

# **INDUSTRIAL DEVELOPMENT AUTHORITY**

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## **COUNTY OF FREDERICK, VIRGINIA**

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

**AGENDA**  
**INDUSTRIAL DEVELOPMENT AUTHORITY**  
**MEETING**  
**(WEDNESDAY, JULY 24, 2013)**  
**(10:00 A.M.)**  
**COUNTY ADMINISTRATION BUILDING**  
**BOARD OF SUPERVISORS CLOSED SESSION ROOM**  
**107 N. KENT STREET**  
**WINCHESTER, VIRGINIA**

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1. Call to Order
2. Approval of Minutes – December 17, 2012 **(See Attached)**
3. Treasurer's Report **(See Attached)**
4. Governor's Development Opportunity Fund Incentive Grant Performance Agreement – Navy Federal Credit Union **(See Attached)**
5. Local Economic Development Incentive Grant Performance Agreement – Kraft Foods Global, Inc. **(See Attached)**
6. Governor's Development Opportunity Fund Performance Agreement – McKesson Medical-Surgical, Inc. **(See Attached)**
7. 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**

**DECEMBER 17, 2012**

An Organizational Meeting of the Frederick County Industrial Development Authority was held on Monday, December 17, 2012, 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; Jim Lockard; John McKenzie; J. Stanley Crockett; Jay Meyers; Beverley Shoemaker; and Dan Wall

**ABSENT:** Jay C. Meyers and Gary A. Lofton, Board of Supervisors' Liaison

**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.

**ELECTION OF OFFICERS FOR 2013**

**RICHARD DICK ELECTED CHAIRMAN. BEVERLY SHOEMAKER ELECTED VICE-CHAIRMAN and JOHN R. RILEY, JR. ELECTED SECRETARY**

Upon a motion by Mr. Crockett, seconded by Mr. Lockard, the current slate of officers were re-elected for 2013: Richard Dick, Chairman; Beverley B. Shoemaker, Vice-Chairman; and John R. Riley, Jr., Secretary /Treasurer.

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

**APPROVAL OF MINUTES**

The minutes from the August 29, 2012 meeting were presented.

Mr. McKenzie noted the Scott & Stringfellow balance should be \$74,769.35 instead of \$74,796.35.

Upon a motion by Vice-Chairman Shoemaker, seconded by Mr. McKenzie, the minutes from the August 29, 2012 meeting were approved with the correction noted.

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 - APPROVED**

Mr. Riley submitted the following report:

Checking Account - Bank of Clarke County as of December 13, 2012 - \$2,670.41

Savings Account - Scott & Stringfellow as of December 13, 2012 - \$146,773.87

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

#### **ADOPTION OF BY-LAWS - APPROVED**

Attorney Bryan advised there were no changes in the past year that would require an amendment to the by-laws.

Upon a motion by Mr. McKenzie, seconded by Vice-Chairman Shoemaker, the Authority

approved the by-laws 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

**APPOINTMENT OF J. STANLEY CROCKETT AS INDUSTRIAL DEVELOPMENT AUTHORITY REPRESENTATIVE TO THE ECONOMIC DEVELOPMENT COMMISSION**

Chairman Dick appointed J. Stanley Crockett as the Industrial Development Authority representative to the Economic Development Commission.

**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 TRADE AND INCREASE COMMERCE FOR THE BENEFIT OF FREDERICK COUNTY AND ITS CITIZENS ON JANUARY 19, 2012 IN RICHMOND, VIRGINIA**

Secretary Riley read the following resolution:

**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 January 17, 2013 in Richmond, Virginia.

Upon a motion by Vice-Chairman Shoemaker, seconded by Mr. Crockett, the above resolution 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

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

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**Richard G. Dick**  
**Chairman**

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**John R. Riley, Jr.**  
**Secretary**

**INDUSTRIAL DEVELOPMENT AUTHORITY**  

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**COUNTY OF FREDERICK, VIRGINIA**

(540) 665-5666  
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**TREASURER'S REPORT SYNOPSIS**  
**INDUSTRIAL DEVELOPMENT AUTHORITY**  
**June 30, 2013**

**BANK OF CLARKE COUNTY**

<b>Beginning Balance - as of December 13, 2012</b>		<b>\$2,670.41</b>
Total Deposits	\$45,250.30	
Total Disbursements	\$41,076.80	
<b>BALANCE AS OF June 30, 2013</b>		<b><u><u>\$6,843.91</u></u></b>

**SCOTT & STRINGFELLOW**

<b>Beginning Balance - As of December 13, 2012</b>		<b>\$146,773.87</b>
Total Deposits	\$10.62	
Total Disbursements	\$16,500.00	
<b>BALANCE AS OF June 30, 2013</b>		<b><u><u>\$130,284.49</u></u></b>

# INDUSTRIAL DEVELOPMENT AUTHORITY

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## COUNTY OF FREDERICK, VIRGINIA

TREASURER'S REPORT  
INDUSTRIAL DEVELOPMENT AUTHORITY  
June 30, 2013

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

BANK OF CLARKE COUNTY

Beginning Balance - as of December 13, 2012

\$2,670.41

Deposits

1/8/2013 Deposit (Claim #15 Barber & Ross Bankruptcy)	\$28,703.87
1/23/2013 Deposit (From Scott & Stringfellow for Operating)	\$8,000.00
3/4/2013 Deposit (IDA Reimbursement Wall & Fisher)	\$46.43
6/19/2013 Deposit (From Scott & Stringfellow for Operating)	\$8,500.00

