

July 2, 2012

The Honorable Walter A. Stosch
Chair, Senate Committee on Finance
General Assembly Building, Room 626
Post Office Box 396
Richmond, Virginia 23218

The Honorable Lacey E. Putney
Chair, House Committee on Appropriations
General Assembly Building, Room 947
Post Office Box 406
Richmond, Virginia 23218

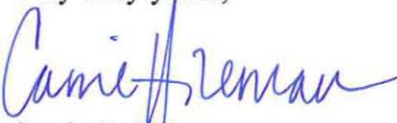
Re: Fiscal Year 2013 Guidelines for Economic Development Grant Programs

Dear Senator Stosch and Delegate Putney:

Pursuant to § 2.2-5101 (D.) and § 59.1-284.27 (G.) the Code of Virginia requires the Secretary of Commerce & Trade to submit to you guidelines for Virginia Investment Partnership (VIP) Act Grants and the Clean Energy Manufacturing Incentive Grant (CEMIG), respectively. Accordingly, updated for Fiscal Year 2013 and attached are the VIP Act Guidelines. Those include the Virginia Investment Partnership Act Grant, the Major Eligible Employer Grant, and the Virginia Economic Development Incentive Grant.

Further enclosed are the updated guidelines for CEMIG and the Governor's Development Opportunity Fund.

Very truly yours,



Carrie D. Hileman
Manager, Legislation and Policy

Enclosures

cc: The Honorable James S. Cheng, Secretary of Commerce & Trade
Carrie Cantrell, Deputy Secretary of Commerce & Trade
Sandra J. McNinch, Virginia Economic Development Partnership

Guidelines for Virginia Investment Partnership Grant

Purpose:

The Virginia Investment Partnership Grant Program (“VIP”) is used to encourage existing Virginia manufacturers or research and development services to continue to invest in Virginia and to provide stable employment opportunities by adding production capacity, utilizing state-of-the-art technology, and modernizing assembly processes. This is a discretionary program in which grants are negotiated and offered to qualified applicants as an economic development incentive.

Statutory Eligibility:

To be eligible for a VIP, a minimum of \$25 million in capital investment by an existing Virginia company is required. Although no minimum job creation is required for a VIP, the investment must not result in any net reduction in employment from the date of the completion of the capital investment until one year from the date of completion. New job creation may, however, result in an increased negotiated benefit under this program. The VIP is available to eligible manufacturers and to research and development services, and these terms are defined below. The VIP cannot be used by a company that is eligible for a Major Eligible Employer (MEE) grant.

An applicant may be granted more than one VIP grant at a time if the scope of each project has a different timeframe and independently meets the minimum investment and all other criteria expressed herein. An applicant that has an active VIP but separately meets the investment threshold and employment requirements for a new project may apply for an additional grant. For an investment occurring in phases or stages, however, the Commonwealth will consider as one project a phased-in investment if: (i) the entire investment is announced at one time, (ii) the phases are clearly related in one project, and (iii) the entire investment proceeds normally to completion, without extraordinary delays. If these conditions are met, the negotiated amount will reflect the entire single investment.

If the applicant participates currently in another production grant program sponsored by the Commonwealth for a project (including but not limited to semiconductor manufacturers, or others), or another grant program under the Act, as defined below, it shall not be eligible for a VIP for that project.

Investments resulting from ongoing VEDP projects will be eligible for consideration for a VIP, but only if the investments have not yet been publicly announced. Investments made with no prior VEDP involvement, and/or investments previously announced, committed or begun will not be eligible for consideration for a VIP.

Definitions:

“*Act*” means the Virginia Investment Partnership Act, Chapter 51, Title 2.2, Code of Virginia of 1950, as amended.

“*Average manufacturing wage*” means that amount determined by the Virginia Employment Commission to be the average wage paid manufacturing workers in a locality or region of the Commonwealth.

“*Basic employment*” means employment that brings new or additional income into Virginia and adds to the gross state product, by providing goods or services at least one-half of which will be sold outside of the Commonwealth or will be paid for with funds from outside the Commonwealth.

“*Capital investment*” means an investment in real property, tangible personal property, or both, at a manufacturing or research and development services facility within the Commonwealth that is capitalized by the company and that increases the productivity of the manufacturing facility, results in the creation, development or utilization of a more advanced technology than is in use immediately prior to such investment, or both. In order to qualify as a capital investment, an investment in technology shall result in a measurable increase in capacity or productivity, a measurable decrease in the production of flawed product, or both. Expenditures for maintenance, replacement or repair of existing machinery, tools and real property shall not constitute a capital investment; however, expenditures for the replacement of property shall not be ineligible for

designation as a capital investment if such replacement results in a measurable increase in productivity.

“Commonwealth” means the Commonwealth of Virginia.

“Eligible manufacturer or research and development service” means an existing Virginia manufacturer or research and development service that makes a capital investment of at least \$25 million, which investment does not result in any net reduction in employment within one year after the capital investment has been completed and verified.

“Existing Virginia manufacturer” means a manufacturer that has a legal presence within the Commonwealth for at least three years prior to making the announcement of the capital investment that makes it an eligible manufacturer. Membership in the Commonwealth Center for Advanced Manufacturing, as an Organizing Industry Member, a Tier 1 Industry Member or a Tier 2 Industry Member, will be considered to be a legal presence in the Commonwealth from the date of membership.

“Fiscally stressed locality” means (A) a locality with an unemployment rate for the most recent calendar year for which such data is available greater than the statewide unemployment rate for that calendar year, or (B) a locality with a poverty rate for the most recent calendar year for which such data is available greater than the statewide poverty rate for that calendar year. Whether a locality will qualify as a fiscally stressed locality will be determined by the Partnership on the date the Partnership provides a proposal to a company indicating that a VIP is available to the company. Once so determined, that status will not change through the pay-out of the VIP.

“Flawed product” means an irregular unit of goods that cannot be sold to an end user.

“Fund” means the Virginia Investment Partnership Grant Fund, created pursuant to §2.2-5104 of the Act, comprised of (i) the Major Eligible Employer Grant subfund, (ii) the Investment Performance Grant subfund, and (iii) the Economic Development Incentive Grant subfund.

“Manufacturer” means a business firm owning or operating a manufacturing establishment as defined in the Standard Industrial Classification Manual

issued by the U.S. Office of Management and Budget or the North American Industry Classification System Manual issued by the United States Census Bureau.

“Net present value of benefits to Virginia” means the present value of the amount by which (i) the anticipated additional state tax revenue expected to accrue to the Commonwealth as a result of the capital investment and jobs created, over a period following the completion of the capital investment not to exceed 20 years, exceeds (ii) the value of all incentives provided by the Commonwealth, including any grant under the Act, for such capital investment during that period.

“New job” means employment of an indefinite duration at the eligible facility, created as the direct result of the capital investment, for which the standard fringe benefits are paid by the firm for the employee, requiring a minimum of either (i) 35 hours of an employee’s time a week for the entire normal year of the firm’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 this Commonwealth to the facility, and positions with construction contractors, vendors, suppliers and similar multiplier or spin-off jobs shall not qualify as new jobs under the Act. Net new jobs for contractors or employees of contractors who are located in the Commonwealth and provide dedicated full-time service to the Company may count as New Jobs, even though the Company is not directly paying the wages or providing the fringe benefits, if the other conditions set forth in this paragraph have been satisfied.

If there are existing jobs at the firm’s facility (or at a contractor’s facility, if applicable), it is expected that the performance agreement will state the number of existing jobs and will require that the new jobs be in addition to the existing jobs.

For cross-border projects for which a significant percentage of the employees are current Virginia residents, the definition of “new jobs” is likely to be adjusted to count as “new jobs” only those positions that are net new jobs in the Commonwealth held by Virginia residents. Such a definition will exclude the number of current Virginia resident employees and the number of employees that are residents of border states.

“*Partnership*” means the Virginia Economic Development Partnership Authority.

“*Performance agreement*” means a memorandum of understanding or other agreement between the Commonwealth and the grantee memorializing the performance expected from the grantee and the anticipated grant payments from the Commonwealth.

“*Productivity*” means the number of hours of labor required to produce a unit of goods.

“*Research and development service*” means a business firm owning or operating an establishment engaged in conducting research and experimental development that supports manufacturing in the physical, engineering and life sciences as defined in the North American Industry Classification System Manual issued by the United States Census Bureau.

Application Process:

The applicant shall submit a detailed letter of application for a VIP directly to the President and Chief Executive Officer of the Partnership providing the following information:

1. The amount and timing of the capital investment;
2. The extent to which, if applicable, the capital investment produces (i) measurable increases in capacity, productivity, or both; (ii) measurable decreases in the production of flawed product; or (iii) measurable advances in knowledge, research, or the application of research findings for the creation of new or significantly improved products or processes that support manufacturing;
3. The number of new jobs created by the capital investment, if any, and a timeline for their creation;
4. (A) The wages paid for the new jobs, (B) a summary of the expected fringe benefits package to be provided by the applicant to a typical employee (the statute requires standard fringe benefits), and (C) the

amount by which the wages exceed the average manufacturing wage for the locality or region;

5. The amount of other incentives requested of, or offered by, the Commonwealth and the locality, including grants, tax credits or exemptions, and other cost-avoidance incentives;
6. General corporate information about the applicant, including date of establishment, tenure and nature of presence in Virginia, and amount of previous capital investment and existing employment, and specific information indicating the importance of the facility to the economy of the locality or region; and
7. Other factors as may be presented and demonstrated by the applicant that might affect the calculation of the net present value of benefits to Virginia. Specifically, applicants may present marginal corporate income (or analogous) tax revenues to Virginia attributable to the investment for which the grant is made. If accepted, these revenues would be included in the calculation of the net present value of benefits to Virginia.

Together with the letter from the applicant described above, the applicant may be asked to provide three years of historical financial statements, covering the three years prior to the application, and three years of pro forma financial statements, covering the three years following the application.

Using the above data, the Partnership will determine the net present value of benefits to Virginia over a 20-year period with respect to the capital investments made and the new jobs created. The Partnership may independently validate or verify any figures or information provided by an applicant, or request further information or certifications from or on behalf of the applicant. The discount rate applied will be based initially on the 20-year Treasury Bill rate and then will factor in the relative risk of the individual project, as determined by the Partnership. Sales and use tax and other applicable tax revenues accruing to the Commonwealth in connection with the investment will also be included in the calculation. This calculation will subtract all direct fiscal benefits provided by the Commonwealth, such as training grants, Governor's Opportunity Fund grants, Enterprise Zone grants, Tobacco Region Opportunity Fund grants or Community Development Block Grants. If marginal income tax revenues

are used in the calculation, then Virginia tax credits will be factored in as well. The negotiated amount of the grants will be based on this calculation.

Once negotiated and agreed upon, the amount, terms and conditions of a VIP shall be reflected in a performance agreement to be executed by the applicant no later than 120 days after the public announcement by the Governor.

Limits, Notifications, Verifications and Payouts for VIP:

Except as provided in the next paragraph, no one VIP grant may exceed \$3,000,000. In the aggregate, no more than \$6 million in grants may be paid-out in any one year. The total aggregate amount of outstanding VIP grants approved since July 1, 2009 cannot exceed \$30 million.

