

**ALBEMARLE COUNTY
ECONOMIC DEVELOPMENT AUTHORITY
JUNE 9, 2015
(Page 1)**

A meeting of the Economic Development Authority was held on June 9, 2015, at 4:00 p.m., Meeting Room #241, Second Floor, County Office Building, 401 McIntire Road, Charlottesville, Virginia.

PRESENT: Mr. James Atkinson, Ms. Lettie Bien, Mr. W. Rod Gentry, Mr. Vernon Jones, Mr. Donald Long, Mr. Elton Oliver and Mr. David Shreve.

ABSENT: None.

OFFICERS PRESENT: Mr. James M. Bowling, IV, Attorney, and Ms. Ella W. Jordan, Assistant Secretary-Treasurer.

COUNTY STAFF: Mr. Greg Kamptner, Deputy County Attorney; and Ms. Faith McClintic, Director of the Office of Economic Development.

Establish Quorum and Call to Order.

Having established a quorum, Mr. Gentry called the meeting to order at 4:03 p.m.

Approval of Minutes: May 12, 2015

Motion was offered by Ms. Bien, seconded by Mr. Long, to approve the minutes of May 12, 2015. On a voice call vote, all voted aye. There were no nays.

Old Business

a. Lewis and Clark Exploratory Center – approval of fourth loan extension.

Mr. Kamptner stated that the Board of Supervisors approved this request at its last meeting. The request before the EDA is that it extend the date by which the loan is due and payable, and amend the promissory note as necessary to allow the extension to October 17, 2015, and to require the payment in lieu of interest to the EDA of \$1,250 due on July 17, 2015. He also asked that the Authority authorize staff to send a letter to the LCEC to reflect the nature of the approval and the request for payment.

Motion was authorized by Ms. Bien to approve as requested. The motion was seconded by Mr. Oliver. On a voice call vote, all voted aye. There were no nays.

b. Approval of Amendment to EDA Rules of Procedures.

Mr. Kamptner said that at its last meeting, the Authority recommended to the Board of Supervisors proposed amendments to the EDA's Rules of Procedures. The Board authorized the proposed changes and they are now before the Authority for final approval.

Motion was authorized by Ms. Bien, seconded by Mr. Atkinson, to approve proposed amendments to the EDA's Rules of Procedures. On a voice call vote, all voted aye. There were no nays.

**ECONOMIC DEVELOPMENT AUTHORITY OF
ALBEMARLE COUNTY, VIRGINIA
RULES AND PROCEDURES**

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 supplement the Act. In the event of any conflict between the Act and these Rules, the provisions of 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 Virginia 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.

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

"Authority" shall mean the Economic Development Authority of the County of Albemarle, 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 1954, 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 administrative agent, the County of Albemarle, by the Clerk of the Board of Supervisors, 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. 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 regular meeting shall be prepared and distributed by the Authority's Secretary to Authority members and the Authority's attorney before the Authority's regularly scheduled meeting date. In the case of special meetings of the Authority, the agenda shall be included in the call issued for such meeting. When action is to be taken with reference to a Project or the issuance of Bonds, the agenda shall contain a description of the type, nature and location of the Project, the name of the Applicant and the nature of the action to be taken by the Authority. The agenda for regular meetings of the Authority shall state that it is a preliminary agenda subject to change at or before the Authority's 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. The date of approval of the Authority's minutes shall appear at the foot of the last page of the minutes which shall, when approved, be signed by the Assistant Secretary-Treasurer of the Authority.

ARTICLE IV

APPLICATION PROCEDURES, FEES AND REQUIREMENTS

Section 4.1 Applications. Each Applicant shall submit nine (9) fully and accurately completed Applications to the Clerk of the Board of Supervisors of Albemarle County at least ten (10) 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.

Section 4.2 Application Fee. The Authority charges an Application fee of Five Hundred Dollars (\$500.00), payable to the County of Albemarle. The Application fee shall be paid to the Authority's administrative agent, the County of Albemarle, prior to consideration of the inducement resolution to be adopted on behalf of the Applicant. Application fees, upon acceptance by the Authority, are non-refundable. No interest shall be paid on Application fees. The County of Albemarle shall not be required to pay the application fee if it is the Applicant.

Section 4.3 Administrative Fees.

(a) If the Authority issues bonds, including refunding bonds, for the benefit of the applicant, the financing documents shall include a requirement that the applicant pay the Authority an annual administrative fee of \$1,000.00 per \$1,000,000.00 of bonds issues, or prorated portion thereof, upon the issuance of bonds and annually thereafter on June 30 each year thereafter until the bonds are paid in full. Except in the case of a refunding, the filing fee shall be applied as a credit against the first annual fee at closing. Bonds issued for the benefit of the County of Albemarle shall not be subject to the annual administrative fee.

(b) 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).

(c) **Expenditures of Funds.** The EDA will expend funds that it receives only to support economic development initiatives that benefit Albemarle County as determined by agreement between the Authority and the Board of Supervisors of Albemarle County. All such initiatives shall be developed in consultation with the County Executive, or its designee. The Albemarle County staff will provide support in the administration of the expenditure of such funds by the Authority.

Section 4.4 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 (2) 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.

Section 4.5 Bond Validation Proceedings. The Authority may require that before issuance, its Bonds be validated by the Circuit Court of the County of Albemarle, 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 proceeding required by the Authority, including attorneys' fees, shall be paid by the Applicant.

Section 4.6 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 which 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.

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 (2) years unless specifically extended by the Authority or the Bonds contemplated by the resolution are issued.

Section 5.2 Payment of Authority Expenses. 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 attorneys' fees) in connection with:

- (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

**ALBEMARLE COUNTY
ECONOMIC DEVELOPMENT AUTHORITY
JUNE 9, 2015
(Page 6)**

(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 Title 15.2 of the Code of Virginia, determined as follows:

(1) All costs and fees relating to any 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 and its 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;

(c) any judgments, penalties, fines, damages, assessments, indemnities or contributions;
and

(d) 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 Indemnites 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. 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.

