

INDUSTRIAL DEVELOPMENT AUTHORITY

COUNTY OF FREDERICK, VIRGINIA

(540) 665-5666

Fax (540) 667-0370

AGENDA

ECONOMIC DEVELOPMENT AUTHORITY

ORGANIZATIONAL MEETING

(THURSDAY, JANUARY 23, 2014)

(10:00 A.M.)

COUNTY ADMINISTRATION BUILDING

BOARD OF SUPERVISORS CLOSED SESSION ROOM

107 N. KENT STREET

WINCHESTER, VIRGINIA

1. Call to Order
2. Election of Officers 2014
 1. Chairman (Current Chairman - Richard G. Dick)
 2. Vice Chairman (Current Vice Chairman - Beverley B. Shoemaker)
 3. Secretary/Treasurer (Current Secretary/Treasurer - John R. Riley, Jr.)
3. Approval of Minutes – July 24, 2013 (**See Attached**)
4. Treasurer's Report (**See Attached**)
5. Adoption of EDA By-Laws. (**See Attached**)
6. Governor's Development Opportunity Fund Incentive Grant Performance Agreement – HP Hood, LLC (**See Attached**)
7. Authorization to Sponsor and Expend Reasonable Sums Necessary to Host an Economic/Legislative Reception for Local Elected Representatives and State Agencies in Order to Promote Industry, Develop Trade, and Increase Commerce for the Benefit of Frederick County and its Citizens on February 13, 2014 in Richmond, Virginia (**See Attached**)
8. Update on Conversion from Industrial Development Authority to Economic Development Authority
9. Such other business as may come before this Authority

Please contact the Office of the County Administrator at 540-665-6382 if you are unable to attend this meeting.

**INDUSTRIAL DEVELOPMENT
AUTHORITY**

MEETING MINUTES

JULY 24, 2013

A meeting of the Frederick County Industrial Development Authority was held on Wednesday, July 24, 2013, at 10:00 A.M. in the County Administration Building, Board of Supervisors' Closed Session Room, 107 North Kent Street, Winchester, Virginia.

PRESENT: Richard Dick; J. Stanley Crockett; Jim Lockard; John McKenzie; Beverley Shoemaker; Dan Wall; and Gary A. Lofton, Board of Supervisors' Liaison

ABSENT: Jay Meyers (arrived at 10:06 a.m.)

STAFF: John R. Riley, Jr. Secretary; Jay E. Tibbs, Assistant Secretary; and Michael Bryan, Attorney

MEETING CALLED TO ORDER

Richard Dick called the meeting to order.

APPROVAL OF MINUTES

Upon a motion by Mr. Crockett, seconded by Mr. McKenzie, the minutes from the December 17, 2012 meeting were approved.

The above motion was approved by the following recorded vote:

Richard G. Dick	Aye
Beverly Shoemaker	Aye
J. Stanley Crockett	Aye
Jim Lockard	Aye
John McKenzie	Aye
Jay C. Meyers	Absent
Dan Wall	Aye

TREASURER'S REPORT

Mr. Riley submitted the following report:

Checking Account - Bank of Clarke County as of June 30, 2013 - \$6,843.91

Savings Account - Scott & Stringfellow as of June 30, 2013 - \$130,284.49

Upon motion made by Mr. Crockett, seconded by Mr. Wall, the Treasurer's Report was approved, as submitted, by the following recorded vote:

Richard G. Dick	Aye
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Beverly Shoemaker	Aye
J. Stanley Crockett	Aye
Jim Lockard	Aye
John McKenzie	Aye
Jay C. Meyers	Absent
Dan Wall	Aye

**GOVERNOR'S DEVELOPMENT OPPORTUNITY FUND INCENTIVE GRANT
PERFORMANCE AGREEMENT – NAVY FEDERAL CREDIT UNION**

Secretary Riley advised this was a proposed performance agreement between the Frederick County Board of Supervisors, the Frederick County Industrial Development Authority, and Navy Federal Credit Union, which would cover the payment of a Governor's Development Opportunity Fund Incentive Grant in the amount of \$250,000.00 to the company for the purpose of inducing the company to make a significant capital investment and create and retain a significant number of jobs. The facility would expand, equip, and operate facility with a capital expenditure of approximately \$20,000,000.00 and create 400 jobs.

Vice-Chairman Shoemaker noted corrections to the Performance Agreement. She noted the references to Section 4 on pages 5 and 6 should be changed to Section 5.

Upon a motion by Mr. Shoemaker, seconded by Mr. Crockett, the Industrial Development Authority approved the resolution approving the performance agreement for Navy Federal Credit Union, with the corrections to the performance agreement as noted.

RESOLVED that the Performance Agreement dated June 12, 2013 with **Navy Federal Credit Union** was unanimously approved, as promoting industry and developing trade for the benefit of the inhabitants of the Commonwealth, through the increase of their commerce and promotion of their prosperity.

The above motion was approved by the following recorded vote:

Richard G. Dick	Aye
Beverly Shoemaker	Aye
J. Stanley Crockett	Aye
Jim Lockard	Aye
John McKenzie	Aye

Jay C. Meyers
Dan Wall

Aye
Absent

(Mr. Meyers arrived. 10:06 a.m.)

LOCAL ECONOMIC DEVELOPMENT INCENTIVE GRANT PERFORMANCE AGREEMENT – KRAFT FOODS GLOBAL, INC.

