

# **Danville-Pittsylvania Regional Industrial Facility Authority**

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

## **AGENDA**

**Monday, June 10, 2013**

**12:00 Noon**

**Danville Regional Airport  
Eastern Conference Room  
424 Airport Drive, Danville, Virginia**

### **County of Pittsylvania Members**

**Coy E. Harville, Vice Chair  
James H. Snead  
Jessie L. Barksdale, Alternate**

### **City of Danville Members**

**Sherman M. Saunders, Chair  
Fred O. Shanks, III  
J. Lee Vogler, Jr., Alternate**

### **Staff**

**Joseph C. King, City Manager, Danville  
William D. Sleeper, Pittsylvania County Administrator  
Clement & Wheatley, Legal Counsel to Authority  
Susan M. DeMasi, Authority Secretary  
Barbara A. Dameron, 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 between the public and the Authority.)

### **4. APPROVAL OF MINUTES FOR THE MAY 13, 2013 MEETING**

### **5. OLD BUSINESS**

Consideration of Resolution No. 2013-06-10-5, approving (i) Amendment to Lease Agreement between the Authority (as landlord) and The Institute of Advanced Learning and Research (the "Institute"), a political subdivision of the Commonwealth of Virginia (as tenant), pertaining to the Charles Hawkins Building, located in the Authority's Cyber Park, under which the term would be extended for five years and thereafter for successive renewals of one year each, and Landlord would be responsible for certain maintenance and repairs in the event that the building was not occupied by a permitted sublessee or a permitted assignee of Tenant; and (ii) Addendum to Lease Agreement for the same lease under which the Institute would be contracted to perform certain maintenance and repairs to the Charles Hawkins Building at an annual rate of compensation equal to \$10 per square foot, subject to annual consideration and adjustment – Michael C. Guanzon, Esq., Clement & Wheatley, Authority Legal Counsel

### **6. NEW BUSINESS**

- A. Update on permitting applications for the Authority's Mega Park project located in Pittsylvania County, Virginia – Shawn R. Harden, PE, Dewberry Engineers, Inc.
- B. Consideration of Resolution No. 2013-06-10-6B approving a one-year renewal of the hunting lease with Jay Vann Clodfelter and Brent Clodfelter, as tenant, of approximately 561.13 acres, more or less, at the Authority's Mega Park Site (GPINs 1366-16-2959 and 1366-37-2002, commonly known as the Hairston Farm, and GPIN 1367-01-8739), for the uses of hunting, fishing and related outdoor recreational activities, at a total rental fee of \$2,000 – William D. Sleeper, County Administrator, Pittsylvania County
- C. Consideration of Resolution No. 2013-06-10-6C authorizing the issuance of the Authority's taxable revenue refunding bond (Cane Creek project), Series 2013; authorizing the execution and delivery of all bond documents, not to exceed \$5,700,000, in connection therewith including without limitation the Financing Agreement, the Bond and the Support Agreements; and authorizing other matters in connection therewith, in order to refinance the prior \$7,300,000 Revenue Bonds (Cane Creek Project), Series 2005 - Barbara A. Dameron, CPA, Authority Treasurer; and Patricia K. Conner, CPA, City of Danville Senior Accountant

## **Danville-Pittsylvania Regional Industrial Facility Authority**

- D. FY 2014 Proposed General Expenditures Budget – Ms. Dameron and Ms. Conner
- E. Financial Status Report as of May 31, 2013 – Ms. Dameron and Ms. Conner

### **7. COMMUNICATIONS FROM:**

Jessie L. Barksdale  
Coy E. Harville  
Sherman M. Saunders  
Fred O. Shanks, III  
James H. Snead  
J. Lee Vogler, Jr.  
Staff

### **8. ADJOURN**

# Danville-Pittsylvania Regional Industrial Facility Authority

## Executive Summary

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|                         |                                      |
|-------------------------|--------------------------------------|
| <b>Agenda Item No.:</b> | 4                                    |
| <b>Meeting Date:</b>    | 06/10/2013                           |
| <b>Subject:</b>         | Meeting Minutes                      |
| <b>From:</b>            | Susan M. DeMasi, Authority Secretary |

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### **SUMMARY**

Attached for the Board's approval are the Meeting Minutes from the Monday, May 13, 2013 meeting.

### **ATTACHMENTS**

Meeting Minutes

DANVILLE-PITTSYLVANIA REGIONAL INDUSTRIAL FACILITY AUTHORITY

Minutes

May 13, 2013

The Regular Meeting of the Danville-Pittsylvania Regional Industrial Facility Authority convened at 12:13 p.m. on the above date in the Danville Regional Airport Conference Room, 424 Airport Drive, Danville, Virginia. Present was City of Danville Member Fred O. Shanks, III; Chairman Sherman M. Saunders, and Alternate J. Lee Vogler were absent. Pittsylvania County Members present were Vice Chairman Coy E. Harville, James Snead and Alternate Jessie L. Barksdale.

City/County staff members attending were: City Manager Joe King, County Administrator Dan Sleeper, Danville Finance Director/Authority Treasurer Barbara Dameron, County Director of Finance Kim Van Der Hyde, City of Danville Director of Economic Development Jeremy Stratton, Assistant County Administrator for Planning & Development Gregory Sides, City of Danville Project Manager Corrie Teague, Governmental Affairs Consultant Linwood Wright, City of Danville Senior Accountant Patricia Conner, Clement & Wheatley Attorney Michael Guanzon and Secretary to the Authority Susan DeMasi.

Also present was Dewberry and Davis Project Manager Shawn Harden.

Vice Chairman Harville called the Meeting to order.

**PUBLIC COMMENT PERIOD**

No one desired to be heard.

**APPROVAL OF MINUTES OF THE APRIL 8, 2013 MEETING**

Upon **Motion** by Mr. Shanks and **second** by Mr. Snead, Minutes of the April 8, 2013 meeting were approved as presented. Draft copies had been distributed to Authority Members prior to the Meeting.

**OLD BUSINESS**

**5A. UPDATE ON IALR REQUEST RE: CHARLES HAWKINS BUILDING**

City Manager Joe King noted this matter has been carried over from the last meeting to ensure that the City and County governing bodies had an opportunity to review it. Mr. King stated his understanding was the County Board has determined that it would prefer that RIFA continue to own the building. Vice Chairman Harville noted he has spoken with Jerry Gwaltney at the Institute and they have no problem with RIFA retaining ownership of the Charles Hawkins Building. Staff and Board members discussed the rent received from the Hawkins Building, the creation of a management agreement with IALR and the term length of the proposed agreement.

Mr. Snead **moved** adoption of a management agreement between RIFA and the IALR, equal to the amount of rent that is being paid, for a five year term with annual review of the money going into the upkeep. The Motion was **seconded** by Mr. Shanks.

Mr. King stated that the annual review is to determine if the rent number and the management fee number is correct, the agreement itself is not renewed, and the fees are adjusted if necessary. Mr. Guanzon confirmed the agreement will be for a five year term, after five years it will be renewable for a one year term for the existence of the agreement,

DANVILLE-PITTSYLVANIA REGIONAL INDUSTRIAL FACILITY AUTHORITY  
Minutes  
May 13, 2013

and the rent and the cost will be reviewed annually. Mr. Snead confirmed the Board is voting on this Motion, but will not vote on the actual contract until the next RIFA meeting.

The **Motion** was carried by the following vote:

VOTE: 3-0  
AYE: Harville, Snead, Shanks (3)  
NAY: None (0)

**NEW BUSINESS**

**6A. DISCUSSION – AUTHORITY’S LEASING STRATEGY AND PRACTICE FOR MEGA PARK**

Greg Sides distributed handouts with background information covering several of the leases discussed at the pre-RIFA meeting. Staff had discussed leases in general and some potential concerns about allowing the grazing of cattle. Shawn Harden noted he pointed out in the pre-RIFA meeting that staff is actively engaged with the Corp getting the wetlands permit. The more activity going on in the Mega Park, the more potential there is for wetlands or stream channels to get damaged or impacted and the Corp would then come down on the Authority and make them mitigate more. Mr. Harville noted this had been discussed previously and the Board has said absolutely no cattle. Mr. Sides noted RIFA has received two lease requests recently, one of which was to graze cattle, and a second to lease RIFA property for planting and harvesting corn, soy beans and wheat, some on the same land that is now being mowed for hay. To plow it up and plant soybeans or corn would be much more disruptive. Mr. Shanks agreed and noted that with a situation as critical as this, the safest thing to do is stay with the current tenants.

**6B. DISCUSSION – APPLEFIELD FARMS REQUEST**

Mr. Sides noted this matter is the request by Applefield Farms to lease property which involves grazing cattle and staff recommendation at the pre-RIFA meeting was not to approve this request. Mr. Harville asked the Authority attorney about the response and Mr. Guanzon noted he will respond to the request and state it is not available for lease.

**6C. CONSIDERATION – RESOLUTION NO. 2013-05-13-6C – RENEWAL OF LEASE TO OSBORNE COMPANY**

Mr. Shanks **moved** adoption of *Resolution 2013-05-13-6C, approving a one-year renewal of the lease to the Osborne Company of North Carolina, Inc., a North Carolina corporation, of approximately 100 acres of pastureland in the Authority’s Mega Park site (a portion of GPINs 1366-78-4718 and 1367-70-4519), owned by the Authority, commonly known as 4380 Berry Hill Road; and the lease would be for the use of harvesting grass hay and incidental uses acceptable to the Authority, at a total rental fee of \$1,000.*

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

VOTE: 3-0  
AYE: Harville, Snead, Shanks (3)  
NAY: None (0)

DANVILLE-PITTSYLVANIA REGIONAL INDUSTRIAL FACILITY AUTHORITY

Minutes

May 13, 2013

**6D. CONSIDERATION – RESOLUTION NO. 2013-05-13-6D – RENEWAL OF HUNTING LEASE WITH GUILFORD WHITETAIL MANAGEMENT**

Mr. Shanks **moved** adoption of *Resolution 2013-05-13-6D approving a one-year renewal of the hunting lease with Guilford Whitetail Management, a North Carolina Corporation, as tenant, of approximately 1,573.94 acres at the Authority's Mega Park Site (GPINs 1366-54-5996, 1367-42-8434, 1377-01-1754 and a portion of 1356-98-0985), commonly known as the Klutz Farm, for the uses of hunting, fishing and related outdoor recreational activities, at a total rental fee of \$5,000.*

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

VOTE: 3-0  
AYE: Harville, Snead, Shanks (3)  
NAY: None (0)

**6E. FINANCIAL REPORT AS OF APRIL 30, 2013**

Authority Treasurer Barbara Dameron began her review with the Cane Creek Centre bonds showing a few dollars in interest, and Ms. Dameron noted there are unspent bond funds still available of \$814,542. General Fund Expenses show \$6,366, the majority of that is legal fees. The Mega Park Funding Other than Bonds has no change from the previous month, the Berry Hill Mega Site Lot 4 Site Development shows no change from March and the Funds Available for Appropriation show no changes from March as well. The Rent, Interest and Other Income Realized shows rent received from Hawkins', the Institute and for Securitas.

Ms. Dameron noted in the Cane Creek Bonds, the letter of credit is up for renewal on August 1. Ms. Dameron has heard back from Wells Fargo with an offer to do a term loan of either three years or five years and has discussed this with Ms. Van Der Hyde as well as Steve Johnson and Joe Mason with Davenport. They have offered RIFA a three year variable rate that would be LIBOR plus .95%, currently that LIBOR is .20%, that would be 1.15% or a fixed rate of 1.85% for three years. The five year is only offered at a variable rate of 1.5% plus LIBOR which would currently be 1.7%. Even though these are three or five year term loans, they would honor the current amortization schedule with the maturity still January 1, 2026 and principal payments would remain the same. There would be an update support agreement that would be brought to the Board of Supervisors on June 3, City Council on June 4, subject to RIFA's approval, and come back to this Board June 10<sup>th</sup> which is the deadline for the acceptance. Staff and financial advisors are recommending that RIFA use the fixed rate. Mr. Johnson needs to have some idea that RIFA is comfortable with that as he is in the process of writing papers. Between now and then RIFA is going to have to determine whether it wants to work with them for another loan, consider bonds or how RIFA wants to proceed.

Board members were in agreement with recommendations.

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

DANVILLE-PITTSYLVANIA REGIONAL INDUSTRIAL FACILITY AUTHORITY

Minutes

May 13, 2013

VOTE: 3-0  
AYE: Harville, Snead, Shanks (3)  
NAY: None (0)

**7A. - CLOSED SESSION**

*Vice Chairman Harville noted that 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 12:47 p.m., Mr. Snead **moved** that the Meeting of the Danville-Pittsylvania Regional Industrial Facility Authority be recessed in a Closed Meeting as permitted by Section 2.2-3711(A)(7) of the Code of Virginia, 1950, as amended, for consultation with the Authority's legal counsel, Clement & Wheatley, and briefings by the Authority staff or consultants on *Danville-Pittsylvania Regional Industrial Facility Authority v. AVRC, Inc.*, Case No. CL 12000634-00, in the Circuit Court for the City of Danville, where such consultation or briefing in open meeting would adversely affect the negotiating or litigating posture of the Authority.

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

VOTE: 3-0  
AYE: Harville, Snead, Shanks (3)  
NAY: None (0)

On **Motion** by Mr. Snead and **second** by Mr. Shanks, and by unanimous vote at 1:00 p.m., the Authority returned to open meeting.

Mr. Shanks **moved** 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. Snead and carried by the following vote:

VOTE: 3-0  
AYE: Harville, Snead, Shanks (3)  
NAY: None (0)

DANVILLE-PITTSYLVANIA REGIONAL INDUSTRIAL FACILITY AUTHORITY

Minutes  
May 13, 2013

**COMMUNICATIONS**

Mr. Harville requested an update on US Green Energy. Mr. Stratton noted that Bob Bennett went to the United Kingdom last Wednesday, Mr. Wright confirmed this and stated they are supposed to be receiving their money this Wednesday to start on their projects.

Mr. Harville welcomed Mr. Larking the Deputy City Manager and noted his appreciation of the staff in preparing for the RIFA meetings.

MEETING ADJOURNED AT 1:04P.M.

\_\_\_\_\_  
Chairman

\_\_\_\_\_  
Secretary to the Authority

DRAFT

**A RESOLUTION TO APPROVE (I) AMENDMENT TO LEASE AGREEMENT BETWEEN THE AUTHORITY (AS LANDLORD) AND THE INSTITUTE OF ADVANCED LEARNING AND RESEARCH (THE “INSTITUTE”), A POLITICAL SUBDIVISION OF THE COMMONWEALTH OF VIRGINIA (AS TENANT), PERTAINING TO THE CHARLES HAWKINS BUILDING, LOCATED IN THE AUTHORITY’S CYBER PARK, UNDER WHICH THE TERM WOULD BE EXTENDED FOR FIVE YEARS AND THEREAFTER FOR SUCCESSIVE RENEWALS OF ONE YEAR EACH, AND LANDLORD WOULD BE RESPONSIBLE FOR CERTAIN MAINTENANCE AND REPAIRS IN THE EVENT THAT THE BUILDING WAS NOT OCCUPIED BY A PERMITTED SUBLESSEE OR A PERMITTED ASSIGNEE OF TENANT; AND (II) ADDENDUM TO LEASE AGREEMENT FOR THE SAME LEASE UNDER WHICH THE INSTITUTE WOULD BE CONTRACTED TO PERFORM CERTAIN MAINTENANCE AND REPAIRS TO THE CHARLES HAWKINS BUILDING AT AN ANNUAL RATE OF COMPENSATION EQUAL TO \$10 PER SQUARE FOOT, SUBJECT TO ANNUAL CONSIDERATION AND ADJUSTMENT**

**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, as Landlord, and the Institute for Advanced Learning and Research, a political subdivision of the Commonwealth of Virginia (the “**Institute**”), as Tenant, made and entered into that certain Lease Agreement dated August 6, 2008 (the “**Lease Agreement**”), for the lease of that certain lot or parcel of land, together with all improvements thereon and appurtenances thereunto belonging, located at 230 Slayton Avenue in the City of Danville, Virginia, identified as Parcel ID Number 78360, which includes without limitation that certain building commonly known as the “**Charles Hawkins Building**”; and

**WHEREAS**, the initial term of the Lease Agreement shall expire June 1, 2013, and shall automatically renew; however, the parties wish to extend the Lease Agreement so long as (i) the Lease Agreement is amended as set forth in that certain Amendment to Lease Agreement (the “**Amendment**”), attached hereto as **Exhibit A**, incorporated herein by this reference; and (ii) the parties execute that certain Addendum to Lease Agreement (the “**Addendum**”), attached hereto as **Exhibit B**, incorporated herein by this reference; and

**WHEREAS**, under the Amendment, the term of the Lease Agreement would be extended for five (5) years and thereafter for successive renewals of one (1) year each, and Landlord would be responsible for certain maintenance and repairs in the event that the Charles Hawkins Building was not occupied by a permitted sublessee or a permitted assignee of Tenant; and

**WHEREAS**, under the Addendum, the Institute would be contracted to perform certain maintenance and repairs to the Charles Hawkins Building at an annual rate of compensation equal to \$10 per square foot, subject to annual consideration and adjustment; and

**WHEREAS**, the Authority has determined that it is in the best interests of the Authority, the citizens of Pittsylvania County and the City of Danville, and the improvement of the

**Resolution No. 2013-06-10-5**

Authority's Cyber Park project for the Authority to enter into (i) the Amendment and (ii) the Addendum.

**NOW, THEREFORE, BE IT RESOLVED,** that

1. The Authority hereby approves the Amendment as set forth in **Exhibit A** and as reviewed at this meeting, together with such amendments, deletions or additions thereto as may be approved by any one or more of the Chairman or Vice Chairman of the Authority, and hereby authorizes each of them to execute and deliver the Amendment on behalf of the Authority, such execution of the Amendment by the Chairman or Vice Chairman to conclusively establish his approval of any amendments, deletions or additions thereto.

2. The Authority hereby approves the Addendum as set forth in **Exhibit B** and as reviewed at this meeting, together with such amendments, deletions or additions thereto as may be approved by any one or more of the Chairman or Vice Chairman of the Authority, and hereby authorizes each of them to execute and deliver the Addendum on behalf of the Authority, such execution of the Addendum by the Chairman or Vice Chairman to conclusively establish his approval of any amendments, deletions or additions thereto.

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

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

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

- # -

**CERTIFICATE**

I, the undersigned Secretary of the Danville-Pittsylvania Regional Industrial Facility Authority, hereby certify that the foregoing is a true, correct and complete copy of a Resolution duly adopted by a majority of the directors of the Danville-Pittsylvania Regional Industrial Facility Authority at a meeting duly called and held on June 10, 2013, and that such Resolution has not been repealed, revoked, rescinded or amended, but is in full force and effect on the date hereof.

**WITNESS** my hand as Secretary of the Danville-Pittsylvania Regional Industrial Facility Authority this \_\_\_\_\_ day of June 2013.

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

(SEAL)

**Exhibit A**  
(Amendment to Lease Agreement)

**AMENDMENT TO LEASE AGREEMENT**

**THIS AMENDMENT TO LEASE AGREEMENT** (this “**Amendment**”) is made effective as of the \_\_\_ day of \_\_\_\_\_ 2013, by and between **DANVILLE-PITTSYLVANIA COUNTY REGIONAL INDUSTRIAL FACILITY AUTHORITY**, a political subdivision of the Commonwealth of Virginia (“**Landlord**”), and **INSTITUTE FOR ADVANCED LEARNING AND RESEARCH**, a political subdivision of the Commonwealth of Virginia (“**Tenant**”).

**WITNESSETH:**

THAT for and in consideration of the mutual covenants and promises of the parties to this Amendment, the parties do agree as follows:

1. Recitals. The parties hereto recite the following:

(a) Landlord and Tenant made and entered into a Lease Agreement dated as of August 6, 2008 (the “**Lease Agreement**”), for the lease by Landlord to Tenant of that certain lot or parcel of land, together with all improvements thereon and appurtenances thereunto belonging, located at 230 Slayton Avenue in the City of Danville, Virginia, identified as Parcel ID Number 78360. Capitalized terms not otherwise defined herein shall have the meanings given them in the Lease Agreement.

(b) The Lease Agreement remains in full force and effect, but the parties desire to make certain amendments to the Lease Agreement, as set forth herein.

2. Amendments to Lease Agreement. The parties do hereby amend the Lease Agreement as follows:

(a) Section 3.1 of the Lease Agreement is hereby amended and restated to read in its entirety as follows:

“3.1 Term. The term of this Lease (“**Term**”) shall begin upon the Commencement Date and shall extend for a period of five (5) years after the Commencement Date. The Term of this Lease shall automatically renew thereafter for successive one (1) year periods (each, a “**Renewal Period**”), unless either party gives the other party notice of its intention not to renew at least ninety (90) days prior to the expiration of the then current Term.”

(b) The definition of “**Change Date**” in the last sentence of the last paragraph of Section 3.2 is hereby amended to mean the first day of each **Renewal Period**.

**Resolution No. 2013-06-10-5**

(c) Section 4.3 of the Lease Agreement is hereby amended by adding thereto the following paragraph between the first and second paragraphs thereof:

“Notwithstanding the foregoing, in the event that at any time during the Term, the building located on the Demised Premises commonly known as the “Charles Hawkins Building” (the “Charles Hawkins Building”) is not occupied by a permitted sublessee or a permitted assignee of Tenant (any such period being an “Unoccupied Period”), Landlord agrees, at its expense, to maintain throughout any Unoccupied Period, all of the Charles Hawkins Building, including both the interior and exterior thereof, its parking areas, its landscaped areas, and its plumbing, heating, air conditioning, and electrical systems, in good operating condition.

(d) Section 4.4 of the Lease Agreement is hereby amended by adding to the end thereto the following paragraph:

“Notwithstanding the foregoing, Landlord agrees, at its expense, throughout any Unoccupied Period, (i) to perform all ordinary and minor repairs related to normal “wear and tear” relating to all of the Charles Hawkins Building, its parking areas, and its landscaped areas.”

3. Effect on Lease Agreement. Except as amended by this Amendment, all other terms, provisions, and conditions of the Lease Agreement shall remain in full force and effect, and the parties hereby ratify and confirm that the Lease Agreement, as amended by this Amendment, is and remains in full force and effect.

4. Due Authorization. Each party represents, warrants, and agrees that the execution and performance of this Amendment by such party have been duly approved by all necessary action of such party’s governing body, that the individual executing this Amendment on behalf of such party is duly authorized to do so, and that this Amendment is a valid binding, legal obligation of such party, enforceable in accordance with its terms.

5. Counterparts. This Amendment may be executed in one or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same Amendment.

[SIGNATURE PAGE FOLLOWS]

**Resolution No. 2013-06-10-5**

WITNESS the following signatures to this **AMENDMENT TO LEASE AGREEMENT** effective as of the date first above written:

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

By: \_\_\_\_\_  
Title: \_\_\_\_\_

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

The foregoing Amendment to Lease Agreement was acknowledged before me by \_\_\_\_\_ acting in his capacity as \_\_\_\_\_ of the Danville-Pittsylvania Regional Industrial Facility Authority, a political subdivision of the Commonwealth of Virginia, this \_\_\_\_ day of \_\_\_\_\_ 2013.

My commission expires: \_\_\_\_\_.

\_\_\_\_\_  
Notary Public

Registration No. \_\_\_\_\_

**INSTITUTE FOR ADVANCED LEARNING AND RESEARCH**, a political subdivision of the Commonwealth of Virginia

By: \_\_\_\_\_  
Title: \_\_\_\_\_

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

The foregoing Amendment to Lease Agreement was acknowledged before me by \_\_\_\_\_ acting in his/her capacity as \_\_\_\_\_ of the Institute for Advanced Learning and Research, a political subdivision of the Commonwealth of Virginia, this \_\_\_\_ day of \_\_\_\_\_ 2013.

My commission expires: \_\_\_\_\_.

\_\_\_\_\_

Notary Public

Registration No. \_\_\_\_\_

**Exhibit B**

(Addendum to Lease Agreement)

**ADDENDUM TO LEASE AGREEMENT**

**THIS ADDENDUM TO LEASE AGREEMENT** (this “**Addendum**”) is made effective as of the \_\_\_ day of \_\_\_\_\_ 2013, by and between **DANVILLE-PITTSYLVANIA COUNTY REGIONAL INDUSTRIAL FACILITY AUTHORITY**, a political subdivision of the Commonwealth of Virginia (“**Landlord**”), and **INSTITUTE FOR ADVANCED LEARNING AND RESEARCH**, a political subdivision of the Commonwealth of Virginia (“**Tenant**”).

**WITNESSETH:**

THAT for and in consideration of the mutual covenants and promises of the parties to this Addendum, the parties do agree as follows:

6. Recitals. The parties hereto recite the following:

(a) Landlord and Tenant made and entered into a Lease Agreement dated as of August 6, 2008, as amended by an Amendment to Lease Agreement made and entered into by Landlord and Tenant as of even date herewith (collectively, the “**Lease Agreement**”), for the lease by Landlord to Tenant of that certain lot or parcel of land, together with all improvements thereon and appurtenances thereunto belonging, located at 230 Slayton Avenue in the City of Danville, Virginia, identified as Parcel ID Number 78360. Capitalized terms not otherwise defined herein shall have the meanings given them in the Lease Agreement.

(b) The Lease Agreement remains in full force and effect, but the parties desire to enter into this Addendum with respect to the engagement by Landlord of Tenant to perform Landlord’s maintenance and repair obligations under the Lease Agreement during any Unoccupied Period, as set forth herein.

7. Engagement of Tenant. Subject to the terms and conditions set forth herein, Landlord hereby engages Tenant, and Tenant hereby accepts such engagement, to perform and provide throughout any Unoccupied Period Landlord’s maintenance and repair obligations with respect to the Charles Hawkins Building as set forth in the Lease Agreement (collectively, the “**Services**”), the costs of which shall be subject to annual review by the parties hereto.

8. Compensation. As consideration for the performance and provision by Tenant of the Services hereunder, Landlord shall pay to Tenant an amount equal to Ten and 00/100 Dollars (\$10.00) per square foot of space within the Charles Hawkins Building per Unoccupied Period, payable on the first (1<sup>st</sup>) day of July of each year, subject to adjustment on each Change Date.

