

Danville-Pittsylvania Regional Industrial Facility Authority

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

AGENDA

September 13, 2021

12:00 P.M.

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

County of Pittsylvania Members

**Ronald S. Scarce, 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 AUGUST 9, 2021 MEETING AND AUGUST 25, 2021 SPECIAL MEETING.

5. NEW BUSINESS

- A. Consideration of Resolution No. 2021-09-13-5A, ratifying that certain Local Performance Agreement, pursuant to Resolution No. 2021-08-25 Special, with Tyson Foods, Inc., a Delaware corporation and Tyson Farms, Inc., a North Carolina corporation, a previously undisclosed industry recruit, for the establishment and operation of a state-of-the-art, no-kill, food processing facility to process and package ready-to-eat consumer foods in the Authority's Cane Creek Centre Industrial Park, located in Pittsylvania County, Virginia – Corrie Teague Bobe, Director of Economic Development, City of Danville, and Matthew D. Rowe, Director of Economic Development, Pittsylvania County
- B. Financial Status Reports as of August 31, 2021 – Mr. Michael L. Adkins, Authority Treasurer and Henrietta Weaver, CPA, City of Danville, Virginia
- C. Report on Southern Virginia Megasite Marketing – Mr. Rowe

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

Danville-Pittsylvania Regional Industrial Facility Authority

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

7. COMMUNICATIONS FROM:

- A. Authority Board Members
- B. Staff
 - i. October RIFA meeting will be held on Tuesday, October 12, 2021 – Susan M. DeMasi, Authority Secretary
 - ii. Discussion on update/replacement of entrance sign for Cane Creek Centre – Ms. Bobe
 - iii. Discussion on recommendations on a process for amending executed performance agreements – Kenneth F. Larking, City Manager, Danville, and David M. Smitherman, Pittsylvania County Administrator

8. ADJOURN

Danville-Pittsylvania Regional Industrial Facility Authority

Executive Summary

Agenda Item No.:	Item 4
Meeting Date:	09/13/2021
Subject:	Meeting Minutes
From:	Susan M. DeMasi, Authority Secretary

SUMMARY

Attached for the Board's approval are the Meeting Minutes from the August 9, 2021 Meeting and the August 25, 2021 Special Meeting.

ATTACHMENTS

Meeting Minutes – 08/09/2021 and 08/25/2021

DANVILLE-PITTSYLVANIA REGIONAL INDUSTRIAL FACILITY AUTHORITY

Minutes

August 9, 2021

A Meeting of the Danville-Pittsylvania Regional Industrial Facility Authority convened at 12:10 p.m. on the above date at the Institute for Advanced Learning and Research, 150 Slayton Avenue, Room 206, 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 Robert W. Warren and Alternate Vic Ingram; Vice Chairman Ronald S. Searce was absent. *Dr. Miller entered the meeting at 12:23 p.m.*

City/County staff members attending were: City Manager Ken Larking, Pittsylvania County Administrator David Smitherman, City of Danville Director of Economic Development Corrie Bobe, Pittsylvania County Director of Economic Development Matt Rowe, Pittsylvania County Project Manager Kattie Saunders, Christian & Barton Attorney Michael C. Guanzon, and Secretary to the Authority Susan DeMasi. Also present were Brian Bradner and Shawn Harden from Dewberry. *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 JULY 12, 2021 MEETING

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

NEW BUSINESS

5A. FINANCIAL STATUS REPORTS AS OF JULY 31, 2021

City of Danville Accountant Henrietta Weaver gave the Financial Status report as of July 31, 2021 beginning with the Cane Creek Bonds which showed RIFA paid \$6,377 to Dewberry for Wetland Monitoring. General Expenditures for Fiscal Year 2021 show RIFA paid \$72,715 to Christian & Barton for Legal Fees, \$191 for meals, \$54 postage and \$31 for utilities. Fiscal Year 2022 General Expenditures show RIFA received \$75,000 each from the City and County and paid \$2,623 for RIFA's Insurance. Berry Hill Mega Park showed no expenditures for the month of July, Berry Hill Lots 1 and 2 showed no activity for July, and Water and Sewer at Berry Hill showed RIFA expended \$92,185 to Haymes Brothers for Phase 1 Sanitary Sewer Construction Expenses. Rent, Interest and Other Income for the last fiscal year show RIFA received \$26 in interest for the Money Market account. Current Year Rent Interest and Other Income showed RIFA received \$58,500 from both the City and County for Morgan Olsen incentives, for a total \$117,000.

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

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

DANVILLE-PITTSYLVANIA REGIONAL INDUSTRIAL FACILITY AUTHORITY

Minutes

August 9, 2021

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 12:14 p.m. Mr. Vogler **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; 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.

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

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

DANVILLE-PITTSYLVANIA REGIONAL INDUSTRIAL FACILITY AUTHORITY

Minutes

August 9, 2021

RETURN TO OPEN SESSION

On **Motion** by Mr. Warren and **second** by Mr. Vogler and by unanimous vote at 1:09 p.m., the Authority returned to open meeting.

Mr. Ingram **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. Vogler and carried by the following vote:

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

(The Zoom call was not reconnected due to technical problems.)

COMMUNICATIONS

Mr. Saunders noted members of RIFA may have received a copy of a letter that he received from Mr. Warren; Mr. Saunders noted he would be responding to the letter and they will receive a copy of the response. Mr. Warren noted the letter was from the Board of Supervisors, and he just signed as Chairman.

