



Industrial Development Authority of the Clarke County, Virginia

Agenda

Thursday, July 28, 2016, 1:00 pm

Meeting Room AB

Berryville Clarke County Government Center
101 Chalmers Court 2nd Floor, Berryville, Virginia

1. Call to Order
2. Approval of Agenda
3. Approval of February 4, 2016 Minutes
4. Treasurer's Report by Allen Frederickson
5. Old Business:
 - A. Governor's Agriculture & Forestry Industries Development Fund Performance Agreement Between County Of Clarke, Virginia Town Of Berryville, Va, Handsome Brook Farms, LLC, And The Industrial Development Authority Of The Clarke County, Virginia

Action: Motion to Approve "I move that the Industrial Development Authority of the Clarke County, Virginia approve the Handsome Brook Farm Performance Agreement and authorize the Chair to make minor modifications as needed in consultation with the Virginia Department of Agriculture and Consumer Services and to sign the document."
6. New Business:
 - A. Lord Fairfax Community College Small Business Development Corporation Funding Request by Christine Kriz
 - B. VEDA IDA Conference, May 24, 25 Summary by Len Capelli
 - C. Bylaws and Rules of Procedures: Proposed Update
7. Set Next Meeting Date [Suggest Thursday, October 27, 2016]
8. Adjourn

**Clarke County Industrial Development Authority (IDA)
Meeting Minutes
Thursday, February 4, 2016**

A meeting of the Clarke County Industrial Development Authority (IDA) was held at the Berryville/Clarke County Government Center, Berryville, Virginia on Thursday, February 4, 2016 at 10:00AM.

ATTENDANCE:

Members Present: Dave Juday (Chair), Rodney Pierce, Mark Cochran, Allen Frederickson

Members Absent: English Koontz, David Weiss

Others Present: Len Capelli, Amanda Kowalski

1. Call to Order

Mr. Juday called the meeting to order at 10:10 am.

2. Approval of Agenda

Mr Juday requested to add ‘Discussion of joint meeting with other advisory boards’ and ‘Discussion of open IDA positions’ to the agenda.

Mr. Juday moved, seconded by Mr. Cochran to approve the agenda as amended.

The motion carried as follows:

Mark Cochran	-	aye
Allen Frederickson	-	aye
Dave Juday	-	aye
English Koontz	-	absent
Rodney Pierce	-	aye

3. Approval of Minutes – October 21, 2015 Meeting

Hearing no objection, the meeting minutes from October 21, 2015, were approved as presented.

4. Treasurer’s Report

Mr. Frederickson reported that a check was received from the Town of Berryville and reviewed the IDA bank accounts and balances with board members.

Mr. Juday asked Mr. Capelli to check on the loan amount outstanding to the Town of Berryville. It was decided that this item will be added to the next meeting agenda.

5. Election of IDA officers for 2016

Mr. Juday moved, seconded by Mr. Pierce, to allow Mr. Capelli to preside over the election of IDA officers for 2016.

The motion carried as follows:

Mark Cochran	-	aye
Allen Frederickson	-	aye
Dave Juday	-	aye
English Koontz	-	absent
Rodney Pierce	-	aye

Mr. Capelli called for the election of officers to the IDA for 2016.

Mr. Juday moved, seconded by Mr. Cochran, to approve the following as presented:

Mr. Juday as Chair of the IDA, Mr. Cochran as Vice Chair of the IDA, and Mr. Frederickson as Treasurer of the IDA.

The motion carried as follows:

Mark Cochran	-	aye
Allen Frederickson	-	aye
Dave Juday	-	aye
English Koontz	-	absent
Rodney Pierce	-	aye

6. Discussion of Two New Web Sites

Mr. Capelli reviewed the new web sites with committee members. He stated that both sites are coming along nicely and should be ready by March 2016.

7. Overview of major activities and initiatives by economic development and tourism and possibly some potential examples of potential businesses for Clarke County

Mr. Capelli reviewed the possibility of Clarke County being a part of the Artisan Trail Network this year and the many benefits associated with this network.

Mr. Capelli reviewed the Clarke County Art and Artisan Tour that will be taking place October 1-2, 2016.

The committee then discussed the newly tourist zoned areas around The Battletown Inn and Food Lion. All members agreed that an upscale restaurant is needed in Berryville.

8. Other Business

a. Entrepreneurial Café

Mr. Capelli requested a monetary donation from the IDA for the Entrepreneurial Café that will be held in April at LFCC.

Mr. Pierce moved, seconded by Mr. Cochran, to donate \$500 for the Entrepreneurial Café sponsorship.

The motion carried as follows:

Mark Cochran	-	aye
Allen Frederickson	-	aye
Dave Juday	-	aye
English Koontz	-	absent
Rodney Pierce	-	aye

Mr. Capelli reported on possible businesses that have shown interest in Clarke County

b. Discussion of joint meeting with other advisory boards

It was discussed and decided that a joint meeting can be held once a year with the EDAC and Joint Committee.

c. Discussion of open IDA positions

Mr. Juday noted that both Wayne Armbrust and Paul Jones term has expired.

Any replacement ideas can be sent to Mr. Capelli and Mr. Juday, who will then pass along to the Board of Supervisors for consideration.

A resolution and plaque was requested for Mr. Armbrust's service to the IDA.

9. Adjourn

Next meeting will be held on Thursday, April 21, 2016 at 10am.

Mr. Cochran moved, seconded by Mr. Pierce, to adjourn the meeting at 11:01 am.

The motion carried as follows:

Mark Cochran	-	aye
Allen Frederickson	-	aye
Dave Juday	-	aye
English Koontz	-	absent
Rodney Pierce	-	aye

Dave Juday, Chair

Minutes recorded and transcribed by Amanda Kowalski

GOVERNOR'S AGRICULTURE & FORESTRY INDUSTRIES DEVELOPMENT FUND

PERFORMANCE AGREEMENT

This **PERFORMANCE AGREEMENT** (the "**Agreement**") made and entered this ____ day of _____, 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**, _____ (the "Company"), a _____ corporation authorized to transact business in the Commonwealth of Virginia (the "Commonwealth"), and the **INDUSTRIAL DEVELOPMENT AUTHORITY OF 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.” [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 ~~of~~ 50% of local real estate, business personal property, and machinery and tools taxes paid by the 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. \$200,000

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:

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

Attention: Chairman Board of Supervisors

if to VDACS, to:

Secretary of Agriculture and Forestry
Office of Governor Terence R. McAuliffe
Commonwealth of Virginia
1111 East Broad Street
Richmond, Virginia 23219
Attention: AFID

with a copy to:

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

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.