Although each VIP grant generally cannot exceed \$3,000,000, a VIP grant may be for as much as \$5,000,000 for a project that meets more than one of the criteria set forth below:

- Desirable workforce characteristics (e.g. significant job numbers, especially high wage levels, or sophisticated skill sets)
- Strategic industry sector
- Significant impact on or transformation of the local/regional economy
- Significant R&D component, especially if in concert with Virginia's public higher educational institutions
- Considerable capital investment
- Likelihood of attracting a significant supply chain or other significant follow-on opportunities

The maximum \$5 million grant is intended to be reserved for special projects deemed meritorious of such a significant investment by the Commonwealth.

The performance agreement will require the grantee to provide annual notice to VEDP of the grantee's progress on meeting its performance goals.

The performance agreement will require the grantee to notify the Partnership in writing within 90 days of completion of the capital investment, certifying the amount of capital investment and providing the number of retained employees and new employees at the facility at the completion of the capital investment, the average annual wage rates paid to such employees and a summary of the fringe benefits package offered by the grantee to a typical employee (an “Initial Company Notification”).

One year after the Initial Company Notification, the performance agreement will require the grantee to certify to the Partnership whether there has been a net reduction in employment in the year since the completion of the capital investment (a “Subsequent Company Notification”). If so provided in the performance agreement, whether there has been a net reduction in employment in such year may be determined solely with respect to the employment related to the improvements made by the capital investment. If, for example, the capital investment updated a single production line, it may be possible to look solely at that production line in determining whether there has been a reduction in employment during that one year period.

Beginning with the fiscal year in which the verified Initial Company Notification has been on file at the Partnership for 36 months, and pursuant to the provisions of the Act, the Commonwealth shall make five equal annual grant payments to the grantee. In fiscally stressed localities, payouts can begin in the fiscal year in which the verified Initial Company Notification has been on file at the Partnership for 24 months.

The performance agreement shall contain an end-date by which the capital investment must have been completed. It is VEDP’s strong preference that this date will be three years, but no more than five years, from the date the performance agreement is signed, but extensions will be considered on a case by case basis and shall be determined solely at VEDP’s discretion.

Conditions to Payouts of VIP Grants; Assignment; Reductions:

VIP payments are subject to annual appropriation by the Virginia General Assembly and are subject also to the conditions that (A) the capital investment remains in place during the payment period, (B) the Subsequent Company Notification has not revealed a net reduction in

employment, and (C) the facility continues to operate throughout the payment period at substantially the same level as existed at the time of the Initial Company Notification. If the capital investment does not remain in place or if the facility is no longer so operated, the performance agreement will require the grantee to provide immediate notice to the Partnership.

A company participating in the VIP grant program may not assign its rights or obligations under a performance agreement without the express written approval of VEDP. VEDP will consider an assignment of rights and obligations in the event that there is a transfer to a parent company, subsidiary or sister entity, there is no net effect on new job creation and capital investment, and the net present value of benefits to Virginia will remain substantially the same.

If the VIP grantee does not achieve the statutory minimum capital investment requirement of \$25 million or does not maintain at least steady employment in the one-year period after the completion of the capital investment, no VIP grant payment will be made. If the VIP grantee achieves the statutory minimum capital investment and maintains steady employment, but does not achieve at least 50% of the capital investment target and any jobs target stated in the performance agreement, no VIP grant payment will be made. If the VIP grantee achieves the statutory minimum capital investment and maintains steady employment and achieves between 50% and 100% of the targeted capital investment and jobs, the total VIP grant to be paid shall be diminished proportionately, but will still be paid out as provided in the Act, so long as the capital investment remains in place during the payment period and the facility continues to operate throughout the payment period at substantially the same level as existed at the time of the Initial Company Notification. For this purpose, in the performance agreement, it is expected that the VIP grant will be allocated between the capital investment goal and the job creation or retention goal. Generally, the VIP grant will be allocated three-quarters to the capital investment goal and one-quarter to the job creation or retention goal. For example, if the grantee achieves 60% of its capital investment goal and 75% of its job retention and creation goal, the grant will be diminished proportionately to 60% of that portion allocable to the capital investment and 75% of that portion allocable to jobs retained and created, to be paid out on the schedule described above. If there is no new job creation goal, the entire VIP grant may be allocated to the capital investment goal.

If the actual average wages paid for the new jobs exceed the target average salaries provided by the VIP grantee by at least 20%, then the new job creation requirement may be reduced, provided that the actual aggregate payroll paid by the VIP grantee for the new jobs is at least equal to the aggregate payroll that would have been paid were the average wages described in the performance agreement to have been paid. The amount of the reduction will depend upon the net present value of benefits to Virginia derived from the grantee's facility.

If there are insufficient moneys in the Fund's Investment Performance Grant subfund to pay all VIP payments due to intended recipients, the provisions of Section 2.2-5104 of the Act shall govern the distribution of the available funds.

If the Virginia General Assembly deposits federal funds into the Fund's Investment Performance Grant subfund, and if the expenditure of those federal funds would require compliance by the grantee with various federal legal requirements, those federal legal requirements will be deemed to be read into the performance agreement.

Special Reporting Provision:

For VEDP to demonstrate the value of the VIP program and other economic development incentives, it would be helpful for the company to share with VEDP the Virginia corporate income taxes paid by the company. VEDP has no access to this information, unless the company volunteers to provide it to VEDP. It is expected that each performance agreement will contain a provision that substantially reads as follows:

With each annual progress report, the company shall report to VEDP the amount paid by the company in the prior calendar year in Virginia corporate income tax. VEDP hereby represents to the company that it considers such information to be confidential proprietary information that is exempt from public disclosure under the Virginia Freedom of Information Act and that such information will be used by VEDP solely in calculating aggregate return on invested capital analyses for purposes of gauging the overall effectiveness of economic development incentives.

Note: Data from the Census Bureau's Model-based Small Area Income & Poverty Estimates (SAIPE) for School Districts, Counties and States is the primary source for annual poverty rates (<http://www.census.gov/did/www/saipe/index.html>).

Guidelines for Major Eligible Employer Grant

Purpose:

The Major Eligible Employer Grant Program (“MEE”) is used to encourage major basic employers to invest in Virginia and to provide a significant number of stable employment opportunities by either making a significant expansion to existing operations or constructing new ones. This is a discretionary program in which grants are negotiated and offered to qualified applicants as an economic development incentive.

Statutory Eligibility:

To be eligible for an MEE, a minimum capital investment of \$100 million and the creation of at least 1,000 new full-time jobs are required, although the job creation threshold can be lowered for exceptionally high-paying new jobs, as described below. The MEE is available to existing Virginia manufacturers and other nonmanufacturing basic employers, and these terms are described below.

An applicant may be granted more than one MEE at a time if the scope of each project has a different timeframe and independently meets the minimum investment and all other criteria expressed herein. An applicant that has an active MEE but separately meets the investment threshold and employment requirements for a new project may apply for an additional grant. For an investment occurring in phases or stages, however, the Commonwealth will consider as one project a phased-in investment if: (i) the entire investment is announced at one time, (ii) the phases are clearly related in one project, and (iii) the entire investment proceeds normally to completion, without extraordinary delays. If these conditions are met, the negotiated amount will reflect the entire single investment.

If the applicant participates currently in another production grant program sponsored by the Commonwealth for a project (including but not limited to semiconductor manufacturers, or others), or another grant program under the Act, as defined below, it shall not be eligible for an MEE for that project.

Investments resulting from ongoing VEDP projects will be eligible for consideration for an MEE, but only if the investments have not yet been publicly announced. Investments made with no prior VEDP involvement, and/or investments previously announced, committed or begun will not be eligible for consideration for an MEE.

Definitions:

“*Act*” means the Virginia Investment Partnership Act, Chapter 51, Title 2.2, Code of Virginia of 1950, as amended.

“*Basic employment*” means employment that brings new or additional income into Virginia and adds to the gross state product, by providing goods or services at least one-half of which will be sold outside of the Commonwealth or will be paid for with funds from outside the Commonwealth.

“*Capital investment*” means an investment in real property, tangible personal property, or both, at a manufacturing or basic nonmanufacturing facility within the Commonwealth that is capitalized by the company. Expenditures for maintenance, replacement or repair of existing machinery, tools and real property shall not constitute a capital investment; however, expenditures for the replacement of property shall not be ineligible for designation as a capital investment if such replacement results in a measurable increase in productivity.

“*Commonwealth*” means the Commonwealth of Virginia.

“*Existing Virginia manufacturer*” means a manufacturer that has a legal presence within the Commonwealth for at least three years prior to making the announcement of the capital investment that makes it an eligible manufacturer. Membership in the Commonwealth Center for Advanced Manufacturing, as an Organizing Industry Member, a Tier 1 Industry Member or a Tier 2 Industry Member, will be considered to be a legal presence in the Commonwealth from the date of membership.

“*Fiscally stressed locality*” means (A) a locality with an unemployment rate for the most recent calendar year for which such data is available greater than the statewide unemployment rate for that calendar year, or (B) a

locality with a poverty rate for the most recent calendar year for which such data is available greater than the statewide poverty rate for that calendar year. Whether a locality will qualify as a fiscally stressed locality will be determined by the Partnership on the date the Partnership provides a proposal to a company indicating that an MEE is available to the company. Once so determined, that status will not change through the pay-out of the MEE.

“Fund” means the Virginia Investment Partnership Grant Fund, created pursuant to §2.2-5104 of the Act, comprised of (i) the Major Eligible Employer Grant subfund, (ii) the Investment Performance Grant subfund, and (iii) the Economic Development Incentive Grant subfund.

“Major eligible employer” means an existing Virginia manufacturer or any other non-manufacturing basic employer that makes a capital investment of at least \$100 million and creates at least 1,000 jobs, or corporate headquarters and other basic employers that make a capital investment of at least \$100 million and create at least 400 jobs paying at least twice the prevailing average wage for the city or county of the Commonwealth where the eligible company is located.

“Manufacturer” means a business firm owning or operating a manufacturing establishment as defined in the Standard Industrial Classification Manual issued by the U.S. Office of Management and Budget or the North American Industry Classification System Manual issued by the United States Census Bureau.

“Net present value of benefits to Virginia” means the present value of the amount by which (i) the anticipated additional state tax revenue expected to accrue to the Commonwealth as a result of the capital investment and jobs created, over a period following the completion of the capital investment not to exceed 20 years, exceeds (ii) the value of all incentives provided by the Commonwealth, including any grant under the Act, for such capital investment during that period.

“New job” means employment of an indefinite duration at the eligible facility, created as the direct result of the capital investment, for which the standard fringe benefits are paid by the firm for the employee, requiring a minimum of either (i) 35 hours of an employee’s time a week for the entire normal year of the firm’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 this Commonwealth to the facility, and positions with construction contractors, vendors, suppliers and similar multiplier or spin-off jobs shall not qualify as new jobs under the Act. Net new jobs for contractors or employees of contractors who are located in the Commonwealth and provide dedicated full-time service to the Company may count as new jobs, even though the Company is not directly paying the wages or providing the fringe benefits, if the other conditions set forth in this paragraph have been satisfied.

If there are existing jobs at the Company's facility (or at a contractor's facility, if applicable), it is expected that the performance agreement will state the number of existing jobs and will require that the new jobs be in addition to the existing jobs.