Meeting Adjourned at 1:15 PM

APPROVED:

Chairman

Secretary to the Authority

DANVILLE-PITTSYLVANIA REGIONAL INDUSTRIAL FACILITY AUTHORITY

Minutes

August 25, 2021s

A Special Called Meeting of the Danville-Pittsylvania Regional Industrial Facility Authority convened at 8:01 a.m. on the above date at the Institute for Advanced Learning and Research, 150 Slayton Avenue, Room 206, Danville, Virginia. Present were City of Danville Members Chairman Sherman M. Saunders and J. Lee Vogler, Jr.; Alternate Dr. Gary P. Miller was absent. Pittsylvania County Members present were Vice Chairman Ronald S. Scarce; Robert W. Warren and Alternate Vic Ingram were absent.

City/County staff members attending were: City Manager Ken Larking, Deputy City Manager Earl Reynolds, City of Danville Director of Economic Development Corrie Bobe, Pittsylvania County Director of Economic Development Matt Rowe, Pittsylvania County Project Manager Kattie Saunders, Christian & Barton Attorney Michael C. Guanzon, and Secretary to the Authority Susan DeMasi.

Chairman Sherman M. Saunders presided.

PUBLIC COMMENT PERIOD

No one present desired to be heard.

NEW BUSINESS

5A. CONSIDERATION OF RESOLUTION 2021-08-25-4A APPROVING THE FORM OF A LOCAL PERFORMANCE AGREEMENT

City of Danville Director of Economic Development Corrie Bobe explained before the Board was a draft of a local performance agreement which they have titled, Cane Creek Project. Staff was requesting approval of the local performance agreement under the terms outlined in the Resolution. Pittsylvania County Director of Economic Development Matt Rowe stated that any details of the project must remain confidential until the subsequent Governor's announcement. Mr. Rowe thanked the Board for being flexible having the special called meeting, it was very important to the company and also noted legal counsel did a great job turning this around.

Mr. Vogler **moved** to approve *Resolution 2021-08-25-4A, approving the form of a Local Performance Agreement to be executed by the Authority and Others, where no previous public announcement has been made of the business or industry's interest in locating its facility in the Authority's Cane Creek Centre Industrial Park, under which agreement, the Authority would provide a Land Grant whose value is approximately \$2,067,650.00; would apply for and disburse certain State Grants and a State Loan; and would provide an Industrial Enhancement Grant of up to \$10,344,160.00, in the form of tax rebates of 70% for 10 consecutive years on Real Property Taxes, Machine and Tool Taxes, and Business Personal Property Taxes.*

Legal Counsel to the Authority Michael Guanzon noted there was a slight error in one of the paragraphs, and distributed the corrected Resolution. Mr. Guanzon stated, on the second page, under the first full Whereas clause, it made two references to Pittsylvania County Industrial Development Authority; those were in error, they were not a party to the agreement. Mr. Guanzon requested that Mr. Vogler remake his motion, as amended, with the corrected resolution.

DANVILLE-PITTSYLVANIA REGIONAL INDUSTRIAL FACILITY AUTHORITY

Minutes

August 25, 2021s

Mr. Vogler **moved** to approve *Resolution 2021-08-25-4A approving the form of a Local Performance Agreement to be executed by the Authority and Others, where no previous public announcement has been made of the business or industry's interest in locating its facility in the Authority's Cane Creek Centre Industrial Park, under which agreement, the Authority would provide a Land Grant whose value is approximately \$2,067,650.00; would apply for and disburse certain State Grants and a State Loan; and would provide an Industrial Enhancement Grant of up to \$10,344,160.00, in the form of tax rebates of 70% for 10 consecutive years on Real Property Taxes, Machine and Tool Taxes, and Business Personal Property Taxes, as amended.*

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

VOTE: 3-0
AYE: Searce, Saunders and Vogler (3)
NAY: None (0)

Meeting Adjourned at 8:06 AM

APPROVED:

Chairman

Secretary to the Authority

Danville-Pittsylvania Regional Industrial Facility Authority

Executive Summary

Agenda Item No.:	Item 5A
Meeting Date:	09/13/2021
Subject:	Resolution 2021-09-13-5A
From:	Corrie T. Bobe, Director of Economic Development, City of Danville Matthew Rowe, Director of Economic Development, Pittsylvania County

SUMMARY

The Board will be asked to ratify the Local Performance Agreement with Tyson Foods Inc., pursuant to Resolution No. 2021-08-25 Special.

ATTACHMENTS

Resolution 2021-09-13-5A

Exhibit A

A RESOLUTION RATIFYING THAT CERTAIN LOCAL PERFORMANCE AGREEMENT, PURSUANT TO RESOLUTION NO. 2021-08-25 SPECIAL, WITH TYSON FOODS, INC., A DELAWARE CORPORATION AND TYSON FARMS, INC., A NORTH CAROLINA CORPORATION, A PREVIOUSLY UNDISCLOSED INDUSTRY RECRUIT, FOR THE ESTABLISHMENT AND OPERATION OF A STATE-OF-THE-ART, NO-KILL, FOOD PROCESSING FACILITY TO PROCESS AND PACKAGE READY-TO-EAT CONSUMER FOODS 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 2021-08-25 Special, the Authority authorized the negotiation, execution and delivery of a local performance agreement with an undisclosed industry recruit, who was subsequently announced as Tyson Farms, Inc., a North Carolina corporation, and a subsidiary of Tyson Foods, Inc., a Delaware corporation (collectively, "**Tyson**"); and

WHEREAS, the Authority determined that the terms of the local performance agreement with Tyson are reasonable, as more particularly set forth in that certain Local Performance Agreement, dated August 26, 2021, attached hereto as **Exhibit A**, and 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 Tyson is reasonable, appropriate and within the authority of Resolution 2021-08-25 Special.
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.

- # -

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 September 13, 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 13th day of September 2021.

