VEDP Policies and Procedural Guidelines for
Major Eligible Employer Grant Program
Approved by VEDP Board of Directors on June 7, 2018

PURPOSE

The Virginia Economic Development Partnership (VEDP) is tasked with administering, monitoring and reviewing the status and progress of the performance requirements for the Major Eligible Employer Grant program (MEE) in accordance with Section 2.2-5100 of the Code of Virginia of 1950, as amended (the Virginia Code).

These Policies and Procedural Guidelines will address the statutory and other requirements for qualifying for grant awards, and other administrative matters. The MEE is used to encourage major traded sector 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 in accordance with criteria established by Section 2.2- 5100 (the Act) of the Virginia Code.

GUIDING PRINCIPLES

- General: To be eligible for a MEE grant, 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 grant is available to existing Virginia manufacturers and other non-manufacturing traded sector employers, as these terms are described below.

  Investments resulting from on-going VEDP projects will be eligible for consideration for an MEE grant, 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 grant.

- Competitive Projects Only: The MEE is the Commonwealth's premier tool for encouraging significant existing Virginia manufacturers and other nonmanufacturing traded sector employers to grow in the Commonwealth, rather than another state or country. Accordingly, there must be an active and realistic competition between Virginia and another state or country for attracting the project. Grants are made with the expectation that award of the grants will result in a favorable decision for Virginia.

- Traded Sector Projects Only: MEE grants will only be awarded for traded sector projects – i.e., projects for companies or functions that provide net new or additional income into Virginia and add to the gross state product, by providing goods or services at least one-half of which will be sold outside the Commonwealth or will be paid for with funds from outside the Commonwealth.

- Incentive Philosophy: These factors, among others, will be considered by VEDP when determining whether to recommend discretionary incentives:
  - proportion of company revenues derived from outside Virginia, including international exports (i.e., determination of traded sector employer)
  - employment multiplier
  - wages compared to local average wage
  - alignment with strategic sectors and state/local strategies
  - solution to a competitive need
  - establishment of a competitive advantage
  - ability to leverage other state and local resources
  - advancement of the quality of life

- Grant Amounts: In determining grant amounts, the following criteria will be considered:
  - return on investment
  - new jobs
  - wage levels
  - overall employment
  - capital investment
  - area and regional unemployment – areas of high unemployment, poverty and fiscal stress
  - commercial development along existing transportation/transit corridors within regions
  - proximity to existing public infrastructure
  - locality's interest in the project
  - industry or company growth potential

- Allocations: In accordance with Section 2.2-5102, B through D references that the fund is subject to the appropriation by the General Assembly of sufficient moneys to the Major Eligible Employer Grant sub-fund, any major eligible employer shall be eligible for a MEE grant of up to $25 million, to be payable from such sub-fund over a period of not less than five years and not more than seven years, commencing in the third year following the approval by the Secretary of Commerce & Trade of the employer's grant application. VEDP has established an application process by which major eligible employers may apply for a grant. An application for a MEE grant shall not be approved until VEDP has verified that the capital investment and job creation metrics have been completed. The payment of any MEE grant shall be in accordance with the terms and conditions set forth in a memorandum of understanding between a major eligible employer and the Commonwealth. These terms and conditions shall supplement the provisions of the Act and shall include but not be limited to the terms of the payment of the grant. The payment of the grant shall be made in full or in proportion to a major eligible employer's fulfillment of the terms of the memorandum of understanding. The Secretary shall consult with the House Committee on Appropriations and the Senate Committee on Finance prior to entering into any memorandum of understanding and seek the approval of the Major Employment and Investment Project Approval Commission. The House Committee on Appropriations and the Senate Committee on Finance shall have the opportunity to review any memorandum of understanding prior to its execution by the Commonwealth.

- Multiple Grants: An applicant may be granted more than one MEE grant at a time if the scope of each project has a different timeframe and independently meets the minimum investment and all other applicable criteria. An applicant that has an active MEE grant but separately meets the investment threshold and employment requirements for a new project may apply for an additional MEE 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 to 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, or another grant program under the Act, as defined below, it shall not be eligible for an MEE grant for that project.