June 23, 2016

Len Capelli
Clarke County Economic Development
101 Chalmers Court, Suite B
Berryville, VA 22611

Dear Len:

Thank you so much for meeting with me this week and for your generous support last year to the Lord Fairfax Small Business Development Center. I am excited about the ideas we shared on ways to help each other support small business in Clarke County in the upcoming year. Last year, we served 21 Clarke County clients who combined employ over 41 people. I am writing to share information with you and to ask for your financial support for 2016/2017 please.

Please find attached three documents. First, a summary of the types of businesses we counseled and the type of counseling provided to them. Second, the Cash Grant Request which includes a short narrative that highlights as a whole for our center as well as individualized Clarke County numbers. Third, please find a copy of the invoice based on the same funding as last year as a grant request for 2016-2017.

We want to continue to be an entity that returns more dollars to the community and the economy than is extended as financial support. We are a generator of revenue and not exclusively a consumer of municipal revenue. These dollars' flow back to the community in various ways. The more easily measured ways are through sales tax, property tax, and payroll dollars. The service we provide to residents saves them dollars over the alternative of seeking help elsewhere.

Please let us know if there are any questions. Thank you again for supporting us in spirit in our mutual efforts for the assistance of the small business owner.

Respectfully,

Christine Kriz, MBA
LFSBDC Director



Attachment A: Description of Business Clients/Services Provided

Clarke County Type of Businesses Served 7/1/2015 - 6/24/2016		
<u>Type of Business</u>	<u># of clients</u>	<u>More specific type of business:</u>
Agriculture, Forestry, Fishing, & Hunting	1	Farm
Construction	2	(Painting contractor)
Retail	8	(Bakery, Auto Repair, Clothing, Jewelry)
Professional, Scientific, Technical Services	1	Drug Scientist
Administration & Support	1	Home Health
Other Services	4	Home based business
Not yet in business	<u>4</u>	
	21	

Clarke County Type of Counseling Provided 7/1/2015 - 6/24/2016		
<u>Type of Counseling</u>	<u># of clients</u>	<u>More specific type of counseling:</u>
Marketing	6	Market Research, Marketing plans
Developing a business plan	4	All parts of a business plan (Financials Marketing SWOT, etc.)
Cash Flow	8	A/R, planning, strategies
Sales	3	Pricing Strategies, Recovering from drop in sales,
Business Licensing	2	Transferring a business, starting a business
Starting a business	0	Grants available, starting a home-based business, licensing
SWAM certification registration process	1	

Clarke County IDA Cash Grant Request

Agency Name: **Lord Fairfax Small Business Development Center**

Contact Name: **Christine Kriz**

173 Skirmisher Lane

Middletown, VA 22645

p: 540-868-7094

f: 540-868-7095

This Figure Represents a 12-Month Total (Jul 2015-June 2016)

Cash Grant: Amount Requested for FY 16/17 **\$6,000**

Through the course of the 2014 Fiscal Year, the Lord Fairfax SBDC had the opportunity to work one-on-one with **388** clients through our centers within our geographical footprint. This area stretches from the top of Virginia to the end of Shenandoah County to both Warrenton and Culpeper, Virginia. For this report, we will work directly with clients who have visited the center with a contact information based in the Clarke County area.

Within this FY 2015 we saw **21** direct clients from the Clarke County area. This represents **5.4%** from our total amount. This number is slightly down from the year prior which was at **27** direct clients. Yet, this does show a growth from two years prior which we only saw **12** direct clients from the Clarke County region.

These numbers represent **clients that came to our office** in 2015/16, but we also were able to help many with a single phone call. In 2015 our office handled **1562** inquiries via the phone, whether this was asking about specific programs OR one-shot questions. Of those inquiries, **100** came from Clarke County. This represents about **6.4%** of the total number. As a point of reference, in years past this number has ranged from **7.4%** to **3.8%**.

In addition to the phone calls and one-on-one counseling, we offer a variety of seminars throughout the course of the year that bring small business owners face-to-face with instructors and new ideas. Last year, we assisted in **120** seminars which had about **1,097** attendees from around our footprint. From the Clarke community we had **50** attendees which represents about **4.6%** of the total number. This shows a large increase from the prior year of **15** attendees representing about **2.2%** of our total number.

Looking at these figures as a whole, all "clients" would be **3047** (phone/email inquiries, seminar attendees, clients) and Clarke County represents **5.6%** of this number. Your continued GRANT funding would help maintain that figure as well as continue to provide great FREE one-on-one counseling as well as a core group of seminars.

Our justification for the \$6,000 Grant goes into both services that we provide, plus direct assistance in the Clarke County area.

- We are developing our 6th Annual Small Business Retreat to be held on October 28th, 2016 (last year's Retreat yielded about 150 attendees) which helps to address needs as identified by the Clarke County small business community.
- We will continue to offer our "Mystery Shopping" services to Clarke County as a resource.
- We can provide a retail expert, Marc Willson, to counsel downtown and local merchants on ways to improve sales and strengthen community shopping.

- We provide e-commerce seminars by Ray Sidney-Smith, a self-proclaimed Google-ologist, to help downtown merchants grow their online marketing programs.
- Dale Maza and Christine Kriz can continue to meet with clients at the library as well as provide marketing counseling to Clarke County (Berryville) merchants.

Our total budget is \$262,149. To support this budget, we receive a federal grant of \$119,373 which needs to be matched by local jurisdictional support.



INVOICE

173 Skirmisher Lane
Middletown, VA 22645
Phone: 540-868-7093 | Fax: 540-868-7095
ckriz@lfcc.edu | lfsbdc.org

INVOICE # 001
DATE June 24, 2016

TO
Clarke County EDA
Attn: Len Capelli
101 Chalmers Court Suite B
Berryville, VA 22611

FOR: 2016/2017 SBDC Services

Description	Amount
Annual Contribution to LFSBDC	\$6000
Total	\$6000

Make all checks payable to LFSBDC
Payment is due within 30 days.
If you have any questions please contact Christine Kriz | 540-868-7094 | ckriz@lfcc.edu

THANK YOU FOR YOUR SUPPORT!

07-28-2016 - Staff Recommendation: Add the following section:

Amend Section 204. Annual Meetings.

The annual meeting of the Board of Directors shall be held in January of each year in the ~~Board of Supervisors Meeting Room on the Second Floor of the Clarke County Circuit Courthouse at 102 North Church Street~~ **Berryville Clarke County Government Center 2nd Floor, 101 Chalmers Court, Berryville, Virginia**, or at such other time and location as the Board of Directors may designate.