Secretary Riley advised this was a proposed performance agreement between the Frederick County Board of Supervisors, the Frederick County Industrial Development Authority, and Kraft Foods Global, Inc., which would cover the payment of a Local Economic Development Incentive Grant in the amount of \$325,000.00 to the company for the purpose of inducing the company to make a significant capital investment and create and retain a significant number of jobs. The facility would construct, equip, and operate facility with a capital expenditure of approximately \$25,000,000.00 and create 25 jobs.

Upon a motion by Mr. Shoemaker, seconded by Mr. McKenzie, the Industrial Development Authority approved the resolution approving the performance agreement for Kraft Foods Global, Inc.

RESOLVED that the Performance Agreement dated July 10, 2013 with **Kraft Foods Global, Inc.** was unanimously approved, as promoting industry and developing trade for the benefit of the inhabitants of the Commonwealth, through the increase of their commerce and promotion of their prosperity.

The above motion was approved by the following recorded vote:

Richard G. Dick	Aye
Beverly Shoemaker	Aye
J. Stanley Crockett	Abstain
Jim Lockard	Aye
John McKenzie	Aye
Jay C. Meyers	Aye
Dan Wall	Aye

GOVERNOR'S DEVELOPMENT OPPORTUNITY FUND PERFORMANCE AGREEMENT – MCKESSON MEDICAL-SURGICAL, INC.

Secretary Riley advised this was a proposed performance agreement between the Frederick County Board of Supervisors, the Frederick County Industrial Development Authority, and McKesson Medical-Surgical, Inc., which would cover the payment of a Governor's Development Opportunity Fund Incentive Grant in the amount of \$150,000.00 to the company for the purpose of inducing the company to make a significant capital investment and create and retain a significant number of jobs. The facility would construct, equip, and operate facility with a capital expenditure of approximately \$36,900,000.00 and create 205 jobs.

Upon a motion by Mr. Crockett, seconded by Mr. McKenzie, the Industrial Development Authority approved the resolution approving the performance agreement for McKesson Medical-Surgical, Inc.

RESOLVED that the Performance Agreement dated July 10, 2013 with **McKesson Medical-Surgical, Inc.** was unanimously approved, as promoting industry and developing trade for the benefit of the inhabitants of the Commonwealth, through the increase of their commerce and promotion of their prosperity.

The above motion was approved by the following recorded vote:

Richard G. Dick	Aye
Beverly Shoemaker	Aye
J. Stanley Crockett	Abstain
Jim Lockard	Aye
John McKenzie	Aye
Jay C. Meyers	Aye
Dan Wall	Aye

Chairman Dick stated this was great that we could help incentivize these expansions.

The amount of jobs and taxes generated are appreciated. He went on to say this showed Frederick County was doing well and we enjoy having business come to the County.

OTHER BUSINESS

Secretary Riley briefed the members on the Business Friendly Committee initiative approved by the Board of Supervisors. Some of the recommendations included:

- Establishment of an economic development authority. The EDS would be more aggressive with business expansions and retention, and agri-business owners.
- Creation of signage to be posted along major roads accessing Frederick County. Signage would get the word out that Frederick County is open for business.

Chairman Dick stated he believed it was important for Frederick County to create its own identity. He hoped the Authority would be agreeable to providing financial support for the signage initiative.

Secretary Riley also briefed the Authority on other issues, including: construction of the replacement Round Hill Fire Company station building and the PPEA proposal for a replacement Frederick County office building.

**THERE BEING NO FURTHER BUSINESS TO COME BEFORE THIS
AUTHORITY, THE MEETING WAS ADJOURNED. (10:24A.M.)**

Richard G. Dick
Chairman

John R. Riley, Jr.
Secretary

INDUSTRIAL DEVELOPMENT AUTHORITY
COUNTY OF FREDERICK, VIRGINIA

(540) 665-5666
Fax (540) 667-0370

TREASURER'S REPORT SYNOPSIS
INDUSTRIAL DEVELOPMENT AUTHORITY
December 31, 2013

BANK OF CLARKE COUNTY

Beginning Balance - as of June 30, 2013	\$6,843.91
Total Deposits	\$650,013.83
Total Disbursements	\$401,899.02
BALANCE AS OF December 31, 2013	<u>\$254,958.72</u>

SCOTT & STRINGFELLOW

Beginning Balance - As of June 30, 2013	\$130,284.49
Total Deposits	\$72,208.78
Total Disbursements	\$0.00
BALANCE AS OF December 31, 2013	<u>\$202,493.27</u>

INDUSTRIAL DEVELOPMENT AUTHORITY

COUNTY OF FREDERICK, VIRGINIA

TREASURER'S REPORT
INDUSTRIAL DEVELOPMENT AUTHORITY
December 31, 2013

(540) 665-5666
Fax (540) 667-0370

BANK OF CLARKE COUNTY

Beginning Balance - as of June 30, 2013

\$6,843.91

Deposits

7/5/2013 Deposit (IDA Credit Card Credit)	\$13.83
10/30/2013 Deposit (GOF Funds Navy Federal & McKesson)	\$400,000.00
12/30/2013 Deposit (Local Economic Incentive Navy Federal Credit Union)	\$250,000.00