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 the last day of the second month after the adoption of an inducement resolution for the Applicant and every three (3) months thereafter until the adoption of any Financing Documents by the Authority. 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.

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 Albemarle.

Section 6.3 Reports by Authority Chairman, Directors, etc. At each regular meeting of the Authority, the Chairman, each Director, the Secretary-Treasurer and the Authority's counsel shall report any action taken on behalf of the Authority since the last regular meeting, including

as may be applicable, receipt of reports required under Section 4.6. No later than September 1 of each year, the Chairman of the Authority may also report to the Authority on the status, as of the end of the Authority's fiscal year, of each active and outstanding inducement resolution of the Authority and the status of each issue of the Authority's Bonds.

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. 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 (3) 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 and commercial 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 Albemarle, and given the express prohibition against operating enterprises or Projects, the Authority believes it is improper for it to inquire into

**ALBEMARLE COUNTY
ECONOMIC DEVELOPMENT AUTHORITY
JUNE 9, 2015
(Page 9)**

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.

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. If the Bonds are secured by a lien upon or security interest in the Project financed with the proceeds of such Bonds, the Authority may require an appraisal of the Project showing that it is valued in an amount sufficient to pay the outstanding principal amount of the Bonds issued to finance such Project.

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 expense 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.

Notes to Application

1. Applicants are referred to the Authority's Rules and Procedures for provisions governing the submission of the application to the Authority.

2. Applications and all exhibits should be submitted to:

**Clerk of the Board of Supervisors of Albemarle County,
4th Floor, County Office Building, 401 McIntire Road,
Charlottesville, Virginia 22902-4596,**

at least ten (10) days before the meeting at which the application is to be considered.

3. A \$500.00 application fee for issues less than \$25.0 million or a \$1,000.00 application fee for issues \$25.0 million or greater, made payable to the County of Albemarle, should be submitted to the Authority's administrative agency, the County of Albemarle, with the application or at the time the application is considered.

4. Questions concerning the qualification of a project or certain expenses of economic development revenue bond financing or other legal questions relating to the issuance of bonds should be directed to the Authority's counsel or to recognized bond counsel.

c. Agriculture and Forestry Industries Development Fund (AFID) Grants for Kelly Turkeys and 20 Paces – Approval of Performance Agreements.

Mr. Kamptner stated that the purpose of this item is to approve the agreements subject to the County Attorney's final approval as to substance and form, and to authorize the Chair and Secretary-Treasurer to sign the agreements on behalf of the EDA.

Mr. Atkinson mentioned that the amount listed in the agreement for Kelly Turkeys is incorrect; should be \$29,000 instead of \$11,000.

Mr. Kamptner discussed tracking of employment and salaries, and added that staff would need to bring back information on reporting requirements.

Mr. Oliver asked if the funding for both of these entities go through the EDA. Mr. Kamptner responded that they do. Ms. McClintic stated that just as the County cannot give grants or funds directly to these entities, the Commonwealth cannot give money to them, but it can pass funds to them through the EDA. She added that she is concerned about the lack of autonomy that this EDA has. She said that she has initiated discussions with the County Executive.

Ms. Bien then moved to approve the Performance Agreements for Kelly Turkey and Twenty Paces subject to the County Attorney's final approval as to substance and form, and to authorize the Chair and Secretary-Treasurer to sign the agreements on behalf of the EDA. Mr. Oliver seconded the motion. On a voice call vote, all voted aye. There were no nays.

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

This **PERFORMANCE AGREEMENT** made and entered this ____ day of June, 2015, by and among the **COUNTY OF ALBEMARLE, VIRGINIA** (the "Locality"), a political subdivision of the Commonwealth of Virginia (the "Commonwealth"), and **KELLY TURKEYS USA, LLC** (the "Company"), a Virginia limited liability company authorized to transact business in the

**ALBEMARLE COUNTY
ECONOMIC DEVELOPMENT AUTHORITY
JUNE 9, 2015
(Page 11)**

Commonwealth, and the **ECONOMIC DEVELOPMENT AUTHORITY OF ALBEMARLE COUNTY, VIRGINIA** (the "Authority"), a political subdivision of the Commonwealth.

WITNESSETH:

WHEREAS, the Locality has been awarded a grant of and expects to receive \$29,000 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 an agriculture 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 and Full-Time Job Equivalents (FTEs), as hereinafter defined, and purchasing a significant amount of Virginia-grown agricultural products, as hereinafter defined; 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 FTEs, and the purchase of Virginia-grown agricultural products; and

WHEREAS, the Locality, the Authority, and the Company have entered into a similar Performance Agreement pertaining to the parties rights and obligations related to the Locality's Economic Opportunity Fund Grant, and that agreement is entitled the "Economic Opportunity Fund Performance Agreement"; 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 and FTE creation, the purchase of Virginia-grown agricultural 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 \$1,400,000, of which approximately \$650,000 will be invested in machinery and equipment, and approximately \$750,000 will be invested to improve the site and building; and

WHEREAS, the construction and operation of the Facility will further entail the creation of 1 New Job and 5 FTEs 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: 17,500 turkeys 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 FTEs, and the 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:

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

**ALBEMARLE COUNTY
ECONOMIC DEVELOPMENT AUTHORITY
JUNE 9, 2015
(Page 12)**

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 Capital Investment must be in addition to the capital improvements at the Facility as of the date of the Grant award: April 30, 2015. The total capital expenditure of \$1,400,000, is referred to in this Agreement as the “Capital Investment.”

“Maintain” means that the New Jobs and FTEs created pursuant to the AFID Grant will continue without interruption from the date of creation through the Performance Date. Positions for the New Jobs and FTEs 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 \$40,479. 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.

“Full-Time Equivalent” (FTEs) are part-time and seasonal positions created by the project on a predictable, annual, basis that do not meet the definition of New Job. For the purposes of the AFID Grant, these positions should be converted into full-time equivalent (FTE) positions based on one FTE equaling 1,680 hours per year.

