

Danville-Pittsylvania Regional Industrial Facility Authority

**City of Danville, Virginia
County of Pittsylvania, Virginia**

SPECIAL MEETING AGENDA

November 8, 2019

8:00 A.M.

**Institute for Advanced Learning and Research
150 Slayton Avenue, Room 205
Danville, Virginia**

County of Pittsylvania Members

**Robert W. Warren, Vice Chairman
Ronald S. Scarce
Elton W. Blackstock, Alternate**

City of Danville Members

**Fred O. Shanks, III, Chairman
Sherman M. Saunders
J. Lee Vogler, Jr., 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. NEW BUSINESS

- A. Consideration of Resolution 2019-11-08-4A, ratifying that certain local performance agreement, pursuant to Resolution No. 2019-10-24-6A, with Morgan Olson, LLC, a previously undisclosed industry recruit, for the establishment and operation of an original equipment manufacturing facility in the Authority's Cane Creek Centre Industrial Park, located in Pittsylvania County, Virginia – Michael C. Guanzon, Christian & Barton, LLP, counsel to the Authority and Matthew D. Rowe, Director of Economic Development, Pittsylvania County.

5. CLOSED SESSION

- A. As permitted by Section 2.2-3711(A)(5) of the Code of Virginia, 1950, as amended ("Virginia Code"), for discussion concerning a prospective business or industry where no previous announcement has been made of that business or industry's interest in locating its facilities in one of the Authority's projects, located in Pittsylvania County;
- B. As permitted by Virginia Code §2.2-3711(A)(40) for discussion or consideration of records excluded under Virginia Code §2.2-3705.6(3) (including without limitation 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
- 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 located in Pittsylvania County, where discussion in an open meeting would adversely affect the bargaining position or negotiating strategy of the Authority.

RETURN TO OPEN SESSION

- D. Confirmation of Motion and Vote to Reconvene in Open Meeting.
- E. Motion to Certify Closed Meeting.

6. OPEN SESSION – NEW BUSINESS

- A. Consideration of Resolution No. 2019-11-08-6A, authorizing the assignment of that certain option contract dated September 14, 2018, with Indevprop, LLC, a Virginia limited liability company, entered pursuant to Resolution No. 2018-09-14A, to assignee; and authorizing the negotiation, execution and delivery of an economic development agreement with the assignee, where the Authority would provide a land cost grant equal to the gross purchase price under the option contract to the assignee, and will provide water and sewer extensions to Lot 7 and cutting and grubbing services for Lot 7 – Mr. Rowe and Mr. Guanzon.

7. ADJOURN

Danville-Pittsylvania Regional Industrial Facility Authority

Executive Summary

| | |
|-------------------------|--|
| Agenda Item No.: | Item 4A |
| Meeting Date: | 11/08/2019 |
| Subject: | Resolution No. 2019-11-08-4A |
| From: | Matthew D. Rowe, Director of Economic Development Pittsylvania County |

SUMMARY

The Board will be asked to approve Resolution 2019-11-08-4A ratifying a local Performance Agreement with Morgan Olson.

ATTACHMENTS

Resolution 2019-11-08-4A
Exhibit A

A RESOLUTION RATIFYING THAT CERTAIN LOCAL PERFORMANCE AGREEMENT, PURSUANT TO RESOLUTION NO. 2019-10-24-6A, WITH MORGAN OLSON, LLC, A PREVIOUSLY UNDISCLOSED INDUSTRY RECRUIT, FOR THE ESTABLISHMENT AND OPERATION OF AN ORIGINAL EQUIPMENT MANUFACTURING FACILITY IN THE AUTHORITY’S CANE CREEK CENTRE INDUSTRIAL PARK, LOCATED IN PITTSYLVANIA COUNTY, 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 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 2019-10-24-6A, the Authority authorized the negotiation, execution and delivery of a local performance agreement with an undisclosed industry recruit, who was subsequently announced as Morgan Olson, LLC (“**Morgan Olson**”); and

WHEREAS, the Authority determined that the terms of the local performance agreement with Morgan Olson are reasonable, as more particularly set forth in that certain Local Performance Agreement, dated October 22, 2019, attached hereto as **Exhibit A**, incorporated herein by this reference (the “**LPA**”); 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 LPA.

