

DANVILLE-PITTSYLVANIA REGIONAL INDUSTRIAL FACILITY AUTHORITY

Minutes

December 14, 2018

The Regular Meeting of the Danville-Pittsylvania Regional Industrial Facility Authority convened at 8:15 a.m. on the above date at the Institute for Advanced Learning and Research, 150 Slayton Drive, Room 206, Danville, Virginia. Present were City of Danville Members Vice Chairman Sherman M. Saunders, Fred O. Shanks, III and Alternate J. Lee Vogler. Pittsylvania County Members present were Chairman Robert W. Warren, Ronald S. Scearce and Alternate Elton W. Blackstock. *Chairman Warren entered the meeting at 8:40 a.m.*

City/County staff members attending were: City Manager Ken Larking, County Administrator David Smitherman, Deputy City Manager Earl Reynolds, Assistant County Administrator for Planning & Development Gregory Sides, City of Danville Director of Economic Development Telly Tucker, Assistant Director of Economic Development Corrie Teague Bobe, Project Manager Kelvin Perry, Consultant Linwood Wright, City of Danville Director of Finance Michael Adkins, City of Danville Senior Accountant Henrietta Weaver, Clement Wheatley Attorneys Michael Guanzon and Jennifer Burnette, and Secretary to the Authority Susan DeMasi. Also present were Brian Bradner and Shawn Harden from Dewberry & Davis, and Brown Edwards Accountant Chris Murray.

PUBLIC COMMENT PERIOD

No one desired to be heard.

APPROVAL OF MINUTES OF THE NOVEMBER 13, 2018 MEETING

Upon **Motion** by Mr. Blackstock and **second** by Mr. Scearce, Minutes of the November 13, 2018 Meeting were approved as presented. Draft copies had been distributed to Authority Members prior to the Meeting.

NEW BUSINESS

5A. – CONSIDERATION OF RESOLUTION NO. 2018-12-14-5A APPROVING THE EXPANDED ROLE OF A. KENT SHELTON, P.E.

Mr. Guanzon noted staff recommends that Kent Shelton, who provides professional monitoring and limited inspection services for other projects at Berry Hill, have his role expanded for the Phase 1 Virginia Water Line Project. For the other parts of this project, RIFA had previously approved that the cost the City pays Mr. Shelton for his services as part of the City's contribution to the due to/from. According to Dewberry, there will be no overlap of services from what Dewberry does and what Mr. Shelton does. The estimated cost is \$29,640 at the same hourly rate of \$38.

Mr. Shanks **moved** for adoption of *Resolution 2018-12-14-5A, approving the expanded role of A. Kent Shelton, P.E., as set forth in Resolutions 2017-03-13-5C and 2017-11-15-5D, to serve as the project monitor and limited inspector for the Phase I Virginia Water Line Project at the Authority's Southern Virginia Mega Site at Berry Hill project (formerly known as the Berry Hill Mega Park project), at an estimated cost of \$29,640.00 (existing hourly rate of \$38 for an estimated 780 hours of work).*

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

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

5B. CONSIDERATION OF RESOLUTION NO. 2018-12-14-5B APPROVING A ONE-YEAR RENEWAL OF A LEASE WITH MOUNTAIN VIEW FARMS, L.C.

Ms. Burnette noted for the past few years, RIFA has had a lease with Mountain View Farms for planting and harvesting sod, soybeans and other crops, but not tobacco; it is up for renewal in January. The only change in this renewal is to make clear what the GPIN is, because of some changes with subdividing property there is a new GPIN. The lease would be for another year, with a rental fee of \$1,200 and a sixty day early termination right in the event that RIFA has a recruit. Mr. Guanzon explained that Southern Virginia Megasite is very large and there were issues at one point with trespassers; by having someone occupying the land, there is indirect surveillance.

Mr. Searce **moved** for adoption of *Resolution 2018-12-14-5B, approving a one-year renewal of the Lease with Mountain View Farms, L.C., a Virginia limited liability company, as tenant, for that certain real property (being a portion of current GPIN 1356-80-4414) of the Authority, containing approximately 30 acres and fronting on Stateline Bridge Road, in the Authority's Southern Virginia Mega Site at Berry Hill project (formerly known as the Berry Hill Mega Park project), in Pittsylvania County, Virginia, for the purpose of planting and harvesting sod, soybeans, and/or other cover crops, but not tobacco, at a total rental fee of \$1,200; such renewal also includes a 60-day early termination right and right to show the property to business recruits of the Authority.*

