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# **DRAFT Incentives Administration Policy And Procedural Guidelines**

June 2021

**Virginia Economic Development Partnership Incentives Administration Policy and Procedural Guidelines**

**Table of Contents**

- I. Purpose ..... 4**
  - A. Incentives Administration by VEDP in Code of Virginia ..... 4
- II. General Principles for VEDP-Administered Incentives ..... 5**
  - A. Guiding Principles ..... 5
  - B. Policy Regarding New Jobs ..... 6
  - C. Policy Regarding Capital Investment ..... 8
  - D. Miscellaneous ..... 9
- III. Approval of the VEDP Board of Directors ..... 9**
- IV. Due Diligence Process for Discretionary Incentives ..... 9**
  - A. Information Gathering & Project Company Communication ..... 9
  - B. Initial Vetting Process ..... 10
  - C. VEDP Project Review and Credit Committee (PRACC) Process ..... 11
  - D. Grant Payment Tranches ..... 15
  - E. Approval Process of VJIP-Only Projects ..... 16
- V. Capital Investment and Employment and Wage Reporting and Verification ..... 17**
  - A. General Guidelines ..... 17
  - B. Annual Progress Reports ..... 18
  - C. Final Progress Report ..... 19
  - D. Initial Company Notifications ..... 20
  - E. Subsequent Company Notifications ..... 21
  - F. Annual Payment Period Certifications ..... 21
  - G. Verification of Company Reported Capital Investment Data ..... 21
  - H. Verification of Company Reported Employment and Wage Level Data ..... 23
  - I. Reporting of New Teleworking Jobs ..... 26
- VI. Performance Extensions ..... 26**
  - A. Written Request ..... 26
  - B. Considerations ..... 27
  - C. VEDP Project Review and Credit Committee (PRACC) Approval ..... 27
  - D. Board and MEI Approval ..... 28
- VII. Clawbacks ..... 28**
  - A. If Statutory Minimum Eligibility Requirements Are Not Met ..... 28
  - B. If Statutory Minimum Eligibility Requirements Are Met ..... 28

C.	Determination of Inability to Comply .....	28
D.	Demand for Payment.....	29
E.	Custom Grants .....	29
F.	VIP, MEE, VEDIG.....	29
<b>VIII.</b>	<b>Commonwealth’s Development Opportunity Fund (COF) .....</b>	<b>29</b>
A.	Guiding Principles.....	29
B.	Statutory Eligibility.....	31
C.	Local Matches.....	33
D.	Application Process .....	33
E.	Performance Agreement.....	35
<b>IX.</b>	<b>Virginia Economic Development Incentive Grant (VEDIG) .....</b>	<b>37</b>
A.	Guiding Principles.....	37
B.	Application Process .....	38
C.	Amount of VEDIG Grant Award .....	39
D.	Performance Agreement.....	39
E.	Conditions to Payouts of VEDIG Grants; Reductions.....	40
<b>X.</b>	<b>Virginia Investment Performance Grant Program (VIP) .....</b>	<b>41</b>
A.	Guiding Principles.....	41
B.	Application Process .....	42
C.	Amount of VIP Grant Award .....	43
D.	Performance Agreement.....	43
E.	Conditions to Payouts of VIP Grants; Reductions.....	44
F.	Local Matches.....	46
<b>XI.</b>	<b>Major Eligible Employer Grant Program (MEE) .....</b>	<b>46</b>
A.	Guiding Principles.....	46
B.	Statutory Eligibility.....	47
C.	Application Process .....	48
D.	Amount of MEE Grant Award .....	48
E.	Performance Agreement.....	49
F.	Conditions to Payouts of MEE Grants; Reductions.....	50
<b>XII.</b>	<b>Virginia Jobs Investment Program (VJIP).....</b>	<b>51</b>
A.	Guiding Principles.....	51
B.	Use of VJIP Proceeds & Program Components .....	53
C.	Statutory Eligibility.....	53
D.	Virginia New Jobs Program .....	54

E. Workforce Retraining Program.....	54
F. Small Business New Jobs and Retraining Programs .....	55
G. VJIP Definitions .....	55
H. Verification Process .....	56
<b>XIII. New Company Incentive Program .....</b>	<b>57</b>
A. Guiding Principles.....	57
B. Benefits of Certification as an Eligible Company.....	57
C. Statutory Eligibility.....	58
D. Policy Regarding Job Creation.....	58
E. Policy Regarding Capital Investment.....	59
F. Policy Regarding Qualified Localities.....	59
G. Policy Regarding Positive Fiscal Impact .....	59
H. Application Process .....	60
I. Distribution of Grant Proceeds to Employees.....	61
J. Failure to Distribute Funds and Demand for Payment.....	62
<b>Exhibit A - Checklist for PRACC .....</b>	<b>63</b>
<b>Exhibit B - Application for Certification of Companies Eligible to Decrease Income Taxed by Virginia by Modifying Apportionment Factor(s) .....</b>	<b>65</b>

## I. Purpose

### A. Incentives Administration by VEDP in Code of Virginia

1. The Virginia Economic Development Partnership (VEDP) Division of Incentives (Incentives Division) is tasked with administering certain economic development incentives, including the vetting of prospective companies being considered for incentives. It is also tasked with monitoring and reviewing the status and progress of the performance requirements for certain economic development incentives in accordance with § 2.2-2237.3 of the Code of Virginia of 1950, as amended (COV).
2. The Board of Directors of VEDP (the Board) recognizes that discretionary economic development incentives, when properly deployed, are effective tools for furthering the statutory duties of VEDP. To be good stewards of the taxpayers' funds and to retain the confidence of interested stakeholders, it is important that these tools be deployed effectively, efficiently, and fairly.
3. VEDP has determined that a structured and formalized approach to awarding incentives is necessary for consistency, effectiveness, and transparency. These procedures will allow our project companies and economic development partners to better understand the information and documentation required for VEDP to ensure that incentives are awarded to companies that are properly reviewed, vetted, tracked, and coordinated.
4. Each Incentive in these Policies and Procedures Guidelines will be subject to additional Code of Virginia sections as applicable:
  - a) The Commonwealth's Development Opportunity Fund (COF) provides either grants or loans to localities to assist in the creation of new jobs and capital investment in accordance with criteria established by COV § 2.2-115.
  - b) The Virginia Economic Development Incentive Grant (VEDIG) program is designed to assist and encourage companies to invest and create new employment opportunities by locating significant headquarters, administrative or service sector operations in Virginia. Discretionary grants are negotiated and offered to qualified applicants as an economic development incentive in accordance with criteria established by COV § 2.2-5102.1.
  - c) The Virginia Investment Performance Grant (VIP) program 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 in accordance with criteria established by COV § 2.2-5101.

- d) The Major Eligible Employer Grant (MEE) program 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 COV § 2.2-5102.
- e) The Virginia Jobs Investment Program (VJIP) provides grant funding to support new or existing businesses in training or retraining employees in accordance with criteria established by COV § 2.2-2240.3 through 2.2-2240.6.
- f) The New Company Incentive Program (NCIP) provides a company certified by VEDP as an “eligible company” to decrease the amount of income taxed by Virginia and may also apply to VEDP for consideration for a discretionary grant from the Commonwealth’s Development Opportunity Fund in accordance with criteria established by COV § 58.1-405.1.

## **II. General Principles for VEDP-Administered Incentives**

### **A. Guiding Principles**

1. **Competitive Projects Only:** These grants are the Commonwealth’s premier tools for encouraging a project to come to or 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 the award of the grants will result in a favorable decision for Virginia.
2. **Traded Sector Projects Only:** 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.
3. **Incentive Philosophy:** These factors, among others, will be considered by VEDP when determining whether to recommend discretionary incentives:
  - a) The proportion of Company revenues derived from outside of Virginia, including international exports (i.e., determination of traded-sector employer)
  - b) Employment multiplier
  - c) Company wages compared to local average wage
  - d) Alignment with strategic sectors and state/local strategies
  - e) The solution to a competitive need
  - f) Establishment of a competitive advantage

- g) Ability to leverage other state and local resources
- h) Advancement of quality of life

If a company has already broken ground for a new project, announced a new plant or an expansion, or engaged in other activities which would indicate that the company's management had already determined to locate or expand in Virginia, the company would generally not be able to qualify for a discretionary incentive. A project should be one that is considering Virginia as well as looking at options in other states or countries.

4. Grant Amounts: In determining grant amounts, the following criteria will be considered:
  - a) return on investment
  - b) new jobs (or retrained – VJIP)
  - c) wage levels
  - d) overall employment
  - e) capital investment
  - f) area and regional unemployment – areas of high unemployment, poverty, and fiscal stress
  - g) commercial development along existing transportation/transit corridors within regions
  - h) proximity to existing public infrastructure
  - i) locality's interest in the project
  - j) industry or company growth potential
5. 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 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 withdrawn.

6. To the extent that any General Principle conflicts with the terms of a Program-specific Policy, the terms set forth in the latter shall prevail.

## **B. Policy Regarding New Jobs**

1. Definition of New Job: VEDP uses a definition of "New Job" that substantially reads as follows: "New Job" means employment of indefinite duration, created as the direct result of the private investment, for which the firm pays the wages and provides standard fringe benefits for its employee, requiring a minimum of either (i) 35 hours of the 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 location of the economic development project, positions with construction contractors, suppliers, and multiplier or spin-off jobs may 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 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.

2. Definition of Maintain: Generally, the new jobs must be created and maintained through the performance period. Accordingly, any layoffs instituted by the company through the performance period will be considered in determining compliance with the company's new job requirement. VEDP expects to use a definition of "Maintain" that substantially reads as follows: "Maintain" means that the New Jobs will continue without interruption from the date of creation through the Performance Period. 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 grantee's employment levels (so long as there is active recruitment for open positions), (ii) strikes, and (iii) other temporary work stoppages.
3. 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 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.

4. 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 VEDP information regarding those jobs, including whether such jobs are "net new jobs" in the Commonwealth.
5. 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.
6. New [Teleworking Jobs: Per COV § 2.2-621, VEDP may consider teleworking positions held by Virginia residents when assessing qualification or](#)



[compliance for receipt or maintenance of performance-based incentives with job creation requirements.](#)

**C. Policy Regarding Capital Investment**

1. **Used Equipment Moved to Project:** 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.
2. **Operating Leases / Expenses:** VEDP may, at its discretion, determine that the value of machinery and equipment leased under an operating lease will qualify as a capital investment.
3. 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 be revenue positive 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.
4. Capital investment generally will not include operating expenses, except operating leases to the limited extent noted above.
5. **Capital Leases:** Capital investment may include the value of real or personal property leased under a capital lease.
6. **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.
7. **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.

#### **D. Miscellaneous**

1. Assignment: The Company may not assign its rights or obligations under a 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.
2. Change in Law: The provisions described in these guidelines reflect the provisions in the Code of Virginia as of July 1, 2021. Changes made by the General Assembly in the applicable provisions of the Code of Virginia will be read into and will be deemed to amend, these guidelines.
3. 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, may be shared by VEDP with the Virginia Small Business Financing Authority, the Joint Legislative Audit and Review Commission, and the general public.

### **III. Approval of the VEDP Board of Directors**

1. The VEDP Incentives Administration Policy and Procedures Guidelines must be reviewed annually by the President with the Chair of the Board's Finance and Audit Committee. Any changes will be set forth in revised Guidelines and will be shared with the full Board at its next meeting. The most recent approval of this document was June 17, 2021.