**TOTAL DEPOSITS**

**\$45,250.30**

Disbursements

12/28/2013 Michael L. Bryan (Legal Fees)	\$702.00
1/15/2013 Cash (Cash Advance for IDA Reception)	\$100.00
1/28/2013 County of Frederick (Return Barber & Ross Claim)	\$28,703.87
1/28/2013 Michael L. Bryan (Legal Fees)	\$837.00
1/28/2013 Treasurer of Frederick County (Nov & Dec Copies & Postage)	\$34.50
1/28/2013 Hoover Penrod PLC (Legal Fees - Barber & Ross Bankruptcy)	\$314.99
1/28/2013 John R. Riley, Jr. (Mileage Reimbursement)	\$69.50
2/22/2013 Cardmember Service (VISA)	\$5,289.89
2/22/2013 Michael L. Bryan (Legal Fees)	\$797.50
4/16/2013 Michael L. Bryan (Legal Fees)	\$1,842.50
6/19/2013 VACoRP (Insurance)	\$1,915.00
6/13/2013 Treasurer of Frederick County Jan. - April Copies & Postage)	\$2.75
6/13/2013 Michael L. Bryan (Legal Fees)	\$467.50

**TOTAL DISBURSEMENTS**

**\$41,076.80**

**BALANCE AS OF June 30, 2013**

**\$6,843.91**



# INDUSTRIAL DEVELOPMENT AUTHORITY

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## COUNTY OF FREDERICK, VIRGINIA

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

TREASURER'S REPORT  
INDUSTRIAL DEVELOPMENT AUTHORITY  
June 30, 2013

SCOTT & STRINGFELLOW

Beginning Balance - As of December 13, 2012	\$146,773.87
<u>Deposits</u>	
12/31/2012 Interest Earned	\$3.67
1/31/2013 Interest Earned	\$1.27
3/31/2013 Interest Earned	\$2.20
6/30/2013 Interest Earned	\$3.48
	\$10.62
<u>Disbursements</u>	
1/15/2013 Withdrawal - To Checking for Operating Costs	\$8,000.00
6/13/2013 Withdrawal - To Checking for Operating Costs	\$8,500.00
<b>TOTAL DISBURSEMENTS</b>	<b>\$16,500.00</b>
<b>BALANCE AS OF June 30, 2013</b>	<b><u>\$130,284.49</u></b>

**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 June 12, 2013 by and between the County of Frederick, Virginia; the Industrial Development Authority of the County of Frederick, Virginia; an **Navy Federal Credit Union** was presented to the Authority for its consideration. Under the terms of the Agreement, **Navy Federal Credit Union** intends to expand, equip, and operate a facility with a capital expenditure of approximately \$20,000,000 and will further entail the creation of 400 jobs at the Facility. The Authority agrees to make a cash grant to **Navy Federal Credit Union** in the sum of \$325,000, 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 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.

	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

### NAVY FEDERAL CREDIT UNION

**WHEREAS**, NAVY FEDERAL CREDIT UNION has made known its intent to expand its operation by making new taxable real estate and personal property 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 \$250,000.00 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 NAVY FEDERAL CREDIT UNION in Frederick County, Virginia.

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

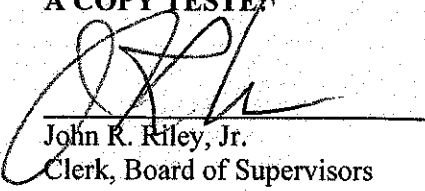
**BE IT FURTHER RESOLVED**, that the Board of Supervisors for the County of Frederick, Virginia, does authorize the County Administrator to execute the Performance Agreement on its behalf.

**ADOPTED**, this 12<sup>th</sup> day of June 2013.

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

Richard C. Shickle	Aye	Robert A. Hess	Aye
Charles S. Dehaven, Jr.	Aye	Gary A. Lofton	Aye
Gene E. Fisher	Aye	Opequon District	Vacant
Christopher E. Collins	Absent		

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 \_\_\_\_ day of July 2013, by and among the **COUNTY OF FREDERICK, VIRGINIA** (the "Locality") a political subdivision of the Commonwealth of Virginia (the "Commonwealth"), **NAVY FEDERAL CREDIT UNION** (the "Company"), a federally chartered credit union, and the **INDUSTRIAL DEVELOPMENT AUTHORITY OF THE COUNTY OF FREDERICK, VIRGINIA** (the "Authority"), a political subdivision of the Commonwealth.

#### WITNESSETH:

WHEREAS, the Locality has been awarded a grant of and expects to receive \$250,000 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, equip and operate an operations center in the Locality (the "Facility"), thereby making a significant Capital Investment, as hereinafter defined, and creating and retaining 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 \$250,000 (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 proceeds of the Grants, 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, equipping and operation of the Facility will entail a capital expenditure of approximately \$20,000,000, of which approximately \$5,000,000 will be invested in machinery and equipment, and approximately \$15,000,000 will be invested in site improvements and the construction of a new building;

WHEREAS, the expansion, equipping and operation of the Facility will further entail the creation and maintenance of 400 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 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 July 1, 2012. The total capital expenditure of \$20,000,000, is referred to in this Agreement as the “Capital Investment.”