For cross-border projects for which a significant percentage of the employees are current Virginia residents, the definition of "new jobs" is likely to be adjusted to count as "new jobs" only those positions that are net new jobs in the Commonwealth held by Virginia residents. Such a definition will exclude the number of current Virginia resident employees and the number of employees that are residents of border states.

"Partnership" means the Virginia Economic Development Partnership Authority.

"Performance agreement" means a memorandum of understanding or other agreement between the Commonwealth and the grantee memorializing the performance expected from the grantee and the anticipated grant payments from the Commonwealth.

"Prevailing average wage" means that amount determined by the Virginia Employment Commission to be the average wage paid workers in the city or county of the Commonwealth where the eligible company is located.

"Productivity" means the number of hours of labor required to produce a unit of goods.

Application Process:

The applicant shall submit a detailed letter of application for an MEE directly to the President and Chief Executive Officer of the Partnership providing the following information:

1. The amount and timing of the capital investment;
2. The number of new jobs created by the capital investment, if any, and a timeline for their creation;
3. If the company has existing operations in Virginia, whether it has closed, downsized, consolidated, or laid off employees within the past 30 months prior to the application date;
4. (A) The wages paid for the new jobs, (B) a summary of the expected fringe benefits package to be provided by the applicant to a typical employee (the statute requires standard fringe benefits), and (C) the amount by which the wages exceed the prevailing average wage for the area;
5. The amount of other incentives requested of, or offered by, the Commonwealth and the locality, including grants, tax credits or exemptions, and other cost-avoidance incentives;
6. General corporate information about the applicant, including date of establishment, tenure and nature of presence in Virginia, and amount of previous capital investment and existing employment, and specific information indicating the importance of the facility to the economy of the locality or region; and
7. Other factors as may be presented and demonstrated by the applicant that might affect the calculation of the net present value of benefits to Virginia. Specifically, applicants may present marginal corporate income (or analogous) tax revenues to Virginia attributable to the investment for which the grant is made. If accepted, these revenues would be included in the calculation of the net present value of benefits to Virginia.

Together with the letter from the applicant described above, the applicant may be asked to provide three years of historical financial statements, covering the three years prior to the application, and three years of pro

forma financial statements, covering the three years following the application. If the applicant has been in business less than three years, it may be asked to provide the historical financial statements that may be available.

Using the above data, the Partnership will determine the net present value of benefits to Virginia over a 20-year period with respect to the capital investments made and the new jobs created. The Partnership may independently validate or verify any figures or information provided by an applicant, or request further information or certifications from or on behalf of the applicant. The discount rate applied will be based initially on the 20-year Treasury Bill rate and then will factor in the relative risk of the individual project, as determined by the Partnership. Sales and use tax and other applicable tax revenues accruing to the Commonwealth in connection with the investment will also be included in the calculation. This calculation will subtract all direct fiscal benefits provided by the Commonwealth, such as training grants, Governor's Opportunity Fund grants, Enterprise Zone grants, Tobacco Region Opportunity Fund grants or Community Development Block Grants. If marginal income tax revenues are used in the calculation, then Virginia tax credits will be factored in as well. The negotiated amount of the grants will be based on this calculation.

For a major eligible employer that is a corporate headquarters or other basic employer making a capital investment of at least \$100 million and creating at least 400 jobs paying at least twice the prevailing average wage for the city or county in which the facility will be located, the 1,000 new jobs requirement for the MEE grant may be reduced in proportion to the factor by which the wages for the new jobs exceed the prevailing average wage for the area. The Partnership will consider this reduction based upon the data provided by the applicant.

Once negotiated and agreed upon, the amount, terms and conditions of an MEE shall be reflected in a performance agreement to be executed by the applicant no later than 120 days after the public announcement by the Governor. Prior to entering into a performance agreement for an MEE, the Commonwealth's Secretary of Commerce and Trade will consult with the Virginia General Assembly's House Appropriations Committee and Senate Finance Committee and offer those Committees an opportunity to review the performance agreement prior to its execution by the Commonwealth.

Limits, Notifications, Verifications and Payouts for MEE:

MEE grants may not exceed \$25 million per project.

The performance agreement will require the grantee to provide annual notice to VEDP of the grantee's progress on meeting its performance goals.

The performance agreement will require the grantee to notify the Partnership in writing within 90 days of completion of the capital investment and new jobs creation, certifying the amount of capital investment and providing the number of new employees at the facility at the completion of the capital investment, the average annual wage paid to such employees and a summary of the fringe benefits package offered by the grantee to a typical employee (a "Company Notification").

Beginning with the fiscal year in which the verified Company Notification has been on file at the Partnership for six years (or four years, as described below), and pursuant to the provisions of the Act, the Commonwealth shall make five-to-seven equal annual grant payments to the grantee. Although payouts of MEE grants generally will begin in the sixth year following a Company Notification, in fiscally stressed areas, payouts can begin in the fourth year after the Company Notification has been submitted and verified.

The performance agreement shall contain an end-date by which the capital investment and jobs targets must have been achieved. It is VEDP's strong preference that this date will be three years, but no more than five years, from the date the performance agreement is signed, but extensions will be considered on a case by case basis and shall be determined solely at VEDP's discretion.

Conditions to Payouts of MEE Grants; Assignment; Reductions:

MEE payments are subject to annual appropriation by the Virginia General Assembly and are subject also to the conditions that (A) the capital investment remains in place during the payment period, (B) the new jobs are maintained during the payment period, and (C) the facility continues to operate throughout the payment period at substantially the same level as

existed at the time of the Company Notification. If the capital investment or jobs do not remain in place or if the facility is no longer so operated, the performance agreement will require the grantee to provide immediate notice to the Partnership.

A company participating in the MEE program may not assign its rights or obligations under a performance agreement without the express written approval of VEDP. VEDP will consider an assignment of rights and obligations in the event that there is a transfer to a parent company, subsidiary or sister entity, there is no net effect on new job creation and capital investment, and the net present value of benefits to Virginia will remain substantially the same.

If the MEE grantee does not achieve the statutory minimum capital investment requirement of \$100 million or the statutory minimum number of new jobs, no MEE grant payment will be made. If the MEE grantee achieves the statutory minimums, but does not achieve at least 50% of the capital investment or jobs targets stated in the performance agreement, no MEE grant payment will be made. If the MEE grantee achieves the statutory minimums and achieves between 50% and 100% of the targeted capital investment and new jobs, the total MEE grant to be paid shall be diminished proportionately, but will still be paid out as provided in the Act, so long as the capital investment and jobs remain in place during the payment period and the facility continues to operate throughout the payment period at substantially the same level as existed at the time of application for the first grant installment. For this purpose, in the performance agreement, it is expected that the MEE grant will be allocated between the capital investment goal and the job creation goal. Generally, the MEE grant will be allocated one-half to the capital investment goal and one-half to the job creation goal. For example, if the grantee achieves 60% of its capital investment goal and 75% of its job creation goal, the grant will be diminished proportionately to 60% of that portion allocable to the capital investment and 75% of that portion allocable to jobs created, to be paid out on the schedule described above.

If the actual average wages paid for the new jobs exceed the target average salaries provided by the MEE grantee by at least 20%, then the new job creation requirement may be reduced to no lower than the statutory minimum, provided that the actual aggregate payroll paid by the MEE grantee for the new jobs is at least equal to the aggregate payroll that

would have been paid were the average wages described in the performance agreement to have been paid.

If there are insufficient moneys in the Fund's Major Eligible Employer Grant subfund to pay all MEE payments due to intended recipients, the provisions of Section 2.2-5104 of the Act shall govern the distribution of the available funds.

If the Virginia General Assembly deposits federal funds into the Fund's Major Eligible Employer Grant subfund, and if the expenditure of those federal funds would require compliance by the grantee with various federal legal requirements, those federal legal requirements will be deemed to be read into the performance agreement.

Special Reporting Provision:

For VEDP to demonstrate the value of the MEE program and other economic development incentives, it would be helpful for the company to share with VEDP the Virginia corporate income taxes paid by the company. VEDP has no access to this information, unless the company volunteers to provide it to VEDP. It is expected that each performance agreement will contain a provision that substantially reads as follows:

With each annual progress report, the company shall report to VEDP the amount paid by the company in the prior calendar year in Virginia corporate income tax. VEDP hereby represents to the company that it considers such information to be confidential proprietary information that is exempt from public disclosure under the Virginia Freedom of Information Act and that such information will be used by VEDP solely in calculating aggregate return on invested capital analyses for purposes of gauging the overall effectiveness of economic development incentives.

Note: Data from the Census Bureau's Model-based Small Area Income & Poverty Estimates (SAIPE) for School Districts, Counties and States is the primary source for annual poverty rates (<http://www.census.gov/did/www/saipe/index.html>).

Guidelines for Virginia Economic Development Incentive Grant

Purpose:

The Virginia Economic Development Incentive Grant (“VEDIG”) assists and encourages companies to invest and to provide new employment opportunities by locating significant headquarters, administrative, research and development and/or similar service and basic sector operations in Virginia. This is a discretionary program in which grants are negotiated and offered to qualified applicants as an economic development incentive.

Statutory Eligibility:

This VEDIG program has two separate eligibility requirements. Companies located in a Metropolitan Statistical Area with a population of 300,000 or more in the most recently preceding decennial census, must:

(A) create or cause to be created and maintained (i) at least 400 jobs with average salaries at least 50% greater than the prevailing average wage, or (ii) at least 300 jobs with average salaries at least 100% greater than the prevailing average wage; and

(B) make a capital investment of at least \$5 million or \$6,500 per job, whichever is greater.

For all companies located elsewhere in Virginia, the company must create or cause to be created and maintained at least 200 jobs with average salaries at least 50% greater than the prevailing average wage, and make a capital investment of at least \$6,500 per job.

A company may be granted more than one VEDIG at a time if it has more than one project and if the scope of each project has a different timeframe and independently meets the minimum capital investment, new jobs, wage rates and all other criteria expressed herein. For a project investment and

employment occurring in phases or stages, however, the Commonwealth will consider it as one project if: (i) the entire investment and employment is announced at one time, (ii) the phases are clearly related to one project, and (iii) the entire investment and employment proceeds normally to substantial completion, without extraordinary delays. If these conditions are met, the negotiated amount will reflect the entire single investment.

If the company currently participates in another production grant program sponsored by the Commonwealth for a project (including, but not limited to, semiconductor manufacturers, or others) or another grant program under the Act, as defined below, it shall not be eligible for a VEDIG for that project.

Investments resulting from ongoing VEDP projects will be eligible for consideration for VEDIGs, provided the investments have not yet been publicly announced. Investments made with no prior VEDP involvement, and/or investments previously announced, committed or begun will not be eligible for consideration for VEDIGs.

For VEDIGs awarded on or after July 1, 2010, in the aggregate, no more than \$6 million in VEDIGs may be awarded for pay-out in any one year and the total aggregate amount of outstanding VEDIGs at any one time cannot exceed \$30 million.

Definitions:

“*Act*” means the Virginia Investment Partnership Act, Chapter 51, Title 2.2, Code of Virginia of 1950, as amended.

“*Capital investment*” means an investment in real property, personal property, or both, at a facility within the Commonwealth.

“*Commonwealth*” means the Commonwealth of Virginia.

