

GOVERNOR'S AGRICULTURE & FORESTRY INDUSTRIES DEVELOPMENT FUND

PERFORMANCE AGREEMENT

This **PERFORMANCE AGREEMENT** (the "Agreement") made and entered into this 12th day of April, 2022, by and among the **COUNTY OF SUSSEX, VIRGINIA** (the "Locality") a political subdivision of the Commonwealth of Virginia (the "Commonwealth"), and **THE GERARD GROUP, INC. DBA VIRGINIA DINER** (the "Company"), a Corporation authorized to transact business in the Commonwealth, and the **INDUSTRIAL DEVELOPMENT AUTHORITY OF THE COUNTY OF SUSSEX** (the "Authority"), a political subdivision of the Commonwealth.

WITNESSETH:

WHEREAS, the Locality has been awarded a grant of and expects to receive \$100,000 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 expand and operate 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 New Full-Time Equivalent Positions (FTEs), as hereinafter defined; and using a significant amount of Virginia-Grown Agricultural and Forestal Products, as such capitalized items are hereinafter defined.

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 use of Virginia-Grown Agricultural and Forestal Products;

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

WHEREAS, the expansion and operation of the Facility will entail taxable capital expenditures by or on behalf of the Company of approximately \$4,547,446, of which approximately \$442,000 will be invested in machinery and tools, approximately \$3,945,446 will be invested in the construction and/or improvement of a building and site, and approximately \$160,000 will be invested in furniture, fixtures and business personal property;

WHEREAS, the expansion and operation of the Facility will further entail the creation of 2 New Jobs and 14 New FTEs at the Facility;

WHEREAS, the expansion and operation of the Facility will further lead to the use of Virginia-Grown Agricultural and Forestal Products in the following amount: \$702,080 (or 763,400 pounds) during the Performance Period; and

WHEREAS, the stimulation of the additional tax revenue and economic activity to be generated by the Capital Investment, New Jobs, and use 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 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. The Capital Investment must be in addition to the capital improvements at the Facility as of the date of the Grant Award Date: July 27, 2021. 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.

“Grant Award Date” means May 24, 2021. This is the date from which progress towards the achievement of all Targets begins. Progress towards achievement of Targets before this date will not be counted, unless such progress is approved in writing by VDACS, in consultation with the Locality and Authority.

“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 (i) temporary reductions in the Company’s employment levels (so long as there is active recruitment for open positions), (ii) strikes and (iii) other temporary 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 \$57,500. Average annual wage means the average annual salary of full-time positions at the Facility determined by dividing total payroll

(of a type included in W-2 compensation) provided to full-time positions at the Facility by the number of full-time positions at the Facility. 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. The New Jobs must be in addition to the 16 full-time jobs at the Facility as of July 27, 2021 which in 2021 paid an average annual wage of \$57,500. Net new jobs in the Commonwealth for contractors or employees of contractors who provide dedicated full-time service to the Company may count as New Jobs, even though the Company is not directly paying the wages or providing the fringe benefits, if the other conditions set forth in this paragraph have been satisfied.

New Full-Time Equivalent Positions (FTEs), are part-time and seasonal positions created by the project on a predictable, annual basis, which do not meet the definition of New Job, and for which the Company pays an average annual wage of at least \$22,000. For the purposes of the AFID Grant, these positions should be converted into New Full-Time Equivalent Positions (FTEs), based on one FTE equaling 2,000 hours per year. The New FTEs must be in addition to the 30 existing Full-Time Equivalent positions at the Facility as of July 27, 2021 which in 2021 paid an average annual wage of \$20,800.

"Performance Date" means September 30, 2025. If the Locality, in consultation with the Authority and VDACS, 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 \$4,547,446, to create and Maintain at least 2 New Jobs at an average annual wage of \$57,500 and 14 FTEs at an average annual wage of \$22,000 at the Facility, and to use at least \$702,080 (or 763,400 pounds) of net new Virginia-Grown Agricultural and Forestal Products as defined in Appendix A, all as of the Performance Date.

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

"Virginia-Grown Agricultural and Forestal Products" means crops, livestock, and livestock products, including field crops, fruits, vegetables, horticultural specialties, cattle, sheep, hogs, goats, horses, poultry, fur-bearing animals, milk, eggs, aquaculture, commercially harvested wild fish, commercially harvested wild shellfish, and furs, as well as, timber, pulpwood, posts, firewood, Christmas trees, and other tree and wood products for sale or for farm use, which are grown or produced in Virginia for commercial purposes and to which the Company adds value to at the Facility. The use of Virginia-Grown Agricultural and Forestal Products at the Facility must be in addition to the annual usage of these products in the year preceding the Grant Award Date.

