

**9. ECONOMIC DEVELOPMENT MATTERS****A. LOCAL PERFORMANCE AGREEMENT – SEVERN PEANUT COMPANY**

Attached for your consideration, please find a proposed performance agreement with Severn Peanut Company, DBA Hampton Farms, which, as you know, has acquired approximately forty (40) acres in the Franklin Magisterial District to repurpose an existing industrial building for the processing of peanut butter.

The Company is contemplating an investment in Southampton County in land, buildings, and equipment of at least Five and One-Half Million Dollars (\$5,500,000.00), and creation of sixty (60) new full-time jobs.

In order to induce and encourage their investment and job creation, the attached performance agreement offers local economic incentives in accordance with the County's adopted Enterprise Zone program.

This agreement offers to the company a 50% rebate on the machinery and tools taxes it pays for the first 5 years, a sliding scale rebate on the electric utility taxes paid by the company over the first 5 years, and a rebate of all permit fees paid by the company. The estimated value of incentives (rebates) is approximately \$215,000 over the next five years, while the project is expected to generate approximately \$450,000 in direct tax revenues over the same time period. After the initial 5 years, the project is expected to generate an average of \$30,000 to \$40,000 annually in direct tax revenues, assuming no additional investment.

This agreement is also subject to approval by the Industrial Development Authority of Southampton County.

**MOTION REQUIRED: A motion is required authorizing execution of the attached Performance Agreement.**

**B. PERFORMANCE AGREEMENT – GOVERNOR'S OPPORTUNITY FUND**

Also attached for your consideration, please find a proposed performance agreement as it relates to the state economic incentives for this project. Under the terms of this agreement, the County will disburse \$200,000 from the Governor's Development Opportunity Fund to the Company by December 31, 2013 and, further, monitor the Company's progress on target investment and job creation. Severn Peanut Company is also expected to qualify for an additional \$324,000 through the State Enterprise Zone and Virginia jobs Investment Program(s).

This agreement is also subject to approval by the Industrial Development Authority of Southampton County.

**MOTION REQUIRED: A motion is required authorizing execution of the attached Governor's Development Opportunity Fund Performance Agreement.**

## **PERFORMANCE AGREEMENT**

This Performance Agreement (the “Agreement”) is made and entered into as of the \_\_\_th day of \_\_\_\_\_, 2013 by and between Southampton County, Virginia, acting by and through the Board of Supervisors and the Industrial Development Authority (the “County”) and Severn Peanut Company Inc. doing business as (DBA) Hampton Farms, with its principal office located at 202 Peanut Street Severn, North Carolina 27877 (the “Company”).

**WHEREAS**, the Company has acquired certain real property from International Paper in the Franklin Magisterial District of Southampton County, Virginia, containing 40 acres, more or less, (the “Site”), for the location of a manufacturing facility (the “Facility”) for the processing of peanut butter (the “Project”). The Company contemplates an investment in Southampton County in land, buildings, and equipment of Five Million Five Hundred Thousand Dollars (\$5,500,000.00) within thirty-six (36) months of the acquisition of the Site, and further contemplates creation of sixty (60) new full-time jobs by that time, all with an average annual compensation, excluding benefits, of at least Thirty Three Thousand Four Hundred Dollars (\$33,400.00), and proposes to maintain such investment and number of jobs for at least ten (10) years; and

**WHEREAS**, the County has determined that the proposed Project will benefit the residents of Southampton County, Virginia by stimulating local commerce and trade, increasing employment, and providing substantial direct tax revenues; and

**WHEREAS**, the parties hereto acknowledge that the participation by the County is for the benefit of the residents of the County and therefore the Company recognizes its obligation to employ residents of the County when possible; and

**WHEREAS**, the parties hereto wish to articulate and pledge their mutual commitments to one another.

**NOW, THEREFORE**, for and in consideration of the mutual covenants contained herein, and other good and valuable consideration, the parties agree as follows:

**ARTICLE I**  
**OBJECTIVES**

1.1 The parties hereby agree that, in consideration of the Company undertaking the Project with its employment opportunities, investment, tax revenues and utility revenues in the County, the County intends to provide the respective incentives set forth herein.