### **IV. Due Diligence Process for Discretionary Incentives**

#### **A. Information Gathering & Project Company Communication**

1. The Project Manager (PM), which may be Business Investment Division (BI) Business Manager or the Talent Solutions (TS) Business Manager, is the lead, with the BI Vice President (BI VP), BI Assistant Vice President (BI AVP), TS Senior Vice President (TS SVP), TS Vice President (TS VP), TS Assistant Vice President (TS AVP), VP Incentives (VPI), the Incentives Division, and the Research Division involved at different stages.
2. When needed, the PM may consult with the Incentives Division for assistance.
3. The PM works with the company, consultant (if any), and the local and/or regional economic developer to request the pertinent data per the information checklist (Exhibit A). This checklist is designed to be a tool for the PM to efficiently request all pertinent information for the project to be considered for an incentive. While it may be shared with the project company, its use is at the discretion of the PM.

4. Once the above information is received by the PM from the project company, it is uploaded to Salesforce. If incentives are being considered, the PM will alert the Incentives Division.
5. Data required for the calculation of the Commonwealth's anticipated Return on Incentive (ROI) is sent by the PM to the Project Research Manager.
6. ROI is a measure that compares the expected amount of state incentive funds used to secure a project to the estimated state tax revenues resulting from the project activity, including when it is expected that the tax revenue generated from the project is expected to exceed the Commonwealth's incentive outlay.
7. If the project warrants financial statements, for due diligence purposes, these are shared with the Incentives Division for analysis.
8. If and when the project is expected to go before the Project Review and Credit Committee (PRACC), a folder is created on the K-drive, PRACC, 1 PRACC Queue. The folder is named in the following manner: name of the company, project name in parentheses, and the Salesforce number also in parentheses (e.g., Company Name (Example) (2021-123456)). As documents are prepared for review, they are stored in the folder.
9. Allowing 3-4 business days before a PRACC meeting for the vetting process is necessary.

#### **B. Initial Vetting Process**

1. The Incentives Division will conduct research on the company, if required, analyze the financial statements, prepare a financial summary, and assign a risk rating (high, moderate, or low). If no financial documents are provided for a project that would otherwise require financial review, an unknown rating will be assigned. The financial summary will be put in Salesforce and the appropriate PRACC folder.
2. The Incentives Division will email the results of the financial analysis to the PM with a copy to the TS SVP, TS VP, TS AVP, BI VP, BI AVP, and the Senior Project Research Manager. The PM will notify the local and/or regional economic developers of the risk rating.
3. Basic documentation required for a PRACC review and consideration includes the ROI, the financial summary and risk assessment (to include results from an internet search), and the preapproval memo. The ROI is prepared by the Research Division, together with the VPI. The financial summary, risk assessment, and internet search is conducted by the Incentives Division.

Prior to PRACC, the Incentives Division, in conjunction with the BI AVP, TS AVP, TS VP, and the Senior Project Research Manager, will also make a recommendation for the payout of any discretionary grants. Before the

PRACC meeting, a draft of the preapproval or for VJIP [and Virginia Talent Accelerator Program](#) purposes, the approval memo is prepared primarily by the BI or TS Division. The Incentives Division adds comments addressing the financial review, the risk rating and supporting comments, and any concerns or observations about information gathered from the internet search. The Research Division adds comments regarding the ROI and the Commonwealth's expected break-even point.

Working in conjunction with the BI Division and TS Division, it is the Incentives Division's goal to have all the documentation for the PRACC meeting completed by noon two business days prior to the meeting. Any exceptions should be rare and agreed upon by the VPI.

The Incentives Division will prepare a folder containing the required documents to be reviewed at the meeting. The folder is named mm.dd.yyyy Meeting. Once all the documents are completed in the project's 1 PRACC Queue folder, the project documents should be stored in the meeting folder within the respective project folders. PRACC documents are sent to the PRACC members via email.

### **C. VEDP Project Review and Credit Committee (PRACC) Process**

1. The purpose of PRACC is to formalize the review process as a part of VEDP's due diligence. Each request will be considered through the lens of the Guiding Principles for VEDP-Administered Incentives. The PRACC members discuss and make a determination as to (i) whether the project is a good use of the grant funds, (ii) whether to confirm or change the initially assigned risk rating of the company, (iii) the amount of the grant, if any, to be awarded, (iv) the appropriate length of the performance period based on company/locality projections, (v) the milestones to be reached for the scheduled payments, and (vi) the schedule of payments (tranches) from the incentive. PRACC members review the elements of the project; consider strategic, competitive, and financial implications to the locality and the company; and evaluate the risk assessment and ROI analysis. In making the assessment, the members will consider the value of the project to the Commonwealth, the locality, and the region. Members are invited to make suggestions regarding other incentives and other financial resources (such as loans, bonds, etc.) that may be deemed useful. PRACC will vote on the approval of all projects brought before the committee and will confirm the proposed risk rating, the incentive value, as well as the structure of the incentive.
2. All projects receiving the following discretionary incentives from VEDP must be reviewed and approved by PRACC. In addition, PRACC deliberates and makes recommendations on all requests for performance extensions and recommends action on projects requiring clawbacks:
  - a) COF

- b) VIP
- c) VEDIG
- d) MEE
- e) NCIP
- f) Custom Performance Grants
- g) VJIP

3. The 11 voting members of PRACC include:

- a) President and CEO (Alternate; Vice President of External Affairs)
- b) Executive Vice President
- c) General Counsel
- d) Vice Presidents of the Divisions of Business Investment, Research, Talent Solutions, and Incentives
- e) Assistant Vice President of Business Investment
- f) Financial Analyst
- g) Senior Economist
- h) Senior Project Research Manager

A majority of the voting members of PRACC must be present to constitute a quorum. A project is approved if a majority of the voting members present at the PRACC meeting vote "yes." The votes and payment milestones are maintained in Salesforce and on record with the Incentives Division.

4. PRACC-Approved Grant Request

- a) If approved by PRACC, a preapproval memo and the ROI analysis will be conveyed to the Secretary of Commerce and Trade (SCT) for pre-approval or, [for VJIP and Virginia Talent Accelerator Program purposes, for -approval.](#)
- b) The memo reflects PRACC's collective recommendation and includes any additional terms, conditions, milestones, and security measures (such as letters of credit or collateral) set by PRACC.
- c) It is expected that the SCT will review and take action on the memo within one week of receiving the documentation.
  - (1) Generally, VEDP's CEO, VP and AVP of BI, and the VP of External Affairs will meet with the SCT weekly to review incentive proposals.
  - (2) The SCT will approve, amend, or decline each incentive proposal.
  - (3) If approved, the SCT will sign the memo, and it will be returned to the Incentives Staff, who will communicate the SCT's decision to the PM and all PRACC members.
  - (4) If a weekly meeting with the SCT is not held, the SCT may email the decision to VEDP.

- (5) If approved, and if approval by the Major Employment and Investment Project Approval Commission (MEI Commission) is not necessary, the PM delivers Virginia's proposal outlining incentives and requirements to the company and notifies the local and/or regional economic developers.
- (6) The PM's documentation to the company and locality reflects that Virginia's proposal expires six (6) months from the date of notification if not accepted by the company.
- (7) The Incentives Coordination Manager tracks and reports to the BI AVP and VPI on any expiring proposals.

#### 5. PRACC Denies Grant Request

- (1) If a majority of PRACC's voting members present at a PRACC meeting vote to not recommend the request to the SCT, the PM will notify the company and the local and/or regional economic development partners of the decision and the reasons for the disapproval.

#### 6. Major Employment and Investment Commission (MEI) Approval

a) The MEI Project Approval Commission (MEI) is a 14-member advisory commission in the legislative branch of state government, established to review financing for individual incentive packages, including but not limited to packages offering incentives for economic development. VEDP will request MEI approval if:

- (1) one or more of the incentives in the incentive package is not authorized under current law;
- (2) an amendment by the General Assembly is being sought to one or more currently existing incentives included as part of the incentive package;
- (3) the aggregate amount of incentives to be provided by the Commonwealth in the incentive package including grants, tax incentives, general or non-general funds, proceeds from bonds, rights to lease property at below fair market value, or any other incentives from the Commonwealth, is in excess of \$10 million in value;
- (4) discretionary incentives are offered to a company relocating within the Commonwealth, while simultaneously closing or reducing operations at an existing Virginia facility.

b) MEI approval is not required for incentive packages consisting of only nondiscretionary tax credits or exemptions available to any qualified taxpayer under existing law.

#### 6.7. Company Decisions for Virginia

- (1) For COF or NCIP: if the company makes a decision for Virginia, the locality will submit an application letter to the CEO of VEDP, and the company will submit an application letter to



the chief appointed officer of the locality. The company's application letter should accompany the locality's application to VEDP.

- (2) For VIP, MEE, and VEDIG: if the company makes a decision for Virginia, the company submits an application letter to the CEO of VEDP.
- (3) For VJIP: if the company makes a decision for Virginia, the company completes the VJIP application, if not already done. The Incentives Staff/VP TS reviews the application letters and confirms they are consistent with the terms and conditions and amounts reflected in the pre-approval memo. Any discrepancies with the VJIP application will be discussed by the PM with the company (and, in the case of COFs, the company, and locality).
- (4) BI, after approving the application letters, will forward them to the Incentives Staff for processing and data input into Salesforce.
- (5) The Incentives Staff will prepare a Decision Brief for submittal by the VEDP CEO to the Governor for final approval. The package first goes through the SCT, the Chief of Staff, and then to the Governor.
- (6) The Decision Brief details the project background and parameters and includes the ROI analysis.
- (7) When the Decision Brief is signed by all three parties, it is returned to VEDP to the Incentives Staff.
- (8) When received, the Incentives Staff notifies the PM, PRACC, and the Marketing and Communications Division (M&C) to let them know it is approved for an announcement to be made.
- (9) A performance agreement (PA) is drafted by the General Counsel's office per the terms and conditions required. (All performance agreements for COF's are required to contain a clawback provision in conformance with COV § 2.2-2237.3.C). VEDP's General Counsel and the VPI (or the EVP of VEDP in his/her absence) might review the PA to ensure compliance with terms of the incentive as approved by PRACC.
- (10) For NCIP, the company is not required to enter into a performance agreement (PA). However, the General Counsel will draft an administrative agreement outlining relevant terms and conditions per COV § 58.1-405.1.
- (11) All draft COF PAs and NCIP administrative agreements are submitted to the Office of the Attorney General for review and approval (mandated in Code of Virginia).
- (12) All draft COF PAs and NCIP administrative agreements are submitted to the locality for its input.
- (13) For all incentives except VJIP and the Virginia Talent Accelerator Program, the PA is submitted to the company for

its input. Generally, for a COF or NCIP, this step will occur after the locality has had a chance to review the agreement.

- (14) For VJIP, the company submits an application.
- (15) When approved by all applicable parties, the PA is then submitted to the company for execution. For COFs, the locality receives the PA to be executed by the locality and the beneficiary company.
- (16) Concurrent with the first approved project in a locality, a Memorandum of Understanding (MOU) may, if requested by the locality, be drafted by the VEDP Incentives Staff outlining the reporting responsibilities of the local Commissioner of the Revenue relative to COV § 58.1-3122.3. This section requires that the Commissioner provide tax information necessary to facilitate the administration and enforcement by VEDP of performance agreements with businesses that have received incentive awards. This MOU need only be executed once with the first project but will be in force on an ongoing basis for every project receiving incentives in that locality.
- (17) Under no circumstances will the company, the locality, or the region announce the project before the Governor's announcement. If an announcement is made by the company, or the locality/region, prior to the Governor's announcement, the incentive may be withdrawn.

#### 7.8. Cancellation of Grant

- a) If the Performance Agreement has not been signed within 18-months of the date the Governor signed the Decision Brief, the CEO of VEDP may cancel the Grant award by notifying the company and the locality.
- b) If the Governor signs a revised Decision Brief, this will automatically cancel the initial Grant Award.

