

DANVILLE-PITTSYLVANIA REGIONAL INDUSTRIAL FACILITY AUTHORITY

Minutes

November 13, 2018

The Regular Meeting of the Danville-Pittsylvania Regional Industrial Facility Authority convened at 12:12 p.m. on the above date at the Institute for Advanced Learning and Research, 150 Slayton Drive, Room 206, Danville, Virginia. Present were City of Danville Members Vice Chairman Sherman M. Saunders, Fred O. Shanks, III and Alternate J. Lee Vogler. Pittsylvania County Members present were Chairman Robert W. Warren, Ronald S. Searce and Alternate Elton W. Blackstock.

City/County staff members attending were: City of Danville Director of Economic Development Telly Tucker, Pittsylvania County Director of Economic Development Matt Rowe, Assistant County Administrator for Planning & Development Gregory Sides, City of Danville Director of Finance Michael Adkins, City of Danville Senior Accountant Henrietta Weaver, Clement Wheatley Attorneys Michael Guanzon and Jennifer Burnette, and Secretary to the Authority Susan DeMasi. Also present were Brian Bradner and Shawn Harden from Dewberry & Davis.

PUBLIC COMMENT PERIOD

No one desired to be heard.

APPROVAL OF MINUTES OF THE OCTOBER 9, 2018 MEETING

Upon **Motion** by Mr. Saunders and **second** by Mr. Searce, Minutes of the October 9, 2018 Meeting were approved as presented. Draft copies had been distributed to Authority Members prior to the Meeting.

NEW BUSINESS

5A. – CONSIDERATION OF RESOLUTION NO. 2018-11-13-5A APPROVING A GROUND LEASE WITH THE INSTITUTE FOR ADVANCED LEARNING AND RESEARCH

Clement Wheatley Attorney Jennifer Burnette explained at the August 13, 2018 meeting of RIFA, Resolution 2018-08-13-5A was adopted approving a letter agreement, approving in concept, the terms and conditions of the Authority's consent to the Institute's construction of the Gene Haas Expansion, which is now referred to internally as, the Hawkins' Expansion. With this Resolution, staff has negotiated with counsel to the Institute, the formal ground lease for the Hawkins' Expansion, and also the two amendments to the SEnTec lease and to the Charles Hawkins' lease that were necessitated by the Ground Lease. Mr. Guanzon explained the original lease for the Charles Hawkins' Building was the entire parcel, which was the building RIFA paid for and is why it was a regular lease to the Institute. When the SEnTec building came on that same parcel, they had a Ground Lease which meant the Institute owned the building but RIFA retained title to the land, because that was the grant they secured to build the structure. The expansion for the Gene Haas Center is going to be paid for by grants the Institute has secured; they are going to own the building and RIFA will retain the land underneath. Staff has the new lease for the expansion; the original lease had to be amended because the parking lot has been moved. It is the same with the SEnTec building; with SEnTec, staff not only moved the lines but also had them give up their option to purchase. Also, the land underneath is still subject to the Federal EDA Grant when RIFA first got the Institute built, RIFA has to comply with all those regulations as well.

Mr. Guanzon noted because of the EDA grant for the original lease, RIFA has to charge fair market rent, that can't be waived. RIFA was charging rent and having to pay for the maintenance of the parking lot as well as the building. RIFA entered into an agreement so

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they would take care of this for RIFA which approximates the rent. Mr. Warren stated what RIFA is trying to do is create more high bay space so they can accommodate industries like Kyocera or Harlow.

Mr. Saunders **moved** for adoption of *Resolution No. 2018-11-13-5A, approving a Ground Lease with the Institute for Advanced Learning and Research, a political subdivision of the Commonwealth of Virginia ("IALR"), for the lease by IALR of a portion of Parcel 78360 in the Authority's Cyber Park Project and the construction thereon of the Hawkins Expansion, together with related amendments to the current leases for the SEnTeC building and the Charles Hawkins Building located in the Authority's Cyber Park Project.*

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

VOTE: 4-0
AYE: Warren, Searce, Saunders, Shanks (4)
NAY: None (0)

