

**ECONOMIC DEVELOPMENT INVESTMENT POOL
PERFORMANCE AGREEMENT
AND
COMMONWEALTH OPPORTUNITY FUND MATCH GRANT**

This Agreement made and entered into on October 19, 2023, by and among the **COUNTY OF ALBEMARLE, VIRGINIA** (hereinafter the "County"), a political subdivision of the Commonwealth of Virginia, **AGROSPHERES, INC.**, (hereinafter the "Company"), a corporation organized under the law of the State of Delaware, authorized to transact business in the Commonwealth of Virginia, and the **ECONOMIC DEVELOPMENT AUTHORITY OF ALBEMARLE COUNTY, VIRGINIA**, (hereinafter the "Authority"), a political subdivision of the Commonwealth of Virginia.

WITNESSETH:

WHEREAS, the Commonwealth of Virginia has agreed to provide the Company a Commonwealth Opportunity Fund Grant (the "COF Grant") of two-hundred thousand dollars and no cents (\$200,000.00) contingent upon the County providing an equal match grant; and

WHEREAS, the County is willing to provide funds to the Authority as its local match to the COF Grant from the County's Economic Development Investment Pool (the "EDIP Grant") with the expectation that the Authority will provide the monies to the Company; provided that the Company meets certain lease obligation and capital investment commitments pursuant to this Agreement; and

WHEREAS, the County, the Authority, and the Company desire to set forth their understanding and agreement as to the payout of the EDIP Grant, the Company's lease and capital investment obligations, and the termination of all or part of the EDIP Grant under certain circumstances; and

WHEREAS, the stimulation of the additional tax revenue, job creation, and economic activity to be generated by the Company's location and expansion in the County constitutes a valid public purpose for the expenditure of public funds and is the animating purpose for the EDIP 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. Lease Obligation.

Lease Obligation. The Company will lease and continuously occupy more than 17,575 square feet (the floor space it leased and occupied as of May 1, 2022) at 1180 Seminole Trail (Albemarle County Parcel Identification Number 061W0-03-00-01800), located in Albemarle County, Virginia (hereinafter the "Facility"), at least until December 31, 2025 (the "Performance Date"). This leasing arrangement shall be referred to as the "Lease Obligation."

Section 2. Capital Investment Obligation.

The Company agrees to make \$13,750,000 in Capital Investments at the Facility between May 1, 2022, and December 31, 2025. "Capital Investments" means and includes any capital expenditure by or on behalf of the Company in the taxable real property or taxable personal property or both at the Facility. The purchase or lease of machinery or tools or furniture, fixtures, or other business personal property, including under an operating lease, and expected building construction, expansion, improvement, and up-fit by or on behalf of the Company will qualify as Capital Investments. Capital Investments must be in addition to any capital improvements existing at the Facility as of May 1, 2022.

Section 3. Economic Development Investment Pool Grant.

The County agrees to appropriate \$200,000.00 (two hundred thousand dollars and no cents) from its Economic Development Investment Pool to the Authority in annual installments (each hereinafter an "Annual Installment") subject to the Company meeting the following benchmarks (each hereinafter a "Benchmark"). The County's obligation commences when the Company executes a lease meeting the terms of the Lease Obligation, continues to satisfy the Lease Obligation, and satisfies the scheduled Capital Investments.

- a. Year 1 (May 1, 2022, through December 31, 2023) Benchmarks: The Company satisfies the Lease Obligation through December 31, 2023, and makes Capital Investments of at least \$1,750,000.00 (one-million, seven-hundred fifty thousand dollars and no cents);
- b. Year 2 (January 1, 2024, through December 31, 2024) Benchmarks: The Company satisfies the Lease Obligation through December 31, 2024, and makes additional Capital Investments of at least \$5,250,000.00 (five million, two-hundred fifty thousand dollars and no cents); and
- c. Year 3 (January 1, 2025, through December 31, 2025) Benchmarks: The Company satisfies the Lease Obligation through December 31, 2025, and makes additional Capital Investments of at least \$6,750,000.00 (six-million, seven-hundred fifty thousand dollars and no cents).

The County's Annual Installments will be as follows:

- a. Year 1: \$75,000.00 (seventy-five thousand dollars and no cents);
- b. Year 2: \$75,000.00 (seventy-five thousand dollars and no cents); and
- c. Year 3: \$50,000.00 (fifty thousand dollars and no cents).

In no event shall the EDIP Grant annual payment exceed the above designated installments. In no event shall the total sum of this EDIP Grant exceed \$200,000.00 (two hundred thousand dollars and no cents).

The County agrees to disburse each annual installment payment to the Authority within thirty (30) days after the Company verifies to the County's satisfaction the Company has met each respective Benchmark.