9. Right of Setoff. To the extent permitted by law, Tenant agrees that Landlord has the right to set off any amount due and payable by Landlord to Tenant hereunder against any amount owing by Tenant to Landlord. Such right of setoff may be exercised by Landlord against

**Resolution No. 2013-06-10-5**

Tenant or against any assigns for the benefit of creditors, receivers, or execution, judgment, or attachment creditors of Tenant, or against anyone else claiming through or against Tenant.

10. Effect on Lease Agreement. Except as modified in this Addendum, all other terms, provisions, and conditions of the Lease Agreement shall remain in full force and effect, and the parties ratify and confirm that the Lease Agreement, as modified by this Addendum, is and remains in full force and effect.

11. Due Authorization. Each party represents, warrants, and agrees that the execution and performance of this Addendum by such party have been duly approved by all necessary action of such party's governing body, that the individual executing this Addendum on behalf of such party is duly authorized to do so, and that this Addendum is a valid binding, legal obligation of such party, enforceable in accordance with its terms.

12. Counterparts. This Addendum may be executed in one or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same Amendment.

[SIGNATURE PAGE FOLLOWS]

**Resolution No. 2013-06-10-5**

WITNESS the following signatures to this **ADDENDUM TO LEASE AGREEMENT** effective as of the date first above written:

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

By: \_\_\_\_\_  
Title: \_\_\_\_\_

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

The foregoing Addendum to Lease Agreement was acknowledged before me by \_\_\_\_\_ acting in his capacity as \_\_\_\_\_ of the Danville-Pittsylvania Regional Industrial Facility Authority, a political subdivision of the Commonwealth of Virginia, this \_\_\_\_ day of \_\_\_\_\_ 2013.

My commission expires: \_\_\_\_\_.

\_\_\_\_\_  
Notary Public

Registration No. \_\_\_\_\_

**INSTITUTE FOR ADVANCED LEARNING AND RESEARCH**, a political subdivision of the Commonwealth of Virginia

By: \_\_\_\_\_  
Title: \_\_\_\_\_

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

The foregoing Addendum to Lease Agreement was acknowledged before me by \_\_\_\_\_ acting in his/her capacity as \_\_\_\_\_ of the Institute for Advanced Learning and Research, a political subdivision of the Commonwealth of Virginia, this \_\_\_\_ day of \_\_\_\_\_ 2013.

My commission expires: \_\_\_\_\_.

\_\_\_\_\_

Notary Public

Registration No. \_\_\_\_\_

**Resolution No. 2013-06-10-6B**

**A RESOLUTION TO APPROVE A ONE-YEAR RENEWAL OF THE HUNTING LEASE WITH JAY VANN CLODFELTER AND BRENT CLODFELTER, AS TENANT, OF APPROXIMATELY 561.13 ACRES, MORE OR LESS, AT THE AUTHORITY'S MEGA PARK SITE (GPINs 1366-16-2959 and 1366-37-2002, COMMONLY KNOWN AS THE HAIRSTON FARM, AND GPIN 1367-01-8739), FOR THE USES OF HUNTING, FISHING AND RELATED OUTDOOR RECREATIONAL ACTIVITIES, AT A TOTAL RENTAL FEE OF \$2,000.**

**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**, Jay Vann Clodfelter and Brent Clodfelter, entered into that certain Hunting Lease Agreement with the Authority dated as of June 11, 2012 (the "Lease"), for that certain real property located in Pittsylvania County, Virginia, containing 371.13 acres, more or less, commonly known as the Hairston Farm (GPIN 1366-16-2959), off State Road 863, for the use of hunting, fishing and related outdoor recreational activities, at a total rental fee of One Thousand Five Hundred Dollars (\$1,500); and

**WHEREAS**, the current term of the Lease expires on June 30, 2013; and

**WHEREAS**, the Authority has determined that it is in the best interests of the Authority and of the citizens of Pittsylvania County and the City of Danville, Virginia, for the Authority to renew the Lease for an additional one (1) year term at a total rental fee of Two Thousand and 00/100 Dollars (\$2,000.00) and to increase, as of the effective date of the renewal of the Lease, the property leased thereunder by 190 acres to a total of 561.13 acres; and

**WHEREAS**, the terms of the lease renewal are set forth in **Exhibit A**, attached hereto and incorporated herein by this reference (the "Lease Renewal").

**NOW, THEREFORE, BE IT RESOLVED**, that

1. The Authority hereby approves the Lease Renewal as set forth in Exhibit A and as reviewed at this meeting, together with such amendments, deletions or additions thereto as may be approved by the Chairman or the Vice Chairman of the Authority, and hereby authorizes the Chairman and the Vice Chairman, either of whom may act independently of the other, to execute and deliver the Lease Renewal on behalf of the Authority, such execution of the Lease Renewal by the Chairman (or Vice Chairman as the case may be) to conclusively establish his approval of any amendments, deletions or additions thereto.

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

**Resolution No. 2013-06-10-6B**

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

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

**CERTIFICATE**

I, the undersigned Secretary of the Danville-Pittsylvania Regional Industrial Facility Authority, hereby certify that the foregoing is a true, correct and complete copy of a Resolution duly adopted by a majority of the directors of the Danville-Pittsylvania Regional Industrial Facility Authority at a meeting duly called and held on June 10, 2013, 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 10th day of June 2013.

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

(SEAL)

Exhibit A

**THIS LEASE RENEWAL** (this “**Lease Renewal**”), made as of the \_\_\_\_ day of \_\_\_\_\_ 2013 (the “**Effective Date**”), by and between **DANVILLE-PITTSYLVANIA REGIONAL INDUSTRIAL FACILITY AUTHORITY**, a political subdivision of the Commonwealth of Virginia (“**Landlord**”), and **JAY VANN CLODFELTER** and **BRENT CLODFELTER** (individually and collectively referred to as “**Tenant**”);

**W I T N E S S E T H :**

**WHEREAS**, Landlord and Tenant entered into that certain Hunting Lease Agreement dated as of June 11, 2012 (the “**Lease**”), for that certain real property located in Pittsylvania County, Virginia, containing 371.13 acres, more or less, commonly known as the Hairston Farm (GPIN 1366-16-2959), off State Road 863;

**WHEREAS**, Landlord and Tenant desire to renew the Lease for an additional one (1) year term, provide for the payment of additional rent during such renewal term, and amend the property subject to the Lease, all as set forth herein.

**NOW, THEREFORE**, for and in consideration of the mutual promises and covenants contained in this Lease, the parties agree as follows:

1. As of the Effective Date, the “**Demised Premises**” (as defined in the Lease) shall be that certain real property located in Pittsylvania County, Virginia, containing an aggregate of 561.13 acres, more or less (GPIN 1366-16-2959, containing approximately 371.13 acres, more or less and GPIN 1366-37-2002, containing approximately 1.0 acres, more or less, commonly known as the Hairston Farm; and GPIN 1367-01-8739, containing approximately 189.0 acres, more or less), off State Road 863.

2. The “**Renewal Term**” shall be for a term of one (1) year beginning on July 1, 2013, and ending on June 30, 2014. The “**Term**” (as defined in the Lease) shall include the initial Term and any Renewal Term.

3. Tenant agrees to pay to Landlord as additional rent (“**Additional Rent**”) for the Renewal Term set forth herein the amount of Two Thousand and 00/100 Dollars (\$2,000.00), payable in advance. The “**Rent**” (as defined in the Lease) shall include the Rent payable for the initial Term and any Additional Rent payable for any Renewal Term.

4. All other terms and conditions of the Lease not specifically changed herein shall remain in full force and effect.

[SIGNATURE PAGE FOLLOWS]

**Resolution No. 2013-06-10-6B**

**WITNESS** the following signatures to this **LEASE RENEWAL** as of the date first set forth above:

**LANDLORD:**

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

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

**TENANT:**

\_\_\_\_\_  
**JAY VANN CLODFELTER**

\_\_\_\_\_  
**BRENT CLODFELTER**

# Danville-Pittsylvania Regional Industrial Facility Authority

## Executive Summary

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|                         |  |
|-------------------------|--|
| <b>Agenda Item No.:</b> | 6-C  |
| <b>Meeting Date:</b>    | 06/10/2013   |
| <b>Subject:</b>         | Cane Creek Financing Options Upon Expiration of Letter of Credit |
| <b>From:</b>            | Barbara A. Dameron, Treasurer                                    |

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### **SUMMARY**

The Letter of Credit with Wells Fargo Bank for the Danville-Pittsylvania Regional Industrial Facility Authority's (RIFA) Cane Creek Bonds expires on August 10, 2013. Patrick Dixon, Senior Vice President with Wells Fargo Bank, has offered a taxable term loan in lieu of renewing the Letter of Credit.

### **BACKGROUND**

Wells Fargo Bank has proposed the following three options in lieu of renewing the existing Letter of Credit. Interest rates are based on the "London Interbank Offered Rate" (LIBOR), which is the primary benchmark for short-term interest rates around the world.

1. Three-year term with a variable interest rate of one-month LIBOR plus 0.95% (LIBOR is currently equal to 0.20%, which results in an initial rate of 1.15%)
2. Three-year term with a fixed interest rate of 1.85%
3. Five-year term with a variable interest rate of one-month LIBOR plus 1.50% (LIBOR is currently equal to 0.20%, which results in an initial rate of 1.70%)

The conversion from the existing Letter of Credit supported Variable Rate Demand Bonds to a taxable loan (Fixed Rate Revenue Refunding Bond) continues the same Support Agreements from the City and County, but simplifies the structure to achieve:

- Elimination of the put risk, remarketing risk, and bank risk associated with Variable Rate Demand Bonds;
- Reduction of the annual cost of remarketing the bonds, approximately \$8,595+ per annum to RIFA;
- Utilization of more traditional taxable loan documents which is easier to renegotiate and extend for future time periods; and

- Elimination of any disclosure requirements of the Authority once the Bonds are redeemed.

Both staff and RIFA's Financial Advisors, Davenport and Company, recommend RIFA accept the three-year fixed-rate option (option 2 above) due to concerns of rising interest rates. The amortization schedule will remain unchanged and still be based on a final maturity of January 1, 2026. Prior to the expiration of the three-year term, the agreement will be renegotiated or other financing sought.

Wells Fargo is requesting the credit commitment be accepted by the RIFA Board by June 10, 2013, and closed by August 1, 2013. In order to meet this deadline, both Pittsylvania County's Board of Supervisors and Danville's City Council were asked to approve Support Agreements on June 3 and June 4, 2013, respectively. The Support Agreements keep the substance of the existing Moral Obligations that are intact currently, but revise the structure of the obligation from the Letter of Credit to the new loan.

### **RECOMMENDATION**

It is recommended the RIFA's Board Members adopt the attached Resolution approving the refinancing of the Cane Creek Letter of Credit supported Variable Rate Demand Bonds by the issuance of its fixed rate revenue refunding bonds with a fixed interest rate of 1.85% in an amount not to exceed \$5,700,000.

### **ATTACHMENTS**

1. Resolution
2. Wells Fargo's Credit Commitment Letter
3. Financing Agreement
4. Pittsylvania County Support Agreement
5. City of Danville Support Agreement

**RESOLUTION OF THE DANVILLE-PITTSYLVANIA REGIONAL INDUSTRIAL FACILITY AUTHORITY AUTHORIZING THE ISSUANCE OF ITS TAXABLE REVENUE REFUNDING BOND (CANE CREEK PROJECT), SERIES 2013; AUTHORIZING THE EXECUTION AND DELIVERY OF ALL BOND DOCUMENTS, NOT TO EXCEED \$5,700,000, IN CONNECTION THEREWITH INCLUDING WITHOUT LIMITATION THE FINANCING AGREEMENT, THE BOND AND THE SUPPORT AGREEMENTS; AND AUTHORIZING OTHER MATTERS IN CONNECTION THEREWITH, IN ORDER TO REFINANCE THE PRIOR \$7,300,000 REVENUE BONDS (CANE CREEK PROJECT), SERIES 2005**

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 (the “**Act**”). In furtherance of the Act’s purposes, the Authority issued its \$7,300,000 Revenue Bonds (Cane Creek Project), Series 2005 (the “**Prior Bonds**”), and used the proceeds thereof to finance, as part of the development of Cane Creek Centre as an industrial park, land acquisition, roads, wetland, remediation, lot clearing and other related capital expenditures, including necessary expenses incidental thereto (collectively, the “**Project**”) and pay costs of issuance.

The Authority now wishes to refinance the Project and refund the Prior Bonds by issuing its Taxable Revenue Refunding Bond (Cane Creek Project), Series 2013 in an amount not to exceed \$5,700,000 (the “**Bond**”) pursuant to the terms of a Financing Agreement, dated as of July 1, 2013 (the “**Agreement**”), between the Authority and Wells Fargo Bank, National Association (the “**Bank**”);

The Bond will be payable from (i) payments from the City of Danville, Virginia (the “**City**”) pursuant to a Support Agreement, dated as of July 1, 2013 (the “**City Support Agreement**”), between the City and the Authority and assigned to the Bank and (ii) payments from Pittsylvania County, Virginia (the “**County**”) pursuant to a Support Agreement, dated as of July 1, 2013 (the “**County Support Agreement**”), between the County and the Authority and assigned to the Bank (the County Support Agreement and the City Support Agreement being collectively referred to herein as the “**Support Agreements**”). The Bond will be purchased by the Bank for its own portfolio pursuant to the terms of the Agreement.

The Agreement, the Bond and the Support Agreements were made available to the Authority at this meeting.

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

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

2. The Authority hereby approves the issuance of the Bond substantially upon the terms set forth therein and in the Agreement and approves the refunding of the Prior Bonds. As of the date of this Resolution, the final principal amount of the Bond and the Bond’s principal amortization have not been determined. The Chairman and Vice Chairman of the Authority, either of whom may act, are each hereby authorized to approve the final principal amount of the Bond, so long as the aggregate principal amount of the Bond does not exceed \$5,700,000, and approve the final amortization, so long as the same is determined based upon an amortization period extending no later than January 1, 2026 but with a

maturity date for the Bond of no later than January 1, 2017. Such approvals shall be conclusively evidenced by the execution and delivery of the Bond by the Authority.

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

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

5. The Chairman and the Vice Chairman of the Authority, either of whom may act, are each authorized and directed to execute the Authority Documents on behalf of the Authority, and, if required or requested, the Secretary and the Assistant Secretary of the Authority, either of whom may act, are each authorized and directed to affix the seal of the Authority to the Authority Documents and to attest such seal.

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

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

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

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

**CERTIFICATE**

I, the undersigned Secretary of the Danville-Pittsylvania Regional Industrial Facility Authority, hereby certify that the foregoing is a true, correct and complete copy of a Resolution duly adopted by a majority of the directors of the Danville-Pittsylvania Regional Industrial Facility Authority at a meeting duly called and held on June 10, 2013, and that such Resolution has not been repealed, revoked, rescinded or amended, but is in full force and effect on the date hereof.

**WITNESS** my hand as Secretary of the Danville-Pittsylvania Regional Industrial Facility Authority this \_\_\_\_ day of June, 2013.

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

#20507626v1  
034002.000005



May 9, 2013

Ms. Barbara A. Dameron, CPA  
Director of Finance  
City of Danville, Virginia  
Email: [damerba@ci.danville.va.us](mailto:damerba@ci.danville.va.us)

RE: Danville- Pittsylvania Regional Industrial Facility Authority  
Series 2005 Bonds- Cane Creek Project

Dear Barbara:

We are pleased to provide the Danville-Pittsylvania Regional Industrial Facility Authority with the REVISED credit commitment. This proposal is intended to summarize, for discussion purposes, the credit accommodation but is subject to mutual acceptance of the legal documentation for the proposed transaction.

- BORROWER:** Danville-Pittsylvania Regional Industrial Facility Authority (“Borrower” or “Authority”)
- PURCHASER:** Wells Fargo Bank, National Association (“Wells Fargo” or the “Bank”), or a wholly owned subsidiary of the Bank.
- FACILITY AMOUNT:** Up to \$5,700,000 in principal.
- STRUCTURE:** The Bank will provide a taxable term loan (the “Loan”) which will initially bear interest at one of the Interest Rate options below.
- PURPOSE:** The Loan will be used to optionally redeem, in whole, the Authority’s Series 2005 Variable Rate Demand Bonds, Cane Creek Project (the “Bonds”).
- TERM:** A three (3) or five (5) year term based upon the existing amortization of the Bonds. This amortization schedule is based upon a final maturity of January 1, 2026. This estimated amortization schedule is shown on Attachment A.
- SECURITY:** A Moral Obligation Pledge from the City of Danville (the “City”) and the County of Pittsylvania (the “County”), in the form of Support Agreements (the “Support Agreements”), from the date of the Loan through termination. The Support Agreements will describe the payment obligations the City and the County each have to the Authority in a manner acceptable to the Bank.
- INTEREST RATE:** Interest Rate Options for a three (3) year term:
- A Variable Interest Rate of 1-month LIBOR plus 0.95%. LIBOR is currently equal to 0.20% which results in an initial rate of **1.15%**.

- A Fixed Interest Rate equal to 1.85%.

Or,

Interest Rate Option for a five (5) year term:

- A Variable Interest Rate of 1-month LIBOR plus 1.50%. LIBOR is currently equal to 0.20% which results in an initial rate of 1.70%.

Please note that these are indicative rates only. The actual interest rates require acceptance by the Authority and are subject to changing market conditions unless accepted by June 10, 2013 and closed by August 1, 2013. If for any reason the financing agreement does not close after rate is locked, the Authority will compensate the Bank for any losses, costs or expenses that the Bank deems to have incurred as a result, including those resulting from changes in interest rates.

The Variable Interest Rate and Fixed Interest Rate are subject to adjustment upon the incurrence of increased costs.

**OTHER FEES:**

Usual and customary for this type of financing, including termination fees, attorney's fees, and customary language regarding increased costs and capital adequacy. Bank Counsel will provide the required loan documentation and be represented by Christian Barton, LLP (Mr. Eric Ballou). Costs of preparation will be paid for by the Authority.

**PREPAYMENT:**

Under the 3 and 5 year Variable Interest Rate options, the Loan is prepayable at anytime with 30 days written notice, at par.

Under the 3 year Fixed Interest Rate, the Note is prepayable at any time at a "make whole" price, with 30 days written notice.

**DEFAULT RATE:**

Greatest of (i) the Bank's Prime Rate plus 3.00%, (ii) the Federal Funds Rate plus 3.00%, or (iii) 9%.

**CONDITIONS  
PRECEDENT TO CREDIT  
COMMITMENT:**

Usual and customary for this type of financing. The Facility will be governed by a financing agreement and other documents for the benefit of the Bank, which agreement and documents will contain conditions and covenants and other provisions that would be usual and customary for this type of financing including but not limited to: authorizing resolutions from the Authority, the City and the County to enter into the financing, valid and binding Support Agreements, etc.

**REPORTING  
REQUIREMENTS:**

Usual and customary for this type of financing including but not limited to:

- The Authority, the City and the County shall furnish to Wells Fargo Bank within 210 days of fiscal year end their annual audited financial statements in each instance prepared in accordance with generally accepted accounting principles consistently applied and otherwise in form and substance satisfactory to Bank.
- Simultaneously with the delivery of the Authority's annual audited financial statements, the Authority shall deliver a certificate signed by a principal financial officer stating that such officer has

made a review of activities during the preceding period for the purpose of determining whether or not the Authority has complied with all of the terms, provisions and conditions of their annual operating budget and the loan documents, and that no event of default has occurred.

- The Authority, the City and the County shall furnish to Wells Fargo Bank within 60 days of its approval the approved annual budget.

**REPS AND WARRANTIES:** Usual and customary for this type of financing.

**EVENTS OF DEFAULT:** Usual and customary for this type of financing

**CONFIDENTIALITY:** This document is confidential and proprietary and shall not be disclosed.

The execution versions of agreements containing final terms and conditions would be subject to approval by Borrower and Bank.

We are delighted to have served the Authority in the past and look forward to our continued partnership going forward. I remain available to answer any questions you may have.

Best Regards,

*Patrick*

Patrick K. Dixon, Senior Vice President  
GOVERNMENT AND INSTITUTIONAL BANKING  
Wells Fargo Bank, N.A.  
540-563-6069

ACCEPTED AND AGREED:

**Danville-Pittsylvania Regional Industrial Facility Authority**

\_\_\_\_\_  
Name and Title:

\_\_\_\_\_  
Date:

Attachment A

Estimated Amortization of Principal

|            |                   |
|------------|-------------------|
| 01/01/2014 | 315,000.00        |
| 01/01/2015 | 330,000.00        |
| 01/01/2016 | 350,000.00        |
| 01/01/2017 | 365,000.00        |
| 01/01/2018 | 385,000.00        |
| 01/01/2019 | 405,000.00        |
| 01/01/2020 | 425,000.00        |
| 01/01/2021 | 445,000.00        |
| 01/01/2022 | 465,000.00        |
| 01/01/2023 | 490,000.00        |
| 01/01/2024 | 515,000.00        |
| 01/01/2025 | 540,000.00        |
| 01/01/2026 | <u>565,000.00</u> |
|            | 5,595,000.00      |

**FINANCING AGREEMENT**

This Financing Agreement is made as of \_\_\_\_\_, 2013, between the **DANVILLE-PITTSYLVANIA REGIONAL INDUSTRIAL FACILITY AUTHORITY**, a political subdivision of the Commonwealth of Virginia (the “Authority”) and **WELLS FARGO BANK, NATIONAL ASSOCIATION**, a national banking association (the “Bank”).

The Authority intends to issue the 2013 Bond (as defined below) to provide for the refunding of the 2005 Bonds (as defined below) previously issued by the Authority.

The Bank is agreeable to acquiring the 2013 Bond and refunding the 2005 Bonds on the terms and conditions contained in this Agreement.

**NOW, THEREFORE**, the parties agree as follows:

**ARTICLE I**  
**Definitions; Construction; Determinations**

**Section 101. Definitions.** The following words and terms as used in this Agreement shall have the following meanings unless some other meaning is plainly intended:

“Act” means Chapter 64, Title 15.2 of the Code of Virginia, as amended and in effect from time to time.

“Affiliate” means a corporation, partnership, association, joint venture, business trust or similar entity organized under the laws of any state that directly, or indirectly through one (1) or more intermediaries, Controls or is Controlled by, or is under common Control with, the Issuer or the Bank, as may be applicable.

“Agreement” means this Financing Agreement and all amendments, supplements and modifications to it from time to time.

“Bank” means Wells Fargo Bank, National Association, its successors and assigns.

“Bond Counsel” means any firm of attorneys of nationally recognized expertise with respect to obligations of political subdivisions, selected by the Authority and acceptable to the Bondholder.

“Bond Registrar” means the Bond Registrar as designated in Section 203 hereof.

“Bondholder” means any person in whose name the 2013 Bond is registered on the books and records of the Bond Registrar pursuant to Section 203 of this Agreement.

“Business Day” means any day (i) other than a Saturday, Sunday or day when banks located in the City of Roanoke, Virginia are authorized or required to be closed and (ii) on which the New York Stock Exchange is not closed.

“Chairman” means the Chairman or Vice Chairman of the Authority, either of whom may act.

“City” means the City of Danville, Virginia.

“Closing Date” means the date that the 2013 Bond is issued and delivered to, and accepted by, the Bank.

“Commonwealth” means the Commonwealth of Virginia.

“Control” or any variant thereof means the ownership of, or power to vote (i) 51% of the outstanding capital stock of a corporation, the membership interests of a limited liability company, or the partnership interests of a partnership; or (ii) 100% of the membership interests of the managing members of a limited liability company or of the partnership interests of the general partners of a partnership.

“County” means Pittsylvania County, Virginia.

“Default Rate” shall mean the interest rate otherwise then in effect for the 2013 Bond plus 3%.

“Event of Default” means any of the events specified in Section 801 hereof to be an Event of Default.

“Governmental board” means any government or political subdivision, or any agency, board, commission, department or instrumentality of either, or any court, tribunal, central bank or arbitrator.

“Government Obligations” means (i) direct obligations of the United States of America, (ii) obligations unconditionally guaranteed by the United States of America, and (iii) securities or receipts evidencing ownership interests in obligations or specified portions (such as principal or interest) of obligations described in clause (i) or (ii) above the full and timely payment of which securities, receipts or obligations is unconditionally guaranteed by the United States of America.

“Indebtedness” means (a) indebtedness or liability for borrowed money, or for the deferred purchase price of property or services; (b) obligations as lessee under leases which are, should be or should have been reported as capital leases in accordance with generally accepted accounting principles; (c) current liabilities in respect of unfunded vested benefits under plans covered by Title IV of ERISA; (d) all obligations arising under any acceptance facility; (e) all guarantees, endorsements (other than for collection or deposit in the ordinary course of business) and other contingent obligations to purchase, to provide funds for payment, to supply funds to invest in any Person or otherwise to assure a creditor against loss; (f) obligations secured by any mortgage, lien,

pledge, security interest or other charge or encumbrance on property owned by the Issuer, whether or not the obligations have been assumed; and (g) all other items or obligations which would be included in determining total liabilities on the balance sheet of a Person; *provided, however*, that “Indebtedness” shall not include (i) trade payables and similar obligations (including the deferred revenues resulting from subscriptions, dues and the like as shown on the financial statements of the Issuer) incurred in the ordinary course of business; (ii) purchase money indebtedness in favor of the seller or lessor of a capital asset so purchased or leased, *provided* that such indebtedness was incurred prior to or within 90 days after such acquisition, *provided further*, that the aggregate principal amount of the indebtedness described in clauses (i) and (ii) does not exceed \$100,000 at any time outstanding; (iii) planned giving actuarial liabilities as reflected in the financial statements of the Issuer to the extent they are offset by planned giving investments; or (iv) interest rate swap or similar agreements in connection with the 2013 Bond or other Indebtedness to the extent that the notional amount of such swap or other agreement does not exceed the principal amount of such Bonds or other Indebtedness then outstanding.

“Loan Documents” means, collectively, this Agreement, the 2013 Bond, the Support Agreements and such additional security agreements and collateral documents and instruments as may be executed pursuant to or in connection with this Agreement.

“Member Jurisdictions” means the City and the County.

“Material Adverse Effect” means an event or occurrence which adversely affects in a material manner (a) the assets, liabilities, condition (financial or otherwise), business or operations of the Authority, or (b) the ability of the Authority to carry out its business as of the date of this Agreement or as proposed herein to be conducted or to meet or perform its obligations under this Agreement or the other Loan Documents on a timely basis.