5B. CONSIDERATION OF RESOLUTION NO. 2018-11-13-5B APPROVING A LOCAL PERFORMANCE AGREEMENT WITH BGF INDUSTRIES

Pittsylvania County Director of Economic Development Matt Rowe explained this Local Performance Agreement is for the BGF Industries project which was announced on October 16th. The Company has already signed the Local Performance Agreement and the state Performance Agreement with the Commonwealth Opportunity Fund; the RIFA Board would provide an Industrial Enhancement Grant in the amount \$245,000. In addition, since the land is in the Cyber Park, which is an Enterprise Zone, the estimated Enterprise Zone incentives are \$113,750 which would be split between the City and the County; this totals about \$200,000 from each locality. The Company signed the lease agreement with the Institute and are hiring people in this facility; their expectation is to break ground in the spring. They are looking at a minimum capital investment in excess of \$7M and the creation of at least 65 new full time jobs to Virginia with an average base wage of \$75,000 and full benefits.

Mr. Rowe explained if they vacate the premises or don't designate it as their corporate headquarters for a period of less than five years, they pay RIFA \$1M; if they fail to be there at year nine, they would pay RIFA \$100,000. All monies that are given to them up front are fully securitized by an irrevocable letter of credit. There is no liability of claw back for the localities. Mr. Tucker stated initially the company requested that all incentives go toward reducing the cost of the building and Mr. Rowe explained the letter of credit will be provided so the company can get those funds up front and will go straight into the hard, fixed asset building costs. Staff believed this was best because the building cannot be moved, is on the tax role and allows RIFA to get their return on investment even faster.

Mr. Searce **moved** for adoption of *Resolution No. 2018-11-13-5B, approving that certain Local Performance Agreement with BGF Industries, Inc., a Delaware corporation, and others, under which the Authority would provide an Industrial Enhancement Grant in the amount of \$245,000 and land in the Authority's Cyber Park project in Danville, Virginia, for a ground lease for new corporate headquarters and research center; and would apply for and disburse certain state grants and state loan, in exchange for capital investments of at least \$7,000,000 and creation of 65 full-time jobs with an average yearly base wage of at least \$75,000 and other capital investments in the Cyber Park project.*

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

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

5C. CONSIDERATION OF RESOLUTION 2018-11-13-5C APPROVING A LOCAL PERFORMANCE AGREEMENT WITH HARLOW FASTECH LLC

City of Danville Director of Economic Development, Telly Tucker explained this item was for the Harlow project; the Company has already signed the Local Performance Agreement. Staff negotiated the \$500,000 industrial enhancement grant to be split between the two localities, \$250,000 each; that would be payable over a six or seven year period. They have leased space at the Institute for twelve months, at which time they are designing the construction of a new building on the campus of the Institute. Mr. Tucker noted the IDA has given the go-ahead to do the lease financing and sign a term sheet with Virginia Community Capital to finance the new building. Staff has received the term sheet from Virginia Community Capital to move forward with the construction of the new building. Staff is securing their investment with the Tobacco Commission and local funds with title to a significant amount of company equipment, as well as a buy back provision that has been reviewed by the attorney in the UK hired by RIFA to validate that the buyback provision is legally binding in the UK. Mr. Shanks questioned the agreement that the UK attorney has looked at, if anything went wrong that would be tried in Virginia and Mr. Guanzon noted it would not. That would be the case wherever the parent company is; RIFA could sue them here in the US, but if they don't have any assets here, then it wouldn't be worth it. Mr. Warren thanked Mr. Tucker and Mr. Rowe for their good work; this was more complicated than usual and thanked Ms. Burnette and Mr. Guanzon from Clement & Wheatley for their great work.