Add Section 209: Removal of Board Members Before Their Terms in Office Expires

Should the Executive Committee, by a majority vote, deem that the attendance pattern of an Authority member at properly scheduled meetings is unacceptable, or should the performance of an Authority member be deemed unacceptable for any other reason by a majority vote of the Executive Committee, then the Chair of the Authority shall solicit the resignation of such an Authority member.

In the event that no resignation is forthcoming, then the Executive Committee shall recommend the termination of such an Authority member to the Clarke County Board of Supervisors.

Amend Section 403. Public Attendance at Meetings: Inspection of Records.

All meetings of the Board of Directors at which formal action is taken shall be open to the public.

The Board of Directors may hold executive or closed meetings in accordance with The Virginia Freedom of Information Act, ~~Chapter 21, Title 2.1,~~ **Chapter 37 Title 2.2 Administration of Government** Code of Virginia (1950, as amended), as may be in effect from time to time (the "Virginia Freedom of Information Act").

All official records of the Authority shall be open for inspection and copying in accordance with the provisions of the Virginia Freedom of Information Act.

Directors and officers of the Authority may inspect all Authority records at any reasonable time.

Suggested Motion: "I move to approve modifications to the Bylaws of the Industrial Development Authority of the Clarke County, Virginia as recommended by staff."

Bylaws Of The Industrial Development Authority Of The Clarke County, Virginia

Article I

Name. Purpose And Powers.

Section 101. Name.

The name of this body shall be the "Industrial Development Authority of the Clarke County, Virginia" (the "Authority").

Section 102. Purposes.

The purposes of the Authority shall be as set forth in Section 15.2-490 I of the Code of Virginia (1950, as amended) and all other purposes as are now or may hereafter be set forth in the Industrial Development and Revenue Bond Act, Chapter 49, Title 15.2 of the Code of Virginia (1950, as amended) (the "Act").

Section 103. Powers.

The Authority shall be vested with all powers as set forth in Section 15.2-4905 of the Code of Virginia (1950, as amended) and all other powers as are now or may hereafter be set forth in the Act.

Article II

Directors.

Section 201. Board of Directors.

The Authority shall be governed by a Board of Directors in which all powers of the Authority shall be vested.

Section 202. Number, Appointment and Terms of Directors.

There shall be seven (7) Directors of the Authority who shall be appointed by the Board of Supervisors of Clarke County, Virginia (the "Board of Supervisors").

Directors shall be appointed for a term of four (4) years, except appointments to fill vacancies, which shall be for the remainder of such un-expired term.

If at the end of any term of office of any Director or successor thereto has not been appointed, then the Director whose term of office has expired shall continue to hold office until a successor is appointed and qualified.

Bylaws Of The Industrial Development Authority Of The Clarke County, Virginia

Each Director, upon his initial appointment and any reappointment, shall take and subscribe the oath prescribed by Section 49-1 of the Code of Virginia (1950, as amended).

No Director shall be an officer or employee of Clarke County, Virginia.

Every Director shall, at the time of his appointment and thereafter, reside in Clarke County, Virginia or in an adjoining locality.

Section 203. Vacancies.

The Chairman of the Authority shall promptly notify the Board of Supervisors of any vacancy that may occur in the Board of Directors.

The Board of Supervisors shall make any appointments necessary to fill any vacancies upon the Board of Directors of the Authority in accordance with the Act.

In the event the term of any Director of the Authority shall expire without the Director being reappointed or a new Director being appointed by the Board of Supervisors, then the Director whose term has expired shall continue in office until his reappointment and qualification or until his successor shall have been appointed and qualified.

Section 204. Annual Meetings.

The annual meeting of the Board of Directors shall be held in January of each year in the Board of Supervisors Meeting Room on the Second Floor of the Clarke County Circuit Courthouse at 102 North Church Street in Berryville, Virginia, or at such other time and location as the Board of Directors may designate.

Section 205. Special Meetings.

Special meetings of the Board of Directors may be called at any time by the Chairman of the Board of Directors or by any two Directors of the Authority, to be held at the time and place designated in the notice of the meeting.

Section 206. Notices.

Notice specifying the time and place of any annual or special meeting of the Board of Directors shall be given to each Director of the Authority at least 24 hours before such meeting by delivering such notice to him or her or by telephoning, telegraphing or mailing such notice to him or her at least 24 hours before the meeting. Any notice postmarked the day before the meeting shall be deemed to have been mailed at least 24 hours before the meeting. Notices of special meetings of the Board of Directors shall specify generally the purposes thereof. The presence of any Director at a meeting shall be deemed an acknowledgment of the timely receipt of notice thereof or a waiver of any

Bylaws Of The Industrial Development Authority Of The Clarke County, Virginia

such notice, unless specific objection to the notice of such meeting shall be raised by any Director in attendance. Meetings may be held without notice if all of the Directors are present or if those Directors not present waive notice prior to the meeting, which waiver shall be in writing, signed either before or after the meeting.

Section 207. Quorum.

Four (4) members of the Board of Directors shall constitute a quorum of the Board of Directors for the purpose of conducting Authority business, exercising Authority powers and for all other purposes, except that no facilities owned by the Authority shall be leased or disposed of in any manner without a majority vote of the Directors of the Authority.

No vacancy in the membership of the Board of Directors shall impair the right of a quorum to exercise all the powers and perform all the duties of the Authority.

Section 208. Voting.

Except as otherwise required in these Bylaws or by the Act, any question submitted to a vote of the Board of Directors shall be passed by simple majority of those Directors present and voting. No Director shall be allowed to vote by proxy at any meeting of the Authority.

Article III

Officers

Section 301. Officers.

The officers of the Authority shall be a Chairman, a Vice-Chairman, and from their membership or not, as they desire, Secretary and Treasurer, or a Secretary-Treasurer, who shall continue to hold office until their respective successors are elected and qualified.

Section 302. Duties of Officers.

The duties of the officers of the Authority shall include, but shall not be limited to, the following:

- A. The Chairman shall preside at all meetings of the Authority; shall be responsible for notice of meetings to the Directors and officers of the Authority; shall be responsible for all correspondence; shall make committee appointments; may appoint members of the Authority as liaison to any other governmental agencies, authorities and commissions; shall act as a signatory on behalf of the Authority when authorized; and shall perform such other duties as are incident to his office or may properly be

Bylaws Of The Industrial Development Authority Of The Clarke County, Virginia

required of him by the Board of Directors.