The Authority agrees it will disburse each annual installment payment to the Company within thirty (30) days after the Company verifies to the Authority's satisfaction that the Company has met each respective Benchmark.

The Company may use the EDIP Grant proceeds for any lawful purpose.

Section 4. Termination.

If, at any time during the term of this Agreement, the Company fails to meet the Lease Obligation, the Capital Investment Obligation, an annual Benchmark, or any combination thereof, this Agreement shall automatically terminate. Upon termination, the Company shall not receive or be entitled to any unpaid EDIP Grant funds unless such payment is required under the Commonwealth's Development Opportunity Fund Performance Agreement (the "COF Agreement") among the parties and the Virginia Economic Development Partnership, a true copy of which is attached hereto as Exhibit A and incorporated herein by reference.

The Company agrees to notify the County and the Authority within seven (7) calendar days of its inability to meet the Lease Obligation, the Capital Investment Obligation, or any annual Benchmark.

If, at any time during the term of this Agreement, the Company fails to pay any taxes due to the County, the County shall notify the Company of its overdue tax liability. The County shall provide the Company thirty (30) days from receipt of the notice to pay any overdue taxes to the County. If the Company does not pay the overdue taxes to the County at the expiration of the 30-day curative period, this Agreement shall automatically terminate. Should the County otherwise be required under the COF Agreement to make a payment, the Company agrees the County may deduct any overdue taxes owed to the County, including any attendant penalty or late fee, from such payment.

Section 5. Company Reporting.

The Company must provide, at the Company's expense, detailed verification reasonably satisfactory to the County and the Authority that the Company is fulfilling its Lease Obligation, Capital Investment Obligation, and each annual Benchmark. The County's Director of Finance or designee may submit requests for additional information to the Company concerning its lease status, capital expenditures, and satisfaction of the annual Benchmarks. Upon submission of the County's request for information, the Company shall respond to the request within thirty (30) days. These requests for information will be submitted to the Company at such times as the County or Authority may require. To the extent such information constitutes proprietary information or trade secrets and are recognized as such under applicable law, the County and Authority will receive it under a promise of confidentiality.

Section 6. 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 or certified mail or overnight courier package not accepted by the addressee):

If to the Company, to:
AgroSpheres, Inc.
1180 Seminole Trail
Charlottesville, Virginia 22901
Attention: Payam Pourtaheri

With a copy to:

If to the County, to:

Albemarle County Executive's Office
401 McIntire Road
Charlottesville, Virginia 22902
Attention: Jeffrey Richardson

With a copy to:

Finance & Budget Department
401 McIntire Road
Charlottesville, Virginia 22902
Director of Finance

If to the Authority, to:

Economic Development Authority
401 McIntire Road
Charlottesville, Virginia 22902
Attention: Donald Long, Chair

With a copy to:

Economic Development Office
401 McIntire Road
Charlottesville, Virginia 22902
Attention: Director of EDO

Section 7. Miscellaneous.

1. *Entire Agreement; Amendments:* This Agreement constitutes the entire agreement among the parties hereto as to the EDIF Grant and may not be amended or modified, except in writing, signed by each of the parties. This Agreement shall be binding upon and inure to the benefits of the parties 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 County and the Authority.
2. *Non-appropriation:* The obligation of the County to contribute to the EDIF Grant as provided in this Agreement is subject to and dependent upon appropriations being made from time to time by the Board of Supervisors of Albemarle County, Virginia (the "Board"). Therefore:
 - a. Obligations in the Event of Non-appropriation. If the Board does not appropriate funds for the EDIF Grant and the Company is otherwise in compliance in all respects, then this Agreement terminates and the Company shall have no further obligation under this Agreement.
 - b. This Agreement does not Establish an Irrevocable Obligation. Under no circumstances shall this Agreement be construed to establish an irrevocable obligation on the County to fund the EDIF Grant as provided in this Agreement.
3. *No Goods or Services Received by the County or Authority:* The EDIF Grant funds transferred by the Authority to the Company pursuant to this Agreement are solely to facilitate the continued location of the Company at the Facility and to incentivize the investment in the Facility and expansion of the Company's business in Albemarle County. The Company's efforts will support the EDIF Grant's public and economic development purposes and are not a procurement of any goods or services by the Authority or the County.
4. *Relationship of Parties:* This Agreement is intended solely to establish the relative rights and obligations of the parties and does not create any type of partnership, joint venture, purchaser-vendor, or employer-employee relationship.
5. *No Third-Party Beneficiaries:* This Agreement does not confer any rights on any person or entity who is not a party, whether as a third-party beneficiary or otherwise.
6. *No Waiver of Sovereign Immunity or Other Immunities:* This Agreement and any action taken by the County or the Authority pursuant to this Agreement are not, and shall not be construed to be, a waiver of either sovereign immunity or any other governmental immunity that applies to the County, the County's Board, the Authority, or the Authority's Board of Directors.