“*Eligible company*” means, for companies located in a Metropolitan Statistical Area with a population of 300,000 or more in the most recently preceding decennial census, a Virginia employer that:

(A) creates or causes to be created and maintained (i) at least 400 jobs with average salaries at least 50% greater than the prevailing average wage, or (ii) at least 300 jobs with average salaries at least 100% greater than the prevailing average wage; and

(B) makes a capital investment of at least \$5 million or \$6,500 per job, whichever is greater.

For all companies located elsewhere in Virginia, “eligible company” means a Virginia employer that creates or causes to be created and maintained at least 200 jobs with average salaries at least 50% greater than the prevailing average wage, and making a capital investment of a least \$6,500 per job.

“*Fund*” means the Virginia Investment Partnership Grant Fund created pursuant to § 2.2-5104 of the Act, comprised of (i) the Major Eligible Employer Grant subfund (ii) the Investment Performance Grant subfund, and (iii) the Economic Development Incentive Grant subfund.

“*Net present value of benefits to Virginia*” means the present value of the amount by which (i) the anticipated additional state tax revenue expected to accrue to the Commonwealth as a result of the capital investment and jobs created, over a period following the completion of the capital investment not to exceed 20 years, exceeds (ii) the value of all incentives provided by the Commonwealth, including any grant from the Fund, for such capital investment during that period.

“*New job*” means employment of an indefinite duration at the eligible facility, created as the direct result of the capital investment, for which the standard fringe benefits are paid by the firm for the employee, requiring a minimum of either (i) 35 hours of an employee’s time a week for the entire normal year of the firm’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 to the facility, and positions with construction contractors, vendors, suppliers and similar multiplier or spin-off jobs shall not qualify as new jobs. Net new jobs for contractors or employees of

contractors who are located in the Commonwealth and provide dedicated full-time service to the grantee may count as New Jobs, even though the grantee is not directly paying the wages or providing the fringe benefits, if the other conditions set forth in this paragraph have been satisfied.

If there are existing jobs at the firm's facility (or at a contractor's facility, if applicable), it is expected that the performance agreement will state the number of existing jobs and will require that the new jobs be in addition to the existing jobs.

For cross-border projects for which a significant percentage of the employees are current Virginia residents, the definition of "new jobs" is likely to be adjusted to count as "new jobs" only those positions that are net new jobs in the Commonwealth held by Virginia residents. Such a definition will exclude the number of current Virginia resident employees and the number of employees that are residents of border states.

"Partnership" means the Virginia Economic Development Partnership Authority.

"Performance agreement" means a memorandum of understanding or other agreement between the Commonwealth and the grantee memorializing the performance expected from the grantee and the anticipated grant payments from the Commonwealth.

"Prevailing average wage" means that amount determined by the Virginia Employment Commission to be the average wage paid workers in the city or county of the Commonwealth where the eligible company is located.

"Secretary" means the Secretary of Commerce and Trade.

Application Process:

The eligible company shall submit a detailed letter of application for a VEDIG directly to the President and Chief Executive Officer of the Partnership providing the following information:

1. The amount and timing of the capital investment;

2. The number of new jobs created by the capital investment and a timeline for their creation;
3. If the company has existing operations in Virginia, whether it has closed, downsized, consolidated, or laid off employees within the past 30 months prior to the application date;
4. The average salaries paid for the new jobs, the amount by which the average salaries exceed the prevailing average wage for the locality at the time of the project announcement, and a summary of the anticipated fringe benefits;
5. The amount of other incentives requested of, or offered by, the Commonwealth and the locality; and
6. General corporate information about the company, including the date of establishment, tenure and nature of presence in Virginia, and amount of previous capital investment and existing employment; and specific information indicating the importance of the facility to the economy of the locality or region, and other factors as may be presented and demonstrated by the company that might affect the calculation of the net present value of benefits to Virginia. Specifically, companies may present marginal corporate income (or analogous) tax revenues to Virginia attributable to the investment for which the VEDIG is made. If accepted and verified, these revenues would be included in the calculation of the net present value of benefits to Virginia.

Together with the letter from the eligible company described above, the eligible company may be asked to provide three years of historical financial statements, covering the three years prior to the application, and three years of pro forma financial statements, covering the three years following the application. If the eligible company has been in business less than three years, it may be asked to provide the historical financial statements that may be available.

Using the above data, the Partnership will determine the net present value of benefits to Virginia over a 20-year period with respect to the capital

investments made and the new jobs created. The Partnership reserves the right independently to validate or verify any figures or information provided by a company or request further information or certifications from or on behalf of the company. The discount rate applied will be based initially on the 20-year Treasury Bill rate and then will factor in the relative risk of the individual project, as determined by the Partnership. Sales and use tax and other applicable tax revenues accruing to the Commonwealth in connection with the investment will also be included in the calculation. This calculation will subtract all direct fiscal benefits provided by the Commonwealth, such as training grants, Governor's Opportunity Fund grants, Enterprise Zone grants, Tobacco Region Opportunity Fund grants or Community Development Block Grants. If marginal income tax revenues are used in the calculation, then Virginia tax credits will be factored in as well.

Once negotiated and agreed upon, the amount and terms of the VEDIG shall be reflected in the performance agreement to be executed by the applicant no later than 120 days after the public announcement by the Governor. The performance agreement shall contain an end-date by which the capital investment and new jobs targets must have been achieved. It is VEDP's strong preference that this date will be three years, but no more than five years, from the date the performance agreement is signed, but extensions will be considered on a case by case basis and shall be determined solely at VEDP's discretion.

Pay-Outs; Reductions:

The performance agreement will require the grantee to provide annual notice to VEDP of the grantee's progress on meeting its performance goals.

The performance agreement will require that each company awarded a VEDIG shall file written notice of the completion of investment and hiring with the President and Chief Executive Officer of the Partnership, within 90 days of completion (a "Company Notification"). The Company Notification shall include appropriate documentation of the capital investment, new employment, and average salaries paid.

Payouts of VEDIG will begin no sooner than the fiscal year in which the verified Company Notification has been on file at the Partnership for 36 months, and pursuant to the provisions of the Act, subject to appropriations. VEDIGs will be paid in no fewer than five installments. Payouts of VEDIG are conditioned upon the capital investment and new jobs remaining in place during the payment period and the applicable facility continuing to operate through the payment period at substantially the same level as existed at the time of the Company Notification.

If the company fails to achieve by the end-date stated in the performance agreement:

(A) the greater of (i) the statutory minimum capital investment requirement and (ii) 50% of its capital investment goal; and

(B) the greater of (i) the statutory minimum new jobs requirement with average salaries at least 50% or 100% greater than the prevailing average wage in the locality, as applicable, and (ii) 50% of its goal of new jobs with average salaries at least 50% or 100% greater than the prevailing average wage in the locality, as applicable, no VEDIG payment in any amount shall be forthcoming.

To the extent that the company achieves more in capital investment and new jobs by the end-date stated in the performance agreement than described in the prior paragraph, but does not completely attain its goals, the total VEDIG to be paid shall be diminished proportionately, but only if the capital investment and new jobs remain in place during the payment period, and the applicable facility continues to operate throughout the payment period at substantially the same level as existed at the time of the completion of the capital investment. For this purpose, in the performance agreement, it is expected that the VEDIG will be allocated between the capital investment goal and the new job creation goal. Generally, the VEDIG will be allocated one-quarter to the capital investment goal and three-quarters to the new job creation goal.

For example, if the company achieves 60% of its capital investment goal and 75% of its new job creation goal, the grants will be diminished proportionately to 60% of that portion allocable to the capital investment

and 75% of that portion allocable to the new jobs created, to be paid out on the schedule set forth above.

If the actual average wages paid for the new jobs exceed the target average salaries provided by the company by at least 20%, then the new job creation requirement may be reduced to no lower than the statutory minimum, provided that the actual aggregate payroll paid by the eligible company for the new jobs is at least equal to the aggregate payroll that would have been paid were the average wages described in the performance agreement to have been paid.

A company participating in the VEDIG program may not assign its rights or obligations under a performance agreement without the express written approval of VEDP. VEDP will consider an assignment of rights and obligations in the event that there is a transfer to a parent company, subsidiary or sister entity, there is no net effect on new job creation and capital investment, and the net present value of benefits to Virginia will remain substantially the same.

If there are insufficient moneys in the Economic Development Incentive Grant subfund in the Fund to pay all VEDIG payments due to intended recipients, the provisions of Section 2.2-5104 of the Act shall govern the distribution of the available funds.

If the Virginia General Assembly deposits federal funds into the Fund's Economic Development Incentive Grant subfund, and if the expenditure of those federal funds would require compliance by the grantee with various federal legal requirements, those federal legal requirements will be deemed to be read into the performance agreement.

Special Reporting Provision:

For VEDP to demonstrate the value of the VEDIG program and other economic development incentives, it would be helpful for the company to share with VEDP the Virginia corporate income taxes paid by the company. VEDP has no access to this information, unless the company volunteers to provide it to VEDP. It is expected that each performance agreement will contain a provision that substantially reads as follows:

With each annual progress report, the company shall report to VEDP the amount paid by the company in the prior calendar year in Virginia corporate income tax. VEDP hereby represents to the company that it considers such information to be confidential proprietary information that is exempt from public disclosure under the Virginia Freedom of Information Act and that such information will be used by VEDP solely in calculating aggregate return on invested capital analyses for purposes of gauging the overall effectiveness of economic development incentives.

Guidelines for Clean Energy Manufacturing Incentive Grant

Purpose:

The Clean Energy Manufacturing Incentive Grant (CEMIG) may be used to provide an incentive for a clean energy manufacturer to grow in the Commonwealth of Virginia. This is a discretionary program in which grants are negotiated and offered to eligible entities as an economic development incentive to encourage these eligible entities to locate or expand in Virginia instead of another state or country. CEMIG awards may only be awarded to competitive projects and are awarded at the Governor's discretion.

CEMIGs are intended to be performance grants and are not intended to serve as front-end funding or financing to assist with initial infrastructure costs. Flexibility with respect to the timing of the payment of the grants is intended to take the variable job creation and capital investment timelines of eligible entities into consideration.

Statutory Eligibility:

There are different criteria for eligibility for a CEMIG depending on where the project locates and its sector:

- In general, the clean energy manufacturer must make capital investments of at least \$50 million AND must create and maintain at least 200 new full-time jobs that pay at least the prevailing average annual wage in the chosen locality.
- If the clean energy manufacturer is locating to or expanding in a fiscally stressed locality, the above thresholds may be reduced at the discretion of the Governor.
- Clean energy manufacturers that are wind energy suppliers must make capital investments of at least \$10 million AND must create and maintain at least 30 new full-time jobs that pay at least the prevailing average wage in the chosen locality. These thresholds may not be reduced. Further, a wind energy supplier may only be eligible for a CEMIG if it will support a new or existing clean energy manufacturer in the wind energy industry located in Virginia.

A clean energy manufacturer that has an active CEMIG, but separately meets the investment threshold and employment requirements for a new project, may be considered for an additional grant. For an investment occurring in phases or stages, however, the Commonwealth will consider as one project a phased-in investment if: (i) the entire investment is announced at one time, (ii) the phases are clearly related in one project, and (iii) the entire investment proceeds normally to completion, without extraordinary delays. If these conditions are met, the negotiated amount will reflect the entire single investment.

If the clean energy manufacturer participates in another discretionary production grant program sponsored by the Commonwealth for a project (such as a grant authorized

under the Virginia Investment Partnership Act), it shall not be eligible for a CEMIG for that project.