NOW, THEREFORE, BE IT RESOLVED BY THE DANVILLE-PITTSYLVANIA REGIONAL INDUSTRIAL FACILITY AUTHORITY, THAT:

1. The Authority hereby finds that the LPA with Morgan Olson is reasonable, appropriate and within the authority of Resolution 2019-10-24-6A.
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 LPA and the matters contemplated in this Resolution.
3. This Resolution shall take effect immediately upon its adoption.

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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 special meeting duly called and held on November 8, 2019, 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 8th day of November 2019.

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

(SEAL)

Exhibit A
(Local Performance Agreement)

LOCAL PERFORMANCE AGREEMENT

THIS LOCAL PERFORMANCE AGREEMENT (this "**Agreement**"), made and entered into as of the 22nd day of October 2019, 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 Virginia municipal corporation (the "**City**"); and **MORGAN OLSON, LLC**, a Delaware limited liability company (the "**Company**");

WITNESSETH:

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 have agreed to provide incentives to new and expanding businesses that conduct industrial activity.

b. The Company, an American-based firm, is North America's leading producer of walk-in vans and dry-freight delivery vehicle bodies, and is a subsidiary of J.B. Poindexter & Co., Inc., a Delaware corporation, which owns and operates fifty-six (56) van and truck manufacturing plants in the United States, Canada and Mexico.

c. The Company has agreed to establish and to operate a state-of-the-art Original Equipment Manufacturing (OEM) facility to manufacture and to assemble walk-in vans in an existing building containing approximately nine hundred twenty five thousand (925,000) square feet of space (the "**Building**"), situated on that certain lot fronting on 100 IKEA Drive, commonly known as Lot 7A, Tax GPIN 2347-06-3528 ("**Lot 7A**"), in RIFA's Cane Creek Centre Industrial Park, in Ringgold, Pittsylvania County, Virginia. In addition, the Company intends to acquire an aggregate of approximately 188 acres of RIFA-owned surrounding real property, commonly known as Tax GPINs 2347-04-1865, 2347-15-7319; and 2347-26-0382 (collectively, the "**Adjacent Land**"), for needed chassis and finished truck / van storage area.

d. During the Performance Period defined below, the Company plans to make total capital investments in the Facility (as defined below) and the Adjacent Land of at least Forty Two Million Eight Hundred Thirty Seven Thousand Three Hundred Fifty Six and 00/100 Dollars (\$42,837,356.00) and to create seven hundred three (703) full-time jobs with an average yearly base wage of at least Thirty Four Thousand Two Hundred Seventy Four and 00/100 Dollars (\$34,274.00), as set forth in this Agreement.

e. Each of RIFA, the County and the City 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 and the City 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 Cane Creek Centre Industrial Park, and that such development will promote the safety, health, welfare, convenience and prosperity of the citizens of the County and the City.

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

a. **"Adjacent Land"** shall have the same meaning as that term in Section 1(c) above. The stated value of the Adjacent Land is One Million Eight Hundred Eighty Thousand and 00/100 Dollars (\$1,880,000.00).

b. **"Affiliated Entity"** shall have the same meaning as in Section 2A below.

c. **"AL Purchase Option"** shall have the same meaning as in Section 3(b) below.

d. **"AL Purchase Price"** shall have the same meaning as in Section 3(b) below.

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

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

g. **"Capital Investment"** means a capital expenditure by or on behalf of the Company in taxable real property, taxable tangible personal property, or both, at the Facility. 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.

h. **"CI Option Date"** shall have the same meaning as that term in Section 3(b)(i) below.

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

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

this Agreement.

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

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

m. **"#Employees Option Date"** shall have the same meaning as that term in Section 3(b)(i) below.