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 26th day of August 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 Virginia municipal corporation (the "**City**"); **TYSON FOODS, INC.**, a Delaware corporation (the "**Company**") and **TYSON FARMS, INC.**, a North Carolina corporation;

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 publicly-traded Company, an American-based firm headquartered in Arkansas, is a global leading protein-centric firm with a substantial portfolio across beef, chicken, pork, and prepared foods. The Company and its subsidiaries have more than 139,000 employees globally and operate across 10 countries with more than 130 production facilities, 80 of which are in the U.S. with two currently in Virginia.
- c. The Company's subsidiary, Tyson Farms, Inc., a North Carolina corporation (the "**Subsidiary**"), has agreed to establish and to operate a state-of-the-art, no-kill, food processing facility in Pittsylvania County, Virginia, to process and package ready-to-eat consumer foods. The Subsidiary intends to construct a building containing approximately 325,000 square feet of space (the "**Building**"), to be situated on that certain lot fronting on Cane Creek Parkway, commonly known as Lot 9, Tax GPIN 2347-37-4337, containing approximately 63.62 acres of land ("**Lot 9**"), in RIFA's Cane Creek Centre Industrial Park, in Ringgold, Pittsylvania County, Virginia ("**Cane Creek**").
- d. During the Performance Period defined below, the Subsidiary plans to make total capital investments in the Facility (as defined below) of at least Two Hundred Ninety Five Million Four Hundred Fifty Two Thousand Seven Hundred Eighteen and 00/100 Dollars (\$295,452,718.00) and to create three hundred seventy six (376) full-time jobs with an average yearly base wage of at least Forty One Thousand Six Hundred Sixty Eight and 00/100 Dollars (\$41,668.00), 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 Subsidiary 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 and the Subsidiary 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.

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

- a. **"Affiliated Entity"** shall have the same meaning as in Section 2A below.
- b. **"Agreement"** shall mean this Local Performance Agreement and shall have the same meaning as set forth in the header paragraph.
- c. **"Building"** shall have the same meaning as that term in Section 1(c) above.
- d. **"Capital Investment"** means a capital expenditure by or on behalf of the Subsidiary 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 or Subsidiary 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. Notwithstanding anything herein to the contrary, it is hereby understood that the Company's total Capital Investment may not be fully captured through the release of the County's tax information. For purposes of compliance with this Agreement, the total Capital Investment reported and documented by the Company shall prevail over the assessed value reported by the County.
- e. **"Cane Creek"** shall have the same meaning as that term in Section 1(c) above.
- f. *[Left intentionally blank.]*
- g. **"City"** shall have the same meaning as that term in the header paragraph of this Agreement.

- g-1. **"Closing"** shall have the same meaning as in Section 3(c) below.
- g-2. **"Commencement of the construction"** shall have the same meaning as in Section 3(d) below.
- 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. **"Danville-Pittsylvania County Industrial Enhancement Grant"** shall have the same meaning as that term in Section 5(b) below.
- k. **"Deed"** shall have the same meaning as that term in Section 3(a) below.
- k-1. **"Donee"** shall have the same meaning as that term in Section 3(a) below.
- l. **"Event of Default"** shall have the same meaning as that term in Section 8 below.
- m. **"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. Delays or failures to perform resulting from lack of funds shall not be deemed delays beyond the reasonable control of the Company, the Affiliated Entity or the Subsidiary.
- n. **"Facility"** shall mean collectively Lot 9, the Building and all other improvements on Lot 9.
- o. *[Left intentionally blank.]*
- p. *[Left intentionally blank.]*
- q. **"Government Party" or "Government Parties"** shall mean any one or more of RIFA, the County or the City.
- r. **"Hazardous Materials"** shall mean and include, but shall not be limited to, any oil, petroleum product and any hazardous or toxic wastes or substances, any substances which

because of their quantitative concentration, chemical, radioactive, flammable, explosive, infectious or other characteristics, constitute or may reasonably be expected to constitute or contribute to a danger or hazard to public health, safety or welfare or to the environment, including without limitation, asbestos (whether or not friable) and any asbestos containing materials, lead paint, waste oils, solvents and chlorinated oils, polychlorinated biphenals (PCB's), toxic metals, pickling and plating wastes, explosives, reactive metals and compounds, pesticides, herbicides, radon gas, urea formaldehyde foam insulation, and chemical, biological and radioactive wastes, or any other similar materials which are included under or regulated by any applicable federal, state, or local law, rule or regulation (whether now existing or hereafter enacted or promulgated, as they may be amended from time to time) pertaining to environmental regulations or laws.

s. **"Inspection Period"** shall have the same meaning as in Section 3(b) below.

s-1. **"Investigations"** shall have the same meaning as in Section 3(b) below.

t. **"Lot 9"** shall have the same meaning as in Section 1(c) above.

u. **"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.

v. **"New Job"** shall mean new permanent full-time employment position 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 overall average annual wage of at least Forty One Thousand Six Hundred Sixty Eight and 00/100 Dollars (\$41,668.00), excluding standard fringe benefits. Each New Job must require a minimum of either (i) thirty (30) 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 four hundred forty (1,440) 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.

w. *[Left intentionally blank.]*

x. **"Performance Date"** shall mean the date that is four (4) years after the date of this Agreement. Notwithstanding the foregoing, Company may request an extension for additional time in the event reasonable cause arises.

y. **"Performance Period"** shall mean that period of time commencing on the date of

this Agreement and ending on the Performance Date.

z. **"Recruitment Documents"** shall mean any one or more of this Agreement, 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.

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

aa-1. **"Security Note"** shall have the same meaning as in Section 3(d) below.