1.2 The Company hereby agrees that in consideration of the provision of said incentives, it intends to develop and maintain the Project in the County in accordance with the terms hereof and undertake reasonable efforts to employ residents of Southampton County.

**ARTICLE II**  
**THE COMPANY'S COMMITMENTS**

2.1 The Company proposes, subject to the performance by the County of their commitments set out in this Performance Agreement, and the successful award of certain other incentives from the Commonwealth of Virginia, to develop the Project in the former International Paper property in Southampton County, Virginia.

2.2 In consideration of the performance by the County of their Commitments set out in Article III, the Company proposes that the Project will result in the following:

(i) An investment in land, buildings, and equipment of not less than Five Million Five Hundred Thousand Dollars (\$5,500,000.00) within thirty-six (36) months of acquisition of the site and maintenance of such land, buildings and equipment for a period of ten (10) years (the "Maintenance Period") commencing on the date of issuance of the Certificate of Occupancy for The Facility, and

2.3 The Company proposes to comply in all material respects with all federal, state and local requirements related to the Project, including the provision of financial and other documentation in connection with all incentive programs as described in this Performance Agreement.

2.4 The Company acknowledges that there are applications and other forms to be completed and statutory and guideline requirements to be met for the Company to qualify for various incentives set out herein and that there may be penalties for failure to perform.

2.5 The Company acknowledges that if its Commitments contained in Article II, 2.2 of this Performance Agreement are not met, all or a portion of the incentives proposed by the County for the Project pursuant to Article III of this Agreement may be forfeited as set out in Article IV.

**ARTICLE III**  
**THE COUNTY'S COMMITMENTS**

3.1 The County, acting by and through the Board of Supervisors and the Industrial Development Authority, acknowledges that certain commitments are hereby made to the Company to induce it to develop the Project in Southampton County, Virginia.

3.2 The County, pursuant to statutory authority, proposes to provide the following assistance in support of the Project:

(i) Provide an annual economic incentive grant for five (5) years, pursuant to Section 15.2-4905 of the Code of Virginia, equivalent to a specified percentage of the tax on machinery & tools paid by the Company, or its Lessor of such machinery and tools, to the County. The aforesaid taxes shall be annually due and payable on or before December fifth and the annual grant shall be remitted to the Company by the County not more than sixty days thereafter. This grant may be withheld by the County in the event that any local taxes or fees owed by the Company, or its Lessor of such machinery and tools, to the County are more than sixty days past due. The percentage(s) are as follows:

YEAR 1 – 50%  
YEAR 2 – 50%

YEAR 3 – 50%

YEAR 4 – 50%

YEAR 5 – 50%

Based upon an initial investment of \$5,000,000.00 in machinery & tools by the Company, or its Lessor, of such machinery and tools, the value of this incentive is estimated at One Hundred and Eighty Thousand Dollars (\$180,000.);

(ii) Provide an annual economic incentive grant for five (5) years, pursuant to Section 15.2-4905 of the Code of Virginia, equivalent to a specified percentage of the tax on electrical utility service paid by the Company to the County. The Company shall agree to provide the County copies of its electric utility bills for the preceding twelve (12) month period no later than January tenth each year and the annual grant shall be remitted to the Company by the County not more than sixty days thereafter. This grant may be withheld by the County in the event that any local taxes or fees owed by the Company to the County are more than sixty days past due. The annual grant shall be equivalent to the following percentages:

|        |      |
|--------|------|
| Year 1 | 100% |
| Year 2 | 80%  |
| Year 3 | 60%  |
| Year 4 | 40%  |
| Year 5 | 20%  |

The value of this incentive over the five year period is estimated at Five Thousand Dollars (\$5,000.00);

(iii) Provide a one-time economic incentive grant, pursuant to Section 15.2-4905 of the Code of Virginia, equivalent to the sum of all Administrative Land Development Fees paid by the Company to the County including Erosion and Sediment Control fees, Stormwater Management fees, and all fees associated with administration and enforcement of the Virginia Uniform Statewide Building Code. The grant may be withheld by the County in the event that any local taxes or fees owed by the Company to the County are more than sixty days past due. The grant shall be remitted to the Company by the County not more than sixty days following

the issuance of the Certificate of Occupancy for the Facility. The value of this incentive is estimated at Ten Thousand Dollars (\$10,000.00);

(iv) Provide in-kind services for fast-track review of the Company's plans. County staff will meet with the Company's design professional to perform a fast track review of the project's site plan and provide written comments in not more than seven working days. The in-kind value of this incentive is estimated at Ten Thousand Dollars (\$10,000.00.);

3.3 The County acknowledges that the Company's acquisition of the Site for the Facility shall be subject to obtaining all zoning, subdivision and building approvals required to permit the Company's intended uses of the Site and the construction of the Project.