7. *Non-liability of County and Authority Officers and Employees:* No County Supervisor or other County officer or employee, and no Authority Director or other Authority officer or employee, shall be personally liable to the Company if there is any default or breach by the County, the Board, the Authority, or the Authority's Board of Directors pursuant to this Agreement.
8. *Indemnification and Hold Harmless:* The Company agrees to indemnify, hold harmless, and defend the County, the Authority, and their supervisors, officers, directors, agents, and employees from any and all liability, loss, damage, claims, causes of action, and expenses (including without limitation reasonable attorneys' fees), caused or asserted to have been caused, directly or indirectly, by the Company in connection with the performance of this Agreement. This includes any act or omission of an officer, director, agent, employee, or representative of the Company, its successors and assigns, to the extent that such liability or damage is caused in whole or in part by such party's default or breach, negligence, or intentional misconduct. The provisions of this section shall survive termination of this Agreement as to acts or omissions occurring prior to the effective date of termination.
9. *Force Majeure:* If any party's timely performance of any obligation in this Agreement is interrupted or delayed by any occurrence that is not caused by the conduct of the officers or employees of either the County, the Authority, or the Company, as applicable, whether the occurrence is an "Act of God" such as lightning, earthquakes, floods, epidemic, pandemic, or other similar causes; a common enemy; the result of war, riot, strike, lockout, civil commotion, sovereign conduct, explosion, fire, or the act or conduct of any person or persons not a party to or under the direction or control of the County, the Authority, or the Company, as applicable, then performance is excused for a period of time that is reasonably necessary after the occurrence to remedy the effects thereof.
10. *Governing Law; Venue:* This Agreement is made, and is intended to be performed, in the Commonwealth of Virginia 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 Albemarle County, and such litigation shall be brought only in that court.
11. *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 the same instrument.
12. *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 the unenforceable provision will be deemed to be restated to reflect the

original intentions of the parties as nearly as possible in accordance with applicable law.

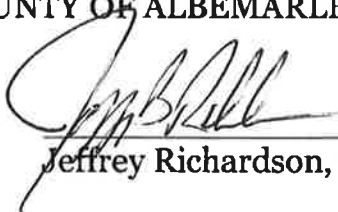
13. *Interpretation of this Agreement:* This Agreement shall be interpreted in accord with how any terms are defined in this Agreement and otherwise by applying the plain and natural meaning of the words used, and not for or against any party by reason of authorship.

[SIGNATURE PAGE FOLLOWS]

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

COUNTY OF ALBEMARLE, VIRGINIA

By:

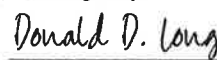


Jeffrey Richardson, County Executive

ECONOMIC DEVELOPMENT
AUTHORITY OF ALBEMARLE COUNTY

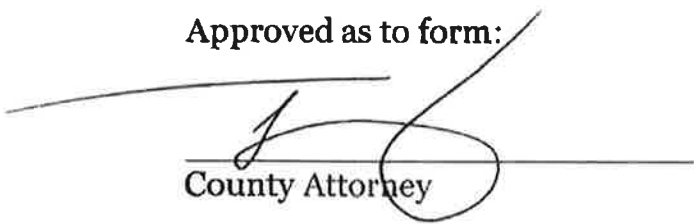
DocuSigned by:

By:



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Donald D. Long, Chair

Approved as to form:



County Attorney

AGROSPHERES, INC.

By:

DocuSigned by:



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Payam Pourtaheri, CEO

EXHIBIT A
COMMONWEALTH'S OPPORTUNITY FUND DEVELOPMENT
AGREEMENT

COMMONWEALTH'S DEVELOPMENT OPPORTUNITY FUND

PERFORMANCE AGREEMENT

This **PERFORMANCE AGREEMENT** (the "Agreement") made and entered this day of May 1, 2023, by and among the **COUNTY OF ALBEMARLE, VIRGINIA** (the "Locality"), a political subdivision of the Commonwealth of Virginia (the "Commonwealth"), **AGROSPHERES, INC.**, a Delaware corporation authorized to transact business in the Commonwealth (the "Company"), the **VIRGINIA ECONOMIC DEVELOPMENT PARTNERSHIP AUTHORITY ("VEDP")**, a political subdivision of the Commonwealth, and the **ECONOMIC DEVELOPMENT AUTHORITY OF ALBEMARLE COUNTY, VIRGINIA** (the "Authority"), a political subdivision of the Commonwealth.