“Performance Date” means September 1, 2018. 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 \$1,400,000, to create and Maintain at least 1 New Job and 5 FTEs at the Facility, and to purchase at least 17,500 turkeys as defined in Appendix A, 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 \$1,400,000, create and Maintain at least 1 New Job and 5 FTEs, and purchase 17,500 turkeys as provided in Appendix A, at the Facility, all as of the Performance Date. If the volume 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 dollar value of Virginia-grown agricultural products they proposed in Appendix A.

The average annual wage of the New Jobs and FTEs will be at least \$40,479.

The average prevailing wage in the locality in 2015 is \$49,480.

Section 3. Disbursement of AFID Grant.

By no later than September 1, 2015, the Locality will request the disbursement to it of the AFID Grant. If not so requested by the Locality by September 1, 2015, 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 \$29,000 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 Incentives.

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 and FTEs at the Facility with the Commonwealth's expenditures on incentives, including but not limited to the AFID Grant. 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	\$29,000

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>
Local Match – Cash Grant (building improvements)	\$29,000

IF THE LOCALITY'S FUNDS ARE BEING PROVIDED OVER TIME: If, by the Performance Date, the funds disbursed or committed to be disbursed by the Locality to the Company total less than the **\$29,000** AFID Grant local match requirement, the Locality, subject

to appropriation, will make an additional grant to the Company of the difference at the Performance Date, so long as the Company has met its Targets.

The proceeds of the AFID Grant shall be used for the purposes described in Section 3. The proceeds of the Locality's \$29,000 may be used by the Company for any lawful purpose.

Section 5. Repayment Obligation.

(a) An impending failure by the Company, as determined by the Locality or the Secretary of Agriculture and Forestry, to meet at least half of its Target for either Capital Investment of at least \$700,000 in the Facility, to create and Maintain at least 3 New Jobs and FTEs at the Facility, or to purchase 8,750 Virginia-grown turkeys (as defined in Appendix A) by the Performance Date shall constitute a breach of this Agreement and the entire AFID Grant must be repaid by the Company to the Authority. Such a determination by the Locality or the Secretary of Agriculture & Forestry will be based on such circumstances 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 the Company will be unable or is unwilling to satisfy the Targets for the AFID Grant.

(b) For purposes of repayment, the AFID Grant is to be allocated as \$9,668 (33%) for the Company's Capital Investment Target, \$9,666 (33%) for its New Jobs and FTEs Target, and \$9,666 (33%) for its purchase of Virginia-grown agricultural and forestal products. If the Company has met at least ninety percent (90%) 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 all 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 \$1,050,000, only 4 New Jobs and FTEs have been created and Maintained, and only 13,125 Virginia-grown turkeys have been purchased (as defined in Appendix A), the Company shall repay to the Authority twenty-five percent (25%) of the moneys allocated to the Capital Investment Target (\$2,418), thirty-three percent (33%) of the moneys allocated to the New Jobs and FTEs Target (\$3,222), and twenty-five percent (25%) of the moneys allocated to the purchase of Virginia-grown agricultural and forestal products Target (\$2,416).

(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 such funds, including legal action for breach of this Agreement. 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 Locality, the Authority, and VDACS of the Company's progress on the Targets. Such progress reports will be provided annually, starting at September 1, 2016 and covering the

**ALBEMARLE COUNTY
ECONOMIC DEVELOPMENT AUTHORITY
JUNE 9, 2015
(Page 15)**

period through the prior twelve-month period, and at such other times as the Locality, the Authority, or VDACS may reasonably require.

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 Locality 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 the 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:

Kelly Turkeys USA, LLC
6921 Jarmans Gap Road
Crozet, VA 22932
Attention: Judd Culver, Principal

With a copy to:

Kelly Turkeys USA, LLC
802 Glenmont Farm Road
Fort Valley, VA 22652
Attention: Judd Culver, Registered Agent

If to the Locality, to:

Albemarle County Executive's Office
401 McIntire Road
Charlottesville, VA 22902
Attention: Thomas C. Foley

With a copy to:

Albemarle County Finance Dept.
401 McIntire Road
Charlottesville, VA 22902
Attention: Betty Burrell

**ALBEMARLE COUNTY
ECONOMIC DEVELOPMENT AUTHORITY
JUNE 9, 2015
(Page 16)**

If to the Authority, to:

Economic Development Authority
Albemarle County
401 McIntire Road, 4th Floor
Charlottesville, VA 22902
Attention: W. Rod Gentry

With a copy to:

Economic Development Authority
Albemarle County
401 McIntire Road, 4th Floor
Charlottesville, VA 22902
Attention: Ella Jordan

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
Virginia Department 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 Albemarle County, 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.

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

COUNTY OF ALBEMARLE, VIRGINIA

By _____

Thomas C. Foley, County Executive

Date: _____

**ECONOMIC DEVELOPMENT AUTHORITY
OF THE COUNTY OF ALBEMARLE,
VIRGINIA**

By _____
W. Rod Gentry, Chairman
Date: _____

By _____
Elton, Oliver, Secretary-Treasurer
Date: _____

KELLY TURKEYS USA, LLC

By _____
Judd Culver, Principal
Date: _____

APPENDIX A

The volume and value of turkey purchases are as follows:

	YEAR 1	YEAR 2	YEAR 3	YEARS 1 - 3
Total Ag & Forest Products Purchase – Turkeys Grown and Processed (100% from VA)	2,500	5,000	10,000	17,500

Kelly Turkeys USA grows, processes and sells premium turkeys, processed on-site – including dry plucking and hung in a cool larder for aging. These turkeys retail between \$10 - \$13/lb., so a typical 14 pound turkey sells for approximately ~\$175. Turkeys that don't generally meet this description will not count towards the target, unless written permission is requested by the locality and approved by the Secretary.

**ECONOMIC OPPORTUNITY FUND
PERFORMANCE AGREEMENT**

This **PERFORMANCE AGREEMENT** made and entered this ____ day of June, 2015, by and among the **COUNTY OF ALBEMARLE, VIRGINIA** (the "County"), a political subdivision of the Commonwealth of Virginia (the "Commonwealth"), **KELLY TURKEYS USA, LLC** (the "Company"), a Virginia limited liability company, and the **ECONOMIC DEVELOPMENT AUTHORITY OF ALBEMARLE COUNTY, VIRGINIA** (the "Authority"), a political subdivision of the Commonwealth.

