

GOVERNOR’S AGRICULTURE & FORESTRY INDUSTRIES DEVELOPMENT FUND
PERFORMANCE AGREEMENT

This **PERFORMANCE AGREEMENT** (the “Agreement”) made and entered into this ____ day of _____, 2022, by and among the **COUNTY OF SUSSEX, VIRGINIA** (the “County”) a political subdivision of the Commonwealth of Virginia (the “Commonwealth”), the **TOWN OF WAVERLY, VIRGINIA** (the “Town”), a political subdivision of the Commonwealth of Virginia, (the County and Town collectively referred to as the “Localities”), and **RESTORATION BIOPRODUCTS, LLC** (the “Company”), a Limited Liability Company 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 County has been awarded a grant of and expects to receive \$50,000 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 operate an agriculture and/or forestry processing/value-added facility using Virginia-grown products in the Localities (the “Facility”), thereby making a significant Capital Investment, as hereinafter defined, creating a significant number of New Jobs, as hereinafter defined; and using a significant amount of Virginia-Grown Agricultural and Forestal Products, as such capitalized items are hereinafter defined.

WHEREAS, the Localities are 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 use of Virginia-Grown Agricultural and Forestal Products;

WHEREAS, the Localities, 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 construction and operation of the Facility will entail taxable capital expenditures by or on behalf of the Company of approximately \$4,199,147, of which approximately \$2,675,000 will be invested in machinery and tools and approximately \$1,524,147 will be invested in the construction and/or improvement of a building and site.

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

WHEREAS, the construction and operation of the Facility will further lead to the use of Virginia-Grown Agricultural and Forestal Products in the following amount: \$1,728,000 (or 34,560 tons); 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 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 Date: October 1, 2022. 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 October 1, 2022. 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 Localities and Authority.

“Maintain” means that the New Jobs created pursuant to the AFID Grant will continue without interruption from the date of creation through the Performance Date. Positions for the New Jobs will be treated as Maintained during periods in which such positions are not filled due to (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 \$55,000. 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. 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.

"Performance Date" means December 31, 2025. If the Localities, 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 Localities may agree to extend the Performance Date by up to 15 months. If the Performance Date is extended, the Localities 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 \$4,199,147, to create and Maintain at least 5 New Jobs at an average annual wage of \$55,000 at the Facility, and to use at least \$1,728,000 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 Town, make a Capital Investment of at least \$4,199,147, create and Maintain at least 5 New Jobs at an average annual wage of \$55,000, and use: \$1,728,000 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 \$55,000.

The average prevailing wage in the County in June 10 is \$47,593.

Section 3. Disbursement of AFID Grant.

(a) *Disbursement of the AFID Grant:* By execution and delivery of this Agreement, the County requests that the AFID Grant be disbursed to it. VDACS will promptly arrange for the payment of the \$50,000 AFID Grant to the County. Within 30 days of its receipt of the AFID Grant proceeds, the County 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.

The disbursement of the AFID Grant proceeds to the Company will serve as an inducement to the Company to achieve the Targets.

(b) *Use of the AFID Grant Proceeds:* The Company will use the AFID Grant proceeds to pay or reimburse the cost of building improvements as permitted by Section 3.2-304(C) of the Virginia Code.

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 | \$50,000 |

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

(b) *Local-Level Incentives:* The Localities expect 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> |
|----------------------------------------|---------------------|
| County Machinery and Tools Tax Rebates | \$40,000 |
| Town Cash Contributions | \$10,000 |

If, by the Performance Date, the funds disbursed or committed to be disbursed by the Localities to (or for the benefit of the Company in the case of the Town’s cash or “in-kind” contributions for capital improvements) the Company total less than the \$50,000 AFID Grant awarded to the Company, minus any AFID funds to be repaid under Section 7(b), the Locality

with the respective shortfall from the incentive set forth above, subject to appropriation, will make an additional grant to the Company of the difference at the Performance Date.

The proceeds of the County's Machinery and Tools Tax Rebates shall be used by the Company to partially defray the cost of research and development and the Town's Cash Contributions shall be used by the Company for capital improvements at its facility.