“Matters Contested in Good Faith” means matters (a) then being contested in good faith by appropriate proceedings diligently and continuously pursued, (b) of which the Bank has been notified in writing and is being kept informed in such detail as the Bank may from time to time reasonably request, (c) the enforcement of which is effectively stayed during the period of the contest, and (d) with respect to which either (i) for disputes valued in excess of \$100,000, adequate reserves in the nature of a cash deposit or pledge of bonds or other securities, or a payment bond of a corporate surety in the face amount equal to the total amount in controversy, reasonably satisfactory to the Bank, have been furnished, or (ii) adequate provision therefor, reasonably satisfactory to the Bank, has been reserved on the financial statements of the Authority.

“Permitted Liens” means any lien, security interest or other charge or encumbrance of any kind, or any other type of preferential arrangement, including without limitation the lien or retained security title of a conditional vendor and any easement, right of way or other encumbrance on title to property (the foregoing are “Liens”) encumbering the 2005 Project in favor of the Bank and any of the following Liens:

- (a) Liens of carriers, warehousemen, mechanics and materialmen incurred in the ordinary course of business for sums not yet due and payable or that are being contested in good faith and with due diligence in appropriate proceedings and for which bonds have been

posted or other security acceptable to the Bank, provided such bonds or other security to be in amounts sufficient to pay off the liens during the pendency of any controversies relating to them;

(b) Liens incurred in the ordinary course of business in connection with worker's compensation, unemployment insurance or other forms of governmental insurance or employee benefits, or liens to secure the performance of letters of credit, bids, tenders, statutory obligations, leases and contracts (other than for borrowed funds) entered into in the ordinary course of business or to secure obligations on surety or appeal bonds;

(c) purchase money Liens on equipment purchased or leased by the Authority;

(d) Liens for current taxes, assessments or other governmental charges that are not delinquent or remain payable without any penalty or that are being contested in good faith and with due diligence by appropriate proceedings;

(e) Liens representing obligations under gifts or contracts to expend monies in a prescribed manner;

(f) Liens on any assets given, bequeathed or devised to the Authority that are created or in existence at the time of such gift, bequeath or devise; and

(g) such other Liens as may be approved in writing by the Bank.

“Person” means an individual, partnership, corporation (including a business trust), limited liability company, trust, unincorporated association, joint venture or other entity.

“Revenues” means all (a) any and all that may be appropriated for and paid to the Authority by a Member Jurisdiction under a Support Agreement or otherwise, and (b) any other income from other sources pledged by the Authority to the payment of the 2013 Bond.

“Secretary” means the secretary of the Authority. The term shall include the assistant or acting secretary of the Authority whenever, by reason of absence, illness or other reason, the Secretary is unable to act.

“Similar Bonds” means any bonds, notes, debentures or other similar obligations or undertakings issued or incurred by or on behalf of the County or the City or any agency, institution, authority or affiliate of the County or the City (including, without limitation, the Authority) and including lease revenue or capital lease obligations, which are either (a) secured by the full faith and credit of the County or the City, or (b) supported by and paid from appropriations of the County or the City, as appropriate.

“Support Agreements” means, collectively, (i) the Support Agreement dated the date hereof between the County and the Authority, and (ii) the Support Agreement dated the date hereof between the City and the Authority, and “Support Agreement” means either of such instruments as the context may require.

“2005 Bonds” means the Authority’s \$7,300,000 Danville-Pittsylvania Regional Industrial Facility Authority, Variable Rate Revenue Bonds (Cane Creek Project), Series 2005, dated August 10, 2005, presently outstanding in the amount of \$\_\_\_\_\_.

“2013 Bond” means the Authority’s \$\_\_\_\_\_ Taxable Revenue Refunding Bond (Cane Creek Project), Series 2013, issued on the Closing Date.

“2013 Refunding Project” means the refunding of the 2005 Bonds and payment of the costs of issuance of the 2013 Bond; the 2005 Bonds in turn provided for the financing of the costs of the development of Cane Creek Centre, including but not limited to land acquisition costs, roads, wetland remediation, lot clearing and other capital expenditures related thereto and the costs of issuing the 2005 Bonds, and other costs associated with the foregoing (the “2005 Project” or the “Cane Creek Centre Project”).

**Section 102. Rules of Construction.**

(a) Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders. Unless the context shall otherwise indicate, the words “Bond,” “Bondholder,” and “person” shall include the plural as well as the singular number; the word “person” shall include any individual, corporation, partnership, joint venture, association, joint-stock company, trust, unincorporated organization or government or any agency or political subdivision thereof.

(b) Words importing the redemption or calling for redemption of the 2013 Bond shall not be deemed to refer to or connote payment of the 2013 Bond at its stated maturity.

(c) The captions and headings in this Agreement are for convenience only and in no way limit the scope or intent of any provision or section of this Agreement

(d) All references herein to particular articles or sections are references to articles or sections of this Agreement unless some other reference is indicated.

**Section 103. Determinations.** The Authority has found and determined that the undertaking of the 2013 Refunding Project and refinancing of the 2005 Project by the Authority is in furtherance of the purposes of the Authority under the Act. [The Authority has also found and determined that the Cane Creek Centre Project constitutes a “facility” within the meaning of the Act.]

**ARTICLE III**  
**The 2013 Bond**

**Section 301. Representations and Findings of Authority.** The Authority makes the following representations and findings as the basis for its undertakings hereunder:

(a) Organization. The Authority is a political subdivision duly organized, existing and in good standing under the Act and the laws of Virginia, and has the power to enter into the Loan Documents, to own its properties and to carry on its business as now being conducted and to issue the 2013 Bond, undertake the 2013 Refunding Project and the refinancing of the Cane Creek Centre Project, such transactions constituting an authorized undertaking under the Act and such transaction being in furtherance of the purposes for which the Authority was organized.

(b) Due Authorization. The execution, delivery and performance by the Authority of the Loan Documents are within the power and authority of the Authority and have been duly authorized by all necessary action of the Authority.

(c) Valid and Binding Obligations. Assuming enforceability against the other parties thereto, the Loan Documents and the Loan Documents to which the Authority is a party are valid and binding obligations of the Authority, enforceable against the Authority in accordance with their respective terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or other laws or equitable principles relating to or limiting creditors' rights generally and except indemnifications to the extent unenforceable as a matter of public policy.

(d) Noncontravention. The execution and delivery by the Authority of the Loan Documents, and the performance of its obligations under the Loan Documents, will not violate (a) any existing law or result in a breach of any of the terms of, or constitute a default under, any indenture, mortgage, deed of trust, lease or other agreement or instrument to which the Authority is a party or by which it or any of its property is bound, or (b) the Act, its bylaws or the organizing resolutions of the Member Jurisdictions that established the Authority, or (c) any of the rules or regulations applicable to the Authority or its property, or (d) any decree or order of any court or other Governmental Board.

(e) Pending Litigation and Other Proceedings. There is no pending action, proceeding or investigation before any Governmental Board against or directly involving the Authority and, to the best of the Authority's actual knowledge, there is no threatened action, proceeding or investigation targeted at the Authority before any Governmental Board which, in any case, may materially and adversely affect (a) the financial condition or operations of the Authority, or (b) the validity or enforceability of any of the Loan Documents or the Loan Documents.

(f) Financial Statements. All financial statements previously furnished to the Bank are complete and correct and fairly present the financial condition, changes in financial position and results of operations of the Authority and the Affiliates of the Authority presented therein on a consolidated basis at such dates and for such period and were prepared in accordance with generally accepted accounting principles (except where otherwise set forth herein), except that all interim statements and unaudited statements are subject to adjustment. Since the period of such statements, there has been no increase in the Indebtedness of the Authority, except for Indebtedness relating to the Loan Documents.

(g) Governmental Approval. The execution, delivery and performance of this Agreement and the Loan Documents to which the Authority is a party and the transactions contemplated hereby and thereby do not require any authorization, exemption, consent or approval

of, notice to, or declaration or filing with, any Governmental Board other than those obtained on or before the Closing Date.

(h) Taxes. The Authority is not delinquent in the payment of any taxes that have been levied or assessed by any Governmental Board against it or its assets unless such tax is being contested in good faith by proper proceedings and the Authority has established and maintained adequate reserves with respect thereto satisfactory to the Bank. The Authority has timely filed all tax and informational returns that are required by law to be filed, and has paid all taxes shown on said returns to be payable by the Authority and all other assessments or fees levied upon it or upon its properties to the extent that such taxes, assessments or fees have become due, and if not due, such taxes have been adequately provided for and sufficient reserves therefor established on its books of account. No material controversy in respect of the Authority's income taxes or its status as a tax exempt entity is pending or, to the knowledge of the Authority, threatened.

(i) Defaults. No Event of Default has occurred and is continuing or exists.

(j) No Material Adverse Change. Since the most current date of the information, financial or otherwise, supplied by the Authority to the Bank:

(k) There has been no change in the assets, liabilities, financial position or results of operations of the Authority which could constitute a Material Adverse Effect.

(i) The Authority has not incurred any obligations or liabilities which could have a Material Adverse Effect.

(ii) The Authority has neither (i) incurred material Indebtedness, other than the Obligations, Indebtedness to the Bank and other than trade accounts payable arising in the ordinary course of the Authority's business, which is not based upon commercial terms customary for the Authority, nor (ii) guaranteed the obligations of any other Person.

(l) Incorporation by Reference. The representations and warranties of the Authority contained in any other Loan Document are hereby incorporated by reference in this Agreement, and the representations and warranties made by the Authority in such sections are hereby made for the benefit of the Bank.

(m) Representations as of the Closing Date. The representations and warranties of the Authority contained in this Article and in the other Loan Documents are correct on and as of the Closing Date as though made on and as of such date; no petition by or against the Authority has at any time been filed under the United States Bankruptcy Code or under any similar act; no Event of Default has occurred and is continuing or would result from the execution of this Agreement, the other Loan Documents; the Authority has complied with all agreements and covenants and satisfied all conditions stated in this Agreement on its part to be performed or satisfied at or prior to the date hereof; and since June 30, 2012; there has been no event which has caused or might reasonably be anticipated to cause a Material Adverse Effect.

(n) Accuracy of Information. All information, reports and other papers and data with respect to the Authority, the 2013 Refunding Project and the 2005 Project furnished to the Bank

are complete and correct in all material respects, to the extent necessary to give the Bank true and accurate knowledge of the subject matter. No fact is known to the Authority which, in the Authority's judgment may have a Material Adverse Effect which has not been set forth in the financial statements previously furnished to the Bank or in other such information, reports, papers and data or otherwise disclosed in writing to the Bank. No document furnished or statement made by the Authority in connection with the negotiation, preparation or execution of this Agreement contains any untrue statement of a fact material to its creditworthiness or omits to state a material fact necessary in order to make the statements contained therein not misleading.

(o) Reliance by the Bank and the Bank Participants. All representations and warranties made herein to the Bank are made with the understanding that the Bank and the Bank Participants are relying upon the accuracy of such representations and warranties. Notwithstanding that the Bank and the Bank Participants may conduct their own investigation as to some or all of the matters covered by the representations and warranties in the Loan Documents and the Loan Documents, and any certificates, information, opinions or documents delivered in connection therewith, the Bank and the Bank Participants are entitled to rely on all representations and warranties as a material inducement to the Bank's extension of the credit evidenced by the Loan Documents.

(p) None of the directors of the Authority has declared that he or she has a personal interest (as defined in Section 2.2-3101 of the Virginia Code) in any Loan Document or in any transaction contemplated thereby, and none is an officer or employee of the Authority or the Bondholder.

### **ARTICLE III** **The 2013 Bond**

**Section 301. Authorization.** The Authority authorizes the issuance of its revenue refunding bond (the "2013 Bond") in order to refund the outstanding principal balance and accrued interest on the 2005 Bond and to pay costs of issuance of the 2013 Bond.

**Section 302. Details of 2013 Bond.** The 2013 Bond shall be in the original principal amount of \$\_\_\_\_\_, and shall contain the terms stated in the form of the 2013 Bond attached to this Agreement as Exhibit A.

**Section 303. Redemption of 2013 Bond.** The Authority may redeem the 2013 Bond, in whole or in part, at any time upon payment of the "make whole" redemption price that is set forth in the form of the 2013 Bond. The Authority shall give notice of any such redemption not more than 60 days and not less than 30 days prior to the redemption date by mailing a notice of redemption by first class mail, postage prepaid, to the Bondholder at its address shown on the Bond Register.

**Section 304. Registered Bond Required, Bond Registrar and Bond Register.** The 2013 Bond shall be issued in fully registered form. The 2013 Bond shall be registered upon original issuance and upon subsequent transfer or exchange as provided in this Agreement.

The Authority appoints the Secretary of the Authority its Bond Registrar in respect of the 2013 Bond. The Bond Registrar shall act as registrar and transfer agent for the 2013 Bond. There shall be kept at an office of the Bond Registrar a register (herein sometimes referred to as the “Bond Register”) in which, subject to such reasonable regulations as the Authority or the Bond Registrar may prescribe, there shall be provisions for the registration of the 2013 Bond and for the registration of transfers of the 2013 Bond.

**Section 305. Transfer.** Upon surrender for transfer of the 2013 Bond at the office of the Bond Registrar, the Authority shall execute and deliver in the name of the transferee or transferees, a new fully registered Bond of like date, series and tenor.

Any instrument presented for transfer shall be accompanied by a written instrument or instruments of transfer, in form satisfactory to the Bond Registrar, which may include a signature guarantee, duly executed by the Bondholder or by his attorney duly authorized in writing.

No service charge shall be made to a Bondholder for any transfer of Bond, but the Authority or the Bond Registrar may require payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in relation thereto.

A new 2013 Bond delivered upon transfer shall be a valid obligation of the Authority, evidencing the same debt as the 2013 Bond surrendered, and shall be entitled to all of the security and benefits hereof to the same extent as the 2013 Bond surrendered.

**Section 306. Execution.** The 2013 Bond shall be executed by the manual signature of the Chairman, and the seal of the Authority shall be affixed, imprinted, lithographed or reproduced thereon and shall be attested by the manual signature of the Secretary.

If executed as above provided, the 2013 Bond may be issued, notwithstanding that any officer signing such bond shall have ceased to hold office at the time of issuance or shall not have held office at the date of the 2013 Bond.

**Section 307. Payment of Principal and Interest of 2013 Bond.** The principal and redemption price of the 2013 Bond shall be payable, without the need for surrender of such 2013 Bond, and interest on the 2013 Bond shall be payable, at the address of the person entitled thereto, as such address shall appear in the Bond Register.

**Section 308. Person Deemed Owner.** The Authority and the Bond Registrar may deem and treat the person in whose name the 2013 Bond is registered as the absolute owner thereof (whether or not the 2013 Bond shall be overdue and notwithstanding any notation of ownership or other writing thereon made by anyone other than the Authority or the Bond Registrar) for the purpose of receiving payment of or on account of the principal of (and premium, if any, on), and interest on the 2013 Bond, and for all other purposes, and neither the Authority nor the Bond Registrar shall be affected by any notice to the contrary. All such payments so made to the Bondholder, or upon his order, shall be valid and, to the extent of the sum or sums so paid, effectual to satisfy and discharge the liability for moneys payable upon the 2013 Bond.

**Section 309. Mutilated, Destroyed, Lost, or Stolen 2013 Bond.** If the 2013 Bond shall become mutilated, the Authority shall execute and deliver a new 2013 Bond of like tenor and denomination in exchange and substitution for the 2013 Bond so mutilated, but only upon surrender to the Authority of such mutilated Bond for cancellation, and the Authority may require reasonable indemnity therefor. If the 2013 Bond shall be reported lost, stolen or destroyed, evidence as to the loss, theft or destruction thereof shall be submitted to the Authority; and if such evidence shall be satisfactory to it and indemnity satisfactory to it shall be given, the Authority shall execute and deliver a new 2013 Bond of like tenor and denomination. The cost of providing any substitute Bond under the provisions of this Section shall be borne by the Bondholder for whose benefit such substitute 2013 Bond is provided.

Every substitute 2013 Bond issued pursuant to this Section 309 shall constitute an additional contractual obligation of the Authority, whether or not the 2013 Bond alleged to have been destroyed, lost or stolen shall be at any time enforceable by anyone, and shall be entitled to all of the benefits of this Agreement.

The 2013 Bond shall be held and owned upon the express condition that the foregoing provisions are, to the extent permitted by law, exclusive with respect to the replacement or payment of a mutilated, destroyed, lost, or stolen Bond and shall preclude any and all other rights or remedies.

**Section 310. Additional Bonds or Indebtedness.** Without the prior written approval of the Bank, the Authority shall not directly or indirectly issue, assume, create, incur or suffer to exist any Indebtedness, other than Indebtedness created pursuant to the Loan Documents.

**Section 311. No Abatement.** Subject to the provisions of Section 501, there will be no abatement or reduction of the payment of principal of or interest on the 2013 Bond by the Authority for any reason, including but not limited to, any failure by a Member Jurisdiction to appropriate funds under the respective Support Agreement, any defense, recoupment, setoff, counterclaims or any claim (real or imaginary) arising out of or related to the 2013 Refunding Project or the 2005 Project. The Authority assumes and shall bear the entire risk of loss and damage to the 2013 Refunding Project or the 2005 Project from any cause whatsoever, it being the intention of the parties that the payments on the 2013 Bond shall be made in all events unless the obligation to make such payments is terminated as otherwise provided herein.

#### **ARTICLE IV** **Delivery of Bond**

**Section 401. Conditions to Closing.** The obligation of the Bank to acquire the 2013 Bond is subject to the conditions precedent that the Bank shall have received, on or before the Closing Date, the items listed below in this Section, each dated and in form and substance as is satisfactory to the Bank. However, should the Bank acquire the 2013 Bond prior to its receipt and approval of any of the following items, such acquisition shall not be deemed to be a waiver of any documentary requirement.

- (a) The following organizational and related documents:

(1) Copies of the resolutions of the Authority approving the execution and delivery of the Loan Documents, certified as being true and complete and in full force and effect on the Closing Date.

(2) The organizational documents and bylaws of the Authority, certified to be in full force and effect on the Closing Date.

(3) Certified copies of all governmental and regulatory approvals necessary for the Authority with respect to the Loan Documents and the other documents to be delivered by it hereunder or thereunder.

(4) A certificate, dated the Closing Date, signed by authorized officers of each of the Authority and the Member Jurisdictions, certifying that, as to the respective entity, there is no action, suit, proceeding, inquiry or investigation at law or in equity or before or by any court, public board or body pending, or, to the best knowledge of the respective entity, threatened against or affecting the respective entity wherein an unfavorable decision, ruling or finding would have a Material Adverse Effect or would adversely affect the transactions contemplated by, or the validity or enforceability of any of the Loan Documents.

(5) A certificate, dated the Closing Date, signed by authorized officers of each of the Authority and the Member Jurisdictions, certifying that (i) the representations and warranties of the respective entity contained in this Agreement and the Loan Documents are true and correct in all material respects on and as of the Closing Date, (ii) that the respective entity is not in violation of any of the covenants contained in this Agreement as of the Closing Date, (iii) no Event of Default has occurred and is continuing or would result from the issuance of the 2013 Bond and the performance of this Agreement and the other Loan Documents, and (iv) the respective entity has complied or is presently in compliance with all agreements and satisfied all conditions on its part to be observed or satisfied under the Loan Documents at or prior to the Closing Date.

(6) Each of the Member Jurisdictions has executed and delivered the Letter of Representations attached as Exhibit B hereto.

(7) Not less than 10 days before the Closing Date, approved fiscal year 2013 budgets of each of the City and the County and unaudited financial statements of each of the City and the County for the period ended June 30, 2013, certified (subject to normal year-end audit adjustments) as to accuracy, correctness and completeness by an appropriate officer of the City or the County, as appropriate.

(8) Not less than 10 days before the Closing Date, evidence satisfactory to the Bank that the issuance of the 2013 Bond and the execution a delivery of the respective Support Agreement has been approved by the Authority, the City, the County and any other government agencies having jurisdiction that require approval.

(b) The following financing documents:

- (1) An executed original of each of the Loan Documents.
- (2) The original executed 2013 Bond.

(c) The following opinions, addressed to the Bank or on which the Bank is otherwise expressly authorized to rely:

(1) From counsel to the Authority, as to the due execution, delivery and enforceability of the Loan Documents and such other customary matters as the Bank may reasonably request;

(2) From counsel to each of the Member Jurisdictions, as to the due execution, delivery and enforceability of the respective Support Agreement and such other customary matters as the Bank may reasonably request;

(3) From Bond Counsel to the Authority, in customary form, as to the validity of the 2013 Bond and the enforceability of this Financing Agreement and such other customary matters as the Bank may reasonably request; and

(d) Such other instruments, documents and opinions as the Bank shall reasonably require to evidence and secure the 2013 Bond and to comply with the provisions of this Agreement and the other Loan Documents and the requirements of any governmental board to which the Bank or the Authority is subject.

(e) As of the Closing Date, the Bank shall be satisfied that there has been no Material Adverse Change in respect of the Authority, the City, the County and the Cane Creek Centre Project, and that all information, representations and materials submitted to the Bank by each of the Authority, the City or the County in connection with the Bank's acquisition of the 2013 Bond are accurate and complete in all material respects.

(f) All legal matters incident to the Loan Documents and all documents and instruments to be delivered hereunder or pursuant hereto or thereto, shall be reasonably satisfactory in form and substance to counsel for the Bank.

**Section 402. Delivery of 2013 Bond.** If the conditions in Section 301 have been satisfied, the Authority will deliver the 2013 Bond to the Bank and the Bank will acquire same.

## **ARTICLE V** **Particular Covenants and Provisions**

**Section 501. Covenant to Pay 2013 Bond; Limited Obligations of the Authority.** The Authority covenants that it will promptly pay the principal of and interest on and other amounts payable under the 2013 Bond at the places, on the dates and in the manner provided herein and in the 2013 Bond according to the true intent and meaning thereof; provided, however, that such principal

and interest and other amounts are payable solely from Revenues. The 2013 Bond and the interest thereon shall not be deemed to constitute or to create in any manner a debt, liability or obligation of the Commonwealth or of any political subdivision or any agency thereof or, including the City or the County, a pledge of the faith and credit of the Commonwealth or any such political subdivision or any such agency, including the City or the County, but shall be limited obligations of the Authority payable solely from the revenues and other funds pledged therefor and shall not be payable from any other assets or funds of the Authority, and neither the faith and credit nor the taxing power of the Commonwealth or any political subdivision or any agency thereof, including the City or the County, is pledged to the payment of the principal of or interest on the 2013 Bond.

**Section 502. Covenants to Perform Obligations.** The Authority covenants that it will faithfully perform at all times any and all covenants, undertakings, stipulations and provisions contained in this Agreement, in the 2013 Bond executed and delivered hereunder and in all proceedings of the Authority pertaining thereto and will faithfully observe and perform at all times any and all covenants, undertakings, stipulations and provisions of the Support Agreements on its part to be observed or performed. The Authority covenants that it is duly authorized under the Constitution and laws of the Commonwealth, including particularly and without limitation the Act, to issue the 2013 Bond authorized hereby and to enter into this Agreement, to enter into the Support Agreements, to pledge the Revenues in the manner and to the extent herein set forth; and that all action on its part for the issuance of the 2013 Bond issued hereunder has been duly and effectively taken; and that the 2013 Bond in the hands of the Bondholder is and will be the valid and binding limited obligation of the Authority according to the tenor and import thereof.

**Section 503. Delivery of Information.** The Authority will furnish to the Bank each of the following:

(a) As soon as available, and in any event within 210 days after the close of each Fiscal Year of the Authority, audited financial statements reflecting the Authority's operations during such Fiscal Year, including, without limitation, statements of financial position, activities and cash flows with related footnotes; all prepared in conformity with GAAP, applied on a basis consistent with that of the preceding year. All such statements shall be examined by an independent certified public accountant acceptable to the Bank. The opinion of such independent certified public accountant shall not be acceptable to the Bank if qualified due to any limitations in scope imposed by the Authority. Any other qualification of the opinion of such independent certified public accountant shall render the acceptability of the financial statements subject to the Bank's approval.

(b) Simultaneously with the delivery of each set of financial statements referred to in Section 503(a), a certificate signed by a principal financial officer of the Authority, (i) stating that such officer has made a review of activities during the preceding period, for the purpose of determining whether or not the Authority has complied with all of the terms, provisions and conditions of the Authority's annual operating budget, of the Loan Documents, (ii) containing calculations of the applicable financial covenants (to the extent applicable as of such date) and (iii) attesting that, to the best of his/her knowledge, the Authority has kept, observed, performed and fulfilled each and every covenant, provision and condition of such documents on its part to be performed and no Event of Default has occurred, or if an Event of Default has occurred such

certificate shall specify such event or condition, the nature and status thereof and any remedial steps taken or proposed to correct such event or condition.

(c) As soon as available, and in any event within 60 days after the beginning of each Fiscal Year of the Authority or approval by the Authority if earlier, an annual operating budget of the Authority for such Fiscal Year, including, without limitation, statements of financial position, activities and cash flows and planned capital expenditures (including a detailed description of the assumptions underlying such budget) and otherwise in form and substance satisfactory to the Bank.

(d) Promptly upon execution, any amendment, modification or supplement to any of the Loan Documents to which the Bank is not a party, a true and correct copy of such amendment, modification or supplement.

(e) Promptly upon filing, copies of all financial statements, reports and notices required to be submitted by the Authority to any Governmental board.

(f) To the extent available, annually and at such other reasonable times as the Bank shall request current financial statements of the Member Jurisdictions (including, without limitation, the Member Jurisdictions' annual budget as submitted or approved and within 60 days following approval), and permit the Bank to inspect the Authority's books and records and make extracts therefrom.

(g) Such other information respecting the business, properties or the condition or operations, financial or otherwise, of the Authority, the Member Jurisdictions, the 2013 Refunding Project or the 2005 Project as the Bank may from time to time reasonably request.

**Section 504. Notices.** The Authority shall provide to the Bank:

(a) Immediate notice by telephone, promptly confirmed in writing, of any event, action or failure to take any action which constitutes an Event of Default.

(b) Promptly after becoming aware of the occurrence of any ERISA Event or of any "prohibited transaction" (as defined in Section 4975 of the Code or Section 406 of ERISA) in connection with any Plan or any trust created thereunder, a written notice signed by the chief executive officer or chief financial officer of the Authority, acting solely on behalf of the Authority (not personally), specifying the nature thereof, what action the Authority is taking or proposes to take with respect thereto and, when known, any action proposed to be taken by any Governmental Board with respect thereto.