WITNESSETH:

WHEREAS, the Locality has been awarded a grant of and expects to receive \$200,000 (the "COF Grant") from the Commonwealth's Development Opportunity Fund through VEDP for the purpose of inducing the Company to expand an existing facility and to construct, equip, improve, and operate a pesticide and fungicide facility and an R&D and demonstration facility in the Locality, thereby making a significant Capital Investment, and creating and Maintaining a significant number of New Jobs, as such capitalized terms are hereinafter defined;

WHEREAS, the Locality is willing to provide the funds to the Authority with the expectation that the Authority will provide the funds to or for the use of the Company, provided that the Company meets certain criteria relating to Capital Investment and New Jobs;

WHEREAS, the Locality, the Authority, the Company, and VEDP desire to set forth their understanding and agreement as to the payout of the COF Grant, the use of the COF Grant proceeds, and the obligations of the Company regarding Capital Investment and New Jobs;

WHEREAS, the construction, expansion, equipping, improvement, and operation of the Facility will entail a capital expenditure by or on behalf of the Company of approximately \$25,000,000, of which approximately \$15,000,000 will be invested in machinery and tools, approximately \$2,000,000 will be invested in furniture, fixtures and business personal property, and approximately \$8,000,000 will be invested in the construction, expansion and up-fit of the buildings for the Facility;

WHEREAS, the construction, expansion, equipping, improvement, and operation of the Facility will further entail the creation and Maintenance of 53 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 COF 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. The purchase or lease of machinery and tools or furniture, fixtures, and business personal property, including under an operating lease, and expected building construction, expansion, improvement and up-fit by or on behalf of the Company will qualify as Capital Investment. The Capital Investment must be in addition to the capital improvements at the Facility as of May 1, 2022.

“Capital Investment Target” means that the Company has made or caused to be made and retained Capital Investments of at least \$25,000,000.

“Cash Grant” means the expected contributions from the Locality or the Authority in the amount of \$200,000.00 for the Company’s capital investments and Facility lease commitments and \$36,000 for the Company’s creation and maintenance of New Jobs, such contributions to be subject of separate agreements between the Locality, the Authority, and the Company.

“Facility” means all improvements situated on Albemarle County Parcel Identification Number 061W0-03-00-01800, also known as 1180 Seminole Trail in the Locality.

“Fund” means the Commonwealth’s Development Opportunity Fund.

“Local-Level Incentives” means all grants and incentives identified in Section 4(b), including the Cash Grant.

“Maintain,” “Maintained,” “Maintaining” and “Maintenance” means that the New Jobs will continue without interruption from the date of creation through the date that the level of achievement of the New Jobs Target is being tested, including 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 provided by the Company for the employee, and for which the Company pays an average annual wage of at least \$74,434. Average annual wage means the average annual salary of full-time positions at the Facility determined by dividing total payroll (of a type included in W-2 compensation) provided to full-time positions at the Facility by the number of full-time positions at the Facility. Each New Job must require a

minimum of either (i) 35 hours of an employee's time per week for the entire normal year of the Company's operations, which "normal year" must consist of at least 48 weeks, or (ii) 1,680 hours per year. Seasonal or temporary positions, positions created when a job function is shifted from an existing location in the Commonwealth, and positions with construction contractors, vendors, suppliers and similar multiplier or spin-off jobs shall not qualify as New Jobs. The New Jobs must be in addition to the 15 full-time jobs at the Facility as of May 1, 2022.

"New Jobs Target" means that the Company has created and Maintained at least 53 New Jobs.

"Performance Date" means December 31, 2027. If the Locality, in consultation with VEDP, deems that good faith and reasonable efforts have been made and are being made by the Company to achieve the Targets, on or before the Performance Date, the Locality may request an extension of the Performance Date by up to 15 months. Any extension of the Performance Date shall require the prior approval of the Company and the Board of Directors of VEDP (the "Board"). 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.

"Performance Report" means a report to be filed by the Company in accordance with Section 5. The "Final Performance Report" is to be filed within 90 days after the Performance Date. As noted in Section 5, the Locality, the Authority and VEDP may each request a Performance Report at other dates prior to the Performance Date.

"Targets" means the Capital Investment Target and the New Jobs Target, all to be achieved as of the Performance Date.

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

Section 2. Targets; Statutory Criteria.

(a) *Targets:* The Company will construct, expand, equip, improve, and operate the Facility, and achieve the Targets.

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

(c) *Prevailing Wage; Unemployment and Poverty Rates:* The average annual wage of the New Jobs of at least \$74,434 is more than the prevailing average annual wage in the Locality of \$65,224. The Locality is not a high-unemployment locality, with an unemployment rate for 2021, which is the last year for which such data is available, of 3.2% as compared to the 2021 statewide unemployment rate of 3.9%. The Locality is not a high-poverty locality, with a poverty

rate for 2021, which is the last year for which such data is available, of 7.0% as compared to the 2021 statewide poverty rate of 10.3%.