#### **D. Grant Payment Tranches**

1. As a general guideline for COF grantees, companies that have high or moderate financial risk ratings will need to have achieved a greater portion of their contractual requirements before grant proceeds will be released.
2. Generally, if a company is deemed high risk, upfront disbursements to a company will be strongly discouraged unless the company provides a standby letter of credit from an approved domestic financial institution or other acceptable collateral, in an amount determined by PRACC to ensure that there is no risk of loss of public funds in the event the grantee is unable or unwilling to meet the contractual requirements. In most cases, it will only be appropriate for payment to high-risk projects to be disbursed after performance targets have been fully met and verified.



3. If a company is deemed a moderate risk, i) up-front disbursements to a company are generally discouraged unless the company provides a standby letter of credit from an approved domestic financial institution or other acceptable collateral, in an amount determined by PRACC to ensure that there is no risk of loss of public funds in the event the grantee is unable or unwilling to meet the contractual requirements, or ii) partial disbursements may be allowed after a company has reached sufficient contractual requirements to be at the project's ROI break-even point for COF and further disbursed in tranches when milestones are met, and the project is at its final completion date.
4. If a company is deemed low risk, up-front disbursements to a company will generally be discouraged; however, partial disbursements may be allowed upfront for purposes of applying toward reimbursement of construction and other qualifying up-front costs. In some cases, disbursements for reimbursable costs may be allowed as early as toward the end of the first year of the company's project should PRACC determine that such disbursement is warranted and is key to the success of the project.
5. In some cases, a company may choose not to disclose its financial statements to VEDP, or the financial statements may be in a foreign language or a foreign currency. In other cases, the financial statements may not be subject to any U.S. or international generally accepted accounting standards. In both types of cases, where VEDP may still wish to proceed with consideration of the incentive request, the Incentives Division will assign a "high risk" assessment to the company and recommend any incentive distribution be made only after full performance of the targets has been achieved. The remainder of the vetting process, as described above, will still be conducted even if financial information has not been provided or is not in a format that is understandable to the Incentives Division.

- a) Requests for Extensions: Extension requests will be vetted and will follow the process as outlined in Section VI in this document.

NOTE: Throughout the entire due diligence process, the information should be recorded in Salesforce as needed or as required.

#### **E. Approval Process for Projects Receiving VJIP and/or Virginia Talent Accelerator Program**

##### 1. Approval Memos

- a) Before a VJIP incentive amount or the market-value of the Virginia Talent Accelerator Program services can be shared with the

company, consultant, or local or regional partner, the amount must be approved by PRACC and the SCT.

- b) After the Project Manager has ensured that the project qualifies for VJIP or the Virginia Talent Accelerator Program, the Project Manager drafts the approval memo. The approval memo is reviewed by the TS VP or BI AVP and the Incentives Staff.
- c) After PRACC approves the incentive offer, it is submitted to the SCT for approval.
- d) It is expected that the SCT will review and take action on the approval within one week of receiving the documentation.
  - (1) Generally, VEDP's CEO, VP and AVP of BI, and the VP of External Affairs will meet with the SCT weekly to review incentive proposals.
  - (2) The SCT will approve, amend, or decline each incentive proposal.
  - (3) If approved, the SCT will sign the approval memo, and it will be returned to the Incentives Division. The Incentives Staff will communicate to the PM and all PRACC members the SCT's decision.
  - (4) If a weekly meeting with the SCT is not held, the SCT may email the decision to VEDP.

## **V. Capital Investment and Employment and Wage Reporting and Verification**

### **A. General Guidelines**

1. A key responsibility of VEDP's due diligence process is the necessary monitoring of outstanding VEDP-administered discretionary incentives. The performance agreement states that the company must provide annual or periodic (depending on the incentive) progress reports in meeting the terms, conditions, and milestones under the agreement. Therefore, the company will need to provide to VEDP (through the locality for a COF) such information as the number of net new jobs added, the average wage rate of the new jobs, and the capital investment made by the company. This report must be certified for its accuracy by an officer of the company. This data will then be verified, as appropriate, against reports the Incentives Division staff may receive from such state and local agencies as the local Commissioners of the Revenue (to verify capital investment), and the Virginia Employment Commission (VEC) (to verify the number of employees and average wage rate). There may also be times when it may become necessary for a member of the VEDP Incentives or Business Investment staff to visit a company in order to directly verify certain required information.
2. VEDP may require that a recipient company provide copies of employer quarterly payroll reports that have been provided to the VEC to verify the employment status of any position included in the employment goal. The PA will require that the company report the required data by location for the

project being provided the incentive. Exceptions to this requirement will require PRACC approval.

3. Each performance agreement contains the statutory minimum capital investment and new jobs targets as set forth in the applicable statute pursuant to which the incentive was awarded, as well as the capital investment, new jobs, and average annual wage targets which the company is expected to achieve for the particular project.
  - a) A company must achieve the statutory minimum capital investment and new jobs targets to qualify for the grant. If the company fails to achieve either or both statutory minimum requirements, the grant will not be paid out or, in the case of COF and VJIP grants, which may be paid out prior to the completion of the performance period based upon the company reaching certain milestones set forth in the performance agreement, the entire grant must be repaid to the Commonwealth.
  - b) If the company achieves the statutory minimum requirements but does not fully achieve the expected capital investment and/or new jobs targets, the approved grant amount may be reduced proportionately or, in the case of a COF grant paid prior to the performance date, a portion of the grant may be required to be repaid to the Commonwealth.
4. To ensure the proper monitoring and review of the status and progress of these targets, each performance agreement contains specific reporting obligations and verification procedures.

#### **B. Annual Progress Reports**

1. For a COF grant, the locality in which a company's facility is located works with the company to file with the Incentives Division an annual progress report for each year of the performance period by the date set forth in the performance agreement.
2. For Virginia Investment Partnership (VIP) grants, Virginia Economic Development Incentive Grants (VEDIG), and Major Eligible Employer (MEE) grants, the company will file with the Incentives Division an annual progress report for each year of the performance period and the payment period by the date set forth in the performance agreement.
3. All annual progress reports will capture a company's progress toward the capital investment, average annual wage, and job creation targets as outlined in the performance agreement. The company will also reflect its confidence level (high, moderate, or low) in reaching those targets, if not yet achieved. The company is encouraged to discuss any potential changes which may impact the achievement of those targets. The company must certify as to the accuracy of the report. There may be times when it is necessary for the Incentives Division to discuss the terms of the agreement with the company and/or locality if sufficient progress towards the targets is not being made. A

company's progress and its confidence in reaching its targets are reflected in VEDP's reports to its Board.

4. All annual progress reports will require, at a minimum, the company to submit, as applicable
  - a) The amount of total capital investment and a summary breakdown of capital investment into categories such as land, purchase of existing building, new construction, renovation or building up-fit, machinery and tools, furniture, fixtures and equipment, and other major categories of expenditures.
  - b) A summary of the number of new jobs created and maintained at the facility, net of any baseline jobs, and the average annual wage of such new jobs.
  - c) Management's confidence level as to the achievement of its performance targets (to be classified as high, moderate, or low).
  - d) Such other documentation as the company may offer to evidence the capital investment and new jobs and average annual wage targets.
5. Upon receipt of the company's annual progress report, the Incentives Staff will compare the figures reflected on the annual progress report to the most current data available from the VEC database (accessed through VEDP's Research Division) for purposes of ensuring general alignment between VEC's figures and the company's annual progress report.
6. For VJIP grants
  - a) Performance is monitored as reimbursement requests are submitted throughout the project life cycle.
  - b) Each reimbursement request is verified through comparison with VEC data.

### **C. Final Progress Report**

#### **1. Final Report Process**

- a) Companies receiving incentives through the COF are required in their performance agreement to file a final report after the performance date related to the performance targets outlined in the performance agreement for capital investment, average annual wage, and job creation. The report must be sent to VEDP's Incentives Staff within ninety (90) days of the final performance date specified in the performance agreement. The final report must be accompanied by verification documentation from the VEC (i.e., FC-20) and the local Commissioner of the Revenue. The company and the locality must certify as to the accuracy of the information provided in the report.
- b) The final report is to be submitted to VEDP's Incentives Staff along with copies of the company's four most current Employer's Quarterly Tax Reports (Form FC-20) that the company is required to submit to the VEC. The Employer's Quarterly Tax Reports (Form FC-20) are

required of all employers covered under the Virginia Unemployment Compensation Act.

- c) VEDP's Incentives Staff will compare the figures reflected on the final report to the Form FC-20. To verify the net new jobs figure, the Incentives Staff will subtract the company's baseline employment, as specified in the performance agreement, from the total employment figure reflected in the matching month of the initial performance period target date, as shown on Form FC-20 (Box A. "Employee Count"), to calculate the net new jobs created. To calculate the average annual wage, the Incentives Staff will look to the wage figure reported on Box B.1. "Total Wages paid this quarter." The sum of each of the four most recent quarters' wages (less the baseline) will be divided by the total average employment (less the baseline) over the 12-month period to calculate the average annual wage. The verified figures are reflected in VEDP reports to its Board.
- d) VEDP's Incentives Staff will compare the figures reflected on the final report to the figures reported by the local Commissioner of the Revenue. The verified figures are reflected in VEDP reports to its Board of Directors.
- e) For VJIP, capital investment is verified directly with the local Commissioner of the Revenue at the end of the project life cycle. Capital investment data reported on the VJIP application is verified against data submitted by the Commissioner of the Revenue.
- f) The final report will compare the actual level of the local match at the final performance date with the promised local match.

## 2. Failure to Submit Final Report

- a) Should the Company be unable to file the report within the 90-day timeframe, the company may request a 60-day delay in filing the report. VEDP will require a \$3,000 fee to process the request for filing delay.
- b) Should the Company not file within the 90-day window nor request a filing delay (including required fee), or if the Company requests a filing delay but does not file the report prior to the new filing deadline, VEDP will withhold any grant payment and/or issue a clawback request on the full amount of the grant.

## D. Initial Company Notifications

1. A company receiving a VIP grant will file what is referred to as an Initial Company Notification or a Company Notification in the case of a VEDIG or MEE grant, indicating the completion of the capital investment and, if applicable, the creation and maintenance of new jobs at the required average wage, at the facility. The submission will include:
  - a) The amount of total capital investment and a summary breakdown of capital investment into categories such as land, purchase of existing

building, new construction, renovation or building up-fit, machinery and tools, furniture, fixtures and equipment, and other major categories of expenditures.

- b) A summary of the number of new jobs created and maintained at the facility, net of any baseline jobs, and the average annual wage of such new jobs.
- c) Management's confidence level as to the achievement of its performance targets (to be classified as high, moderate, or low).
- d) Copies of the company's four most recent Employer's Quarterly Tax Reports (Form FC-20) filed with the VEC.

**E. Subsequent Company Notifications**

- 1. A company receiving a VIP grant must submit an additional report referred to as a Subsequent Company Notification to the Incentives Division in order to ensure qualification for such grant. One year after the Initial Company Notification has been filed, the company must provide:
  - a) A written certification to VEDP indicating whether there has been a net reduction in employment in the year since the completion of the capital investment and the creation of new jobs as required under its performance agreement.
  - b) Copies of the company's four most recent Employer's Quarterly Tax Reports (Form FC-20) filed with the VEC.

**F. Annual Payment Period Certifications**

- 1. A company receiving a VIP, VEDIG, or MEE grant is required to make an additional certification to VEDP for each year throughout the payment period. Each year prior to the scheduling of the disbursement of the grant installment payment, the company must provide:
  - a) A written certification to VEDP that the capital investment has substantially remained in place during the payment period, the new jobs have been maintained during the payment period, and the facility continues to operate during the payment period at substantially the same level as existed at the time of the completion of the capital investment and creation of the new jobs as required under its performance agreement.
  - b) Copies of the company's four most recent Employer's Quarterly Tax Report (Form FC-20) filed with the VEC.