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

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

5C. CONSIDERATION OF RESOLUTION 2018-12-14-5C APPROVING A REFERRAL AGREEMENT WITH ALLIANCE DATA CENTER ADVISORS, LLC

City of Danville Consultant Linwood Wright explained this was an agreement negotiated by Matt Rowe, Telly Tucker, Michael Guanzon and himself. In effect, RIFA will be entering into an agreement with Charles Henyon and his partner, who developed the DuPont Fabros Data Center Park in Ashburn, VA. RIFA is committing to pay Alliance Data Center Advisors based on projects that RIFA has the right to approve or reject, if their referral results in a developed project; otherwise RIFA owes Alliance nothing. Mr. Wright noted they sent the agreement to Mr. Henyon and he called back questioning what was a developable acre. Mr. Wright explained to him a developable acre is an acre that has a building or parking lot on it, or is useful. RIFA will not pay \$1,000 an acre for a referral if it dealt with wetlands, historic properties or property that cannot be developed. RIFA also requires them to bring the prospect to the site at their expense, and that will enable RIFA to vet the projects carefully before agreeing to anything. Mr. Saunders questioned Mr. Guanzon if they should institute a cap on developable acres and Mr. Guanzon noted they shouldn't. RIFA can always negotiate

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what happens because they have control; this is more of a finder's fee. RIFA can control it indirectly and it gives a lot more flexibility than with a standard real estate agent arrangement.

Mr. Vogler questioned was their purpose to find and recruit data centers or was it broader than that and Mr. Tucker noted it was broader. They have a reputation in northern Virginia for finding some of those larger data centers, but it would be any industrial prospect that RIFA thinks warrants going into Berry Hill. Mr. Vogler asked if was just for Berry Hill or all RIFA parks and Mr. Tucker stated all RIFA parks. Mr. Shanks questioned if the recruit closes on the real estate and doesn't build, RIFA would still owe that money and Mr. Guanzon stated yes. Mr. Tucker suggested they could ask the potential prospect, as a deposit, to pay an amount equal to what RIFA pays as the finder's fee to the consultant, until the project is completed; if they don't develop, they lose it and RIFA takes that to pay the consultant.

Mr. Blackstock questioned if the money the finder's fee would be paid out of exists or is that something the County and the City would have to put up additionally and Mr. Tucker explained it was something the County and the City would have to put up. Mr. Guanzon noted it would have to be built in because that finder's fee is only paid if RIFA has a signed contract with the recruit. Mr. Smitherman noted reading this, it does not read like it contemplates a closing. Mr. Guanzon explained it was a contract because some of RIFA's recruits don't buy the land, the City or County IDAs are the ones that hold the land, builds the property and does a lease of the property to the recruit, so there isn't a closing. Mr. Smitherman noted conceivably this could default, somebody could encumber RIFA's land, the consultant gets paid, nothing vertical ever happens and RIFA's end goal didn't come true. Mr. Guanzon stated that could happen, and is why he is saying it is good that RIFA has the ability to control their own level of risk at that time. RIFA can negotiate an amendment with respect to this particular deal.

Mr. Shanks **moved** for adoption of *Resolution No. 2018-12-14-5C, approving that certain Referral Agreement with Alliance Data Center Advisors LLC, a Virginia limited liability company, for the introduction to the Authority of certain prospective purchasers or tenants to a capital lease, at a referral fee equal to \$1,000 per Developable Acre of Land that can be feasibly developed for industrial use and economic development, payable only after the occurrence of a Recruitment Closing with that purchasers or tenants.*

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

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

5D. CONSIDERATION OF RESOLUTION 2018-12-14-5D APPROVING A LOGO FOR SOUTHERN VIRGINIA MEGA SITE AT BERRY HILL

Mr. Tucker noted staff has been working with the client that was selected, based on the logo preference of the Board from the previous meeting; they have been working to align the colors of the logo with what was approved for the Danville Pittsylvania County logo. They have finalized the color selection, but it is still being worked on. Staff wanted to update the Board.

5E. CONSIDERATION OF RESOLUTION NO. 2018-12-14-5E APPROVING THE NAME CHANGE OF THE SOUTHERN VIRGINIA MEGA SITE AT BERRY HILL

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Mr. Tucker stated the Board had approved, previously, Southern Virginia Mega Site at Berry Hill, Mega Site being two words. In research, some people hyphenate it, some people do two words, some do one. Staff recommendation is to proceed with it as one word, Megasite; staff needed to come back to the Board to have a resolution to approve that. Mr. Shanks noted he was concerned after the last meeting with the way the logo would look using all four letters; this is a good way to get around that. Mr. Guanzon noted Ms. Burnette checked the trademark files to make sure there wasn't anything that would interfere with it and it looks fine.