3.4 The County acknowledges that the Company's acquisition of the Site is subject to completion of its inspections including but not limited to title, survey, environmental, geotechnical and cultural resources and the Company's satisfaction with all aspects thereof in its sole discretion.

#### **ARTICLE IV REMEDIES FOR FAILURE TO PERFORM**

4.1 Upon request of the County, the Company will provide reasonable verification of its compliance with the maintenance commitment and the investment commitment as set out in Article II, Section 2.2 herein.

4.2 If the Company defaults on its investment obligation at any time during the Maintenance Period as set out in Article II, 2.2(i) and (ii) of this Performance Agreement, then the County shall provide the Company with a written notice of default after which the Company will be given ninety (90) days following receipt of such notice to cure such default. If the default has not been cured by the end of the ninety (90) day period, the Company shall forfeit a percentage of the Economic Incentive Grants provided by the County pursuant to 3.2 (iv) and (v) of this Performance Agreement. If the total taxable investment is at least Four Million Five Hundred Thousand Dollars (\$4,500,000.00) no forfeiture is necessary. If the total taxable investment is

between Two Million Five Hundred Thousand Dollars (\$2,500,000.00) and Four Million Five Hundred Thousand Dollars (\$4,500,000.00), the Company shall forfeit fifty percent (50%) of the remaining economic incentive grants awarded. If the total taxable investment is less than Two Million Five Hundred Thousand Dollars (\$2,500,000.00) then the Company shall forfeit ninety percent (90%) of the remaining economic incentive grants awarded.

**ARTICLE V**  
**MISCELLANEOUS**

5.1 The parties agree to execute and deliver such additional instruments and documents, provide such additional financial or technical information, and to act with due diligence and good faith to comply with the terms of this Performance Agreement, and to work together in a mutually supportive manner to accomplish the realization of the Project.

5.2 The terms of this Performance Agreement shall be subject to the approval of the County's Board of Supervisors, the Directors of the County's Industrial Development Authority, and the Company's Board of Directors.

5.3 All communications and notices regarding this Performance Agreement shall be delivered by registered first class mail, postage prepaid, or by nationally recognized courier for delivery on the next business day, or by telecopy (with such telecopy to be promptly confirmed in writing sent by mail or overnight courier as aforesaid) as follows:

SOUTHAMPTON COUNTY

County Administrator  
26022 Administration Center Drive  
P. O. Box 400  
Courtland, VA 23837  
Fax: 757-653-0227  
[mjohnson@southamptoncounty.org](mailto:mjohnson@southamptoncounty.org)

Hampton Farms

Severn Peanut Co., Inc.

DBA Hampton Farms

413 Main St.

PO Box 149

Severn, NC 27877

IN WITNESS WHEREOF, the Company has caused its name to be hereunto subscribed by its \_\_\_\_\_, and the County has caused its name to be hereunto subscribed by the Chairman of the Board of Supervisors, the Chairman of the Industrial Development Authority and the Clerk of the Board, as of the date hereinafter written.

SOUTHAMPTON COUNTY, VIRGINIA  
INDUSTRIAL DEVELOPMENT AUTHORITY

\_\_\_\_\_

DATE

BY: \_\_\_\_\_

E. Beale Carter, Jr.  
Chairman

ATTESTED BY:

\_\_\_\_\_

Secretary

SOUTHAMPTON COUNTY, VIRGINIA  
BOARD OF SUPERVISORS

\_\_\_\_\_  
DATE

By: \_\_\_\_\_  
Dallas O. Jones, Chairman

ATTESTED BY:

\_\_\_\_\_  
Clerk to the Board

SEVERN PEANUT COMPANY INC.  
DBA HAMPTON FARMS

11-8-13  
DATE

BY:   
G. Dallas Barnes, Jr., President

ATTESTED BY:

  
*Assistant* Secretary



***Commonwealth of Virginia***  
***Office of Governor Bob McDonnell***

**FOR IMMEDIATE RELEASE**

August 8, 2013

**Office of the Governor**

Contact: Taylor Thornley Keeney

Phone: (804) 225-4260

Email: [Taylor.Keeney@governor.virginia.gov](mailto:Taylor.Keeney@governor.virginia.gov)

**Virginia Economic Development Partnership**

Contact: Suzanne West Clark

Phone: (804) 545-5806

Email: [Sclark@yesvirginia.org](mailto:Sclark@yesvirginia.org)

**Hampton Farms**

Contact: G. Dallas Barnes

Phone: 252-585-0838

Email: [dbarnes@hamptonfarms.com](mailto:dbarnes@hamptonfarms.com)

**Governor McDonnell Announces 60 New Jobs  
in Southampton County**

*~Hampton Farms to invest \$5.5 million in new peanut butter production  
plant ~*

RICHMOND – Governor Bob McDonnell today announced that Hampton Farms, the leading roaster of in-shell peanuts in the United States, will invest \$5.5 million to establish a peanut butter production plant in Southampton County. Virginia successfully competed against North Carolina for the project, which will create 60 new jobs.

Speaking about today's announcement, Governor McDonnell said, "We are thrilled that, as part of its regional corporate growth, Hampton Farms chose Virginia. Southampton County is

the perfect fit for the company's needs, offering an existing building that allows great speed to market, and abundant natural resources for its product. It is gratifying that a region that is recovering economically will gain 60 new jobs, and a strong Virginia agriculture sector will be utilized. We welcome Hampton Farms to the Commonwealth."

"It is always a pleasure to gain a new corporate partner to Virginia, and Hampton Farms is a great addition to the Commonwealth's burgeoning food and beverage industry," said Jim Cheng, Virginia Secretary of Commerce and Trade. "Southampton County will benefit from new jobs and investment, and the company is able to take advantage of the infrastructure in place that put Virginia ahead of the competition."

Hampton Farms has become the #1 brand of In-Shell peanuts in the country (Source: IRI 2011), and operates four strategically located roasting and productions facilities. The company remains family-owned and committed to producing the finest peanut snacks available.

"Hampton Farms and Severn Peanut Company of Severn, N.C. are pleased to become a part of Southampton County and the Commonwealth of Virginia," said G. Dallas Barnes, President & CEO of Hampton Farms. "We believe the relocation to Southampton/Franklin will be a great fit for Hampton Farms, and affords Hampton the benefit of immediate and long term expansion. Ms. Amanda Jarratt with Franklin Southampton Economic Development and Mike Johnson with Southampton County Administration have been instrumental in handling all of the many details. Their quick follow-up and willingness to work with Hampton was obvious."

The Virginia Economic Development Partnership worked with Southampton County, Franklin Southampton Economic Development Inc., and the Hampton Roads Economic Development Alliance to secure the project for Virginia. Governor McDonnell approved a \$200,000 grant from the Governor's Opportunity Fund to assist Southampton County with the project. The company is eligible to receive state benefits from the Virginia Enterprise Zone Program, administered by the Virginia Department of Housing and Community Development. The company will be eligible for a sales tax exemption on eligible equipment as a result of legislation passed in 2009 by the General Assembly. Through its Virginia Jobs Investment Program, the Virginia Department of Business Assistance will provide funding and services to support the company's recruitment and training activities.

Dallas O. Jones, Chairman of the Southampton County Board of Supervisor indicated, "Southampton County is delighted to play a part in Hampton Farms' and Severn Peanut Company's continued growth and development. For more than 60 years, we've admired their growth from a small, local peanut sheller to the leading roaster and number one brand of in-shell peanuts in the country. They've built their business the right way, with a strong reputation for honesty and integrity, and we are honored to partner with them on this latest expansion. We appreciate the assistance of the Virginia Economic Development Partnership, and the dedication of the Franklin-Southampton Economic Development Inc. (FSEDI) staff in working to bring this project to Southampton County."

