

PARTICIPATION AGREEMENT

THIS PARTICIPATION AGREEMENT (this "Agreement"), dated as of this 11th day of October, 2016 by and between the WESTERN VIRGINIA REGIONAL INDUSTRIAL FACILITY AUTHORITY, a political subdivision of the Commonwealth of Virginia created pursuant to Chapter 64 of Title 15.2 of the Code of Virginia, 1950, as amended, (the "Authority") and Roanoke County, the City of Roanoke, and the City of Salem, political subdivisions of the Commonwealth of Virginia and members of the Authority (the "Participants" and each individually, a "Participant").

WHEREAS, the Authority has been created under the provision of Chapter 64 of Title 15.2 of the Code of Virginia, 1950, as amended (the "Act"), to promote economic development in the Participants' geographical region; and,

WHEREAS, the Participants and the Authority have identified real property located in Roanoke County described as five (5) parcels in Roanoke County, Virginia roughly bounded by and in the vicinity of Interstate 81 and Wood Haven Road, which consists of approximately one hundred six (106) acres, together with such other parcels of real property that may be acquired by the Authority in connection with the project contemplated herein (the "Real Property") to be acquired and used for industrial park or other economic development purposes and the need for the design, acquisition, construction and equipping of water, sewer, roadway and other improvements on or near the Real Property (together, the "Project"), as an important project for the region to promote the purposes for which the Authority has been formed; and,

WHEREAS, the Act authorizes the Authority, among other things, to develop, construct, improve, equip and maintain facilities for industrial or commercial purposes, to expend funds as may be available to it for the purposes of developing such facilities, to enter into contracts of any kind with respect to carrying out its powers under the Act, to accept funds and property from counties, cities and towns and use the same for any of the purposes for which the Authority is created and to enter into cooperative arrangements with any governmental entity in furtherance of the purposes of the Act, and authorizes each Participant to provide funds to the Authority for any of its purposes and each Participant is otherwise authorized by law to make appropriations for the accomplishment of the lawful purposes and objectives of such Participant; and

WHEREAS, the Authority and the Participants desire to enter into this Agreement for the purposes of establishing the scope of the Project, describing certain contributions of the Authority and the Participants toward development of the Project and providing for the sharing of certain revenue from the Project.

NOW THEREFORE, in order to carry out the purposes for which the Authority was formed and to promote economic development for the benefit of the Participants, the parties hereto do hereby agree as follows:

I

PROJECT DESCRIPTION

The Project may include the following on or near the Project site: (i) acquisition and disposition by the Authority of interests in Project real estate, (ii) promotion of the Project site for economic development purposes, (iii) grading all or a portion of the Project site, (iv) improving, replacing and extending water, sewer, natural gas, electrical and other utility facilities, (v) construction, rehabilitating and expanding buildings, (vi) construction of parking facilities, (vii) constructing, expanding and improving roads, streets and bridges (viii) purchasing or leasing machinery and tools, (ix) making other improvements consistent with the foregoing actions and in support of the objectives of the Project, (x) financing any or all of the above activities, (xi) selling, leasing, disposing of or making grants of interests in Project real property and personal property in furtherance of the objectives of the Project and (xii) taking other actions consistent with developing the Project for economic development purposes.

II

PROJECT UNDERTAKEN IN THE NAME OF THE AUTHORITY

The acquisition and development of the Project shall be undertaken in the name of the Authority and, subject to the terms of this Agreement, the Authority, shall own, hold, develop, lease, use, sell, encumber, transfer, and dispose of any real or personal property comprising part or all of the Project, provided, however, that the Authority agrees not to take any action related to the financing, development and operation of the Project without the unanimous consent of all of the Participants as reflected by action of the Committee (as defined below) and the Authority further agrees that it will not lease, use, sell, encumber, transfer or dispose of any real or personal property comprising part or all of the Project or take any action or perform any function related to the Project or any portion thereof without the unanimous consent of all of the Participants as reflected by action of the Committee.

III

PROJECT PARTICIPATION COMMITTEE

The Participants shall establish a participation committee for the Project (**the "Committee"**) that shall consist of the respective County Administrator or City Manager of each Participant, or the respective designee of each such chief administrative officer. The Committee shall oversee the development and management of the Project. The Committee shall organize and may adopt bylaws and other organizational documents to designate its procedures and responsibilities. Committee action shall require an unanimous, affirmative vote by all of the Participants. The Committee will recommend action to the Board of Directors of the Authority (the "Board"), and any Committee action must be ratified by the Board.