(d) *Disclosure of Political Contributions:* The Company acknowledges that the name of the Company will be shared by VEDP with the Governor of Virginia, and any campaign committee or political action committee associated with the Governor. The Company acknowledges that within 18 months of the date of this Agreement, the Governor, his campaign committee, and his political action committee will submit to the Virginia Conflict of Interest and Ethics Advisory Council a report listing any contribution, gift, or other item with a value greater than \$100 provided by the Company to the Governor, his campaign committee, or his political action committee, respectively, during the period from the date of the Company's application for the COF Grant through the one-year period immediately after the date of this Agreement.

(e) *Support for Virginia's and Locality's Economic Development Efforts:* Recognizing that it is in the best interest of all parties for the Commonwealth and the Locality to achieve sustained economic growth, the parties will periodically engage with one another to advise on economic development strategies and initiatives for the Commonwealth and the Locality, such as promoting the attributes of the Commonwealth and the Locality as places to do business, or highlighting important industry trends and/or business development opportunities that the Commonwealth or the Locality may wish to pursue. Such engagement would include the Company's participation in occasional business retention and expansion visits from VEDP personnel, as deemed appropriate based on the project parameters and nature of the incentives provided to the Company.

(f) *Compliance with Environmental Laws:* The Company covenants to (i) comply in all material respects with any and all applicable federal, state and local laws and regulations relating to the protection of human health and safety, the environment or hazardous or toxic substances or wastes, pollutants or contaminants ("Environmental Laws") with respect to its operations at the Facility, (ii) receive all material permits, licenses or other approvals required of the Company under applicable Environmental Laws to conduct its business at the Facility, and (iii) remain in compliance with all material terms and conditions of any such permit, license or approval. If the Company fails to comply with this covenant and fails to rectify the noncompliance within 30 days of notice from VEDP, VEDP shall have the option to terminate this Agreement in accordance with Section 7.

Section 3. Disbursement of COF Grant.

(a) *General Provisions:* The commitment to disburse COF Grant proceeds to the Company will serve as an inducement to the Company to achieve the Targets.

The COF Grant is to be allocated as 20% (\$40,000) for the Company's Capital Investment Target, and 80% (\$160,000) for the Company's New Jobs Target.

The statutory minimum requirements for a COF Grant in the Locality require that the Company (1) make or cause to be made and retained a Capital Investment of at least \$5,000,000 and (2) create and Maintain at least 50 New Jobs (the "Statutory Minimum Requirements").

The COF Grant proceeds shall be retained in the Fund until needed for disbursement or the COF Grant is withdrawn in accordance with the terms of this Agreement.

(b) *Disbursement of the COF Grant:* Within 90 days after the Performance Date, the Company will deliver the Final Performance Report. Through this report, the Company will provide notice and evidence satisfactory to the Locality, the Authority and VEDP of the amount of Capital Investments made or caused to be made and retained, and the number of New Jobs created and Maintained, by the Company as of the Performance Date. The Final Performance Report will be subject to verification by the Locality, the Authority, and VEDP.

Upon such verification, the amount of the COF Grant proceeds to be disbursed to the Company, if any, shall be determined as follows:

(i) *If Statutory Minimum Requirements Not Met:* If, as of the Performance Date, the Company has not achieved both Statutory Minimum Requirements, the Company will not receive any of the proceeds of the COF Grant.

(ii) *If Targets Met:* If, as of the Performance Date, the Company has achieved the Capital Investment Target and the New Jobs Target, the Company will receive all \$200,000 of the proceeds of the COF Grant.

(iii) *If Statutory Minimum Requirements Met, but Targets Not Met:* If, as of the Performance Date, the Company has achieved both of the Statutory Minimum Requirements, but has not achieved the full Capital Investment Target and the full New Jobs Target, the Company will qualify for a reduced disbursement of the COF Grant, reflecting a proportional amount of the Target or Targets for which there is a shortfall. For example, if as of the Performance Date, only \$22,500,000 of the Capital Investment has been retained (reflecting achievement of 90% of the Capital Investment Target), only 50 New Jobs have been created and Maintained (reflecting achievement of 94% of the New Jobs Target), the Company will receive \$36,000 (reflecting 90% of the \$40,000 of the COF Grant allocated to the Capital Investment Target), *plus* \$150,400 (reflecting 94% of the \$160,000 of the COF Grant allocated to the New Jobs Target), for a total of \$186,400. These amounts reflect the percentages of the shortfall from the Capital Investment Target and the New Jobs Target, each such shortfall multiplied by the portion of the COF Grant proceeds available to the Company allocated to that Target.

