

**REPORT OF THE
VIRGINIA ECONOMIC DEVELOPMENT PARTNERSHIP**

Performance Agreement

**TO THE GOVERNOR AND
THE GENERAL ASSEMBLY OF VIRGINIA**



SENATE DOCUMENT NO. 16

**COMMONWEALTH OF VIRGINIA
RICHMOND
2006**

PERFORMANCE AGREEMENT

This Performance Agreement made and entered this ____ day of _____ 2006, by and between the City/County of _____, Virginia (the "City/County"), a political subdivision of the Commonwealth, and _____ (the "Company"), a _____ corporation (if foreign) authorized to do business in the Commonwealth of Virginia.

WITNESSETH:

WHEREAS the County has received a grant of and expects to receive the sum of \$_____ from the Governor's Opportunity Fund ("GOF") through VEDP for the purpose of inducing the Company to locate in the County to build or expand a facility, and create a significant number of new full-time permanent jobs; and

WHEREAS the County is willing to provide the funds to or for the use of the Company provided the Company meets certain criteria relating to employment projections and capital investment; and

WHEREAS the County is required to return all or a portion of the funds so received to the Commonwealth if the performance criteria of the Company are not met; and

WHEREAS the County and the Company desire to set forth their understanding and agreement as to the use of the GOF grant, the obligations of the Company regarding capital investment and job creation and repayment by the Company of all or part of the GOF grant under certain circumstances.

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.

1. The County will disburse the entire amount of funds provided to it from the GOF, expected to be the sum of \$_____, as an inducement to the Company to locate/expand its (new) facility, and create a significant number of new jobs, in _____ County, Virginia.
2. The County will disburse the entire amount of the GOF grant to the Company to be used by the Company in the improvement of the site upon which the Company shall construct and operate a facility in _____ County, Virginia.
3. The Company will construct and operate a facility on the site in _____ County, Virginia with an investment of at least \$_____ in improvements, machinery, and equipment, and will create **and maintain** ___ jobs at said facility with an average annual wage of \$_____,* all within thirty-six months of the date the County received the GOF grant. For purposes of this Performance Agreement, "maintain" means that the jobs created

* The County's prevailing average annual wage is \$_____. The County is (not) a high-unemployment locality with an unemployment rate of ___% as compared with the 2005 statewide rate of 3.5%.

pursuant to the GOF grant will continue without interruption from the date of creation for at least thirty-six months from the County's receipt of the GOF grant, or until the Commonwealth reaches its "break-even point" as established by the return on investment (ROI) prepared by VEDP, whichever is later. The break-even point compares new revenues realized as a result of this project with the Commonwealth's expenditures on incentives including but not limited to the GOF grant. With regard to this project, the Commonwealth will provide incentives in the following amounts:

[chart with type of grant, cash amount or fair market value, source and use]

For this project, the break-even point is __ months.

The County has committed to provide the following incentives, as matching grants or otherwise, for this project:

[chart with type of incentive, cash amount or fair market value, source and use]

4. Repayment Obligation: The Code of Virginia, § 2.2-115, requires that the Company invest at least \$_____ of private capital in this project and create at least __ jobs in order to be eligible for the GOF grant. If the Company fails to meet either of these eligibility requirements, the entire GOF grant must be repaid. For purposes of repayment, the GOF grant is to be allocated as \$_____ (50%) for the Company's capital investment commitment and \$_____ (50%) for its employment commitment. If the Company has met at least ninety percent (90%) of the capital investment and employment goals set forth in paragraph three (3) hereof, factoring in the average wages paid, then and thereafter the Company is no longer obligated to repay any portion of either grant provided to it hereunder. If the Company has not met at least ninety percent (90%) of its capital investment and new jobs commitment set forth in paragraph three (3) hereof, the Company shall repay to the County that part of the grant that is proportional to the shortfall. For example, if at the end of the performance period above the capital investment is only \$_____ and only __ new jobs have been created, the Company shall refund to the County _____ percent (__%) of the monies allocated to capital investment (\$_____) and _____ percent (__%) of the monies allocated to employment (\$_____). The employment component will be determined by comparing the anticipated payroll (agreed number of new jobs multiplied by salary above) to the actual numbers reported at the end of the performance period. ***Such repayment shall be due within thirty days of the end date of the performance period above.*** Any monies repaid by the Company to the County hereunder shall be repaid by the County to the Virginia Economic Development Partnership for the GOF. **[Add in provisions for repayment of County incentives, if any].**
5. The Company shall provide, at the Company's expense detailed verification reasonably satisfactory to the County of the Company's progress on the capital investment and employment goals contemplated herein. Such progress reports will be provided at twelve months, twenty-four months and thirty-six months from the date the GOF grant is received by the County, and at such other time(s) as the County may require.

6. The Company acknowledges and agrees to the Repayment Obligation in accordance with the terms of this Performance Agreement.
7. 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 not accepted by the addressee):

if to the Company, to:

NAME
ADDRESS

Attention:

if to the County, to:

NAME
ADDRESS

Attention: County Administrator

8. This Performance Agreement constitutes the entire agreement between the parties hereto as to the subject matter contained herein and may not be amended or modified, except in writing, signed by each of the parties hereto. This agreement is made, and intended to be performed, in the Commonwealth and shall be construed and enforced by the laws of that state. 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.
9. 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. This agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. If any provision of this agreement is determined to be unenforceable, then the remaining provisions of this agreement shall, in the discretion of the County and the Virginia Economic Development Partnership, be voidable or interpreted as in effect as if such unenforceable provisions were not included therein.
10. The provisions of this agreement are intended to and shall survive closing, the delivery of any deed or other instrument, and any other event.

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

COUNTY

By: _____

Title: _____

Date: _____

COMPANY

By: _____

Title: _____

Date: _____