The locality in which the Project is situated (the "Host Locality") shall not enter into a performance agreement or any other arrangement that involves the rebate or abatement of all or a

portion of the enumerated taxes to the owner of the Real Property without the unanimous consent of the Committee. The Committee may choose to review and recommend to the Authority restrictive covenants for the development of the Real Property and the Project; such restrictive covenants shall include setbacks, landscaping, land uses and other similar restrictions that are usual and customary in industrial developments. The Authority shall take all steps necessary to implement such restrictive covenants at the recommendation of the Committee. The Committee may collaborate with the planning staff of each of the Participants to develop land use regulations and other such standards of land use to be established on the Real Property. Such regulations and standards of land use will be developed in order to maximize the revenue producing use of the Real Property. Such standards may include the average wage of the jobs produced by the Project, anticipated tax returns of the Project, and numbers of jobs created by the Project. The Committee shall present such recommended land use regulations to the Authority for consideration and implementation.

The Host Locality agrees to cooperate with the Authority in pursuing the rezoning or other land use regulation of the Real Property and diligently pursue approval of such rezoning or other land use regulation of the Real Property, based on the recommendation of the Committee.

IV

ANNUAL BUDGET

As soon as practicable after the Committee is formed, and thereafter by March 1 of each year, the Committee shall develop and present to the Participants and the Authority a budget for the fiscal year beginning the following July 1, showing (a) all contemplated expenditures for costs and expenses of the Project (the "**Project Costs**"), including the cost of debt service ("**Project Debt Service Costs**") and the cost of operations and administration of the Project including costs to design, acquire, construct, equip and operate the Project not paid from the proceeds of Project Debt (as defined below) ("**Project Administration Costs**") and (b) all anticipated Project Revenue (as defined below) and other funds expected to be generated from or in connection with the Project, including federal and state grants. This annual budget shall be approved by the Committee on or before April 1 of each year.

V

CONTRIBUTION AMOUNTS

Subject to Article VIII below, each Participant shall make payments on a quarterly basis, in advance, or on another basis if approved by the Project Participant Committee, sufficient to pay the Project Administration Costs (the "**Project Administration Contribution Amounts**") in the following proportions (the "**Contribution Proportions**"): City of Roanoke = 44.2%, Roanoke County = 44.2%, City of Salem = 11.6%.

The initial payment of Project Administration Contribution Amounts shall be made by each Participant on or before January 1, 2017. Should any Participant fail or neglect to pay its

Project Administration Contribution Amount on or before the date when such Project Administration Contribution Amount is due and owing, and such failure continues for more than thirty (30) days after written demand for payment made to such Participant by the Committee, such Participant shall forfeit and lose any and all rights arising out of this Agreement, including any rights to vote and any right to receive a share of Project Revenue (as defined below). In the event that any Participant forfeits and loses its rights under this Agreement, the Project Administration Contribution Amounts of the remaining Participants shall increase proportionately so that Project Administration Costs may be paid in full.

Contribution Amounts to be used by the Authority to pay debt service on Project Debt (the "**Project Debt Contribution Amounts**") shall be paid by each Participant in accordance with one or more support agreements entered into by each Participant (each, a "**Support Agreement**") in connection with Project Debt (as defined below) in accordance with the Contribution Proportion applicable to each Participant as set forth above. The type of obligation of any Participant under a Support Agreement, whether a general obligation, a "moral" obligation or otherwise shall be as set forth and described in each particular Support Agreement. The right of any Participant to prepay any Project Debt Contribution Amount shall be as set forth and described in each particular Support Agreement. Should any Participant fail or neglect to pay its Project Debt Contribution Amount on or before the date when such Project Debt Contribution Amount is due and owing, or fail to enter into a Support Agreement reflecting that Participant's Contribution Proportion up to the Maximum Project Debt (as defined below) such Participant shall forfeit and lose any and all rights arising out of this Agreement, including any rights to vote and any right to receive a share of Project Revenue (as defined below). In the event that any Participant forfeits and loses its rights under this Agreement, the remaining Participants shall have no responsibility or liability to pay any portion of the Project Debt Contribution Amount of the former Participant.

VI

FINANCING

Participants shall be responsible for payment of all debt obligations of the Authority related to or arising from the Project ("**Project Debt**") in their respective Project Debt Contribution Amounts and for costs and expenses for the implementation of the Project through payment of their respective Project Debt Contribution Amounts as set forth above. Member localities of the Authority not participating in the Project shall have no responsibility for payments in support of any Project Debt or any other Project costs.

The Authority agrees, subject to conditions imposed by a lender, lenders or other financing source and to the Participants entering into such Support Agreements as may be required, to finance the acquisition of interests in Project property and initial costs related to marketing and development of the Project, such financing expected to occur in calendar year 2016, in a principal amount not to exceed \$10,000,000 (the "**Initial Project Debt**"). The Authority further agrees, subject to conditions imposed by a lender, lenders or other financing source and to the Participants entering into such Support Agreements as may be required, to finance the acquisition of additional property near the Real Property as deemed desirable by the

Authority and the Committee and the design, acquisition, construction and equipping of water, sewer, roadway and other improvements on or near such Project Real Property (the "Additional Project Debt") in a principal amount such that the total of the Initial Project Debt and the Additional Project Debt does not exceed \$20,000,000 (the "Maximum Project Debt").