TOTAL DEPOSITS

\$650,013.83

Disbursements

7/25/2013 Michael L. Bryan (Legal Fees)	\$110.00
8/30/2013 Michael L. Bryan (Legal Fees)	\$165.00
8/30/2013 Treasurer, Frederick County (May-July Postage & Copies)	\$19.02
10/18/2013 Michael L. Bryan (Legal Fees)	\$55.00
10/31/2013 Bank of Clarke County (Cashier's Ck. McKesson Surgical)	\$150,000.00
10/31/2013 Bank of Clarke County (Cashier's Ck. Navy Federal Credit Union)	\$250,000.00
11/7/2013 Robinson Farmer Cox Associates (Audit)	\$1,000.00
12/26/2013 Michael L. Bryan (Legal Fees)	\$550.00

TOTAL DISBURSEMENTS

\$401,899.02

BALANCE AS OF December 31, 2013

\$254,958.72

INDUSTRIAL DEVELOPMENT AUTHORITY

COUNTY OF FREDERICK, VIRGINIA

TREASURER'S REPORT
INDUSTRIAL DEVELOPMENT AUTHORITY
December 31, 2013

(540) 665-5666
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SCOTT & STRINGFELLOW

Beginning Balance - As of June 30, 2013 \$130,284.49

Deposits

9/9/2013 Admin. Fee (The Village at Orchard Ridge)	\$55,200.00
9/3/2013 Admin. Fee (The Village at Orchard Ridge)	\$17,000.00
9/30/2013 Interest Earned	\$3.73
12/31/2013 Interest Earned	\$5.05

\$72,208.78

Disbursements

TOTAL DISBURSEMENTS \$0.00

BALANCE AS OF December 31, 2013 \$202,493.27

**BYLAWS
OF
THE ECONOMIC DEVELOPMENT AUTHORITY
OF THE COUNTY OF FREDERICK, VIRGINIA**

ARTICLE I

NAME, PURPOSE, AND POWERS.

Section 101. Name. The name of this body shall be the "Economic Development Authority of the County of Frederick, Virginia" (the "Authority"). **(Amended 1/23/14.)**

Section 102. Purposes. The purposes of the Authority shall be as set forth in Section 15.2-4901 of the Code of Virginia (1950, as amended) and all other purposes as are now or may hereafter be set forth in the Industrial Development and Revenue Bond Act, Chapter 49, Title 15.2 of the Code of Virginia (1950, as amended) (the "Act").

Section 103. Powers. The Authority shall be vested with all powers as set forth in Section 15.2-4905 of the Code of Virginia (1950, as amended) and all other powers as are now or may hereafter be set forth in the Act.

ARTICLE II

DIRECTORS.

Section 201. Board of Directors. The Authority shall be governed by a Board of Directors in which all powers of the Authority shall be vested.

Section 202. Number, Appointment and Terms of Directors. There shall be seven (7) Directors of the Authority who shall be appointed by the Board of Supervisors of Frederick County, Virginia (the "Board of Supervisors"). Directors shall be appointed for a term of four (4) years, except appointments to fill vacancies which shall be for the remainder of such unexpired term. If at the end of any term of office of any Director or successor thereto has not been appointed, then the Director whose term of office has expired shall continue to hold office until a successor is appointed and qualified. Each Director, upon his initial appointment and any reappointment, shall take and subscribe the oath prescribed by Section 49-1 of the Code of Virginia (1950, as amended). No Director shall be an officer or employee of Frederick County, Virginia. Every Director shall, at the time of his appointment and thereafter, reside in Frederick County, Virginia or in an adjoining locality.

Section 203. Vacancies. The Chairman of the Authority shall promptly notify the Board of Supervisors of Frederick County, Virginia, of any vacancy which may occur in the Board of Directors. The Board of Supervisors of Frederick County, Virginia, shall make any appointments necessary to fill any vacancies upon the Board of Directors in

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

Section 204. Annual Meetings. The annual meeting of the Board of Directors shall be held at 107 North Kent Street, Winchester, Virginia, on the second Tuesday of each January at 10:00 a.m., unless the same shall fall upon a legal holiday, in which case said annual meeting shall be held on the following day or upon such other date as might be established by the Board. **(Amended 2/8/05.)**

Section 205. Special Meetings. Special meetings of the Board of Directors may be called at any time by the Chairman of the Board of Directors or by any two Directors of the Authority, to be held at the time and place designated in the notice of the meeting.

Section 206. Notices. Notice specifying the time and place of any annual or special meeting of the Board of Directors shall be given to each Director of the Authority at least 24 hours before such meeting by delivering such notice to him or her or by telephone, telegraph, telefax, or e-mail. If notice is given by mail, such notice shall be sent not less than 48 hours before the meeting. Any notice postmarked two days before the meeting shall be deemed to have been mailed at least 48 hours before the meeting. Notices of special meetings of the Board of Directors shall specify generally the purposes thereof. The presence of any Director at a meeting shall be deemed an acknowledgment of the timely receipt of notice thereof or a waiver of any such notice, unless specific objection to the notice of such meeting shall be raised by any Director in attendance. Meetings may be held without notice if all of the Directors are present or if those Directors not present waive notice prior to the meeting which waiver shall be in writing, signed either before or after the meeting. **(Amended 1/10/06.)**

Section 207. Quorum. Four (4) members of the Board of Directors shall constitute a quorum of the Board of Directors for the purpose of conducting Authority business, exercising Authority powers and for all other purposes, except that no facilities owned by the Authority shall be leased or disposed of in any manner without a majority vote of the Directors of the Authority. No vacancy in the membership of the Board of Directors shall impair the right of a quorum to exercise all the powers and perform all the duties of the Authority.

Section 208. Voting. Except as otherwise required in these Bylaws or by the Act, any question submitted to a vote of the Board of Directors shall be passed by simple majority of those Directors present and voting. No Director shall be allowed to vote by proxy at any meeting of the Authority.

