

June 29, 2016

Clarke County Board Of Supervisors
Berryville Town Council
Joint Meeting
Main Meeting Room

7:00 p.m.

At a joint session of the Board of Supervisors of Clarke County, Virginia, and Berryville Town Council held in the Berryville Clarke County Government Center, 101 Chalmers Court, 2nd Floor, Berryville, Virginia on Wednesday, June 29, 2016.

Supervisors Present

Mary L.C. Daniel – Berryville District; David S. Weiss - Buckmarsh / Blue Ridge District;
Terri T. Catlett - Millwood / Pine Grove District; Bev B. McKay – White Post District

Supervisors Absent

Barbara J. Byrd – Russell District

Town Council Present

Wilson Kirby - Mayor, Harry Lee Arnold, Jr. – Recorder, Bryant Condrey, Doug Shaffer

Town Council Absent

Allen Kitselman; David Tollett

County Staff Present

David Ash, Robert Mitchell, Lora Walburn

Town Staff Present

Keith Dalton, Christie Dunkle, Ann Phillips

Press

None

Others Present

Pat Dickinson

1. Call to Order

At 7:00 p.m., Mayor Kirby called the Berryville Town Council continued meeting to order.

At 7:00 p.m., Chairman Weiss called the Board of Supervisors joint meeting to order.

2. Discussion Economic Development Proposal

Mayor Kirby introduced the meeting topic to include discussion of the performance agreement with Handsome Brook Farms.

Keith Dalton briefly reviewed the agreement advising that issues specific to the local legislative bodies were detailed in Section 4. He concluded his review by recapping the Governor's economic development announcement earlier in the day at the facility located on First Street.

Keith Dalton extended special thanks to Christy Dunkle, Town Planner, for her work on this project.

Keith Dalton explained for Supervisor Daniel that the Industrial Development Authority would be the funding conduit.

Mayor Kirby called for questions and comments from Town Council. The members had no questions or comments.

Chairman Weiss called for questions and comments from the Board of Supervisors. The members had no questions or comments.

Recorder Arnold moved that the Council of the Town of Berryville approve the attached Handsome Brook Farm Performance Agreement and authorize the County Administrator to make minor modifications as needed in consultation with the Virginia Department of Agriculture and Consumer Services and to sign the document. Council member Condrey seconded the motion, which carried on the following vote:

Aye – Wilson Kirby
 Harry Lee Arnold, Jr.
 Bryant Condrey

Douglas Shaffer

Nay – None

Absent - Allen Kitselman
David Tollett

Supervisor Daniel moved that the Clarke County Board of Supervisors approve the attached Handsome Brook Farm Performance Agreement and authorize the County Administrator to make minor modifications as needed in consultation with the Virginia Department of Agriculture and Consumer Services and to sign the document.

Chairman Weiss expressed his thanks to Christy Dunkle, Keith Dalton – Town Manager, David Ash – County Administrator, and Len Capelli – Economic Development Director. He opined that staff had done an outstanding job pulling the project together, going above and beyond to bring this business to Clarke County and the Town of Berryville. He stated that he believed it was important to point out the safety portion of the agreement in the Town and County do not “front” money but only rebate money that is paid in to each entity ensuring that the citizens are not at risk. He, again, opined that it was a great day for the Town and County.

The motion carried by the following vote:

- Barbara J. Byrd - Absent
- Terri T. Catlett - Aye
- Mary L.C. Daniel - Aye
- Beverly B. McKay - Aye
- David S. Weiss - Aye

**GOVERNOR'S AGRICULTURE & FORESTRY INDUSTRIES DEVELOPMENT FUND
PERFORMANCE AGREEMENT**

This **PERFORMANCE AGREEMENT (the "Agreement")** made and entered this 29th day of June, 2016, by and among the **COUNTY OF CLARKE, VIRGINIA** (the "County") and the **TOWN OF BERRYVILLE, VA** (the "Town") (collectively "the Locality"), and **HANDSOME BROOK FARMS, LLC** (the "Company"), a corporation authorized to transact business in the Commonwealth of Virginia (the "Commonwealth"), and the **INDUSTRIAL DEVELOPMENT AUTHORITY OF THE CLARKE COUNTY, VIRGINIA** (the "Authority"), a political subdivision of the Commonwealth.