WITNESSETH:

WHEREAS, the County has been awarded a grant of and expects to receive \$29,000 from the Governor's Agriculture and Forestry Industries Development Fund (the "AFID Grant") through the Virginia Department of Agriculture and Consumer Services ("VDACS") for the purpose of inducing the Company to construct an agriculture processing/value-added facility using Virginia-

**ALBEMARLE COUNTY
ECONOMIC DEVELOPMENT AUTHORITY
JUNE 9, 2015
(Page 18)**

grown products in the County (the "Facility"), thereby making a significant Capital Investment, as hereinafter defined, and creating a significant number of New Jobs and Full Time Equivalents (FTEs), as hereinafter defined, and purchasing a significant amount of Virginia-grown agricultural products, as hereinafter defined; and

WHEREAS, the County is willing to provide the AFID Grant 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 FTEs, and the purchase of Virginia-grown agricultural products; and

WHEREAS, the County also is willing to provide funds to the Authority from its Economic Opportunity Fund (the "EOF Grant") as its local match to the AFID Grant 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 FTEs, and the purchase of Virginia-grown agricultural products; and

WHEREAS, the County, the Authority, and the Company have entered into a similar Performance Agreement pertaining to the parties rights and obligations related to the AFID Grant, and that agreement is entitled the "Governor's Agriculture and Forestry Industries Development Fund Performance Agreement"; and

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

WHEREAS, the construction and operation of the Facility will entail a capital expenditure of approximately \$1,400,000, of which approximately \$650,000 will be invested in machinery and equipment, and approximately \$750,000 will be invested to improve the site and building; and

WHEREAS, the construction and operation of the Facility will further entail the creation of 1 New Job and 5 FTEs 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: 17,500 turkeys 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 FTEs, and the 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 EOF Grant:

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.

**ALBEMARLE COUNTY
ECONOMIC DEVELOPMENT AUTHORITY
JUNE 9, 2015
(Page 19)**

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 Capital Investment must be in addition to the capital improvements at the Facility as of the date of the AFID Grant award: April 30, 2015. The total capital expenditure of \$1,400,000, is referred to in this Agreement as the “Capital Investment.”

“Maintain” means that the New Jobs and FTEs created pursuant to the EOF Grant will continue without interruption from the date of creation through the Performance Date. Positions for the New Jobs and FTEs 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 \$40,479. 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.

“Full-Time Equivalent” (FTEs) are part-time and seasonal positions created by the project on a predictable, annual, basis that do not meet the definition of New Job. For the purposes of the EOF Grant, these positions should be converted into full-time equivalent (FTE) positions based on one FTE equaling 1,680 hours per year.

“Performance Date” means September 1, 2018. If the County, 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 County may agree to extend the Performance Date by up to 15 months. If the Performance Date is extended, the County 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 \$1,400,000, to create and Maintain at least 1 New Job and 5 FTEs at the Facility, and to purchase at least 17,500 turkeys as provided in Appendix A, 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 County, make a Capital Investment of at least \$1,400,000, create and Maintain at least 1 New Job and 5 FTEs, and purchase 17,500 turkeys as provided in Appendix A, at the Facility, all as of the Performance Date. If the volume 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 dollar value of Virginia-grown agricultural products they proposed in Appendix A.

The average annual wage of the New Jobs and FTEs will be at least \$40,479.

The average prevailing wage in the locality in 2015 is \$49,480.

Section 3. Disbursement of EOF Grant; Use of Proceeds.

The EOF Grant in the amount of \$29,000 will be disbursed to the Authority at or about the same time the AFID Grant funds are disbursed to the Authority. Within 30 days of its receipt of the EOF Grant proceeds, the Authority shall disburse the EOF Grant proceeds to the Company as an inducement to the Company to achieve the Targets at the Facility.

The Company shall use the EOF Grant proceeds to make building improvements, as permitted by Virginia Code § 3.2-304(C).

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

VDACS has estimated that the Commonwealth will reach its “break-even point” by the Performance Date. The County has estimated that it 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 and FTEs at the Facility with the County’s EOF Grant. 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	\$29,000

The County has committed to provide the following incentives, as matching grants or otherwise, for the Facility:

<u>Category of Incentive:</u>	<u>Total Amount</u>
EOF Grant	\$29,000

Section 5. Repayment Obligation.

(a) *Failure to Satisfy Targets.* An impending failure by the Company, as determined by the County or the Secretary of Agriculture and Forestry, to meet at least half of its target for either Capital Investment of at least \$700,000 in the Facility, to create and Maintain at least 3 New Jobs and FTEs at the Facility, or to purchase 8,750 Virginia-grown turkeys (as defined in Appendix A) by the Performance Date, shall constitute a breach of this Agreement and the entire EOF Grant must be repaid by the Company to the Authority. Such a determination by the County or the Secretary of Agriculture and Forestry will be based on such circumstances as a filing by or on

**ALBEMARLE COUNTY
ECONOMIC DEVELOPMENT AUTHORITY
JUNE 9, 2015
(Page 21)**

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 the Company will be unable or is unwilling to satisfy the Targets for the EOF Grant.

(b) *Repayment.* For purposes of repayment, the EOF Grant is to be allocated as \$9,668 (33%) for the Company's Capital Investment Target, \$9,666 (33%) for its New Jobs and FTEs Target, and \$9,666 (33%) for its purchase of Virginia-grown agricultural and forestal products. If the Company has met at least ninety percent (90%) of the three Targets at the Performance Date, then and thereafter the Company is no longer obligated to repay any portion of the EOF Grant. If the Company has not met at least ninety percent (90%) of all three of its Targets at the Performance Date, the Company shall repay to the Authority that part of the EOF 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 \$1,050,000, only 4 New Jobs and FTEs have been created and Maintained, and only 13,125 Virginia-grown turkeys have been purchased (as defined in Appendix A), the Company shall repay to the Authority twenty-five percent (25%) of the moneys allocated to the Capital Investment Target (\$2,418), thirty-three percent (33%) of the moneys allocated to the New Jobs and FTEs Target (\$3,222), and twenty-five percent (25%) of the moneys allocated to the purchase of Virginia-grown agricultural and forestal products Target (\$2,416).