ARTICLE III

OFFICERS

Section 301. Officers. The officers of the Authority shall be a Chairman, a Vice-Chairman, and from their membership or not, as they desire, Secretary and Treasurer, or a Secretary-Treasurer, who shall continue to hold office until their respective successors are elected and qualified.

Section 302. Duties of Officers. The duties of the officers of the Authority shall include, but shall not be limited to, the following:

- A. The Chairman shall preside at all meetings of the Authority; shall be responsible for notice of meetings to the Directors and officers of the Authority; shall be responsible for all correspondence; shall make committee appointments; may appoint members of the Authority as liaison to any other governmental agencies; authorities and commissions; shall act a signatory on behalf of the Authority when authorized; and shall perform such other duties as are incident to his office or may properly be required of him by the Board of Directors.
- B. The Vice-Chairman shall, in the absence of the Chairman, exercise all of the Chairman's powers and duties. In the event the office of Chairman shall become vacant, the Vice-Chairman shall immediately become the Chairman.
- C. The Secretary shall transcribe detailed minutes of every meeting or proceeding of the Authority; shall issue notices for all meetings; shall keep the seal of the Authority and all books and records of the Authority; and shall perform such other duties as may be directed by the Board of Directors.
- D. The Treasurer shall have the custody of all funds and securities of the Authority, and shall deposit the same in the name of the Authority in such bank or banks as the Directors may from time to time determine; shall sign all checks, drafts, notes and orders for the payment of moneys and shall pay out and dispose of the same under the direction of the Chairman. The Treasurer shall keep suitable records of all financial transactions of the Authority and shall arrange to have the same audited following the end of each fiscal year of the Authority, subject to the approval of the Board of Directors. Copies of each audit shall be furnished to the Board of Supervisors.

Section 303. Elections. Officers of the Authority shall be elected annually at the annual meeting of the Authority held prior to March 1st of each year, shall commence their duties

immediately upon election and shall continue in office thereafter until a successor shall have been elected and qualified. The Directors may elect at any annual or special meeting such officers as may be necessary to fill any vacancy created by resignation, expiration of term of appointment as a Director, or otherwise. Any officer so elected shall serve until his successor shall have been elected at the next annual election and qualified. **(Amended 2/27/07)**

ARTICLE IV

GENERAL PROVISIONS

Section 401. Seal. The seal of the Authority shall be a flat-faced circular die with the name of the Authority engraved thereon and such other words and figures as may appear thereon as evidenced by a sample of such seal which appears on the margin of these Bylaws opposite this section.

Section 402. Compensation. The Directors and officers of the Authority shall receive no salary but may be compensated such amount per regular, special or committee meeting or per each official representation as may be approved by the Board of Supervisors, not to exceed the amount as provided in the Act for each meeting or official representation, and shall be reimbursed for necessary traveling and other expenses incurred in the performance of their duties.

Section 403. Public Attendance at Meetings; Inspection of Records. All meetings of the Board of Directors at which formal action is taken shall be open to the public. The Board of Directors may hold executive or closed meetings in accordance with The Virginia Freedom of Information Act, Chapter 37, Title 2.2, Code of Virginia (1950, as amended), as may be in effect from time to time (the "Virginia Freedom of Information Act"). All official records of the Authority shall be open for inspection and copying in accordance with the provisions of the Virginia Freedom of Information Act. Directors and officers of the Authority may inspect all Authority records at any reasonable time. **(Amended 1/28/04)**

Section 404. Rules, Regulations and Procedure.

- I. Roberts Rules of Order, Newly Revised, shall govern all matters of procedure not specifically set forth in these Bylaws or the Acts.
- II. The format of meetings of the Board of Directors may be as follows:
 - A. Call to order
 - B. Recording of attendance
 - C. Reading, approval, and correction of the minutes of the last meeting
 - D. Reports of officers and committee
 - E. Old Business

- F. New Business
- G. Adjournment

III. The Board of Directors may adopt, amend and alter from time to time such rules, regulations or forms which it deems necessary or expedient for the management of the affairs of the Authority and which shall not be inconsistent with the Act. The Secretary of the Authority shall maintain current copies of the Bylaws, and any rules, regulations and forms adopted by the Authority.

Section 406. Authorized Signatures. Checks, notes, drafts and other legal documents shall be signed by such Directors or officers of the Authority as may be specified in the Act, these Bylaws, or as the Board of Directors may, from time to time, authorize by resolution. The signature of any officer or Director may be by facsimile when authorized by the Board of Directors.

ARTICLE V

AMENDMENTS

Section 501. Amendment of Bylaws. These Bylaws may be amended, repealed or altered, in whole or in part, by a majority vote of the Board of Directors at any duly constituted meeting, provided notice of such amendment shall have been given to the Directors in the notice of such meeting.

Effective: January 11, 2000

Amended: January 28, 2004
February 8, 2005
January 10, 2006
February 27, 2007
January 23, 2014

RESOLUTION

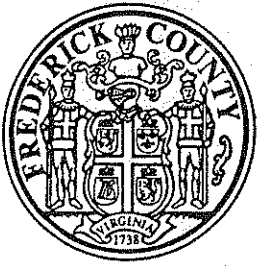
At a duly constituted meeting of the Industrial Development Authority of the County of Frederick, Virginia, at which meeting a quorum of the members of the Authority were present and voted, held on July 24, 2013 at 10:00 a.m. in the County Administration Building, Board of Supervisors' Closed Session Room, 107 North Kent Street, Winchester, Virginia, the proposed Performance Agreement dated January 8, 2014 by and between the County of Frederick, Virginia; the Industrial Development Authority of the County of Frederick, Virginia; and **HP Hood, LLC** was presented to the Authority for its consideration. Under the terms of the Agreement, **HP Hood, LLC** intends to expand and improve a facility with a capital expenditure of approximately \$84,628,856 and will further entail the creation of 75 new jobs at the Facility. The Authority agrees to make a cash grant to **HP Hood, LLC** in the sum of \$1,100,000, in accordance with the terms of the Agreement.