“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 at the Facility for which the standard fringe benefits are paid by the Company for the employee, and for which the Company pays an average annual wage of at least \$40,000. 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 556 full-time jobs at the Facility as of July 1, 2012.

“Performance Date” means December 31, 2015. 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 in its sole and absolute discretion 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, nor any of them, shall have any obligation whatsoever to extend the Performance Date.

“Targets” means the Company’s obligations to make Capital Investments at the Facility of at least \$20,000,000 and to create and Maintain at least 400 New Jobs, in addition to maintaining the current 556 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, equip and operate the Facility in the Locality, make a Capital Investment of at least \$20,000,000, and create and Maintain at least 400 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 \$40,000 is more than the prevailing average annual wage in the Locality of \$38,534. The Locality is not a high-unemployment locality, having an unemployment rate for 2011, which is the last year for which such data is available, of 5.9% as compared to the 2011 statewide unemployment rate of 6.2%. The Locality is not a high-poverty locality, with a poverty rate for 2010, which is the last year for which such data is available, of 7.4% as compared to the 2010 statewide poverty rate of 11.1%.

**Section 3. Disbursement of the Grants.**

(a) *GOF Grant:* By no later than August 1, 2013, the Locality will request the disbursement to it of the GOF Grant. If not so requested by the Locality by August 1, 2013, this Agreement will automatically 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 the GOF Grant thereafter, based upon the terms, conditions and availability of funds at that time.

The GOF Grant in the amount of \$250,000 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 workforce training and the construction or build-out of publicly or privately owned buildings, 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 or before June 1, 2013.

(b) *LEDIG Grant:* 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 \$250,000 will be paid by the Locality to the Company through the Authority on or before the date that the GOF Grant proceeds are disbursed by the Authority to the Company. The Company will use the LEDIG proceeds for workforce training and the construction or build-out of publicly or privately owned buildings.

**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	\$ 250,000
Virginia Jobs Investment Program (“VJIP”) (Estimated)	200,000

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 (LEDIG)	\$ 250,000

If, by the Performance Date, the LEDIG funds disbursed or committed to be disbursed by the Locality to the Company through the Authority total less than the \$250,000 GOF Grant local match requirement, the Locality, subject to appropriation, will make an additional grant through the Authority 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 for its employees. The proceeds of the LEDIG shall be used for the purposes described in Section 3(b).

**Section 5. Repayment Obligation.**

(a) *If Statutory Minimum 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, and the Locality’s policy is to administer its LEDIG similarly. Failure by the Company to meet either of these statutory minimum eligibility requirements by the Performance Date shall constitute a breach of this Agreement and the entire amount of both Grants must be repaid by the Company to the Authority.

(b) *If Statutory Minimum Requirements are Met:* The provisions of this subsection (b) are applicable only if the Company has met the statutory minimum eligibility requirements set forth in subsection (a). For purposes of repayment, each of the Grants is to be allocated as \$125,000 (50%) for the Company’s Capital Investment Target and \$125,000 (50%) for its New Jobs Target. If the Company has met at least ninety percent (90%) of both of the Targets as of 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 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 \$10,000,000 or 50% of the Capital Investment Target, and only 200 New Jobs or 50% of the New Jobs Target have been created and Maintained, the Company shall repay to the Authority fifty percent (50%) of the moneys allocated to the Capital Investment Target (\$125,000) and fifty percent (50%) of the moneys allocated to the New Jobs Target (\$125,000) for each the GOF Grant and the LEDIG (for a total repayment of \$250,000). 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 solely 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) *Repayment Dates:* Such repayment shall be due from the Company to the Authority within thirty days of the Performance Date or the Determination Date, whichever shall first occur.—Any LEDIG moneys shall be repaid by the Company to the Authority within 30 days after request for payment is made by the Locality or the Authority and thereafter be paid by the Authority to the Locality.. The Locality and the Authority shall use their best efforts to recover such funds, including legal action for any breach of this Agreement by the Company. In the event that the Company fails to comply with the repayment obligations set forth in this Section 4, 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 such proceedings are instituted to collect such repayment funds. The Authority shall not have any responsibility whatsoever for the repayment of any sums hereunder to the Locality unless and until said sums have been received by the Authority from the Company. In the event that the Company fails or refuses to repay any of the LEDIG moneys as called for in this Section 4, such sums shall be assessed interest at the rate of 8.00% annum until repaid in full by the Company.

(i) *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.



(ii) *LEDIG Grant*: 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.

(iii) *Recovery of Funds and Repayment*: The Locality and the Authority shall use their best efforts to recover such funds, including legal action for any breach of this Agreement by the Company. The Company shall be liable for all attorney's fees and costs incurred by the Locality and/or the Authority in connection with any legal action brought to collect such funds. 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.

(iv) *Interest*: In the event that the Company fails or refuses to repay any of the LEDIG moneys as called for in this Section 4, 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.**

The Company shall timely provide, at the Company's expense, written detailed verification satisfactory to the Locality and the Authority of the Company's progress on achieving the Targets. The Company shall provide for review by the Locality the Company's quarterly payroll tax filings and will denote on those filings which of the employees met the definition of New Jobs to confirm satisfaction with the Company's progress on achieving the Targets for New Jobs. The Company also will permit the Locality to review annual tax filings to confirm reasonable satisfaction with the Company's progress on achieving the Capital Investment Targets. The Locality's right to review annual tax filings shall also apply to any amendments to such tax filings for the duration of the time such amendments are permitted under applicable law and for one year after the final disposition of such amendments. Such progress reports will be provided annually, starting on December 1, 2013, and at such other times as the Locality or the Authority may reasonably require. The Company shall provide a letter confirming the Targets for Capital Investment and New Jobs. This letter will shall confirm Capital Investment incurred by or on behalf of the Company and the number of New Jobs created by the Company at the facility. The Company shall provide an affirmative signed statement by an authorized Company Officer or Director that information provided in progress reports are true and correct and certify the status of its efforts to achieve the Targets for New Jobs and Capital Investment.