(c) *Repayment Dates. **Repayment of the EOF Grant Funds shall be due from the Company to the Authority within thirty days after the Performance Date or the Determination Date, as applicable.*** Any moneys repaid by the Company to the Authority hereunder shall be promptly repaid by the Authority to the County for redeposit into the EOF. The County and the Authority shall use their best efforts to recover the EOF Grant funds, including legal action for breach of this Agreement. Neither the County nor the Authority shall have any responsibility for the repayment of any sums hereunder unless the 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 and the Authority of the Company's progress on the Targets, which may be the same verification as required by Section 6 of the Governor's AFID Fund Performance Agreement. The progress reports will be provided annually, starting at September 1, 2016, and covering the period through the prior twelve-month period, and at such other times as the County or the Authority may reasonably require.

The County and the 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. The Company understands that the Virginia Department of Agriculture and Consumer Services (VDACS) and its authorized agents, and/or state auditors (both the Auditor of Public Accounts and/or VDACS Internal Auditor) will 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.

**ALBEMARLE COUNTY
ECONOMIC DEVELOPMENT AUTHORITY
JUNE 9, 2015
(Page 22)**

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:

Kelly Turkeys USA, LLC
6921 Jarmans Gap Road
Crozet, VA 22932
Attention: Judd Culver, Principal

With a copy to:

Kelly Turkeys USA, LLC
802 Glenmont Farm Road
Fort Valley, VA 22652
Attention: Judd Culver, Registered Agent

If to the County, to:

Albemarle County Executive's Office
401 McIntire Road
Charlottesville, VA 22902
Attention: Thomas C. Foley

With a copy to:

Albemarle County Finance Dept.
401 McIntire Road
Charlottesville, VA 22902
Attention: Betty Burrell

If to the Authority, to:

Economic Development Authority
Albemarle County
401 McIntire Road, 4th Floor
Charlottesville, VA 22902
Attention: W. Rod Gentry

With a copy to:

Economic Development Authority
Albemarle County
401 McIntire Road, 4th Floor
Charlottesville, VA 22902
Attention: Ella Jordan

Section 8. Miscellaneous.

(a) *Entire Agreement; Amendments.* This Agreement constitutes the entire agreement among the parties hereto as to the EOF 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 County and the Authority.

(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 Albemarle, 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

**ALBEMARLE COUNTY
ECONOMIC DEVELOPMENT AUTHORITY
JUNE 9, 2015
(Page 23)**

original intentions of the parties as nearly as possible in accordance with applicable law.

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

COUNTY OF ALBEMARLE, VIRGINIA

By _____
Thomas C. Foley, County Executive
Date: _____

**ECONOMIC DEVELOPMENT AUTHORITY
OF THE COUNTY OF ALBEMARLE,
VIRGINIA**

By _____
W. Rod Gentry, Chairman
Date: _____
By _____
Elton Oliver, Secretary-Treasurer
Date: _____

KELLY TURKEYS USA, LLC

By _____
Judd Culver, Principal
Date: _____

APPENDIX A

The volume and value of turkey purchases are as follows:

	YEAR 1	YEAR 2	YEAR 3	YEARS 1 - 3
Total Ag & Forest Products Purchase – Turkeys Grown and Processed (100% from VA)	2,500	5,000	10,000	17,500

Kelly Turkeys USA grows, processes and sells premium turkeys, processed on-site – including dry plucking and hung in a cool larder for aging. These turkeys retail between \$10 - \$13/lb., so a typical 14 pound turkey sells for approximately ~\$175. Turkeys that don't generally meet this description will not count towards the target, unless written permission is requested by the locality and approved by the Secretary.

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

This **PERFORMANCE AGREEMENT** made and entered this ___ day of June, 2015, by and among the **COUNTY OF ALBEMARLE, VIRGINIA** (the “Locality”), a political subdivision of

**ALBEMARLE COUNTY
ECONOMIC DEVELOPMENT AUTHORITY
JUNE 9, 2015
(Page 24)**

the Commonwealth of Virginia (the "Commonwealth"), and **EWES GUYS, LLC DBA TWENTY PACES** (the "Company"), a Virginia Limited Liability Company authorized to transact business in the Commonwealth, and the **ECONOMIC DEVELOPMENT AUTHORITY OF ALBEMARLE COUNTY, VIRGINIA** (the "Authority"), a political subdivision of the Commonwealth.

WITNESSETH:

WHEREAS, the Locality has been awarded a grant of and expects to receive \$11,000 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 and Full-Time Job Equivalents (FTEs), as hereinafter defined; and purchasing a significant amount of Virginia-grown agricultural and forestal products, as hereinafter defined; 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 FTEs, and the 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 and FTE creation, the 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 \$321,000, of which approximately \$169,000 will be invested in machinery and equipment, and approximately \$152,000 will be invested in the up-fit of the building; and

WHEREAS, the construction and operation of the Facility will further entail the creation of 5 New Jobs and 1 FTE at the Facility;

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: \$1,033,432 (37,733 gal.) of sheep and goat milk 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 FTEs, and the 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:

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

**ALBEMARLE COUNTY
ECONOMIC DEVELOPMENT AUTHORITY
JUNE 9, 2015
(Page 25)**

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 Capital Investment must be in addition to the capital improvements at the Facility as of the date of the Grant award: April 30, 2015. The total capital expenditure of \$321,000 is referred to in this Agreement as the “Capital Investment.” A capital expenditure related to a leasehold interest in real property will be considered to be made “on behalf of the Company” if a lease between a developer and the Company is a capital lease, or is an operating lease having a term of at least ten years, and the real property would not have been constructed or improved but for the Company’s interest in leasing some or all of the real property. Only the capital expenditures allocated to the portion of the real property to be leased by the Company will count as “Capital Investment.” The purchase or lease of furniture, fixtures, machinery and equipment, including under an operating lease, and expected building up-fit and tenant improvements by or on behalf of the Company will qualify as Capital Investment.