After review of the Memorandum of Understanding and discussion of the same, upon motion duly made by _____, seconded by _____, it was unanimously

RESOLVED that the Performance Agreement dated January 8, 2014 with **HP Hood, LLC** was unanimously approved, as promoting industry and developing trade for the benefit of the inhabitants of the Commonwealth, through the increase of their commerce and promotion of their prosperity.

	AYE	NAY	ABSTAIN	ABSENT
Richard G. Dick, Chairman				
Beverley B. Shoemaker, Vice-Chairman				
J. Stanley Crockett				
Jim Lockard				
John L. McKenzie				
Jay C. Meyers				
Dan Wall				

John R. Riley, Jr., Secretary to the
Frederick County Industrial Development
Authority



BOARD OF SUPERVISORS

Resolution HP HOOD LLC

WHEREAS, HP HOOD LLC has made known its intent to expand its operation by making new taxable real estate and machinery investments and retain and create jobs; and

WHEREAS, the company meets the policy guidelines of the Frederick County Economic Development Incentives Policy as established by the Winchester-Frederick County Economic Development Commission in 1995;

BE IT RESOLVED, that the Board of Supervisors for the County of Frederick, Virginia, does hereby approve and appropriate the payment of \$1,100,000 in installments as stated in the executed Performance Agreement to the Industrial Development Authority of Frederick County, Virginia from the Frederick County's Fund Balance to assist in expanding the operation for HP HOOD LLC in Frederick County, Virginia.

BE IT RESOLVED, that the Board of Supervisors for the County of Frederick, Virginia, does hereby approve and appropriate the payment of \$500,000.00 to the Industrial Development Authority of Frederick County, Virginia from the Governor's Development Opportunity Fund to assist in expanding the operation for HP HOOD LLC in Frederick County, Virginia.

BE IT RESOLVED, that said funds are subject to an executed Performance Agreement outlining the required performance criteria.


BE IT FURTHER RESOLVED, that the Board of Supervisors for the County of Frederick, Virginia, does authorize the County Administrator to execute the Performance Agreement on its behalf.

Upon motion duly made by Charles S. DeHaven, Jr., seconded by Gary A. Lofton, and on the votes hereafter recorded,

ADOPTED, this 8th January 2014

Richard C. Shickle	<u>Aye</u>	Bob Hess	<u>Aye</u>
Charles S. Dehaven, Jr.	<u>Aye</u>	Gary Lofton	<u>Aye</u>
Gene Fisher	<u>Aye</u>	Robert Wells	<u>Aye</u>
Christopher E. Collins	<u>Absent</u>		

A COPY TESTE:



John R. Riley, Jr.
Clerk, Board of Supervisors

GOVERNOR'S DEVELOPMENT OPPORTUNITY FUND

PERFORMANCE AGREEMENT

This **PERFORMANCE AGREEMENT** made and entered this 8th day of January, 2014, by and among the **COUNTY OF FREDERICK, VIRGINIA** (the "Locality") a political subdivision of the Commonwealth of Virginia (the "Commonwealth"), and **HP HOOD LLC** (the "Company"), a Delaware limited liability company authorized to transact business in the Commonwealth, and the **INDUSTRIAL DEVELOPMENT AUTHORITY OF FREDERICK COUNTY, VIRGINIA** (the "Authority"), a political subdivision of the Commonwealth.

WITNESSETH:

WHEREAS, the Locality has been awarded a grant of and expects to receive \$500,000 from the Governor's Development Opportunity Fund (a "GOF Grant") through the Virginia Economic Development Partnership Authority ("VEDP") for the purpose of inducing the Company to expand and improve a processing facility in the Locality (the "Facility"), thereby making a significant Capital Investment, as hereinafter defined, and creating a significant number of New Jobs, as 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 and New Jobs;

WHEREAS, the Locality wishes to make a Local Economic Development Incentive Grant in the amount of \$1,100,000 (the "LEDIG") through the Authority to the Company for the purpose of inducing the Company to expand and improve the Facility, thereby making a significant Capital Investment and creating and retaining a significant number of New Jobs;

WHEREAS, the Locality, the Authority and the Company desire to set forth their understanding and agreement as to the payout of the GOF Grant and the LEDIG (together, the "Grants"), the use of the Grants proceeds, the obligations of the Company regarding Capital Investment and New Job creation, and the repayment by the Company of all or part of the Grants under certain circumstances;

WHEREAS, the expansion, improvement and operation of the Facility will entail a capital expenditure of approximately \$84,628,856, of which approximately \$52,069,839 will be invested in machinery and equipment and approximately \$32,559,017 will be invested in real property improvements;

WHEREAS, the expansion, improvement and operation of the Facility will further entail the creation of 75 New Jobs at the Facility; and

WHEREAS, the stimulation of the additional tax revenue and economic activity to be generated by the Capital Investment and New Jobs constitutes a valid public purpose for the expenditure of public funds and is the animating purpose for each of the Grants:

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 existing real property improvements. The Capital Investment must be in addition to the capital improvements at the Facility as of May 29, 2013. The total expected capital expenditure of \$84,628,856 is referred to in this Agreement as the “Capital Investment.”