#### **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:

with a copy to:

Navy Federal Credit Union  
141 Security Drive  
Winchester, VA 22602  
Attention: Susan Brooks

Navy Federal Credit Union  
820 Follin Lane  
Vienna, VA 22180  
Attention: George Eichert

if to the Locality, to:

with a copy to:

County of Frederick  
107 North Kent St  
Winchester, VA 22601  
Attention: County Administrator

County of Frederick  
107 North Kent St  
Winchester, VA 22601  
Attention: County Attorney

if to the Authority, to:

with a copy to:

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

Industrial Development Authority of the  
County of Frederick, Virginia  
107 North Kent St  
Winchester, VA 22601  
Attention: General Counsel

if to VEDP, to:

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: President and CEO

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 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.

(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, Virginia, 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 R. Riley, Jr.  
Title: County Administrator  
Date: 6/13/13

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

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

**NAVY FEDERAL CREDIT UNION**

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

**RESOLUTION**

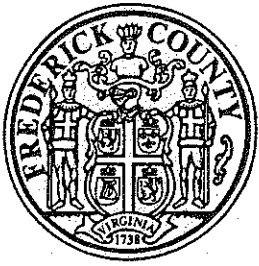
At a duly constituted meeting of the Industrial Development Authority of the County of Frederick, Virginia, at which meeting a quorum of the members of the Authority were present and voted, held on July 24, 2013 at 10:00 a.m. in the County Administration Building, Board of Supervisors' Closed Session Room, 107 North Kent Street, Winchester, Virginia, the proposed Performance Agreement dated July 10, 2013 by and between the County of Frederick, Virginia; the Industrial Development Authority of the County of Frederick, Virginia; and **Kraft Foods Global, Inc.** was presented to the Authority for its consideration. Under the terms of the Agreement, **Kraft Foods Global, Inc.** intends to construct, equip, and operate a facility with a capital expenditure of approximately \$25,000,000 and will further entail the creation of 25 jobs at the Facility. The Authority agrees to make a cash grant to **Kraft Foods Global, Inc.** in the sum of \$325,000, 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 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.

	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 KRAFT FOODS GLOBAL

**WHEREAS**, KRAFT FOODS GLOBAL INC has made known its intent to expand its operation by making new taxable real estate and personal property 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 \$325,000.00 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 KRAFT FOODS GLOBAL INC 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.

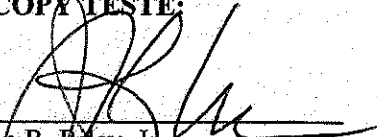
**ADOPTED**, this 10<sup>th</sup> day of July 2013.

Upon motion duly made by Chares S. DeHaven, Jr., seconded by

Christopher E. Collins, and on the votes hereafter recorded:

Richard C. Shickle	<u>Aye</u>	Robert Hess	<u>Aye</u>
Charles S. Dehaven, Jr.	<u>Aye</u>	Gary Lofton	<u>Aye</u>
Gene Fisher	<u>Aye</u>	Opequon District	Vacant
Christopher E. Collins	<u>Aye</u>		

**A COPY TESTE:**

  
\_\_\_\_\_  
John R. Rley, Jr.  
Clerk, Board of Supervisors

**LOCAL ECONOMIC DEVELOPMENT INCENTIVE GRANT  
PERFORMANCE AGREEMENT**

This **PERFORMANCE AGREEMENT** made and entered this \_\_\_\_\_th day of July 2013 by and among the **COUNTY OF FREDERICK, VIRGINIA** (the "Locality") a political subdivision of the Commonwealth of Virginia (the "Commonwealth"), **KRAFT FOODS GLOBAL, INC** (the "Company"), a Delaware corporation, and the **INDUSTRIAL DEVELOPMENT AUTHORITY OF FREDERICK COUNTY, VIRGINIA** (the "Authority"), a political subdivision of the Commonwealth.

**RECITALS:**

WHEREAS, the Locality wishes to make a Local Economic Development Incentive Grant in the amount of \$325,000 (the "LEDIG") through the Authority to the Company for the purpose of inducing the Company to construct the Facility (as hereinafter defined), thereby making a significant Capital Investment (as hereinafter defined) and creating and retaining a significant number of new Jobs (as hereinafter defined);

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

WHEREAS, the construction and operation of the Facility will entail a capital expenditure in machinery and equipment of approximately \$25,000,000 and will create 25 Jobs at the Facility;

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

WHEREAS, the LEDIG will increase commerce and will benefit the citizens of the Locality:

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 hereto hereby covenant and agree as follows.