Section 2. Targets.

The Company will develop and operate the Facility in the Locality, make a Capital Investment of at least \$4,547,446, create and Maintain at least 2 New Jobs at an average annual wage of \$57,500 and 14 FTEs at an average annual wage of \$22,000, and use: \$702,080 (or 763,400 pounds) of net new Virginia-Grown Agricultural and Forestal Products (see Appendix A), at the Facility, all as of the Performance Date. If the dollar amount of new purchases of Virginia-Grown Agricultural and Forestal Products is not met, the Company can still achieve the purchase target by demonstrating they substantively achieved the same volume of Virginia-Grown Agricultural and Forestal Products they proposed in Appendix A.

The average annual wage of the New Jobs will be at least \$57,500.

The average annual wage of FTEs will be at least \$22,000.

The average prevailing wage in the locality in July 2021 is \$36,497.

Section 3. Disbursement of AFID Grant and Local Grant.

The Company will use the AFID Grant proceeds to make building improvements, as permitted by Section 3.2-304(C) of the Virginia Code. The AFID Grant proceeds shall retain with VDACS and shall be disbursed in payments as follows:

First Payment: By execution and delivery of this Agreement, the Locality requests that the first half of the AFID Grant be disbursed to it. VDACS will promptly arrange for the payment of \$50,000 of the AFID Grant to the Locality. 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.

Second Payment: The Company will be eligible for the remaining \$50,000 of the \$100,000 AFID Grant following submission of the Company's fourth and final annual progress report, as required in Section 6 of this Agreement, that demonstrates to the satisfaction of the Locality, the Authority, and VDACS that it has made a Capital Investment of \$4,547,446, created and Maintained at least two (2) New Jobs and fourteen (14) FTEs, and purchased \$702,080 (or 763,400 pounds) of Virginia-grown agricultural and forestal products (see Appendix A). Such evidence will be subject to verification by the Locality, the Authority, and VDACS. Within 30 days of the verification, VDACS will disburse the remaining AFID Grant proceeds to the Locality. Within 30 days of its receipt of such AFID Grant proceeds, the Locality will disburse such AFID Grant proceeds to the Authority. Within 30 days of its receipt of such AFID Grant proceeds, the Authority will disburse such AFID Grant proceeds to the Company.

If the Company should fail to achieve the conditions required for the *Second Payment* the Company shall receive a partial payment based on its achievement of the Targets. The amount of the *Second Payment* shall be determined by VDACS after the Performance Date and the submission of an annual report, as required in Section 6 of this Agreement, and will determine

what proportion of the total \$100,000 Award will be paid. For purposes of determining the amount of the total payment, the AFID Grant is to be allocated as \$33,333 (33%) for the Company's Capital Investment Target, \$33,333 (33%) for its Maintain New Jobs Target, and \$33,334 (33%) for its purchase of Virginia-grown agricultural and forestal products Target. If the Company has met at least ninety percent (90%) of each of the three Targets at the Performance Date, the Company is eligible for the entire \$100,000 AFID Grant. If the Company has not met at least ninety percent (90%) of each of its three Targets at the Performance Date, the *Second Payment* will be reduced so that the amount paid of the AFID Grant is proportional to the Target or Targets for which there is a shortfall. For example, if at the Performance Date there is a twenty-five percent (25%) shortfall on each Target so that achievement of the Capital Investment is only \$3,410,584.50, only one (1) New Job and eleven (11) FTEs have been created and Maintained, and only \$526,560 (or 572,550 pounds) of Virginia-grown agricultural and forestal products have been purchased, the *Second Payment* will be reduced so that the aggregate amount paid, including the *First Payment*, equals twenty-five percent (25%) of the moneys allocated to the Capital Investment Target (\$25,000), twenty-five percent (25%) of the moneys allocated to the New Jobs Target (\$25,000), and twenty-five percent (25%) of the moneys allocated to the purchase of Virginia-grown agricultural and forestal products Target (\$25,000).