VII

REVENUE SHARING

"Project Revenue" is defined as all of the local taxes paid by businesses and industries including, but not limited to, the real property, personal property, machinery and tools, sales, and meals located at the Project site at the applicable tax rates. Project Revenue will, subject to Article VIII below, be paid to the Authority by the governing body of the locality in which the Project is located and shall be distributed by the Authority to the Participants in the Project based upon each Participant's Contribution Proportion.

VIII

WITHDRAWAL OF PARTICIPANT

No Participant may withdraw from this Agreement without the unanimous consent of all other Participants. Once Project Debt obligations have been incurred by the Authority, no Participant may withdraw from this Agreement without the unanimous consent of all holders or owners of Project Debt.

Once Additional Project Debt obligations have been incurred by the Authority, no Participant may withdraw from this Agreement without the unanimous consent of all holders or owners of Additional Project Debt.

IX

ANNUAL APPROPRIATION

Any obligation of a Participant to pay any Project Administration Contribution Amount or to pay any Project Revenue to the Authority set forth in this Agreement, as applicable, shall not constitute a debt or a pledge of any Participant within the meaning of any constitutional or statutory debt limitation, but shall be subject to and dependent upon annual appropriations being made from time to time by the governing body of such Participant. The chief administrative officer or other officer charged with the responsibility for preparing the proposed annual budget of each Participant is directed to include in the proposed budget for each fiscal year the amount of the expected Project Administration Contribution Amount (and, if applicable, payment of Project Revenue) for such fiscal year and any other sums due under this Agreement. If, by July 15 of each fiscal year the governing body of any Participant has not appropriated such amount for the then current fiscal year for the purposes intended by this Agreement, the chief administrative officer of such Participant shall give written notice to the governing body of such Participant of the consequences of such failure to appropriate, including the forfeiture of rights under this Agreement.

To the extent permitted by law, in the event of the failure of the Host Locality to make its payment of any Project Revenue to the other Participants under this Agreement, any Participant has the right to institute a process under which a Participant could cause the Participant's Director of Finance to withhold and setoff all further payments due to the Host Locality until the unpaid sum of Project Revenue is obtained. The Participant will give the Host Locality sixty (60) days' notice before withholding and setting off any such payments.

X

AMENDMENT

This Agreement may be amended from time to time by written agreement duly approved and executed by all Participants and the Authority.

XI

TITLE AND HEADINGS

The title and article headings in this Agreement are solely for convenience of reference and shall not constitute a part of this Agreement nor shall they affect its meaning, construction or effect.

XII

SEVERABILITY

If any clause, provision or section of this Agreement shall be held illegal or invalid by any court, the illegality or invalidity of such clause, provision or section shall not affect the remainder of this Agreement which shall be construed and enforced as if such illegal or invalid clause, provision or section had not been contained in this Agreement. If any agreement or obligation contained in this Agreement is held to be in violation of law, then such agreement or obligation shall be deemed to be the agreement or obligation of the parties hereto only to the extent permitted by law.

XIII

EXECUTION OF COUNTERPARTS

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

XIV

VENUE

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

SIGNATURE PAGES TO FOLLOW.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed and attested by their respective clerks or secretaries.

ATTEST:

WESTERN VIRGINIA REGIONAL
INDUSTRIAL FACILITY AUTHORITY

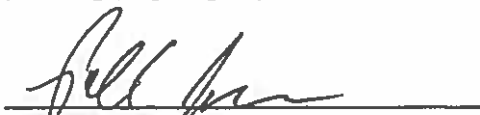


By: 

W. BRENT ROBERTSON, Secretary
Printed Name and Title

CHRISTOPHER MORRILL, ~~CITY MANAGER~~
Printed Name and Title Chairman


APPROVED TO FORM:


Counsel to Authority


ATTEST:

Cecelia F. McCoy
Cecelia F. McCoy
Deputy City Clerk
Printed Name and Title

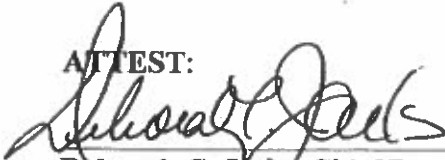
CITY OF ROANOKE, VIRGINIA

By 
CHRISTOPHER MORRILL, CITY MANAGER
Printed Name and Title

APPROVED TO FORM:


A Roanoke City Attorney


ATTEST:



Deborah C. Jacks, Chief Deputy
Clerk to the Board

Printed Name and Title

COUNTY OF ROANOKE, VIRGINIA

By: 

Thomas C. Gates
County Administrator


Printed Name and Title

APPROVED TO FORM:




Ruth Ellen Hubert
Roanoke County Attorney

ATTEST:



James E. Taliaferro, II
Printed Name and Title

CITY OF SALEM, VIRGINIA

By: 

Kevin S. Boggs
Printed Name and Title

APPROVED TO FORM:



Stephen M. York
Salem City Attorney