**Section 1. Disbursement of LEDIG.**

As an inducement to the Company to achieve the Targets (as hereinafter defined) 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 \$325,000 will be paid by the Locality to the Company through the Authority in two installments. The first installment of \$150,000 will be paid by the

Locality to the Authority and thereafter by the Authority to the Company after July 1, 2013 but no later than December 31, 2014 post the confirmation of local taxes paid and confirmation of compliance with the terms of this Performance Agreement and will use the funds to address workforce needs for high-tech diversified skills. The second installment of \$175,000 will be paid by the Locality to the Authority and by the Authority to the Company after July 1, 2015 but no later than June 30, 2016 post the confirmation of local taxes paid and confirmation of compliance with the terms of this Performance Agreement. The Company will use the LEDIG proceeds to upgrade public and private utilities at and around the Facility as well as workforce training.

## **Section 2. Targets; Definitions.**

The Company will construct and operate the Facility in the Locality, make a Capital Investment of at least \$25,000,000 and create and maintain, as hereinafter defined, at least 25 Jobs at the Facility, all as of the Performance Date, as hereinafter defined. The average annual wage of the Jobs of at least \$38,500 is slightly less than the prevailing average annual wage in the Locality of \$38,649.

For the purposes of this Agreement, the following terms shall have the following definitions:

“Capital Investment” means a capital expenditure by the Company in taxable real property, taxable tangible personal property, or both, at the Facility excluding the purchase of land or existing taxable tangible personal property. The Capital Investment must be in addition to the capital improvements at the Company’s existing location in Frederick County as of October 4, 2012. The total capital expenditure of \$25,000,000 is referred to in this Agreement as the “Capital Investment.”

“Maintain” means that the current 460 jobs at the Facility as of October 4, 2012 and the New Jobs created pursuant to the LEDIG will continue without interruption from the date of creation through the Performance Date.

“Facility” means that certain industrial facility operated by the Company situate in Frederick County, Virginia at 220 Park Center Drive.

“New Jobs” 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 \$38,500, including overtime. Each 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. Those jobs existing as of October 4, 2012 will not count as New Jobs.



“Performance Date” means June 1, 2015. If the Locality, in consultation with the Authority, deems that good faith and reasonable efforts have been made and are being made by the Company to achieve the Targets as hereinafter defined, the Locality in its sole and absolute discretion may agree to extend the Performance Date by up to 15 months. The Locality shall have no obligation whatsoever to extend the Performance Date. If the Performance Date is extended, the Locality shall send written notice of the extension to the Authority and the Company 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 \$25,000,000 and to create and maintain at least 25 New Jobs at the Facility, all as of the Performance Date.

**Section 3. Break-Even Point; Local Incentives.**

The Locality has estimated that it will reach its “break-even point” by the Performance Date. The break-even point compares new revenues realized as a result of the Capital Investment and Jobs at the Facility with the Locality’s expenditures on incentives. With regard to the Facility, the Locality will provide incentives in the following amounts:

<u>Category of Incentive</u>	<u>Total Amount</u>
Local Economic Development Incentive Grant	\$325,000

The proceeds of the LEDIG Grant shall be used for the purposes described in the Recitals and in Section 1 and 2 above.

**Section 4. Repayment Obligation.**

(a) (i) For purposes of repayment, the LEDIG is to be allocated as 50% (\$162,500) for the Company’s Capital Investment Target and 50% (\$162,500) for its New Jobs Target. If the Company has met at least ninety percent (90%) of both of the Targets as of the Performance Date, then and thereafter the Company shall no longer be obligated to repay any portion of the LEDIG.

(ii) If the Company has not met at least ninety percent (90%) of both of the Targets, the Company shall repay to the Authority that part of the LEDIG that is proportional to the Target or Targets for which there is a shortfall as of the Performance Date. For example, if on the Performance Date, the Capital Investment is only \$12,500,000 and only 12 New Jobs have been created, the Company shall repay to the Authority fifty percent (50%) of the moneys allocated to the Capital Investment Target (\$162,500) and fifty percent (50%) of the moneys allocated to the New Jobs Target (\$162,500). Whether the New Jobs Target has been met will be determined by comparing the anticipated increase in payroll (to-wit: 25 New Jobs at an average annual salary of at least \$38,500) to the actual number of Jobs in effect as of the date of execution of this Performance Agreement and by comparing the actual average annual salary of

New Jobs reported on at the Performance Date. 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.

(b) **Determination of Inability to Comply:** If the Locality in its sole and absolute discretion shall determine at any time (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 or the Authority shall have promptly notified the Company of such determination, the Company must repay the entire amount of the LEDIG to the Authority.

(c) **Repayment Dates:** Such repayment shall be due from the Company to the Authority within thirty days of the Performance Date or the Determination Date, whichever shall first occur. Any LEDIG moneys shall be repaid by the Company to the Authority within 30 days after request for payment is made by the Locality or the Authority and thereafter be paid by the Authority to the Locality. The Locality and the Authority shall use their best efforts to recover such funds, including legal action for any breach of this Agreement by the Company. In the event that the Company fails to comply with the repayment obligations set forth in this Section 4, 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 such proceedings are instituted to collect such repayment funds. The Authority shall not have any responsibility whatsoever for the repayment of any sums hereunder to the Locality unless and until said sums have been received by the Authority from the Company. In the event that the Company fails or refuses to repay any of the LEDIG moneys as called for in this Section 4, such sums shall be assessed interest at the rate of 8.00% annum until repaid in full by the Company.