“Maintain” means that the New Jobs created pursuant to the Grants 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.

“Facility” means that certain industrial facility operated by the Company situate in Frederick County, Virginia at 160 Hood Way.

“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 \$44,080. 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 425 full-time jobs at the Facility as of May 29, 2013.

“Performance Date” means July 31, 2016. If the Locality, in consultation with the Authority and VEDP, 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 VEDP and the date to which the Performance Date has been extended shall be the “Performance Date” for the purposes of this Agreement. Neither the Locality, the Authority, nor VEDP, shall have any obligation whatsoever to extend the Performance Date.

“Targets” means the Company’s obligations to make or cause to be made Capital Investments at the Facility of at least \$84,628,856 and to create and Maintain at least 75 New Jobs at the Facility, Jobs, in addition to maintaining the current 425 jobs at the Facility, all as of the Performance Date.

“Virginia Code” means the Code of Virginia of 1950, as amended.

Section 2. Targets.

The Company will expand, improve and operate the Facility in the Locality, make or cause to be made a Capital Investment of at least \$84,628,856, and create and Maintain at least 75 New Jobs at the Facility, all as of the Performance Date.

The Locality and the Authority hereby strongly encourage the Company to ensure that at least 30% of the New Jobs are offered to “Residents” of the Commonwealth, as defined in Virginia Code Section 58.1-302. In pertinent part, that definition includes natural persons domiciled in Virginia or natural persons who, for an aggregate of more than 183 days of the year, maintained a place of abode within the Commonwealth, whether domiciled in the Commonwealth or not.

The average annual wage of the New Jobs of at least \$44,080 is greater than the prevailing average annual wage in the Locality of \$39,362.

Section 3. Disbursement of the Grants

(a) *GOF Grant*: By no later than March 1, 2014, the Locality will request the disbursement to it of the GOF Grant. If not so requested by the Locality by March 1, 2014, this Agreement will terminate and the Company will have no claim whatsoever against the Locality or the Authority. The Locality and the Company will be entitled to reapply for a GOF Grant thereafter, based upon the terms, conditions and availability of funds at that time.

The Locality anticipates that the GOF Grant in the amount of \$500,000 will be paid to the Locality, upon its request. Within 30 days of its receipt of the GOF Grant proceeds, the Locality will disburse the GOF Grant proceeds to the Authority. Within 30 days of its receipt of the GOF Grant proceeds, the Authority will disburse the GOF Grant proceeds to the Company as an inducement to the Company to achieve the Targets at the Facility. The Company will use the GOF Grant proceeds for utility capacity development on and off site, as permitted by Section 2.2-115(D) of the Virginia Code. This Performance Agreement shall terminate and shall be of no force or effect in the event that the GOF Grant is not received by the Locality on before March 1, 2014.

(b) *LEDIG*: As an inducement to the Company to achieve the Targets at the Facility and provided that the Company is not in default under the terms of this Performance Agreement, the LEDIG in the amount of \$1,100,000 will be paid by the Locality through the Authority in four installments; and thereafter disbursed by the Authority to the Company. The first

installment of \$500,000 will be paid by the Locality to the Authority and by the Authority to the Company after July 1, 2013 but no later than and June 30, 2014. The second installment of \$250,000 will be paid by the Locality to the Authority and thereafter by the Authority to the Company after July 1, 2014 but no later than June 30, 2015. The third installment of \$250,000 will be paid by the Locality to the Authority and thereafter by the Authority to the Company after July 1, 2015 but no later than June 30, 2016. The fourth installment of \$100,000 will be paid by the Locality to the Authority and thereafter by the Authority to the Company after July 1, 2016 but no later than June 30, 2017. The Company will use the LEDIG proceeds for workforce training and to upgrade public and private utilities at and around the Facility.

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

VEDP 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 GOF 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>
GOF Grant	\$ 500,000
Virginia Investment Partnership (“VIP”) Grant	1,000,000
Virginia Jobs Investment Program (“VJIP”) (Estimated)	33,600

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>
LEDIG	\$ 1,100,000

If, by the Performance Date, the LEDIG funds disbursed or committed to be disbursed by the Locality to the Authority and thereafter disbursed by the Authority to the Company total less than the required \$500,000 GOF Grant local match, the Locality, subject to appropriation, will make an additional grant to the Authority, and thereafter, the Authority 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 GOF Grant shall be used for the purposes described in Section 3(a). The VJIP grant proceeds shall be used by the Company to pay or reimburse itself for recruitment and training costs. The VIP Grant proceeds may be used by the Company for any lawful purpose. The proceeds of the LEDIG shall be used for the purposes described in Section 3(b).

Section 5. Repayment Obligation.

(a) *If Statutory Minimum Eligibility Requirements are Not Met:* Section 2.2-115 of the Virginia Code requires that the Company make a Capital Investment of at least \$5,000,000 in the Facility and create and Maintain at least 50 New Jobs at the Facility in order to be eligible for the GOF Grant. Failure by the Company to meet both of these statutory minimum eligibility requirements by the Performance Date shall constitute a breach of this Agreement and the entire GOF Grant must be repaid by the Company to the Authority.