Mr. Shanks **moved** for adoption of Resolution 2018-11-13-5C, *approving that certain Local Performance Agreement with Harlow Fastech LLC, and others, under which the Authority would provide an Industrial Enhancement Grant in the amount of \$500,000, residential housing expenses reimbursement in the maximum amount of \$35,000, payment of the first 12 months of base rent, up to \$75,000, under a Hawkins High Bay Lease with the Institute for Advanced Learning and Research, a political subdivision of the Commonwealth of Virginia, and land in the Authority's Cyber Park project in Danville, Virginia, for a lease for a new manufacturing facility; and would apply for and disburse certain state and private grants and state loan, in exchange for capital investments of at least \$8,000,000 and creation of 49 full-time jobs with an average yearly base wage of at least \$55,000 and other capital investments in the Cyber Park project.*

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

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

5D. CONSIDERATION OF RESOLUTION 2018-11-13-5D APPROVING THAT COOPERATION AGREEMENT WITH THE IDA

Mr. Guanzon explained this was a companion resolution to the one the Board just passed for Harlow, it is an agreement between RIFA and the City IDA for the land. Once the actual dimensions of the property are identified and surveyed, RIFA will convey the land to the City IDA, and the IDA would construct the facility as contemplated in the local performance agreement. There is a provision included for an option to purchase that Harlow has under the

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Local Performance Agreement under their lease. To ensure that RIFA has additional security above the others discussed, Virginia Community Capital and IDA will be agreeable to having a second position Deed of Trust on the property. Mr. Tucker noted because they were able to get the federal grants for the EDA to help develop this park, RIFA does have to go through certain processes in order to be able to transfer property to them to do a market rate lease. Mr. Shanks asked if this was for the company to end up owning the property and Mr. Guanzon noted it was; it would essentially be a pass-through. The amount of the rent they are paying is to pay back the financing for the building they are constructing. The purchase price will be the pay off amount. When they have fee simple title to it, they will be paying the ordinary real estate tax. Mr. Tucker noted Virginia Community Capital has agreed that the City IDA and the City will have to have a moral obligation during construction only; at the end of the construction period, the moral obligation goes away. The idea is for the company to finance the building directly with Virginia Community Capital as soon as possible, within the first couple years.

Mr. Warren stated he was glad staff has done this so RIFA can maintain control of the parks and Mr. Guanzon explained RIFA does have some control already because of the Restrictive Covenants for the Cyber Park. Moving forward, RIFA always has the ability, per deal, to have even additional restrictions on a particular parcel should it decide to and be able to negotiate that provision. Mr. Warren stated he hoped as they start with the Southern Virginia Mega Park the Board will be able to do something similar. Mr. Guanzon noted staff has had a discussion this year about looking through those Restrictive Covenants again in light of the many changes in the Authority's strategy, to see if any additional revisions need to be made.

Mr. Saunders **moved** for approval of Resolution 2018-11-13-5D, *approving that certain Cooperation Agreement with the Industrial Development Authority of Danville, Virginia, a political subdivision of the Commonwealth of Virginia (the "City IDA"), under which the Authority shall donate approximately 10.17 acres or other land located in the Authority's Cyber Park project in Danville, Virginia, in support of Resolution No. 2018-11-13-5C; such Cooperation Agreement shall include among other things, the obligation of the City IDA to record a deed of trust to secure performance by Harlow Fastech LLC, a Virginia limited liability company, under a Local Performance Agreement.*

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

VOTE: 4-0
AYE: Warren, Searce, Saunders, Shanks (4)
NAY: None (0)

5B. FINANCIAL STATUS REPORT AS OF OCTOBER 31, 2018

Authority Treasurer Michael Adkins gave the Financial Status report as of October 31, 2018 beginning with the Cane Creek Bonds showing no activity for the month of October. General Expenditures for FY 2019 show RIFA received \$10,000 from Southern Virginia Regional Alliance; they were helping RIFA to fund the helipad and that was received in October. \$5,000 was expended to Brown, Edwards for progress billing on the audit; that audit is nearing completion, and the Board should have a formal report on that next month. \$343 in meals and \$31 in monthly utilities were also expended. Funding Other than Bonds for the Southern Virginia Mega Site show RIFA expended \$180,000 to Appalachian Power Company, that was some of the additional cost of the routing analysis and permitting to get that infrastructure service underway. Lot 4 Site Development at Berry Hill shows \$1,400 to the Treasurer of Virginia for a construction permit modification. Lot 8 Site Development shows no activity, and

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Water and Sewer at Berry Hill shows \$700 to the Treasurer of Virginia for permit modifications related to the Stormwater. Rent, Interest and Other Income for October shows \$27,272 received from the Institute representing the September and October maintenance fee for the Hawkins' Building, \$425 in Interest Income and \$13,636 paid to the Institute for the Hawkins' Building Management Fee.