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

- First Announcement by Governor: Grants will not be made for projects that have been publicly announced prior to the Governor’s approval and public announcement of a grant award.

  Upon approval of a MEE grant, 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 withdrawn.

STATUTORY ELIGIBILITY

<u>General Eligibility Thresholds:</u> Section 2.2-5102 A.

- 1,000 new jobs/$100 million capital investment;
- “For corporate headquarters and other basic employers that make a capital investment of at least $100 million and create at least 400 new jobs paying at least twice the prevailing average wage for the area, the 1,000 job requirement may be reduced in proportion to the factor by which the wages for the new jobs exceed the prevailing average wage for the area.” In accordance with Section 2.2-5100, "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.”

POLICY REGARDING NEW JOBS

- <u>Definition of New Job:</u> VEDP uses a definition of “new job” that reads as follows (Section 2.2-5100): "*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 provided 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 under this article. 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 (as determined by VEDP), 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.

- <u>Definition of Maintain:</u> Generally, the new jobs must be created <u>and</u> maintained through the performance and payment period. Accordingly, any layoffs instituted by the company through the performance and payment period will be taken into account in determining compliance with the company’s new job requirement. VEDP uses a definition of “Maintain” that reads as follows:

  “Maintain” means that the New Jobs will continue without interruption from the date of creation through the Performance Date. Positions for the New Jobs will be treated as Maintained during periods in which such positions are not filled due to

(i) temporary reductions in the MEE grantee's employment levels (so long as there is active recruitment for open positions), (ii) strikes, and (iii) other temporary work stoppages.

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

- Contractor Job Information: 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.

- Date from Which to Count New Jobs: For the expansion of an existing facility, the date from which VEDP will start counting new jobs generally will be around the announcement date. It is not expected that this date will ever be earlier than the date that the company received an incentive proposal from VEDP.

- Verification of New Jobs: VEDP will verify company reports per its verification policies and procedural guidelines.

POLICY REGARDING CAPITAL INVESTMENT

- Definition of Capital Investment: In accordance with Section 2.2-5100, B.,

  "Capital investment" means an investment in real property, personal property, or both, at a manufacturing or basic nonmanufacturing 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."

VEDP will use a definition of “capital investment" that reads as follows:

“Capital investment” means a capital expenditure by or on behalf of the company on or after ________, 20__ in taxable real property, taxable tangible personal property, or both, at the company’s facility in the locality. [Generally, this date will be around the announcement date.]

Capital expenditures funded with the proceeds of a MEE grant or other contributions by governmental entities shall not count toward a company’s required “capital investment.”

- <u>Used Equipment Moved to Project</u>: Generally, VEDP will not count as “capital investment” the value of used equipment transferred by the company to the project site. VEDP may, in its discretion (which it expects to exercise only in very unusual circumstances), allow such equipment to count toward qualifying investment, if it is being moved to the Commonwealth from outside the Commonwealth, and it does not represent more than half of the qualifying capital investment. The community’s assessed value of the used equipment to which the local tax rate will be applied will be considered in determining qualifying capital investment.

- <u>Operating Leases / Expenses</u>: 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.

- <u>Capital Leases</u>: Capital investment may include the value of real or personal property leased under a capital lease.

- Exclusion for the Cost of Land and Existing Buildings*:* 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.
- Date from Which to Count Capital Investment: For an expansion of an existing facility, the date from which VEDP will start counting capital investment generally will be around the announcement date. It is not expected that this date will ever be earlier than the date that the company received an incentive proposal from VEDP.

- Verification of Capital Investment: VEDP will verify company reports per its verification policies and procedural guidelines.

APPLICATION PROCESS

Once the due diligence process is complete and a MEE grant has been pre-approved for a company, the company can submit an application to VEDP.

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

1. The amount and timing of the expected capital investment;

2. The number of new jobs expected to be created and maintained because of 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. (A) The average annual wages expected to be paid for the new jobs, (B) whether a package of fringe benefits will be provided by the applicant to a typical employee (the statute requires standard fringe benefits), and (C) the amount by which the expected average annual 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

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 MEE grant is made. If accepted, these revenues would be included in the calculation of the net present value of benefits to Virginia.