**G. Verification of Company Reported Capital Investment Data**

- 1. Commissioner of the Revenue Records
  - a) The Incentives Division will verify the capital investment data by requesting the company's real estate tax, business personal property tax, and machinery and tools tax records from the local Commissioner



of the Revenue, or equivalent official, in the applicable locality where the company's facility is located.

- (1) In accordance with COV § 58.1-3122.3, VEDP is entitled to receive such tax information as may be required to facilitate the administration and enforcement of a performance agreement with a company that has received an incentive award.
  - (2) A performance agreement will contain language in which the company authorizes VEDP to access this tax information and agrees to provide such other consents as may be required.
  - (3) In order to verify the capital investment claimed by the company that received an incentive award, VEDP will ask for the change in the assessed value of the project facility from the beginning to the end of the performance period and/or confirmation that the tax records reflect the capital investment reported by the company.
  - (4) Promptly upon request made by the Incentives Division, the local Commissioner of the Revenue or equivalent official will release to the Incentives Division a company's real estate tax, business personal property tax, and machinery and tools tax information.
  - (5) If the Commissioner of the Revenue or equivalent official should require documentation verifying the Incentives Division's need to access the tax information, the Incentives Division will provide a copy of the performance agreement or such documentation as such office may reasonably require.
  - (6) Any tax information provided to VEDP shall be confidential and not divulged by VEDP.
  - (7) Such tax information will be used by VEDP solely for the purpose of verifying a capital investment.
- b) VEDP recognizes that the data provided by the Commissioners of the Revenue will not match exactly the data provided by the company.
- (1) The records of the Commissioners of the Revenue represent assessed real estate, business personal property, and machinery and tools tax value, rather than actual capital expenditures.
  - (2) Tax reporting periods may not align with performance reporting periods.
  - (3) Despite these limitations, records of the Commissioners of the Revenue are the most useful data source available for independent verification purposes and should represent confirmation that some or all the expected capital investment was indeed made and is in place.

2. Utilizing Company and Local Commissioner of the Revenue Data in Determining Performance

- a) Based on the comparison results of the company's final report against the data provided by the local Commissioner of the Revenue, VEDP's Incentives Staff will calculate how closely the data reported to VEDP matches the data reflected by the local Commissioner of the Revenue. In the event the data provided by the local Commissioner of the Revenue is 75% or more of the company's reported data as reflected in its final report, then VEDP will consider the final report data to be effectively verified.

3. Invoices

- a) If the records of the Commissioners of the Revenue reflect achievement of less than 75% of the capital investment target, the Incentives Division will work with the company to determine the source of such discrepancy.
- b) The company may be required to submit copies of invoices related to the capital investment paid by or on behalf of the company, accompanied by a summary of the invoices and a certification by the company that such copies are true, accurate, and complete.
- c) The Incentives Division will sample the invoices submitted by the company and review the dates and amounts of such invoices to determine whether they comport with the company's reported capital investment totals.

4. Right to Require Audit

- a) In every performance agreement, VEDP reserves the right to require the company to submit to audits as may be required to properly verify the capital investment.
- b) If the local Commissioner of the Revenue's records and the invoices do not appear to reflect the reported capital investment total, then VEDP may require the company to engage a mutually agreed-upon certified public accounting firm, at the company's expense, to audit the company's records with respect to the capital investment.

**H. Verification of Company Reported Employment and Wage Level Data**

1. Virginia Employment Commission Records

- a) Using the company's most current Employer's Quarterly Tax Report (Form FC-20) filed with the VEC during the performance period, the Incentives Division will verify the employee count. The Incentives Division will also verify the average annual wage using the company's four most recent Employer's Quarterly Tax Reports (Form FC-20) filed with the VEC.



- (1) In accordance with COV § 60.2-114, VEDP is entitled to receive the Company's employment level and wage information from the VEC as it may require to facilitate the administration and enforcement by VEDP of a performance agreement with a company that has received an incentive award.
  - (2) Any VEC information provided to VEDP shall be confidential and only disclosed to employees and Directors of VEDP who are public officials, for the performance of their official duties.
  - (3) No public official or employee can re-disclose any such confidential information to non-legislative citizen members of the VEDP Board or the public.
  - (4) Such VEC information will be used by VEDP solely for the purpose of verifying an employment and wage claim.
- b) Form FC-20 provides the total number of employees who worked during or received pay for any part of the payroll period, plus total wages paid in the quarter, and certifies that the information is true and correct. It should be recognized that the Form FC-20 does not distinguish between full-time and part-time employees, nor does it adequately account for turnover by position.
  - c) If more detailed data is necessary, the company may be asked to provide its most recent Employer's Quarterly Payroll Report (FC-21) filed with the VEC, which provides each individual employee position and associated wages paid for the payroll period. All personally identifying employee information on such form, including Social Security number and first, middle and last name, must be redacted. The company will be asked to highlight new jobs, net of any baseline jobs, and strike part-time positions.
  - d) Each company is requested to report to the VEC with respect to its employees at a facility-level, rather than at the company-level. This will ensure ease of access to information for a facility in a specific locality.

## 2. Utilizing Company and VEC Data in Determining Performance

- a) Based on the comparison results of the company's final report against the Form FC-20 (or FC-21, where appropriate), VEDP's Incentives Staff will calculate how closely the data reported to VEDP matches the data reported to VEC. In the event the data provided by the company in the final report is lower than the data provided on Form FC-20, VEDP's Incentive Coordination Manager will consider the final progress report as the figure to be used when determining performance against target. In those instances, the amount of repayment (if any) associated with the new jobs target will be prorated according to the company data.

- b) If, however, the company's final report job figure is higher than the VEC data, VEDP will request that the company provide a list of the positions filled and the wages associated with those positions. The burden is on the company to prove that its figure is the most accurate and, if sufficiently convincing, then the company's figure will be used to evaluate performance against target and the amount of the clawback (if any); otherwise, the VEC data will be controlling.

*Example:*

*New jobs target per the performance agreement = 100 net new jobs above the baseline. Company's final report reflects 80 net new jobs above the baseline, and VEC Form FC-20 reflects 70 net new jobs above the baseline.*

*VEDP's Incentives Staff would request that the company provide detailed data on the positions filled to adequately explain the discrepancy. In some cases, this scenario would require an audit. Barring the company's ability to prove the accuracy of its figure, VEDP would use VEC's figure in determining the company's performance against target and the repayment amount (if any). In this example, VEDP would determine that the company's net new job figure was 70, not 80.*

### 3. Average Annual Wage Calculations

- a) Should the average annual wage calculation per the company's final report be lower than the average annual wage as calculated using the four most recent quarterly VEC FC-20 reports, then the Incentives Staff shall use the final report data to compare against the performance target for average annual wage.
- b) If, however, the company's final report reflects an average annual wage that is higher than the average as calculated using the VEC Form-FC20, then the wage as reflected on the VEC Form FC-20 will be used.

### 4. Right to Require Audit

- a) In every performance agreement, VEDP reserves the right to require such other documentation as may be necessary to evidence the new jobs and average annual wage targets and to require the company to submit to audits as may be required to properly verify the employment and wage levels.
- b) VEDP may also request both FC-20 and FC-21, directly from the VEC, to verify employment numbers submitted by the company.
- c) If the VEC records do not appear to reflect the reported new jobs and average annual wage totals, then VEDP may require the company to engage a mutually agreed-upon certified public accounting firm, at the

company's expense, to audit the company's records with respect to the new jobs.

**I. Reporting of New Teleworking Jobs**

1. For performance agreements that include employees that work from home or from a different location from that included in the performance agreement ("New Teleworking Jobs"), VEDP may require that the employees are Virginia residents. The company must provide the necessary documentation to prove that all Remote Workers are Virginia residents, including:

- a) Individual titles
- b) Individual salaries
- b)c) Hire date
- e)d) Zip code of the home address
- e) State of the home address

2. In reporting New Teleworking Jobs, the company may be asked to report to the VEC with respect to its employees at a facility-level, rather than at the company-level, and to report all New Teleworking Jobs associated with the project to a single facility. This will ensure ease of access to information for the specific project at hand.

**VI. Performance Extensions**

**A. Written Request**

1. In the case of a COF Performance Agreement, each performance agreement that may allow for an extension contains specific language permitting a request for an extension similar to the following:

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, at any time prior to the Performance Date, request an extension of the Performance Date by up to 15 months. Any extension of the Performance Date shall require the prior approval of the Board of Directors of VEDP. If the Performance Date is extended, the VEDP shall send written notice of the extension to the Authority and the date to which the Performance Date has been extended shall be the "Performance Date" for the purposes of this Agreement.

2. In the case of a VJIP incentive, a company may request an extension using the following process:

If VEDP deems that good faith and reasonable efforts have been made and are being made by the Company to achieve the Targets, the Company may, at any time prior to the Performance Date, request an extension of the Performance Date by up to 15 months. Any extension of the Performance Date shall require the prior approval of the Board of Directors of VEDP. If the

Performance Date is extended, the VEDP shall send written notice of the extension to the Company, and the date to which the Performance Date has been extended shall be the "Performance Date" for the purposes of this Agreement.

3. The request shall be made in advance of the performance period expiration date.
4. The locality's and company's request must address:
  - a) The progress of the company in reaching its performance metrics as agreed to in the performance agreement;
  - b) The reasons for the company not meeting its targets;
  - c) An explanation as to how the extension will enable the company sufficient time to reach its targets; and
  - d) How the targets will be achieved.
5. Additional extensions of up to 15 months each may be requested. For COF, if such request is made, the locality must, in addition to addressing the above issues, secure from the company a payment equal to 5% of the Commonwealth's part of the grant.
6. If, however, the request for additional extensions is due to an event of force majeure, payment of the 5% fee will be waived. In addition, payment of the 5% fee may be waived in other circumstances with the approval of the Board or the MEI Project Approval Commission.

**B. Considerations**

1. Extension requests received prior to the performance period expiration date will generally be considered for events such as force majeure, unforeseen delays in business operations that are beyond the direct control of the business, unexpected major changes in the market or industry, and other such major events that have a material adverse change on the company. Extension requests received after the performance period expiration date may be considered under extenuating circumstances.
2. The Incentives Division may determine that financial projections and evidence of financing for the project are needed from the company to make a determination as to whether the project remains financially viable. If so, the locality will obtain those from the company and any interim financial statements or other documentation to support the projections.

**C. VEDP Project Review and Credit Committee (PRACC) Approval**

1. The Incentives Division will present the request to PRACC for approval.
2. The Incentives Division will present all data and justifications provided by the locality and the company in support of the company's and locality's request.

3. The Incentives Division may also request that VEDP's Research Division calculate a revised Return on Investment (ROI) in order to evaluate how the delayed completion of performance targets compares to the original ROI.
4. PRACC will consider the request at its weekly meeting and will make a determination on whether to recommend approval of the extension to VEDP's Board.
5. If the recommendation is not approved, the Incentives Division and or the PM will give the locality and/or the company the reasons for the decision and sufficient guidance as to what would be necessary for a PRACC approval.
6. The Incentives Division will record the reasons for the approval or the disapproval in Salesforce.

**D. Board and MEI Approval**

1. If the extension is recommended for approval by PRACC, the request will be taken to the Board for a decision. All data and justifications provided in support of the recommendation of the company's and locality's request will be provided to the Board.
2. For COF, in the event of an additional request for an extension, the request must be approved by the MEI Project Approval Commission (MEI) as well.
3. The Incentives Division and/or PM will promptly notify the locality and/or company of the approval or the disapproval decision in writing.