(c) Prompt written notice of all actions, suits and proceedings before any court, governmental board or other governmental commission, board, bureau, agency or instrumentality, domestic or foreign, against the Authority which involve claims equal to or in excess of \$25,000.

(d) Prompt written notice of any event which has or is reasonably anticipated to have a Material Adverse Effect.

(e) Promptly upon receipt of any notice from, or the taking of any action by, the holder of any Indebtedness of the Authority with respect to a claimed default, copies of such notice or a report of such action.

(f) Immediately upon becoming aware of the occurrence or non-occurrence of any event, happening or condition under either of the Support Agreements that would have a material and adverse effect on its ability to meet its obligations hereunder.

**Section 505. Payment of Taxes.** The Authority shall pay all assessments or other governmental charges as the same respectively become due, all taxes and payments in lieu of taxes, assessments (general or special) and governmental charges of any kind whatsoever that may be at any time lawfully assessed or levied against or with respect to the Authority. Notwithstanding the previous sentence, the Authority shall not be required to pay any tax, charge, assessment or imposition, nor to comply with any applicable law, with respect to any Matters Contested in Good Faith.

**Section 506. Compliance with Laws.** The Authority shall comply with all applicable laws, except for Matters Contested in Good Faith, provided that any such contest does not have a Material Adverse Effect.

**Section 507. Compliance with Other Agreements.** The Authority shall comply in all material respects with the terms and conditions of the Loan Documents and all other instruments, agreements and other documents delivered by or on behalf of the Authority in connection with issuance of the 2013 Bond.

**Section 508. Amendments.** The Authority shall not amend, modify or supplement, nor agree to any amendment or modification of, or supplement to, any of the Loan Documents without the prior written consent of the Bank.

**Section 509. Accounting Methods and Fiscal Year.** The Authority shall keep proper books of record and account in which full, true and correct entries will be made of all dealings or transactions of or in relation to the business and affairs of the Authority in accordance with generally accepted accounting principles. The Authority shall not adopt, permit or consent to any change in its method of accounting, other than as permitted or required by generally accepted accounting principles (except as disclosed in the audit and approved by the Bank) and shall not adopt, permit or consent to any change in its established Fiscal Year without the Bank's prior consent.

**Section 510. Liens.** The Authority shall not create, assume or permit to exist any Lien on the 2005 Project, other than Permitted Liens.

**Section 511. Judgments.** The Authority shall not permit the entry of any monetary judgment or the assessment against, the filing of any tax lien against, or the issuance of any writ of garnishment or attachment against any property of or debts due the Authority that is not discharged or stayed within 60 days of entry.

**Section 512. Transactions With Related Persons.** Except as otherwise expressly permitted hereunder, without the prior written approval of the Bank, the Authority shall not directly

or indirectly make any loan or advance to, or purchase, assume or guarantee any indebtedness to or from, any of its officers, directors or Affiliates, or to or from any member of the immediate family of any of its officers, directors or Affiliates, or subcontract any operations to any Affiliate, except for travel or other reasonable expense advances to employees in the ordinary course of business; or enter into any transaction with any Affiliate, except pursuant to the reasonable requirements of the business of such Affiliate and on terms substantially no more favorable to such Affiliate than those that such Affiliate would obtain in a comparable arms-length transaction with a Person not an Affiliate of the Authority.

**Section 513. Other Defaults.** The Authority shall not default on any material contract with or obligation when due to a third party or default in the performance of any Indebtedness to a third party in an amount in excess of \$25,000, unless such default is cured within any applicable grace period or is a Matter Contested in Good Faith.

**Section 514. Cross-Default.** The Authority shall not default in the payment or the performance of any of its obligations under any other loans, contracts or agreements with the Bank or the Bank's Affiliates, nor shall the Authority permit any of the Authority's Subsidiaries, or any of the Authority's Affiliates over which the Authority has such control, to default under any loans, contracts or agreements with the Bank or the Bank's Affiliates.

**Section 515. Covenant to Perform Obligations under the Support Agreements.** Subject to the provisions of Section 501 of this Article, the Authority covenants and agrees that it will not suffer, permit or take any action or do anything or fail to take any action or fail to do anything which may result in the termination or cancellation of the Support Agreements so long as the 2013 Bond is outstanding; that it will faithfully and punctually fulfill its covenants, conditions, agreements and obligations and will require the County and the City to perform punctually their respective duties, agreements, covenants and obligations under the Support Agreements and will otherwise administer each Support Agreement in accordance with its terms to assure the timely payment of all amounts, charges and payments due it thereunder, all in accordance with the terms of the Support Agreements; that it will not execute or agree to any change, amendment or modification of or supplement to either of the Support Agreements except by a supplement or an amendment duly executed by the Authority and the County or the City, as applicable, with, so long as the 2013 Bond is outstanding, the written approval of the Bondholder of the 2013 Bond; that it will not agree to any abatement, reduction, abrogation, waiver, diminution or other modification in any manner or to any extent whatsoever of the obligation of the City or the County to pay amounts under and to meet their respective other obligations as provided in the Support Agreements.

**Section 516. Pledge of Revenues.** The Authority pledges the Revenues to the payment of the principal of and interest on the 2013 Bond. This pledge shall be valid and binding from and after the execution of this Agreement and shall be imposed on the Revenues without any physical delivery of them or further act.

**Section 517. Increased Costs; Taxes.**

(a) Definitions. For purposes of this Section 517:

“Applicable Law” means (i) all applicable common law and principles of equity and (ii) all applicable provisions of all (A) constitutions, statutes, rules, regulations and orders of all governmental and non-governmental bodies, (B) Governmental Approvals and (C) orders, decisions, judgments and decrees of all courts (whether at law or in equity) and arbitrators.

“Change in Law” means the occurrence, after the Closing Date, of any of the following: (a) the adoption or taking effect of any Law, including, without limitation Risk--Based Capital Guidelines, (b) any change in any Law or in the administration, interpretation, implementation or application thereof by any Governmental Authority or (c) the making or issuance of any request, rule, ruling, guideline, regulation or directive (whether or not having the force of law) by any Governmental Authority; provided that notwithstanding anything herein to the contrary, (i) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, ruling, guidelines, regulations or directives thereunder or issued in connection therewith and (ii) all requests, rules, rulings, guidelines, regulations or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to be a “Change in Law”, regardless of the date enacted, adopted or issued.

“Excluded Taxes” means, with respect to the Bank or any Participant, (a) taxes imposed on or measured by its overall net income (however denominated), and franchise taxes imposed on it (in lieu of net income taxes), by the jurisdiction (or any political subdivision thereof) under the laws of which the Bank or such Participant is organized or in which its principal office is located, and (b) any branch profits taxes imposed by the United States or any similar tax imposed by any other jurisdiction in which the Authority is located.

“Governmental Approvals” means an authorization, consent, approval, license or exemption of, registration or filing with, or report to, any Governmental Authority.

“Governmental Authority” means the government of the United States or any other nation or any political subdivision thereof or any governmental or quasi-governmental entity, including any court, department, commission, board, bureau, agency, administration, central bank, service, district or other instrumentality of any governmental entity or other entity exercising executive, legislative, judicial, taxing, regulatory, fiscal, monetary or administrative powers or functions of or pertaining to government, or any arbitrator, mediator or other Person with authority to bind a party at law.

“Law” means any treaty or any federal, regional, state and local law, statute, rule, ordinance, regulation, code, license, authorization, decision, injunction, interpretation, order or decree of any court or other Governmental Authority.

“Indemnified Taxes” means Taxes other than Excluded Taxes.

“Other Taxes” means all present or future stamp or documentary taxes or any other excise or property taxes, charges or similar levies arising from any payment made hereunder or

under any other Related Document or from the execution, delivery or enforcement of, or otherwise with respect to, this Agreement or any other Related Document.

“Participant(s)” means any bank(s) or other financial institution(s) that may purchase from the Bank a participation interest in this Agreement and certain of the Related Documents pursuant to a participation agreement between the Bank and the Participant(s).

“Related Documents” means the Loan Documents and any exhibits, schedules, instruments or agreements relating thereto, as the same may be amended, modified or supplemented in accordance with their terms and the terms hereof.

“Risk-Based Capital Guidelines” means (i) the risk--based capital guidelines in effect in the United States on the Effective Date, including transition rules, and (ii) the corresponding capital regulations promulgated by regulatory authorities outside the United States including transition rules, and any amendments to such regulations adopted prior to the Closing Date.

“Taxes” means all present or future taxes, levies, imposts, duties, deductions, withholdings (including backup withholding), assessments, fees or other charges imposed by any Governmental Authority, including any interest, fines, additions to tax or penalties applicable thereto.

(b) Increased Costs Generally. If any Change in Law shall:

(i) impose, modify or deem applicable any reserve, liquidity ratio, special deposit, compulsory loan, insurance charge or similar requirement against assets of, deposits with or for the account of, or advances, loans or other credit extended or participated in by, the Bank or any Participant;

(ii) subject to the Bank or any Participant to any Tax of any kind whatsoever with respect to this Agreement, or change the basis of taxation of payments to the Bank or such Participant in respect thereof (except for Indemnified Taxes or Other Taxes covered by paragraph (h) below and the imposition of, or any change in the rate of any Excluded Tax payable by the Bank or any Participant); or

(iii) impose on the Bank or any Participant any other condition, cost or expense affecting this Agreement;

and the result of any of the foregoing shall be to increase the cost to the Bank or such Participant related to issuing or maintaining this Agreement, or to reduce the amount of any sum received or receivable by the Bank or such Participant hereunder (whether of principal, interest or any other amount) then, upon written request of the Bank or such Participant, the Authority shall promptly pay to the Bank or such Participant, as the case may be, such additional amount or amounts as will compensate the Bank or such Participant, as the case may be, for such additional costs incurred or reduction suffered.

(c) Capital Requirements. If the Bank or any Participant determines that any Change in Law affecting the Bank or such Participant or the Bank's or such Participant's parent or holding company, if any, regarding capital requirements, has or would have the effect of reducing the rate of return on the Bank's or such Participant's or the Bank's or such Participant's parent or holding company holding, if any, as a consequence of this Agreement, or for maintaining this Agreement, to a level below that which the Bank or such Participant or the Bank's or such Participant's parent or holding company could have achieved but for such Change in Law (taking into consideration the Bank's or such Participant's policies and the policies of the Bank's or such Participant's parent or holding company with respect to capital adequacy), then from time to time upon written request of the Bank or such Participant the Authority shall promptly pay to the Bank or such Participant, as the case may be, such additional amount or amounts as will compensate the Bank or such Participant or the Bank's or such Participant's parent or holding company for any such reduction suffered.

(d) Certificates for Reimbursement. A certificate of the Bank or a Participant setting forth the amount or amounts necessary to compensate the Bank or any such Participant or the Bank's or any such Participant's parent or holding company, as the case may be, as specified in paragraph (b) or (c) of this Section and delivered to the Authority, shall be conclusive absent manifest error. The Authority shall pay the Bank or any such Participant, as the case may be, the amount shown as due on any such certificate within thirty (30) days after receipt thereof.

(e) Delay in Requests. Failure or delay on the part of the Bank or any such Participant to demand compensation pursuant to this Section shall not constitute a waiver of the Bank's or any such Participant's right to demand such compensation.

(f) Payments Free of Taxes. Any and all payments by or on account of any obligation of the Authority hereunder or under the Fee Letter shall be made free and clear of and without reduction or withholding for any Indemnified Taxes or Other Taxes; provided that if the Authority shall be required by Applicable Law to deduct any Indemnified Taxes (including any Other Taxes) from such payments, then (i) the sum payable shall be increased as necessary so that after making all required deductions (including deductions applicable to additional sums payable under this Section) the Bank or any Participant receives an amount equal to the sum it would have received had no such deductions been made, (ii) the Authority shall make such deductions and (iii) the Authority shall timely pay the full amount deducted to the relevant Governmental Authority in accordance with Applicable Law.

(g) Payment of Other Taxes by the Authority. Without limiting the provisions of paragraph (f) above, the Authority shall timely pay any Other Taxes to the relevant Governmental Authority in accordance with Applicable Law.

(h) Indemnification by the Authority. To the extent allowed by law, the Authority shall indemnify the Bank and each Participant, within thirty (30) days after demand therefor, for the full amount of any Indemnified Taxes or Other Taxes (including Indemnified Taxes or Other Taxes imposed or asserted on or attributable to amounts payable under this Section) paid by the Bank or any Participant and any penalties, interest and reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes or Other Taxes were correctly or legally

imposed or asserted by the relevant Governmental Authority; provided, however, that the Authority shall not be obligated to reimburse the Bank or any Participant for any penalties, interest or expenses relating to Indemnified Taxes or Other Taxes arising from such indemnified party's own gross negligence or willful misconduct. A certificate stating in reasonable detail the amount of such payment or liability delivered to the Authority by the Bank or any Participant shall be conclusive absent manifest error. In addition, to the extent allowed by law, the Authority shall indemnify the Bank and each Participant, within thirty (30) days after demand therefor, for any incremental Taxes that may become payable by the Bank or any Participant as a result of any failure of the Authority to pay any Taxes when due to the appropriate Governmental Authority or to deliver to the Bank or any Participant pursuant to paragraph (i) below, documentation evidencing the payment of Taxes.

(i) Evidence of Payments. As soon as practicable after any payment of Indemnified Taxes or Other Taxes by the Authority to a Governmental Authority, the Authority shall deliver to the Bank or such Participant the original or a certified copy of a receipt issued by such Governmental Authority evidencing applicable indemnifying party an amount equal to such refund (but only to the extent of indemnity payments made, or additional amounts paid, under this Section with respect to the Taxes or Other Taxes giving rise to such refund), net of all out-of-pocket expenses of the Bank, and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund); provided that the applicable indemnifying party, upon the request of the Bank, or such Participant, as applicable, agrees to repay the amount paid over pursuant to this Section (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) to the Bank or such Participant in the event the Bank or such Participant is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this paragraph (j), in no event will the Bank or any Participant be required to pay any amount to an indemnifying party pursuant to this paragraph (j) the payment of which would place the Bank in a less favorable net after-Tax position than the Bank would have been in if the indemnification payments or additional amounts giving rise to such refund had never been paid. This paragraph shall not be construed to require the Bank or any Participant to make available its tax returns (or any other information relating to its taxes which it deems confidential) to the Authority or any other Person.

(k) Survival. Without prejudice to the survival of any other agreement of the Authority hereunder, the agreements and obligations of the Authority contained in this Section shall survive the termination of this Agreement and the payment in full of the 2013 Bond and the obligations of the Authority thereunder and hereunder.

## **ARTICLE VI**

### **Default and Remedies**

**Section 601. Defaults**. Each of the following events is hereby declared an "Event of Default":

(a) Payment of interest on the 2013 Bond is not be made when the same shall become due;

(b) Payment of the principal or redemption price of the 2013 Bond is not made when the same shall become due, whether at maturity or upon call for redemption or otherwise;

(c) Failure of any Member Jurisdiction to make a payment under the respective Support Agreement as and when due or any other “Event of Default” under either of the Support Agreements shall have occurred and not have been waived or cured;

(d) The Authority shall default in the due and punctual performance of any of the covenants, conditions, agreements and provisions contained in the 2013 Bond or in this Agreement on the part of the Authority to be performed other than as referred to in the preceding paragraphs of this Section;

(e) The Authority shall (i) voluntarily commence any proceeding or file any petition seeking relief under Title 11 of the United States Code or any other federal, state or foreign bankruptcy, insolvency or similar law, (ii) consent to the institution of, or fail to controvert in a timely and appropriate manner, any such proceeding or the filing of any such petition, (iii) apply for or consent to the appointment of a receiver, trustee, custodian, sequestrator or similar official for it or for a substantial part of its property, (iv) file an answer admitting the material allegations of a petition filed against it in any such proceeding, (v) make a general assignment for the benefit of creditors, (vi) become unable, admit in writing its inability or fail generally to pay its debts as they become due, or (vii) take corporate action for the purpose of effecting any of the foregoing;

(f) An involuntary proceeding shall be commenced or an involuntary petition shall be filed in a court of competent jurisdiction seeking (i) relief in respect of the Authority or of a substantial part of its property, under Title 11 of the United States Code or any other federal, state or foreign bankruptcy, insolvency or similar law, (ii) the appointment of a receiver, trustee, custodian, sequestrator or similar official for the Authority or for a substantial part of its property or (iii) the winding-up or liquidation of the Authority and such proceeding or petition shall continue undismissed for 60 days or an order or decree approving or ordering any of the foregoing shall continue unstayed and in effect for 30 days;

(g) Any failure by the City or the County to pay any installment of principal of or interest on any Similar Bond when due, and such default shall continue unremedied for a period of five (5) Business Days; or

(h) Either the City, the County or the Authority shall (i) pursuant to an announcement, finding, ruling or decree by any Governmental Board with jurisdiction to rule on the matter, cease to be obligated, in whole or in part, under the Support Agreement with respect to their obligations to make debt service and other payments with respect to the 2013 Bond, or (ii) repudiate, reject or contest its obligations to make debt service payments with respect to the 2013 Bond or Similar Bonds;

provided, however, that no default specified in clause (d) of this Section 601 shall constitute such an Event of Default until written notice specifying such default and requiring the same to be remedied shall have been given to the Authority by the Bondholder, and the Authority shall have had 30 days after receipt of such notice to correct said default and shall not have corrected such default within the applicable period.

**Section 602. Acceleration and Annulment Thereof.** Upon the occurrence of an Event of Default, the Bondholder may, by notice to the Authority, declare the entire unpaid principal of and interest on the 2013 Bond due and payable; and upon such declaration, the said principal, together with interest accrued thereon, shall become payable immediately at the place of payment provided therein, anything in this Agreement or in the 2013 Bond to the contrary notwithstanding.

If, after the principal of the 2013 Bond has become due and payable, all arrears of interest upon the 2013 Bond is paid by the Authority, and the Authority also performs all other things in respect to which it may have been in default hereunder and pays the reasonable charges of the Bondholder, including reasonable attorneys' fees, then, and in every such case, the Bondholder, by written notice to the Authority, may annul such acceleration and its consequences.

**Section 603. Other Remedies.** If any Event of Default occurs and is continuing, the Bondholder, before or after the principal of the 2013 Bond becomes immediately due and payable, may enforce each and every right granted to it under this Agreement and the 2013 Bond and the Support Agreements and any supplements or amendments thereto, including but not limited to imposition of interest at the Default Rate.

In the enforcement of the remedies provided in this Article, the Bondholder may treat all reasonable expenses of enforcement, including, without limitation, legal, accounting and advertising fees and expenses, as additional amounts payable by the Authority then due and owing and the Authority agrees to pay such additional amounts upon demand, with interest at the Default Rate, the amount of such legal fees to be without regard to any statutory presumption.

**Section 604. Remedies Not Exclusive.** No remedy herein conferred is intended to be exclusive of any other remedy or remedies, and each remedy is in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute.

**Section 605. Delays and Omissions Not to Impair Rights.** No delays or omission in respect of exercising any right or power accruing upon any default shall impair such right or power or be a waiver of such default, and every remedy given by this Article VI may be exercised from time to time and as often as may be deemed expedient.

## **ARTICLE VII** **Defeasance of Bond**

**Section 701. Defeasance.**

(a) When the principal or redemption price (as the case may be) of, and interest on the 2013 Bond have been paid, or provision has been made for payment of the same and all other sums payable hereunder by the Authority, the right, title and interest of the holder of the 2013 Bond shall thereupon cease.

(b) Provision for the payment of the 2013 Bond shall be deemed to have been made when a bank or trust company, qualified to hold such funds, holds in trust and irrevocably sets aside exclusively for such payment, (i) moneys sufficient to make such payment or (ii) noncallable Government Obligations maturing as to principal and interest in such amounts and at such times as will provide sufficient moneys without reinvestment to make such payment.

(c) If a deposit under subsection (b) above has been made, the 2013 Bond shall not be deemed paid within the meaning of this Article unless the Authority delivers to or for the benefit of the holder of such Bond a verification report of a firm of nationally recognized independent public accountants as to the sufficiency of the moneys and Governmental Obligations to make the payment required under subsection (b) above. Notwithstanding the foregoing, no delivery to the bank or trust company under subsection (b) shall be deemed a payment of the 2013 Bond prior to its stated maturity until the 2013 Bond shall have been irrevocably called or designated for redemption on a date thereafter on which the 2013 Bond may be redeemed in accordance with the provisions of this Agreement. Neither the obligations nor moneys deposited with the bank or trust company pursuant to this Section shall be withdrawn or used for any purpose other than, and shall be segregated and held in trust for, the payment of the principal of, redemption price of, and interest on the 2013 Bond with respect to which such deposit has been made.

Notwithstanding the foregoing, those provisions relating to the maturities of the 2013 Bond, payments and dates thereof, and the dates, premiums and notice requirements for optional and mandatory redemption and the Bondholder's remedies with respect thereto, and provisions relating to exchange, transfer and registration of Bond, replacement of mutilated, destroyed, lost or stolen Bond, the safekeeping and cancellation of Bond, and the nonpresentment of Bond, shall remain in effect and shall be binding upon the Authority and the Bondholder, notwithstanding the release and discharge of the lien of this Agreement.

**Section 702. Deposit of Funds for Payment of Bond.** If the principal or redemption price of the 2013 Bond becoming due, either at maturity or by call for redemption or otherwise, together with all interest accruing thereon to the due date, has been paid or provisions therefor made in accordance with Section 901 hereof, all interest on the 2013 Bond shall cease to accrue on the due date and all liability of the Authority with respect to the 2013 Bond shall likewise cease, except as hereinafter provided. Thereafter the holder of the 2013 Bond shall be restricted exclusively to the funds so deposited for any claim of whatsoever nature with respect to such bond, and the bank or trust company in question shall hold such funds in trust for such holder.

## **ARTICLE VIII** **Miscellaneous Provisions**

**Section 801. Covenants of Authority to Bind its Successors.** In the event of the dissolution of the Authority, all of the covenants, stipulations, obligations and agreements contained in this Agreement by or on behalf of or for the benefit of the Authority shall bind or inure to the benefit of the successor or successors of the Authority from time to time and any officer, board, commission, authority, agency or instrumentality to whom or to which any power or duty affecting such covenants, stipulations, obligations and agreements shall be transferred by or in accordance with law, and the word “Authority” as used in this Agreement shall include such successor or successors.

**Section 802. Notices.** Any notice, demand, direction, request or other instrument authorized or required by this Agreement to be given to or filed with the parties shall be in writing and shall be deemed given or filed for all purposes of this Agreement when delivered by hand delivery or mailed by first-class, postage prepaid, registered or certified mail, addressed as follows:

If to the Authority at:

Danville-Pittsylvania Regional Industrial Facility Authority  
c/o City of Danville, Fiscal Agent  
427 Patton Street  
Danville, Virginia 24543  
Attention: City Manager

If to the Bank at:

Wells Fargo Bank, National Association  
Attention: Government and Institutional Banking  
201 South Jefferson St.  
2nd Floor, MAC R4050-021  
Roanoke, VA 24011

The parties may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent.

**Section 803. Severability.** In case any one or more of the provisions of this Agreement or of the 2013 Bond issued hereunder shall for any reason be held to be illegal or invalid, such illegality or invalidity shall not affect any other provision of this Agreement or of the 2013 Bond, but this Agreement and the 2013 Bond shall be construed and enforced as if such illegal or invalid provision had not been contained therein. In case any covenant, stipulation, obligation or agreement of the Authority contained in the 2013 Bond or in this Agreement shall for any reason be held to be in violation of law then such covenant, stipulation, obligation or agreement shall be deemed to be the covenant, stipulation, obligation or agreement of the Authority to the full extent permitted by law.

**Section 804. Covenants of Authority Not Covenants of Officials.** All covenants, stipulations, obligations and agreements of the Authority contained in this Agreement shall be deemed to be covenants, stipulations, obligations and agreements of the Authority to the full extent permitted by the Constitution and laws of the Commonwealth. No covenant, stipulation, obligation

or agreement contained herein shall be deemed to be a covenant, stipulation, obligation or agreement of any present or future commissioner, agent or employee of the Authority in his individual capacity, and neither the directors of the Authority nor any other officer of the Authority executing the 2013 Bond shall be liable personally on the 2013 Bond or be subject to any personal liability or accountability by reason of the issuance thereof. No director, officer, agent or employee of the Authority shall incur any personal liability in acting or proceeding or in not acting or not proceeding in accordance with the terms of this Agreement.

**Section 805. State Law Governs.** This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia.

**Section 806. Jury Trial and Venue.** Any litigation involving the Bank shall be brought in the appropriate Commonwealth of Virginia court having jurisdiction over the matter. The Authority agrees to waive a jury trial in any proceeding involving the Bank to the extent permissible by law. [Arbitration]

**Section 807. Payments or Performance Due on Days Other Than Business Days.** In any case where the date of maturity of interest on or principal of the 2013 Bond or the date fixed for redemption of the 2013 Bond or the specified last date for the performance of any act or the exercising of any right shall be a day other than a Business Day, then such payment may be made or act performed or right exercised on the next succeeding Business Day with the same force and effect as if made, performed or exercised on the specified date, provided that interest shall accrue for the period of any such extension.

**Section 808. Execution in Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

*Remainder of page intentionally left blank. Signature page follows.*

**IN WITNESS WHEREOF**, the parties have caused this Agreement to be duly executed and delivered by their proper and duly authorized officer as of the day and year first written above:

**DANVILLE-PITTSYLVANIA REGIONAL  
INDUSTRIAL FACILITY AUTHORITY**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**WELLS FARGO BANK, NATIONAL  
ASSOCIATION**

By: \_\_\_\_\_

Name: Patrick K. Dixon

Title: Senior Vice President

**EXHIBIT A**  
**FORM OF 2013 BOND**

**EXHIBIT B-1**

**CITY LETTER OF REPRESENTATIONS**

\_\_\_\_\_, 2013

Danville-Pittsylvania Regional  
Industrial Facility Authority  
c/o City of Danville, Fiscal Agent  
427 Patton Street  
Danville, Virginia 24551

Wells Fargo Bank  
201 South Jefferson Street  
Roanoke, Virginia 24011

Ladies and Gentlemen:

The undersigned, on behalf of the **CITY OF DANVILLE** (the “*City*”) has requested that the **DANVILLE – PITTSYLVANIA REGIONAL INDUSTRIAL FACILITY AUTHORITY** (the “*Authority*”) issue \$\_\_\_\_\_ aggregate principal amount of its Revenue Refunding Bond (Cane Creek Project), Series 2013 (the “*2013 Bonds*”). The 2013 Bond will be issued pursuant to a Financing Agreement, dated as of \_\_\_\_\_ 1, 2013 (the “*Financing Agreement*”), between the Authority and Wells Fargo Bank, National Association (the “*Bank*”), pursuant to which the Bank will acquire the 2013 Bond. Capitalized terms used herein and not otherwise defined shall have the meaning given to such terms in the Financing Agreement.