(b) *If Statutory Minimum Eligibility Requirements are Met:* The provisions of this subsection (b) shall be applicable only if the Company has met the statutory minimum eligibility requirements described in subsection (a). For purposes of repayment, each of the Grants is to be allocated as 50% for the Company's Capital Investment Target (\$250,000 for the GOF Grant and \$550,000 for the LEDIG) and 50% for the Company's New Jobs Target (\$250,000 for the GOF Grant and \$550,000 for the LEDIG). If the Company has met at least 90% of both of the Targets at the Performance Date, then and thereafter the Company is no longer obligated to repay any portion of either Grant. If the Company has not met at least 90% of either or both of its Targets at the Performance Date, the Company shall repay to the Authority that part of the Grants 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 \$50,777,314 (reflecting achievement of 60% of the Capital Investment Target) and only 60 New Jobs have been created and Maintained (reflecting achievement of 80% of the New Jobs Target), the Company shall repay to the Authority 40% of the moneys allocated to the Capital Investment Target (\$100,000 for the GOF Grant and \$220,000 for the LEDIG) and 20% of the moneys allocated to the New Jobs Target (\$50,000 for the GOF Grant and \$110,000 for the LEDIG). Also, in the event that the Company should file any amended return indicating that the Company did not meet the Capital Investment and/or New Jobs Target, the Company shall be obligated to repay all or a portion of the Grants, according to the formula set forth herein. The Company's repayment obligation hereunder shall survive the Performance Date to the extent that the Locality subsequently receives information to the effect that the Company did not meet the Targets.

(c) *Determination of Inability to Comply:* If the Locality or VEDP shall determine at any time prior to the Performance Date (a "Determination Date") that the Company is unable or unwilling to meet and Maintain its Targets by and through the Performance Date, and if the Locality, the Authority or VEDP shall have promptly notified the Company of such determination, the Company must repay the entire amount of the Grants to the Authority. Such a determination will be based on such circumstances as a filing by or on behalf of the Company under Chapter 7 or Chapter 11 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 Grants, as determined by the Locality or VEDP.

(d) In the event that the Company is obligated to repay Grants, or any portion thereof, as called for under the terms of this Agreement, the Company shall pay such sums within 30 days after notification of the amount of the sums to be repaid by the Company. Such determination of

liability shall be made on the Performance Date or the Determination Date or promptly upon receipt of the Progress Report or other information confirming lack of achievement of the Targets as of the Performance Date, whichever shall first occur. Any sums that the Company is obligated to repay shall be paid to the Authority.

(e) In the event that the Company fails to comply with the repayment obligations set forth in this Section 5, the Locality and the Authority shall be entitled to recover their reasonable attorney's fees and costs incurred in connection with such default by the Company, whether or not judicial proceedings are instituted to collect such funds. The Locality and the Authority shall use their best efforts to recover such funds, including judicial proceedings for any breach of this Agreement by the Company. In the event that the Company fails to make a full repayment, 31% of any repayment shall be deemed to be allotted to the GOF Grant and 69% shall be deemed to be allotted to the LEDIG.

(f) GOF Grant: Any GOF Grant moneys repaid by the Company to the Authority hereunder shall be repaid by the Authority to the Locality within 30 days after the repayment by the Company to the Authority, and shall be repaid by the Locality promptly to VEDP for redeposit into the Governor's Development Opportunity Fund.

(g) LEDIG: Any LEDIG moneys repaid by the Company to the Authority hereunder shall be repaid by the Authority to the Locality within 30 days after repayment by the Company to the Authority.

(h) Interest: In the event that the Company fails or refuses to repay any of the LEDIG moneys as called for in this Section 5, such sums shall be assessed interest at the rate of 8.00% per annum until repaid in full by the Company.

Section 6. Company Reporting.

Commencing on October 31, 2014; and on October 31st of each year thereafter, the Company shall provide an annual letter confirming progress on achieving the Targets for Capital Investment and New Jobs (the "Progress Reports"). The Progress Reports shall confirm Capital Investment incurred by or on behalf of the Company and the number of New Jobs created and maintained by the Company at the Facility through the prior July 31st. The Progress Reports shall include an affirmative statement signed by an authorized Company Officer or Director that the information provided in Progress Reports is true and correct and certify the status of its efforts to achieve the Targets for New Jobs and Capital Investment.

As part of the Progress Reports, the Company shall provide for review by the Locality and VEDP of the Company's quarterly Virginia unemployment tax return filing confirmation page, which indicates the number of employees and total wages paid for the quarter, to confirm satisfaction with the Company's progress on achieving the Targets for New Jobs. The Company also will permit the Locality and VEDP to review annual business personal property and real estate filings to confirm reasonable satisfaction with the Company's progress on achieving the Capital Investment Targets.

Upon a request from VEDP, the Company shall provide to VEDP a copy of Virginia Form 502, Pass-Through Entity Return of Income and Return of Non-Resident Withholding Tax. The Commonwealth hereby represents 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 VEDP solely in calculating aggregate return on invested capital analyses for purposes of gauging the overall effectiveness of economic development incentives.