WITNESSETH:

WHEREAS, the Locality has been awarded a grant of and expects to receive \$200,000 from the Governor's Agriculture & Forestry Industries Development Fund (an "AFID Grant") through the Virginia Department of Agriculture and Consumer Services ("VDACS") for the purpose of inducing the Company to construct and improve an agriculture and/or forestry processing/value-added facility using Virginia-grown products in the Locality (the "Facility"), thereby making a significant Capital Investment, as hereinafter defined, creating a significant number of New Jobs, as hereinafter defined; and purchasing a significant amount of Virginia-grown agricultural and forestal products, as hereinafter set forth; and.

WHEREAS, the Locality is willing to provide the funds to the Authority with the expectation that the Authority will provide the funds to or for the use of the Company, provided that the Company promises to meet certain criteria relating to Capital Investment, New Jobs, and purchase of Virginia-grown agricultural and forestal products; and

WHEREAS, the Locality, the Authority, and the Company desire to set forth their understanding and agreement as to the payout of the AFID Grant, the use of the AFID Grant proceeds, the obligations of the Company regarding Capital Investment, New Job creation, purchase of Virginia-grown agricultural and forestal products, and the repayment by the Company of all or part of the AFID Grant under certain circumstances; and

WHEREAS, the construction and operation of the Facility will entail a capital expenditure of approximately \$6,809,820, of which approximately \$3,647,180 will be invested in machinery and equipment, approximately \$1,698,640 will be invested to improve the site and building, and approximately \$1,464,000 will be invested in tangible personal property; and

WHEREAS, the construction and operation of the Facility will further entail the creation of 105 New Jobs at the Facility; and

WHEREAS, the construction and operation of the Facility will further lead to the purchase of Virginia-grown agricultural and forestal products in the following amount: 20,232,450 dozen eggs for \$50,581,125 over the performance period (see Appendix A for details); and

WHEREAS, the stimulation of the additional tax revenue and economic activity to be generated by the Capital Investment, New Jobs, and purchase of Virginia-grown agricultural and forestal products constitutes a valid public purpose for the expenditure of public funds and is the animating purpose for the AFID Grant: and

WHEREAS, the County is the Lead Applicant and will serve as fiscal agent for the Locality.

NOW, THEREFORE, in consideration of the foregoing, the mutual benefits, promises, and undertakings of the parties to this Agreement, and other good and valuable

consideration, the receipt and sufficiency of which are hereby acknowledged, the parties covenant and agree as follows.

Section 1. Definitions.

For the purposes of this Agreement, the following terms shall have the following definitions:

"Capital Investment" means a capital expenditure by or on behalf of the Company in taxable real property, taxable tangible personal property, or both, at the Facility excluding the purchase of land or existing real property improvements. The total capital expenditure of \$6,809,820 is referred to in this Agreement as the "Capital Investment."

"Maintain" means that the New Jobs created pursuant to the AFID Grant will continue without interruption from the date of creation through the Performance Date. Positions for the New Jobs will be treated as Maintained during periods in which such positions are not filled due to temporary reductions in the Company's employment levels in connection with recruitment for open positions or strikes and other work stoppages.

"New Job" means new permanent full-time employment of an indefinite duration at the Facility for which the standard fringe benefits are paid by the Company for the employee, and for which the Company pays an average annual wage of at least \$33,955. Each New Job must require a minimum of either (i) 35 hours of an employee's time per week for the entire normal year of the Company's operations, which "normal year" must consist of at least 48 weeks, or (ii) 1,680 hours per year. Seasonal or temporary positions, positions created when a job function is shifted from an existing location in the Commonwealth, and positions with construction contractors, vendors, suppliers and similar multiplier or spin-off jobs shall not qualify as New Jobs.