“Maintain” means that the New Jobs and FTEs created pursuant to the AFID Grant will continue without interruption from the date of creation through the Performance Date. Positions for the New Jobs and FTEs 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 \$33,773. 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.

“Full-Time Equivalents” (FTEs) are part-time and seasonal positions created by the project on a predictable, annual basis that do not meet the definition of New Job. For the purposes of the AFID Grant, these positions should be converted into full-time equivalent (FTE) positions based on one FTE equaling 1,680 hours per year.

“Performance Date” means September 1, 2018. 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 \$321,000, to create and Maintain at least 5 New Jobs and 1 FTE at the Facility, and to purchase at least \$1,033,432 of Virginia-grown agricultural and forestal products as defined in Appendix A, all as of the Performance Date. Further, "Targets" includes the Company's obligation to Maintain at least 5 New Jobs and 1 FTE at the Facility 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 \$321,000, create and Maintain at least 5 New Jobs and 1 FTE, and purchase \$1,033,432 of Virginia-grown agricultural and forestal products as provided in 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 and FTEs will be at least \$33,773.

The average prevailing wage in the locality in 2015 is \$49,482.

Section 3. Disbursement of AFID Grant.

By no later than September 1, 2015, the Locality will request the disbursement to it of the AFID Grant. If not so requested by the Locality by September 1, 2015, 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 \$11,000 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 Incentives.

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 and FTEs at the Facility with the Commonwealth's expenditures on incentives, including but not limited to the AFID Grant. 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	\$11,000

**ALBEMARLE COUNTY
ECONOMIC DEVELOPMENT AUTHORITY
JUNE 9, 2015
(Page 27)**

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>
Local Match – Cash Grant (building improvements)	\$11,000

IF THE LOCALITY'S FUNDS ARE BEING PROVIDED OVER TIME: If, by the Performance Date, the funds disbursed or committed to be disbursed by the Locality to the Company total less than the \$11,000 AFID Grant local match requirement, the Locality, subject to appropriation, will make an additional grant to the Company of the difference at the Performance Date, so long as the Company has met its Targets.

The proceeds of the AFID Grant shall be used for the purposes described in Section 3. The proceeds of the Locality's \$11,000 may be used by the Company for any lawful purpose.

Section 5. Repayment Obligation.

(a) An impending failure by the Company, as determined by the Locality or the Secretary of Agriculture and Forestry, to meet at least half of its Target for either Capital Investment of at least \$160,500 in the Facility, to create and Maintain at least 3 New Jobs and FTEs at the Facility, or to purchase \$516,716 of Virginia-grown agricultural and forestal products by the Performance Date shall constitute a breach of this Agreement and the entire AFID Grant must be repaid by the Company to the Authority. Such a determination by the Locality or the Secretary of Agriculture & Forestry will be based on such circumstances 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 the Company will be unable or is unwilling to satisfy the Targets for the AFID Grant.

(b) For purposes of repayment, the AFID Grant is to be allocated as \$3,668 (33%) for the Company's Capital Investment Target, \$3,666 (33%) for its New Jobs and FTEs Target, and \$3,666 (33%) for its purchase of Virginia-grown agricultural and forestal products. If the Company has met at least ninety percent (90%) 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 all 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 \$240,750, only 4 New Jobs and FTEs have been created and Maintained, and only \$677,573 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 (\$918), thirty-three percent (33%) of the moneys allocated to the New Jobs and FTEs Target (\$1,222), and twenty-five percent (25%) of the moneys allocated to the purchase of Virginia-grown agricultural and forestal products Target (\$916).

(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. The Locality and the Authority shall use their best efforts to recover such funds,

**ALBEMARLE COUNTY
ECONOMIC DEVELOPMENT AUTHORITY
JUNE 9, 2015
(Page 28)**

including legal action for breach of this Agreement. 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 Locality, the Authority and VDACS of the Company's progress on the Targets. Such progress reports will be provided annually, starting at September 1, 2016 and covering the period through the prior twelve-month period, and at such other times as the Locality, the Authority, or VDACS may reasonably require.

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 County 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 the 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:

Ewes Guys, LLC dba Twenty Paces
5209 Bellair Farm
Charlottesville, VA 22902
Attention: Kyle L. Kilduff

With a copy to:

Ewes Guys, LLC dba Twenty Paces
5209 Bellair Farm
Charlottesville, VA 22902
Attention: Kyle L. Kilduff, Registered Agent

**ALBEMARLE COUNTY
ECONOMIC DEVELOPMENT AUTHORITY
JUNE 9, 2015
(Page 29)**

If to the County, to:

Albemarle County Executive's Office
401 McIntire Road
Charlottesville, VA 22902
Attention: Thomas C. Foley

With a copy to:

Albemarle County Finance Dept.
401 McIntire Road
Charlottesville, VA 22902
Attention: Betty Burrell

If to the Authority, to:

Economic Development Authority
Albemarle County
401 McIntire Road, 4th Floor
Charlottesville, VA 22902
Attention: W. Rod Gentry

With a copy to:

Economic Development Authority
Albemarle County
401 McIntire Road, 4th Floor
Charlottesville, VA 22902
Attention: Ella Jordan

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 Albemarle County, 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.