(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 Localities, 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 March 31, 2024, and at such other times as the Localities, the Authority or VDACS may reasonably require. The first progress report will cover the period from October 1, 2022 to December 31, 2023, the second progress report will cover the period from January 1, 2023 to December 31, 2024, and the third and final progress report will cover the period from January 1, 2025 to December 31, 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 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 created and maintained, and use of Virginia-Grown Agricultural or Forestal Products for purposes of gauging the overall effectiveness of economic development incentives.

The Localities 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 Localities, including

the County'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 Localities, 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 Localities, 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 Localities, the Authority, or VDACS, the Localities, 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 and Wages:* VDACS will verify New Jobs 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 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.

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 Localities, the Authority, or VDACS, the Localities, the Authority or VDACS, may each require such other documentation or audits as may be required to properly verify the New Jobs.

(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 Localities, the Authority, or VDACS, the Localities, 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 Localities or VDACS determine 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 \$2,099,574 at the Facility, to creating and Maintaining at least 2 New Jobs at the Facility, or purchasing at least \$864,000 of Virginia-Grown Agricultural and Forestal Products by the Performance Date), and if the Localities 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 Localities 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 \$16,667 (33%) for the Company’s Capital Investment Target, \$16,667 (33%) for its New Jobs Target, and \$16,667 (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 (\$4,167) plus, twenty-five percent (25%) of the moneys allocated to the New Jobs Target (\$4,167), and plus twenty-five percent (25%) of the moneys allocated to the purchase of Virginia-Grown Agricultural and Forestal Products Target (\$4,167).

(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 Localities and shall be repaid by the Localities promptly to VDACS for redeposit into the AFID fund. The Localities and the Authority shall use their best efforts to recover all such funds, including legal action for breach of this Agreement. The Localities shall assume primary responsibility for filing and prosecuting any such legal action, and the Authority shall cooperate with the Localities’ efforts. Neither the Localities 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 Localities 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:

Facsimile: _____
Email: _____
Attention: _____

with a copy to:

Facsimile: _____
Email: _____
Attention: _____

if to the County, to:

with a copy to:

Facsimile: _____
Email: _____
Attention: _____

Facsimile: _____
Email: _____
Attention: _____

if to the Town, to:

with a copy to:

Facsimile: _____
Email: _____
Attention: _____

Facsimile: _____
Email: _____
Attention: _____

if to the Authority, to:

with a copy to:

Facsimile: _____
Email: _____
Attention: _____

Facsimile: _____
Email: _____
Attention: _____

if to VDACS, to:

with a copy to:

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

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 Localities, 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 Sussex 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.

(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.

[THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

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

COUNTY OF SUSSEX, VIRGINIA

By _____
Name: _____
Title: _____
Date: _____

TOWN OF WAVERLY, VIRGINIA

By _____
Name: _____
Title: _____
Date: _____

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

By _____
Name: _____
Title: _____
Date: _____

RESTORATION BIOPRODUCTS, LLC

By _____
Name: _____
Title: _____
Date: _____

APPENDIX A

Purchases of Virginia-Grown Agricultural and Forestal Products:

| PROJECTED AGRICULTURE PURCHASES | | | | | | | | |
|----------------------------------------------------------|----------------------------|-------------------------------------|----------------------------|-------------------------------------|----------------------------|-------------------------------------|---------------------------|------------------------------------|
| | Year 1 \$ Value | Year 1 Volume (tons) | Year 2 \$ Value | Year 2 Volume (tons) | Year 3 \$ Value | Year 3 Volume (tons) | Total \$ Value | Total Volume (tons) |
| Total of all Ag Product Purchases | | | | | | | | |
| Wood Fiber Tons (ground, dry, and delivered at \$50/ton) | \$576,000 | 11,520 | \$576,000 | 11,520 | \$576,000 | 11,520 | \$1,728,000 | 34,560 |
| *100% of all purchases is Virginia-grown | | | | | | | | |