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

o. **"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 of Virginia 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.

p. **"Facility"** shall mean collectively Lot 7A, the Building and all other improvements on Lot 7A, the Adjacent Land and all improvements on the Adjacent Land.

q. **"GL Landlord"** shall mean with respect to the Ground Lease executed by the Company, the landlord thereunder.

r. **"GL Term"** shall mean the term of the Ground Lease and shall have the same meaning as that term in Section 3(a)(i) below.

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

t. **"Ground Lease"** shall mean that certain fifteen (15) year ground lease for the Adjacent Land, with the Company as tenant, and RIFA as landlord, as more particularly described in Section 3 below.

u. **"Lot 7A"** shall have the same meaning as in Section 1(c) above.

v. **"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.

w. **"New Job"** shall mean new permanent full-time employment of an indefinite duration at the Facility for which the standard fringe benefits are provided by the Company for the employee, and for which the Company pays an average annual wage of at least Thirty Four Thousand Two Hundred Seventy Four and 00/100 Dollars (\$34,274.00), 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.

x. **"Option Date"** shall have the same meaning as in Section 3(b) below.

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

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

aa. **"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.

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

cc. **"State Grants"** shall mean the Tobacco Region Opportunity Fund Grant awarded by the Tobacco Commission (as defined below).

dd. **"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.

ee. **"Utility Taxes"** shall have the same meaning as in Section 3(a)(iv) below.

Section 2A. – Domestication in Virginia; Establishment of an Affiliated Entity. Within ninety (90) days after the date of this Agreement, the Company shall either domesticate itself in the Commonwealth of Virginia or establish an affiliated entity controlled by the Company and domesticated under the laws of the Commonwealth of Virginia (the **"Affiliated Entity"**). The Affiliated Entity, if any, shall support the Company's operations at the Facility on such terms and

conditions as the Company and the Affiliated Entity shall agree. Within thirty (30) days after such domestication, 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.

Section 3. - The Ground Lease.

a. Ground Lease – Minimum Terms and Conditions. Within sixty (60) days after the Company's execution of this Agreement, the Company shall execute a Ground Lease with the GL Landlord on such terms and conditions as the parties may then agree; however, the Ground Lease, at a minimum, shall provide the following provisions:

i. The term of the Ground Lease shall be fifteen (15) years (the "**GL Term**"), with annual base rent of One and 00/100 Dollar (\$1.00) per year.

ii. The Company and GL Landlord shall obtain prior written approval from RIFA, which approval shall not be unreasonably withheld, delayed or conditioned, of (A) any improvements to the Adjacent Land, and (B) the construction schedule that is reasonably calculated to complete the construction and capital expenditures to or for the Facility within the Performance Period.

iii. Should RIFA or some other tax-exempt Government Party be the GL Landlord, the Company shall pay directly to the taxing authority of all real property taxes that may be assessed pursuant to Virginia Code § 58.1-3203 or successor provision.

iv. The Company agrees to pay or cause to be paid, on a timely basis, directly to the provider thereof, all costs and charges for electricity, gas, sewer, heat, water, and all other utilities to the extent used by the Company on the Adjacent Land, and all taxes (collectively, "**Utility Taxes**") or charges imposed by the County, the City or any other governmental or quasi-governmental units on such utility services which are used on or attributable to the Adjacent Land during the GL Term. In no event shall RIFA be liable for any interruption or failure in the supply of any utilities to the Adjacent Land. Notwithstanding the foregoing, in the event that Utility Taxes are not charged on any portion of the Adjacent Land or any building or improvements thereon at one hundred percent (100%) because of RIFA's status as a political subdivision or otherwise, the Company shall pay to RIFA as additional rent a sum equal to Utility Taxes which would have come due had the Company, instead of RIFA, owned the Adjacent Land, less the amount of Utility Taxes charged. RIFA shall give notice of such additional rent, and the Company shall pay the same to RIFA within thirty (30) days after the date of such notice.