- B. The Vice Chairman shall, in the absence of the Chairman, exercise all of the Chairman's powers and duties. In the event the office of Chairman shall become vacant, the Vice-Chairman shall immediately become the Chairman.
- C. The Secretary shall transcribe detailed minutes of every meeting or proceeding of the Authority; shall issue notices for all meetings; shall keep the seal of the Authority and all books and records of the Authority; and shall perform such other duties as may be directed by the Board of Directors.
- D. The Treasurer shall have the custody of all funds and securities of the Authority, and shall deposit the same in the name of the Authority in such bank or banks as the Directors may from time to time determine; shall sign all checks, drafts, notes and orders for the payment of moneys and shall payout and dispose of the same under the direction of the Chairman. The Treasurer shall keep suitable records of all financial transactions of the Authority and shall arrange to have the same audited following the end of each fiscal year of the Authority, subject to the approval of the Board of Directors. Copies of each audit shall be furnished to the Board of Supervisors.

Section 303. Elections.

Officers of the Authority shall be elected annually at the annual meeting of the Authority held in January of each year, shall commence their duties immediately upon election and shall continue in office thereafter until a successor shall have been elected and qualified. The Directors may elect at any annual or special meeting such officers as may be necessary to fill any vacancy created by resignation, expiration of term of appointment as a Director, or otherwise. Any officer so elected shall serve until his successor shall have been elected at the next annual election and qualified.

Article IV.

General Provisions

Section 401. Seal.

The seal of the Authority shall be a flat-faced circular die with the name of the Authority engraved thereon and such other words and figures as may appear thereon as evidenced by a sample of such seal which appears on the margin of these Bylaws opposite this Section.

Section 402. Compensation.

Adoption Date: January 12, 1999

Page 5

Bylaws Of The Industrial Development Authority Of The Clarke County, Virginia

The Directors and officers of the Authority shall receive no salary but may be compensated such amount per regular, special or committee meeting or per each official representation as may be approved by the Board of Supervisors, not to exceed the amount as provided in the Act for each meeting or official representation, and shall be reimbursed for necessary traveling and other expenses incurred in the performance of their duties.

Section 403. Public Attendance at Meetings: Inspection of Records.

All meetings of the Board of Directors at which formal action is taken shall be open to the public.

The Board of Directors may hold executive or closed meetings in accordance with The Virginia Freedom of Information Act, ~~Chapter 21, Title 2.1~~, Chapter 37 Title 2.2 Administration of Government Code of Virginia (1950, as amended), as may be in effect from time to time (the "Virginia Freedom of Information Act").

All official records of the Authority shall be open for inspection and copying in accordance with the provisions of the Virginia Freedom of Information Act.

Directors and officers of the Authority may inspect all Authority records at any reasonable time.

Section 404. Rules Regulations and Procedure.

- A. Roberts Rules of Order, Newly Revised, shall govern all matters of procedure not specifically set forth in these Bylaws or the Act.
- B. The format of meetings of the Board of Directors may be as follows:
 - (1) Call to order
 - (2) Recording of attendance
 - (3) Reading, approval, and correction of the minutes of the last meeting.
 - (4) Reports of officers and committee
 - (5) Old Business
 - (6) New Business
 - (7) Adjournment
- C. The Board of Directors may adopt, amend and alter from time to time such rules, regulations or forms, which it deems necessary or expedient from the management of the affairs of the Authority and which shall not be inconsistent with the Act. The Secretary of the Authority shall maintain current copies of the Bylaws, and any rules, regulations and forms adopted by the Authority.

Bylaws Of The Industrial Development Authority Of The Clarke County, Virginia

Section 406. Authorized Signatures.

Checks, notes, drafts and other legal documents shall be signed by such Directors or officers of the Authority as may be specified in the act, these Bylaws, or as the Board of Directors may, from time to time, authorize by resolution. The signature of any officer or Director may be by facsimile when authorized by the Board of Directors.

Article V

Amendments

Section 501. Amendment of Bylaws.

These Bylaws may be amended, repealed or altered, in whole or in part, by a majority vote of the Board of Directors at any duly constituted meeting, provided notice of such amendment shall have been given to the Directors in the notice of such meeting.

Rules and Procedures Of The Industrial Development Authority Of Clarke County, Virginia

Industrial Development Authority
Of Clarke County, Virginia

Rules and Procedures
Adopted: January 12, 1999

Article I

Purpose and Scope

Section 1.1 Purpose.

These Rules shall govern the submission of Applications to the Authority, application and administrative fees, consideration of matters to be brought to the attention of the Authority relating to the authorization, issuance and sale of its Bonds, the adoption of Financing Documents, reports to be submitted to the Authority, and such other matters as are contained herein.

Section 1.2 Scope.

These Rules are supplementary to the Authority's Bylaws and the Act. In the event of any conflict between the Authority's Bylaws, the Act and these Rules, the provisions of the Bylaws and the Act shall prevail.

Article II

Definitions

Section 2.1 Definitions.

As used in these rules and procedures, the following terms shall have the meaning as set forth herein, unless the context clearly requires otherwise:

"Act" shall mean the Industrial Development and Revenue Bond Act, Chapter 49, Title 15.2, Code of Virginia of 1950, as amended.

"Applicant" shall mean any individual, person, firm, corporation, partnership or other entity applying for industrial development revenue bond financing, or for whose benefit the Authority has issued its Bonds, or who requests the Authority to take any action.

Rules and Procedures Of The Industrial Development Authority Of Clarke County, Virginia

"Application" shall mean the Authority's application for industrial development revenue bond financing as in effect from time to time.

"Authority" shall mean the Industrial Development Authority of Clarke County, Virginia, a political subdivision of the Commonwealth of Virginia.

"Bonds" shall mean any notes, bonds and other obligations authorized to be issued by the Authority pursuant to the Act.

"Code" shall mean the Code of Virginia of 1950, as amended.

"Financing Documents" shall mean any resolutions, instruments, documents, papers, elections, certificates or financing statements required to be adopted or authorized, executed and delivered by the Authority in connection with the authorization, issuance and sale of its Bonds.

"IRC" shall mean the Internal Revenue Code of 1986, as amended.

"Project" shall mean any land, improvements, machinery, equipment or property financed by the issuance and sale of the Authority's Bonds.

"Rules" shall mean these Rules and Procedures of the Authority, as may be in effect from time to time.

Article III

General

Section 3.1 Copies to be Provided Applicants.