Ongoing VEDP projects will be eligible for consideration for a CEMIG, but only if the capital investments and job creation have not yet been publicly announced. Capital investments and job creation made with no prior VEDP involvement, and/or investments and jobs previously announced, committed or begun will not be eligible for consideration for a CEMIG.

Definitions:

"Biodiesel fuel" means a fuel composed of mono-alkyl esters of long-chain fatty acids derived from vegetable oils or animal fats, designated B100, and meeting the requirements of ASTM D6751.

"Biofuels" means neat biodiesel fuel, neat green diesel fuel, or neat ethanol fuel that is not blended with a traditional fuel such as gasoline or diesel.

"Capital investment" means an investment in real property, tangible personal property, or both, within the Commonwealth that is capitalized.

"Commonwealth" means the Commonwealth of Virginia.

"Clean energy manufacturer" means (i) a manufacturer whose primary function is to manufacture or assemble equipment, systems, or products used to produce renewable or nuclear energy, or products used for energy conservation, storage, or grid efficiency purposes, so long as the manufacturer is not a public service corporation as defined in Virginia Code § [56-1](#) that recovers its costs pursuant to Virginia Code § [56-585.1](#), or (ii) a producer of biofuels.

"Fiscally stressed locality" means a locality with an annual average unemployment rate for the most recent calendar year for which such data is available that is at least 1.25 times greater than the final statewide average unemployment rate for that calendar year. Whether a locality will qualify as a fiscally stressed locality will be determined by VEDP on the date VEDP provides a proposal to an eligible entity indicating that a CEMIG is being offered. Once so determined, that status will not change through the pay-out of the CEMIG.

"Fund" means the Clean Energy Manufacturing Incentive Grant Fund established pursuant to Virginia Code § [59.1-284.26](#).

"Net present value of benefits to Virginia" means the present value of the amount by which (i) the anticipated additional state tax revenue expected to accrue to the Commonwealth as a result of the capital investment and new full-time jobs created, over a period following the completion of the capital investment not to exceed 20 years,

exceeds (ii) the value of all incentives provided by the Commonwealth, including any CEMIG grant, for such capital investment during that period.

"New full-time job" means employment (i) of an indefinite duration created as the direct result of capital investment, (ii) for which the average annual wage is at least equal to the prevailing average annual wage in the locality where the clean energy manufacturer is to locate or expand, (iii) for which the standard fringe benefits are paid by the clean energy manufacturer, and (iv) that requires a minimum of either 1,680 hours per year or 35 hours of any employee's time per week for the entire normal year of such manufacturer's operations. For the purposes of this definition, a "normal year" consists of a minimum of 48 weeks. Positions that are seasonal or temporary and positions created when a job function is shifted from an existing location in the Commonwealth shall not qualify as new full-time jobs. Other positions, including those of indefinite duration, and supplemental employees of affiliates, subsidiaries, joint ventures, contractors, or subcontractors may be considered new full-time jobs only if so designated in the performance agreement.

If there are existing jobs at the firm's facility (or at a contractor's facility, if applicable), it is expected that the performance agreement will state the number of existing jobs and will require that the new full-time jobs be in addition to the existing jobs.

For cross-border projects for which a significant percentage of the employees are current Virginia residents, the definition of "new full-time jobs" is likely to be adjusted to count as "new jobs" only those positions that are net new jobs in the Commonwealth held by Virginia residents. Such a definition will exclude the number of current Virginia resident employees and the number of employees that are residents of border states.

"Performance agreement" means a memorandum of understanding or other agreement between the Commonwealth and the grantee memorializing the performance expected from the grantee and the anticipated grant payments from the Commonwealth.

"VEDP" means the Virginia Economic Development Partnership Authority.

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

"Wind energy supplier" means a basic sector manufacturer, installer, operator, or other type of provider that directly supports a clean energy manufacturer in the wind energy industry located in the Commonwealth.

Award Process:

The eligible entity must submit a letter to the President and CEO of VEDP detailing:

1. The amount and timing of the capital investment;

2. The number of new full-time jobs expected to be created by the capital investment and a timeline for their creation;
3. (A) The wages expected to be paid for the new full-time jobs, (B) a summary of the expected fringe benefits package to be provided by the eligible entity to a typical employee (the statute requires standard fringe benefits), and (C) the amount by which the wages exceed the prevailing average wage for the locality;
4. The amount of other incentives requested of, or offered by, the Commonwealth and the locality, including grants, tax credits or exemptions, and other cost-avoidance incentives;
5. General corporate information about the eligible entity, including date of establishment, tenure and nature of presence in Virginia, any amount of previous capital investment and/or existing employment, and specific information indicating the importance of the facility to the economy of the locality or region; and
6. Other factors as may be presented and demonstrated by the eligible entity that might affect the calculation of the net present value of benefits to Virginia. Specifically, applicants may present marginal corporate income (or analogous) tax revenues to Virginia attributable to the investment for which the grant is made. If accepted, these revenues would be included in the calculation of the net present value of benefits to Virginia.

Together with the letter from the eligible entity described above, the eligible entity may be asked to provide three years of historical financial statements, covering the three years prior to the application, and three years of pro forma financial statements, covering the three years following the application. If the eligible entity has been in business less than three years, it may be asked to provide the historical financial statements that may be available.

Using the above data, VEDP will determine the expected return on invested capital to the Commonwealth with respect to the project. VEDP may independently validate or verify any figures or information provided by an eligible entity, or request further information or certifications from or on behalf of the eligible entity. The discount rate applied will be based initially on the 20-year Treasury Bill rate and then will factor in the relative risk of the individual project, as determined by the VEDP. Sales and use tax and other applicable tax revenues accruing to the Commonwealth in connection with the investment will be included in the calculation. This calculation will subtract all direct fiscal benefits provided by the Commonwealth, such as training grants, Governor's Opportunity Fund (GOF) grants, Enterprise Zone grants, Tobacco Region Opportunity Fund grants or Community Development Block Grants. If marginal income tax revenues are used in the calculation, then Virginia tax credits will be factored in, as well. The negotiated amount of the CEMIG will be based on this calculation.

Once negotiated and agreed upon, the amount, timing, terms and conditions of a CEMIG shall be reflected in a performance agreement to be executed by the eligible entity no later than 120 days after the public announcement by the Governor. Any delay caused by the eligible entity in entering into a performance agreement by such deadline may cause VEDP to withdraw the CEMIG.

Limits, Notifications, Verifications and Payouts for CEMIG:

No more than \$36 million of CEMIGs may be awarded and outstanding at any given time.

It is expected that no single CEMIG will exceed \$9 million.

It is expected that each CEMIG will be paid in at least two annual installments, but no more than six. It is expected that a four-year payout will be the norm.

It is expected that the CEMIG annual installments will begin to be paid no earlier than the fiscal year following the end of the calendar year in which the eligible entity has met its performance targets under the performance agreement.

For projects with significant state or regional interest, the Governor may approve CEMIGs in excess of \$9 million, payable in less than two annual installments and/or payable as early as the date that the performance agreement is executed.

The performance agreement will require the eligible entity to provide annual notice to VEDP of the grantee's progress on meeting or maintaining, as applicable, its performance targets. Such annual report will be due by April 1 of each year, covering performance by the eligible entity through the end of the prior calendar year. Failure to meet the filing deadline may render the eligible entity ineligible to receive its CEMIG annual installment in the next fiscal year.

The performance agreement will contain an end-date – a performance date – by which the performance targets must have been originally achieved. It is VEDP's strong preference that this will be three years – and no more than five years – from the date the performance agreement is signed, but extensions will be considered on a case-by-case basis and shall be determined solely at VEDP's discretion.

Conditions to Payouts of CEMIG Grants; Assignment; Reductions:

CEMIG payments are subject to annual appropriation by the Virginia General Assembly and are subject also to the conditions that (A) the capital investment and new full-time jobs remain substantially in place during the payment period, and (B) the facility continues to operate throughout the payment period at substantially the same level as existed at the time of the original achievement of the performance targets. If the capital investment and new full-time jobs do not remain in place or if the facility is no longer so

operated, the performance agreement will require the grantee to provide immediate notice to VEDP.

An eligible entity participating in the CEMIG grant program may not assign its rights or obligations under a performance agreement without the express written approval of VEDP. VEDP will consider an assignment of rights and obligations in the event that there is a transfer to a parent company, subsidiary or sister entity, there is no net effect on new full-time job creation and capital investment, and the net present value of benefits to Virginia will remain substantially the same.

If the CEMIG grantee does not achieve by the performance date the appropriate statutory minimum capital investment and new full-time job creation requirements, no CEMIG payment will be made or, if one or more installments have been paid before the performance date, the performance agreement will require that the grantee repay all CEMIG amounts paid.

If the CEMIG grantee achieves by the performance date the appropriate statutory minimum capital investment and new full-time job creation requirements, but does not achieve at least 50% of the capital investment target or at least 50% of the new full-time jobs target stated in the performance agreement, no CEMIG grant payment will be made or, if one or more installments have been paid before the performance date, the performance agreement will require that the grantee repay all CEMIG amounts paid.

If the CEMIG grantee achieves by the performance date the appropriate statutory minimum capital investment and new full-time job creation requirements and achieves between 50% and 100% of the targeted capital investment and new full-time job creation requirements, the total CEMIG to be paid shall be diminished proportionately, but will still be paid out on the schedule provided in the performance agreement, so long as the capital investment and new full-time jobs remain in place during the payment period and the facility continues to operate throughout the payment period at substantially the same level as existed at performance date. For this purpose, in the performance agreement, it is expected that the CEMIG will be allocated between the capital investment goal and the new full-time job creation goal. Generally, the CEMIG will be allocated one-half to the capital investment goal and one-half to the new full-time job creation goal. For example, if the grantee achieves 60% of its capital investment goal and 75% of its new full-time job creation goal, the CEMIG will be diminished proportionately to 60% of that portion allocable to the capital investment plus 75% of that portion allocable to new full-time jobs created.

If the actual average annual wages paid for the new full-time jobs exceed the target average annual wages promised by the CEMIG grantee by at least 20%, then the new full-time job creation requirement may be reduced at VEDP's sole and absolute discretion, provided that the actual aggregate payroll paid by the CEMIG grantee for the new full-time jobs is at least equal to the aggregate payroll that would have been paid were the average annual wages promised in the performance agreement to have been

paid. The amount of the reduction, if any, will depend upon the net present value of benefits to Virginia derived from the grantee's facility.

If there are insufficient moneys in the fund to pay all CEMIG payments due to intended recipients, the provisions of paragraphs E. and F. of Section 59.1-284.27 of the Virginia Code shall govern the distribution of the available funds.

Miscellaneous Provisions:

If the Virginia General Assembly deposits federal funds into the CEMIG fund, and if the expenditure of those federal funds would require compliance by the grantee with various federal legal requirements, those federal legal requirements will be deemed to be read into the performance agreement.

The CEMIG provisions described in these guidelines reflect the CEMIG provisions in the Virginia Code as of July 1, 2012. Changes made by the General Assembly in the applicable provisions of the Virginia Code will be read into, and will be deemed to amend, these guidelines. As necessary, VEDP will provide the CEMIG grantees with written notice of any such changes.