v. The Company shall timely pay for all permitted construction and shall keep the Adjacent Land free from mechanics', materialmen's, and/or other laborers' liens as a

result of any permitted construction performed by or on behalf of the Company on any portion of the Adjacent Land during the GL Term. In the event that any such lien is filed against any portion of the Adjacent Land, the Company agrees within sixty (60) days after receipt by the Company of notice of such lien, to either (a) pay to such lien claimant such sums as are necessary to release such lien in full, or (b) if the Company desires to contest all or any portion of such lien, to post bond before a court of competent jurisdiction sufficient to release such lien of record. All permitted work under the Ground Lease performed in the construction on any portion of the Adjacent Land shall be performed in a good and workmanlike manner, in conformity with all applicable requirements of law.

vi. Except for any claims resulting from the willful misconduct and/or gross negligence of RIFA or its agents, contractors or employees, the Company shall indemnify and hold harmless RIFA from any and all suits, actions, damages, claims, judgments, costs, liabilities, and expenses in connection with loss of life, bodily or personal injury, or property damage arising from or out of any occurrence, (a) the occupancy or use by the Company of the Adjacent Land or any improvements thereon, occasioned in whole or in part by any act or omission by the Company, its agents, contractors, employees, servants, invitees, licensees, or subtenants, or (b) any action, activity, occupancy, or use by the Company of any portion of the Adjacent Land, occasioned in whole or in part by any act or omission by the Company or its agents, contractors, employees, servants, invitees, licensees, or subtenants.

vii. The Company, at its sole expense, shall keep in full force during the GL Term public liability insurance covering the Company, naming RIFA as an additional insured, in a form satisfactory to RIFA, with coverage of not less than One Million and 00/100 Dollars (\$1,000,000.00) for one person and Three Million and 00/100 Dollars (\$3,000,000.00) for one accident and property damage in the amount of One Million and 00/100 Dollars (\$1,000,000.00) for each accident, and to deposit evidence thereof with RIFA.

b. The AL Purchase Option.

i. Generally. At the expiration of the GL Term (the "**Option Date**"), the Company shall have the right to purchase the Adjacent Land from RIFA (the "**AL Purchase Option**") at the purchase price (the "**AL Purchase Price**") equal to One Hundred and 00/100 Dollars (\$100.00) so long as the Company has at least five hundred sixty three (563) full-time employees working at the Facility and the Company is not then in default of the GL Lease. However, if at the Option Date, the Company has fewer than that number of full-time employees, the AL Purchase Price shall be calculated as follows:

$$\text{AL Purchase Price} = \$1.88\text{M} - \frac{\$940\text{K} \times \# \text{Employees}_{\text{Option Date}}}{563 \text{ employees}} - \frac{\$940\text{K} \times \text{CI}_{\text{Option Date}}}{\$42,837,356}$$

, where "**#Employees_{Option Date}**" is the total number of full-time employees that the

Company employs to work at the Facility as of the Option Date; and

, where "CI Option Date" is the total Capital Investment of the Company, expressed in U.S. Dollars, to or for the Facility, as of the Option Date.

However, in no event shall the AL Purchase Price be less than One Hundred and 00/100 Dollars (\$100.00).

ii. Closing. At the closing of the AL Purchase Option, RIFA, at its expense, shall prepare and deliver to the Company a special warranty deed to the Adjacent Land, "AS IS", "WHERE IS" and "WITH ALL FAULTS", and subject to all non-utility easements, conditions, restrictions and agreements of record affecting the Adjacent Land, but free and clear of any monetary liens. RIFA shall pay any grantor's tax due with respect to the transfer of the Adjacent 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 AL 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(b) and to complete the AL 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. \$42,837,356.00 Capital Investment. On or before the Performance Date, the Company shall make Capital Investment in the minimum aggregate amount of Forty Two Million Eight Hundred Thirty Seven Thousand Three Hundred Fifty Six and 00/100 Dollars (\$42,837,356.00) (approximately Thirty Million Two Hundred Eighty Nine Thousand Ninety Eight and 00/100 Dollars (\$30,289,098.00) in new machines and tools, approximately Four Million Eight Hundred Seventy Four Thousand and 00/100 Dollars (\$4,874,000.00) in upfits to the Building, and approximately Seven Million Six Hundred Seventy Four Thousand Two Hundred Fifty Eight and 00/100 Dollars (\$7,674,258.00) in new furniture, fixtures and equipment to or for the 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 Thirty Eight Million Five Hundred Fifty Three Thousand Six Hundred Twenty and 00/100 Dollars (\$38,553,620.00) on or before the Performance Date.