**GOVERNOR'S DEVELOPMENT OPPORTUNITY FUND**  
**PERFORMANCE AGREEMENT**

This **PERFORMANCE AGREEMENT** made and entered this \_\_\_\_ day of November, 2013, by and among the **COUNTY OF SOUTHAMPTON, VIRGINIA** (the "Locality"), a political subdivision of the Commonwealth of Virginia (the "Commonwealth"), **SEVERN PEANUT COMPANY, INC.**, a North Carolina corporation, authorized to transact business in the Commonwealth (the "Company") and the **INDUSTRIAL DEVELOPMENT AUTHORITY OF THE COUNTY OF SOUTHAMPTON, VIRGINIA** (the "Authority"), a political subdivision of the Commonwealth.

WITNESSETH:

WHEREAS, the Locality has been awarded a grant of and expects to receive a grant of \$200,000 from the Governor's Development Opportunity Fund (the "GOF Grant") through the Virginia Economic Development Partnership Authority ("VEDP") for the purpose of inducing the Company to purchase, equip and improve a manufacturing 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, the Authority and the Company desire to set forth their understanding and agreement as to the payout of the GOF Grant, the use of the GOF Grant 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 GOF Grant under certain circumstances;

WHEREAS, the purchase, equipping, improvement and operation of the Facility will entail a capital expenditure of approximately \$6,050,000, of which approximately \$5,000,000 will be invested in machinery and equipment and approximately \$1,050,000 will be invested in the up-fit of the building;

WHEREAS, the purchase, equipping, improvement and operation of the Facility will further entail the creation of 60 New Jobs at the Facility;

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 the GOF 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 August 8, 2013. The total capital expenditure of \$6,050,000, which does not include any amounts allocated to the purchase of the land and the existing building, is referred to in this Agreement as the “Capital Investment.”

"Company" means Severn Peanut Company, Inc., a North Carolina corporation, authorized to transact business in the Commonwealth, including its operating division, Hampton Farms.

“Maintain” means that the New Jobs created pursuant to the GOF 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 \$33,400. Each New Job must require a minimum of either (i) 35 hours of an employee’s time per week for the entire normal year of the Company’s operations, which “normal year” must consist of at least 48 weeks, or (ii) 1,680 hours per year. Seasonal or temporary positions, positions created when a job function is shifted from an existing location in the Commonwealth, and positions with construction contractors, vendors, suppliers and similar multiplier or spin-off jobs shall not qualify as New Jobs.

“Performance Date” means December 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.

“Targets” means the Company’s obligations to make Capital Investments at the Facility of at least \$6,050,000 and to create and Maintain at least 60 New 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 acquire, equip, improve and operate the Facility in the Locality, make a Capital Investment of at least \$6,050,000, and create and Maintain at least 60 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 thirty percent (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 \$33,400 is more than the prevailing average annual wage in the Locality of \$31,497. The Locality is a high-unemployment locality, with an unemployment rate for 2012, which is the last year for which such data is available, of 7.1% as compared to the 2012 statewide unemployment rate of 5.9%. The Locality is a high-poverty locality, with a poverty rate for 2011, which is the last year for which such data is available, of 16.0% as compared to the 2011 statewide poverty rate of 11.6%.

## **Section 3. Disbursement of GOF Grant.**

By no later than December 31, 2013, the Locality will request the disbursement to it of the GOF Grant. If not so requested by the Locality by December 31, 2013, this Agreement will terminate. 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 GOF Grant 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 the construction or build-out of a privately owned building or for grading, drainage, paving, and any other activity required to prepare a site for construction, all as permitted by Section 2.2-115(D) of the Virginia Code.

## **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  | \$ 200,000          |
| Virginia Jobs Investment Program (“VJIP”) (Estimated)                  | 48,000              |
| Enterprise Zone Job Creation Grant (“EZJCG”) (Estimated)               | 176,000             |
| Enterprise Zone Real Property Improvement Grant (“EZRPIG”) (Estimated) | 100,000             |

The Locality expects to provide the following incentives, as matching grants or otherwise, for the Facility:

| <u>Category of Incentive:</u>              | <u>Total Amount</u> |
|--|---------------------|
| Local Economic Development Incentive Grant | \$ 215,000          |

If, by the Performance Date, the Local Economic Development Incentive Grant funds disbursed or committed to be disbursed by the Locality to the Company total less than the 100% GOF Grant local match requirement, the Locality, subject to appropriation, will make an additional grant to the Company of the difference at the Performance Date, so long as the Company has met its Targets.