**VII. Clawbacks**

**A. If Statutory Minimum Eligibility Requirements Are Not Met**

1. Failure to Achieve Full Compliance with Statutory Minimum Eligibility Requirements: Failure by a company to meet the statutory minimums detailed in the "Statutory Eligibility" section will constitute a breach of the performance agreement, and the grant is subject to a 100% repayment or reduction.

**B. If Statutory Minimum Eligibility Requirements Are Met**

1. If a company meets its new jobs and capital investment targets by the Performance Date, there will be no repayment, assuming that the statutory minimum requirements have been achieved. If the minimum statutory thresholds are met, but the jobs and/or investment targets are not fully met, then there will be a repayment or reduction in proportion to the underperformance.

**C. Determination of Inability to Comply**

1. If at any time the community or VEDP concludes that the company will be unable or unwilling to meet its new jobs and capital investment targets by the performance date, the entire COF grant will be subject to repayment. 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.

**D. Demand for Payment**

1. In the event that the terms of the performance agreement have not been met by the applicable performance period date, VEDP will verify employment, wage, and investment data provided by the company. Upon verification, demand for repayment, if appropriate, will be made by VEDP within thirty (30) days of the date of verification. In most cases, VEDP will first go through the locality to request that the locality attempt to collect all COF funds previously disbursed to the company.
2. If appropriate, VEDP may agree to accept repayment in installments. The Board may direct the Office of the Attorney General to assist with the enforcement of a repayment.

**E. Custom Grants**

1. Collection procedures, where necessary, will vary based on the specific performance agreement and legislation associated with each custom grant on a case-by-case basis.

**F. VIP, MEE, VEDIG**

1. Performance agreements for these incentive programs will typically require that the company achieve employment and capital expenditure amounts above the statutory minimum and 50% of promised metrics as a basis for grant installment payments. Below this threshold, no money will be paid. Above this threshold, a prorated amount will be paid for any metric below those outlined in the performance agreement.

**VIII. Commonwealth's Development Opportunity Fund (COF)**

**A. Guiding Principles**

1. General: COF 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. Although the COF may be used to make loans, the practice has been to use the COF for grants.
2. Allocations: In accordance with COV § 2.2-115 C "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 Fund in every such five-year period shall 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. However, if such one-third requirement will not be met because economic development prospects in such counties and cities are unable to fulfill the



applicable minimum private investment and new jobs requirements set forth in this section, then any funds remaining in the Fund 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." VEDP will compile a report at each fiscal year end to include the most current five-year period to ensure compliance is maintained.

COV § 2.2-115 F.1.: "The guidelines and criteria shall include provisions for geographic diversity and a cap on the amount of funds to be provided to any individual project. At the discretion of the Governor, this cap may be waived for qualifying projects of regional or statewide interest. In developing the guidelines and criteria, the VEDP shall use the measure for Fiscal Stress published by the Commission on Local Government of the Department of Housing and Community Development for the locality in which the project is located or will be located as one method of determining the amount of assistance a locality shall receive from the Fund." The maximum amount of a COF grant through June 30, 2019 is \$1,500,000. In very unique circumstances, this limit may be exceeded for projects that are determined to be of statewide or regional interest.

3. Multiple Grants: Localities may receive more than one COF 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.
4. Relocations: COV § 2.2-115 D "...the Fund shall 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, unless the procedures set forth in § 30-310 are followed. The Secretary of Commerce and Trade shall enforce this policy and for any exception thereto shall, pursuant to § 30-310, submit such projects to the MEI Project Approval Commission established pursuant to § 30-309."
5. 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 COF 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.
6. Hiring of Virginia Residents: In the performance agreement for the COF grant, the company will be strongly encouraged to ensure that at least 30% of the new jobs are offered to "Residents" of the Commonwealth, as defined in COV § 58.1-302.
7. Use of COF Proceeds: In accordance with COV § 2.2-115 D of the COF Act, COF 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 COF 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.”

8. Political Contributions: For a company receiving a COF grant based upon an application made on or after July 1, 2016, there is a notification requirement for certain political contributions. For any political contributions, gifts or other items with a value greater than \$100 made by the company to the Governor or his/her political action committee or his/her campaign committee from the date of the application for the COF grant until one year after the COF grant is awarded, the Governor, or his/her political action committee or campaign committee must notify the Virginia Conflict of Interest and Ethics Advisory Council that such a contribution, gift or other item of value over \$100 has been received.

## **B. Statutory Eligibility**

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

General Eligibility Thresholds: COV § 2.2-115 E.1.a. and E.1.b.

- a) 50 new jobs/\$5 million capital investment; or
  - b) 25 new jobs/\$100 million capital investment
  - c) 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
  - d) 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
2. Eligibility Thresholds in Localities with Above-Average Unemployment or Above-Average Poverty (so-called distressed localities): COV § 2.2-115 E.2 and E.4
    - a) 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, the thresholds are:

- (1) 25 new jobs / \$2.5 million capital investment
  - (2) Jobs may pay below the prevailing average annual wage in the locality, but must pay at least 85% of such prevailing average annual wage
  - (3) If the average annual wage of the new jobs is less than 85% of the prevailing average annual wage, but the customary employee benefits are offered, 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
3. Eligibility Thresholds in Localities with Above-Average Unemployment and Above-Average Poverty (so-called double distressed): COV § 2.2-115 E.3. and E.4
- a) 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, the thresholds are:
    - (1) 15 new jobs / \$1.5 million capital investment
    - (2) Jobs may pay below the prevailing average annual wage in the locality, but must pay at least 85% of such prevailing average annual wage
    - (3) If the average annual wage of the new jobs is less than 85% of the prevailing average annual wage, but the customary employee benefits are offered, 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
4. In accordance with COV § 2.2-115 A "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 economic development project is located. The prevailing average wage shall be determined without regard to any fringe benefits.
5. Data from the Bureau of Labor Statistics' Local Area Unemployment Statistics (LAUS) is the primary source of annual unemployment rates (<https://data.virginialmi.com>).

5.6. Capital Investment Waiver for Remote Work: In circumstances where a company will create at least the minimum number of new jobs required by Code, and at least 75% of those jobs will be new teleworking jobs for which the majority of the work is performed remotely, the Governor may reduce or waive the COF capital investment requirement. For new teleworking jobs to be considered, the jobs must be held by Virginia residents and pay at least 120% of the Virginia Minimum Wage as defined by the Virginia Minimum Wage Act (§ 40.1-28.8 et seq.)

### **C. Local Matches**

1. **Qualifying Local Matches:** Localities must at least match dollar-for-dollar with local funds the amount requested from the COF. 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.
2. **Local Match Waiver:** 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. If the minimum private capital investment is reduced or waived for a company creating jobs of which at least 75% will be new teleworking jobs in Virginia, the Governor may provide full or partial relief from the local matching requirement as well.
3. 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.
4. Grants for a project made to the locality from the Tobacco Region Opportunity Fund may be used as up to one-half of the local match for the COF grant.
5. **Date by Which Local Matches Must be Provided:** Local matches generally must be made by the performance date by which the company is obligated to complete its capital investment and job creation and maintenance. Generally, this period is three years.

### **D. Application Process**

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

2. Two Documents: Applications should consist of two documents: 1) a community 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 locality where the project will be located. The company letter should accompany the community letter.
3. Community Letter: It is expected that the letter from the community will use the following format and include the following information:
  - a) A summary statement presenting the importance of the project to the community and why support from the COF is being sought;
  - b) Amount requested;
  - c) The expected use of the funds;
  - d) Description of the project, including:
    - (1) Company name and information (website, stock exchange ticker)
    - (2) Type of operation (i.e. manufacturing, distribution, etc.)
    - (3) Headquarters location
    - (4) Virginia operations (if any exist)
    - (5) What the company is planning to do in Virginia
    - (6) Employment impact on current operations in Virginia
  - e) Location of the project, including the community, and its population, current unemployment and poverty rates and prevailing average annual wage;
  - f) Details of capital investment, including, but not limited to, the value of property to be leased under a capital lease, or other investments of capital that add to the local tax revenues;
  - g) Jobs anticipated to be created and maintained by the company's performance date (generally three years after the locality receives a grant payment), information on "jobs saved," average salary level and total yearly payroll of jobs created;
  - h) Local and state financial participation, specifying new moneys to be allocated to the project and how those funds will be used;
  - i) 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;
  - j) If the project for which a COF 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 COF application that this notification has taken place, and must also provide the reasons for the move and the out-of-state competition;
  - k) If applicable, an acknowledgement that the COF grant proceeds will be disbursed in installments, as certain milestones are achieved; and

- l) 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.
4. Company Letter: It is expected that the letter from the company will use the following format and include the following information:
- a) An indication from the company that without support from the COF, 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;
  - b) An indication from the company of the number of new jobs expected to be created (and saved, if any) and maintained, payroll and salary levels and a statement confirming the company offers its employees a standard package of fringe benefits;
  - c) An indication of the capital investment expected to be made by or on behalf of the company at the facility in the community by the performance date, which is generally three years, including an indication of the extent to which the company expects to make the capital investment through the use of operating or capital leases;
  - d) 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 duration of the performance period;
  - e) If applicable, an acknowledgement that the COF grant proceeds will be disbursed in installments, as certain milestones are achieved;
  - f) 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.
  - g) A copy of the company's W-9.

#### **E. Performance Agreement**

1. Performance Agreement Between VEDP, Community and Company: Since a COF grant is awarded to a community, the community is required to enter into a performance agreement with the company before it may receive the COF 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. It is expected that the performance agreement will also have the community's industrial or economic development authority, and VEDP as parties. (§2.2-115 F.2.a.).
2. Targets and Statutory Criteria: The performance agreement will set forth the (i) capital investment target; (ii) new jobs target; (iii) wage target; (iv) fair market value of all funds the Commonwealth is expected to provide; (v) fair

market value of the local match; (vi) prevailing average wage in locality; (vii) performance date; (viii) reporting and target verification procedures; and (ix) any repayment obligations.

3. Disbursement of COF Grant: The performance agreement generally will call for the COF grant to be disbursed by VEDP to the locality. The performance agreement will then contain the terms and conditions under which the locality may cause the COF grant proceeds to be disbursed to the company. In some circumstances, but only with the consent of the locality, VEDP may cause the COF grant proceeds to be disbursed directly to the company, upon the terms and conditions to be set forth in the performance agreement.
4. Performance Date: The performance agreement will include an end-date by which the company will achieve the capital investment and new jobs targets ("Performance Date"). The Performance Date is generally 36 months after the date the project is announced. 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. 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 request an extension of up to 15 months. 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 (MEI) Project Approval Commission. COV § 2.2-115 F.2.b. and 2.2-2237.2.
5. Business Income Tax Information: For VEDP to demonstrate the value of the COF 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 [or, as applicable, shall provide to VEDP a copy of its Virginia income tax form filed with respect to its status as a pass-through entity]. 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-investment capital analyses for purposes of gauging the overall effectiveness of economic development incentives.*

6. Office of the Attorney General (OAG) Review: Once VEDP, the locality and the company are comfortable with the language of the performance agreement, the performance agreement must be presented to the OAG for review of proper legal form. The OAG will have up to seven (7) days to provide written comments regarding the performance agreement.

## **IX. Virginia Economic Development Incentive Grant (VEDIG)**

### **A. Guiding Principles**

1. General: To be eligible for a VEDIG grant, 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. Investments resulting from ongoing VEDP projects will be eligible for consideration for a VEDIG, 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 a VEDIG.
2. Allocations: In accordance with COV § 2.2-5102.1, A through C references that the fund is subject to the appropriation by the General Assembly of sufficient moneys to the Economic Development Incentive Grant sub-fund, any eligible company that meets the requirements of this section and is not awarded a VIP grant or MEE grant for the same project shall be eligible to apply for a VEDIG. VEDP established an application process by which eligible companies may apply for a VEDIG. An application for a VEDIG under this section shall not be approved for payment until VEDP has verified that the requirements for capital investment and new job creation have been satisfied.