To assist VEDP with its return on invested capital analysis for projects that receive discretionary economic development incentives, it is expected that each performance agreement will contain a provision that substantially reads as follows:

With each annual progress report, the CEMIG grantee shall report to VEDP the amount paid by the CEMIG grantee in the prior calendar year in Virginia corporate income tax. VEDP represents to the CEMIG grantee that it considers such information to be confidential proprietary information that is exempt from public disclosure under the Virginia Freedom of Information Act and that such information will be used by VEDP solely in calculating aggregate return on invested capital analyses for purposes of gauging the overall effectiveness of economic development incentives.

GOVERNOR'S DEVELOPMENT OPPORTUNITY FUND GUIDELINES

Purpose:

The Governor's Development Opportunity Fund (GOF) provides either grants or loans to localities to assist in the creation of new jobs and capital investment in accordance with criteria established by legislation. The statutory provisions for the GOF can be found at Section 2.2-115 of the Code of Virginia of 1950, as amended (the GOF Act).

Guiding Principles and Statutory Conditions:

GOF grants are made at the discretion of the Governor with the expectation that grants awarded to a locality or authority will result in a favorable decision for Virginia. Grants will only be awarded for basic projects—i.e. projects that would bring additional income into the Commonwealth. Grants will not be made for projects which have been publicly announced prior to the Governor's approval and public announcement of a grant award.

Beginning with the five fiscal years from fiscal year 2006-2007 through fiscal year 2010-2011, and for every five fiscal years' period thereafter, in general, no less than one-third of the moneys appropriated to the GOF in every such five-year period may be awarded to counties and cities having an annual average unemployment rate that is greater than the final statewide average unemployment rate for the calendar year that immediately precedes the calendar year of the award. If, however, the one-third requirement will not be met because economic development prospects in such counties and cities are unable to fulfill the applicable statutory minimum private investment and new jobs requirements, then any funds remaining in the GOF at the end of the five-year period that would have otherwise been awarded to such counties and cities shall be made available for awards in the next five fiscal years' period.

The Appropriations Act directs the Virginia Economic Development Partnership (VEDP) to give consideration to projects that (1) are in areas of high unemployment; (2) link commercial development along existing

transportation/transit corridors within regions; and (3) are located near existing public infrastructure.

It is the policy of the Commonwealth that GOF proceeds will not be used for any economic development project in which a business relocates or expands its operations in one or more Virginia localities and simultaneously closes its operations or substantially reduces the number of its employees in another Virginia locality. The Secretary of Commerce and Trade will enforce this policy. Exceptions to this policy may be made, but will require that the Secretary provide written notice to the Chairmen of the Senate Finance and House Appropriations Committees, which notice will include a justification for any such exception. Further, the locality receiving the jobs will provide notification and a justification to the locality from which the jobs will be lost.

Although the GOF may be used to make loans, the practice has been to use the GOF to make grants.

In assessing the amount of a GOF grant, the measure for Fiscal Stress published by the Commission on Local Government for the applicable locality will be one determining factor. Geographic diversity will be another determining factor.

GOF grants are intended to be performance grants and are not intended to serve as front-end funding or financing for an economic development project.

Statutory Eligibility:

The GOF has several levels of qualification based on such measures as a locality's unemployment rate and poverty rate.

- General Eligibility Thresholds:
 - 50 new jobs / \$5 million capital investment; or
 - 25 new jobs / \$100 million capital investment
 - The average annual wage for the new jobs must be at least equal to the prevailing average annual wage in the locality, excluding fringe benefits

- If the average annual wage is twice the prevailing average annual wage, the Governor may reduce the new jobs threshold to as low as 25
- Eligibility Thresholds in Localities with Above-Average Unemployment **or** Above-Average Poverty:
 - For a locality with an unemployment rate for the most recent calendar year for which such data is available above the average statewide unemployment rate for that calendar year **or** with a poverty rate for the most recent calendar year for which such data is available above the statewide average poverty rate for that calendar year
 - 25 new jobs / \$2.5 million capital investment
 - Jobs may pay below the prevailing average annual wage in the locality, but must pay at least 85% of the prevailing average annual wage
 - If the average annual wage of the new jobs is less than 85% of the prevailing average annual wage, the Governor may still award a grant or loan, but the Secretary of Commerce and Trade must furnish a written explanation to the Chairmen of the Senate Finance and House Appropriations Committees setting forth the urgent need to provide a grant or loan to that project
- Eligibility Thresholds in Localities with Above-Average Unemployment **and** Above-Average Poverty:
 - For a locality with an unemployment rate for the most recent calendar year for which such data is available above the average statewide unemployment rate for that calendar year **and** with a poverty rate for the most recent calendar year for which such data is available above the statewide average poverty rate for that calendar year
 - 15 new jobs / \$1.5 million capital investment
 - Jobs may pay below the prevailing average annual wage in the locality, but must pay at least 85% of the prevailing average annual wage
 - If the average annual wage of the new jobs is less than 85% of the prevailing average annual wage, the Governor may still award a grant or loan, but the Secretary of Commerce and Trade must furnish a written explanation to the Chairmen of the

Senate Finance and House Appropriations Committees setting forth the urgent need to provide a grant or loan to that project

Provisions Regarding New Jobs:

VEDP expects to use a definition of “*new job*” that substantially reads as follows:

“New job” means new permanent full-time employment of an indefinite duration at the company’s facility in the locality, 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 \$[insert the company’s projected average annual wage]. 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. Net new jobs in the Commonwealth for contractors or employees of contractors who are located in the Commonwealth and provide dedicated full-time service to the Company may count as New Jobs, even though the Company is not directly paying the wages or providing the fringe benefits, if the other conditions set forth in this paragraph have been satisfied.

If there are existing jobs at the company’s facility (or at a contractor’s facility, if applicable), it is expected that the GOF grant performance agreement will state the number of existing jobs and will require that the new jobs be in addition to the existing jobs. Further, any layoffs instituted by the company through the performance period will be taken into account in determining compliance with the company’s new job requirement.

Seasonal or temporary positions, positions created when a job function is shifted from an existing location in the Commonwealth, and positions with

construction contractors, suppliers and similar multiplier or spin-off jobs will generally not qualify as new jobs.

In projects that involve job preservation, the number of “jobs saved” will be used to help determine the amount of the grant; however, the project must still meet the appropriate minimum new job *creation* threshold listed above.

If a company is relocating or expanding its operations, but is simultaneously closing or substantially reducing its operations in another Virginia locality, the jobs at the new or expanding location will count as “new jobs” only if the Secretary of Commerce and Trade agrees to this exception to the general policy and provides written notice to the Chairmen of the Senate Finance and House Appropriations Committees justifying such exception.

If the company wishes to count the new jobs created by contractors in meeting its new jobs target, as described in the last sentence of the definition of “new job,” the company will be responsible for gathering and disseminating to the locality and VEDP information regarding those jobs, including whether such jobs are “net new jobs” in the Commonwealth.

In the performance agreement for the GOF grant, the company will be strongly encouraged 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.

For cross-border projects for which a significant percentage of the employees are current Virginia residents, the definition of “new jobs” is likely to be adjusted to count as “new jobs” only those positions that are net new jobs in the Commonwealth held by Virginia residents. Such a definition will exclude the number of current Virginia resident employees and the number of employees that are residents of border states.

Provisions Regarding Capital Investment:

“Capital investment” is used in these Guidelines to mean “private investment” under the GOF Act.

VEDP expects to use a definition of “*capital investment*” that substantially reads as follows:

“Capital investment” means a private capital expenditure by the company in taxable real property, taxable tangible personal property, or both, at the company’s facility in the locality. The capital investment must be in addition to the amount of grant proceeds (GOF or otherwise) and other incentives applied to the costs of capital assets.

VEDP may, in its discretion, determine that the value of machinery and equipment leased under an operating lease will qualify as a capital investment.

VEDP may, in its discretion, determine that the value of the construction or improvement of real property leased under an operating lease will qualify as a capital investment, but is likely to do so only in circumstances in which (1) the operating lease is for at least the longer of five years or twice the period of time until VEDP has estimated that the Commonwealth will “break-even” on the project, taking into account all incentives offered to the company by the Commonwealth, (2) the real property would not be constructed or improved “but for” the company’s interest in leasing some or all of the facility, and (3) if for an improvement project, the improvements will significantly increase the taxable value of the property. Only that portion of the construction or improvement costs related to the portion of the facility to be leased to the company may qualify.

Capital investment generally will not include operating expenses, except operating leases to the limited extent noted above.

Capital investment may include the value of real or personal property leased under a capital lease.

The cost of the acquisition of land and existing buildings will not count toward the required capital investment thresholds, unless the land and existing buildings are being purchased from a governmental entity and are being returned to the tax rolls.

Determination of Grant Amount and Conditions:

In determining grant amounts, the following criteria will be considered: new jobs, wage levels, overall employment, capital investment, area and regional unemployment, poverty and fiscal stress, the locality's interest in the project, and industry or company growth potential.

The maximum amount of a GOF grant through June 30, 2013 is \$1,500,000. In very unique circumstances, the Governor may waive this limit for projects that the Governor has determined are of statewide or regional interest.

Localities may receive more than one GOF grant during a fiscal year.

Grants may be made for more than one project for a single company, but the projects must clearly represent separate investments for separate projects.

If the company has existing operations in Virginia and has closed, downsized, consolidated, or laid off employees within the past 30 months prior to the application date, there may be a bias toward not approving a GOF application. The company will be offered an opportunity to explain such actions and to provide assurances regarding the expected new jobs and capital investment.

Grants may only be made from current appropriations and available funds and may not be committed from anticipated future appropriations.

Local Matches:

Localities must at least match dollar-for-dollar with local funds the amount requested from the GOF. Previously invested local funds, grants of moneys from other government sources (except as noted below with respect to the Tobacco Region Opportunity Fund), and contributions from private interests which benefit from the project's location may not be counted as part of the local match. A local match may be funded by an in-kind contribution from the locality for the direct benefit of the grantee, such as infrastructure development, fee waivers, or free or reduced-price land or buildings. In very unique circumstances, the Governor may waive or reduce the requirement for a local match for projects that the Governor has

determined are of statewide or regional interest. Criteria such as vacancy and unemployment or poverty rates in the immediate area of the proposed site may be considered in the decision-making process.

Local matches generally must be made within 3 years of receipt of the GOF grant proceeds and may not be spread out over more than five years.

Local Enterprise Zone incentives may be counted toward the local match where the locality makes actual expenditures after the project is announced to benefit the project.

Grants to the locality from the Tobacco Region Opportunity Fund may be used as up to one-half of the matching funds.

Use of GOF Proceeds:

GOF Proceeds may be used for public and private utility extension or capacity development on and off site; public and private installation, extension, or capacity development of high-speed or broadband Internet access, whether on or off site; road, rail, or other transportation access costs beyond the funding capability of existing programs; site acquisition; grading, drainage, paving, and any other activity required to prepare a site for construction; construction of publicly or privately owned buildings or build-out of publicly or privately owned buildings; training; or grants or loans to an industrial development authority, housing and redevelopment authority, or other political subdivision for purposes directly relating to any of the foregoing. In no case may GOF proceeds be used, directly or indirectly, to pay or guarantee the payment for any rental, lease, license, or other contractual right to the use of any property.

Application Process:

Applications should consist of two documents: (1) a letter sent by the chief appointed official of any county, city, town or other applicable political subdivision to the President and Chief Executive Officer of VEDP and (2) a letter sent by the company to the President and Chief Executive Officer of VEDP.