Within 30 days after verification of the Final Performance Report, if any amount of COF Grant proceeds is available for disbursement to the Company, as determined in accordance with the foregoing calculations, VEDP will disburse that amount to the Locality. Within 30 days after receipt of such amount, the Locality will disburse such COF Grant proceeds to the Authority. Within 30 days after receipt of such amount, the Authority will disburse such COF Grant proceeds to the Company.

If any amount of COF Grant proceeds has not been earned by the Company, the amount not disbursed will be retained in the Fund and will be available for other economic development projects.

(c) *Use of the COF Grant Proceeds:* The Company will use the COF Grant proceeds to pay or reimburse the cost of construction or build-out of publicly or privately owned buildings for the Facility, and all as permitted by Section 2.2-115(D) of the Virginia Code.

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

(a) *State-Level 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 discretionary incentives, including but not limited to the COF Grant. With regard to the Facility, the Commonwealth expects to provide discretionary incentives in the following amounts:

<u>Category of Incentive:</u>	<u>Total Amount</u>
COF Grant	\$200,000
Virginia Jobs Investment Program (“VJIP”) (Estimated)	\$36,000

The proceeds of the COF Grant shall be used for the purposes described in Section 3(c). The VJIP grant proceeds shall be used by the Company to pay or reimburse itself for recruitment and training costs.

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

<u>Category of Incentive:</u>	<u>Total Amount</u>
Cash Grant	\$236,000

If, by the Performance Date, the total value of all Local-Level Incentives disbursed or provided, or committed to be disbursed or provided, by the Locality to the Company is less than the \$200,000 COF Grant local match requirement, the Locality, subject to appropriation, will make an additional grant to the Company of the difference promptly after Performance Date, so long as the Company has met its Targets.

The proceeds of the Cash Grant may be used by the Company for any lawful purpose as designated in a separate Performance Agreement among the Locality, Authority, and Company.

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

Section 5. Company Reporting.

(a) *Performance Reporting:* The Company shall provide, at the Company's expense, in the form attached hereto as Exhibit A, detailed Performance Reports satisfactory to the Locality, the Authority and VEDP of the Company's progress on the Targets. The Performance Reports are due annually on April 1, commencing April 1, 2024, reflecting the Company's progress toward the Targets as of the prior December 31. Further, the Company shall provide such Performance Reports at such other times as the Locality, the Authority or VEDP may require.

(b) *Final Performance Report:* The Company shall provide, at the Company's expense, in the form attached hereto as Exhibit B, a detailed Final Performance Report satisfactory to the Locality, the Authority and VEDP of the Company's achievement of the Targets as of the Performance Date. This Final Performance Report shall be filed within 90 days after the Performance Date.

Should the Company be unable to file the Final Performance Report within the 90-day timeframe, the Company may request a 60-day delay in filing the Final Performance Report. VEDP will require a \$3,000 fee, payable to VEDP, to process the request for the filing delay. Should the Company not file the Final Performance Report within the 90-day window nor request a filing delay (including payment of the required fee), or if the Company requests a filing delay but does not file the Final Performance Report prior to the new filing deadline, VEDP will withhold any COF Grant payment that might otherwise be due, and all rights of the Company under this Agreement will automatically terminate.

Section 6. Verification of Targets.

(a) *Verification of Capital Investment:* The Company hereby authorizes the Locality to release to VEDP the Company's real estate tax, business personal property tax and machinery and tools tax information. To the extent such information is deemed confidential and proprietary under state law, it shall be so marked and shall be used by VEDP solely for verifying satisfaction of the Capital Investment Target. If the Locality or the Locality's Director of Finance should require additional documentation or consents from the Company to access such information, the Company shall promptly provide, at the Company's expense, such additional documentation or consents as the Locality or VEDP may request. In accordance with Virginia Code Section 58.1-3122.3, VEDP is entitled to receive the Company's real estate tax, business personal property tax and machinery and tools tax information from the Locality.

(b) *Verification of New Jobs and Wages:* The Company must submit a copy of its four most recent Employer's Quarterly Tax Reports (Form FC-20) with the Virginia Employment Commission with the Final Performance Report. The forms shall be marked and considered confidential and proprietary and shall be used by VEDP solely for verifying satisfaction of the New Jobs Target. In accordance with Virginia Code Section 60.2-114, VEDP is entitled to receive the Company's employment level and wage information from the Virginia Employment Commission.

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

(c) *Additional Documentation:* In addition to the verification data described above, in the sole discretion of the Locality, the Authority or VEDP, the Locality, the Authority or VEDP, may each require such other documentation or audits as may be required to properly verify the Capital Investment or New Jobs.