The 2013 Bond is a limited obligations of the Authority payable from payments made by the City and the County of Pittsylvania, political subdivision of the Commonwealth of Virginia, pursuant to respective Support Agreements dated as of \_\_\_\_\_, 2013 (each, a “*Support Agreement*”), between the Authority and, as appropriate, the City and the County.

The defined terms in the Financing Agreement are used herein as used therein and the City acknowledges and accepts all the terms and conditions set forth therein relating to the sale and delivery of the 2013 Bond.

In order to induce the Authority to issue and sell the 2013 Bond and to induce the Bank to purchase the 2013 Bond as contemplated in the Financing Agreement, the City hereby represents, warrants and agrees with you as follows:

- (a) The City is a political subdivision of the Commonwealth of Virginia.
- (b) The City has full power and authority to execute this Letter and enter into the Support Agreement and to perform the transactions contemplated thereby and to carry out its

obligations thereunder and by proper action has duly authorized, executed and delivered such documents.

(c) The financial statements of the City delivered to the Bank present fairly and accurately the financial position of the City as of the dates specified therein, and the results of its operations and changes in its financial position for the periods specified therein, in conformity with generally accepted accounting principles applied on a consistent basis. Subsequent to June 30, 2012, there has been no material adverse change in the financial position or results of operations of the City.

(d) All information, reports and other papers and data that the City has furnished with respect to itself and to the Cane Creek Centre Project and the 2013 Refunding Project are complete and correct in all material respects, to the extent necessary to give true and accurate knowledge of the subject matter. No fact is known to the City which, in the City's judgment may have a material adverse effect which has not been set forth in the financial statements previously furnished or in other such information, reports, papers and data or otherwise disclosed in writing. No document furnished or statement made by the City in connection with the negotiation, preparation or execution of the Support Agreement or the issuance of the 2013 Bond contains any untrue statement of a fact material to its creditworthiness or omits to state a material fact necessary in order to make the statements contained therein not misleading.

(e) The execution and delivery of this Letter, the Support Agreement and all other documents and instruments required to be executed in connection therewith, the consummation of the transactions herein and therein contemplated and compliance by the City with the provisions hereof and thereof will not result in a breach or violation of any of the terms or provisions of, or constitute a default under, any indenture, mortgage or other agreement or instrument to which the City, is a party or by which it is bound or any existing law, administrative regulation, court order or consent decree to which it is subject.

(f) The City has obtained all consents and approvals of governmental or regulatory authorities that are required to be obtained by the City, as a condition precedent to the execution of all documents required to effectuate the transactions described in this Letter of Representations and the Financing Agreement, provided, however, that no representation is given as to any action required under state securities or blue sky laws in connection with the purchase, sale or distribution of the 2013 Bond.

(g) The City is not in default in the payment of the principal of or interest on any indebtedness for borrowed money or under any instrument under and subject to which any indebtedness has been incurred and no event has occurred and is continuing that, with the lapse of time or the giving of notice or both, would constitute an event of default under any such instrument.

(h) The City will comply with the obligations set forth in the Support Agreement relating to the City, including without limitation the obligations set forth in Section 8 thereof relating to expenses.

(i) The City has confidence in the Authority's management with respect to the obligations it undertakes and currently intends to assist the Authority in maintaining the necessary

liquidity to discharge its obligations to the Bank in respect of the Support Agreement and the Financing Agreement.

(j) There is no action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, governmental agency, public board or body, pending of which we have received notice or, to the best of our knowledge, threatened against the City affecting the corporate existence of the City or the titles of its officers to their respective offices or seeking to prohibit, restrain or enjoin the collection of revenues by the City which the City may use to make payments under the Support Agreement or in any way contesting the powers of the City to execute and deliver or to consummate the transactions contemplated in such documents (nor, to the best knowledge of the City, is there any basis therefor).

The agreements and indemnities contained herein shall survive the Closing Date under the Financing Agreement and any investigation made by or on behalf of either of you or any person who controls you (as aforesaid) of any matters described in or related to the transactions contemplated hereby and by Financing Agreement, this Letter of Representation and the Support Agreements.

This Letter of Representation shall be binding upon and inure solely to the benefit of each of you and, to the extent set forth herein, your members, officers, directors, employees and agents, persons controlling either of you, and their respective personal representatives, successors and assigns, and no other person or firm shall acquire or have any rights under or by virtue of this Letter of Representation.

Very truly yours,

**CITY OF DANVILLE, VIRGINIA,**  
a political subdivision of the  
Commonwealth of Virginia

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**EXHIBIT B-2**

**COUNTY LETTER OF REPRESENTATIONS**

\_\_\_\_\_, 2013

Danville-Pittsylvania Regional  
Industrial Facility Authority  
c/o City of Danville, Fiscal Agent  
427 Patton Street  
Danville, Virginia 24551

Wells Fargo Bank  
201 South Jefferson Street  
Roanoke, Virginia 24011

Ladies and Gentlemen:

The undersigned, on behalf of the **COUNTY OF PITTSYLVANIA, VIRGINIA** (the "**County**") has requested that the **DANVILLE – PITTSYLVANIA REGIONAL INDUSTRIAL FACILITY AUTHORITY** (the "**Authority**") issue \$\_\_\_\_\_ aggregate principal amount of its Revenue Refunding Bond (Cane Creek Project), Series 2013 (the "**2013 Bonds**"). The 2013 Bonds will be issued pursuant to a Financing Agreement, dated as of \_\_\_\_\_ 1, 2013 (the "**Financing Agreement**"), between the Authority and Wells Fargo Bank, National Association (the "**Bank**"), pursuant to which the Bank will acquire the 2013 Bond. Capitalized terms used herein and not otherwise defined shall have the meaning given to such terms in the Financing Agreement.

The 2013 Bond is a limited obligation of the Authority payable from payments made by the County and the City of Danville, Virginia, pursuant to respective Support Agreements dated as of \_\_\_\_\_, 2013 (each, a "**Support Agreement**"), between the Authority and, as appropriate, the City and the County.

The defined terms in the Financing Agreement are used herein as used therein and the County acknowledges and accepts all the terms and conditions set forth therein relating to the sale and delivery of the 2013 Bond.

In order to induce the Authority to issue and sell the 2013 Bond and the Bank to acquire the 2013 Bond as therein contemplated, the County hereby represents, warrants and agrees with you as follows:

- (a) The County is a political subdivision of the Commonwealth of Virginia.

(b) The County has full power and authority to execute this Letter and enter into the Support Agreement and to perform the transactions contemplated thereby and to carry out its obligations thereunder and by proper action has duly authorized, executed and delivered such documents.

(c) The financial statements of the County delivered to the Bank present fairly and accurately the financial position of the County as of the dates specified therein, and the results of its operations and changes in its financial position for the periods specified therein, in conformity with generally accepted accounting principles applied on a consistent basis. Subsequent to June 30, [2012] [2013], there has been no material adverse change in the financial position or results of operations of the County.

(d) The execution and delivery of this Letter, the Support Agreement and all other documents and instruments required to be executed in connection therewith, the consummation of the transactions herein and therein contemplated and compliance by the County with the provisions hereof and thereof will not result in a breach or violation of any of the terms or provisions of, or constitute a default under, any indenture, mortgage or other agreement or instrument to which the County, is a party or by which it is bound or any existing law, administrative regulation, court order or consent decree to which it is subject.

(e) All information, reports and other papers and data that the County has furnished with respect to itself and to the 2013 Refunding Project and the Cane Creek Centre Project are complete and correct in all material respects, to the extent necessary to give true and accurate knowledge of the subject matter. No fact is known to the County which, in the County's judgment may have a material adverse effect which has not been set forth in the financial statements previously furnished or in other such information, reports, papers and data or otherwise disclosed in writing. No document furnished or statement made by the County in connection with the negotiation, preparation or execution of the Support Agreement or the issuance of the 2013 Bond contains any untrue statement of a fact material to its creditworthiness or omits to state a material fact necessary in order to make the statements contained therein not misleading.

(f) The County has obtained all consents and approvals of governmental or regulatory authorities that are required to be obtained by the County, as a condition precedent to the execution of all documents required to effectuate the transactions described in this Letter and in the Financing Agreement; provided, however, that no representation is given as to any action required under state securities or blue sky laws in connection with the purchase, sale or distribution of the 2013 Bond.

(g) The County is not in default in the payment of the principal of or interest on any indebtedness for borrowed money or under any instrument under and subject to which any indebtedness has been incurred and no event has occurred and is continuing that, with the lapse of time or the giving of notice or both, would constitute an event of default under any such instrument.

(h) The County will comply with the obligations set forth in the Support Agreement relating to the County, including without limitation the obligations set forth in Section 8 thereof relating to expenses.

(i) The City has confidence in the Authority's management with respect to the obligations it undertakes and currently intends to assist the Authority in maintaining the necessary liquidity to discharge its obligations to the Bank in respect of the Support Agreement and the Financing Agreement.

(j) There is no action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, governmental agency, public board or body, pending of which we have received notice or, to the best of our knowledge, threatened against the County affecting the corporate existence of the County or the titles of its officers to their respective offices or seeking to prohibit, restrain or enjoin the collection of revenues by the County which the County may use to make payments under the Support Agreement or in any way contesting the powers of the County to execute and deliver or to consummate the transactions contemplated in such documents (nor, to the best knowledge of the County, is there any basis therefor).

The agreements contained herein shall survive the Closing Date under the Financing Agreement and any investigation made by or on behalf of either of you or any person who controls you (as aforesaid) of any matters described in or related to the transactions contemplated hereby and by the Financing Agreement, this Letter of Representation and the Support Agreements.

This Letter of Representation shall be binding upon and inure solely to the benefit of each of you and, to the extent set forth herein, your members, officers, directors, employees and agents, persons controlling either of you, and their respective personal representatives, successors and assigns, and no other person or firm shall acquire or have any rights under or by virtue of this Letter of Representation.

Very truly yours,

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

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**SUPPORT AGREEMENT**

**between**

**DANVILLE-PITTSYLVANIA REGIONAL INDUSTRIAL FACILITY AUTHORITY**

**and**

**COUNTY OF PITTSYLVANIA, VIRGINIA**

**Dated as of July 1, 2013**

**NOTE: THIS SUPPORT AGREEMENT HAS BEEN ASSIGNED TO, AND IS SUBJECT TO A SECURITY INTEREST IN FAVOR OF, WELLS FARGO BANK, NATIONAL ASSOCIATION.**

TABLE OF CONTENTS

|   | Page |
|---|------|
| Parties.....  | 1    |
| Recitals.....   | 1    |
| Granting Clauses.....   | 1    |
| ARTICLE I   |      |
| DEFINITIONS AND RULES OF CONSTRUCTION   |      |
| Section 1.1. Definitions.....   | 2    |
| Section 1.2. Rules of Construction. ....  | 2    |
| ARTICLE II  |      |
| REPRESENTATIONS   |      |
| Section 2.1. Representations by Authority. ....                                       | 3    |
| Section 2.2. Representations by County. ....  | 3    |
| ARTICLE III   |      |
| AGREEMENT TO ISSUE BOND   |      |
| Section 3.1. Agreement to Issue Bond.....   | 4    |
| Section 3.2. Limitation of Authority’s Liability.....                                 | 5    |
| Section 3.3. Compliance with Agreement. ....  | 5    |
| ARTICLE IV  |      |
| PAYMENT OBLIGATIONS   |      |
| Section 4.1. Amounts Payable. ....  | 5    |
| Section 4.2. Payments Assigned. ....  | 6    |
| Section 4.3. Obligation Unconditional.....  | 6    |
| Section 4.4. Appropriations of Annual Payments and Additional Payments. ....          | 6    |
| ARTICLE V   |      |
| PREPAYMENT  |      |
| Section 5.1. Prepayment. ....   | 7    |
| ARTICLE VI  |      |
| PARTICULAR COVENANTS  |      |
| Section 6.1. Limitation of Liability of Directors, etc. of Authority and County. .... | 7    |
| Section 6.2. Use of Proceeds.....   | 8    |
| Section 6.3. Maintenance of Existence of Authority. ....                              | 8    |
| Section 6.4. County Covenants. ....   | 9    |

ARTICLE VII

EVENTS OF DEFAULT AND REMEDIES

Section 7.1. Events of Default. ....9  
Section 7.2. Remedies.....10  
Section 7.3. Reinstatement after Event of Default.....10  
Section 7.4. No Remedy Exclusive.....10  
Section 7.5. No Additional Waiver Implied by One Waiver.....10  
Section 7.6. Attorneys’ Fees and Other Expenses.....11

ARTICLE VIII

REMEDY FOR NONAPPROPRIATION

Section 8.1. Remedy for Nonappropriation. ....11

ARTICLE IX

AGREEMENT; AMENDMENTS; ASSIGNMENT

Section 9.1. Agreement; Covenants.....11  
Section 9.2. Amendments. ....12  
Section 9.3. Assignment. ....12

ARTICLE X

MISCELLANEOUS

Section 10.1. Notices. ....12  
Section 10.2. Severability. ....12  
Section 10.3. Limited Liability of County.....12  
Section 10.4. Successors and Assigns.....13  
Section 10.5. Counterparts.....13  
Section 10.6. Governing Law. ....13  
Section 10.7. Term of Agreement.....13  
Signatures.....15  
Receipt .....16

THIS SUPPORT AGREEMENT dated as of the 1<sup>st</sup> day of July, 2013, by and between the **DANVILLE-PITTSYLVANIA REGIONAL INDUSTRIAL FACILITY AUTHORITY**, a political subdivision of the Commonwealth of Virginia (the “Authority”), and the **COUNTY OF PITTSYLVANIA, VIRGINIA**, a political subdivision of the Commonwealth of Virginia (the “County”), provides:

**WITNESSETH:**

**WHEREAS**, the Authority is a political subdivision of the Commonwealth of Virginia duly created pursuant to Chapter 64 of Title 15.2 of the Code of Virginia of 1950, as amended (the “Act”); and

**WHEREAS**, the Act authorizes the Authority to borrow money to pay the costs of real estate and all improvements located in industrial parks intended to be occupied by manufacturing, warehousing, distribution, office or other commercial enterprises; and

**WHEREAS**, in order to further the purposes of the Act, the Authority has previously issued its \$7,300,000 Revenue Bonds (Cane Creek Project), Series 2005 (the “Prior Bonds”) to finance as part of the development of Cane Creek Center as an industrial park, the financing of land acquisition, roads, wetland, remediation, lot clearing and other related capital expenditures, including necessary expenses incidental thereto (collectively, the “Project”); and

**WHEREAS**, the Authority now wishes to refinance the Project and refund the Prior Bonds by issuing its Revenue Refunding Bond (Cane Creek Project), Series 2013 in the amount of \$\_\_\_\_\_ (the “Bond”) pursuant to the terms of a Financing Agreement, dated as of July 1, 2013 (the “Agreement”), between the Authority and Wells Fargo Bank, National Association (the “Bank”); and

**WHEREAS**, the County and the City of Danville, Virginia (the “City”) agree with the desire of the Authority to refinance the Project; and

**WHEREAS**, the Bond will be secured by a pledge of the revenues and receipts received by the Authority from payments made by the County pursuant to this Support Agreement and by the City pursuant to a separate support agreement; and

**WHEREAS**, all acts, conditions and things required by law to happen, exist and be performed precedent to and in connection with the execution of and entering into this Support Agreement have happened, exist and have been performed in regular and due time and in form and manner as required by law, and the parties hereto are now duly empowered to execute and enter into this Support Agreement;

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements hereinafter contained and other valuable consideration, the parties hereto covenant and agree as follows:

## ARTICLE I

### DEFINITIONS AND RULES OF CONSTRUCTION

#### Section 1.1. Definitions.

Unless otherwise defined in this Support Agreement, all words used herein shall have the meanings assigned to such terms in the Agreement. In addition to the words defined in the recitals hereto, the following words as used in this Support Agreement shall have the following meanings unless a different meaning clearly appears from the context:

**“Additional Payment(s)”** shall mean such payment or payments made by the County pursuant to Section 4.1(b) and Section 5.1.

**“Annual Budget”** shall mean the budget by that name referred to in Section 4.4.

**“Annual Payment(s)”** shall mean the payments made by the County under this Support Agreement as set forth in Section 4.1(a), which such payments are equal to one-half of the payments of principal and interest due on the Bond in each Fiscal Year.

**“Basic Documents”** shall mean the Agreement and this Support Agreement.

**“Board”** shall mean the Board of Supervisors of the County.

**“City Support Agreement”** shall mean the Support Agreement, dated as of July 1, 2013, between the City and the Authority, as the same may be supplemented, amended or modified.

**“Event of Default”** shall mean the events enumerated in Section 7.1.

**“Fiscal Year”** shall mean the twelve-month period beginning July 1 of one year and ending on June 30 of the following year, or such other fiscal year of twelve months as may be selected by the County.

**“Support Agreement”** shall mean this Support Agreement, as such Support Agreement may be supplemented, amended or modified.

#### Section 1.2. Rules of Construction.

The following rules shall apply to the construction of this Support Agreement unless the context otherwise requires:

(a) Words importing the singular number shall include the plural number and vice versa.

(b) Words importing the prepayment or calling for prepayment of the Bond shall not be deemed to refer to or connote the payment of the Bond at its stated maturity.

(c) Unless otherwise indicated, all references herein to particular Articles or Sections are references to Articles or Sections of this Support Agreement.

(d) The headings herein and Table of Contents to this Support Agreement herein are solely for convenience of reference and shall not constitute a part of this Support Agreement nor shall they affect its meaning, construction or effect.

(e) All references herein to payment of the Bond are references to payment of principal of and premium, if any, and interest on the Bond.

## **ARTICLE II**

### **REPRESENTATIONS**

#### **Section 2.1. Representations by Authority.**

The Authority makes the following representations:

(a) The Authority is a political subdivision of the Commonwealth of Virginia duly created under the Act;

(b) Pursuant to the Act, the Authority has full power and authority to enter into the Basic Documents and to perform the transactions contemplated thereby and to carry out its obligations thereunder and by proper action has duly authorized, executed and delivered such Basic Documents;

(c) The execution, delivery and compliance by the Authority with the terms and conditions of the Basic Documents will not conflict with or constitute or result in a default under or violation of, (1) any existing law, rule or regulation applicable to the Authority, or (2) any trust agreement, mortgage, deed of trust, lien, lease, contract, note, order, judgment, decree or other agreement, instrument or other restriction of any kind to which the Authority or any of its assets is subject;

(d) No further approval, consent or withholding of objection on the part of any regulatory body or any official, Federal, state or local, is required in connection with the execution or delivery of or compliance by the Authority with the terms and conditions of the Basic Documents, except that no representation is made as to the applicability of any Federal or state securities laws; and

(e) There is no litigation at law or in equity or any proceeding before any governmental agency involving the Authority pending or, to the knowledge of the Authority, threatened with respect to (1) the creation and existence of the Authority, (2) its authority to execute and deliver the Basic Documents, (3) the validity or enforceability of the Basic Documents or the Authority's performance of its obligations thereunder, (4) the title of any officer of the Authority executing the Basic Documents, or (5) the ability of the Authority to issue and sell its Bond and refinance the Project.

#### **Section 2.2. Representations by County.**

The County makes the following representations:

(a) The County is a political subdivision of the Commonwealth of Virginia;

(b) The County has full power and authority to enter into the Basic Documents to which it is a party and to perform the transactions contemplated thereby and to carry out its obligations thereunder and by proper action has duly authorized, executed and delivered such Basic Documents;

(c) The County is not in default in the payment of the principal of or interest on any of its indebtedness for borrowed money and is not in default under any instrument under or subject to which any indebtedness for borrowed money has been incurred, and no event has occurred and is continuing that with the lapse of time or the giving of notice, or both, would constitute or result in an event of default thereunder;

(d) The County is not in default under or in violation of, and the execution, delivery and compliance by the County with the terms and conditions of the Basic Documents to which it is a party will not conflict with or constitute or result in a default under or violation of, (1) any existing law, rule or regulation applicable to the County or (2) any trust agreement, mortgage, deed of trust, lien, lease, contract, note, order, judgment, decree or other agreement, instrument or restriction of any kind to which the County or any of its assets is subject, and no event has occurred and is continuing that with the lapse of time or the giving of notice, or both, would constitute or result in such a default or violation;

(e) No further approval, consent or withholding of objection on the part of any regulatory body or any official, Federal, state or local, is required in connection with the execution or delivery of or compliance by the County with the terms and conditions of the Basic Documents to which it is a party; and

(f) There is no litigation at law or in equity or any proceeding before any governmental agency involving the County pending or, to the knowledge of the County, threatened with respect to (1) the authority of the County to execute and deliver the Basic Documents to which it is a party, (2) the validity or enforceability of such Basic Documents or the County's performance of its obligations thereunder, or (3) the title of any officer of the County executing such Basic Documents.

(g) The Project has been determined to be essential to the County's economic development and future revenue growth, and the Board anticipates that the Project will continue to be essential to the County's economic development and future revenue growth during the term of this Support Agreement.

### **ARTICLE III**

#### **AGREEMENT TO ISSUE BOND**

##### **Section 3.1. Agreement to Issue Bond.**

The Authority hereby agrees, simultaneously with the execution and delivery hereof, to proceed with the issuance and sale of the Bond, bearing interest, maturing and having the other terms and provisions set forth in the Agreement. The proceeds of the Bond will be used to

refinance the costs of the Project. Subject to the limitation of Section 4.4, the County agrees to make all Annual Payments and Additional Payments when and as the same shall become due and payable.

**Section 3.2. Limitation of Authority's Liability.**

Anything contained in this Support Agreement to the contrary notwithstanding, any obligation the Authority may incur in connection with the issuance of the Bond for the payment of money shall not be deemed to constitute a debt or general obligation of the Authority within any constitutional or statutory limitations, but shall be a limited obligation payable solely from the revenues and receipts derived by it pursuant to this Support Agreement and the City Support Agreement.

**Section 3.3. Compliance with Agreement.**

If the County is not in default under this Support Agreement, the Authority, at the request of the County, shall take (a) all steps that may be necessary to effect prepayment under the Agreement and (b) any other action required by the Agreement. By its execution of this Support Agreement, the County acknowledges its approval of all the terms and conditions set forth in the Agreement.

**ARTICLE IV**

**PAYMENT OBLIGATIONS**

**Section 4.1. Amounts Payable.**

(a) (1) Subject to the limitation of Section 4.4, the County shall pay to the Authority or its assignee the Annual Payments. The Annual Payments shall be payable without notice or demand at the address designated by the Bank. In the event of an acceleration of the Bond under the Agreement, the County agrees to pay to the Bank, subject to the limitation of Section 4.4, an amount equal to all Annual Payments payable or to become payable under this Support Agreement to enable the Authority to pay, together with amounts payable under the City Support Agreement, in full the principal of and interest on the Bond.

(2) The Authority, in conjunction with the County and the City, will determine, as part of its budget process, by March 1 of each year the Annual Payment to be requested from, and paid (subject to the limitation of Section 4.4) by, the County for the immediately succeeding fiscal year. In calculating such payments, the Authority shall use the principal amount (if any) due on the Bond in the succeeding fiscal year. In determining the interest component of the Annual Payment, the Authority shall calculate interest at a rate equal to the actual fixed rate on the Bond.

(b) Subject to the limitation of Section 4.4, the County agrees to make Additional Payments to pay one-half of (1) any expenses incurred by the Authority (including reasonable attorney's fees and expenses) in connection with (A) its obligations under this Support Agreement and the other Basic Documents, (B) the issuance of the Bond and (C) any

prepayment of the Bond and (2) all other amounts which the County agrees to pay under the terms of this Support Agreement, but not including Annual Payments.

**Section 4.2. Payments Assigned.**

The Authority and the County acknowledge and agree that this Support Agreement and all Annual Payments and Additional Payments (except the rights of the Authority to receive payment of its expenses, to receive notices and to give consents) are assigned by the Agreement to the Bank. The County consents to such assignment and agrees to pay to the Bank all amounts payable by the County that are so assigned.

**Section 4.3. Obligation Unconditional.**

Except as otherwise provided in this Support Agreement, including the limitation in Section 4.4, the obligations of the County to make all Annual Payments and Additional Payments and to observe all other covenants, conditions and agreements hereunder shall be absolute and unconditional, irrespective of any right of setoff, recoupment or counterclaim the County may otherwise have against the Authority, and the County shall not suspend or discontinue any such Annual Payment or Additional Payment or fail to observe and perform any of its covenants, conditions and agreements hereunder.

**Section 4.4. Appropriations of Annual Payments and Additional Payments.**

While recognizing that it is not empowered to make any binding commitment to make Annual Payments and Additional Payments beyond the current Fiscal Year, the Board in authorizing the execution of this Support Agreement has stated its intent to make annual appropriations sufficient to make the Annual Payments and Additional Payments, and as such it is hereby recognized by the parties hereto that this Support Agreement, to the extent permitted by law, creates strictly a moral obligation of the County to pay such amounts.