## **Section 5. Company Reporting.**

The Company shall timely provide, at the Company's expense, written detailed verification satisfactory to the Locality and the Authority of the Company's progress on achieving the Targets. The Company shall provide for review by the Locality the Company's quarterly payroll tax filings and will denote on those filings which of the employees met the definition of New Jobs to confirm satisfaction with the Company's progress on achieving the Targets for New Jobs. The Company also will permit the Locality to review annual tax filings to confirm reasonable satisfaction with the Company's progress on achieving the Capital Investment Targets. The Locality's right to review annual tax filings shall also apply to any amendments to such tax filings for the duration of the time such amendments are permitted under applicable law and for one year after the final disposition of such amendments. Such progress reports will be provided annually, starting on December 1, 2013, and at such other times as the Locality or the Authority may reasonably require. The Company shall provide a letter confirming the Targets for Capital Investment and New Jobs. This letter will shall confirm Capital Investment incurred by or on behalf of the Company and the number of New Jobs created by the Company at the facility. The Company shall provide an affirmative signed statement by an authorized Company Officer or Director that information provided in progress

reports are true and correct and certify the status of its efforts to achieve the Targets for New Jobs and Capital Investment.

**Section 6. Notices.**

Any notice required or permitted to be given hereunder shall be in writing and may be given by personal delivery, facsimile, by depositing the same in the United States Mail, properly addressed, postage prepaid, and registered or certified, with return receipt requested, or overnight delivery service. A notice given by personal delivery or facsimile shall be effective upon delivery and a notice given by registered or certified mail shall be deemed effective on the second day after such deposit. Notice given by overnight delivery service shall be deemed effective on the date of actual delivery. Either party may by notice to the other specify a different address for notice purposes.

if to the Company, to:

Kraft Foods  
220 Park Center Drive  
Winchester, VA 22602  
Attention: VP/General Manager

with a copy to:

SALT – Credits and Incentives Practice  
175 West Jackson, 20th Floor  
Chicago, IL 60604  
Attention: National Director

if to the Locality, to:

County of Frederick, Virginia  
107 North Kent St  
Winchester, VA 22601  
Attention: County Administrator

with a copy to:

County of Frederick, Virginia  
107 North Kent St  
Winchester, VA 22601  
Attention: County Attorney

if to the Authority, to:

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

with a copy to:

Industrial Development Authority  
of the County of Frederick, Virginia  
107 North Kent St  
Winchester, VA 22601  
Attention: General Counsel

**Section 7. Miscellaneous.**

(a) Entire Agreement; Amendments: This Agreement constitutes the entire agreement between the parties hereto as to the LEDIG and any other matters set forth herein 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 and the Authority, which consent may be withheld by the Locality and/or the Authority.

(b) **Governing Law; Venue:** This Agreement is made, and is intended to be performed, in the Commonwealth and shall be construed and enforced in accordance with the laws and judicial decisions of the Commonwealth. Jurisdiction shall lie exclusively in the Circuit Court of the County of Frederick, Virginia and any litigation shall be brought only in such court.

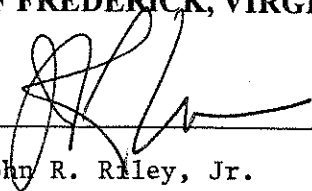
(c) **Counterparts:** This Agreement may be executed in one or more counterparts, each of which shall be an original, and all of which together shall be one and the same instrument.

(d) **Severability:** If any provision of this Agreement is determined to be unenforceable, invalid, or illegal, then the validity, legality and enforceability 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.

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 R. Riley, Jr.  
Title: County Administrator  
Date: 7/11/13

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

By  
Name: Richard G. Dick  
Title: Chair, Industrial Development  
Authority of the County of Frederick, Virginia  
Date: \_\_\_\_\_

**KRAFT FOODS GLOBAL, INC.**

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

**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 July 10, 2013 by and between the County of Frederick, Virginia; the Industrial Development Authority of the County of Frederick, Virginia; and **McKesson Medical-Surgical, Inc.** was presented to the Authority for its consideration. Under the terms of the Agreement, **McKesson Medical-Surgical, Inc.** intends to construct, equip, and operate a facility with a capital expenditure of approximately \$36,900,000 and will further entail the creation and maintenance of 205 new jobs at the Facility. The Authority agrees to make a cash grant to **McKesson Medical-Surgical, Inc.** in the sum of \$150,000, 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 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.

	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  
**MCKESSON MEDICAL-SURGICAL INC.**

**WHEREAS**, MCKESSON MEDICAL-SURGICAL INC. has made known its intent to locate a new distribution operation by making new taxable real estate and personal property 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 \$150,000.00 to the Industrial Development Authority of Frederick County, Virginia from the Governor's Opportunity Fund to assist in locating a distribution operation for MCKESSON MEDICAL-SURGICAL INC. in Frederick County, Virginia.

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

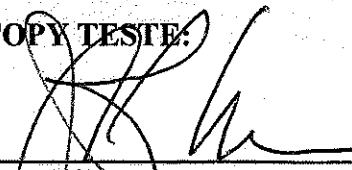
**BE IT FURTHER RESOLVED**, that the Board of Supervisors for the County of Frederick, Virginia, does authorize the County Administrator to execute the Performance Agreement on its behalf.