A copy of these rules and procedures shall be furnished by the Authority's Secretary to each prospective Applicant.

Section 3.2 Compliance with Rules and Procedures.

Each Applicant shall comply with these rules and procedures in the submission of its Application or any Financing Documents to the Authority and in requesting that the Authority take any action, including the adoption of Financing Documents.

Failure to comply with these rules and procedures shall constitute sufficient reason for the Authority to refuse to consider any Application, Financing Documents or any other matter to be brought before the Authority by or on behalf of any Applicant.

Section 3.3 Amendments.

Rules and Procedures Of The Industrial Development Authority Of Clarke County, Virginia

These rules and procedures may be changed from time to time by the Authority by the vote of a majority of its Directors present at any meeting of the Authority, provided notice of such change shall have been given to each Director before such meeting.

These rules and procedures may, notwithstanding the foregoing, be amended without prior notice upon the affirmative vote of all Directors of the Authority.

Section 3.4 Preparation and Distribution of Agenda and Minutes.

- (a) A preliminary agenda for the Authority's meetings shall be prepared and distributed by the Authority's Secretary [no later than three (3) days] before the Authority's scheduled meeting date. The agenda may state that it is a preliminary agenda subject to change at or before the Authority's meeting. **Failure to distribute the preliminary agenda as set forth above shall in no way affect the validity of any actions taken by the Authority at the meeting.**
- (b) Preliminary drafts of the minutes of the Authority's meeting shall, as soon as practicable following the meeting, be mailed or delivered to each officer and director of the Authority and the Authority's counsel. Each preliminary copy of the minutes so distributed shall be marked to indicate that it is a preliminary draft subject to additions or corrections at the Authority's next meeting.

Article IV

Applications Procedures, Fees and Requirements

Section 4.1 Applications.

Each Applicant shall submit a fully and accurately completed Application to:

- each Director of the Authority,
- the Authority's Secretary and Counsel and
- the Economic Development Director of the County of Clarke,

at least twenty-one days before the Authority's meeting at which the Application is to be considered.

Each Application shall include all requested exhibits. In the event all requested exhibits are not available or not to be made part of the public record, a statement of explanation will be attached to the Application.

The Authority recommends that each Applicant seek the advice of the Economic Development Director of the County of Clarke or the Authority's Counsel respecting completion of the Application before submitting it to the Authority.

Rules and Procedures Of The Industrial Development Authority Of Clarke County, Virginia

Section 4.2 Administrative Fees.

Each application submitted pursuant to Section 4.1 shall be accompanied with an application fee of \$5,000; provided, however, that if the amount of the application is \$1,000,000 or less, such fee shall be \$1,000.

The Authority also charges an annual administrative fee equal to:

- 1/10th of one percent for transactions of \$1,000,000 or less;
- 1/15th of one percent for transactions between \$1,000,001 and \$5,000,000; and
- 1/20th of one percent for transactions of more than \$5,000,000.

Such annual administrative fees shall be payable on the anniversary date of the closing of the transaction, **and shall be computed by multiplying the applicable percentage by the outstanding principal balance of the bonds on such date.**

The Authority reserves the right to modify the fees described in this section on a case-by-case basis, in the sole discretion of the Authority.

Fees, upon acceptance by the Authority, are non-refundable.

Section 4.3 Costs and Expenses.

The Authority requires reimbursement of its costs and expenses incurred in connection with the issuance and sale of its Bonds and by virtue of its Bonds being outstanding. (See Section 5.2)

Section 4.4 Modification Fee; Transaction Fee.

- (a) The Authority may, in its discretion, require payment of a \$1,000 modification fee by any Applicant requesting the Authority to approve any modification or amendment to its Bonds or the applicable Financing Documents. The modification fee shall be due and payable on or before the date of execution and delivery of the modification or amendment.
- (b) The Authority may, **in its discretion,** charge a transaction fee in the amount of \$1,000 to any Applicant requesting the Authority to take any action, regardless of whether the Authority has Bonds outstanding for the benefit of the Applicant. The transaction fee will be in addition to any other fees required hereunder.

Section 4.5 Transcripts of Proceedings.

Each Applicant receiving Bond financing through the Authority shall furnish to the Authority upon the sale and delivery of the Bonds, two complete transcripts of the Financing Documents relating to such Bonds. Bond transcripts shall be hardback bound in library standard quality binders at the cost and expense of the Applicant.

Rules and Procedures Of The Industrial Development Authority Of Clarke County, Virginia

Section 4.6 Bond Validation Proceedings.

The Authority may require that before issuance, its Bonds be validated by the Circuit Court of the County of Clarke, Virginia, pursuant to the requirements of Article 6, Chapter 26, Title 15.2 of the Code. The costs, expenses and fees incurred in connection with any bond validation proceedings required by the Authority, including attorneys' fees, shall be paid by the Applicant.

Section 4.7 Additional Information Required of Applicants

- (a) The Authority may adopt an inducement resolution conditioned upon the subsequent furnishing of certain information satisfactory to the Authority. All required information shall be promptly furnished to the Authority and failure of any Applicant to furnish such information shall constitute a ground for rescission of any inducement resolution adopted pursuant to such conditions.
- (b) The Authority may, at its option, require the furnishing of appraisals, evaluations or reports respecting the Project or any portion thereof. The Authority may retain advisors and consultants to advise it regarding any Project or other action that it is requested to undertake by any Applicant. All costs, fees and expenses of such appraisals, reports, consultants and advisors incurred by the Authority after prior notification to the Applicant shall be paid by the Applicant.
- (c) Since the Authority usually acts based upon information furnished to it solely by the Applicant, the Authority reserves the right to require at any time the furnishing of additional information concerning the Applicant, its financial statements, and any other information deemed relevant by the Authority. In instances where the Applicant has undergone changes in form or management or where the security to be given for payment of the Bonds has changed, the Applicant shall report such changes promptly to the Authority.

Section 4.8 Notice of Public Hearing

The Applicant shall publish a notice of public hearing with respect to each Application for which a public hearing is required by the Code once a week for two successive weeks, to be published in a newspaper having general circulation in the County of Clarke, Virginia and in such other newspapers as may be required.

The notice shall be in a form approved by the Authority's Counsel and Bond Counsel.

The second publication shall be not less than six nor more that twenty-one days before the Authority's meeting at which the Application is to be considered.

Rules and Procedures Of The Industrial Development Authority Of Clarke County, Virginia

Persons who are interested in speaking at any public hearing held by the Authority are encouraged to submit their comments in writing.