b. 703 New Jobs. The Company shall create and employ seven hundred three (703) New Jobs on or before the Performance Date and shall Maintain these New Jobs until at least the Performance Date. Beginning December 1, 2019, 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(w) 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'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 Performance Period shall create and Maintain at least six hundred thirty two (632) New Jobs on or before the Performance Date.

c. Financial Report. On December 1 and June 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 Facility.

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

a. State Grant Applications. As part of the establishment of the Facility, RIFA or other Government Parties shall apply for and accept State Grants as follows:

- i. Up to \$1,195,000.00 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.

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 Investment, 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. \$500,000.00 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 Five Hundred Thousand and 00/100 Dollars (\$500,000.00) ("**Danville-Pittsylvania County Industrial Enhancement Grant**") in the form of tax rebates on real property taxes, and

machine and tool taxes. 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 \$351,500.00 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 Facility and creation of New Jobs as contemplated in this Agreement could qualify for up to Three Hundred Fifty One Thousand Five Hundred and 00/100 Dollars (\$351,500.00) in value in the form of cash payments, commercial building permit fee waivers and utility connection 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. AL Purchase Option: Land Value of \$1,880,000.00. As part of the Ground Lease, RIFA shall grant to the Company the AL Purchase Option as more particularly described in Section 3(b) above, at an AL Purchase Price ranging from One Hundred and 00/100 Dollars (\$100.00) to One Million Eight Hundred Eighty Thousand and 00/100 Dollars (\$1,880,000.00).

Section 6. - Capital Investment Report and Unaudited Annual Financial Statements. The Company shall provide a signed report to RIFA annually, beginning January 1, 2020, documenting the Company'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'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 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 at the Facility 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. Each of the Company and the Affiliated Entity, if any, 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 or the Affiliated Entity, if any, that may materially and adversely affect the financial condition, business operations, or business prospects of the Company, the Affiliated Entity, or both.

f. The Company is not in material default with respect to any existing indebtedness incurred by it. The Affiliated Entity, if any, 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 permitted assignee of the Company to any one or more of the Recruitment Documents and the Affiliated Entity, if any.

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; or

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.

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

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 Tobacco Region 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 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;

e. 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

f. 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 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 Thirty Eight Million Five Hundred Fifty Three Thousand Six Hundred Twenty and 00/100 Dollars (\$38,553,620.00); plus
- ii. 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 Thirty Eight Million Five Hundred Fifty Three Thousand Six Hundred Twenty and 00/100 Dollars (\$38,553,620.00).

b. Failure to Create and Maintain New Jobs. 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. 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 three hundred sixty two (362) New Jobs; plus
- ii. 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 three hundred sixty two (362) New Jobs.

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.

Section 11. - Audit and Guideline Requirements. Upon reasonable prior written request, the Company shall allow each of the County's Economic Development Director, the City'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 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 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 Performance Date 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

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:

Attn.: Telly D. Tucker
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:

Morgan Olson, LLC
Attn.: Phillip M. Ownbey, President/CEO
1801 S. Nottawa Street
Sturgis, MI 49091

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 effect notice as provided herein.

Section 21. - 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 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:

MORGAN OLSON, LLC, a Delaware limited liability company

By: Phillip M. Ownbey
Phillip M. Ownbey, President/CEO

(SEAL)

STATE OF Michigan
COUNTY/CITY OF St. Joseph Co. / Sturgis, to-wit:

The foregoing instrument was acknowledged before me this 22nd day of October 2019, by PHILLIP M. OWNBEY, in his capacity as President/CEO of MORGAN OLSON, LLC, a Delaware limited liability company, on behalf of such entity.

My commission expires: February 12, 2023.

Karen K. West
Notary Public
Registration No. N/A

(Only if in Va.)