Further, in accordance with COV § 2.2-5102.1, E through G any eligible company may be eligible to receive a grant from the Fund in no fewer than five installments beginning in the third year after VEDP has verified that the requirements applicable to such grant have been satisfied. All such terms shall be negotiated and set forth in a performance agreement.
3. Multiple Grants: An applicant 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. An applicant that has



an active VEDIG but separately meets the investment threshold and employment requirements for a new project may apply for an additional VEDIG. 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, or another grant program under the Act, it shall not be eligible for a VEDIG for that project.

## **B. Application Process**

1. Once the due diligence process is complete and a VEDIG has been pre-approved for a company, the company can submit an application to VEDP.
2. The applicant shall submit a detailed letter of application for a VEDIG directly to the President and Chief Executive Officer of VEDP providing the following information:
  - a) The amount and timing of the expected capital investment;
  - b) The number of new jobs expected to be created and maintained because of the capital investment, and a timeline for their creation;
  - c) 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;
  - d) (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;
  - e) 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;
  - f) 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
  - g) 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 VEDIG grant is made. If accepted, these revenues would be included in the calculation of the net present value of benefits to Virginia.

**C. Amount of VEDIG Grant Award**

1. For VEDIG grants awarded on or after July 1, 2017, in the aggregate, no more than \$4 million in total VEDIG grants may be awarded. The VEDIG will be paid in five annual installments at the time described below under “Performance Agreement – VEDIG Payout Schedule”.

**D. Performance Agreement**

1. General Provisions: Once negotiated and agreed upon, the amount and terms of the VEDIG shall be reflected in the performance agreement expected to be executed by the eligible company no later than 120 days after the public announcement of the project by the Governor.
2. 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.
3. 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 VEDIG grantee to provide annual notice to VEDP of the VEDIG 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 (MEI) Project Approval Commission. COV § 2.2-2237.2. See also VEDP’s Policy and Procedural Guidelines on Extensions.
4. Company Notification: The performance agreement will require the VEDIG grantee to notify VEDP in writing within ninety (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 VEDIG grant program.
5. VEDIG Payout Schedule: Payouts of VEDIG grants will begin no sooner than the fiscal year in which the verified Company Notification has been on file at VEDP for 36 months and pursuant to the provisions of the Act, subject to appropriations. VEDIG grants will be paid in no fewer than five installments.



Payouts of VEDIG grants are conditioned upon the capital investment remaining in place and the new jobs being maintained 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.

**E. Conditions to Payouts of VEDIG Grants; Reductions**

1. Annual Appropriation: VEDIG payments are subject to annual appropriation by the Virginia General Assembly. If there are insufficient moneys in the VEDIG sub-fund to pay all VEDIG grant payments due to intended recipients, the provisions of COV § 2.2-5104 of the Act shall govern the distribution of the available funds.
2. No Payouts: No VEDIG payment in any amount shall be forthcoming if the VEDIG grantee 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.
3. Reduced Payouts; Allocations: To the extent that the VEDIG grantee achieves at least the statutory minimum requirements for capital investment and new jobs by the end-date stated in the performance agreement, but does not completely attain its goals, the total VEDIG to be paid shall be diminished proportionately, but only if 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 the completion of the capital investment. For this purpose, in the performance agreement, it is expected that the VEDIG grant will be allocated between the capital investment goal and the new job creation goal. Generally, the VEDIG grant will be allocated one-quarter to the capital investment goal and three-quarters to the new job creation goal. For example, if the VEDIG grantee achieves 60% of its capital investment goal and 75% of its new job creation goal, the VEDIG 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 and maintained, to be paid out on the schedule set forth above.

## X. Virginia Investment Performance Grant Program (VIP)

### A. Guiding Principles

1. General: To be eligible for a VIP grant, a minimum of \$25 million in capital investment is required by an eligible existing Virginia manufacturer or research and development service, as these terms are defined below.
2. Although no minimum new job creation is required for a VIP grant, the investment must not result in any net reduction in employment from the date of the completion of the capital investment through one year from the date of completion. New job creation associated with the capital investment may, however, result in an increased negotiated VIP grant benefit under this program. Even if there is no requirement to create new jobs, there may be a requirement to maintain a certain level of existing full-time jobs.
3. Investments resulting from ongoing VEDP projects will be eligible for consideration for a VIP 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 a VIP grant.
4. Allocations: COV § 2.2-5101, A through C references that the fund is subject to the appropriation by the General Assembly of sufficient moneys to the Investment Performance Grant sub-fund, any eligible manufacturer or research and development service that is not eligible for a MEE grant under COV § 2.2-5102 shall be eligible for an investment performance grant as provided in this section. VEDP established an application process by which eligible manufacturers and research and development services may apply for a grant. An application for a VIP grant shall not be approved for payment until VEDP has verified that the capital investment has been completed. The amount of the VIP grant that an eligible manufacturer or research and development service shall be eligible to receive shall be determined by the Secretary of Commerce & Trade (SCT), based on the recommendation of VEDP, and contingent upon approval by the Governor. The determination of the appropriate amount of a VIP grant shall be based on the application of guidelines that establish criteria for correlating the amount of a VIP grant to the relative value to the Commonwealth of the eligible investment.
5. Multiple Grants: 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 grant but separately meets the investment threshold and employment requirements for a new project may apply for an additional VIP 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 a VIP grant for that project.

## **B. Application Process**

1. Once the due diligence process is complete and a VIP grant has been pre-approved for a company, the company can submit an application to VEDP.
2. The applicant shall submit a detailed letter of application for a VIP grant directly to the President and Chief Executive Officer of VEDP providing the following information:
  - a) The amount and timing of the expected capital investment;
  - b) The extent to which, if applicable, the expected 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;
  - c) The number of new jobs expected to be created and maintained because of the capital investment, if any, and a timeline for their creation;
  - d) (A) The average annual wages expected to be paid for the new jobs, if any, (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) a comparison of the expected average annual wages with the average manufacturing wage for the locality or region;
  - e) 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;
  - f) 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
  - g) 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 VIP grant is made. If accepted, these revenues would be included in the calculation of the net present value of benefits to Virginia.

### **C. Amount of VIP Grant Award**

1. 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 total VIP grants may be paid-out in any one year. The total aggregate amount of outstanding VIP grants approved after July 1, 2019 cannot exceed \$20 million.
2. 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 extraordinary characteristics set forth below:
  - a) Desirable workforce characteristics (e.g. significant job numbers, especially high wage levels, or sophisticated skill sets)
  - b) Strategic industry sector
  - c) Significant impact on or transformation of the local/regional economy
  - d) Significant R&D component, especially if in concert with Virginia's public higher educational institutions
  - e) Considerable capital investment
  - f) Likelihood of attracting a significant supply chain or other significant follow-on opportunities
3. The maximum \$5 million grant is intended to be reserved for special projects deemed meritorious of such a significant investment by the Commonwealth.
4. The VIP grant will be paid in five annual installments at the times described below under "Performance Agreement – VIP Grant Payout Schedule."

### **D. Performance Agreement**

1. **General Provisions:** Once negotiated and agreed upon, the amount, terms and conditions of a VIP grant shall be reflected in a performance agreement expected to be executed by the applicant no later than 120 days after the public announcement of the project by the Governor.
2. **Targets and Statutory Criteria:** The performance agreement will set forth the (i) capital investment target; (ii) new jobs target, if applicable; (iii) wage target, if applicable; (iv) prevailing average manufacturing wage in the locality; (v) expected performance date; (vi) reporting and target verification procedures; and (vii) any grant reduction circumstances.
3. **Performance Date:** The performance agreement shall contain an end-date by which the capital investment and, if applicable, new job creation, is expected to have been completed (a "Projected Completion Date"). It is VEDP's strong preference that this Projected Completion 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.
4. Any extension of the Projected Completion Date shall require the prior approval of VEDP's Project Review and Credit Committee ("PRACC") and the Board of Directors of VEDP. If the Projected Completion Date is extended,

VEDP will notify the company of any such extension. Generally, the extension should be granted only in circumstances under which it is reasonable to believe that the company is likely to make significant progress toward meeting its performance targets by the extension date. In the unlikely event that a second extension request will be considered, that extension will require the approval of PRACC, the Board of Directors of VEDP and the Major Employment and Investment (MEI) Project Approval Commission.

5. Initial Company Notification: The performance agreement will require the VIP grantee to notify VEDP in writing within ninety (90) days of the completion of the capital investment and any new job creation or existing job maintenance, certifying the amount of capital investment and, if applicable, the number of net new jobs created and maintained at the facility, the average annual wage rates paid to such employees and a summary of the fringe benefits package offered by the VIP grantee to a typical employee (an "Initial Company Notification").
6. Subsequent Company Notification: One year after the completion of the capital investment and, if applicable, any new job creation, the performance agreement will require the VIP grantee to certify to VEDP 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.
7. The performance agreement will likely require other notices to VEDP as may be necessary to administer the VIP grant program.
8. VIP Grant Payout Schedule: Beginning with the fiscal year in which the verified Initial Company Notification has been on file at VEDP for 36 months, and pursuant to the provisions of the Act, the Commonwealth will make five equal annual grant installment payments to the VIP grantee. In fiscally stressed localities, installment payments can begin in the fiscal year in which the verified Initial Company Notification has been on file at VEDP for 24 months.

#### **E. Conditions to Payouts of VIP Grants; Reductions**

1. Annual Appropriation: VIP grant installment payments are subject to annual appropriation by the Virginia General Assembly. If there are insufficient moneys in the Investment Performance Grant subfund to pay all VIP grant payments due to intended recipients, the provisions of COV § 2.2-5104 of the Act shall govern the distribution of the available funds.

2. **Conditions to Payouts:** VIP grant installment payments are subject to the conditions that (i) the capital investment remains in place during the payment period, (ii) the Subsequent Company Notification has not revealed a net reduction in employment, (iii) if applicable, the new jobs have been maintained during the payment period, and (iv) the 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. If the capital investment does not remain in place, if the new jobs have not been maintained, or if the facility is no longer so operated, the performance agreement will require the VIP grantee to provide immediate notice to VEDP. In the event that conditions (i), (iii) or (iv) are not met, the installment payments on the VIP grant will cease, but the VIP grantee will not be required to return any VIP grant installments previously paid.
3. **No Payouts:** 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 goal and any jobs goal stated in the performance agreement, no VIP grant payment will be made.
4. **Reduced Payouts; Allocations:** If the VIP grantee achieves the statutory minimum capital investment goal and maintains steady employment and achieves between 50% and 100% of the targeted capital investment and new jobs, the total VIP grant to be paid shall be diminished proportionately.
5. In the event that the total VIP grant is reduced, the VIP grant will still be paid out as provided in the Act, so long as the capital investment remains in place during the payment period, the new jobs, if applicable, have been 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 the completion of the capital investment. 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 VIP grantee achieves 60% of its capital investment goal and 75% of its job retention and creation goal, the VIP 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.



## **F. Local Matches**

1. **Qualifying Local Matches:** Localities are expected to provide local matches at least equal to 50% of the VIP grant. Previously invested local funds, grants of moneys from other government sources, 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.

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.

2. **Date by Which Local Matches Must be Provided:** Local matches generally must be made by the performance date by which the company is obligated to complete its capital investment and job creation and maintenance. Generally, this period is three to five years.