The Authority shall publish such additional notice or notices and hold such additional public hearings with respect to each Application as may be required by law or recommended by Counsel to the Authority.

Section 4.9 Projects Outside of the County of Clarke, Virginia

Any Applicant to finance a Project located outside the County of Clarke, Virginia shall be accompanied by evidence satisfactory to the Authority that the county, city or town in which the Project is proposed to be located approves the proposed financing of the Project by the Authority.

Following the adoption of an inducement resolution for such Project, the Applicant shall furnish to the Authority a certified copy of a resolution duly adopted by the governing body of such county, city or town stating that such governing body concurs with the inducement resolution adopted by the Authority evidence satisfactory to the Authority that the county, city or town in which the Project is proposed to be located approves the proposed financing of the Project by the Authority.

Following the adoption of an inducement resolution for such Project, the Applicant shall furnish to the Authority a certified copy of a resolution duly adopted by the governing body of such county, city or town stating that such governing body concurs with the inducement resolution adopted by the Authority.

The Authority may also require additional evidence concerning the impact or effect of the Project on the area where it will be located, whether the Project has received appropriate local approvals or permits, and whether the Project is acceptable to the inhabitants where it will be located

Article V

PROVISIONS TO BE INCORPORATED INTO RESOLUTIONS AND FINANCING DOCUMENTS

Section 5.1 Inducement Resolutions.

Each inducement resolution adopted by the Authority shall provide that it shall continue in full force and effect for a period of two years unless specifically extended by the Authority.

Section 5.2 Payment of Authority Expenses.

Rules and Procedures Of The Industrial Development Authority Of Clarke County, Virginia

The Financing Documents adopted by the Authority for the benefit of any Applicant shall provide that the Applicant agrees to pay all costs, fees and expenses incurred by the Authority (including attorney's fees) in connection with: where it will be located.

- (a) the authorization, issuance and sale of the Authority's Bonds;
- (b) the ownership, occupation, operation or use of the Project being financed, whether owned by the Authority or the Applicant;
- (c) prepayment or redemption of the Authority's Bonds;
- (d) administrative costs and expenses of the Authority, including the fees of attorneys, accountants, engineers, appraisers or consultants, paid or incurred by the Authority by reason of the Bonds being outstanding or pursuant to requirements of the Financing Documents; and
- (e) Such other fees and expenses of the Authority, not directly related to the Project being financed for the Applicant, but attributable to the Authority's financing of industrial or commercial Projects, including without limitation, a share of costs of the Authority's annual audit as required by Code Section 15.2-4904, determined as follows:
 - (1) All costs and fees relating to the annual audit and directly attributable to a particular Applicant or Project, shall be charged to such Applicant; and
 - (2) Any costs and fees of such audit not directly attributable to any Applicant or Project shall be allocated among all Applicants having Bonds outstanding, pro rata, as the amount of Bonds originally issued for such Applicant bears to the total face amount of Bonds issued by the Authority of which any portion of any issue remains outstanding and unpaid.

Section 5.3 Indemnification of the Authority.

Each Applicant shall agree to indemnify and save harmless the Authority, the County, the Board of Supervisors and their officers, directors, employees and agents (hereinafter the "Indemnitees") from and against all liabilities, obligations, claims, damages, penalties, fines, losses, costs and expenses (hereinafter referred to as "Damages"), including without limitation:

- (a) all amounts paid in settlement of any litigation commenced or threatened against the Indemnitees, if such settlement is effected with the written consent of the Applicant;
- (b) all expenses reasonably incurred in the investigation of, preparation for or defense of any litigation, proceeding or investigation of any nature whatsoever, commenced or threatened against the Applicant, the Project or the Indemnitees;

Rules and Procedures Of The Industrial Development Authority Of Clarke County, Virginia

- (c) any judgments, penalties, fines, damages, assessments, indemnities or contributions; and
- (c) the reasonable fees of attorneys, auditors, and consultants; provided that the damages arise out of:
 - (i) failure by the Applicant, or its officers, employees or agents, to comply with the terms of the Financing Documents and any agreements, covenants, obligations, or prohibitions set forth therein;
 - (ii) any action, suit, claim or demand contesting or affecting the title of the Project;
 - (iii) any breach of any representation or warranty set forth in the Financing Documents or any certificate delivered pursuant thereto, and any claim that any representation or warranty of the Applicant contains or contained any untrue or misleading statement of fact or omits or omitted to state any material facts necessary to make the statements made therein not misleading in light of the circumstances under which they were made;
 - (iv) any action, suit, claim, proceeding or investigation of a judicial, legislative, administrative or regulatory nature arising from or in connection with the construction, acquisition, ownership, operation, occupation or use of the Project; or
 - (v) any suit, action, administrative proceeding, enforcement action, or governmental or private action of any kind whatsoever commenced against the Applicant, the Project or the Indemnitees which might adversely affect the validity or enforceability of the Bonds, the Financing Documents, or the performance by the Applicant or any Indemnitee of any of their respective obligations thereunder.

Section 5.4 Bond Counsel Opinion Required.

Before issuing and delivering any of its Bonds, the Authority shall receive an unqualified approving opinion of recognized bond counsel licensed to practice law in Virginia and approved by the Authority stating, among other things, that the Bonds have been duly authorized, executed, issued and delivered, that the interest thereon is exempt from Federal income taxation under IRC §103 (or other applicable provision of law) and taxation by the Commonwealth of Virginia, and that the Bonds are exempt from registration requirements under applicable state and Federal securities laws.

Section 5.5 Covenants to Preserve Tax Exempt Status of Bonds.

Rules and Procedures Of The Industrial Development Authority Of Clarke County, Virginia

All Financing Documents presented for approval by the Authority shall contain appropriate covenants of the Applicant designed to insure compliance with the requirements of IRC §103 to preserve the tax exempt status of interest on the Bonds, including without limitation, "arbitrage" requirements, capital expenditure limitations and reporting requirements.

Section 5.6 Payments in Lieu of Taxes.

In event title to the Project is held by any person or entity not subject to real or personal property taxes, the Applicant and any user of the Project, unless specifically exempted by the Authority, shall enter into an agreement to pay all taxes, levies, assessments, charges or other impositions which may be levied by any taxing authority on the Project as if such Applicant or user held title to the Project or any portion thereof.

Section 5.7 Restriction on Advertising.