"Performance Date" means August 31, 2019. If the Locality, in consultation with the Authority and the Secretary of Agriculture and Forestry, deems that good faith and reasonable efforts have been made and are being made by the Company to achieve the Targets, the Locality may agree to extend the Performance Date by up to 15 months. If the Performance Date is extended, the Locality shall send written notice of the extension to the Authority, the Company and the Secretary of Agriculture and Forestry and the date to which the Performance Date has been extended shall be the "Performance Date" for the purposes of this Agreement.

"Targets" means the Company's obligations to make Capital Investments at the Facility of at least \$6,809,820, to create and Maintain at least 105 New Jobs at the Facility, and to purchase at least \$50,581,125 of Virginia-grown agricultural and forestal products (see Appendix A for details) , all as of the Performance Date.

"Virginia Code" means the Code of Virginia of 1950, as amended.

Section 2. Targets.

The Company will develop and operate the Facility in the Locality, make a Capital Investment of at least \$6,809,820, create and Maintain at least 105 New Jobs, and purchase \$50,581,125 of Virginia-grown agricultural and forestal products (see Appendix A), at the Facility, all as of the Performance Date. If the dollar amount of new purchases of Virginia-grown agricultural and forestal products is not met, the Company can still achieve the purchase target by demonstrating they substantively achieved the same volume of Virginia-grown agricultural and forestal products they proposed in Appendix A.

The average annual wage of the New Jobs will be at least \$33,955.

The average prevailing wage in the locality in 2016 is \$42,796.

Section 3. Disbursement of AFID Grant.

By no later than August 31, 2016, the Locality will request the disbursement to it of the AFID Grant. If not so requested by the Locality by August 31, 2016, this Agreement will terminate. The Locality and the Company will be entitled to reapply for an AFID Grant thereafter, based upon the terms, conditions and availability of funds at that time.

The AFID Grant in the amount of \$200,000 will be paid to the Locality, upon its request. Within 30 days of its receipt of the AFID Grant proceeds, the Locality will disburse the AFID Grant proceeds to the Authority. Within 30 days of its receipt of the AFID Grant proceeds, the Authority will disburse the AFID Grant proceeds to the Company as an inducement to the Company to achieve the Targets at the Facility. The Company will use the AFID Grant proceeds to make building improvements, as permitted by Section 3.2-304(C) of the Virginia Code.

Section 4. Break Even Point; State and Local Government Incentives

See Appendix B for description of "break-even point" j[SV1] With regard to the Facility, the Commonwealth expects to provide incentives in the following amounts:

<u>Category of Incentive:</u>	<u>Total Amount</u>
AFID Grant	\$200,000
Virginia Jobs Investment Program ("VJIP") (Estimated)	\$57,750

The Locality expects to provide the following incentives, as matching grants or otherwise, for the Facility:

<u>Category of Incentive:</u>	<u>Total Amount</u>
Clarke County and the Town of Berryville will rebate <u> </u> % of local real estate, business personal property, and machinery and tools taxes paid by the	\$200,000

Company to the Town and County on assessments above current assessed values (\$898,900 land and improvements for real estate taxes; \$0 for business personal property taxes; and \$0 for machinery and tools taxes) for each year through calendar year 2022, up to total rebates of \$200,000.00. Such rebates shall be paid by the Locality to the Authority by February 15 of the year following the calendar year in which the Company pays the taxes, and the Authority shall pay the rebates to the Company within forty-five (45) days after receipt of the rebate amounts from the Locality. It is estimated that Clarke County will rebate \$134,400 and the Town of Berryville will rebate \$65,600.

The Grant award is based on the assumption that the Company will generate new taxes for the locality. The amount of \$200,000 is drawn from a calculation of the total estimated new local taxes to be generated by the Company through August 31, 2022 based on investment information presented by the company as part of the AFID application process.

If, by August 31, 2022, the value of the funds and other local incentives disbursed or committed to be disbursed by the Locality to the Company total less than the \$200,000 AFID Grant local match requirement, the Company shall repay the difference to the AFID Fund.