KAREN K. WEST
NOTARY PUBLIC, STATE OF MI
COUNTY OF ST. JOSEPH
MY COMMISSION EXPIRES Feb 12, 2023
ACTING IN COUNTY OF St. Joseph

List of Schedules

1(e) - Summary of Incentives

Schedule 1(e)
(Summary of Incentives)

| Cash Incentives | Value or Max. Value |
|---|--------------------------------|
| Tobacco Region Opportunity Fund Grant (§5(a)(i))* | \$1,195,000.00 |
| Danville-Pittsylvania County Enterprise Zone Grant (§5(c)) | \$351,500.00 |
| Danville-Pittsylvania County Industrial Enhancement Grant (§5(b)) | \$500,000.00 |
| Subtotal | \$2,046,500.00 |

| Real Property Incentives | Value or Max. Value |
|---|--------------------------------|
| AL Purchase Option for as low as \$100.00 AL Purchase Price (§3(b)) | \$1,879,900.00 |
| Subtotal | \$1,879,900.00 |

| | |
|--------------------------------------|-----------------------|
| Subtotal of Cash Incentives | \$2,046,500.00 |
| Subtotal of Real Property Incentives | \$1,879,900.00 |
| TOTAL INCENTIVES | \$3,926,400.00 |

**Any and all advances of this cash incentive 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 incentive.*

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: _____
Fred O. Shanks, III, 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 _____ 2019, by **FRED O. SHANKS, III**, 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: _____
Joe B. Davis, 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 _____ 2019, by **JOE B. DAVIS**, 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 _____ 2019, 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. _____

Danville-Pittsylvania Regional Industrial Facility Authority

Executive Summary

| | |
|-------------------------|---|
| Agenda Item No.: | Item 6A |
| Meeting Date: | 11/08/2019 |
| Subject: | Resolution No. 2019-11-08-6A Matthew D. Rowe, Director of Economic Development |
| From: | Pittsylvania County Michael C. Guanzon, Esq., Counsel to the Authority |

SUMMARY

The Board will be asked to approve Resolution 2019-11-08-6A authorizing the assignment of a option contract with Indevprop, LLC.

ATTACHMENTS

Resolution 2019-11-08-6A

Resolution No. 2019-11-08-6A Special

A RESOLUTION AUTHORIZING THE ASSIGNMENT OF THAT CERTAIN OPTION CONTRACT DATED SEPTEMBER 14, 2018, WITH INDEVPROP, LLC, A VIRGINIA LIMITED LIABILITY COMPANY, ENTERED PURSUANT TO RESOLUTION NO. 2018-09-14A, TO ASSIGNEE; AND AUTHORIZING THE NEGOTIATION, EXECUTION AND DELIVERY OF AN ECONOMIC DEVELOPMENT AGREEMENT WITH THE ASSIGNEE, WHERE THE AUTHORITY WOULD PROVIDE A LAND COST GRANT EQUAL TO THE GROSS PURCHASE PRICE UNDER THE OPTION CONTRACT TO THE ASSIGNEE, AND WILL PROVIDE WATER AND SEWER EXTENSIONS TO LOT 7 AND CUTTING AND GRUBBING SERVICES FOR LOT 7

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, pursuant to paragraph 3 of Article VIII of the Authority’s Amended and Restated Bylaws, the Authority held its special meeting on November 8, 2019, duly called by the Chairman of the Authority at least three (3) business days before such meeting to discuss the subject matter of this Resolution, and the other items specified in the notice; and

WHEREAS, as permitted by Sections 2.2-3711(A)(3), 2.2-3711(A)(5) and 2.2-3711(A)(40) of the Code of Virginia, 1950, as amended, the Authority, at the special meeting, (i) discussed 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; (ii) discussed the location of a prospective business or industry in the Authority’s Southern Virginia Megasite at Berry Hill (the “**SVM Project**”), located in Pittsylvania County, Virginia, where no previous announcement has been made of the business’s or industry’s interest in locating its facility in the SVM Project; and (iii) discussed and considered records excluded under Virginia Code § 2.2-3705.6(3) (including without limitation 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