If the Company received the *First Payment* and if the calculation of the *Second Payment* described above indicates that Company is due to receive less total award money than it was awarded in the *Second Payment*, then the Company shall repay the difference to the Authority as described in Section 5(b) below.

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

(a) *State-Level 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 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	\$100,000

The proceeds of the AFID Grant shall be used for the purposes described in Section 3.

(b) *Local-Level Incentives:* The Locality expects to provide the following incentives, as matching grants or otherwise, for the Facility by the Performance Date:

<u>Category of Incentive:</u>	<u>Total Amount</u>
Local Cash Grant	\$70,000
Local Site Improvements	\$30,000

Locality grant disbursement schedule:

As of the effective date of this Agreement, the County has commenced the site improvement work and plans to complete the \$30,000 in kind contribution toward the site

improvements on or before December 31, 2022. The Locality shall appropriate to the Authority, which shall disburse the cash grant to the Company, not to exceed a total of \$70,000, in annual installments. Each annual installment shall be no more than the increased local tax revenue generated by the Project the previous year, and such installment payment shall be made to the Company by no later than June 30.

The proceeds of the Locality's Local Cash Grant may be used by the Company for any lawful purpose.

(c) Other Incentives: This Agreement relates solely to the AFID Grant. The qualification for, and payment of, all State-Level Incentives and Locality-Level Incentives, except for the AFID Grant, will be governed by separate arrangements between the Company and the entities offering the other incentives.

Section 5. 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, using a form provided by VDACS, starting September 30, 2022, and at such other times as the Locality, the Authority or VDACS may reasonably require. The first progress report will cover the period from July 27, 2021 to September 30, 2022, the second progress report will cover the period from October 1, 2022 to September 30, 2023, the third progress report will cover the period from October 1, 2023 to September 30, 2024 and the fourth and final progress report will cover the period from October 1, 2024 to September 30, 2025.

With each progress report, the Company shall report to VDACS (i) the amount of taxable expenditures made at the facility for this project, (ii) the number of New Jobs and FTEs created and Maintained during the reporting period, (iii) 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. VDACS has represented to the Company that it considers such information to be confidential proprietary information that is exempt from public disclosure under the Freedom of Information Act and that such information will be used by VDACS solely in calculating aggregate return on invested capital expenditures, New Jobs and FTEs created and Maintained, and use of Virginia-Grown Agricultural or Forestal Products for purposes of gauging the overall effectiveness of economic development incentives.

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

Section 6. Verification of Targets.

(a) *Verification of Capital Investment:* The Company must submit copies of fixed assets reports, business personal property tax filings, personal property tax assessment invoices, and real estate tax assessment invoices. The Company hereby authorizes the Locality, including the Locality's Commissioner of the Revenue and Treasurer, to release to VDACS the Company's real estate tax, business personal property tax and machinery and tools tax information. Such information shall be marked and considered confidential and proprietary and shall be used by VDACS solely for verifying satisfaction of the Capital Investment Target. If the Locality, the Office of the Commissioner of the Revenue or the Office of the Treasurer should require additional documentation or consents from the Company to access such information, the Company shall promptly provide, at the Company's expense, such additional documentation or consents as the Locality, the Authority, or VDACS may request. If the Company wishes to count as Capital Investments the capital expenditures made on its behalf by a lessor or a developer of the Facility, the Company is responsible for assembling and distributing the documentation necessary to verify the capital expenditures made on behalf of the Company.

In addition to the verification data described above, in the sole discretion of the Locality, the Authority, or VDACS, the Locality, the Authority, or VDACS, may each require such other documentation, including invoices, or audits as may be required to properly verify the Capital Investment.

(b) *Verification of New Jobs, FTEs and Wages:* VDACS will verify New Jobs, FTEs, and wages through the Virginia Employment Commission (VEC). If requested by VDACS, the Company shall provide to VDACS copies of the Company's Employer Quarterly Tax Report (Form FC 20) filings with VEC covering the period from the date of this Agreement through the Performance Date. The forms shall be marked and considered confidential and proprietary and shall be used by VDACS solely for verifying satisfaction of the New Jobs and FTEs Target. In accordance with the Virginia Code Section 60.2-114, VDACS is entitled to receive the Company's employment level and wage from the Virginia Employment Commission. If the Company wishes to count as New Jobs the employees of contractors, to the extent permitted in the definition of "New Jobs" in Section 1, the Company is responsible for assembling and distributing the documentation necessary to verify such New Jobs, including whether such jobs are net New Jobs in the Commonwealth. For verification of FTEs, the company is responsible for assembling and distributing the documentation necessary to verify such positions, including individuals' names, hours worked, and salaries.