The Applicant and any purchaser or underwriter of the Authority's Bonds shall not publish any advertisement, tombstone or other information with respect to the Authority's Bonds unless:

- (a) such advertisement has been approved by the Chairman or Vice Chairman of the Authority and Counsel to the Authority and
- (b) (such advertisement contains the statement set forth below with respect to the limited nature of the obligations.

Any bond purchase agreement entered into in connection with the Authority's Bonds shall contain a covenant in substantially the following form which shall be binding on the Applicant, any purchaser and any underwriter of such bonds: The undersigned agree that no advertisement, tombstone or other information with respect to the Bonds shall be published in any newspaper or other publication unless such advertisement:

- (a) is approved by the Chairman or Vice Chairman of the Authority and Counsel to the Authority and
- (b) clearly states that the Bonds are limited obligations of the Authority payable solely from revenues and that neither the Commonwealth of Virginia nor any political subdivision thereof, including the Authority and the County of Clarke, Virginia, shall be obligated to pay the principal of or the interest or premium, if any, on the Bonds and neither the faith and credit nor the taxing power of the Commonwealth of Virginia or any political subdivision thereof, including the Authority and the County of Clarke, is pledged to payment of the Bonds.

Rules and Procedures Of The Industrial Development Authority Of Clarke County, Virginia

Article VI

Reports

Section 6.1 Interim Reports by Applicants.

Each Applicant shall file with the Authority a written report describing the status of its proposed financing no later than ten (10) days after receipt of written request therefore. Such written report shall include the proposed purchaser of the Bonds, the proposed terms of the Bonds, the status of Financing Documents, and the current status of the Project. Each Applicant shall promptly notify the Authority of any significant or material changes to any information previously furnished by the Applicant to the Authority, including specific descriptions of new or changed plans for the placement of the bonds and the security to be offered.

Section 6.2 Annual Reports of Applicants.

Each Applicant, after the issuance and sale of the Authority's Bonds for the benefit of such Applicant, shall annually report to the Authority no later than June 30 the status of the Project, which shall include the outstanding and unpaid balance of Bonds issued for the Project, whether any event of default has occurred under the Financing Documents, and other information relating to the financing of the Project and benefits to the County of Clarke, Virginia.

Section 6.3 Reports by Authority Chairman Directors etc.

At each meeting of the Authority, the Chairman, each Director, the Secretary, the Treasurer and the Authority's Counsel shall report any action taken on behalf of the Authority since the last meeting, including receipt of reports required under Sections 4.7, 6.1 and 6.2.

Article VII

Enforcement

Section 7.1 Enforcement of Provisions.

The Authority may refuse to consider or adopt any inducement resolutions, Financing Documents or any other matters presented for its consideration if the Applicant has failed to comply with the requirements of these Rules.

Section 7.2 Repeal of Actions Previously Taken.

Rules and Procedures Of The Industrial Development Authority Of Clarke County, Virginia

The Authority may rescind or repeal any inducement resolution previously adopted by it or any other action taken by the Authority because of failure of the Applicant to comply with the provisions of these Rules or because of substantial changes in the management, ownership, Project plan or financial circumstances of the Applicant; provided, however, no inducement resolution or action taken by the Authority shall be repealed or rescinded unless prior written notice of such proposed action shall have been mailed to the Applicant at least three weeks before the date upon which such action is proposed to be taken. Notwithstanding the foregoing, no such action shall be taken by the Authority which will impair or adversely affect the interests of the holders of the Authority's Bonds.

Article VIII

Statements of Policy

Section 8.1 Construction, Operation and Effect of Rules.

These Rules are intended as guidelines to promote and insure the orderly and consistent consideration of Applications, Financing Documents and other matters brought before the Authority. For good cause, application of these Rules may be modified and waived upon a case by case basis upon the consent of the Authority. Any action taken by the Authority not in conformity with these Rules shall, nevertheless, be fully effective as if taken in compliance with these Rules. It is, however, the policy of the Authority that each Applicant comply fully and completely with these Rules, and failure to comply with these Rules may constitute grounds for refusal by the Authority to take any action requested.

Section 8.2 Approval of Inducement Resolution not to Constitute an Endorsement of Applicant.

The purpose of the Authority, as set forth in the Act, is to promote industry and develop trade by inducing manufacturing, industrial, governmental, commercial and non-profit enterprises to locate in or remain in the Commonwealth of Virginia. Pursuant to the Act, the Authority's powers shall be exercised for the benefit of the inhabitants of Virginia through the promotion of their safety, health, welfare, convenience or prosperity. Accordingly, the Authority's decision to adopt an inducement resolution or take other action will be based largely upon these factors. Further, the Act prohibits the Authority from operating any enterprise or Project. Since the Authority is a conduit for providing tax exempt financing to promote the commerce and industry of the Commonwealth of Virginia and the County of Clarke, Virginia, and given the express prohibition against operating enterprises or Projects, the Authority believes it is improper for it to inquire into matters relating to the business judgment of the management of any Applicant not relevant to the foregoing factors. The Authority may, however, examine the business decisions and other aspects of management of the Applicant should it deem such matters relevant to the authorization, issuance and sale of its Bonds.

Rules and Procedures Of The Industrial Development Authority Of Clarke County, Virginia

In view of the foregoing limitations, the adoption of an inducement resolution or any other action taken by the Authority is not to be used by any Applicant in any manner whatsoever as an endorsement or approval of the Applicant, its policies or its management.

Section 8.3 Security for Payment of Bonds.

The Authority will require a showing that any issue of its Bonds is fully and adequately secured.

Section 8.4 Compliance with Rules.

These Rules were adopted by the Authority to assist in the orderly and expeditious conduct of its business. As stated in Section 3.2 of these Rules, the Authority has reserved the right to require that any Applicant strictly conform to the requirements of the Rules. Among other things, the Rules require that each Applicant inform the Authority of any new developments or material changes in information which has been submitted to the Authority, either orally or in writing. Matters concerning the structure of the financing, the prospective purchasers of the Bonds and the security for payment of the Bonds are items of particular interest to the Authority; however, the Authority expects to be kept informed of all material changes to information submitted to it.

By submitting an Application to the Authority, the Applicant agrees to abide by these Rules. Thus, the burden is placed upon the Applicant to review and to comply with these Rules. The principal sanction which may be applied by the Authority against any Applicant for failure to comply with the Rules would be a refusal to take any action requested by the applicant. Such a refusal might result in embarrassment to or considerable financial expenses on the part of the Applicant. To avoid such embarrassment or expense, the Authority urges each Applicant to keep the Authority fully informed of any new developments or material changes to information previously submitted to the Authority, including in particular, changes in the contemplated financing structure or the proposed security for the Bonds. As noted above, the burden is upon the Applicant to convey this information to the Authority in a timely manner. What constitutes "timely" depends upon the circumstances of each case; however, each Applicant is urged to provide all such information before considerable time and expense is incurred upon matters which may prove unacceptable to the Authority. Any such communications should be made directly to the Authority's officers, directors and counsel.