Notwithstanding anything in this Support Agreement to the contrary, the County's obligations to pay the cost of performing its obligations under this Support Agreement and the Agreement, including its obligations to pay all Annual Payments and Additional Payments, shall be subject to and dependent upon appropriations being made from time to time by the Board for such purpose; provided, however, that the County Administrator or other officer charged with the responsibility for preparing the County's Annual Budget shall include in the budget for each Fiscal Year as a single appropriation the amount of all Annual Payments and estimated Additional Payments coming due during such Fiscal Year. Throughout the term of this Support Agreement, the County Administrator or other officer charged with the responsibility for preparing the County's Annual Budget shall deliver to the Bank and the Authority within 10 days after the adoption of the Annual Budget for each Fiscal Year, but not later than the beginning of each Fiscal Year, a certificate stating whether an amount equal to the Annual Payments and Additional Payments which will come due during such Fiscal Year has been appropriated by the Board in such budget. If any adopted Annual Budget does not include an appropriation of funds sufficient to pay both Annual Payments and estimated Additional Payments coming due for the relevant Fiscal Year, the Board shall take a roll call vote immediately after adoption of such Annual Budget acknowledging the impact of its failure to

appropriate such funds. If, by the beginning of the Fiscal Year, the Board has not appropriated funds for the payment of both Annual Payments and estimated Additional Payments coming due for the then current Fiscal Year, the County Administrator or other officer charged with the responsibility for preparing the County's Annual Budget shall give written notice to the Board of the consequences of such failure to appropriate, including the right of the Bank to accelerate the Annual Payments in accordance with Article VIII, and request the Board to consider a supplemental appropriation for such purposes.

If at any time the Annual Payments as determined pursuant to Section 4.1(a)(2) are insufficient to make one-half of the payments of principal and interest due on the Bond, the Authority (or the Bank as assignee of the Authority) shall notify the County Administrator (or other officer charged with the responsibility for preparing the County's Annual Budget) of the amount of such insufficiency, and the County Administrator shall submit to the Board at its next regularly scheduled meeting or as promptly as practicable, but in any event within 45 days, a request for a supplemental appropriation in the amount necessary to cover such insufficiency.

## **ARTICLE V**

### **PREPAYMENT**

#### **Section 5.1. Prepayment.**

The County shall have the option to prepay any Annual Payments at the times and in the amounts as necessary to enable the Authority to exercise its option to cause the Bond to be prepaid as set forth in such Bond. Such prepayments of Annual Payments shall be made at the times and in the amounts as necessary to accomplish the optional prepayment of the Bond as set forth in such Bond. Upon the exercise of such option, the County shall also pay as Additional Payments, the amounts necessary to pay one-half of the premium, if any, due on the Bond on the date or dates of prepayment.

The County shall direct the Authority to send to the Bank notice of any prepayment of the Bond, such notice to the Bank to specify the prepayment date, the principal amount of the Bond to be redeemed, and the premium, if any. The County shall send to the City a copy of the direction given to the Authority.

## **ARTICLE VI**

### **PARTICULAR COVENANTS**

#### **Section 6.1. Limitation of Liability of Directors, etc. of Authority and County.**

No covenant, agreement or obligation contained in this Support Agreement shall be deemed to be a covenant, agreement or obligation of any past, present or future member, officer, director, employee or agent of the Authority in his or her individual capacity, and neither the members of the Authority nor any officer thereof executing this Support Agreement shall be liable personally on this Support Agreement or be subject to any personal liability or

accountability by reason of the execution and delivery hereof. No member, director, officer, employee or agent of the Authority shall incur any personal liability with respect to any other action taken by him or her pursuant to this Support Agreement or the Act or any of the transactions contemplated hereby provided that he or she acts in good faith.

No covenant, agreement or obligation contained herein shall be deemed to be a covenant, agreement or obligation of any past, present or future Board member or officer, employee or agent of the County or Board in his or her individual capacity, and neither the members of the Board nor any officer of the County or Board executing this Support Agreement shall be liable personally on this Support Agreement or be subject to any personal liability or accountability by reason of the execution and delivery hereof. No Board member or officer, employee or agent of the County or Board shall incur any personal liability with respect to any action taken by him or her pursuant to this Support Agreement or any of the transactions contemplated hereby, provided that he or she acts in good faith.

### **Section 6.2. Use of Proceeds.**

The Authority and the County shall use the proceeds of the Bond to refinance the Project and pay the costs of issuance of the Bond.

### **Section 6.3. Maintenance of Existence of Authority.**

Except for the assignment of its rights under this Support Agreement to the Bank pursuant to the Agreement, the Authority agrees that it will not assign, transfer or convey its interest in this Support Agreement or any of the revenues to be derived therefrom. The Authority further agrees that, until the Bond has been paid in full, the Authority will not (a) dissolve or otherwise dispose of all or substantially all of its assets, (b) consolidate with or merge into any authority, corporation, association or other body, (c) permit any other authority, corporation, association or other body to consolidate with or merge into it, (d) act jointly with any other authority, corporation, association or other body (other than the City, the County and the Bank) with respect to the transactions contemplated by this Support Agreement and the Agreement, or (e) take any action or refrain from taking any action which would (i) permit any of the foregoing to be required by operation of law or (ii) which would permit it, or require it by operation of law, to avoid its obligations under this Support Agreement or the Agreement or any other agreement contemplated hereby; provided, however, that nothing contained in this Section shall prevent the consolidation of the Authority with, or the merger of the Authority into, or the transfer of the interest of the Authority in this Support Agreement as an entirety to, any public corporation whose property and income are not subject to taxation and which has the corporate authority to carry out the transactions contemplated by this Support Agreement and the Agreement, but only on the condition that (A) reasonable prior notice of such consolidation, merger or transfer is given to the City, the County and the Bank, and (B) upon any such consolidation, merger or transfer, the obligation of the Authority to make due and punctual payment of the principal of and prepayment premium, if any, and interest on the Bond and to perform and observe all of the agreements and conditions of this Support Agreement and the Agreement shall be expressly assumed in writing by the corporation resulting from such consolidation or surviving such merger or to which the interest of the Authority in this Support Agreement shall be transferred as an entirety.

**Section 6.4. County Covenants.** To assist the Authority in complying with certain of its obligations under the Basic Documents, the County agrees to provide, in accordance with the specifications provided in the Agreement, (a) notice of any material litigation with respect to the County, (b) copies to the Bank of (1) the County's 2013 Fiscal Year budget, (2) the County's financial statements within 210 days of the end of each of the County's Fiscal Years and (3) future budgets within 60 days of approval, and (c) any notices of any defaults with respect to any general obligation indebtedness or moral obligations of the County. The County also agrees to provide such information as maybe reasonably requested by Bond Counsel in order to comply with any applicable securities disclosure requirements or other applicable laws and regulations.

## **ARTICLE VII**

### **EVENTS OF DEFAULT AND REMEDIES**

#### **Section 7.1. Events of Default.**

(a) Each of the following events shall be an Event of Default:

(1) Default in the due and punctual payment of an Annual Payment when the same becomes due and payable and continuation of such failure for a period of five business days; or

(2) Failure of the County to pay when due any other payment due under this Support Agreement or to observe and perform any covenant, condition or agreement on its part to be observed or performed, which failure shall continue for a period of 30 days after notice is given, or in the case of any such default that cannot with due diligence be cured within such 30 day period but can be cured within the succeeding 60 days, failure of the County to proceed promptly to cure the same and thereafter prosecute the curing of such default with due diligence.

(b) The provisions of the foregoing subparagraph (a)(2) are subject to the limitation that if by reason of force majeure the County is unable in whole or in part to perform any of its covenants, conditions or agreements hereunder, the County shall not be deemed in default during the continuance of such inability. The term "force majeure" as used herein shall include without limitation acts of God; strikes, lockouts or other industrial disturbances; acts of public enemies; orders of any kind of the government of the United States of America or the Commonwealth of Virginia or any political subdivision thereof or any of their departments, agencies or officials, or any civil or military authority; insurrections; riots; epidemics; swarms of boll weevils and plagues of locusts; landslides; earthquakes; fires; hurricanes; tornadoes; storms; floods; washouts; droughts; restraint of government and people; or civil disturbances. The County shall remedy with all reasonable dispatch the cause or causes preventing the County from carrying out its covenants, conditions and agreements, provided that the settlement of strikes, lockouts and other industrial disturbances shall be entirely within the discretion of the County, and the County shall not be required to make settlement of strikes, lockouts and other industrial disturbances by acceding to the demands of any opposing party when such course is in the judgment of the County not in its best interests.

(c) Notwithstanding anything contained in this Section to the contrary, (1) failure by the County to pay when due any payment required to be made under this Support Agreement or (2) failure by the County to observe and perform any covenant, condition or agreement on its part to be observed or performed under this Support Agreement, either of which results from failure of the County to appropriate moneys for such purposes, as described in Section 4.4, shall not constitute an Event of Default. Upon any such failure to appropriate, the provisions of Article VIII shall be applicable.

**Section 7.2. Remedies.**

Whenever any Event of Default shall have happened and is continuing, the Authority may take any one or more of the following remedial steps, without further demand or notice: (a) declare immediately due and payable the entire unpaid principal balance of the Annual Payments due and thereafter to become due through and including the final installment payment of principal on the Bond or (b) take whatever action at law or in equity may appear necessary or desirable to collect the Annual Payments and Additional Payments then due and thereafter to become due, or to enforce performance and observance of any obligation, agreement or covenant of the County under this Support Agreement. Any amounts received by the Authority pursuant to the foregoing provisions shall be applied first to costs, then to any unpaid interest and then to repayment of principal, and upon payment in full of all amounts due such excess shall be credited to the next Annual Payment to the extent such Annual Payments have not been paid in full. This provision shall survive termination of this Support Agreement.

**Section 7.3. Reinstatement after Event of Default.**

Notwithstanding the exercise by the Authority of any remedy granted by Section 7.2, if all overdue Annual Payments, together with any interest thereon, and all Additional Payments shall have been made, and payment on the Bond has not been accelerated or such acceleration has been waived pursuant to the Agreement, then the County's default under this Support Agreement shall be waived without further action by the Authority. Upon such payment and waiver, this Support Agreement shall be fully reinstated and all Annual Payments will be due and payable in accordance with the previously determined schedule.

**Section 7.4. No Remedy Exclusive.**

No remedy conferred by this Support Agreement upon or reserved to the Authority is intended to be exclusive of any other available remedy or remedies, but every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof or acquiescence therein, but any such right and power may be exercised from time to time and as often as may be deemed expedient.

**Section 7.5. No Additional Waiver Implied by One Waiver.**

Failure by the Authority at any time to require performance by the County of any provision hereof shall in no way affect the Authority's right hereunder to enforce the same, nor

shall any waiver by the Authority of any breach of any provision hereof be held to be a waiver of any succeeding breach of any such provision, or as a waiver of the provision itself.

**Section 7.6. Attorneys' Fees and Other Expenses.**

Subject to the limitation in Section 4.4, the County shall on demand pay to the Authority and the Bank one-half of the reasonable fees of attorneys and other reasonable expenses incurred by either of them in the collection of appropriated, but unpaid, Annual Payments or Additional Payments, or the enforcement of any other obligation of the County, or its agents, upon an Event of Default.

**ARTICLE VIII**

**REMEDY FOR NONAPPROPRIATION**

**Section 8.1. Remedy for Nonappropriation.**

If by June 21 of any year, the Board has failed to appropriate moneys sufficient for the payment of Annual Payments and estimated Additional Payments for the following Fiscal Year, the County Administrator shall give notice to the Authority and the Bank of such failure to appropriate within 5 Business Days thereafter, and if no such appropriation has been made by the beginning of such Fiscal Year, the Authority shall declare immediately due and payable the entire unpaid principal and interest of all Annual Payments due and thereafter to become due through and including the final payment of principal and interest on any portion of the Bond then outstanding.

Nothing contained in this Section shall be construed as affecting or superseding in any manner the provisions of Section 4.4.

**ARTICLE IX**

**AGREEMENT; AMENDMENTS; ASSIGNMENT**

**Section 9.1. Agreement; Covenants.**

(a) Contemporaneously with the execution of this Support Agreement, the Authority has entered into the Agreement with the Bank. The County shall not be obligated to take any notice of any sale, assignment, reassignment, pledge, mortgage, transfer or other disposition of any interest in this Support Agreement by the Authority, unless such sale, assignment, reassignment, pledge, mortgage, transfer or other disposition is undertaken in accordance with Section 6.3 hereof.

(b) Subject to Section 4.4, the County covenants to take whatever action may be necessary for the Authority to comply with the Authority's covenants under the Agreement.

(c) The County agrees, for the benefit of the holder of the Bond, to do and perform all acts and things contemplated in the Agreement to be done or performed by it. The Authority agrees that it shall not execute or permit any amendment or supplement to the Agreement which

affects any right, power or authority of the County under this Support Agreement or requires a revision of this Support Agreement without the prior written consent of the County.

**Section 9.2. Amendments.**

This Support Agreement shall not be supplemented, amended or modified by the parties hereto prior to the payment in full of the Bond, without the consent of the Bank.

**Section 9.3. Assignment.**

Simultaneously with the execution of this Support Agreement, the Authority has entered into the Agreement by which the Authority has assigned all of its rights in and to this Support Agreement (except its rights to receive payment of its expenses, to receive notices and to give consents) to the Bank. The County (a) consents to such assignment, (b) agrees to execute and deliver such further acknowledgments, agreements and other instruments as may be reasonably requested by the Authority or the Bank to effect such assignment, (c) agrees to make all payments due to the Authority under this Support Agreement directly to the Bank (except the Authority's rights to receive payment of its expenses, to receive notices and to give consents), subject to Section 4.4, and (d) agrees to comply fully with the terms of such assignment so long as such assignment is not inconsistent with the provisions hereof.

**ARTICLE X**

**MISCELLANEOUS**

**Section 10.1. Notices.**

Unless otherwise provided herein, all demands, notices, approvals, consents, requests, opinions and other communications hereunder shall be in writing and shall be deemed to have been given when delivered in person or mailed by first class registered or certified mail, postage prepaid, addressed (a) if to the County, at 21 North Main Street, Chatham, Virginia 24531 (Attention: County Administrator), (b) if to the Authority, c/o the City as Fiscal Agent, at 427 Patton Street, Danville, Virginia 24541 (Attention: City Manager) and (c) if to the Bank, 201 South Jefferson Street, 2nd Floor, Roanoke, Virginia 24011 (Attention: Government and Institutional Banking). The County, the Authority and the Bank may, by notice given hereunder, designate any further or different addresses to which subsequent demands, notices, approvals, consents, requests, opinions or other communications shall be sent or persons to whose attention the same shall be directed.

**Section 10.2. Severability.**

If any provision of this Support Agreement shall be held invalid by any court of competent jurisdiction, such holding shall not invalidate any other provision hereof.

**Section 10.3. Limited Liability of County.**

Notwithstanding any provision hereof to the contrary, the obligations of the County under this Support Agreement are not general obligations of the County, nor shall they be deemed to be

a lending of the credit of the County to the Authority or to any other person or entity and nothing herein contained is or shall be deemed to be a pledge of the faith and credit or the taxing power of the County. The obligations of the County hereunder are payable solely from amounts that are subject to annual appropriation. No officer, official, employee or agent of the County or Board shall be personally liable on the County's obligations hereunder. The Authority shall not be liable under any circumstances for the actions of the County, as agent for the Authority, or for any actions of the County with respect to the Basic Documents. The Authority shall not be liable under any circumstances for the actions of the Bank under the Basic Documents.

**Section 10.4. Successors and Assigns.**

This Support Agreement shall be binding upon, inure to the benefit of and be enforceable by the parties and their respective successors and assigns. The Bank is intended to be, and shall be, a third party beneficiary of this Support Agreement.

**Section 10.5. Counterparts.**

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

**Section 10.6. Governing Law.**

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

**Section 10.7. Term of Agreement.**

This Support Agreement shall commence on the date of issuance of the Bond and will terminate on the date that no portion of the Bond is outstanding.

**IN WITNESS WHEREOF**, the parties have caused this Support Agreement to be duly executed and effective as of the 1<sup>st</sup> day of July, 2013, by their duly authorized representatives.

**DANVILLE-PITTSYLVANIA REGIONAL  
INDUSTRIAL FACILITY AUTHORITY**

By: \_\_\_\_\_  
Chairman

**COUNTY OF PITTSYLVANIA, VIRGINIA**

By: \_\_\_\_\_  
County Administrator

**Seen and agreed to:**

**WELLS FARGO BANK, NATIONAL ASSOCIATION,**  
as holder of the Bond

By: \_\_\_\_\_  
Its: \_\_\_\_\_

[SIGNATURE PAGE TO COUNTY SUPPORT AGREEMENT]

**RECEIPT**

Receipt of the foregoing original counterpart of the Support Agreement dated as of July 1, 2013, between the Danville-Pittsylvania Regional Industrial Facility Authority and the County of Pittsylvania, Virginia, is hereby acknowledged.

**WELLS FARGO BANK, NATIONAL ASSOCIATION,**  
as holder of the Bond

By: \_\_\_\_\_  
Its: \_\_\_\_\_

**SUPPORT AGREEMENT**

**between**

**DANVILLE-PITTSYLVANIA REGIONAL INDUSTRIAL FACILITY AUTHORITY**

**and**

**CITY OF DANVILLE, VIRGINIA**

**Dated as of July 1, 2013**

**NOTE: THIS SUPPORT AGREEMENT HAS BEEN ASSIGNED TO, AND IS SUBJECT TO A SECURITY INTEREST IN FAVOR OF, WELLS FARGO BANK, NATIONAL ASSOCIATION.**

TABLE OF CONTENTS

|  | Page |
|--|------|
| Parties.....   | 1    |
| Recitals.....  | 1    |
| Granting Clauses.....  | 1    |
| ARTICLE I  |      |
| DEFINITIONS AND RULES OF CONSTRUCTION  |      |
| Section 1.1. Definitions.....  | 2    |
| Section 1.2. Rules of Construction. ....   | 2    |
| ARTICLE II   |      |
| REPRESENTATIONS  |      |
| Section 2.1. Representations by Authority. ....                                    | 3    |
| Section 2.2. Representations by City. ....   | 3    |
| ARTICLE III  |      |
| AGREEMENT TO ISSUE BOND  |      |
| Section 3.1. Agreement to Issue Bond.....  | 4    |
| Section 3.2. Limitation of Authority’s Liability.....                              | 5    |
| Section 3.3. Compliance with Agreement. ....                                       | 5    |
| ARTICLE IV   |      |
| PAYMENT OBLIGATIONS  |      |
| Section 4.1. Amounts Payable. ....   | 5    |
| Section 4.2. Payments Assigned. ....   | 6    |
| Section 4.3. Obligation Unconditional.....   | 6    |
| Section 4.4. Appropriations of Annual Payments and Additional Payments. ....       | 6    |
| ARTICLE V  |      |
| PREPAYMENT   |      |
| Section 5.1. Prepayment. ....  | 7    |
| ARTICLE VI   |      |
| PARTICULAR COVENANTS   |      |
| Section 6.1. Limitation of Liability of Directors, etc. of Authority and City..... | 7    |
| Section 6.2. Use of Proceeds.....  | 8    |
| Section 6.3. Maintenance of Existence of Authority. ....                           | 8    |
| Section 6.4. City Covenants. ....  | 9    |

ARTICLE VII

EVENTS OF DEFAULT AND REMEDIES

Section 7.1. Events of Default. ....9  
Section 7.2. Remedies.....10  
Section 7.3. Reinstatement after Event of Default.....10  
Section 7.4. No Remedy Exclusive.....10  
Section 7.5. No Additional Waiver Implied by One Waiver.....10  
Section 7.6. Attorneys’ Fees and Other Expenses.....11

ARTICLE VIII

REMEDY FOR NONAPPROPRIATION

Section 8.1. Remedy for Nonappropriation. ....11

ARTICLE IX

AGREEMENT; AMENDMENTS; ASSIGNMENT

Section 9.1. Agreement; Covenants.....11  
Section 9.2. Amendments. ....12  
Section 9.3. Assignment. ....12

ARTICLE X

MISCELLANEOUS

Section 10.1. Notices. ....12  
Section 10.2. Severability. ....12  
Section 10.3. Limited Liability of City.....12  
Section 10.4. Successors and Assigns.....13  
Section 10.5. Counterparts.....13  
Section 10.6. Governing Law. ....13  
Section 10.7. Term of Agreement.....13  
Signatures.....15  
Receipt .....16

THIS SUPPORT AGREEMENT dated as of the 1<sup>st</sup> day of July, 2013, by and between the **DANVILLE-PITTSYLVANIA REGIONAL INDUSTRIAL FACILITY AUTHORITY**, a political subdivision of the Commonwealth of Virginia (the “Authority”), and the **CITY OF DANVILLE, VIRGINIA**, a political subdivision of the Commonwealth of Virginia (the “City”), provides:

**WITNESSETH:**

**WHEREAS**, the Authority is a political subdivision of the Commonwealth of Virginia duly created pursuant to Chapter 64 of Title 15.2 of the Code of Virginia of 1950, as amended (the “Act”); and

**WHEREAS**, the Act authorizes the Authority to borrow money to pay the costs of real estate and all improvements located in industrial parks intended to be occupied by manufacturing, warehousing, distribution, office or other commercial enterprises; and

**WHEREAS**, in order to further the purposes of the Act, the Authority has previously issued its \$\_\_\_\_\_ Revenue Bonds (Cane Creek Project), Series 2005 (the “Prior Bonds”) to finance as part of the development of Cane Creek Center as an industrial park, the financing of land acquisition, roads, wetland, remediation, lot clearing and other related capital expenditures, including necessary expenses incidental thereto (collectively, the “Project”); and

**WHEREAS**, the Authority now wishes to refinance the Project and refund the Prior Bonds by issuing its Revenue Refunding Bond (Cane Creek Project), Series 2013 in the amount of \$\_\_\_\_\_ (the “Bond”) pursuant to the terms of a Financing Agreement, dated as of July 1, 2013 (the “Agreement”), between the Authority and Wells Fargo Bank, National Association (the “Bank”); and

**WHEREAS**, the City and Pittsylvania County, Virginia (the “County”) agree with the desire of the Authority to refinance the Project; and

**WHEREAS**, the Bond will be secured by a pledge of the revenues and receipts received by the Authority from payments made by the City pursuant to this Support Agreement and by the County pursuant to a separate support agreement; and

**WHEREAS**, all acts, conditions and things required by law to happen, exist and be performed precedent to and in connection with the execution of and entering into this Support Agreement have happened, exist and have been performed in regular and due time and in form and manner as required by law, and the parties hereto are now duly empowered to execute and enter into this Support Agreement;

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements hereinafter contained and other valuable consideration, the parties hereto covenant and agree as follows:

## ARTICLE I

### DEFINITIONS AND RULES OF CONSTRUCTION

#### Section 1.1. Definitions.

Unless otherwise defined in this Support Agreement, all words used herein shall have the meanings assigned to such terms in the Agreement. In addition to the words defined in the recitals hereto, the following words as used in this Support Agreement shall have the following meanings unless a different meaning clearly appears from the context:

**“Additional Payment(s)”** shall mean such payment or payments made by the City pursuant to Section 4.1(b) and Section 5.1.

**“Annual Budget”** shall mean the budget by that name referred to in Section 4.4.

**“Annual Payment(s)”** shall mean the payments made by the City under this Support Agreement as set forth in Section 4.1(a), which such payments are equal to one-half of the payments of principal and interest due on the Bond in each Fiscal Year.

**“Basic Documents”** shall mean the Agreement and this Support Agreement.

**“County Support Agreement”** shall mean the Support Agreement, dated as of July 1, 2013, between the County and the Authority, as the same may be supplemented, amended or modified.

**“Event of Default”** shall mean the events enumerated in Section 7.1.

**“Fiscal Year”** shall mean the twelve-month period beginning July 1 of one year and ending on June 30 of the following year, or such other fiscal year of twelve months as may be selected by the City.

**“Support Agreement”** shall mean this Support Agreement, as such Support Agreement may be supplemented, amended or modified.

#### Section 1.2. Rules of Construction.

The following rules shall apply to the construction of this Support Agreement unless the context otherwise requires:

(a) Words importing the singular number shall include the plural number and vice versa.

(b) Words importing the prepayment or calling for prepayment of the Bond shall not be deemed to refer to or connote the payment of the Bond at its stated maturity.

(c) Unless otherwise indicated, all references herein to particular Articles or Sections are references to Articles or Sections of this Support Agreement.

(d) The headings herein and Table of Contents to this Support Agreement herein are solely for convenience of reference and shall not constitute a part of this Support Agreement nor shall they affect its meaning, construction or effect.

(e) All references herein to payment of the Bond are references to payment of principal of and premium, if any, and interest on the Bond.

## **ARTICLE II**

### **REPRESENTATIONS**

#### **Section 2.1. Representations by Authority.**

The Authority makes the following representations:

(a) The Authority is a political subdivision of the Commonwealth of Virginia duly created under the Act;

(b) Pursuant to the Act, the Authority has full power and authority to enter into the Basic Documents and to perform the transactions contemplated thereby and to carry out its obligations thereunder and by proper action has duly authorized, executed and delivered such Basic Documents;

(c) The execution, delivery and compliance by the Authority with the terms and conditions of the Basic Documents will not conflict with or constitute or result in a default under or violation of, (1) any existing law, rule or regulation applicable to the Authority, or (2) any trust agreement, mortgage, deed of trust, lien, lease, contract, note, order, judgment, decree or other agreement, instrument or other restriction of any kind to which the Authority or any of its assets is subject;

(d) No further approval, consent or withholding of objection on the part of any regulatory body or any official, Federal, state or local, is required in connection with the execution or delivery of or compliance by the Authority with the terms and conditions of the Basic Documents, except that no representation is made as to the applicability of any Federal or state securities laws; and

(e) There is no litigation at law or in equity or any proceeding before any governmental agency involving the Authority pending or, to the knowledge of the Authority, threatened with respect to (1) the creation and existence of the Authority, (2) its authority to execute and deliver the Basic Documents, (3) the validity or enforceability of the Basic Documents or the Authority's performance of its obligations thereunder, (4) the title of any officer of the Authority executing the Basic Documents, or (5) the ability of the Authority to issue and sell its Bond and refinance the Project.

#### **Section 2.2. Representations by City.**

The City makes the following representations:

(a) The City is a political subdivision of the Commonwealth of Virginia;

(b) The City has full power and authority to enter into the Basic Documents to which it is a party and to perform the transactions contemplated thereby and to carry out its obligations thereunder and by proper action has duly authorized, executed and delivered such Basic Documents;

(c) The City is not in default in the payment of the principal of or interest on any of its indebtedness for borrowed money and is not in default under any instrument under or subject to which any indebtedness for borrowed money has been incurred, and no event has occurred and is continuing that with the lapse of time or the giving of notice, or both, would constitute or result in an event of default thereunder;

(d) The City is not in default under or in violation of, and the execution, delivery and compliance by the City with the terms and conditions of the Basic Documents to which it is a party will not conflict with or constitute or result in a default under or violation of, (1) any existing law, rule or regulation applicable to the City or (2) any trust agreement, mortgage, deed of trust, lien, lease, contract, note, order, judgment, decree or other agreement, instrument or restriction of any kind to which the City or any of its assets is subject, and no event has occurred and is continuing that with the lapse of time or the giving of notice, or both, would constitute or result in such a default or violation;

(e) No further approval, consent or withholding of objection on the part of any regulatory body or any official, Federal, state or local, is required in connection with the execution or delivery of or compliance by the City with the terms and conditions of the Basic Documents to which it is a party; and

(f) There is no litigation at law or in equity or any proceeding before any governmental agency involving the City pending or, to the knowledge of the City, threatened with respect to (1) the authority of the City to execute and deliver the Basic Documents to which it is a party, (2) the validity or enforceability of such Basic Documents or the City's performance of its obligations thereunder, or (3) the title of any officer of the City executing such Basic Documents.