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

bb-1. **"Subsidiary"** shall mean Tyson Farms, Inc., a North Carolina corporation and a subsidiary of the Company.

bb-2. **"Substantially complete the construction of the Building"** shall have the same meaning as in Section 3(c) below.

cc. **"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 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 Subsidiary's operations at the Facility on such terms and conditions as the Subsidiary 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, without duplication. The Subsidiary 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. - Transfer of Lot 9 to the Company.

a. Generally. Upon at least fifteen (15) days written notice from the Company to RIFA, RIFA shall transfer Lot 9 to the Company or the Subsidiary, "**AS IS**", "**WHERE IS**" and "**WITH ALL FAULTS**", and without limiting the preceding, specifically made subject to all

easements, conditions, restrictions and agreements of record, but free and clear of any monetary liens. To exercise this right, the Company must give such notice within the first one hundred twenty (120) days of the Performance Period or this right shall automatically expire. The transfer shall be by special warranty deed of gift (the "**Deed**"), the form of which shall substantively include without limitation the provisions of Section 3(d)(i) below, as agreed upon by legal counsel to the respective parties. RIFA shall pay any grantor's tax due with respect to the transfer to the Company or the Subsidiary. 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 on Lot 9 (the "**Closing**"). Prepaid items shall be prorated. RIFA and the Company (and/or the Subsidiary, as the case may be) 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 and complete the closing in accordance with the custom in the Commonwealth of Virginia for commercial real property transactions.

b. Pre-Closing Access to Lot 9. Beginning on the date of this Agreement, and ending on a date that is ninety (90) days thereafter (the "**Inspection Period**"), the Company and/or the Subsidiary (individually and collectively, the "**Donee**"), its agents, employees, representatives and contractors, at the Donee's sole cost and expense, shall have the right to enter upon Lot 9 to perform such tests, inspections and examinations of Lot 9 as the Donee deems advisable (collectively, the "**Investigations**"), including all matters of survey, flood plain of Lot 9, the availability of utilities, zoning and building code and other applicable governmental regulation compliance in connection with Lot 9 and the use thereof. Without limiting the foregoing, the Donee shall have the right to conduct any environmental testing and inspection of Lot 9 that the Donee deems advisable during the Inspection Period, including without limitation any testing or examination for the presence in, on, or under the Property of any Hazardous Materials (as defined in Section 2(r) above), which tests and inspections shall be included within the definition of "**Investigations**". For such purposes, the Donee, its agents, employees, representatives and contractors, may enter upon Lot 9 upon giving notice to RIFA staff (which may be by e-mail) and do all things necessary in connection therewith, provided they do not materially damage Lot 9 and provided that should the Closing not occur, Lot 9 is promptly restored to the condition that existed prior to such Investigations. The Company shall indemnify, defend, and hold harmless RIFA, its directors, employees and agents from and against all cost, loss, damage and expense, including without limitation reasonable attorneys' fees and claims and/or damages arising out of the Donee's, its agents', employees', representatives', or contractors' activities upon Lot 9 pursuant to this Section 3(b). In the event that the Company does not timely exercise its right to receive Lot 9 as set forth in Section 3(a) above, the Donee shall promptly furnish to RIFA, at no expense to RIFA, and without warranty as to their contents or the completeness of the disclosure, copies of any and all third party inspection reports received by the Donee that are not proprietary information related to any Investigations performed on Lot 9. For the purposes hereof, the physical condition of Lot 9, or the title to Lot 9 shall not be deemed proprietary to the Donee.

c. Construction of the Building. At its expense, the Subsidiary (i) shall cause the

commencement of the construction of the Building within one (1) year after the date of the Closing and (ii) shall substantially complete the construction of the Building within three (3) years after the date of the Closing. For purposes of this Section 3, “**substantially complete the construction of the Building**” (or a phrase of similar import) shall mean that the Subsidiary can occupy and use the Building for its intended purposes of a food processing and packaging ready-to-eat consumer foods or that a temporary or permanent certificate of occupancy has been issued for the Building, whichever occurs first.

d. Failure to Construct the Building.

i. Reconveyance to RIFA. In the event that the commencement of the construction of the Building has not occurred within one (1) year after the date of the Closing, the Donee, at its sole expense, shall remove the improvements (if any) on Lot 9, shall substantially restore Lot 9 to its natural state existing as of the date of the Closing and the Donee shall convey, by special warranty deed, Lot 9 to RIFA, in its “**as is**” condition, but free and clear of any liens or any environmental condition requiring remediation. The phrase “**commencement of the construction**” means (A) plans have been prepared and all approvals thereof required by applicable governmental authorities have been obtained; (B) all necessary permits for construction pursuant to the plans therefor have been issued by all applicable governmental authorities; (C) a notice to proceed has been issued to the contractor; and (D) construction on substantial portions of the site development components (such as drainage, extensive grading or utilities) has commenced. The Donee shall pay any grantor’s tax due with respect to the transfer to RIFA. RIFA, if not tax exempt, shall pay the Virginia recordation tax on the special warranty deed to RIFA. Prepaid items shall be prorated. RIFA and the Donee agree to execute and deliver to the other such documents (or cause the same, as may be required) as may be then legally necessary to carry out the terms of this Section 3(d)(i) and to complete the reconveyance of Lot 9 in accordance with the custom in the Commonwealth of Virginia for commercial real property transactions.