Mr. Searce **moved** for adoption of *Resolution 2018-12-14-5E approving the name change of the Southern Virginia Mega Site at Berry Hill project to be known as "Southern Virginia Megasite at Berry Hill" or "SVM."*

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

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

5F. CONSIDERATION OF RESOLUTION NO. 2018-12-14-5F ACCEPTING THE \$1,843,540 BID FROM C.W. CAULEY & SON, INC., FOR THE PHASE 1 WATER PROJECT

Shawn Harden from Dewberry explained staff received bids for the Phase 1 Water Line to serve the Southern Virginia Mega Site; they received six bids with the low bid being C.W. Cauley & Sons at \$1,843,540.00. The Tobacco grant with local match is \$2.4M, so RIFA is well within their budget. RIFA received very competitive bids for this project, will have extra money for contingency and recommend awarding the contract to C.W. Cauley & Son.

Mr. Shanks **moved** for adoption of *Resolution No. 2018-12-14-5F, accepting the \$1,843,540.00 bid submitted on or before November 27, 2018, from C.W. Cauley & Son, Inc., a Virginia corporation, as the lowest responsive and responsible bidder submitted for SOVA Mega Site at Berry Hill - Phase 1 Virginia Water project, as more particularly described in that certain Advertisement for Bids advertised on October 22, 2018, issued by the Authority, and being within available funds.*

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

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

Mr. Shanks stated he wanted to make sure the minutes were correct, did the Board agree on the Resolution listed in Item D, Item E or both. Mr. Guanzon noted just Item E.

5G. PRESENTATION OF AUDIT OF THE AUTHORITY'S FINANCIAL STATEMENTS FOR YEAR ENDING JUNE 30, 2018

Mr. Chris Murray from Brown, Edwards gave the audit report, and explained there were three documents, the first was the Financial Report; they issued a clean, unmodified opinion this

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year. Mr. Murray reviewed the Statement of Net Position, noting there was a \$1.2M drop in receivables that was really just timing on reimbursements around the grading of Phase I at the Mega Park. To go along with that there was a drop down in Current Liabilities; Accounts Payable in Construction and Retainage Payable were up last year but that was related to the construction as well, those balances are down. Under Revenue and Expenses, everything was fairly flat and comparable to previous years and Tobacco Commission grants were relatively flat. The reimbursement of incentive grants dropped to zero, that was FY 2017 and completed the reimbursements from Elkay. The biggest change under Operating Expenses was the Cyber Park last year had the land donation for the Kyocera Agreement, which is similar this year. Going to the Letters, the first is the Required Communication; this is a required document they have to issue to let the Board know what the Auditor's responsibilities are, what are the Authority's responsibilities and lets the Board know they did not have any disagreements with management. It also lets the Board know if there were any adjustments with management to post during the audit. The final document is the Comments on Internal Controls, there were no new comments this year. The only comment they had was the segregation of duties which has been there every year; it is based on limited staffing and does not rise to the level of a Significant Deficiency or a Material Weakness. The rest of the document was information on standards; one standard to consider is GASB 89 that is coming up in 2021, but localities can early implement. It is related to interest costs on loans.

Mr. Shanks **moved** that the Authority accept the presentation of the Audit for the year ending June 30, 2018 by Brown, Edwards. The Motion was **seconded** by Mr. Scarce.

Mr. Shanks thanked Mr. Adkins and Ms. Weaver for doing their usual great job and thanked Mr. Murray; Mr. Warren noted his agreement.

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

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

5H. FINANCIAL STATUS REPORTS AS OF NOVEMBER 30, 2018

Authority Treasurer Michael Adkins gave the Financial Status report as of November 30, 2018 beginning with the Cane Creek Bonds showing two expenditures in November. The first was \$2,242 paid to Dewberry for continued wetland monitoring, and \$2,402.00 paid to Clement Wheatley for legal fees for Cane Creek Centre. General Expenditures for FY 2019 show RIFA paid legal fees to Clement Wheatley of \$1,500 related to project VP and \$13,905 for General Legal Counsel, \$230 for meals and \$31 for utilities. Mr. Adkins noted there was an expenditure for the purchase of a scanner for Ms. Weaver; they have a back log of documents from the inception of RIFA, so they are trying to create an electronic file system of those documents. The Mega Site at Berry Hill showed no expenditures. Lot 4 Site Development has an expenditure of \$84,108 for Haymes Brothers which was part of the Phase 1 Pad Grading. Lot 8 Site Development shows no expenditures, Water and Sewer at Berry Hill shows \$7,810 expended to Dewberry for Amendment No. 22 and \$1,000 to Norfolk Southern related to a permit. Rent, Interest and Other Income shows interest earned of \$440, and a payment issued to the Institute for Hawkins' Building Maintenance of \$13,636 for October; the lease payment from the Institute and the payment to the Institute for the month of November

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occurred during the last couple days of November and did not get picked up for this report.