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:
HP Hood LLC
6 Kimball Lane, Suite 400
Lynnfield, MA 01940
Att: Theresa M. Bresten, Treasurer

with a copy to:
HP Hood LLC
6 Kimball Lane, Suite 400
Lynnfield, MA 01940
Att: Paul Nightingale, Legal Department,

if to the Locality, to:
County of Frederick, Virginia
107 North Kent Street
Winchester, VA 22601
Attention: County Administrator

with a copy to:
County of Frederick, Virginia
107 North Kent Street, 3rd Floor
Winchester, VA 22601
Attention: County Attorney

if to the Authority, to:
Industrial Development Authority of Frederick
County, Virginia
107 North Kent Street
Winchester, VA 22601
Attention: Chair

with a copy to:
Industrial Development Authority of Frederick
County, Virginia
107 North Kent Street
Winchester, VA 22601
Attention: Counsel to the Authority

if to VEDP, to:
Virginia Economic Development Partnership
901 East Byrd Street, 19th Floor
Post Office Box 798 (zip: 23218-0798)
Richmond, Virginia 23219
Attention: President and CEO

with a copy to:
Virginia Economic Development Partnership
901 East Byrd Street, 19th Floor
Post Office Box 798 (zip: 23218-0798)
Richmond, Virginia 23219
Attention: General Counsel

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Section 8. Miscellaneous.

(a) *Entire Agreement; Amendments:* This Agreement constitutes the entire agreement among the parties hereto as to the Grants 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 VEDP, which consent may be withheld by the Locality, the Authority and VEDP; provided however this Agreement may be assigned in connection with a sale of the Facility and/or the sale of all or substantially all of the assets of the Company.

(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 the GOF Grant under the terms of this Agreement shall lie in the Circuit Court of the City of Richmond, and such litigation shall be brought only in such court. Jurisdiction and venue for any litigation arising out of or involving the LEDIG under the terms of this Agreement shall lie in the Circuit Court of the County of Frederick, Virginia, 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.

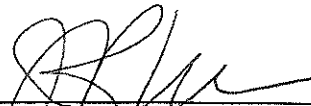
(d) *Severability:* If any provision of this Agreement is determined to be unenforceable, invalid or illegal, then the enforceability, validity and legality of the remaining provisions will not in any way be affected or impaired, and such provision will be deemed to be restated to reflect the original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

(e) *Time:* Time is of the essence as to all matters set forth in this Performance 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 FREDERICK, VIRGINIA

By 
Name: John K. Riley, Jr.
Title: County Administrator
Date: January 9, 2014

**INDUSTRIAL DEVELOPMENT
AUTHORITY OF FREDERICK
COUNTY, VIRGINIA**

By _____
Name: _____
Title: _____
Date: _____

HP HOOD LLC

By _____
Name: _____
Title: _____
Date: _____

INDUSTRIAL DEVELOPMENT AUTHORITY

COUNTY OF FREDERICK, VIRGINIA

(540) 665-5666
Fax (540) 667-0370

RESOLUTION AUTHORIZING EXPENDITURE OF REASONABLE SUMS NECESSARY TO HOST ECONOMIC/LEGISLATIVE RECEPTION

BE IT RESOLVED that the Industrial Development Authority of Frederick County, Virginia is hereby authorized to sponsor and expend reasonable sums necessary to host an economic/legislative reception for local elected representatives and state agencies in order to promote industry, develop trade, and increase commerce for the benefit of Frederick County and its citizens on February 13, 2014 in Richmond, Virginia.

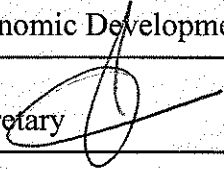
Adopted this 23rd day of January, 2014.

	AYE	NAY	ABSTAIN	ABSENT
Richard G. Dick				
Beverley B. Shoemaker				
J. Stanley Crockett				
Jim Lockard				
Jay Meyers				
John L. McKenzie				
Dan Wall				

John R. Riley, Jr.
Secretary

INDUSTRIAL DEVELOPMENT AUTHORITY
COUNTY OF FREDERICK, VIRGINIA

(540) 665-5666
Fax (540) 667-0370

TO:	Frederick County Economic Development Authority
FROM:	John R. Riley, Jr. Secretary 
SUBJECT:	Conversion to Economic Development Authority
DATE:	January 16, 2014

At the Board of Supervisor's November 13, 2013 meeting, the Board authorized staff to proceed with the creation of an EDA with an effective date of July 1, 2014. In order to make that happen, the following needs to occur:

- 1) The Board must conduct a public hearing to approve the ordinance changing the name of the INDUSTRIAL DEVELOPMENT AUTHORITY OF THE COUNTY OF FREDERICK, VIRGINIA to the ECONOMIC DEVELOPMENT AUTHORITY OF THE COUNTY OF FREDERICK, VIRGINIA. This hearing and ordinance was adopted at the Board's January 8, 2014 meeting.
- 2) Special legislation to allow a Board of Supervisors' member to be appointed as a voting member of the EDA. Staff has met with members of our state delegation regarding this need for special legislation. This legislation has been presented by Delegate Minchew and Senator Vogel.
- 3) A plan must be developed to transition the existing EDC staff to EDA staff.

Staff has checked with IDA legal counsel and it has been determined that the name change from Industrial Development Authority to Economic Development Authority would not affect the outstanding bond financings.

At the Board's December 6, 2013 work session, the Board discussed the proposed make up of the new EDA. It was the consensus of the board members that the new EDA would consist of three members each from the existing EDC and IDA and one member of the Board of Supervisors, pending approval of the needed legislative change.

As we continue to move through this conversion process, staff would like to have feedback from you as to how we can make this conversion as smooth as possible. To that end, if any of you would like to be considered as an appointee to this new authority, we would ask that you send a letter of interest me. I will share your interest with Chairman Shickle.

Should you have any questions or need additional information, please do not hesitate to contact me.

JRR/jet