## **XI. Major Eligible Employer Grant Program (MEE)**

### **A. Guiding Principles**

1. **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.
2. 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.
3. **Allocations:** In accordance with COV § 2.2-5102, B through D references that the fund is subject to the appropriation by the General Assembly of sufficient moneys to the MEE 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 (SCT) 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 for payment 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 performance



agreement 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 performance agreement. The Secretary shall consult with the House Committee on Appropriations and the Senate Committee on Finance prior to entering into any performance agreement and seek the approval of the Major Employment and Investment (MEI) Project Approval Commission. The House Committee on Appropriations and the Senate Committee on Finance shall have the opportunity to review any performance agreement prior to its execution by the Commonwealth.

4. 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.

5. 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.

## **B. Statutory Eligibility**

1. General Eligibility Thresholds: COV § 2.2-5102 A.
  - a) 1,000 new jobs/\$100 million capital investment;
  - b) "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 COV § 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."

### **C. Application Process**

1. 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.
2. 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:
  - a) The amount and timing of the expected capital investment;
  - b) The number of new jobs expected to be created and maintained because of the capital investment, and a timeline for their creation;
  - c) 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;
  - d) (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;
  - e) 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;
  - f) 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
  - g) 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.

### **D. Amount of MEE Grant Award**

1. No one MEE grant may exceed twenty-five million dollars (\$25,000,000).
2. The MEE grant will be paid in five-to-seven annual installments at the times described below under "Performance Agreement – MEE Grant Payout Schedule."

## **E. Performance Agreement**

1. **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.
2. 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.
3. **Targets and Statutory Criteria:** The performance agreement will set forth the (i) capital investment target; (ii) new jobs target, if applicable; (iii) wage target, if applicable; (iv) prevailing average manufacturing wage in the locality; (v) expected performance date; (vi) reporting and target verification procedures; and (vii) any grant reduction circumstances.
4. **Performance Date:** The performance agreement shall contain an end-date by which the capital investment and new jobs targets must be 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 (MEI) Project Approval Commission. COV § 2.2-2237.2. See also VEDP's Policies and Procedural Guidelines on Extensions.
5. **Company Notification:** The performance agreement will require the MEE grantee to notify VEDP in writing within ninety (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.

6. 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.

**F. Conditions to Payouts of MEE Grants; Reductions**

1. Annual Appropriation: MEE grant payments are subject to annual appropriation by the Virginia General Assembly. If there are insufficient moneys in the Fund's MEE Grant sub-fund to pay all MEE grant payments due to intended recipients, the provisions of COV § 2.2-5104 of the Act shall govern the distribution of the available funds.
2. 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.
3. 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.
4. 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.
5. 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.

## **XII. Virginia Jobs Investment Program (VJIP)**

### **A. Guiding Principles**

1. **General:** VJIP grants are made at the discretion of the Governor. VJIP is a performance-based incentive that provides a reimbursement to businesses for each net new full-time job created or full-time employee retrained. VJIP consists of four programs: the Virginia New Jobs Program, the Workforce Retraining Program, the Small Business New Jobs Program, and the Small Business Retraining Program. In addition to direct funding to offset a company's recruitment and training costs, the Virginia Economic Development Partnership (VEDP) offers human resource consultative support at no charge to the company. Consulting services include: assistance guiding the employee recruitment and selection process, assistance evaluating training needs and coordinating resources, and coordination solutions offered by Virginia's workforce and higher education partners.
2. **Project Types:** The Virginia New Jobs Program of VJIP is the Commonwealth's premier tool for offsetting recruitment and training costs for new or expanding businesses that choose to operate in Virginia, rather than another state or country. Accordingly, there must be active, realistic competition between Virginia and another state or country for attracting the project. The Retraining, Small Business New Job, and Small Business Retraining VJIP programs do not have a competitiveness requirement.
3. **Incentive Philosophy:** These factors, among others, will be considered by VEDP when determining whether to recommend VJIP grant funding:
  - a) proportion of company revenues directly or indirectly derived from outside Virginia, including international exports (i.e., determination of traded sector company or function)
  - b) wages that meet the minimum wage requirements per COV § 2.2-2240.3 D
  - c) alignment with strategic sectors and state/local strategies
  - d) establishment of a competitive advantage
  - e) advancement of the quality of life
  - f) estimated business cost associated with workforce development activities
  - g) analysis of company's anticipated training and recruitment activities
4. **Grant Amounts:** Grant amounts for each net new full-time job created or full-time employee retrained is based on a customized budget determined by an assessment of the company's recruiting and training activities as well as the

project's expected benefit to the Commonwealth. The reimbursement rate is limited to 50% of the company's average cost for recruitment and training or retraining and a one-year return on investment for the Commonwealth unless approved by the Vice President of Talent Solutions.

5. Allocations: In accordance with COV § 2.2-2240.3 E "There is hereby established in the state treasury a special non-reverting fund to be known as the Virginia Jobs Investment Program Fund (the Fund). The Fund shall consist of any moneys appropriated thereto by the General Assembly from time to time and designated for the Fund. Any moneys deposited to or remaining in the Fund during or at the end of each fiscal year or biennium, including interest thereon, shall not revert to the general fund but shall remain in the Fund and be available for allocation under this article in ensuing fiscal years. Moneys in the Fund shall be used solely for grants to eligible businesses as permitted by the Program."
6. Allocations Required: COV § 2.2-2240.3 E "The total amount of funds provided to eligible businesses under the Program for any year, shall not exceed the amount appropriated by the General Assembly to the Fund for such year, plus any carryover from previous years. Expenditures and disbursements from the Fund shall be made by the State Treasurer on warrants issued by the Comptroller upon written request signed by the President and Chief Executive Officer or his/her designee. The Fund shall be administered by the President and Chief Executive Officer" of the VEDP.
7. Project Cycle: Project cycles run for 36 months, beginning with the date of the first hire or, in the case of retraining projects, the application date. After 36 months, the project must be closed, unless an extension is granted. The TS VP may recommend a longer performance period for a project at the time VEDP is making a commitment to a prospect, and this will be noted in the approval memo to the SCT.
8. Extensions: The process for extending the performance period in the VJIP program will be performed in a similar manner as described in Section VI, Performance Extensions, with the exceptions that a.) the Company will initiate the extension request in lieu of the Locality, b.) all extension requests require Board approval, and c.) no extension will require a fee.
9. Multiple Grants: If the company is continuing to grow and meets the eligibility criteria (including competitive criteria for large businesses), it may apply again for an award under a New Jobs Program or Small Business New Jobs Program. Companies accessing the Retraining Program must wait at least 36 months before applying to the program again. The 36-month waiting period begins on the date of the last payment to the company.
10. Downsizing and Relocation: If a company has accessed VJIP in the past and has downsized its workforce, VJIP can consider a new project to support the anticipated net new, full-time job creation. The company will be asked to



explain the reduction and provide assurances regarding the expected new jobs and capital investment. In order to use the current employment as a baseline headcount, the Vice President of Talent Solutions must approve the request. The new project must meet capital investment and jobs thresholds. If a company is relocating from one locality to another, VJIP will only support the net new, full-time job creation in the Commonwealth, and the project must meet all of the qualifying criteria for the program.

11. Clawbacks: The VJIP is a pay-for-performance grant that only reimburses a company for recruitment and training costs after the company certifies that the training and/or new hire requirements have been met. The VJIP applications include the following paragraph:

*“I understand any funding for this project is contingent upon appropriations to the Virginia Jobs Investment Program by the Commonwealth of Virginia. I also understand that from time to time, I may be required to produce additional documents or other information related to the project that is deemed necessary by the Virginia Economic Development Partnership to verify the information I provided to obtain VJIP funding. I understand that we will be required to pay back the VJIP grant if our facility closes within a year of the first reimbursement or prior to the Commonwealth of Virginia recovering its investment in this project or if the information on this application or on request for reimbursement is found to be false or inaccurate.”*

Grant funding is only awarded to the company after an employee has either completed the relevant training or been on the job a minimum of ninety (90) days. Should a clawback prove necessary due to the conditions described in the application language above, VJIP will follow a process similar to the one described in Section VII, Clawbacks.

#### **B. Use of VJIP Proceeds & Program Components**

1. In accordance with COV § 2.2-2240.3 B, “there is hereby created the Virginia Jobs Investment Program to support private sector job creation by encouraging the expansion of existing Virginia businesses and the start-up of new business operations in Virginia. The Program shall support existing businesses and economic development prospects by offering funding to offset recruiting and training and retraining costs incurred by companies that are either creating new jobs or implementing technological upgrades and by providing assistance with workforce-related challenges and organizational development workshops.”

#### **C. Statutory Eligibility**

1. General Eligibility Thresholds: COV § 2.2-2240.3 D. To be eligible for assistance under any of the component programs of VJIP, a company shall:
  - a) Create or sustain employment for the Commonwealth in a traded sector industry or function;



- b) Include businesses or functions that directly or indirectly derive more than 50% of their revenues from out-of-state sources, as determined by the Authority;
- c) Pay a minimum entry-level wage rate per hour of at least 120% of the Federal Minimum Wage or the Virginia Minimum Wage as defined in the Virginia Minimum Wage Act § 40.1-28.8, whichever is higher. In areas that have an unemployment rate greater than 150% of the statewide average unemployment rate, the wage rate minimum may be waived by the Authority; and
- d) Meet employment thresholds for full-time positions with benefits.

#### **D. Virginia New Jobs Program**

1. In accordance with COV § 2.2-2240.4 A, VEDP is required to “develop as a component of the Virginia Jobs Investment Program the Virginia New Jobs Program to support the expansion of existing Virginia companies and new facility locations involving competition with other states or countries.”
2. Virginia New Jobs Program Eligibility Thresholds: COV § 2.2-2240.4 B. In addition to the requirements of subsection D of § 2.2-2240.3 regarding general eligibility, to be eligible for assistance, an expansion of an existing company or a new company location shall:
  - a) Create 25 net new full-time jobs and \$1 million capital investment; and
  - b) Include Virginia in a current competition for the location of the project with at least one other state or country.
3. The Secretary of Commerce and Trade (SCT) may waive these requirements but shall promptly provide written notice of any such waiver to the Chairmen of the Senate Finance and House Appropriations Committees, which notice shall include a justification for any waiver of these requirements.

#### **E. Workforce Retraining Program**

1. In accordance with COV § 2.2-2240.5 A, VEDP is required to “develop as a component of the Virginia Jobs Investment Program the Workforce Retraining Program to provide consulting services and funding to assist companies and businesses with retraining their existing workforces to increase productivity.”
2. Workforce Retraining Program Eligibility Thresholds: COV § 2.2-2240.5 B. In addition to the requirements of subsection D of § 2.2-2240.3 regarding general eligibility, to be eligible for assistance, a company shall demonstrate that:
  - a) It is undergoing integration of new technology into its production process, a change of product line in keeping with marketplace demands, or substantial change to its service delivery process that would require assimilation of new skills and technological capabilities by the firm's existing labor force; and

- b) For each such integration of new technology, change of product, or substantial change to its service delivery process, ten full-time employees will be retrained, and \$500,000 capital investment will be made within a 12-month period.

3. The SCT may waive these requirements but shall promptly provide written notice of any such waiver to the Chairmen of the Senate Finance and House Appropriations Committees, which notice shall include a justification for any waiver of these requirements.