The Company agrees that it will report to VDACS with respect to its employees at a facility-level, rather than at the company-level.

In addition to the verification data described above, in the sole discretion of the Locality, the Authority, or VDACS, the Locality, the Authority or VDACS, may each require such other documentation or audits as may be required to properly verify the New Jobs and FTEs.

(c) *Verification of use of Virginia-Grown Agricultural and Forestal Products:* The Company must provide to VDACS an accounting system generated report of the amount of Virginia-Grown Agricultural and Forestal Products purchased or used, including 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. If the Company wishes to count as used the Virginia-Grown Agricultural and Forestal Products that is not directly purchasing or using, but is instead purchasing from another company which is making the Virginia-Grown Agricultural and Forestal Products, the Company is responsible for assembling and distributing the documentation necessary to verify these purchases.

In addition to the verification data described above, in the sole discretion of the Locality, the Authority, or VDACS, the Locality, the Authority, or VDACS, may each require such other documentation, including invoices, or audits as may be required to properly verify the use of Virginia-Grown Agricultural and Forestal Products.

Section 7. Repayment Obligation.

(a) *Determination of Inability to Comply:* If the Locality or VDACS determines at any time before the Performance Date (a "Determination Date") that the Company is unable or unwilling to meet and Maintain at least fifty (50) percent of its Targets by and through the Performance Date (i.e., by making a Capital Investment of at least \$2,273,723 at the Facility, to creating and Maintaining at least 1 New Job and 7FTEs at the Facility, or purchasing at least \$351,040 of Virginia-Grown Agricultural and Forestal Products by the Performance Date), and if the Locality or VDACS have notified the Company of such determination, the entire AFID Grant must be repaid by the Company to the Authority. Such a determination by the Locality or VDACS will be based on such circumstances as a written acknowledgement by the company, 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) *Repayment of AFID Grant:* For purposes of repayment, the AFID Grant is to be allocated as \$33,333 (33%) for the Company's Capital Investment Target, \$33,333 (33%) for its New Jobs and FTEs Target, and \$33,334 (33%) for the Virginia-Grown Agricultural and Forestal Products Target. If the Company has met at least ninety percent (90%) of each of the three Targets at the Performance Date, then and thereafter the Company is no longer obligated to repay any portion of the AFID Grant. If the Company has not met at least ninety percent (90%) of each of the three of its Targets at the Performance Date, the Company shall repay to the Authority that part of the AFID Grant that is proportional to the Target or Targets for which there is a shortfall. For example, if at the Performance Date, if the Company meets seventy-five percent (75%) of each performance target, the Company shall repay to the Authority twenty-five percent (25%) of the moneys allocated to the Capital Investment Target (\$8,333) plus, twenty-five percent (25%) of the moneys allocated to the New Jobs and FTEs Target (\$8,333), and plus twenty-five percent (25%) of the moneys allocated to the purchase of Virginia-Grown Agricultural and Forestal Products Target (\$8,333).

(c) *Repayment:* The Company shall be liable for any repayment of all or a portion of the AFID Grant, as described in this Section 7. ***Such repayment shall be due from the Company to the Authority within ninety days of the Performance Date or the Determination Date, as applicable.*** Any moneys repaid by the Company to the Authority hereunder shall be repaid by the

Authority to the Locality and shall be repaid by the Locality promptly to VDACS for redeposit into the AFID fund. The Locality and the Authority shall use their best efforts to recover all such funds, including legal action for breach of this Agreement. The Locality shall assume primary responsibility for filing and prosecuting any such legal action, and the Authority shall cooperate with the Locality's efforts. Neither the Locality nor the Authority shall have any responsibility for the repayment of any sums hereunder unless said sums have been received by the Authority from the Company.

(d) *Failure to Repay:* If the Company fails to repay AFID funds following a determination of its liability for repayment pursuant to this Section 7, VDACS may determine that further collection action is required and may refer the matter to the Office of the Attorney General (the "OAG") for collection pursuant to Section 2.2-518 of the Virginia Code. In such event, by their signatures below, the Locality and the Authority will be deemed to have assigned to the Commonwealth all of their rights, title and interest in and to this Section 7. In any matter referred to the OAG for collection, the Company shall be liable to pay interest, administrative charges, attorney fees and other applicable fees. Interest on any outstanding repayment referred to the OAG shall accrue at the rate set forth in Section 6.2-301 A. of the Virginia Code (currently 6.0% per year) for the period from the Performance Date or the Determination Date, as applicable, until paid.