**ADOPTED**, this 10<sup>th</sup> day of July 2013.

Upon motion duly made by Gary A. Lofton, seconded by Robert A. Hess, and on the votes hereafter recorded:

Richard C. Shickle	<u>Aye</u>	Robert Hess	<u>Aye</u>
Charles S. Dehaven, Jr.	<u>Aye</u>	Gary Lofton	<u>Aye</u>
Gene Fisher	<u>Aye</u>	Opequon District	Vacant
Christopher E. Collins	<u>Aye</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 \_\_\_\_ day of July, 2013 by and among the **COUNTY OF FREDERICK, VIRGINIA** (the "Locality") a political subdivision of the Commonwealth of Virginia (the "Commonwealth"), **MCKESSON MEDICAL-SURGICAL INC.** (the "Company"), a Virginia corporation, and the **INDUSTRIAL DEVELOPMENT AUTHORITY OF THE COUNTY OF FREDERICK, VIRGINIA** (the "Authority"), a political subdivision of the Commonwealth.

#### RECITALS:

WHEREAS, the Locality has been awarded a grant of and expects to receive \$150,000 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 construct, equip and operate a distribution facility (the "Facility") in the Locality, thereby making a significant Capital Investment, as hereinafter defined, and creating and retaining 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 proceeds of the GOF Grant, 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 construction, equipping and operation of the Facility will entail a capital expenditure of approximately \$36,900,000, of which approximately \$13,300,000 will be invested in machinery and equipment, and \$23,600,000 will be invested in the construction of a new building;

WHEREAS, the construction, equipping and operation of the Facility will further entail the creation and maintenance of 205 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 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:

“Average Annual Wage” means the average salary for New Jobs as determined by dividing total payroll (all W-2 compensation) for New Jobs by the number of New Jobs. The calculation of Average Annual Wage shall be applicable to New Jobs, GOF Eligible New Jobs and Other Jobs.

“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 July 1, 2012. The total capital expenditure of \$36,900,000 is referred to in this Agreement as the “Capital Investment.”

“GOF Eligible New Job” means the limited number of total New Jobs that meet the Average Annual Wage requirement of at least \$38,874 for the GOF Grant.

“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 in a position of an indefinite duration by the Company, its affiliates, or its subsidiaries at the Facility for which the standard fringe benefits are paid by the Company for the employee. 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. New Job includes GOF Eligible New Jobs and Other New Jobs.

“Other New Job” means the limited number of total New Jobs that are not GOF Eligible New Jobs and have an Average Annual Wage of at least \$29,580.

“Performance Date” means October 31, 2015. 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, as hereinafter defined, the Locality in its sole and absolute discretion may agree to extend the Performance Date by up to fifteen (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, nor any of them, shall have any obligation whatsoever to extend the Performance Date.

“Targets” means, as of the Performance Date, the Company’s obligations to make or cause to be made Capital Investments at the Facility of at least \$36,900,000 and to create and Maintain at least 205 New Jobs at the Facility. At least 57 of the New Jobs shall be GOF Eligible New Jobs, and at least 148 of the New Jobs shall be Other New Jobs.

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

**Section 2. Targets.**

The Company will develop or cause to be developed and operate the Facility in the Locality and achieve the Targets.

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 prevailing average wage in the Locality is \$38,349. The Locality is not a high-unemployment locality, having an unemployment rate for 2011, which is the last year for which such data is available, of 5.9% as compared to the 2011 statewide unemployment rate of 6.2%. The Locality is not a high-poverty locality, with a poverty rate for 2010, which is the last year for which such data is available, of 7.4% as compared to the 2010 statewide poverty rate of 11.1%.

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

By its signature below, the Locality requests of VEDP the release of the GOF Grant for the Company. VEDP has informed the Locality and the Company that the time period for the disbursement of the GOF Grant from the Commonwealth to the Locality is likely to be 30-45 days.

The Locality anticipates that the GOF Grant in the amount of \$150,000 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 the construction or build-out of publicly or privately owned buildings, as permitted by Section 2.2-115(D) of the Virginia Code. This Performance Agreement shall terminate and shall be of no force and effect in the event that the GOF Grant is not received by the Locality on or before September 30, 2013.

**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	\$150,000
Virginia Jobs Investment Program (“VJIP”) (Estimated)	143,500

The Locality expects to provide the following incentives, as matching grants or otherwise, for the Facility, the “GOF Grant Local Match Requirement”:

<u>Category of Incentive:</u>	<u>Total Amount</u>
Realign Brucetown Road, Route 11 and I-81 Exit 321	\$150,000

If, by the Performance Date, the funds disbursed or committed to be disbursed by the Locality for the improvements described above total less than the \$150,000 GOF Grant Local Match Requirement, the Locality, subject to appropriation, will make an additional grant to or for the benefit of the Company, through the Authority, of the difference as of 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 the Recitals and as set forth in Section 3. The VJIP grant proceeds shall be used by the Company to pay or reimburse itself for recruitment and training costs for its employees.

The Company has agreed that the realignment of Brucetown Road, Route 11 and Interstate 81 Exit 321, approximately 0.3 miles from the site, will provide material and substantial benefit to the Company.

**Section 5. Repayment Obligation.**

(a) *If Statutory Minimum Requirements are Not Met:* Notwithstanding the terms of this Performance Agreement, 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 GOF Eligible New Jobs at the Facility paying an annual average wage of at least \$38,874, in order to be eligible for the GOF Grant. Failure by the Company to meet either of these statutory minimum eligibility requirements by the Performance Date shall constitute a breach of this Agreement and the entire amount of the GOF Grant must be repaid by the Company to the Authority.