Section 7. Possible Termination of this Agreement and Redeployment of COF Grant Proceeds. If the Locality, the Authority or VEDP shall determine at any time prior to the Performance 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, this Agreement will be terminated, no further disbursements of the COF Grant proceeds will be made to the Company, and the amount not disbursed will be retained in the Fund and made available for other economic development projects. 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, a failure to comply with the covenant provided in Section 2(f), or other similar significant event that demonstrates that the Company will be unable or is unwilling to satisfy the Targets for the COF Grant.

Section 8. Notices. Formal notices and communications between the parties shall be given either by (i) personal service, (ii) delivery by a reputable document delivery service that provides a receipt showing date and time of delivery, (iii) mailing utilizing a certified or first class mail postage prepaid service of the United States Postal Service that provides a receipt showing date and time of delivery, or (iv) delivery by electronic mail (email) with transmittal confirmation and confirmation of delivery, addressed as noted below. Notices and communications personally delivered or delivered by document delivery service shall be deemed effective upon receipt. Notices and communications mailed shall be deemed effective on the second business day following deposit in the United States mail. Notices and communications delivered by email shall be deemed effective the next business day, not less than 24 hours, following the date of transmittal and confirmation of delivery to the intended recipient. Such written notices and communications shall be addressed to:

If to the Company, to:

With a copy to:

AgroSpheres, Inc.
1180 Seminole Trail
Charlottesville, Virginia 22901
Attention: Payam Pourtaheri

If to the County, to:

Albemarle County Executive's Office
401 McIntire Road
Charlottesville, Virginia 22902
Attention: Jeffrey Richardson

With a copy to:

Finance & Budget Department
401 McIntire Road
Charlottesville, Virginia 22902
Director of Finance

If to the Authority, to:

Economic Development Authority
401 McIntire Road
Charlottesville, Virginia 22902
Attention: Donald Long, Chair

With a copy to:

Economic Development Office
401 McIntire Road
Charlottesville, Virginia 22902
Attention: Director of EDO

if to VEDP, to:

Virginia Economic Development Partnership
One James Center, Suite 900
901 East Cary Street
Richmond, Virginia 23219
Email: ceo@vedp.org
Attention: President and CEO

with a copy to:

Virginia Economic Development Partnership
One James Center, Suite 900
901 East Cary Street
Richmond, Virginia 23219
Email: generalcounsel@vedp.org
Attention: General Counsel

Each party may change the address for service of notice upon it by a notice in writing to the other parties hereto.

Section 9. Miscellaneous.

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

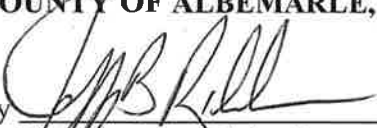
(e) *Attorney's Fees:* Attorney's fees shall be paid by the party incurring such fees.

(f) *Force Majeure:* Notwithstanding the foregoing provisions of this Agreement, if the Company does not achieve a Target or take any action required under this Agreement because of an "Event of Force Majeure" (as defined below), the time for achieving the applicable Target or taking such action will be extended day-for-day by the delay in meeting the applicable Target or taking such action caused by the Event of Force Majeure. "Event of Force Majeure" means without limitation, any of the following: acts of God; strikes, lockouts or other industrial disturbances; act of public enemies; orders of any kind of the government of the United States of America or of the Commonwealth or any of their respective departments, agencies, political subdivisions or officials, or any civil or military authority; insurrections; riots; epidemics; pandemics; landslides; lightning; earthquakes; fires; hurricanes; tornadoes; storms; floods; washouts; droughts; arrests; restraint of government and people; civil disturbances; explosions; breakage or accident to machinery, transmission pipes or canals not caused by the Company; partial or entire failure of utilities; or any other cause or event not reasonably within the control of the Company.

[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 ALBEMARLE, VIRGINIA

By 

Name: Jeffrey Richardson

Title: County Executive

Date: 9/22/23

**ECONOMIC DEVELOPMENT
AUTHORITY OF ALBEMARLE, VIRGINIA**

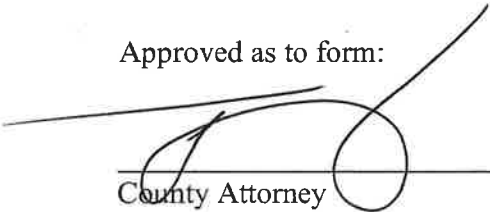
By _____

Name: Donald D. Long

Title: Chair

Date: _____

Approved as to form:


County Attorney

AGROSPHERES, INC.

By Payam Pourtahari

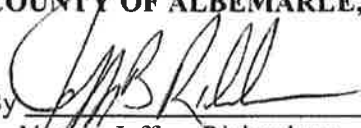
Name: Payam Pourtahari

Title: Chief Executive Officer

Date: 08/31/2023

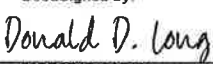
IN WITNESS WHEREOF, the parties hereto have executed this Performance Agreement as of the date first written above.