Mr. Shanks **moved** to accept the Financial Report as presented. The Motion was **seconded** by Mr. Searce and carried by the following vote:

VOTE: 4-0
AYE: Warren, Searce, Saunders, Shanks (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 12:45 p.m. Mr. Saunders **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 Berry Hill Mega Site 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 the Authority's Berry Hill Mega Site project 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.

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

VOTE: 4-0
AYE: Warren, Searce, Saunders, Shanks (4)

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NAY: None (0)

D. On **Motion** by Mr. Searce and **second** by Mr. Shanks and by unanimous vote at 2:00 p.m., the Authority returned to open meeting.

E. Mr. Searce **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.

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

VOTE: 4-0

AYE: Warren, Searce, Saunders, Shanks (4)

NAY: None (0)

7. COMMUNICATIONS

Board Members thanked staff, including Dewberry, for the hard work they are doing. Mr. Blackstock noted Mr. Dewberry was originally from Hurt, his nephew was an engineer in Texas and was tragically killed last week.

Mr. Tucker noted approximately two meetings ago, the Board officially adopted the name, Southern Virginia Mega Site at Berry Hill and instructed staff to proceed with getting concepts for a logo and gateway signage to brand the park. Staff used the same process they used for the joint logo, with an online competition. They had approximately seventy submittals, evaluated them, and narrowed it down to the top two or three, and would like to get feedback from the Board. After discussion, the Board decided on Option #2 with same color scheme as the joint logo. Mr. Tucker noted staff will work with the designer, taking Board member's comments about the colors, to refine the design and bring the final design back to the Board at the December meeting.

Mr. Guanzon noted the County has adopted, under certain circumstances, where people can participate by conference call for a meeting. Staff discussed this in a pre-RIFA meeting, and Ms. Burnette explained members can only attend a meeting via electronic means if the Board member cannot attend due to a temporary or permanent disability or other medical condition that would prevent physical attendance. They can attend due to a personal matter but they have to identify with specificity the nature of the personal matter and that participation is only limited each calendar year to two meetings; or if the personal residence is more than sixty miles from the meeting location. RIFA would have to adopt a written policy that governs participation of members by electronic means including an approval process. Also, the remote

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participant cannot be counted for the quorum; there would have to be a quorum of the RIFA members physically assembled at a primary location. It would have to be recorded in the minutes whether the Board approved or disapproved attendance by electronic means and would have to be specific about what the personal matter is; it becomes part of the official record. Mr. Guanzon stated their recommendation is that the Board does not adopt this. The County does not have any alternate supervisors, the RIFA Board does have alternate directors for this purpose. For quorum requirements there has to be three members present, of which the City or County is represented with one or two members. If one member wanted to participate because they were out of town, they could now, listen in on the phone and give comments, but would not be able to vote.

Mr. Warren noted there could be a situation where Mr. Blackstock and himself could not be present; there could be something that comes up that the County agreed with and the City didn't. It could be two to one. Mr. Guanzon stated the other alternate could just not show up and there wouldn't be a quorum. Mr. Guanzon stated the benefits of having this are very limited, it will cause more problems by trying to implement this type of policy. Mr. Warren stated he did like the idea of being able to call in, hear and share their opinions and ideas, whether they could be there or not. Mr. Blackstock stated they are flexible enough as a group, if they had to change a meeting date, they could. In response to Mr. Saunders, Mr. Guanzon explained it would be the same for a closed meeting; a Board member could call in and participate in the closed session discussion. Mr. Saunders noted his concern with confidentiality in closed session if someone calls in. Mr. Warren noted the Board should have something that if someone calls in that is going to participate in closed session, they certify that they are alone in the room. Mr. Warren noted he was good with leaving things as they were and Board members noted their agreement.

Meeting adjourned at 2:23 p.m.

s/Robert W. Warren
Chairman

s/Susan M. DeMasi
Secretary to the Authority