The proceeds of the GOF Grant shall be used for the purposes described in Section 3. The VJIP grant proceeds shall be used by the Company to pay or reimburse itself for recruitment and training costs. The EZJCG and the EZRPIG proceeds may be used by the Company for any lawful purpose. The proceeds of the Locality’s Local Economic Development Incentive Grant may be used by the Company for any lawful purpose connected with the Facility.

**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 \$1,500,000 in the Facility and create and Maintain at least 15 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, the GOF Grant is to be allocated as \$100,000 (50%) for the Company’s Capital Investment Target and \$100,000 (50%) for its New Jobs Target. 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 the GOF 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 GOF Grant that is proportional to the Target or Targets for which there is a shortfall. For example, if at the

Performance Date, the Capital Investment is only \$4,235,000 and only 36 New Jobs have been created and Maintained, the Company shall repay to the Authority 30% of the moneys allocated to the Capital Investment Target (\$30,000) and 40% of the moneys allocated to the New Jobs Target (\$40,000).

(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 GOF Grant 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 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 GOF Grant.

(d) *Repayment Dates:* ***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 VEDP for redeposit into the Governor’s Development Opportunity Fund. The Locality and the Authority shall use their best efforts to recover such funds, including legal action for breach of this Agreement. Neither the Locality nor the Authority shall have any responsibility for the repayment of any sums hereunder unless said sums have been received by the Authority from the Company.

## **Section 6. Company Reporting.**

The Company shall provide, at the Company’s expense, detailed verification reasonably satisfactory to the Locality, the Authority and VEDP of the Company’s progress on the Targets. Such progress reports will be provided annually on April 1, starting at April 1, 2014, and covering the period through the end of the prior calendar year. Further, such project reports will be provided at such other times as the Locality, the Authority or VEDP may reasonably require.

With each such progress report, the Company shall report to VEDP the amount paid by the Company in the prior calendar year in Virginia corporate income tax. VEDP has represented to the Company that it considers such information to be confidential proprietary information that is exempt from public disclosure under the Virginia Freedom of Information Act and that such information will be used by 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:

Severn Peanut Co., Inc.  
DBA Hampton Farms  
413 Main St., PO Box 149  
Severn, NC 27877  
Attention: Dallas Barnes

with a copy to:

Charles L. Revelle, III  
Attorney at Law  
PO Box 448  
Murfreesboro, NC 27855

if to the Locality, to:

County of Southampton, Virginia  
P.O. Box 400  
Courtland, VA 23837  
Attention: County Administrator

with a copy to:

Railey & Railey  
22237 Main Street  
Courtland, VA 23837  
Attention: Richard E. Railey, Jr.

if to the Authority, to:

Industrial Development Authority of the  
County of Southampton, Virginia  
c/o County of Southampton, Virginia  
P.O. Box 400  
Courtland, VA 23837  
Attention: Chair

with a copy to:

Franklin Southampton Economic Development  
Inc.  
601 N. Mechanic Street, Suite 300  
Franklin, VA 23851  
Attention: Amanda Jarratt

if to VEDP, to:

Virginia Economic Development Partnership  
901 East Byrd Street, 19<sup>th</sup> 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, 19<sup>th</sup> Floor  
Post Office Box 798 (zip: 23218-0798)  
Richmond, Virginia 23219  
Attention: General Counsel

**Section 8. Miscellaneous.**

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

(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 City of Richmond, and such litigation shall be brought only in such court.

(c) *Counterparts*: This Agreement may be executed in one or more counterparts, each of which shall be an original, and all of which together shall be one and the same instrument.

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

[THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

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

**COUNTY OF SOUTHAMPTON,  
VIRGINIA**

By \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

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

By \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**SEVERN PEANUT COMPANY, INC.**

By *B. Dallas Barnes Sr*  
Name: *B. Dallas Barnes Sr*  
Title: *Pres.*  
Date: *11 - 8 - 13*