(b) *If Statutory Minimum Requirements are Met:* The provisions of this subsection (b) are applicable only if the Company has met the statutory minimum eligibility requirements set forth in subsection (a). For purposes of repayment, the GOF Grant is to be allocated as \$75,000 (50%) for the Company's Capital Investment Target of \$36,900,000 and \$75,000 (50%) for its New Jobs Target of 205 New Jobs. If the Company has met at least ninety percent (90%) of both its Capital Investment Target (i.e. at least \$33,210,000) and its New Jobs Target (i.e. at least 185 New Jobs of which 50 must be GOF Eligible New Jobs) as of the Performance Date, then and thereafter the Company is no longer obligated to repay any portion of the GOF Grant. If the Company has not met at least ninety percent (90%) of both of the Targets at the Performance Date as described above, 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 \$9,225,000 (representing achievement of twenty-five percent (25%) of the Capital Investment Target), and only (i) 60 GOF Eligible New Jobs (representing achievement of at least 50 GOF Eligible New Jobs) and (ii) 21 additional Other New Jobs have been created and Maintained (representing achievement of 81 of the 205 New Jobs Target or 40%), the Company shall repay to the Authority seventy-five percent (75%) of the moneys allocated to the Capital Investment Target (\$56,250) and sixty percent (60%) of the moneys allocated to the New Jobs Target (\$45,000).

(c) *Determination of Inability to Comply:* If the Locality, the Authority and/or VEDP shall have a reasonable basis to 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 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 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 GOF Grant, as determined by the Locality, the Authority or VEDP.

(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, whichever shall first occur.***

(i) *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 paid by the Locality promptly to VEDP for redeposit into the Governor's Development Opportunity Fund.

(ii) *Recovery of Funds and Repayment:* The Locality and the Authority shall use their best efforts to recover such funds, including legal action for any breach of this Agreement by the Company. The Company shall be liable for all reasonable attorneys' fees and costs incurred by the Locality and/or the Authority in connection with any legal action brought to collect such funds. 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 timely provide, at the Company's expense, written detailed verification satisfactory to the Locality, the Authority and VEDP of the Company's progress on achieving the Targets. The Company shall provide for review by the Locality the Company's quarterly payroll tax filings for the Facility and will denote on those filings which of the employees met the definition of New Jobs to confirm satisfaction with the Company's progress on achieving the Targets for New Jobs. Such progress reports will be provided annually, starting on May 1, 2014 and covering the period through the prior March 31st, and at such other times as the Locality, the Authority or VEDP may reasonably require. Concurrently with each progress report the Company shall provide a letter confirming the Targets for Capital Investment and shall provide written authorization for the appropriate unit of the Locality to review its personal property tax form filed with the Locality. This letter will confirm Capital Investment incurred by or on behalf of the Company. The Company shall provide an affirmative signed statement by a knowledgeable employee that information provided in progress report is true and correct and certify the status of its efforts to achieve the Targets.

Upon request of the Locality the Company will certify that it is current in its Virginia tax filings and in good standing under the laws of the Commonwealth of Virginia.

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**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:

McKesson Medical-Surgical Inc.  
8741 Landmark Road  
Richmond, VA 23228  
Attention: Pat McClenaghan  
Senior Vice President

with a copies to:

McKesson Medical-Surgical Inc.  
c/o McKesson Corporation  
Corporate Tax Department  
601 E. Corporate Drive  
Lewisville, TX 75057  
Attention: Senior Tax Manager

and

Nicole Normansell  
Assistant General Counsel  
McKesson Medical-Surgical Inc.  
8741 Landmark Road  
Richmond, VA 23228

if to the Locality, to:

County of Frederick  
107 North Kent St  
Winchester, VA 22601  
Attention: County Administrator

with a copy to:

County of Frederick  
107 North Kent St  
Winchester, VA 22601  
Attention: County Attorney

if to the Authority, to:

Industrial Development Authority of the  
County of Frederick, Virginia  
107 North Kent St.  
Winchester, VA 22601  
Attention: Chair

with a copy to:

Industrial Development Authority of the  
County of Frederick, Virginia  
107 North Kent St.  
Winchester, VA 22601  
Attention: General Counsel

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, which consent may not be unreasonably withheld, conditioned or delayed by the Locality, the Authority or 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 the GOF Grant under the terms of this Agreement shall lie in the Circuit Court of the City of Richmond, 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.

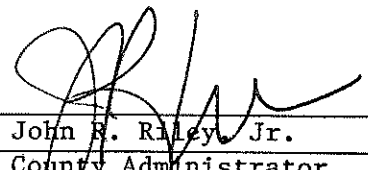
(d) *Severability:* If any provision of this Agreement is determined to be unenforceable, invalid or illegal, then the enforceability, validity and legality of the remaining provisions will not in any way be affected or impaired, and such provision will be deemed to be restated to reflect the original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

(e) *Time:* Time is of the essence 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 R. Riley Jr.  
Title: County Administrator  
Date: 7/11/13

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

By \_\_\_\_\_  
Name: Richard G. Dick  
Title: Chairman, IDA  
Date: \_\_\_\_\_

**MCKESSON MEDICAL-SURGICAL  
INC.,**  
a Virginia corporation

By: \_\_\_\_\_  
Pat McClenaghan  
Senior Vice President  
Date: \_\_\_\_\_