(g) The Project has been determined to be essential to the City's economic development and future revenue growth, and the City Council anticipates that the Project will continue to be essential to the City's economic development and future revenue growth during the term of this Support Agreement.

### **ARTICLE III**

#### **AGREEMENT TO ISSUE BOND**

##### **Section 3.1. Agreement to Issue Bond.**

The Authority hereby agrees, simultaneously with the execution and delivery hereof, to proceed with the issuance and sale of the Bond, bearing interest, maturing and having the other terms and provisions set forth in the Agreement. The proceeds of the Bond will be used to

refinance the costs of the Project. Subject to the limitation of Section 4.4, the City agrees to make all Annual Payments and Additional Payments when and as the same shall become due and payable.

**Section 3.2. Limitation of Authority's Liability.**

Anything contained in this Support Agreement to the contrary notwithstanding, any obligation the Authority may incur in connection with the issuance of the Bond for the payment of money shall not be deemed to constitute a debt or general obligation of the Authority within any constitutional or statutory limitations, but shall be a limited obligation payable solely from the revenues and receipts derived by it pursuant to this Support Agreement and the County Support Agreement.

**Section 3.3. Compliance with Agreement.**

If the City is not in default under this Support Agreement, the Authority, at the request of the City, shall take (a) all steps that may be necessary to effect prepayment under the Agreement and (b) any other action required by the Agreement. By its execution of this Support Agreement, the City acknowledges its approval of all the terms and conditions set forth in the Agreement.

**ARTICLE IV**

**PAYMENT OBLIGATIONS**

**Section 4.1. Amounts Payable.**

(a) (1) Subject to the limitation of Section 4.4, the City shall pay to the Authority or its assignee the Annual Payments. The Annual Payments shall be payable without notice or demand at the address designated by the Bank. In the event of an acceleration of the Bond under the Agreement, the City agrees to pay to the Bank, subject to the limitation of Section 4.4, an amount equal to all Annual Payments payable or to become payable under this Support Agreement to enable the Authority to pay, together with amounts payable under the County Support Agreement, in full the principal of and interest on the Bond.

(2) The Authority, in conjunction with the County and the City, will determine, as part of its budget process, by March 1 of each year the Annual Payment to be requested from, and paid (subject to the limitation of Section 4.4) by, the City for the immediately succeeding fiscal year. In calculating such payments, the Authority shall use the principal amount (if any) due on the Bond in the succeeding fiscal year. In determining the interest component of the Annual Payment, the Authority shall calculate interest at a rate equal to the actual fixed rate on the Bond.

(b) Subject to the limitation of Section 4.4, the City agrees to make Additional Payments to pay one-half of (1) any expenses incurred by the Authority (including reasonable attorney's fees and expenses) in connection with (A) its obligations under this Support Agreement and the other Basic Documents, (B) the issuance of the Bond and (C) any prepayment of the Bond and (2) all other amounts which the City agrees to pay under the terms of this Support Agreement, but not including Annual Payments.

#### **Section 4.2. Payments Assigned.**

The Authority and the City acknowledge and agree that this Support Agreement and all Annual Payments and Additional Payments (except the rights of the Authority to receive payment of its expenses, to receive notices and to give consents) are assigned by the Agreement to the Bank. The City consents to such assignment and agrees to pay to the Bank all amounts payable by the City that are so assigned.

#### **Section 4.3. Obligation Unconditional.**

Except as otherwise provided in this Support Agreement, including the limitation in Section 4.4, the obligations of the City to make all Annual Payments and Additional Payments and to observe all other covenants, conditions and agreements hereunder shall be absolute and unconditional, irrespective of any right of setoff, recoupment or counterclaim the City may otherwise have against the Authority, and the City shall not suspend or discontinue any such Annual Payment or Additional Payment or fail to observe and perform any of its covenants, conditions and agreements hereunder.

#### **Section 4.4. Appropriations of Annual Payments and Additional Payments.**

While recognizing that it is not empowered to make any binding commitment to make Annual Payments and Additional Payments beyond the current Fiscal Year, the City Council in authorizing the execution of this Support Agreement has stated its intent to make annual appropriations sufficient to make the Annual Payments and Additional Payments, and as such it is hereby recognized by the parties hereto that this Support Agreement, to the extent permitted by law, creates strictly a moral obligation of the City to pay such amounts.

Notwithstanding anything in this Support Agreement to the contrary, the City's obligations to pay the cost of performing its obligations under this Support Agreement and the Agreement, including its obligations to pay all Annual Payments and Additional Payments, shall be subject to and dependent upon appropriations being made from time to time by the City Council for such purpose; provided, however, that the City Manager or other officer charged with the responsibility for preparing the City's Annual Budget shall include in the budget for each Fiscal Year as a single appropriation the amount of all Annual Payments and estimated Additional Payments coming due during such Fiscal Year. Throughout the term of this Support Agreement, the City Manager or other officer charged with the responsibility for preparing the City's Annual Budget shall deliver to the Bank and the Authority within 10 days after the adoption of the Annual Budget for each Fiscal Year, but not later than the beginning of each Fiscal Year, a certificate stating whether an amount equal to the Annual Payments and Additional Payments which will come due during such Fiscal Year has been appropriated by the City Council in such budget. If any adopted Annual Budget does not include an appropriation of funds sufficient to pay both Annual Payments and estimated Additional Payments coming due for the relevant Fiscal Year, the City Council shall take a roll call vote immediately after adoption of such Annual Budget acknowledging the impact of its failure to appropriate such funds. If, by the beginning of the Fiscal Year, the City Council has not appropriated funds for the payment of both Annual Payments and estimated Additional Payments coming due for the then current Fiscal Year, the City Manager or other officer charged with the responsibility for

preparing the City's Annual Budget shall give written notice to the City Council of the consequences of such failure to appropriate, including the right of the Bank to accelerate the Annual Payments in accordance with Article VIII, and request the City Council to consider a supplemental appropriation for such purposes.

If at any time the Annual Payments as determined pursuant to Section 4.1(a)(2) are insufficient to make one-half of the payments of principal and interest due on the Bond, the Authority (or the Bank as assignee of the Authority) shall notify the City Manager (or other officer charged with the responsibility for preparing the City's Annual Budget) of the amount of such insufficiency, and the City Manager shall submit to the City Council at its next regularly scheduled meeting or as promptly as practicable, but in any event within 45 days, a request for a supplemental appropriation in the amount necessary to cover such insufficiency.

## **ARTICLE V**

### **PREPAYMENT**

#### **Section 5.1. Prepayment.**

The City shall have the option to prepay any Annual Payments at the times and in the amounts as necessary to enable the Authority to exercise its option to cause the Bond to be prepaid as set forth in such Bond. Such prepayments of Annual Payments shall be made at the times and in the amounts as necessary to accomplish the optional prepayment of the Bond as set forth in such Bond. Upon the exercise of such option, the City shall also pay as Additional Payments, the amounts necessary to pay one-half of the premium, if any, due on the Bond on the date or dates of prepayment.

The City shall direct the Authority to send to the Bank notice of any prepayment of the Bond, such notice to the Bank to specify the prepayment date, the principal amount of the Bond to be redeemed, and the premium, if any. The City shall send to the County a copy of the direction given to the Authority.

## **ARTICLE VI**

### **PARTICULAR COVENANTS**

#### **Section 6.1. Limitation of Liability of Directors, etc. of Authority and City.**

No covenant, agreement or obligation contained in this Support Agreement shall be deemed to be a covenant, agreement or obligation of any past, present or future member, officer, director, employee or agent of the Authority in his or her individual capacity, and neither the members of the Authority nor any officer thereof executing this Support Agreement shall be liable personally on this Support Agreement or be subject to any personal liability or accountability by reason of the execution and delivery hereof. No member, director, officer, employee or agent of the Authority shall incur any personal liability with respect to any other

action taken by him or her pursuant to this Support Agreement or the Act or any of the transactions contemplated hereby provided that he or she acts in good faith.

No covenant, agreement or obligation contained herein shall be deemed to be a covenant, agreement or obligation of any past, present or future Council member or officer, employee or agent of the City or City Council in his or her individual capacity, and neither the members of the Council nor any officer of the City or City Council executing this Support Agreement shall be liable personally on this Support Agreement or be subject to any personal liability or accountability by reason of the execution and delivery hereof. No Council member or officer, employee or agent of the City or City Council shall incur any personal liability with respect to any action taken by him or her pursuant to this Support Agreement or any of the transactions contemplated hereby, provided that he or she acts in good faith.

**Section 6.2. Use of Proceeds.**

The Authority and the City shall use the proceeds of the Bond to refinance the Project and pay the costs of issuance of the Bond.

**Section 6.3. Maintenance of Existence of Authority.**

Except for the assignment of its rights under this Support Agreement to the Bank pursuant to the Agreement, the Authority agrees that it will not assign, transfer or convey its interest in this Support Agreement or any of the revenues to be derived therefrom. The Authority further agrees that, until the Bond has been paid in full, the Authority will not (a) dissolve or otherwise dispose of all or substantially all of its assets, (b) consolidate with or merge into any authority, corporation, association or other body, (c) permit any other authority, corporation, association or other body to consolidate with or merge into it, (d) act jointly with any other authority, corporation, association or other body (other than the City, the County and the Bank) with respect to the transactions contemplated by this Support Agreement and the Agreement, or (e) take any action or refrain from taking any action which would (i) permit any of the foregoing to be required by operation of law or (ii) which would permit it, or require it by operation of law, to avoid its obligations under this Support Agreement or the Agreement or any other agreement contemplated hereby; provided, however, that nothing contained in this Section shall prevent the consolidation of the Authority with, or the merger of the Authority into, or the transfer of the interest of the Authority in this Support Agreement as an entirety to, any public corporation whose property and income are not subject to taxation and which has the corporate authority to carry out the transactions contemplated by this Support Agreement and the Agreement, but only on the condition that (A) reasonable prior notice of such consolidation, merger or transfer is given to the City, the County and the Bank, and (B) upon any such consolidation, merger or transfer, the obligation of the Authority to make due and punctual payment of the principal of and prepayment premium, if any, and interest on the Bond and to perform and observe all of the agreements and conditions of this Support Agreement and the Agreement shall be expressly assumed in writing by the corporation resulting from such consolidation or surviving such merger or to which the interest of the Authority in this Support Agreement shall be transferred as an entirety.

**Section 6.4. City Covenants.** To assist the Authority in complying with certain of its obligations under the Basic Documents, the City agrees to provide, in accordance with the specifications provided in the Agreement, (a) notice of any material litigation with respect to the City, (b) copies to the Bank of (1) the City's 2013 Fiscal Year budget, (2) the City's financial statements within 210 days of the end of each of the City's Fiscal Years and (3) future budgets within 60 days of approval, and (c) any notices of any defaults with respect to any general obligation indebtedness or moral obligations of the City. The City also agrees to provide such information as maybe reasonably requested by Bond Counsel in order to comply with any applicable securities disclosure requirements or other applicable laws and regulations.

## **ARTICLE VII**

### **EVENTS OF DEFAULT AND REMEDIES**

#### **Section 7.1. Events of Default.**

(a) Each of the following events shall be an Event of Default:

(1) Default in the due and punctual payment of an Annual Payment when the same becomes due and payable and continuation of such failure for a period of five business days; or

(2) Failure of the City to pay when due any other payment due under this Support Agreement or to observe and perform any covenant, condition or agreement on its part to be observed or performed, which failure shall continue for a period of 30 days after notice is given, or in the case of any such default that cannot with due diligence be cured within such 30 day period but can be cured within the succeeding 60 days, failure of the City to proceed promptly to cure the same and thereafter prosecute the curing of such default with due diligence.

(b) The provisions of the foregoing subparagraph (a)(2) are subject to the limitation that if by reason of force majeure the City is unable in whole or in part to perform any of its covenants, conditions or agreements hereunder, the City shall not be deemed in default during the continuance of such inability. The term "force majeure" as used herein shall include without limitation acts of God; strikes, lockouts or other industrial disturbances; acts of public enemies; orders of any kind of the government of the United States of America or the Commonwealth of Virginia or any political subdivision thereof or any of their departments, agencies or officials, or any civil or military authority; insurrections; riots; epidemics; swarms of boll weevils and plagues of locusts; landslides; earthquakes; fires; hurricanes; tornadoes; storms; floods; washouts; droughts; restraint of government and people; or civil disturbances. The City shall remedy with all reasonable dispatch the cause or causes preventing the City from carrying out its covenants, conditions and agreements, provided that the settlement of strikes, lockouts and other industrial disturbances shall be entirely within the discretion of the City, and the City shall not be required to make settlement of strikes, lockouts and other industrial disturbances by acceding to the demands of any opposing party when such course is in the judgment of the City not in its best interests.

(c) Notwithstanding anything contained in this Section to the contrary, (1) failure by the City to pay when due any payment required to be made under this Support Agreement or (2) failure by the City to observe and perform any covenant, condition or agreement on its part to be observed or performed under this Support Agreement, either of which results from failure of the City to appropriate moneys for such purposes, as described in Section 4.4, shall not constitute an Event of Default. Upon any such failure to appropriate, the provisions of Article VIII shall be applicable.

**Section 7.2. Remedies.**

Whenever any Event of Default shall have happened and is continuing, the Authority may take any one or more of the following remedial steps, without further demand or notice: (a) declare immediately due and payable the entire unpaid principal balance of the Annual Payments due and thereafter to become due through and including the final installment payment of principal on the Bond or (b) take whatever action at law or in equity may appear necessary or desirable to collect the Annual Payments and Additional Payments then due and thereafter to become due, or to enforce performance and observance of any obligation, agreement or covenant of the City under this Support Agreement. Any amounts received by the Authority pursuant to the foregoing provisions shall be applied first to costs, then to any unpaid interest and then to repayment of principal, and upon payment in full of all amounts due such excess shall be credited to the next Annual Payment to the extent such Annual Payments have not been paid in full. This provision shall survive termination of this Support Agreement.

**Section 7.3. Reinstatement after Event of Default.**

Notwithstanding the exercise by the Authority of any remedy granted by Section 7.2, if all overdue Annual Payments, together with any interest thereon, and all Additional Payments shall have been made, and payment on the Bond has not been accelerated or such acceleration has been waived pursuant to the Agreement, then the City's default under this Support Agreement shall be waived without further action by the Authority. Upon such payment and waiver, this Support Agreement shall be fully reinstated and all Annual Payments will be due and payable in accordance with the previously determined schedule.

**Section 7.4. No Remedy Exclusive.**

No remedy conferred by this Support Agreement upon or reserved to the Authority is intended to be exclusive of any other available remedy or remedies, but every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof or acquiescence therein, but any such right and power may be exercised from time to time and as often as may be deemed expedient.

**Section 7.5. No Additional Waiver Implied by One Waiver.**

Failure by the Authority at any time to require performance by the City of any provision hereof shall in no way affect the Authority's right hereunder to enforce the same, nor shall any

waiver by the Authority of any breach of any provision hereof be held to be a waiver of any succeeding breach of any such provision, or as a waiver of the provision itself.

**Section 7.6. Attorneys' Fees and Other Expenses.**

Subject to the limitation in Section 4.4, the City shall on demand pay to the Authority and the Bank one-half of the reasonable fees of attorneys and other reasonable expenses incurred by either of them in the collection of appropriated, but unpaid, Annual Payments or Additional Payments, or the enforcement of any other obligation of the City, or its agents, upon an Event of Default.

**ARTICLE VIII**

**REMEDY FOR NONAPPROPRIATION**

**Section 8.1. Remedy for Nonappropriation.**

If by June 21 of any year, the City Council has failed to appropriate moneys sufficient for the payment of Annual Payments and estimated Additional Payments for the following Fiscal Year, the City Manager shall give notice to the Authority and the Bank of such failure to appropriate within 5 Business Days thereafter, and if no such appropriation has been made by the beginning of such Fiscal Year, the Authority shall declare immediately due and payable the entire unpaid principal and interest of all Annual Payments due and thereafter to become due through and including the final payment of principal and interest on any portion of the Bond then outstanding.

Nothing contained in this Section shall be construed as affecting or superseding in any manner the provisions of Section 4.4.

**ARTICLE IX**

**AGREEMENT; AMENDMENTS; ASSIGNMENT**

**Section 9.1. Agreement; Covenants.**

(a) Contemporaneously with the execution of this Support Agreement, the Authority has entered into the Agreement with the Bank. The City shall not be obligated to take any notice of any sale, assignment, reassignment, pledge, mortgage, transfer or other disposition of any interest in this Support Agreement by the Authority, unless such sale, assignment, reassignment, pledge, mortgage, transfer or other disposition is undertaken in accordance with Section 6.3 hereof.

(b) Subject to Section 4.4, the City covenants to take whatever action may be necessary for the Authority to comply with the Authority's covenants under the Agreement.

(c) The City agrees, for the benefit of the holder of the Bond, to do and perform all acts and things contemplated in the Agreement to be done or performed by it. The Authority agrees that it shall not execute or permit any amendment or supplement to the Agreement which

affects any right, power or authority of the City under this Support Agreement or requires a revision of this Support Agreement without the prior written consent of the City.

**Section 9.2. Amendments.**

This Support Agreement shall not be supplemented, amended or modified by the parties hereto prior to the payment in full of the Bond, without the consent of the Bank.

**Section 9.3. Assignment.**

Simultaneously with the execution of this Support Agreement, the Authority has entered into the Agreement by which the Authority has assigned all of its rights in and to this Support Agreement (except its rights to receive payment of its expenses, to receive notices and to give consents) to the Bank. The City (a) consents to such assignment, (b) agrees to execute and deliver such further acknowledgments, agreements and other instruments as may be reasonably requested by the Authority or the Bank to effect such assignment, (c) agrees to make all payments due to the Authority under this Support Agreement directly to the Bank (except the Authority's rights to receive payment of its expenses, to receive notices and to give consents), subject to Section 4.4, and (d) agrees to comply fully with the terms of such assignment so long as such assignment is not inconsistent with the provisions hereof.

**ARTICLE X**

**MISCELLANEOUS**

**Section 10.1. Notices.**

Unless otherwise provided herein, all demands, notices, approvals, consents, requests, opinions and other communications hereunder shall be in writing and shall be deemed to have been given when delivered in person or mailed by first class registered or certified mail, postage prepaid, addressed (a) if to the City, at 427 Patton Street, Danville, Virginia 24541 (Attention: City Manager), (b) if to the Authority, c/o the City as Fiscal Agent, at 427 Patton Street, Danville, Virginia 24541 (Attention: City Manager) and (c) if to the Bank, 201 South Jefferson Street, 2nd Floor, Roanoke, Virginia 24011 (Attention: Government and Institutional Banking). The City, the Authority and the Bank may, by notice given hereunder, designate any further or different addresses to which subsequent demands, notices, approvals, consents, requests, opinions or other communications shall be sent or persons to whose attention the same shall be directed.

**Section 10.2. Severability.**

If any provision of this Support Agreement shall be held invalid by any court of competent jurisdiction, such holding shall not invalidate any other provision hereof.

**Section 10.3. Limited Liability of City.**

Notwithstanding any provision hereof to the contrary, the obligations of the City under this Support Agreement are not general obligations of the City, nor shall they be deemed to be a

lending of the credit of the City to the Authority or to any other person or entity and nothing herein contained is or shall be deemed to be a pledge of the faith and credit or the taxing power of the City. The obligations of the City hereunder are payable solely from amounts that are subject to annual appropriation. No officer, official, employee or agent of the City or City Council shall be personally liable on the City's obligations hereunder. The Authority shall not be liable under any circumstances for the actions of the City, as agent for the Authority, or for any actions of the City with respect to the Basic Documents. The Authority shall not be liable under any circumstances for the actions of the Bank under the Basic Documents.

**Section 10.4. Successors and Assigns.**

This Support Agreement shall be binding upon, inure to the benefit of and be enforceable by the parties and their respective successors and assigns. The Bank is intended to be, and shall be, a third party beneficiary of this Support Agreement.

**Section 10.5. Counterparts.**

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

**Section 10.6. Governing Law.**

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

**Section 10.7. Term of Agreement.**

This Support Agreement shall commence on the date of issuance of the Bond and will terminate on the date that no portion of the Bond is outstanding.

**IN WITNESS WHEREOF**, the parties have caused this Support Agreement to be duly executed and effective as of the 1<sup>st</sup> day of July, 2013, by their duly authorized representatives.

**DANVILLE-PITTSYLVANIA REGIONAL  
INDUSTRIAL FACILITY AUTHORITY**

By: \_\_\_\_\_  
Chairman

**CITY OF DANVILLE, VIRGINIA**

By: \_\_\_\_\_  
City Manager

**Seen and agreed to:**

**WELLS FARGO BANK, NATIONAL ASSOCIATION,**  
as holder of the Bond

By: \_\_\_\_\_  
Its: \_\_\_\_\_

[SIGNATURE PAGE TO CITY SUPPORT AGREEMENT]

**RECEIPT**

Receipt of the foregoing original counterpart of the Support Agreement dated as of July 1, 2013, between the Danville-Pittsylvania Regional Industrial Facility Authority and the City of Danville, Virginia, is hereby acknowledged.

**WELLS FARGO BANK, NATIONAL ASSOCIATION,**  
as holder of the Bond

By: \_\_\_\_\_  
Its: \_\_\_\_\_

1897360v8

# Danville-Pittsylvania Regional Industrial Facility Authority

## Executive Summary

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|                         |   |
|-------------------------|---|
| <b>Agenda Item No.:</b> | 6-D   |
| <b>Meeting Date:</b>    | 06/10/2013  |
| <b>Subject:</b>         | Proposed Fiscal Year 2014 General Expenditures Budget |
| <b>From:</b>            | Barbara A. Dameron, Authority Treasurer               |

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### **SUMMARY**

The RIFA Board approves a budget for the general expenditures of RIFA each fiscal year.

### **BACKGROUND**

Attached is the proposed General Expenditures budget for fiscal year 2014. The sheet also displays the fiscal year 2013 General Expenditures data thus far (as of May 31<sup>st</sup>) for comparison purposes.

Staff will review the proposed fiscal year 2014 General Expenditures budget at the meeting.

### **RECOMMENDATION**

Staff recommends the RIFA Board approve the proposed fiscal year 2014 General Expenditures budget.

### **ATTACHMENTS**

Proposed General Expenditures Budget for FY 2014 Compared to FY 2013

**Danville-Pittsylvania Regional Industrial Facility Authority**  
**Proposed General Expenditures Budget for Fiscal Year 2014 Compared to Fiscal Year 2013**

|  | <u>FY 2013 (as of 5/31/2013)</u> |               |                                  | <u>FY 2014</u>          |                        |
|--|----------------------------------|---------------|----------------------------------|-------------------------|------------------------|
|  | <u>Funding</u>                   | <u>Budget</u> | <u>Expenditures</u> <sup>1</sup> | <u>Proposed Funding</u> | <u>Proposed Budget</u> |
| <b>Funding</b>                                 |                                  |               |                                  |                         |                        |
| City Contribution                              | \$ 75,000.00                     |               |                                  | \$ 75,000.00            |                        |
| County Contribution                            | 75,000.00                        |               |                                  | 75,000.00               |                        |
| Carryforward from prior fiscal year            | 11,042.93                        |               |                                  | -                       | <sup>2</sup>           |
| Transfer in from Rent for Charles Hawkins Bldg | 33,777.98                        |               |                                  | -                       |                        |
| <b>Contingency</b>                             |                                  |               |                                  |                         |                        |
| Miscellaneous contingency items                |                                  | \$ 47,992.93  | \$ 218.50                        |                         | \$ 16,900.00           |
| <b>Total Contingency Budget</b>                |                                  | 47,992.93     | 218.50                           |                         | 16,900.00              |
| <b>Legal</b>                                   |                                  | 108,777.98    | 66,738.26                        |                         | 100,000.00             |
| <b>Accounting</b>                              |                                  | 20,750.00     | 20,750.00                        |                         | 18,900.00              |
| <b>Annual Bank Fees</b>                        |                                  | 4,400.00      | 4,571.25                         |                         | 4,600.00               |
| <b>Postage &amp; Shipping</b>                  |                                  | 100.00        | 84.36                            |                         | 100.00                 |
| <b>Meals</b>                                   |                                  | 2,800.00      | 2,509.36                         |                         | 3,000.00               |
| <b>Utilities</b>                               |                                  | 4,000.00      | 229.40                           |                         | 500.00                 |
| <b>Insurance</b>                               |                                  | 6,000.00      | -                                |                         | 6,000.00               |
| <b>Total</b>                                   | \$ 194,820.91                    | \$ 194,820.91 | \$ 95,101.13                     | \$ 150,000.00           | \$ 150,000.00          |

<sup>1</sup> As of the date of preparation, May 31, 2013.

<sup>2</sup> If there is a carryforward from the prior fiscal year, the funds will be budgeted toward contingency.

See definitions provided for each budget line item on the following page.

**Danville-Pittsylvania Regional Industrial Facility Authority**  
**Proposed General Expenditures Budget for Fiscal Year 2014 Compared to Fiscal Year 2013**  
**Budget Definitions**

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**Funding** = Represents sources of incoming funds to support general expenditures of RIFA.

**Contingency** = Represents a provision for expenditures that cannot be predicted with certainty during the budget process. It includes, but is not limited to, project-specific expenditures necessary as a project develops for which there is no other funding source to cover the expenditure.

**Legal** = Represents expenditures for general legal services provided to RIFA.

**Accounting** = Represents expenditures for the required annual audit of the RIFA financial statements.

**Annual Bank Fees** = Represents the annual fees paid to U.S. Bank related to the Cane Creek Centre bonds and Berry Hill bonds.