ii. \$9.6M Non-Completion Fee. In the event that commencement of the construction (as defined in Section 3(d)(i)) has occurred, but the construction of the Building has not been substantially completed (as described in Section 3(c) above) within three (3) years after the date of the Closing, then within thirty (30) days after written demand by RIFA, the Subsidiary shall pay RIFA a Non-Completion Fee equal to Nine Million Six Hundred Thousand and 00/100 Dollars (\$9,600,000.00) for the Donee’s failure to substantially complete the construction of the Building as set forth in this Section 3. The obligation of the Subsidiary to pay the Non-Completion Fee shall be evidenced by a demand promissory note duly executed by the Subsidiary (the “**Security Note**”) and delivered to RIFA at the Closing, and shall be secured by an unconditional guaranty of the Company. The form of the Security Note and such guaranty by the Company shall be reasonably agreed upon by legal counsel of the respective parties. It is expressly agreed that that the Non-Completion Fee are liquidated damages and do not constitute a penalty and that the parties, having negotiated in good faith for such specific liquidated damages and having agreed that the amount of such liquidated damages is reasonable

in light of the anticipated harm caused by the breach related thereto and the difficulties of proof of loss and inconvenience or infeasibility of obtaining any adequate remedy, are estopped from contesting the validity or enforceability of such liquidated damages.

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

a. \$295,452,718.00 Capital Investment. On or before the Performance Date, the Company or the Subsidiary shall make Capital Investment in the minimum aggregate amount of Two Hundred Ninety Five Million Four Hundred Fifty Two Thousand Seven Hundred Eighteen and 00/100 Dollars (\$295,452,718.00) (approximately One Hundred Seventeen Million Eight Hundred Sixty Nine Thousand Two Hundred Thirteen and 00/100 Dollars (\$117,869,213.00) in real estate and construction, approximately One Hundred Seventy Five Million Five Hundred Eighty Three Thousand Five Hundred Five and 00/100 Dollars (\$175,583,505.00) in new production-related machinery and tools, and approximately Two Million and 00/100 Dollars (\$2,000,000.00) 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 or the Subsidiary during the Performance Period shall make a Capital Investment of at least Two Hundred Sixty Five Million Nine Hundred Seven Thousand Four Hundred Forty Six and 00/100 Dollars (\$265,907,446.00) on or before the Performance Date.

b. 376 New Jobs. The Company shall create and make available to employ three hundred seventy six (376) New Jobs on or before the Performance Date and shall Maintain these New Jobs until at least the Performance Date. Beginning April 1, 2023, 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 job created and the base pay (excluding fringe benefits), being provided 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 three hundred one (301) New Jobs on or before the Performance Date.

c. Financial Report Balance Sheet. 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 balance sheet 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 \$707,500.00 Tobacco Region Opportunity Fund Grant and \$821,500.00 Tobacco Region Opportunity Fund Interest-Free Loan. As a condition to and as a part of the application for the Tobacco Region Opportunity Fund Grant and Tobacco Region Opportunity Fund Interest-Free Loan, RIFA and the Subsidiary shall enter into a performance grant agreement and loan agreement with the Tobacco Commission. If the applications for such grant and loan are approved, RIFA shall disburse the funds to the Subsidiary upon the satisfaction or achievement of certain performance metrics as set forth in such performance grant agreement and loan agreement. However, should the Tobacco Region Opportunity Fund Grant be advanced to the Subsidiary 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 Subsidiary 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 Subsidiary'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 Subsidiary does not meet the performance metrics or other requirements for such State Grant.

- b. \$10,344,160.00 Danville-Pittsylvania County Industrial Enhancement Grant. RIFA shall pay to or for the Subsidiary a Danville-Pittsylvania County Industrial Enhancement Grant in the amount of up to Ten Million Three Hundred Forty Four Thousand One Hundred Sixty and 00/100 Dollars (\$10,344,160.00) ("**Danville-Pittsylvania County Industrial Enhancement Grant**") in the form of tax rebates of seventy percent (70%) for ten (10) consecutive years on real property taxes, and machine and tool taxes, and business personal property taxes (furniture, fixtures, and equipment). After this grant is disbursed, this grant is subject to recapture by RIFA in the event the Subsidiary fails to make the Capital Investment and/or create and Maintain the New Jobs on or before the Performance Date.

- c. \$240,500.00 Danville-Pittsylvania County Enterprise Zone Jobs Grant. The City and the County acknowledge that under the City-County's Enterprise Zone program, the Capital Investment for the Facility and creation of New Jobs as contemplated in this Agreement could qualify for Two Hundred Forty Thousand Five Hundred and 00/100 Dollars (\$240,500.00) in value in the form of one-time cash payments of approximately Six Hundred Forty and 00/100 Dollars (\$640.00) per job. In the event the New Jobs creation goal is exceeded during the

Performance Period, the Subsidiary could qualify for additional cash payments as provided by the City-County's Enterprise Zone program. 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 Subsidiary fails to make the Capital Investment and/or create and Maintain the New Jobs on or before the Performance Date.

d. Waiver of Building Zoning and Land Disturbance Permit Fees and Water & Sewer Connection Fees: Value of \$150,000.00. The County will waive one hundred percent (100%) of the cost of building zoning and land disturbance permit fees for eligible new construction and expansions in the Enterprise Zone. Water and sewer connection fees are reimbursed by the Pittsylvania County Service Authority for new construction and the Pittsylvania County Service Authority will run necessary water and sewer lines to Lot 9 at no charge to the Subsidiary.

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 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 documentation or other information reasonably satisfactory to RIFA demonstrating the Subsidiary'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. The Subsidiary 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 Subsidiary have been or shall have been approved by all necessary action by the Subsidiary; and the persons executing this Agreement and any of the other Recruitment Documents to be executed by the Subsidiary 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 Subsidiary 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 Subsidiary

(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 Subsidiary is a party, or by which the Subsidiary is bound; or (iii) any orders, decrees, or laws of any jurisdiction applicable to and binding upon the Subsidiary.