Section 8. Notices.

Formal notices and communications between the Parties shall be given either by (i) personal service, (ii) delivery by a reputable document delivery service that provides a receipt showing date and time of delivery, (iii) mailing utilizing a certified or first class mail postage prepaid service of the United States Postal Service that provides a receipt showing date and time of delivery, or (iv) delivery by facsimile or electronic mail (email) with transmittal confirmation and confirmation of delivery, addressed as noted below. Notices and communications personally delivered or delivered by document delivery service shall be deemed effective upon receipt. Notices and communications mailed shall be deemed effective on the second business day following deposit in the United States mail. Notices and communications delivered by facsimile or email shall be deemed effective the next business day, not less than 24 hours, following the date of transmittal and confirmation of delivery to the intended recipient. Such written notices and communications shall be addressed to:

if to the Company, to:

Virginia Diner
Secretary & Treasurer
322 West Main Street
Wakefield, Virginia 23888
Email: sjordan@vadiner.com
Attention: R. Steven Jordan, Secretary &
Treasurer

with a copy to:

Woods Rogers PLC
828 Main Street, 9th Floor
Lynchburg, Virginia 24504
Email: bbaldwin@woodsrogers.com
Attention: Bernard Baldwin, III

if to the Locality, to:

County of Sussex
Post Office Box 1397
Sussex, Virginia 23884

Facsimile: N/A
Email: _rdouglas@sussexcountyva.gov
Attention: Richard Douglas

with a copy to:

Hefty, Wiley & Gore, P.C.
100 W. Franklin Street, Suite 300
Richmond, VA 23220

Facsimile: _____
Email: jeff@heftywiley.com
Attention: Jeff Gore

if to the Authority, to:

Industrial Development Authority of
of the County of Sussex
Post Office Box 1397
Sussex, Virginia 23884
Facsimile: N/A
Email: lcacesl@aol.com
Attention: L. Chester Carter

with a copy to:

Sussex County Administration
Post Office Box 1397
Sussex, Virginia 23884

Facsimile: N/A
Email: sricks@sussexcountyva.gov
Attention: Shilton R. Butts

if to VDACS, to:

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

with a copy to:

AFID Compliance Coordinator
Va Dept. of Agriculture & Consumer
Services
102 Governor St., Room 353
Richmond, Virginia 23219
Attention: AFID

Section 9. 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 (Secretary).

(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 Locality 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.

(e) *Attorney's Fees*: Except as provided in Section 7, attorney's fees shall be paid by the party incurring such fees.

(f) *Interpretation of Language*: Any potential dispute in language shall be determined by VDACS or the Secretary. For any terms which any party to the Agreement might seek interpretation, the party or parties seeking interpretation must write VDACS or the Secretary describing the need for interpretation and any related context, factual or legal, which the party believes will aid the interpretation. When seeking interpretation, parties must notify all other parties to the Agreement of any interpretation request. Requests must indicate whether the other parties consent to the interpretation request. Parties that do not consent to requests may write their own requests for interpretation. All parties shall cooperate with the efforts made by VDACS and the Secretary in making any interpretations and such interpretations shall be conclusive and binding upon all parties to the Agreement.

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

COUNTY OF SUSSEX, VIRGINIA

By Richard Douglas
Name: Richard Douglas
Title: County Administrator
Date: 4-6-22

**INDUSTRIAL DEVELOPMENT
AUTHORITY OF THE COUNTY OF
SUSSEX, VIRGINIA**

By Chester Carter
Name: Chester Carter
Title: Chairman
Date: 4-6-22

**THE GERARD GROUP, INC. DBA
VIRGINIA DINER**

By Steve Jordan
Name: Steve Jordan
Title: Doc / Tru AC
Date: 4-12-22

APPENDIX A

Purchases of Virginia-Grown Agricultural and Forestal Products:

PROJECTED AGRICULTURE PURCHASES												
	Current S Value	Current Volume	YEAR 1 S Value	YEAR 1 Volume	YEAR 2 S Value	YEAR 2 Volume	YEAR 3 S Value	YEAR 3 Volume	YEAR 4 S Value	YEAR 4 Volume	Net New S Value	Net New Volume
Total of all Ag & Forest Products Purchase	\$634,040	704,000	\$821,360	948,000	\$943,000	1,010,000	\$1,004,000	1,075,000	1,102,400	1,180,000	\$1,334,600	1,397,000
Super XL Peanuts (FL)	\$600,600	660,000	\$360,360	396,000							-\$2,042,040	(2,244,000)
XL Peanuts (FL)	\$33,440	44,000									-\$133,760	(176,000)
Super XL Peanuts			\$57,200	44,000	\$735,000	750,000	\$784,000	800,000	862,400	880,000	\$2,438,600	2,474,000
XL Peanuts			\$289,400	332,000	\$208,000	260,000	\$220,000	275,000	240,000	300,000	\$957,400	1,167,000
Jumbo Runner Peanuts			\$114,400	176,000							\$114,400	176,000
Total Virginia Ag & Forest Products Purchase	\$0	-	\$461,000	552,000	\$943,000	1,010,000	\$1,004,000	1,075,000	1,102,400	1,180,000	\$3,510,400	3,817,000
Super XL Peanuts			\$57,200	44,000	\$735,000	750,000	\$784,000	800,000	862,400	880,000	\$2,438,600	2,474,000
XL Peanuts			\$289,400	332,000	\$208,000	260,000	\$220,000	275,000	240,000	300,000	\$957,400	1,167,000
Jumbo Runner Peanuts			\$114,400	176,000							\$114,400	176,000
Percentage of Purchases from Virginia			56%	58%	100%	100%	100%	100%	100%	100%	100%	100%
Estimated Total Purchases Representing Virginia-grown Peanuts*			\$92,200	110,400	\$188,600	202,000	\$200,800	215,000	\$220,480	236,000	\$702,080	763,400

*Estimated Total Purchases Representing Virginia-grown Peanuts calculated at 20% of total purchases, an assumption based on estimated Virginia sourcing of Virginia sheller supplying company

May 22, 2023

GERARD GROUP INC

MACHINERY & TOOLS-4/1/2022-12/31/2022

BOOK COST VALUE - 679,492 @100%

TAX-\$16,511.66

EQUIPMENT & FIXTURES

ORIGINAL COST-100,214-DEPRECIATED VALUE @10% is 95,676

TAX-\$4,640.29

SOFTWARE & EQUIPMENT-BOOK COST VALUE-54,612 -DEPRECIATED VALUE@10%-49,837

TAX-\$2417.09

Ellen G. Boone

Commissioner of the Revenue

RESOLUTION #23-XX
FY23 BUDGET AMENDMENT

BE IT RESOLVED by the Sussex County Board of Supervisors that the following budget amendment for the Fire, Rescue, & Emergency Services function be and hereby is made for the period of July 1, 2022 through June 30, 2023. This resolution will appropriate local reserve funds to the Planning & Community Development function to appropriate local cash grant incentive disbursement funds for the VA Diner AFID Performance Agreement.

FUND # 100
GENERAL FUND

REVENUE

Fund 135 Local Reserves	<u>\$70,000</u>
Total Revenues	\$70,000

EXPENDITURE

Fund 100 Economic Development	<u>\$70,000</u>
Total Expenditures	\$70,000

Wayne O. Jones, Chairman
Sussex County Board of Supervisors

ATTEST:

Shilton R. Butts, Clerk
Sussex County Board of Supervisors

Adopted this 15th day of June, 2023.

RESOLUTION #23-XX
FY23 BUDGET TRANSFER

BE IT RESOLVED by the Sussex County Board of Supervisors that the following budget amendment for the Fire, Rescue, & Emergency Services function be and hereby is made for the period of July 1, 2022 through June 30, 2023. This resolution will transfer the 1st annual local incentive-level payment to the IDA for VA Diner per the AFID Performance Agreement.

FUND # 100
GENERAL FUND

TRANSFER

Fund 100 Economic Development	<u>\$23,569.04</u>
Total Transfer	\$23,569.04

EXPENDITURE

Fund 100 IDA	<u>\$23,569.04</u>
Total Expenditures	\$23,569.04

Adopted this 15th day of June, 2023.

Wayne O. Jones, Chairman
Sussex County Board of Supervisors

ATTEST:

Shilton R. Butts, Clerk
Sussex County Board of Supervisors