Mr. Saunders **moved** to accept the Financial Report as presented. The Motion was **seconded** by Mr. Searce.

Mr. Warren noted he was glad Mr. Adkins has purchased the scanner; he knows that City Council does their meetings on I Pads and the County is doing theirs on I Pads; why doesn't RIFA do their meetings on the I Pads so they don't have to have paper copies of the agendas. Mr. Shanks noted it is already there, but Mr. Warren stated staff still brings the hard copies and Mr. Saunders noted some people read it easier on the hard copy. Mr. Guanzon stated the Board is also required by the open meeting law to have copies available for the public.

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

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

6. CLOSED SESSION

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

At 8:56 a.m. Mr. Shanks **moved** that the Meeting of the Danville-Pittsylvania Regional Industrial Facility Authority be recessed in a Closed Meeting for the following purposes:

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

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

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

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

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

D. On **Motion** by Mr. Shanks and **second** by Mr. Searce and by unanimous vote at 9:15 a.m., the Authority returned to open meeting.

E. Mr. Searce **moved** for adoption of the following Resolution:

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

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

NOW, THEREFORE, BE IT RESOLVED that the Authority hereby certifies that, to the best of each Member's knowledge, (i) only public business matters lawfully exempted by the open meeting requirements of Virginia Law were discussed in the Closed Meeting to which this Certification Resolution applies, and (ii) only such public business matters as were identified in the motion convening the Closed Meeting were heard, discussed, or considered by the Authority.

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

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

7. COMMUNICATIONS

Mr. Shanks thanked staff for everything they have done and a Merry Christmas and Happy Holiday Season. Mr. Searce noted a Merry Christmas to everyone. Mr. Warren noted a Merry Christmas to everyone and thanked everyone for all the support this year chairing RIFA, he thought it was a really exciting year with some wonderful announcements, hopes RIFA can continue with that excitement and looks forward to seeing the Staunton River RIFA starting. Mr. Warren thanked the City for the relationship they have with them and the County, it is outstanding; people are amazed at their collaborative effort.

Mr. Guanzon noted the pre-RIFA meeting for staff is scheduled for Monday, does everyone want to continue on that date; if staff wants to move it, it shouldn't be extended past next week because of holidays and agenda deadlines. Staff agreed to keep it on Monday and email any agenda items to Kim Custer today.

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Mr. Tucker noted he and Mr. Rowe participated in a call with Liz Povar who was previously at VEDP, who now consults privately and provides a lot of support for Region 3 Go Virginia; she contacted Mr. Tucker in that role. At the State level, Go Virginia's focus has shifted, they are now starting to entertain site development requests which initially wasn't the direction Go Virginia wanted to go in. The question was posed, was there an opportunity for all the mega parks to do a joint application to Go Virginia to do something around marketing. They had discussion and some feedback; Go Virginia is not enthusiastic on spending their money on marketing but they have approved an application for the Maymack Site on 95 to do some actual site development and infrastructure work; there is now an application from Commonwealth Crossing to do some site development work. Mr. Tucker noted he wanted to ask the Board if they would give staff permission to work with Dewberry to see if there are some other site development projects at Berry Hill they might consider applying for. Mr. Tucker noted they submitted their initial support behind the community colleges and the higher education centers working together on a joint application for workforce development; they received one grant and are submitting another one. Any other grant staff submits would compete with that one; if the state board decides to support workforce development that would be great, but if they decide to support site development, that would be great too. Mr. Tucker stated he believes VEDP is trying to rebuild and rebrand Virginia. One of the things they identified as a deficit for Virginia is they don't have nearly as many sites characterized and as far developed along as some other states. There is a push at the state level to invest in sites, getting more of them shovel ready and more to Tier 4 and Tier 5 status. Mr. Tucker noted for Berry Hill, they still need to extend sewer and Mr. Harden explained the sewer force main still has a gap which would cost about \$1.2M, it is not a huge project, but it is a good project and a strong candidate. Mr. Tucker explained they will look at some projects they could submit and at the next meeting come back to the Board with a plan on what they want to apply for.

Meeting adjourned at 9:33 a.m.

s/Fred O. Shanks, III
Chairman

s/ Susan M. DeMasi
Secretary to the Authority