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 any one or more of the Company or the Affiliated Entity, if any, or the Subsidiary that may materially and adversely affect the financial condition, business operations, or business prospects of any one or more of the Company, the Affiliated Entity, or the Subsidiary.

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. The Subsidiary 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 in all material respects, 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, the Affiliated Entity, if any, and the Subsidiary

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 Subsidiary discontinues full-time business at the Facility for a period of sixty (60) days or more, or materially changes the nature of the business at the Facility, not owing to an Event of Force Majeure;

c. The Subsidiary (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 Subsidiary (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 Subsidiary 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, the Affiliated Entity, if any, and the Subsidiary.

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 or the Subsidiary 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 Subsidiary 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 and Interest-Free Loan. An amount equal to fifty percent (50%) of the total amount of the Tobacco Region Opportunity Fund Grant and Interest-Free Loan 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 and Interest-Free Loan actually disbursed as of the Performance Date, and (B) the denominator of which is Two Hundred Sixty Five Million Nine Hundred Seven Thousand Four Hundred Forty Six and 00/100 Dollars (\$265,907,446.00); 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 Two Hundred Sixty Five Million Nine Hundred Seven Thousand Four Hundred Forty Six and 00/100 Dollars (\$265,907,446.00).

b. Failure to Create and Maintain New Jobs. In the event the Subsidiary 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 and Interest-Free Loan. An amount equal to fifty percent (50%) of the total amount of the Tobacco Region Opportunity Fund Grant and Interest-Free Loan 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 and Interest-Free Loan actually disbursed as of the Performance Date, and (B) the denominator of which is three hundred one (301) 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 one (301) 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 records validating 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
901 E. Cary St., Suite 1800
Richmond, VA 23219-4037

If to the County:

Pittsylvania 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:

City of Danville
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 or the Subsidiary:

Tyson Foods, Inc.
Attn.: _____
2200 W. Don Tyson Parkway
Springdale, AR 72762

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:

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:

TYSON FOODS, INC., a Delaware corporation

By: _____
Printed name: _____
Title: _____

(SEAL)

STATE OF _____
CITY/COUNTY OF _____, to-wit:

The foregoing instrument was acknowledged before me this ____ day of _____ 2021, by _____, in the capacity as _____ of **TYSON FOODS, INC.**, a Delaware corporation, on behalf of such entity.

My commission expires: _____.

(Only if in Va.):

Notary Public
Registration No. _____

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

TYSON FARMS, INC., a North Carolina corporation

By: _____
Printed name: _____
Title: _____

(SEAL)

STATE OF _____
CITY/COUNTY OF _____, to-wit:

The foregoing instrument was acknowledged before me this ____ day of _____ 2021, by _____, in the capacity as _____ of **TYSON FARMS, INC.**, a North Carolina corporation, on behalf of such entity.

My commission expires: _____.

(Only if in Va. :) _____
Notary Public
Registration No. _____

List of Schedules
1(e) - Summary of Incentives

Schedule 1(e)
(Summary of Incentives)

Cash and other Non-Real Property Incentives	Estimated Value
Tobacco Region Opportunity Fund Grant* and Interest-Free Loan (§5(a)(i))	\$1,529,000.00
Danville-Pittsylvania County Enterprise Zone Jobs Grant (§5(c))	\$240,500.00
Danville-Pittsylvania County Industrial Enhancement Grant (§5(b))	\$10,344,160.00
Waiver of Building Zoning and Land Disturbance Permit Fees and Water & Sewer Connection Fees (§5(d))	\$150,000.00
Subtotal	\$12,263,660.00

Real Property Incentives	Value or Max. Value
Lot 9 Cane Creek Centre Industrial Park (§3)	\$2,067,650.00
Subtotal	\$2,067,650.00

Subtotal of Cash and other Non-Real Property Incentives	\$12,263,660.00
Subtotal of Real Property Incentives	\$2,067,650.00
TOTAL INCENTIVES	\$14,331,310.00

Danville-Pittsylvania Regional Industrial Facility Authority

Executive Summary

Agenda Item No.:	Item 5B
Meeting Date:	September 13, 2021
Subject:	Financial Status Reports – August 31, 2021
From:	Michael L. Adkins, Authority Treasurer

SUMMARY

A review of the financial status reports through August 31, 2021 will be provided at the meeting. The financial status reports as of August 31, 2021 are attached for the DPRIFA Board's review.

RECOMMENDATION

Staff recommends approving the financial status reports as of August 31, 2021 as presented.

ATTACHMENTS

Financial Status Reports

Financial Status

Table of Contents

- A. \$7.3 Million Bonds - Cane Creek Centre
- B. General Expenditures for FY2021
- C. General Expenditures for FY2022
- D. Mega Park – Funding Other than Bond Funds
- E. Berry Hill Mega Park – Lots 1 & 2 Site Development
- F. Berry Hill Mega Park – Water & Sewer
- G. Rent, Interest, and Other Income Realized FY2021
- H. Rent, Interest, and Other Income Realized FY2022
- I. Monthly Checks
- J. Unaudited Financial Statements

Danville-Pittsylvania Regional Industrial Facility Authority

\$7,300,000 Bonds for Cane Creek Centre - Issued in August 2005 ⁷

As of August 31, 2021

Funding	Funding	Budget / Contract Amount	Expenditures	Encumbered	Unexpended / Unencumbered
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	56,379.12	20,607.34	
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	\$ 7,555,099.78	\$ 20,607.34	\$ 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