The proceeds of the AFID Grant shall be used for the purposes described in Section 3. The VJIP grant proceeds shall be used by the Company to pay or reimburse itself for recruitment and training costs. The proceeds of the Locality's \$200,000 may be used by the Company for any lawful purpose.

Section 5. Repayment Obligation.

(a) *Determination of Inability to Comply:* If the County or the Secretary of Agriculture and Forestry (the "Secretary") determines at any time before the Performance Date (a "Determination Date") that the Company is unlikely to meet and Maintain at least fifty (50) percent of its Targets by and through the Performance Date (i.e., by making a Capital Investment of at least \$3,404,910 in the Facility, by creating and Maintaining at least 52 New Jobs at the Facility, or by purchasing at least \$25,290,562 of Virginia-grown agricultural and forestal products by the Performance Date), and if the County or the Secretary shall have promptly notified the Company of such determination, the entire AFID Grant must be repaid by the Company to the Authority. Such a determination by the Locality or the Secretary will be based on circumstances such as a filing by or on behalf of the Company under Chapter 7 of the U.S. Bankruptcy Code, the liquidation of the Company, an abandonment of the Facility by the Company, or other similar significant event that demonstrates that the Company will be unable or is unwilling to satisfy the Targets for the AFID Grant.

(b) *Repayment of AFID Grant:* For purposes of repayment, the AFID Grant is to be allocated as \$66,667 (33%) for the Company's Capital Investment Target, \$66,666 (33%) for its New Jobs Target, and \$66,666 (33%) for its purchase of Virginia-grown agricultural and forestal products. If the Company has met at least ninety percent (90%) of each of the three Targets at the Performance Date, then and thereafter the Company is no longer obligated to repay

any portion of the AFID Grant. If the Company has not met at least ninety percent (90%) of each of the three of its Targets at the Performance Date, the Company shall repay to the Authority that part of the AFID Grant that is proportional to the Target or Targets for which there is a shortfall. For example, if at the Performance Date, the Capital Investment is only \$4,009,365, only 79 New Jobs have been created and Maintained, and only \$37,935,843 of Virginia-grown agricultural and forestal products have been purchased, the Company shall repay to the Authority twenty-five percent (25%) of the moneys allocated to the Capital Investment Target (\$16,667), twenty-five percent (25%) of the moneys allocated to the New Jobs Target (\$16,666), and twenty-five percent (25%) of the moneys allocated to the purchase of Virginia-grown agricultural and forestal products Target (\$16,666). Whether the New Jobs Target has been met will be determined by comparing the anticipated payroll (105 New Jobs at an average annual wage of at least \$33,955) to the actual number of New Jobs and the actual average annual wage reported at the Performance Date.

(c) *Repayment Dates:* Such repayment shall be due from the Company to the Authority within thirty days of the Performance Date or the Determination Date, as applicable. Any moneys repaid by the Company to the Authority hereunder shall be repaid by the Authority to the Locality and shall be repaid by the Locality promptly to VDACS for redeposit into the AFID fund. The Locality and the Authority shall use their best efforts to recover all such funds, including legal action for breach of this Agreement. The County shall assume primary responsibility for filing and prosecuting any such legal action, and the Authority shall cooperate with the County's efforts. Neither the Locality nor the Authority shall have any responsibility for the repayment of any sums hereunder unless said sums have been received by the Authority from the Company.

Section 6. Company Reporting.

The Company shall provide, at the Company's expense, detailed verification reasonably satisfactory to the County, the Authority, and VDACS of the Company's progress on the Targets. Such progress reports will be provided annually, starting February 15, 2017 and at such other times as the Locality, the Authority, or VDACS may reasonably require. The progress reports will cover the previous calendar year of the Performance Period, beginning on August 31, 2016.

With each such progress report, the Company shall report to VDACS the amount paid by the Company in the prior calendar year in Virginia corporate income tax. The Company hereby authorizes the Commissioner of the Revenue, the Treasurer, and the Director of Finance for the County to release to the Authority and the Locality the Company's confidential tax information and data so that the Authority may verify the payments made. VDACS has represented to the Company that it considers such information to be confidential proprietary information that is exempt from public disclosure under the Virginia Freedom of Information Act and that such information will be used by VDACS solely in calculating aggregate return on invested capital analyses for purposes of gauging the overall effectiveness of economic development incentives.