AMOUNT OF MEE GRANT AWARD

No one MEE grant may exceed twenty-five million dollars ($25,000,000).

The MEE grant will be paid in five-to-seven annual installments at the times described below under "Performance Agreement – MEE Grant Payout Schedule."

PERFORMANCE AGREEMENT

General Provisions: Once negotiated and agreed upon, the amount, terms and conditions of an MEE grant shall be reflected in a performance agreement expected 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 grant, 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 and will seek the approval of the Major Employment and Investment Project Approval Commission.

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

Targets and Statutory Criteria: The performance agreement will set forth the (i) capital investment target; (ii) new jobs target; (iii) wage target; (iv) prevailing average manufacturing wage in locality; (v) expected performance date; (vi) reporting and target verification procedures; and (vii) any grant reduction circumstances.

Performance Date: 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. The performance agreement will set forth the performance goals and require the MEE grantee to provide annual notice to VEDP of the MEE grantee's progress on meeting its performance goals. Any extension of the Performance Date requires prior approval by VEDP's Project Review and Credit Committee ("PRACC") and the VEDP Board of Directors. Any additional extensions must be approved by PRACC, the VEDP Board, and the Major Employment and Investment Project Approval Commission. Section 2.2-2237.2. See also VEDP's *Policies and Procedural Guidelines on Extensions.*

Company Notification: The performance agreement will require the MEE grantee to notify VEDP 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"). The performance agreement will likely require other notices to VEDP as may be necessary to administer the MEE grant program.

MEE Grant Payout Schedule: Beginning with the fiscal year in which the verified Company Notification has been on file at VEDP for three years, and pursuant to the provisions of the Act, the Commonwealth shall make five to seven equal annual grant payments to the grantee.

CONDITIONS TO PAYOUTS OF MEE GRANTS; REDUCTIONS

Annual Appropriation: MEE grant payments are subject to annual appropriation by the Virginia General Assembly. If there are insufficient moneys in the Fund's Major Eligible Employer Grant sub-fund to pay all MEE grant payments due to intended recipients, the provisions of Section 2.2-5104 of the Act shall govern the distribution of the available funds.

Conditions to Payouts: MEE grant installment payments are subject to the conditions that (i) the capital investment remains in place during the payment period, (ii) the new jobs are maintained during the payment period, and (iii) 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 does not remain in place, if the new jobs are not maintained, or if the facility is no longer so operated, the performance agreement will require the MEE grantee to provide immediate notice to VEDP. In the event that clauses (i), (ii) or (iii) are not met, the installment payments on the MEE grant will cease, but the MEE grantee will not be required to return any MEE grant installments previously paid.

No Payouts: If the MEE grantee does not achieve the statutory minimum capital investment requirement of $100 million and 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 and jobs goals stated in the performance agreement, no MEE grant payment will be made.

Reduced Payouts; Allocations: If the MEE grantee achieves the statutory minimums and achieves between 50% and 100% of the required capital investment and new jobs, the total MEE grant to be paid shall be diminished proportionately.

In the event that the total MEE grant is reduced, the MEE grant will still be paid out as provided in the Act, so long as the capital investment remains in place and the new jobs are maintained 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 and maintenance goal. Generally, the MEE grant will be allocated one-half to the capital investment goal and one-half to the new job creation and maintenance goal. For example, if the MEE grantee achieves the statutory minimum eligibility requirements and achieves 60% of its capital investment goal and 75% of its new job creation and maintenance goal, the grant will be diminished proportionately to 60% of that portion allocable to the capital investment and 75% of that portion allocable to new jobs created and maintained, to be paid out on the schedule described above.

MISCELLANEOUS

Assignment: The Company may not assign its rights or obligations under a performance agreement without the express written approval from VEDP. 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.

Change in Law: The provisions described in these guidelines reflect the provisions in the Virginia Code as of July 1, 2017. 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 grantees with written notice of any such changes.

Confidentiality: Each grantee should be aware that information regarding the grantee, including its application materials and its level of achievement of its performance goals under the performance agreement, will be shared by VEDP with the Virginia Small Business Financing Authority, the Joint Legislative Audit and Review Commission, and the general public.