delivery, the .pdf signature shall be deemed to have the same effect as if the original signature had been delivered to the other Party or Parties.

[SIGNATURES ARE ON FOLLOWING PAGE.]

IN WITNESS WHEREOF, the Parties have executed this **MEMORANDUM OF UNDERSTANDING – MEGASITE** as of the last date written below.

COUNTY OF PITTSYLVANIA, VIRGINIA, a political subdivision of the Commonwealth of Virginia

05 / 19 /2021

By: ______________________
David M. Smitherman
County Administrator

CITY OF DANVILLE, VIRGINIA, a Virginia municipal corporation

5 / 24 /2021

By: ______________________
Kenneth F. Larking
City Manager

DANVILLE-PITTSYLVANIA INDUSTRIAL REGIONAL FACILITY AUTHORITY, a political subdivision of the Commonwealth of Virginia

_____/_____/20121

By: ______________________
Sherman Saunders, Chairman

Exhibit A

("Future Southern Connection")