Clarke County

Industrial Development Authority

July 27, 2016

Treasurer's Report


Checking Account:	\$72,577.93
Brokerage Account:	\$34,817.87
MMDA:	<u>\$1,531.40</u>
Total:	\$108,927.20

Income:	\$0.00
---------	--------

Expenses:

Meeting Expense:	\$200.00
USPS (stamps)	\$9.40
VA Corp	<u>\$1,333.00</u>
Total Expense:	\$1,542.40

Respectfully Submitted,



Allan Frederickson

Economic Development and Tourism

Report to the Clarke County IDA

July 28, 2016

Major new Business in Town: We are all aware of Handsome Brook Farm opening a processing and distribution center in Berryville. This will have far reaching benefits for Clarke County, Berryville, The Shenandoah Valley and Virginia. Millions of eggs will be purchased, processed, packaged and shipped. Jobs will be created or expanded in all of these segments of the delivery chain and the towns will benefit from new people and new money. Additionally, the press regarding Berryville and Clarke County will encourage other similar or agricultural related businesses to explore relocating or establishing their business in Clarke County and Berryville.

The Battle Town Inn has been sold. The new owner Jerry Johnson is interested in restoring, renovating and upgrading the facilities and opening the Bar and Restaurant and the Inn. He is pursuing a number of options at this time toward a successful new hospitality asset in Berryville and Clarke County.

Marissa Stalvey has joined the Economic Development and Tourism department specializing in Web site content and social media content and distribution.

We are continuing to work with a variety of organizations, local, regional and state wide to enhance the tourism in Clarke County and Berryville and to promote Clarke County as a regular Tourist Destination especially for the following:

Artists, Artisans, Agritourism, Agribusiness, hiking, kayaking, boating, fishing, walking, and other outdoor activities.

Working with the Shenandoah Valley DMO, the show Family Vacations has filmed a week vacation in the Shenandoah Valley from Frederick County to Rockingham County. Clarke County will be mentioned in several segments and the Dinosaur Land will be featured in part of the film.

The Clarke County Artisan Studio Tour will be October 1st and 2nd. This will coincide with Art at the Mill and will help to create an even better image of Clarke County and Berryville as a center for Artistic expression and creativity.

We are in the planning stages for a local, Clarke County Agribusiness, Agritourism, Sustainable Farm, and outdoor business, entrepreneur class in October. This will be a 6 week class with the final week being a presentation of business plans to local residents and businesses. This will take the place of the

Entrepreneur Café that we participated in last year. We are focusing on agricultural or outdoor related local businesses or startups, including entrepreneurs that have not yet started their business. We will have speakers from a variety of organizations including the State of Virginia, Agricultural Departments, County Economic Development, People Virginia and others not yet committed. With anticipated sponsorships, there will be a cash prize for 1st and 2nd place but the real value will be gaining knowledge about the risks, benefits and potential for starting an agricultural related business here in Clarke County.

I attended a very valuable two day seminar / class "Virginia Industrial Development Authorities Institute"

Hosted by Virginia Tech, May 24-25 2016. I have selected some slides to share and discuss from the many presentations. The slides are attached.

Christy Dunkle

From: Taylor, Chauntele (VDACS) <Chauntele.Taylor@vdacs.virginia.gov>
Sent: Thursday, July 28, 2016 12:13 PM
To: Christy Dunkle
Cc: Knicely, Ernest (VDACS); Versen, Stephen (VDACS)
Subject: To Review: Performance Agreement for Handsome Brook Farms - AFID Facility Grant
Attachments: Handsome Brook Farms AFID Performance Agreement _Revised.docx

Christy,

Attached is the AFID Performance Agreement between Clarke County, the Town of Berryville, Clarke County IDA and Handsome Brook Farms. As discussed, I had to make a change to the capital investment performance measure throughout the document – I changed the amount from \$6,809,820 to the amount provided in the application letter of \$6,413,820. Please review and edit as needed, however please share any edits with us (using tracked changes) for approval. Once you all are satisfied, please send to all other parties of this Agreement – again having any of their changes approved by both of us.

Once everyone is satisfied with the document, I will forward a copy to the Attorney General's office for review to ensure enforceability, as required by Code. You will be notified when the Performance Agreement has been approved by the Attorney General and ready for signatures.

Feel free to contact me if you have any questions or concerns.

Chauntele D. Taylor
AFID Compliance Coordinator
Virginia Department of Agriculture and Consumer Services
Agriculture and Forestry Development Services
102 Governor Street
Richmond, Virginia 23219
Phone: (804) 786-2285
chauntele.taylor@vdacs.virginia.gov

GOVERNOR'S AGRICULTURE & FORESTRY INDUSTRIES DEVELOPMENT FUND

PERFORMANCE AGREEMENT

This **PERFORMANCE AGREEMENT** (the "**Agreement**") made and entered this ____ day of July, 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 FARM, LLC**, (the "**Company**"), a Delaware corporation authorized to transact business in the Commonwealth of Virginia (the "**Commonwealth**"), and the **INDUSTRIAL DEVELOPMENT AUTHORITY OF 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 \$6,413,820, of which approximately \$3,347,180 will be invested in machinery and equipment, approximately \$1,698,640 will be invested to improve the site and building, and approximately \$1,368,000 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 \$6,413,820 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 \$6,413,820, 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 \$6,413,820, 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.” 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 of 50% of local real estate, business personal property, and machinery and tools taxes	\$200,000

paid by the Company to the Town and County on assessments above current assessed values (\$937,400 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 \$3,206,910 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 \$4,810,365, 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:

with a copy to:

Attention: _____

Attention: _____

if to the Locality, to:

with a copy to:

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

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

Attention: Keith R. Dalton, Town Manager

Attention: Mayor

if to the Authority, to:

with a copy to:

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

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

Attention: David L. Ash, County Administrator

Attention: Chairman Board of Supervisors

if to VDACS, to:

with a copy to:

Secretary of Agriculture and Forestry
Office of Governor Terence R. McAuliffe
Commonwealth of Virginia
1111 East Broad Street
Richmond, Virginia 23219
Attention: AFID

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

Handsome Brook Farm 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.