It is expected that the letter from the community will use the following format and include the following information:

- A summary statement presenting the importance of the project to the community and why support from the GOF is being sought;
- Amount requested and the use of the funds;
- Description of the project, including:
 - Company name and information (website, stock exchange ticker)
 - Type of operation (i.e. manufacturing, distribution, etc.)
 - Headquarters location
 - Virginia operations (if any exist)
 - Sales and revenues and the timeframe in which they occurred/were generated
 - What the company is planning to do in Virginia
 - Employment impact on current operations in Virginia
- Location of the project including the community, and its population, current unemployment and poverty rates and prevailing average annual wage;
- Details of private capital investment, including but not limited to the value of property to be leased under a capital lease, or other private investments of capital that add to the local tax revenues;
- Jobs created (within 3 years of a locality receiving a grant payment), information on “jobs saved,” average salary level and total yearly payroll of jobs created;
- Local and state financial participation, specifying new monies to be allocated to the project and how those funds will be used;
- Description of other public funds that have been or will be expended for the project such as training or past public expenditures for road, utility extension or site development;
- If the project for which a GOF grant is being requested involves the relocation of a business from one Virginia locality to another, the community applying for the grant must officially notify the community

from which the business is moving. For such projects, a statement must be included in the GOF application that this notification has taken place, and must also provide the reasons for the move and the out-of-state competition; and

- Any other current or background information pertinent to the project that might assist the Governor in making an informed decision based on complete knowledge. Communities are obliged to disclose any information that could reflect negatively on the project.

It is expected that the letter from the company will use the following format and include the following information:

- An indication from the company that without support from the GOF, there is a possibility that the project could be located outside of Virginia and that only one site in Virginia is under consideration for the project;
- An indication from the company of the number of existing jobs to be retained and new jobs to be created (and saved, if any), payroll and salary levels and a statement confirming the company offers its employees a standard package of fringe benefits;
- An indication of the private capital investment to be made by the company at the facility in the community within 3 years of the expected receipt of the grant by the community;
- An affirmation that the proposed project will not result in a closing, loss of jobs, consolidation, or change to any existing operations in Virginia for the next 12 months;
- An affirmation that the company has not closed, downsized, consolidated, or laid off employees at existing operations in Virginia within the past 12 months prior to the application date, or, if it has, additional assurances regarding the stability of the new jobs and capital investment.

Together with the letter from the company described above, the company may be asked to provide three years of historical financial statements,

covering the three years prior to the application, and three years of pro forma financial statements, covering the three years following the application. If the company has been in business less than three years, it may be asked to provide the historical financial statements that may be available. VEDP's President and Chief Executive Officer may request additional financial information from the company, including financial information and satisfactory evidence of a company's financial stability. It is likely that such information will be requested and reviewed prior to a decision on whether to recommend a GOF grant for a start-up company or for a new division or operation for an existing company.

Contractual Arrangements

Since a GOF grant is awarded to a community, the community is required to enter into a performance agreement with the company before it may receive the GOF grant. This is to ensure that the company will meet the new job and capital investment levels as stated in its application and as agreed to. Neither VEDP nor the Commonwealth will be a party to the performance agreement.

The performance agreement will likely contain a date by which the community must request the GOF check, which date is likely to be 3 or 4 months after the Governor has announced that the project will be coming to Virginia. The performance agreement will likely provide that the performance agreement will be terminated if the check is not requested by that date. The community and the company would be welcome to reapply for another GOF grant, using any new criteria in place at that time and subject to the availability of funds at that time. The form to be used by the community for requesting the check is available from VEDP.

The performance agreement must include a statement that the company will achieve and maintain through a "Performance Date" the specified new job creation and capital investment targets. Generally, the Performance Date will be the date 36 months after the date by which the community needs to request the GOF check. Further, if the date by which the Commonwealth is expected to reach its "break-even point" as determined by a return-on-investment analysis prepared by VEDP, is later than the Performance Date, there will be another obligation of the company to maintain its new jobs through the break-even date. The community will be held responsible for requesting any repayments as calculated by VEDP,

and for returning the GOF grant moneys repaid by the company to the Commonwealth if the performance agreement criteria are not met.

Generally, GOF grants are broken into 50% for job creation and 50% for capital investment. **The company must meet the statutory minimums for both jobs and investment detailed in the “Statutory Eligibility” section or be subject to a 100% clawback.** If the minimum statutory thresholds are met, but the jobs and/or investment targets are not met up to 90% of their goal, then there will be a clawback in proportion to the underperformance for each respective component. If the Company meets at least 90% of its new jobs and capital investment targets by the Performance Date, there will be no clawback, assuming that the statutory minimum requirements have been achieved.

The performance agreement will likely contain a provision that will require a 100% clawback if at any time the community or VEDP conclude that the company will be unable to meet its new jobs and capital investment targets by the Performance Date. Such a conclusion may be based on factors such as the bankruptcy of the company, the sale or liquidation of the company, or the cessation or substantial reduction of operations by the company in the community.

The Company may not assign its rights or obligations under a GOF performance agreement without the express written approval from VEDP and the community. VEDP will consider a reassignment of rights and obligations in the event that there is a transfer to a parent company, subsidiary or sister entity, there is no net effect on new job creation and capital investment, and the benefits accruing to the locality and the Commonwealth will remain substantially the same.

Once VEDP, the locality and the company are comfortable with the language of the performance agreement, the performance agreement must be presented to the Office of the Attorney General for review as to proper legal form. The OAG will have up to seven days to provide written comments regarding the performance agreement.

If the company has not achieved at least 90% of its new jobs and capital investment targets by the Performance Date set forth in the performance agreement, the locality, in consultation with VEDP, may grant the company

an extension of up to 15 months. The locality will notify VEDP of any such extension.

Upon approval of a GOF grant or loan, neither the locality nor the company shall announce or confirm the proposed project without coordination with VEDP. The new jobs and capital investment targets in the performance agreement will be used in the press release when the public announcement is made. If the targets are not used for the public announcement of the project, or if the public announcement is made by anyone other than the Governor, the grant award is subject to being reduced or withdrawn.

For VEDP to demonstrate the value of the GOF program and other economic development incentives, it would be helpful for the company to share with VEDP the Virginia corporate income taxes paid by the company. VEDP has no access to this information, unless the company volunteers to provide it to VEDP. It is expected that each performance agreement will contain a provision that substantially reads as follows:

With each annual progress report, the company shall report to VEDP the amount paid by the company in the prior calendar year in Virginia corporate income tax. VEDP has represented to the company that it considers such information to be confidential proprietary information that is exempt from public disclosure under the Virginia Freedom of Information Act and that such information will be used by VEDP solely in calculating aggregate return on invested capital analyses for purposes of gauging the overall effectiveness of economic development incentives.

The basic form of a performance agreement is attached to these Guidelines.

MISCELLANEOUS

If legislation from the Virginia General Assembly provides that moneys from the GOF fund must be or may be directed to other uses, VEDP may cause the withdrawal of such moneys from the GOF fund for those uses, regardless of whether such those uses may conflict with these Guidelines.

If the Virginia General Assembly deposits federal funds into the GOF fund, and if the expenditure of those federal funds would require compliance by the locality and/or the company with various federal legal requirements, those federal legal requirements will be deemed to be read into the performance agreement.

Data from the Census Bureau's Model-based Small Area Income & Poverty Estimates (SAIPE) for School Districts, Counties, and States is the primary source for annual poverty rates. (<http://www.census.gov/did/www/saipe/index.html>) .

GOVERNOR'S DEVELOPMENT OPPORTUNITY FUND

PERFORMANCE AGREEMENT

This **PERFORMANCE AGREEMENT** made and entered this ____ day of _____, 20__, by and among the _____ of _____, **VIRGINIA** (the "Locality") a political subdivision of the Commonwealth of Virginia (the "Commonwealth"), and _____ (the "Company"), a _____ [corporation] [authorized to transact business in the Commonwealth], and the **[INDUSTRIAL / ECONOMIC] DEVELOPMENT AUTHORITY OF _____** (the "Authority"), a political subdivision of the Commonwealth. [CAN DELETE THE LOCALITY'S AUTHORITY AS A PARTY, IF SO DESIRED BY THE LOCALITY, THEN MAKE APPROPRIATE CHANGES THROUGHOUT]

WITNESSETH:

WHEREAS, the Locality has been awarded a grant of and expects to receive \$_____ 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 [purchase] [construct] [expand] and improve a [manufacturing] facility in the Locality (the "Facility"), thereby making a significant Capital Investment, as hereinafter defined, and creating a significant number of New Jobs, as hereinafter defined;

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

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

WHEREAS, the [purchase / construction / expansion] and operation of the Facility will entail a capital expenditure of approximately \$_____, of which approximately \$_____ will be invested in machinery and equipment, approximately \$_____ will be invested in the purchase of land, approximately \$_____ will be invested in the [purchase of an existing] [construction of a new] building and approximately \$_____ will be invested in the up-fit of the building;

WHEREAS, the [purchase / construction / expansion] and operation of the Facility will further entail the creation of ____ 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:

“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 _____, 20__]. The total capital expenditure of \$_____, [less the \$_____ allocated to the purchase of the land [and the existing building]], is referred to in this Agreement as the “Capital Investment.” [MODIFY FOR CAPITAL LEASE OF REAL ESTATE OR OPERATING LEASE OF EQUIPMENT BY INSERTING, AS APPROPRIATE: A capital expenditure related to a leasehold interest in real property will be considered to be made “on behalf of the Company” if a lease between a developer and the Company is a capital lease, or is an operating lease having a term of at least ten years, and the real property would not have been constructed or improved but for the Company’s interest in leasing some or all of the real property. Only the capital expenditures allocated to the portion of the real property to be leased by the Company will count as “Capital Investment.” The purchase or lease of furniture, fixtures, machinery and equipment, including under an operating lease, and expected building up-fit and tenant improvements by or on behalf of the Company will qualify as 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 [Subsequent] Performance Date. Positions for the New Jobs will be treated as Maintained during periods in which such positions are not filled due to (i) temporary reductions in the Company’s employment levels (so long as there is active recruitment for open positions), (ii) strikes and (iii) other temporary work stoppages.

“New Job” means new permanent full-time employment of an indefinite duration at the Facility for which the standard fringe benefits are paid by the Company for the employee, and for which the Company pays an average annual wage of at least \$_____. 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 ___ full-time jobs at the Facility as of _____, 20__.] [IF APPLICABLE: Net new jobs in the Commonwealth for contractors or employees of contractors who provide dedicated full-time service to the Company may count as New Jobs, even though the Company is not directly paying the wages or providing the fringe benefits, if the other conditions set forth in this paragraph have been satisfied.]

“[Initial] Performance Date” means _____, 20___. If the Locality, in consultation with the Authority and VEDP, deems that good faith and reasonable efforts have been made and are being made by the Company to achieve the Targets, the Locality may agree to extend the [Initial] Performance Date by up to 15 months. If the [Initial] 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 [Initial] Performance Date has been extended shall be the “[Initial] Performance Date” for the purposes of this Agreement. [GENERALLY, THIS PERFORMANCE DATE WILL BE 3 YEARS AFTER THE DATE GIVEN IN SECTION 3 AS THE DATE BY WHICH THE GOF CHECK NEEDS TO BE REQUESTED]

“Targets” means the Company’s obligations to make Capital Investments at the Facility of at least \$_____ and to create and Maintain at least ___ New Jobs at the Facility, all as of the [Initial] Performance Date. Further, “Targets” includes the Company’s obligation to Maintain at least ___ New Jobs at the Facility as of the Subsequent Performance Date.]