⁴ 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 August 31, 2021

	<u>Funding</u>	<u>Budget</u>	<u>Expenditures</u>	<u>Encumbered</u>	<u>Unexpended / Unencumbered</u>
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	\$ 9,329.35	\$ 9,329.35	\$ 6,580.05	\$ -	\$ 2,749.30
SVM at Berry Hill - grading for sign placement	\$ 20,000.00			\$ 20,000.00	-
Total Contingency Budget		<u>29,329.35</u>	<u>6,580.05</u>	<u>20,000.00</u>	<u>2,749.30</u>
Legal		176,656.28	176,656.28	-	0.00
Accounting		22,400.00	22,400.00	-	-
Postage & Shipping		100.00	53.55	-	46.45
Meals		4,000.00	2,848.51	-	1,151.49
Utilities		400.00	368.40	-	31.60
Insurance		3,000.00	2,353.00	-	647.00
Total		<u>\$ 235,885.63</u>	<u>\$ 211,259.79</u>	<u>\$ 20,000.00</u>	<u>\$ 4,625.84</u>

Danville-Pittsylvania Regional Industrial Facility Authority

General Expenditures for Fiscal Year 2022

As of August 31, 2021

	<u>Funding</u>	<u>Budget</u>	<u>Expenditures</u>	<u>Encumbered</u>	<u>Unexpended / Unencumbered</u>
Funding					
City Contribution	\$ 75,000.00				
County Contribution	75,000.00				
Carryforward from FY2021	24,625.84				
Contingency					
Miscellaneous contingency items		\$ 9,050.84		\$ -	\$ 9,050.84
SVM at Berry Hill - grading for sign placement		\$ 20,000.00		\$ 20,000.00	-
Total Contingency Budget		29,050.84	-	20,000.00	9,050.84
Legal		115,000.00		-	115,000.00
Accounting		23,075.00		-	23,075.00
Postage & Shipping		100.00		-	100.00
Meals		4,000.00	232.81	-	3,767.19
Utilities		400.00	30.70	-	369.30
Insurance		3,000.00	2,623.00	-	377.00
Total		\$ 174,625.84	\$ 2,886.51	\$ 20,000.00	<u>\$ 151,739.33</u>

Danville-Pittsylvania Regional Industrial Facility Authority
Southern Virginia Megasite at Berry Hill - Funding Other than Bond Funds
As of August 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				
Virginia Resources Authority - TRRF Loan #3658	4,500,000.00				
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	417,050.00	4,200.00	
Appalachian Power Company		5,178,500.00	5,178,500.00	-	
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	\$ 23,009,027.97	\$ 20,980,708.58	\$ 20,973,537.87	\$ 7,170.71	\$ 2,028,319.39

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 Commission 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 August 31, 2021

	<u>Funding</u>	<u>Budget / Contract Amount</u>	<u>Expenditures</u>	<u>Encumbered</u>	<u>Unexpended / Unencumbered</u>
<i>Funding</i>					
<i>TIC #3358 Site Improvements</i>					
Tobacco Commission Grant	\$ 2,624,800.00				
<i>Expenditures</i>					
Dewberry Engineers Inc.		379,300.00	214,800.00	164,500.00	
<i>Total</i>	\$ 2,624,800.00	\$ 379,300.00	\$ 214,800.00	\$ 164,500.00	\$ <u>2,245,500.00</u>

Danville-Pittsylvania Regional Industrial Facility Authority

Southern Virginia Megasite at Berry Hill - Water & Sewer

As of August 31, 2021

	<u>Funding</u>	<u>Budget / Contract Amount</u>	<u>Expenditures</u>	<u>Encumbered</u>	<u>Unexpended / Unencumbered</u>
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	754,939.99	264,825.00	
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	3,062,973.32	162,117.44	
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	\$ 9,898,717.86	\$ 1,319,917.19	\$ <u>465,087.00</u>

Danville-Pittsylvania Regional Industrial Facility Authority

Rent, Interest, and Other Income Realized for Fiscal Year 2021

As of August 31, 2021

Source of Funds	Funding		Expenditures FY2021	Unexpended / Unencumbered	
	Carryforward from FY2020	Receipts Current Month			Receipts FY2021
<u>Carryforward</u>	\$ 1,034,570.10				
<u>Current Lessees</u>					
Institute for Advanced Learning and Research (IALR) ¹		\$ 286,252.81			
RealtyLink Investments, LLC		10,500.00			
Mountain View Farms of Virginia, L.C.		1,200.00			
Osborne Company of North Carolina, Inc.		1,000.00			
Capital Outdoor, Inc.		2,000.00			
Total Rent		\$ -	\$ 300,952.81		
<u>Interest Received</u> ²			\$ 593.95		
<u>Miscellaneous Income</u>			\$ 781,441.60		
Expenditures					
Hawkins Research Bldg. Property Mgmt. Fee			\$ 286,252.81		
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	\$ -	\$ 1,082,988.36	\$ 869,038.53	\$ 1,248,519.93
			Restricted ¹	\$ 312,826.70	
			Unrestricted	\$ 38,693.23	
			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 Industrial Facility Authority

Rent, Interest, and Other Income Realized for Fiscal Year 2022

As of August 31, 2021

<i>Source of Funds</i>	<u>Funding</u>		<u>Expenditures</u> <u>FY2022</u>	<u>Unexpended /</u> <u>Unencumbered</u>
	<u>Carryforward</u> <u>from FY2021</u>	<u>Receipts</u> <u>Current</u> <u>Month</u>		
<u>Carryforward</u>	\$ 1,248,519.93			
<u>Current Lessees</u>				
Institute for Advanced Learning and Research (IALR) ¹		\$ 43,931.66	\$ 43,931.66	
Axxor N.A. LLC		1,000.00	1,000.00	
<i>Total Rent</i>		<u>\$ 44,931.66</u>	<u>\$ 44,931.66</u>	
<u>Interest Received</u> ²		\$ 46.53	\$ 46.53	
<u>Miscellaneous Income</u>		\$ -	\$ 117,000.00	
Expenditures				
Hawkins Research Bldg. Property Mgmt. Fee			\$ 21,965.83	
Incentive Disbursements			\$ 117,000.00	
Totals	<u>\$ 1,248,519.93</u>	<u>\$ 44,978.19</u>	<u>\$ 161,978.19</u>	<u>\$ 138,965.83</u>
				<u>\$ 1,271,532.29</u>
			Restricted ¹	\$ 334,792.53
			Unrestricted	\$ 39,739.76
			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
August 2021