WHEREAS, pursuant to Resolution No. 2018-09-14A, the Authority entered into that certain Option Contract dated September 14, 2018 (the “**Option Contract**”) with Indevprop, LLC, a Virginia limited liability company (“**Indevprop**”), as optionee, for the purchase of Lot 7 in the SVM Project (“**Lot 7**”); and

WHEREAS, the Authority is agreeable to Indevprop’s assignment of the Option Contract to the Company (as defined below); and

WHEREAS, an undisclosed company (the “**Company**”), has agreed to establish and operate an electrical power plant (the “**Facility**”) on Lot 7 in the SVM Project; and

WHEREAS, the Authority desires to enter into an economic development agreement (the “**EDA**”) with the Company, under the following minimum business terms:

- (i) certain capital investments by the Company for the Facility totaling at least \$200,000,000.00; and
- (ii) the creation of five (5) full-time jobs with an average yearly base wage of at least \$65,000.00; and
- (iii) a performance period of five (5) years; and
- (iv) site preparation and water and sewer service utility extension to be completed on Lot 7 by the Authority funded through incentives from or through any one or more of the Authority, the County and the City; and
- (v) site cutting and grubbing to be provided by the Authority for Lot 7; and
- (vi) subsidies by the Authority, subject to appropriation, for the Company’s water and wastewater services to be provided by the City; and
- (vii) a Land Cost Grant equal to the gross purchase price under the Option Contract; and
- (viii) the option to repurchase Lot 7 by the Authority under certain conditions as more particularly described in the EDA

; and

WHEREAS, each of the Authority, the County and the City finds that the provisions of the EDA and the commitments of the Company will promote the expansion of industry by inducing industrial development within the SVM Project, and that such development will promote the safety, health, welfare, convenience and prosperity of the citizens of the County and the City; 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 in furtherance of the development of the SVM Project, for the Authority to approve, to execute and to deliver the EDA, as applicable, consistent with this Resolution.

NOW, THEREFORE, BE IT RESOLVED BY THE DANVILLE-PITTSYLVANIA REGIONAL INDUSTRIAL FACILITY AUTHORITY, THAT:

1. The Authority hereby authorizes and consents to the assignment of the Option Contract to the Company, as applicable, as described in this Resolution, together with such amendments, deletions, or additions thereto as may be approved by the Chairman or the Vice

Chairman of the Authority, and hereby authorizes the Chairman and the Vice Chairman, either of whom may act independently of the other, to execute and deliver the consent, and all other related documents to consummate the transaction, on behalf of the Authority, such execution of the assignment, and related documents by the Chairman (or Vice Chairman as the case may be) to conclusively establish his approval of any amendments, deletions, or additions thereto.

2. The Authority hereby authorizes and approves the negotiation, execution and delivery of the EDA, as applicable, as described in this Resolution, together with such amendments, deletions or additions thereto as may be approved by the Chairman or the Vice Chairman of the Authority, and hereby authorizes the Chairman and the Vice Chairman, either of whom may act independently of the other, to execute and deliver the EDA, and all other related documents to consummate the transaction, on behalf of the Authority, such execution of the EDA, and related documents by the Chairman (or Vice Chairman as the case may be) to conclusively establish his approval of any amendments, deletions or additions thereto.

3. The Authority hereby directs that in the event that the Company is announced, the EDA, as then executed by the Chairman (or Vice Chairman as the case may be), shall be placed on the agenda for the Authority's December 2019 regular meeting for ratification.

4. 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 EDA as may be executed and delivered by the Chairman (or Vice Chairman as the case may be), or as such staff, agents and representatives in their discretion deem necessary or appropriate in order to carry out the intent and purposes of this Resolution.

5. The Authority hereby approves, ratifies and confirms any and all actions previously taken by the Authority, its agents and representatives, in respect to the EDA and the matters contemplated therein or related thereto, including without limitation any confidentiality agreement, letter of intent or other document related to the EDA dated on before the date of this Resolution is adopted.

6. 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 special meeting duly called and held on November 8, 2019, 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 8th day of November 2019.

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

(SEAL)