COUNTY OF ALBEMARLE, VIRGINIA

By 
Name: Jeffrey Richardson
Title: County Executive

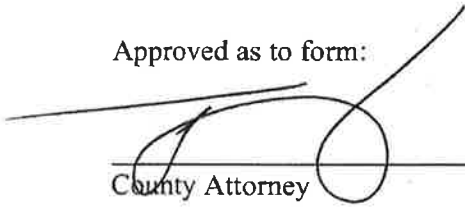
Date: 9/22/23

**ECONOMIC DEVELOPMENT
AUTHORITY OF ALBEMARLE, VIRGINIA**

DocuSigned by:
By 
008FC74E492F484
Name: Donald D. Long
Title: Chair

Date: 9/22/2023

Approved as to form:


County Attorney

AGROSPHERES, INC.

By 
Name: Payam Pourtahari
Title: Chief Executive Officer

Date: 08/31/2023

**VIRGINIA ECONOMIC
DEVELOPMENT PARTNERSHIP
AUTHORITY**

DocuSigned by:
Jason El Koubi
By 00EAD10B57FE100
Name: Jason El Koubi
Title: President & CEO
Date: 9/27/2023

Exhibit A: Performance Report Form
Exhibit B: Final Performance Report Form

PERFORMANCE REPORT COMMONWEALTH'S DEVELOPMENT OPPORTUNITY FUND

PROJECT SUMMARY:

Project	
Location	
Amount of Grant	
Performance Reporting Period	
Performance Date	

PROJECT PERFORMANCE³:

Performance Measurement	Target	As of	% Complete
New Jobs (over baseline)¹			
Confidence level target will be reached by Performance Date shown above (check one)	High ☐	Moderate ☐	Low ☐
Capital Investment (provide breakdown below)²			
Confidence level target will be reached by Performance Date shown above (check one)	High ☐	Moderate ☐	Low ☐
Average Annual Wage			N/A
Confidence level target will be reached by Performance Date shown above (check one)	High ☐	Moderate ☐	Low ☐
Standard Fringe Benefits (check one)	Yes ☐	No ☐	N/A

¹Data will be verified using Virginia Employment Commission records. Attach the company's four most recent Quarterly Tax Reports (Form FC-20) filed with the Virginia Employment Commission.

²Data will be verified with locality records.

³Final, actual performance will be reported on VEDP's public reporting website.

Capital Investment Breakdown	Amount
Land	\$
Land Improvements	
New Construction or Expansion	
Renovation or Building Up-fit	
Production Machinery and Tools	
Furniture, Fixtures and Equipment	
Other	
Total	\$

COMMENTS:

Discuss project status, including the current level of new jobs and capital investment, progress on targets, changes or likely changes in project's nature that may impact achievement of targets, and other information relevant to project performance. If the project is not on track to meet targets, please provide an explanation.

TO BE CERTIFIED BY AN OFFICER OF THE COMPANY:

I certify that I have examined this report and to the best of my knowledge and belief, it is true, correct, and complete.

Company: _____

Submitted By: _____
Signature of Official

Name: _____
Print Name

Title: _____

Date: _____

Please return to:

Kim Ellett, Director of Compliance, Virginia Economic Development Partnership,
804.545.5618, kellett@vedp.org

FINAL PERFORMANCE REPORT COMMONWEALTH'S DEVELOPMENT OPPORTUNITY FUND

PROJECT SUMMARY:

Project	
Location	
Amount of Grant	
Performance Date	

PROJECT PERFORMANCE:¹

Performance Measurement	Target	As of _____, 20__	% Complete
New Jobs (over __ baseline) ²			
Capital Investment (provide breakdown below) ³			
Average Annual Wage			N/A
Standard Fringe Benefits			

¹Final, actual performance will be reported on VEDP's public reporting website.

² Attach the company's four most recent Quarterly Tax Reports (Form FC-20) filed with the Virginia Employment Commission.

³ Data will be verified using records from the Commissioner of the Revenue and invoices.

Capital Investment Breakdown	Amount
Land	\$
Land Improvements	
New Construction or Expansion	
Renovation or Building Up-fit	
Production Machinery and Tools	
Furniture, Fixtures and Equipment	
Other	
Total	\$

LOCAL MATCH:

Goal	
Actual	

COMMENTS:

Discuss Project status or the importance of the Project to the locality and region.

TO BE CERTIFIED BY AN OFFICER OF THE COMPANY:

I certify that I have examined this report and to the best of my knowledge and belief, it is true, correct, and complete.

Company: _____

Submitted By: _____
Signature of Official

Name: _____
Print Name

Title: _____

Date: _____

Please return to:

Kim Ellett, Director of Compliance, Virginia Economic Development Partnership,
804.545.5618, kellett@vedp.org