<u>Check Number</u>	<u>Date</u>	<u>Vendor Name</u>	<u>Paid Amount</u>
2425	8/9/2021	Hunton Andrews Kurth	14,475.00
2426	8/9/2021	IALR	232.81
2427	8/9/2021	IALR	21,965.83
2428	8/9/2021	Christian & Barton, LLP	29,082.00
ACH	8/20/2021	City of Danville, VA	30.70

Danville-Pittsylvania Regional Industrial Facility Authority
Statement of Net Position ^{1, 2}
August 31, 2021*

	Unaudited FY 2022
Assets	
<i>Current assets</i>	
Cash - checking	\$ 1,769,511
Cash - money market	456,590
<i>Total current assets</i>	2,226,101
<i>Noncurrent assets</i>	
Restricted cash - project fund CCC bonds	29,982
Restricted cash - debt service fund CCC bonds	517,980
Capital assets not being depreciated	24,560,850
Capital assets being depreciated, net	22,136,588
Construction in progress	19,115,392
<i>Total noncurrent assets</i>	66,360,792
Total assets	68,586,893
Liabilities	
<i>Current liabilities</i>	
Economic development payable - current portion	147,000
Bonds payable - current portion	465,000
<i>Total current liabilities</i>	612,000
<i>Noncurrent liabilities</i>	
Bonds payable - less current portion	1,210,000
Loans payable - less current portion	4,500,000
<i>Total noncurrent liabilities</i>	5,710,000
Total liabilities	6,322,000
Net Position	
Net investment in capital assets	64,167,812
Restricted - debt reserves	517,980
Unrestricted	(2,420,899)
Total net position	\$ 62,264,893

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
*August 31, 2021**

	Unaudited FY 2022
Operating revenues	
Rental income	47,407
Other Income	417
Total operating revenues	47,824
Operating expenses⁴	
Mega Park expenses ³	121,081
Cane Creek Centre expenses ³	53,343
Cyber Park expenses ³	34,633
Professional fees	57,140
Other operating expenses	3,270
Total operating expenses	269,467
Operating income (loss)	(221,643)
Non-operating revenues (expenses)	
Interest income	46
Total non-operating expenses, net	46
Net income (loss) before capital contributions	(221,597)
Capital contributions	
Contribution - City of Danville	336,897
Contribution - Pittsylvania County	336,897
Total capital contributions	673,794
Change in net position	452,197
Net position at July 1, 2021	61,812,696
Net position at August 31, 2021	\$ 62,264,893

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.

⁵ Please note this statement will change once all FY2021 entries are made and may also change depending on audit adjustments, if any, for FY2021 and the nature of those audit adjustments.

Danville-Pittsylvania Regional Industrial Facility Authority
Statement of Cash Flows
*August 31, 2021**

	Unaudited FY 2022
Operating activities	
Receipts from leases	\$ 44,932
Payments to suppliers for goods and services	(269,467)
Net cash used by operating activities	(224,535)
Capital and related financing activities	
Capital contributions	673,795
Net cash provided by capital and related financing activities	673,795
Investing activities	
Interest received	46
Net cash provided by investing activities	46
Net increase (decrease) in cash and cash equivalents	449,306
Cash and cash equivalents - beginning of year (including restricted cash)	2,324,757
Cash and cash equivalents - through August 31, 2021 (including restricted cash)	\$ 2,774,063
Reconciliation of operating loss before capital contributions to net cash used by operating activities:	
Operating income (loss)	\$ (221,643)
Changes in assets and liabilities:	
Change in other receivables	583
Change in unearned income	(3,475)
Net cash used by operating activities	\$ (224,535)

Components of cash and cash equivalents at August 31, 2021:	
American National - Checking	\$ 1,769,511
American National - General money market	456,590
Wells Fargo - \$7.3M Bonds CCC Debt service fund	517,980
Wells Fargo - \$7.3M Bonds CCC Project fund	29,982
	\$ 2,774,063

Danville-Pittsylvania Regional Industrial Facility Authority

Executive Summary

Agenda Item No.:	Item 5C
Meeting Date:	09/13/2021
Subject:	Megasite Marketing
From:	Matthew Rowe, Director of Economic Development, Pittsylvania County

SUMMARY

The Board will hear a report on Southern Virginia Megasite Marketing.

Danville-Pittsylvania Regional Industrial Facility Authority

Executive Summary

Agenda Item No.: Item 6ABCDEF

Meeting Date: 09/13/2021

Subject: Closed Session

From: Chairman

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

G. Motion to Certify Closed Meeting.

Danville-Pittsylvania Regional Industrial Facility Authority

Executive Summary

Agenda Item No.: Item 7

Meeting Date: 09/13/2021

Subject: Communications

From: Board and Staff

Authority Board Members

Staff

- i. October RIFA meeting will be held on Tuesday, October 12, 2021 – Susan M. DeMasi, Authority Secretary
- ii. Discussion on update/replacement of entrance sign for Cane Creek Centre – Ms. Bobe
- iii. Discussion on recommendations on a process for amending executed performance agreements – Kenneth F. Larking, City Manager, Danville, and David M. Smitherman, Pittsylvania County Administrator