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

COUNTY OF ALBEMARLE, VIRGINIA

By _____
Thomas C. Foley, County Executive
Date: _____

**ECONOMIC DEVELOPMENT AUTHORITY
OF THE COUNTY OF ALBEMARLE,
VIRGINIA**

By _____
W. Rod Gentry, Chairman
Date: _____
By _____
Elton Oliver, Secretary-Treasurer
Date: _____

EWES GUYS, LLC DBA TWENTY PACES

By _____
Name: _____
Title: _____
Date: _____

APPENDIX A

The volume and value of the sheep and goats milk purchases are as follows:

	YEAR 1 - \$ Value	YEAR 1 - Gallons	YEAR 2 - \$ Value	YEAR 2 - Gallons	YEAR 3 - \$ Value	YEAR 3 - Gallons	Yrs 1 - 3 \$ Value	Yrs 1 - 3 Gallons
Total Ag & Forest Products Purchase (100% from VA)	177,145	6,643	310,140	11,602	546,147	20,488	1,033,432	37,733
Sheep Milk	170,680	5,178	300,880	9,160	525,530	15,930	997,090	30,268
Goat Milk	6,465	1,465	9,260	2,442	20,617	4,558	36,342	8,465

**ECONOMIC OPPORTUNITY FUND
PERFORMANCE AGREEMENT**

This **PERFORMANCE AGREEMENT** made and entered this ____ day of June, 2015, by and among the **COUNTY OF ALBEMARLE, VIRGINIA** (the "County"), a political subdivision of the Commonwealth of Virginia (the "Commonwealth"), **EWES GUYS, LLC DBA TWENTY PACES** (the "Company"), a Virginia limited liability company, and the **ECONOMIC DEVELOPMENT AUTHORITY OF ALBEMARLE COUNTY, VIRGINIA** (the "Authority"), a political subdivision of the Commonwealth.

WITNESSETH:

WHEREAS, the County has been awarded a grant of and expects to receive \$11,000 from the Governor's Agriculture and Forestry Industries Development Fund (the "AFID Grant") through the Virginia Department of Agriculture and Consumer Services ("VDACS") for the purpose of inducing the Company to construct an agriculture processing/value-added facility using Virginia-grown products in the County (the "Facility"), thereby making a significant Capital Investment, as hereinafter defined, and creating a significant number of New Jobs and Full Time Equivalents (FTEs), as hereinafter defined, and purchasing a significant amount of Virginia-grown agricultural and forestall products, as hereinafter defined; and

WHEREAS, the County is willing to provide the AFID Grant 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 FTEs, and the purchase of Virginia-grown agricultural and forestall products; and

WHEREAS, the County also is willing to provide funds to the Authority from its Economic Opportunity Fund (the "EOF Grant") as its local match to the AFID Grant 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 FTEs, and the purchase of Virginia-grown agricultural and forestall products; and

WHEREAS, the County, the Authority, and the Company have entered into a similar Performance Agreement pertaining to the parties rights and obligations related to the AFID Grant, and that agreement is entitled the "Governor's Agriculture and Forestry Industries Development Fund Performance Agreement"; and

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

WHEREAS, the construction and operation of the Facility will entail a capital expenditure of approximately \$321,000, of which approximately \$169,000 will be invested in machinery and equipment, and approximately \$152,000 will be invested in the up-fit of the building; and

WHEREAS, the construction and operation of the Facility will further entail the creation of 5 New Jobs and 1 FTE 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: \$1,033,432 (37,733 gal.) of sheep and goat milk 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 FTEs, and the 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 EOF Grant:

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 Capital Investment must be in addition to the capital improvements at the Facility as of the date of the AFID Grant award: April 30, 2015. The total capital expenditure of \$321,000 is referred to in this Agreement as the “Capital Investment.” A capital expenditure related to a leasehold interest in real property will be considered to be made “on behalf of the Company” if a lease between a developer and the Company is a capital lease, or is an operating lease having a term of at least ten years, and the real property would not have been constructed or improved but for the Company’s interest in leasing some or all of the real property. Only the capital expenditures allocated to the portion of the real property to be leased by the Company will count as “Capital Investment.” The purchase or lease of furniture, fixtures, machinery and equipment, including under an operating lease, and expected building up-fit and tenant improvements by or on behalf of the Company will qualify as Capital Investment.

“Maintain” means that the New Jobs and FTEs created pursuant to the EOF Grant will continue without interruption from the date of creation through the Performance Date. Positions for the New Jobs and FTEs 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 \$33,773. 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.

“Full-Time Equivalent” (FTEs) are part-time and seasonal positions created by the project on a predictable, annual, basis that do not meet the definition of New Job. For the purposes of the EOF Grant, these positions should be converted into full-time equivalent (FTE) positions based on one FTE equaling 1,680 hours per year.

“Performance Date” means September 1, 2018. If the County, 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 County may agree to extend the Performance Date by up to 15 months. If the Performance Date is

extended, the County 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 \$321,000, to create and Maintain at least 5 New Jobs and 1 FTE at the Facility, and to purchase at least \$1,033,432 of Virginia-grown agricultural and forestal products as provided in Appendix A, all as of the Performance Date. Further, "Targets" includes the Company's obligation to Maintain at least 5 New Jobs and 1 FTE at the Facility 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 County, make a Capital Investment of at least \$321,000, create and Maintain at least 5 New Jobs and 1 FTE, and purchase \$1,033,432 of Virginia-grown agricultural and forestal products as provided in 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 and FTEs will be at least \$33,773.

The average prevailing wage in the County in 2015 is \$49,482.

Section 3. Disbursement of EOF Grant; Use of Proceeds.

The EOF Grant in the amount of \$11,000 will be disbursed to the Authority at or about the same time the AFID Grant funds are disbursed to the Authority. Within 30 days of its receipt of the EOF Grant proceeds, the Authority shall disburse the EOF Grant proceeds to the Company as an inducement to the Company to achieve the Targets at the Facility.

The Company shall use the EOF Grant proceeds to make building improvements, as permitted by Virginia Code § 3.2-304(C).

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

VDACS has estimated that the Commonwealth will reach its "break-even point" by the Performance Date. The County has estimated that it 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 and FTEs at the Facility with the County's EOF Grant. 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	\$11,000

The County has committed to provide the following incentives, as matching grants or otherwise, for the Facility:

<u>Category of Incentive:</u>	<u>Total Amount</u>
EOF Grant	\$11,000

Section 5. Repayment Obligation.