**Postage & Shipping** = Represents expenditures for mailing documents for RIFA business.

**Meals** = Represents expenditures for meals provided while conducting RIFA business.

**Utilities** = Represents expenditures for electric service at RIFA properties.

**Insurance** = Represents the annual premium paid for RIFA's insurance coverage, currently with VML Insurance Programs.

# Danville-Pittsylvania Regional Industrial Facility Authority

## Executive Summary

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|                         |   |
|-------------------------|---|
| <b>Agenda Item No.:</b> | 6-E                                     |
| <b>Meeting Date:</b>    | 06/10/2013                              |
| <b>Subject:</b>         | Financial Status Reports – May 31, 2013 |
| <b>From:</b>            | Barbara A. Dameron, Authority Treasurer |

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### **SUMMARY**

A review of the financial status reports through May 31, 2013 will be provided at the meeting. The financial status reports are attached for the RIFA Board's review.

### **RECOMMENDATION**

Staff recommends approving the financial status reports as of May 31, 2013 as presented.

### **ATTACHMENTS**

Financial Status Reports

# Financial Status

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## Table of Contents

- A. \$7.3 Million Bonds - Cane Creek Centre
- B. General Expenditures for FY 2013
- C. Mega Park – Funding Other than Bond Funds
- D. Berry Hill Mega Park – Lot 4 Site Development
- E. Funds Available for Appropriation
- F. Rent, Interest, and Other Income Realized
- G. Unaudited Financial Statements

**Danville-Pittsylvania Regional Industrial Facility Authority**

\$7.3 million Bonds for Cane Creek Centre - Issued in August 2005

As of May 31, 2013

| <b>Funding</b>  | <b>Funding</b>  | <b>Budget / Contract<br/>Amount</b> | <b>Expenditures</b> | <b>Encumbered</b> | <b>Unexpended /<br/>Unencumbered</b> |
|---|-----------------|-------------------------------------|---------------------|-------------------|--------------------------------------|
| Funds from bond issuance  | \$ 7,300,000.00 |                                     |                     |                   |                                      |
| Issuance cost   | (155,401.33)    |                                     |                     |                   |                                      |
| Bank fees   | (98.25)         |                                     |                     |                   |                                      |
| Interest earned to date   | 486,566.39      |                                     |                     |                   |                                      |
| <b>Cane Creek Parkway <sup>3</sup></b>                              |                 | \$ 3,804,576.00                     | \$ 3,724,241.16     | \$ -              |                                      |
| <b>Swedwood Drive <sup>2</sup></b>                                  |                 | 69,414.00                           | 69,414.00           | -                 |                                      |
| <b>Cane Creek Centre entrance <sup>3</sup></b>                      |                 | 72,335.00                           | 53,878.70           | -                 |                                      |
| <b>Financial Advisory Services</b>                                  |                 | 9,900.00                            | 9,900.00            | -                 |                                      |
| <b>Dewberry contracts <sup>1</sup></b>                              |                 | 69,582.50                           | 69,582.50           | -                 |                                      |
| <b>Dewberry contracts not paid by 1.7 grant <sup>4, 5</sup></b>     |                 | 71,881.00                           | 13,774.62           | 58,106.38         |                                      |
| <b>Land</b>   |                 | -                                   | 2,560,921.67        | -                 |                                      |
| <b>Demolition services</b>  |                 | 71,261.62                           | 71,261.62           | -                 |                                      |
| <b>Legal fees</b>   |                 | -                                   | 50,884.23           | -                 |                                      |
| <b>CCC - Lots 3 &amp; 9 project - RIFA Local Share <sup>6</sup></b> |                 | 142,190.00                          | 112,464.98          | -                 |                                      |
| <b>Other expenditures</b>   |                 | -                                   | 22,089.70           | -                 |                                      |
| <b>Total</b>  | \$ 7,631,066.81 | \$ 4,311,140.12                     | \$ 6,758,413.18     | \$ 58,106.38      | \$ <u><u>814,547.25</u></u>          |

**notes:**

<sup>1</sup> Dewberry Contracts consist of wetland, engineering, surveying and site preparation

<sup>2</sup> Funds being used to cover City and County matching contributions for a VDOT grant for Swedwood Drive

<sup>3</sup> Project completed under budget

<sup>\*</sup> 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.

<sup>4</sup> 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.

<sup>5</sup> The budget amount decreased \$71,279.61 from the September 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.

<sup>6</sup> 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.

| <b>Road Summary-Cane Creek Parkway:</b>       |                        |
|---|------------------------|
| 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             |
| <b>Total Road Contract Allocated to RIFA</b>  | <b>\$ 5,271,916.00</b> |

| <b>Funding Summary - Cane Creek Parkway</b> |                        |
|---|------------------------|
| VDOT  | \$ 1,467,340.00        |
| Bonds                                       | 3,804,576.00           |
|   | <b>\$ 5,271,916.00</b> |

**Danville-Pittsylvania Regional Industrial Facility Authority**

General Expenditures for Fiscal Year 2013

As of May 31, 2013

|   | <u>Funding</u> | <u>Budget</u> | <u>Expenditures</u> | <u>Encumbered</u> | <u>Unexpended /<br/>Unencumbered</u> |
|---|----------------|---------------|---------------------|-------------------|--------------------------------------|
| <b>Funding</b>  |                |               |                     |                   |                                      |
| City Contribution   | \$ 75,000.00   |               |                     |                   |                                      |
| County Contribution   | 75,000.00      |               |                     |                   |                                      |
| Carryforward from FY2012                                    | 11,042.93      |               |                     |                   |                                      |
| Transfer in from Rent for Charles Hawkins Bldg <sup>1</sup> | 33,777.98      |               |                     |                   |                                      |
| <b>Contingency</b>  |                |               |                     |                   |                                      |
| Miscellaneous contingency items                             |                | \$ 47,992.93  | \$ 218.50           | \$ -              | \$ 47,774.43                         |
| <b>Total Contingency Budget</b>                             |                | 47,992.93     | 218.50              | -                 | 47,774.43                            |
| <b>Legal</b>  |                | 108,777.98    | 66,738.26           | -                 | 42,039.72                            |
| <b>Accounting</b>   |                | 20,750.00     | 20,750.00           | -                 | -                                    |
| <b>Annual Bank Fees</b>                                     |                | 4,400.00      | 4,571.25            | -                 | (171.25)                             |
| <b>Postage &amp; Shipping</b>                               |                | 100.00        | 84.36               | -                 | 15.64                                |
| <b>Meals</b>  |                | 2,800.00      | 2,509.36            | -                 | 290.64                               |
| <b>Utilities</b>  |                | 4,000.00      | 229.40              | -                 | 3,770.60                             |
| <b>Insurance</b>  |                | 6,000.00      | -                   | -                 | 6,000.00                             |
| <b>Total</b>  | \$ 194,820.91  | \$ 194,820.91 | \$ 95,101.13        | \$ -              | <u>\$ 99,719.78</u>                  |

<sup>1</sup> The rent proceeds from the Charles Hawkins Research Building are restricted by the EDA. RIFA is allowed to reimburse the General Expenditures budget for expenses of the building after the EDA grant closeout date of 7/31/2008. This transfer is to utilize part of the rent proceeds of the Hawkins Building to reimburse RIFA's General Expenditures budget for such expenses paid by it for the Hawkins Building.

**Danville-Pittsylvania Regional Industrial Facility Authority**  
**Mega Park - Funding Other than Bond Funds**  
**As of May 31, 2013**

| <b>Funding</b>  | <b>Funding</b>          | <b>Budget / Contract<br/>Amount</b> | <b>Expenditures</b>     | <b>Encumbered</b>   | <b>Unexpended /<br/>Unencumbered</b> |
|---|-------------------------|-------------------------------------|-------------------------|---------------------|--------------------------------------|
| City contribution   | \$ 134,482.50           |                                     |                         |                     |                                      |
| County contribution   | 134,482.50              |                                     |                         |                     |                                      |
| City advance for Klutz, Canter, & Shoffner property <sup>1-4</sup>          | 10,340,983.83           |                                     |                         |                     |                                      |
| Tobacco Commission FY09 SSED Allocation                                     | 3,370,726.00            |                                     |                         |                     |                                      |
| Tobacco Commission FY10 SSED Allocation - Engineering Portion               | 407,725.00              |                                     |                         |                     |                                      |
| Tobacco Commission FY10 SSED Allocation - Eng. Portion Deobligated          | (244,797.00)            |                                     |                         |                     |                                      |
| Local Match for TIC FY10 SSED Allocation - Engineering Portion <sup>5</sup> | 76,067.61               |                                     |                         |                     |                                      |
| Additional funds allocated by RIFA Board on 1/14/2013 <sup>6</sup>          | 11,854.39               |                                     |                         |                     |                                      |
| <b>Land</b>   |                         |                                     |                         |                     |                                      |
| Klutz property  |                         | \$ 8,394,553.50                     | \$ 8,394,553.50         | \$ -                |                                      |
| Canter property <sup>2</sup>  |                         | 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            | -                   |                                      |
| <b>Other</b>  |                         |                                     |                         |                     |                                      |
| Dewberry & Davis  |                         | 28,965.00                           | 28,965.00               | -                   |                                      |
| Dewberry & Davis <sup>3</sup>   |                         | 990,850.00                          | 972,754.29              | 18,095.71           |                                      |
| Consulting Services - McCallum Sweeney                                      |                         | 115,000.00                          | 92,130.18               | 22,869.82           |                                      |
| <b>Total</b>  | <b>\$ 14,231,524.83</b> | <b>\$ 14,231,524.83</b>             | <b>\$ 14,190,559.30</b> | <b>\$ 40,965.53</b> | <b>\$ (0.00)</b>                     |

<sup>1</sup> 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.

<sup>2</sup> Settlement fees were drawn from bonds issued for the Berry Hill project 12/1/2011.

<sup>3</sup> 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.

<sup>4</sup> RIFA paid the City back for all advances on 1/3/2012.

<sup>5</sup> 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.

<sup>6</sup> 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.

**Danville-Pittsylvania Regional Industrial Facility Authority**  
**Berry Hill Mega Park - Lot 4 Site Development**  
**As of May 31, 2013**

| <b>Funding</b>   | <b>Funding</b>         | <b>Budget / Contract<br/>Amount</b> | <b>Expenditures</b> | <b>Encumbered</b> | <b>Unexpended /<br/>Unencumbered</b> |
|--|------------------------|-------------------------------------|---------------------|-------------------|--------------------------------------|
| Tobacco Commission FY12 Megasite Allocation                                | \$ 6,208,153.00        |                                     |                     |                   |                                      |
| Local Match for TIC FY12 Megasite Allocation - County Portion <sup>1</sup> | 750,000.00             |                                     |                     |                   |                                      |
| Local Match for TIC FY12 Megasite Allocation - City Portion <sup>1</sup>   | 750,000.00             |                                     |                     |                   |                                      |
| Local Match for TIC FY12 Megasite Allocation - RIFA Portion <sup>2</sup>   | 181,000.00             |                                     |                     |                   |                                      |
| <b>Expenditures</b>  |                        |                                     |                     |                   |                                      |
| VA Water Protection Permit Fee   |                        | 57,840.00                           | 57,840.00           | -                 |                                      |
| <b>Total</b>   | <b>\$ 7,889,153.00</b> | <b>\$ 57,840.00</b>                 | <b>\$ 57,840.00</b> | <b>\$ -</b>       | <b>\$ 7,831,313.00</b>               |

<sup>1</sup> These amounts have not been sent to RIFA yet as they are not needed at this time. Each locality has its local match budgeted.

<sup>2</sup> The RIFA Board approved on 2/11/2013 to transfer the remaining funds of \$175,316.17 from the "Funds Available for Appropriation" budget sheet and funds of \$5,683.83 from the "Rent, Interest, and Other Income Realized" budget sheet to use for the RIFA local match to Tobacco Commission grant #2491 for Berry Hill Mega Park Lot 4 Site Development.

**Danville-Pittsylvania Regional Industrial Facility Authority**  
**Funds Available for Appropriation**  
**As of May 31, 2013**

| <i>Source of Funds</i>   | <u>Funding</u>       | <u>Contract<br/>Amount</u> | <u>Expenditures</u>  | <u>Encumbered</u> | <u>Unexpended /<br/>Unencumbered</u> |
|--|----------------------|----------------------------|----------------------|-------------------|--------------------------------------|
| Yorktowne Reimbursement <sup>1</sup>                           | \$ 181,339.68        |                            |                      |                   |                                      |
| General funds reimbursed by Berry Hill \$11.25M Bonds          | 184,266.38           |                            |                      |                   |                                      |
| Sale of Land to Harmony Church                                 | 36,564.50            |                            |                      |                   |                                      |
| <b>Expenditures</b>  |                      |                            |                      |                   |                                      |
| Transfer to 'Mega Park - Other than Bonds' budget <sup>2</sup> |                      | \$ -                       | \$ 76,854.39         | \$ -              |                                      |
| CBN Grant Agreement - Approved 11/12/12 <sup>3</sup>           |                      | 150,000.00                 | 150,000.00           | -                 |                                      |
| Transfer to Berry Hill Mega Park Lot 4 Project <sup>4</sup>    |                      | -                          | 175,316.17           | -                 |                                      |
| <b>Totals</b>  | <b>\$ 402,170.56</b> | <b>\$ 150,000.00</b>       | <b>\$ 402,170.56</b> | <b>\$ -</b>       | <b>\$ (0.00)</b>                     |

<sup>1</sup> Since Yorktowne did not meet the job requirements set forth in its initial Performance Agreement executed in 2005, it is repaying incentive money to RIFA to account for the jobs not created. In accordance with the amended Performance Agreement, we received one payment from Yorktowne in the amount of \$45,334.92 in November 2009. We received another payment of \$136,004.76 in November 2010. No further payments are due unless Yorktowne fails to meet the new targets in the amended performance agreement. The RIFA Board approved at the March 14, 2011 meeting to retain these funds for use within RIFA. These funds are available for the RIFA Board to allocate to budgets as needed.

<sup>2</sup> The RIFA Board approved to utilize \$65,000 of these funds toward the local match for the engineering portion of Tobacco Commission grant #1916 for the Berry Hill Mega Park. Due to expiration of the Tobacco Commission grant, the RIFA Board approved on 1/14/2013 to utilize an additional \$11,854.39 to cover budgeted Phase I engineering costs.

<sup>3</sup> This grant is to be paid to CBN according to the approved agreement once CBN has (1) delivered a Performance Bond or letter of credit to RIFA and (2) obtained a building permit and provided RIFA with proof that substantial grading has started.

<sup>4</sup> The RIFA Board approved on 2/11/2013 to transfer the remaining funds of \$175,316.17 from the "Funds Available for Appropriation" budget sheet and funds of \$5,683.83 from the "Rent, Interest, and Other Income Realized" budget sheet to use for the RIFA local match to the Tobacco Commission grant #2491 for Berry Hill Mega Park Lot 4 Site Development.

**Danville-Pittsylvania Regional Industrial Facility Authority**

Rent, Interest, and Other Income Realized

As of May 31, 2013

| Source of Funds   | Funding                     |   |                      | Expenditures        | Unexpended /<br>Unencumbered |                     |                      |
|---|-----------------------------|---|----------------------|---------------------|------------------------------|---------------------|----------------------|
|   | Carryforward<br>from FY2012 | Receipts<br>May 2013                      | Receipts<br>FY2013   |                     |                              |                     |                      |
| <u>Carryforward</u>   | \$ 376,519.31               |   |                      |                     |                              |                     |                      |
| <u>Current Lessees</u>  |                             |   |                      |                     |                              |                     |                      |
| Institute for Advanced Learning and Research (IALR) <sup>1</sup>    | Cyberpark                   | Hawkins Research Bldg at 230 Slayton Ave. | \$ 3,904.51          | \$ 65,991.40        |                              |                     |                      |
| Institute for Advanced Learning and Research (IALR)                 | Cyberpark                   | IALR Building at 150 Slayton Ave.         | -                    | 9.00                |                              |                     |                      |
| Securitas   | Cyberpark                   | Gilbert Building at 1260 South Boston Rd. | 300.00               | 3,300.00            |                              |                     |                      |
| Axxor N.A. LLC <sup>3</sup>   | Cane Creek                  | Apartments at 390 Cedar Lane              | -                    | 500.00              |                              |                     |                      |
| Guilford Whittail Management  | Berry Hill                  | Klutz Farm off State Rd. 863              | 5,000.00             | 5,000.00            |                              |                     |                      |
| Browning & Associates, Ltd. <sup>4</sup>                            | Berry Hill                  | 4380 Berry Hill Road House                | -                    | 1,000.00            |                              |                     |                      |
| Mountain View Farms of Virginia, L.C.                               | Berry Hill                  | 30 acre tract on Stateline Bridge Rd.     | -                    | 1,200.00            |                              |                     |                      |
| Osborne Company of North Carolina, Inc.                             | Berry Hill                  | 4380 Berry Hill Road Pastureland          | 1,000.00             | 1,000.00            |                              |                     |                      |
| Clodfeiter Hunting Lease  | Berry Hill                  | 371.13 acres off State Road 863           | -                    | -                   |                              |                     |                      |
| Mark L. Osborne   | Berry Hill                  | Mega Park Lot 8 approx. 34.4 acres        | -                    | -                   |                              |                     |                      |
| <b>Total Rent</b>   |                             |   | <b>\$ 10,204.51</b>  | <b>\$ 78,000.40</b> |                              |                     |                      |
| <u>Interest Received</u> <sup>2</sup>                               |                             |   | \$ 18.74             | \$ 276.52           |                              |                     |                      |
| <b>Expenditures</b>   |                             |   |                      |                     |                              |                     |                      |
| Transfer to Berry Hill Mega Park Lot 4 Project <sup>5</sup>         |                             |   |                      | \$ 5,683.83         |                              |                     |                      |
| Transfer to General Expenditures budget - Hawkins Bldg <sup>6</sup> |                             |   |                      | \$ 33,777.98        |                              |                     |                      |
| <b>Totals</b>   |                             |   | <b>\$ 376,519.31</b> | <b>\$ 10,223.25</b> | <b>\$ 78,276.92</b>          | <b>\$ 39,461.81</b> | <b>\$ 415,334.42</b> |

**Restricted** <sup>1</sup> \$ 357,391.06  
**Unrestricted** \$ 57,943.36

<sup>1</sup> Please note that rent proceeds must be used in accordance with the U.S. Economic Development Administration's (EDA) Standard Terms and Conditions

<sup>2</sup> Please note that this is only interest received on RIFA's general money market account.

<sup>3</sup> Lease terminated August 31, 2012

<sup>4</sup> Lease terminated August 13, 2012

<sup>5</sup> The RIFA Board approved on 2/11/2013 to transfer the remaining funds of \$175,316.17 from the "Funds Available for Appropriation" budget sheet and funds of \$5,683.83 from the "Rent, Interest, and Other Income Realized" budget sheet to use for the RIFA local match to the Tobacco Commission grant #2491 for Berry Hill Mega Park Lot 4 Site Development.

<sup>6</sup> The rent proceeds from the Charles Hawkins Research Building are restricted by the EDA as stated in note 1. RIFA is allowed to reimburse the General Expenditures budget for expenses paid for the building after the EDA grant closeout date of 7/31/2008. This transfer is to utilize part of the rent proceeds of the Hawkins Building to reimburse RIFA's General Expenditures budget for such expenses paid by it for the Hawkins Building.

**Danville-Pittsylvania Regional Industrial Facility Authority**  
**Statement of Net Assets**<sup>1,2</sup>  
**May 31, 2013\***

|  | <b>Unaudited<br/>FY 2013</b> |
|--|------------------------------|
| <b>Assets</b>  |                              |
| <i>Current assets</i>  |                              |
| Cash - checking  | \$ 219,317                   |
| Cash - money market  | 1,140,222                    |
| Prepays  | 4,022                        |
| <i>Total current assets</i>                                  | 1,363,561                    |
| <i>Noncurrent assets</i>                                     |                              |
| Restricted cash - project fund CCC bonds                     | 917,771                      |
| Restricted cash - debt service fund CCC bonds                | 973,957                      |
| Restricted cash - debt service fund Berry Hill bonds         | -                            |
| Restricted cash - debt service reserve fund Berry Hill bonds | 2,000,083                    |
| Capital assets not being depreciated                         | 24,839,271                   |
| Capital assets being depreciated, net                        | 27,794,063                   |
| Construction in progress                                     | 2,277,130                    |
| Unamortized bond issuance costs                              | 627,906                      |
| <i>Total noncurrent assets</i>                               | 59,430,181                   |
| <b>Total assets</b>  | <b>60,793,742</b>            |
| <b>Liabilities</b>   |                              |
| <i>Current liabilities</i>                                   |                              |
| Bonds payable - current portion                              | 1,045,000                    |
| Unearned income  | 5,850                        |
| <i>Total current liabilities</i>                             | 1,050,850                    |
| <i>Noncurrent liabilities</i>                                |                              |
| Bonds payable - less current portion                         | 10,275,000                   |
| <i>Total noncurrent liabilities</i>                          | 10,275,000                   |
| <b>Total liabilities</b>                                     | <b>11,325,850</b>            |
| <b>Net Assets</b>  |                              |
| Invested in capital assets - net of related debt             | 48,110,181                   |
| Unrestricted   | 1,357,711                    |
| <b>Total net assets</b>                                      | <b>\$ 49,467,892</b>         |

<sup>1</sup> Please note that 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.

<sup>2</sup> Please note that 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.

\*Please note these statements are for the period ended May 31, 2013 as of May 29, 2013, the date of preparation. Due to statement preparation occurring in close proximity to month-end, these statements may not include some pending adjustments for the period.

**Danville-Pittsylvania Regional Industrial Facility Authority**  
**Statement of Revenues and Expenses and Changes in Fund Net Assets**  
**May 31, 2013\***

|  | <b>Unaudited<br/>FY 2013</b> |
|--|------------------------------|
| <b>Operating revenues</b>                      |                              |
| Virginia Tobacco Commission Grants             | 5,708,878                    |
| Rental income                                  | 63,656                       |
| <b>Total operating revenues</b>                | <b>5,772,534</b>             |
| <b>Operating expenses</b> <sup>4</sup>         |                              |
| Mega Park expenses <sup>3</sup>                | 70,959                       |
| Cane Creek Centre expenses <sup>3, 5</sup>     | 104,711                      |
| Cyber Park expenses <sup>3</sup>               | 166,636                      |
| Professional fees                              | 46,728                       |
| Insurance                                      | 5,456                        |
| Other operating expenses                       | 2,873                        |
| <b>Total operating expenses</b>                | <b>397,363</b>               |
| <b>Operating income</b>                        | <b>5,375,171</b>             |
| <b>Non-operating revenues (expenses)</b>       |                              |
| Interest income                                | 505                          |
| Interest expense                               | (185,992)                    |
| <b>Total non-operating expenses, net</b>       | <b>(185,487)</b>             |
| <b>Net income before capital contributions</b> | <b>5,189,684</b>             |
| <b>Capital contributions</b>                   |                              |
| Contribution - City of Danville                | 396,793                      |
| Contribution - Pittsylvania County             | 396,792                      |
| <b>Total capital contributions</b>             | <b>793,585</b>               |
| <b>Change in net assets</b>                    | <b>5,983,269</b>             |
| <b>Net assets at July 1,</b>                   | <b>43,484,623</b>            |
| <b>Net assets at May 31,</b>                   | <b>\$ 49,467,892</b>         |

<sup>3</sup> A portion or all of these expenses may be capitalized at fiscal year-end.

<sup>4</sup> Please note that most non-cash items, such as depreciation and amortization, are not included here until year-end entries are made.

<sup>5</sup> Please note that this line item includes fees of \$55,740 related to the \$7.3M bonds for Cane Creek.

*Danville-Pittsylvania Regional Industrial Facility Authority*  
*Statement of Cash Flows*  
*May 31, 2013\**

|  | <b>Unaudited<br/>FY 2013</b> |
|--|------------------------------|
| <b>Operating activities</b>  |                              |
| Receipts from grant reimbursement requests   | \$ 5,867,159                 |
| Receipts from leases   | 76,503                       |
| Incentives paid  | (150,000)                    |
| Payments to suppliers for goods and services   | (326,124)                    |
| <b>Net cash provided by operating activities</b>   | <b>5,467,538</b>             |
| <b>Capital and related financing activities</b>  |                              |
| Capital contributions  | 793,335                      |
| Interest paid on bonds   | (309,628)                    |
| Principal repayments on bonds  | (5,825,000)                  |
| <b>Net cash used by capital and related financing activities</b>   | <b>(5,341,293)</b>           |
| <b>Investing activities</b>  |                              |
| Interest received  | 505                          |
| <b>Net cash provided by investing activities</b>   | <b>505</b>                   |
| <b>Net increase in cash and cash equivalents</b>   | 126,750                      |
| <b>Cash and cash equivalents - beginning of year (including restricted cash)</b>                                     | <b>5,124,600</b>             |
| <b>Cash and cash equivalents - through May 31, 2013 (including restricted cash)</b>                                  | <b>\$ 5,251,350</b>          |
| <b>Reconciliation of operating income before capital contributions to net cash provided by operating activities:</b> |                              |
| Operating income   | \$ 5,375,171                 |
| Adjustments to reconcile operating income to net cash provided by operating activities:                              |                              |
| Non-cash operating in-kind expenses  | 250                          |
| Changes in assets and liabilities:   |                              |
| Change in prepaids   | 5,557                        |
| Change in due from other governments   | 158,281                      |
| Change in other receivables  | 17,886                       |
| Change in accounts payable   | (84,851)                     |
| Change in unearned income  | (3,256)                      |
| Change in security deposit   | (1,500)                      |
| <b>Net cash provided by operating activities</b>   | <b>\$ 5,467,538</b>          |

| <b>Components of cash and cash equivalents at May 31, 2013:</b> |                     |
|---|---------------------|
| American National - Checking                                    | \$ 219,317          |
| American National - General money market                        | 1,140,222           |
| Wachovia - \$7.3M Bonds CCC Debt service fund                   | 973,957             |
| Wachovia - \$7.3M Bonds CCC Project fund                        | 917,771             |
| US Bank - \$11.25M Bonds Berry Hill Debt service fund           | -                   |
| US Bank - \$11.25M Bonds Berry Hill Debt service reserve fund   | 2,000,083           |
|   | <b>\$ 5,251,350</b> |