With each progress report, the Company shall also report to VDACS the amount purchased and the purchase price paid by the Company, or the fair market value of the Virginia-Grown Agricultural or Forestal Products utilized, through the prior year.

The Locality and Company agree to retain all books, records, data, and other documents relative to this agreement for a period of three (3) years after the end of this agreement, or until audited by the Commonwealth of Virginia, whichever is sooner. VDACS and its authorized agents, and/or state auditors (both the Auditor of Public Accounts and/or VDACS Internal Auditor) shall have full access to and the right to examine any of said materials and records relating to this agreement during this period.

Section 7. Notices.

Any notices required or permitted under this Agreement shall be given in writing, and shall be deemed to be received upon receipt or refusal after mailing of the same in the United States Mail by certified mail, postage fully pre-paid or by overnight courier (refusal shall mean return of certified mail or overnight courier package not accepted by the addressee):

if to the Company, to:

Attention: _____

with a copy to:

Attention: _____

if to the Locality, to:

Town of Berryville
101 Chalmers Court, Suite A
Berryville, VA 22611

Attention: Keith R. Dalton, Town Manager

with a copy to:

Town of Berryville
101 Chalmers Court, Suite A
Berryville, VA 22611

Attention: Mayor

if to the Authority, to:

County of Clarke
101 Chalmers Court, Suite B
Berryville, VA 22611

Attention: David L. Ash, County Administrator

with a copy to:

Attention: Chairman Board of Supervisors

if to the VDACS, to:

Secretary of Agriculture and Forestry

with a copy to:

Stephen G. Versen

Office of Governor Terence R. McAuliffe
Commonwealth of Virginia
1111 East Broad Street
Richmond, Virginia 23219

AFID Fund Coordinator
Va Dept. of Agriculture & Consumer
Services
102 Governor St.
Richmond, Virginia 23219

Attention: AFID

Attention: AFID

Section 8. Miscellaneous.

(a) *Entire Agreement; Amendments*-. This Agreement constitutes the entire agreement among the parties hereto as to the AFID Grant and may not be amended or modified, except in writing, signed by each of the parties hereto. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. The Company may not assign its rights and obligations under this Agreement without the prior written consent of the Locality, the Authority, and the Secretary of Agriculture and Forestry.

(b) *Governing Law; Venue*: This Agreement is made, and is intended to be performed, in the Commonwealth and shall be construed and enforced by the laws of the Commonwealth. Jurisdiction and venue for any litigation arising out of or involving this Agreement shall lie in the Circuit Court of the County of Clarke and such litigation shall be brought only in such court.

(c) *Counterparts*: This Agreement may be executed in one or more counterparts, each of which shall be an original, and all of which together shall be one and the same instrument.

(d) *Severability*: If any provision of this Agreement is determined to be unenforceable, invalid or illegal, then the enforceability, validity and legality of the remaining provisions will not in any way be affected or impaired, and such provision will be deemed to be restated to reflect the original intentions of the parties as nearly as possible in accordance with applicable law.

THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK

IN WITNESS WHEREOF, the parties hereto have executed this Performance Agreement as of the date first written above.

TOWN OF BERRYVILLE, VIRGINIA

By: _____
Name: _____
Title: _____
Date: _____

COUNTY OF CLARKE, VIRGINIA

By: _____
Name: _____
Title: _____
Date: _____

INDUSTRIAL DEVELOPMENT AUTHORITY
OF THE COUNTY OF CLARKE, VIRGINIA

By: _____
Name: _____
Title: _____
Date: _____

HANDSOME BROOK FARMS, LLC

By: _____
Name: _____
Title: _____
Date: _____

APPENDIX A

Purchases of Virginia-grown Products:

BY the Performance Date, the Company is committing to sourcing from Virginia farms 20,232,450 net new dozen eggs at a value of \$2.50 per dozen for a total of \$50,581,125^[sv2]