(a) *Failure to Satisfy Targets.* An impending failure by the Company, as determined by the County or the Secretary of Agriculture and Forestry, to meet at least half of its target for either Capital Investment of at least \$160,500 in the Facility, to create and Maintain at least 3 New Jobs and FTEs at the Facility, or to purchase \$516,716 of Virginia-grown agricultural and forestal products by the Performance Date shall constitute a breach of this Agreement and the entire EOF Grant must be repaid by the Company to the Authority. Such a determination by the County or the Secretary of Agriculture and Forestry will be based on such circumstances 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 the Company will be unable or is unwilling to satisfy the Targets for the EOF Grant.

(b) *Repayment.* For purposes of repayment, the EOF Grant is to be allocated as \$3,668 (33%) for the Company's Capital Investment Target, \$3,666 (33%) for its New Jobs and FTEs Target, and \$3,666 (33%) for its purchase of Virginia-grown agricultural and forestal products. If the Company has met at least ninety percent (90%) of the three Targets at the Performance Date, then and thereafter the Company is no longer obligated to repay any portion of the EOF Grant. If the Company has not met at least ninety percent (90%) of all three of its Targets at the Performance Date, the Company shall repay to the Authority that part of the EOF 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 \$240,750, only 4 New Jobs and FTEs have been created and Maintained, and only \$677,573 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 (\$918), thirty-three percent (33%) of the moneys allocated to the New Jobs and FTEs Target (\$1,222), and twenty-five percent (25%) of the moneys allocated to the purchase of Virginia-grown agricultural and forestal products Target (\$916).

(c) *Repayment Dates. **Repayment of the EOF Grant Funds shall be due from the Company to the Authority within thirty days after the Performance Date or the Determination Date, as applicable.*** Any moneys repaid by the Company to the Authority hereunder shall be promptly repaid by the Authority to the County for redeposit into the EOF. The County and the Authority shall use their best efforts to recover the EOF Grant funds, including legal action for breach of this Agreement. Neither the County nor the Authority shall have any responsibility for the repayment of any sums hereunder unless the 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 and the Authority of the Company's progress on the Targets, which may be the same verification as required by Section 6 of the Governor's AFID Fund Performance Agreement. The progress reports will be provided annually, starting at September 1, 2016, and

**ALBEMARLE COUNTY
ECONOMIC DEVELOPMENT AUTHORITY
JUNE 9, 2015
(Page 35)**

covering the period through the prior twelve-month period, and at such other times as the County or the Authority may reasonably require.

The County and the 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. The Company understands that the Virginia Department of Agriculture and Consumer Services (VDACS) and its authorized agents, and/or state auditors (both the Auditor of Public Accounts and/or VDACS Internal Auditor) will 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:

Ewes Guys, LLC dba Twenty Paces
5209 Bellair Farm
Charlottesville, VA 22902
Attention: Kyle L. Kilduff

With a copy to:

Ewes Guys, LLC dba Twenty Paces
5209 Bellair Farm
Charlottesville, VA 22902
Attention: Kyle L. Kilduff, Registered Agent

If to the County, to:

Albemarle County Executive's Office
401 McIntire Road
Charlottesville, VA 22902
Attention: Thomas C. Foley

With a copy to:

Albemarle County Finance Dept.
401 McIntire Road
Charlottesville, VA 22902
Attention: Betty Burrell

If to the Authority, to:

Economic Development Authority
Albemarle County
401 McIntire Road, 4th Floor
Charlottesville, VA 22902
Attention: W. Rod Gentry

With a copy to:

Economic Development Authority
Albemarle County
401 McIntire Road, 4th Floor
Charlottesville, VA 22902
Attention: Ella Jordan

Section 8. Miscellaneous.

(a) *Entire Agreement; Amendments.* This Agreement constitutes the entire agreement among the parties hereto as to the EOF 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

**ALBEMARLE COUNTY
ECONOMIC DEVELOPMENT AUTHORITY
JUNE 9, 2015
(Page 36)**

not assign its rights and obligations under this Agreement without the prior written consent of the County and the Authority.

(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 Albemarle, 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.

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

COUNTY OF ALBEMARLE, VIRGINIA

By _____
Thomas C. Foley, County Executive
Date: _____

**ECONOMIC DEVELOPMENT AUTHORITY
OF THE COUNTY OF ALBEMARLE,
VIRGINIA**

By _____
W. Rod Gentry, Chairman
Date: _____
By _____
Elton Oliver, Secretary-Treasurer
Date: _____

EWES GUYS, LLC, DBA TWENTY PACES

By _____
Date: _____

APPENDIX A

The volume and value of the sheep and goats milk purchases are as follows:

	YEAR 1 - \$ Value	YEAR 1 - Gallons	YEAR 2 - \$ Value	YEAR 2 - Gallons	YEAR 3 - \$ Value	YEAR 3 - Gallons	Yrs 1 - 3 \$ Value	Yrs 1 - 3 Gallons
Total Ag & Forest Products Purchase (100% from VA)	177,145	6,643	310,140	11,602	546,147	20,488	1,033,432	37,733

ALBEMARLE COUNTY
ECONOMIC DEVELOPMENT AUTHORITY
JUNE 9, 2015
(Page 37)

Sheep Milk	170,680	5,178	300,880	9,160	525,530	15,930	997,090	30,268
Goat Milk	6,465	1,465	9,260	2,442	20,617	4,558	36,342	8,465

New Business

- a. **Workshop on Economic Development Authority roles, purpose and authority. *Faith McClintic.***

Ms. McClintic presented a slide presentation with an overview of the powers and activities of economic development authorities (copy on file). The presentation included a discussion about best practices and successful strategies. Following the discussion, it was suggested and agreed to that the EDA consider holding an annual meeting with the Board of Supervisors.

Other Matters.

Ms. Bien commented that the proposed Route 29 Business Assistance Program was not approved by the Board of Supervisors. EDA members then discussed and expressed some concerns about how it was never asked to participate in the formation of the proposed plan or provide any input. Ms. McClintic added that the proposed program is scheduled to go back to the Board.

Adjourn.

With no further business to come forward, the meeting was adjourned at 6:12 p.m.

Assistant Secretary-Treasurer

Date Approved