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

[SEE SECTIONS 4 AND 5, IF THE BREAK-EVEN POINT IS BEYOND THE PERFORMANCE DATE, THE COMPANY WILL BE REQUIRED TO ACHIEVE ITS TARGETS BY THE PERFORMANCE DATE, BUT WILL ALSO BE REQUIRED TO MAINTAIN ITS NEW JOBS THROUGH THE BREAK-EVEN POINT. IN THIS EVENT, THE “PERFORMANCE DATE” WILL BECOME THE “INITIAL PERFORMANCE DATE” AND THE DATE OF THE BREAK-EVEN POINT WILL BECOME THE “SUBSEQUENT PERFORMANCE DATE.” THIS WILL BE THE DEFINITION OF “SUBSEQUENT PERFORMANCE DATE:

“Subsequent Performance Date” means _____, 20___, unless the Initial Performance Date has been extended. If the Initial Performance Date has been extended, the Subsequent Performance shall be ___ year(s) after the new Initial Performance Date. Except as so noted, the Subsequent Performance Date is not subject to extension.]

Section 2. Targets.

The Company will develop and operate the Facility in the Locality, make a Capital Investment of at least \$_____, and create and Maintain at least ___ New Jobs at the Facility, all as of the [Initial] Performance Date. [Further, the Company will Maintain at least ___ New Jobs at the Facility as of the Subsequent 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.

The average annual wage of the New Jobs of at least \$_____ is [less than the prevailing average annual wage in the Locality of \$_____, but is more than 85% of that prevailing average annual wage (\$_____) [more than the prevailing average annual wage in the Locality of \$_____]. [The Locality is a high-unemployment locality, with an unemployment rate for 20_, which is the last year for which such data is available, of ___% as compared to the 20__

statewide unemployment rate of ____%.] [The Locality is a high-poverty locality, with a poverty rate for 20__, which is the last year for which such data is available, of ____% as compared to the 20__ statewide poverty rate of ____%.]

[IF THE GOF GRANT IS ALSO PREDICATED ON OTHER FACTORS, SUCH AS ESTABLISHING AND MAINTAINING THE COMPANY’S CORPORATE HEADQUARTERS IN VIRGINIA, ADD HERE LANGUAGE REQUIRING THE COMPANY TO DO THOSE OTHER THINGS.]

Section 3. Disbursement of GOF Grant.

By no later than _____, 20__, the Locality will request the disbursement to it of the GOF Grant. If not so requested by the Locality by _____, 20__, this Agreement will terminate. The Locality and the Company will be entitled to reapply for a GOF Grant thereafter, based upon the terms, conditions and availability of funds at that time. [THIS DEADLINE DATE WILL GENERALLY BE 3 - 4 MONTHS BEYOND THE DATE THE GOVERNOR ANNOUNCES THAT THE PROJECT IS COMING TO VIRGINIA]

The GOF Grant in the amount of \$_____ 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. [OR INDICATE THAT THE LOCALITY OR THE AUTHORITY WILL SPEND \$ ON BEHALF OF THE COMPANY] The [Company] [Locality] [Authority] will use the GOF Grant proceeds to _____, as permitted by Section 2.2-115(D) of the Virginia Code.

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

VEDP has estimated that the Commonwealth will reach its “break-even point” by the [Subsequent] 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	\$_____
Virginia Jobs Investment Program (“VJIP”) (Estimated)	
Tobacco Region Opportunity Fund Grant (“TROF”)	

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>
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[IF THE LOCALITY'S FUNDS ARE BEING PROVIDED OVER TIME: If, by the [Initial] Performance Date, the _____ funds disbursed or committed to be disbursed by the Locality to the Company total less than the \$_____ GOF Grant local match requirement, the Locality, subject to appropriation, will make an additional grant to the Company of the difference at the [Initial] Performance Date, so long as the Company has met its Targets.]

The proceeds of the GOF Grant shall be used for the purposes described in Section 3. The VJIP grant proceeds shall be used by the Company to pay or reimburse itself for recruitment and training costs. [The proceeds of the TROF Grant shall be used for _____.] [The Enterprise Zone / VIP / MEE / VEDIG Grant proceeds may be used by the Company for any lawful purpose.] [The Major Business Facilities Job Tax Credits/Green Jobs Tax Credits are an offset to Virginia corporate income taxes that may be owed by the Company.] [The proceeds of the Locality's _____ may be used by the Company for [any lawful purpose / _____].]

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 \$_____ in the Facility and create and Maintain at least ___ New Jobs at the Facility in order to be eligible for the GOF Grant. Failure by the Company to meet either of these eligibility requirements by the [Initial] Performance Date shall constitute a breach of this Agreement and the entire GOF Grant must be repaid by the Company to the Authority.

(b) *If Statutory Minimum Requirements are Met:* For purposes of repayment, the GOF Grant is to be allocated as \$_____ (50%) for the Company's Capital Investment Target and \$_____ (50%) for its New Jobs Target. [Except as noted in subsection (c) below,] [If the Company has met at least ninety percent (90%) of both of the Targets at the [Initial] Performance Date, then and thereafter the Company is no longer obligated to repay any portion the GOF Grant. If the Company has not met at least ninety percent (90%) of either or both of its Targets at the [Initial] Performance Date, the Company shall repay to the Authority that part of the GOF Grant that is proportional to the Target or Targets for which there is a shortfall. For example, if at the [Initial] Performance Date, the Capital Investment is only \$_____ and only ___ New Jobs have been created and Maintained, the Company shall repay to the Authority _____ percent (___%) of the moneys allocated to the Capital Investment Target (\$_____) and _____ percent (___%) of the moneys allocated to the New Jobs Target (\$_____). [Whether the New Jobs Target has been met will be determined by comparing the anticipated payroll (___ New Jobs at an average annual wage of at least \$_____) to the actual number of New Jobs and the actual average annual wage reported at the [Initial] Performance Date.]

[(c)(d)] *Determination of Inability to Comply:* If the Locality or VEDP shall determine at any time prior to the [Initial] Performance Date (a “Determination Date”) that the Company is unable or unwilling to meet and Maintain its Targets by and through the [Initial] Performance Date, and if the Locality, the Authority or VEDP shall have promptly notified the Company of such determination, the Company must repay the entire GOF Grant to the Authority. Such a determination will be based on such circumstances as a filing by or on behalf of the Company under Chapter 7 of the U.S. Bankruptcy Code, the liquidation of the Company, an abandonment of the Facility by the Company or other similar significant event that demonstrates the Company will be unable or is unwilling to satisfy the Targets for the GOF Grant.

[(d)(e)] *Repayment Dates:* ***Such repayment shall be due from the Company to the Authority within thirty days of the [Initial] Performance Date [, the Subsequent Performance Date] or the Determination Date, as applicable.*** Any moneys repaid by the Company to the Authority hereunder shall be repaid by the Authority to the Locality and shall be repaid by the Locality promptly to VEDP for redeposit into the Governor’s Development Opportunity Fund. The Locality and the Authority shall use their best efforts to recover such funds, including legal action for breach of this Agreement. Neither the Locality nor the Authority shall have any responsibility for the repayment of any sums hereunder unless said sums have been received by the Authority from the Company.

[SEE SECTIONS 1 AND 4. IF THE BREAK-EVEN POINT IS BEYOND THE INITIAL PERFORMANCE DATE, A NEW SUBSECTION (c) WILL BE ADDED TO SECTION 5, SUBSTANTIALLY AS FOLLOWS:

[(c) *Further Performance Target for the Maintenance of the New Jobs:* If the Company had no repayment obligation under subsection (a) above or under subsection (b) above as to the New Jobs Target, the Company may still have a repayment obligation if it has not Maintained the New Jobs from the Initial Performance Date through the Subsequent Performance Date. If the Company has not Maintained at least ___ New Jobs (ninety percent (90%) of ___ New Jobs) through the Subsequent Performance Date, the Company shall repay to the Authority that part of GOF Grant that is proportional to the shortfall from the ___ New Jobs. For example, if at the Subsequent Performance Date, only ___ New Jobs have been Maintained, the Company shall repay to the Authority _____ percent (___%) of the moneys allocated to New Jobs (\$_____).]

Section 6. Company Reporting.

The Company shall provide, at the Company’s expense, detailed verification reasonably satisfactory to the Locality, the Authority and VEDP of the Company’s progress on the Targets. Such progress reports will be provided annually, starting at _____, 20__ and covering the period through the prior _____, and at such other times as the Locality, the Authority or VEDP may reasonably require. [If the Company wishes to count as New Jobs employees of contractors, to the extent permitted in the definition of “New Jobs” in Section 1, the Company is responsible for assembling and distributing the documentation necessary to verify such New Jobs, including whether such jobs are net New Jobs in the Commonwealth.] [If the Company wishes to count as Capital Investments the capital expenditures made on its behalf by a lessor or a developer of the Facility, the Company is responsible for assembling and distributing the documentation necessary to verify the capital expenditures made on behalf of the Company.]

With each such progress report, the Company shall report to VEDP the amount paid by the Company in the prior calendar year in Virginia corporate income tax. VEDP has represented to the Company that it considers such information to be confidential proprietary information that is exempt from public disclosure under the Virginia Freedom of Information Act and that such information will be used by VEDP solely in calculating aggregate return on invested capital analyses for purposes of gauging the overall effectiveness of economic development incentives.

Section 7. Notices.

Any notices required or permitted under this Agreement shall be given in writing, and shall be deemed to be received upon receipt or refusal after mailing of the same in the United States Mail by certified mail, postage fully pre-paid or by overnight courier (refusal shall mean return of certified mail or overnight courier package not accepted by the addressee):

if to the Company, to:

 Attention: _____

with a copy to:

 Attention: _____

if to the Locality, to:

 Attention: _____

with a copy to:

 Attention: _____

if to the Authority, to:

 Attention: _____

with a copy to:

 Attention: _____

if to VEDP, to:

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

with a copy to:

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

Section 8. Miscellaneous.

(a) *Entire Agreement; Amendments:* This Agreement constitutes the entire agreement [between][among] the parties hereto as to the GOF Grant and may not be amended or modified, except in writing, signed by each of the parties hereto. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. The Company may not assign its rights and obligations under this Agreement without the prior written consent of the Locality, the Authority and VEDP.

(b) *Governing Law; Venue:* This Agreement is made, and is intended to be performed, in the Commonwealth and shall be construed and enforced by the laws of the Commonwealth. Jurisdiction and venue for any litigation arising out of or involving this Agreement shall lie in the Circuit Court of the City of Richmond, and such litigation shall be brought only in such court.

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

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

[THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

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

_____ **OF** _____, **VIRGINIA**

By _____
Name: _____
Title: _____
Date: _____

**INDUSTRIAL/ECONOMIC
DEVELOPMENT AUTHORITY OF
THE _____ OF _____,
VIRGINIA**

By _____
Name: _____
Title: _____
Date: _____

[COMPANY]

By _____
Name: _____
Title: _____
Date: _____