Handsome Brook Farms Berryville Three Year Production and Sourcing Estimate					
	Baseline	New Production			Total
		9/16 to 8/17	9/17 to 8/18	9/18 to 8/19	
Net New Plant Egg Processing in Pallets	-	13,843	34,183	44,400	92,426
Plant Egg Processing in Pallets	535.50	14,378.50	34,183.25	44,400.00	92,962
Net New Plant Egg Processing in Dozens	-	6,675,300	24,981,525	34,176,600	65,833,425
Plant Egg Processing in Dozens	481,950	12,940,650	30,764,925	39,960,000	83,665,575
Net New Production -- Virginia (Farm Equiv)	0	28	111	111	111
Production -- Virginia (Farm Equiv)	1	29	112	112	112
Net New Production -- Outside VA (Farm Equiv)	0	93	190	190	190
Production -- Outside VA (Farm Equiv)	50	143	240	240	240
Net New Total Farm Equiv	-	121	301	301	301
Total Farm Equiv	51	172	352	352	352
					-
Net New Production -- Virginia (Dz)	-	1,445,850	6,520,500	12,266,100	20,232,450
Production -- Virginia (Dz)	9,450	1,568,700	6,633,900	12,379,500	20,582,100
Net New Production -- Outside VA (Dz)	-	5,229,450	18,461,025	21,910,500	45,600,975
Production -- Outside VA (Dz)	472,500	12,931,200	30,764,925	39,960,000	83,656,125
Total Net New Production at Berryville Plant	-	6,675,300	24,981,525	34,176,600	65,833,425
Total Production at Berryville Plant	-	12,458,700	30,764,925	39,960,000	83,183,625
Net New Percentage of Production in Virginia		22%	26%	36%	31%
Percentage of Production in VA	2%	13%	22%	31%	25%
*Eggs valued at \$2.50 per dozen					

APPENDIX B

Break-Even Point Description:

VDACS has estimated that the Commonwealth will reach its "break-even point" by the Performance Date. The break-even point compares new revenues realized as a result of the Capital Investment and New Jobs at the Facility with the Commonwealth's expenditures on incentives, including but not limited to the AFID Grant.

3. Adjournment

Mayor Kirby remarked that so many times the labor that goes into an effort like this is not recognized. He stated that over the years he had seen staff work diligently and he expressed his appreciation to Keith Dalton and Christy Dunkle. Mayor Kirby noted that tomorrow was his last day and the Governor of the State of Virginia coming to Berryville today topped off that service.

Chairman Weiss stated that working with him was a pleasure and wished him well in future endeavors. He, again, expressed appreciation for staff remarking that today he was reminded of how much staff does for the citizens.

Supervisor Daniel commented that it would be good for the Town to have a dormant piece of property back in service. She expressed appreciation to staff.

At 7:11 p.m., **Vice Chair McKay moved to adjourn the Board of Supervisors joint meeting. The motion carried by the following vote:**

Barbara J. Byrd	-	Absent
Terri T. Catlett	-	Aye
Mary L.C. Daniel	-	Aye
Beverly B. McKay	-	Aye
David S. Weiss	-	Aye

Recorder Arnold moved to adjourn the Berryville Town Council continued meeting. Council member Condrey seconded the motion, which carried on the following vote:

Aye –	Wilson Kirby Harry Lee Arnold, Jr. Bryant Condrey Douglas Shaffer
-------	--

Nay –	None
-------	------

Absent -	Allen Kitselman David Tollett
----------	----------------------------------

Next Regular Board of Supervisors Meeting Date

Approved July 19, 2016

Book 22
Page 651

The next regular meeting of the Board of Supervisors is set for Tuesday, July 19, 2016, at 1:00 p.m. in the Berryville Clarke County Government Center, Main Meeting Room, 101 Chalmers Court, Berryville, Virginia.

ATTEST: June 29, 2016

David S. Weiss, Chair

David L. Ash, County Administrator

Minutes Recorded and Transcribed by:
Lora B. Walburn, Deputy Clerk, Board of Supervisors