**F. Small Business New Jobs and Retraining Programs**

1. In accordance with COV § 2.2-2240.6 A, VEDP is required to “develop as a component of the Virginia Jobs Investment Program the Small Business New Jobs and Retraining Programs to support the establishment or expansion of Virginia's small businesses or to improve their efficiency through retraining.”
2. Small Business New Jobs Program Eligibility Thresholds: COV § 2.2-2240.6 B. In addition to the requirements of subsection D of § 2.2-2240.3 regarding general eligibility, to be eligible for assistance, a company shall:
  - a) Create five net new full-time jobs and \$100,000 capital investment.
3. Small Business Retraining Program Eligibility Thresholds: COV § 2.2-2240.6 B. In addition to the requirements of subsection D of § 2.2-2240.3 regarding general eligibility, to be eligible for assistance for retraining, a company shall demonstrate that:
  - a) It is undergoing integration of new technology into its production process, a change of product line in keeping with marketplace demands, or substantial change to its service delivery process that would require assimilation of new skills and technological capabilities by the firm's existing labor force; and
    - (1) For each such integration of new technology, change of product, or substantial change to its service delivery process, five full-time employees will be retrained, and \$50,000 capital investment will be made within a 12-month period.
4. The SCT may waive these requirements but shall promptly provide written notice of any such waiver to the Chairmen of the Senate Finance and House Appropriations Committees, which notice shall include a justification for any waiver of these requirements.

**G. VJIP Definitions**

1. Full-Time Employee: COV § 2.2-2240.3 A. “Full-time employee” means a natural person employed for indefinite duration in a position requiring a minimum of either:

- a) 35 hours of the employee's time per week for the entire normal year, which "normal year" shall consist of at least 48 weeks; or
- b) 1,680 hours per year.

Seasonal or temporary employees shall not qualify as new full-time employees under the VJIP.”

2. **New Job:** "New job" means net new full-time employment, created on or after the application date, as a result of the capital investment, that meet the minimum wage requirements as per COV § 2.2-2240.3 D, requiring a minimum of 35 hours of the employee's time a week for the entire normal year of the firm's operations, which "normal year" shall consist of at least 48 weeks. Seasonal or temporary positions or positions created when a job function is shifted from an existing location in the Commonwealth to the location of the economic development project, positions with suppliers, and multiplier or spin-off jobs shall not qualify as new jobs.
3. **Capital Investment:** COV § 2.2-2240.3 A. "Capital investment" means an investment in real property, personal property, or both, at a manufacturing or basic nonmanufacturing facility within the Commonwealth that is or may be capitalized by the company and that establishes or increases the productivity of the manufacturing facility, results in the utilization of a more advanced technology than is in use immediately prior to such investment, or both." The capital expenditure may be made by or on behalf of the company but must be at the company's facility for which the application is being made. Capital expenditures by governmental entities shall not count toward a company's required capital investment.
4. **Incentive Payout:** Once the company reaches the minimum number of net new hires employed for ninety (90) days or retrained employees (according to the program for which they applied), the company submits a Reimbursement Request Form to the assigned PM. The PM continues to work with the company to issue reimbursements until all projected net new hires or retained employees have been achieved or until the project performance period is complete.
5. As part of the application process the PM will collect SCC verification that the company is registered to do business in Virginia and verification of Good Standing as noted on the State Corporation Commission website and a copy of the Federal Tax form W9 - Taxpayer Identification Number (TIN)

#### **H. Verification Process**

1. Companies receiving VJIP self-report full-time employee headcount and average wages of individuals listed on the Reimbursement Request Form. Talent Solutions Business Managers process reimbursements for the net increase in the company's full-time headcount (as compared to the full-time headcount at the time of the application) for New Jobs projects, or for individuals who have completed the retraining activity for Retraining projects.

New hires must have been on the company's payroll for at least ninety (90) days to be eligible for reimbursement.

- a) Employment and wage level data is verified when a company submits a reimbursement request. Reimbursement requests may be submitted on a rolling basis as newly hired employees reach eligibility. To qualify for reimbursement, a position's wages must exceed 120% of the Federal Minimum Wage or the Virginia Minimum Wage, whichever is higher, as of the hire date for the employee.
  - b) All reimbursement requests must be submitted with the corresponding quarter's FC-20 documentation from the VEC.
  - c) Incentives Staff will compare employment numbers listed on the reimbursement request to the corresponding quarter's VEC-reported data to ensure compliance.
2. Verification of jobs, wages, and capital investment in the VJIP program is performed in the manner described in Section V, Capital Investment, Employment, and Wage Level Reporting and Verification.

### **XIII. New Company Incentive Program (NCIP)**

#### **A. Guiding Principles**

1. General: Multistate and instate companies are eligible to decrease the amount of income taxed by Virginia when they start doing business in qualified localities pursuant to COV § 58.1-405.1.

These guidelines establish the process for VEDP to certify whether a company qualifies as an "eligible company."

#### **B. Benefits of Certification as an Eligible Company**

1. A company certified by VEDP as an "eligible company" may decrease the amount of income taxed by Virginia. For multistate companies, this is accomplished by allowing them to make certain modifications to the apportionment factor(s) described in COV § 58.1-408, § 58.1-417, § 58.1-418, § 58.1-419, § 58.1-420, § 58.1-422, § 58.1-422.1 or § 58.1-422.2. For in-state companies, this is accomplished differently. As a general rule, in-state companies do not utilize apportionment factors because they pay tax to Virginia on all of their Virginia taxable income. However, § 58.1-405 allows eligible in-state companies to utilize apportionment factors based on their Virginia activities in qualified localities and outside qualified localities and thereby decrease their Virginia tax liability. Additional information regarding these tax provisions are available on the Virginia Department of Taxation website, [www.tax.virginia.gov](http://www.tax.virginia.gov).
2. A company certified by VEDP as an "eligible company" may apply to VEDP for consideration for a discretionary grant from the COF as described in COV

§ 2.2-115. This is an avenue for a project which doesn't meet the typical COF criteria to access to these funds within qualified localities.

### **C. Statutory Eligibility**

1. To be certified as an eligible company, each of the following criteria must be met:
  - a) Corporation or Pass-Through Entity: A company must be a corporation or pass-through entity, as defined in COV § 58.1-390.1.
    - (1) "Pass-through entity" means any entity, including a limited partnership, a limited liability partnership, a general partnership, a limited liability company, a professional limited liability company, a business trust or a Subchapter S corporation, that is recognized as a separate entity for federal income tax purposes, in which the partners, members or shareholders report their share of the income, gains, losses, deductions and credits from the entity on their federal income tax returns.
  - b) No Existing Property or Payroll: A company must have no existing property or [New Teleworking Jobs](#) payroll in the Commonwealth of Virginia (the "Commonwealth") as of January 1, 2018.
  - c) New Capital Investment and New Jobs Requirements: A company must on or after January 1, 2018, but before January 1, 2025, either (a) spend at least \$5 million in new capital investment in a qualified locality or qualified localities and create at least 10 new jobs in a qualified locality or qualified localities, or (b) create at least 50 new jobs in a qualified locality or qualified localities.
2. VEDP will deny certification to any company it determines has engaged in a merger, acquisition, similar business combination, name change, change in business form, or other transaction the primary purpose of which is to obtain status as an eligible company.

### **D. Policy Regarding Job Creation**

1. Definition of New Job: In accordance with COV § 58.1-405.1 A., "new job" means a permanent, full-time position of indefinite duration that pays at least 150% of the minimum wage, as defined in the Virginia Minimum Wage Act § 40.1-28.8, and that requires a minimum of (i) 35 hours of an employee's time a week for the entire normal year of the eligible company's operations, which normal year shall consist of at least 48 weeks, or (ii) 1,680 hours per year. Each new job must be created on or after January 1, 2018, but before January 1, 2025.

2. [Employment and wage level data will be verified annually at the time of the application for certification and re-certification. To qualify for an NCIP](#)

payment, the company must create the minimum number of jobs required by Code, and the positions' wages must exceed 150% of the Virginia Minimum Wage for the Calendar Year for which they are requesting certification.

**E. Policy Regarding Capital Investment**

1. Definition of New Capital Investment: In accordance with COV § 58.1-405.1 A., "New Capital Investment" means real property acquired in a qualified locality or qualified localities on or after January 1, 2018, but before January 1, 2025, and any improvements to real property in a qualified locality or qualified localities on or after January 1, 2018, but before January 1, 2025.
2. Capital Leases: New capital investment will include the value of the construction or improvement of real property leased under a capital lease.

**F. Policy Regarding Qualified Localities**

1. New Capital Investment and New Jobs in Qualified Locality or Qualified Localities: The new capital investment must be made, and new jobs must be created in a qualified locality or qualified localities.
2. Qualified Locality or Qualified Localities: In accordance with COV § 58.1-405.1 A., "qualified locality" means (i) the County of Alleghany, Bland, Buchanan, Carroll, Craig, Dickenson, Giles, Grayson, Lee, Russell, Scott, Smyth, Tazewell, Washington, Wise, or Wythe or the City of Bristol, Galax, or Norton; (ii) the County of Amelia, Appomattox, Buckingham, Charlotte, Cumberland, Halifax, Henry, Lunenburg, Mecklenburg, Nottoway, Patrick, Pittsylvania, or Prince Edward or the City of Danville or Martinsville; (iii) the County of Accomack, Caroline, Essex, Gloucester, King and Queen, King William, Lancaster, Mathews, Middlesex, Northampton, Northumberland, Richmond, or Westmoreland; or (iv) the County of Brunswick or Dinwiddie or the City of Petersburg.
3. Qualified Development Site: A qualified locality may be deemed to include a qualified development site. In accordance with COV § 58.1-405.1 A., "qualified development site" means real property that is in a locality adjacent to a qualified locality and, before January 1, 2018, either (i) was owned or partly owned by a qualified locality or an industrial development authority of which a qualified locality is a member or (ii) was owned or partly owned by a locality or industrial development authority, was leased to a private party, and was subject to a revenue-sharing agreement providing that a portion of the revenues from the lease would be distributed to a qualified locality. A qualified development site does not include real property that is not owned by the Commonwealth or a political subdivision thereof.

**G. Policy Regarding Positive Fiscal Impact**

1. Considerations: As noted above, (i) job creation; (ii) private capital investment; (iii) anticipated additional state and local tax revenue; and (iv) the additional revenue the Commonwealth likely would expend in and for the



localities if the economy in the localities continues to erode will be considered in a determination of whether a company will generate a positive fiscal impact. Additional factors to be considered include: (i) the company average annual wage in comparison to the local average annual wage; (ii) the local unemployment level; (iii) local poverty level; (iv) the value of other economic development incentives and by-right incentives the company receives or has received; and (v) community impact and support.

## H. Application Process

1. Annual Application: For each taxable year for the period beginning January 1, 2018, and ending January 1, 2025, a company may file with VEDP an application for or certification or re-certification that the company is an Eligible Company. Applications will be accepted during the period beginning on January 1 and ending April 1 of the calendar year immediately following the taxable year for which certification is sought. To remain an eligible company for any taxable year, a company must obtain certification or re-certification annually.
2. Application: Exhibit B details the full list of requirements for this application, which is expected to include the following:
  - a) The full legal name of the company and a description of whether the company is a corporation or pass-through entity.
  - b) The name of the qualified locality or qualified localities in which the company is located.
  - c) The history of the company including any activities, assets, or employees in Virginia prior to January 1, 2018.
  - d) General corporate information including the names of officers, directors, owners, partners, or members as may be applicable.
  - e) Either (i) the amount of total new capital investment by the company in a qualified locality or qualified localities on or after January 1, 2018, and a summary breakdown of new capital investment into categories such as land, purchase of existing building, or real property improvements, or (ii) in the case of re-certification, whether the capital investment has been substantially retained or the additional amount of new capital investment made since the company's previous application.
  - f) A "Locality Certification", including a copy of the company's property tax records from the Commissioner of the Revenue, or equivalent official, in the applicable qualified locality or qualified localities where the company's facility is located.
  - g) If the company's real estate tax record does not accurately reflect the new capital investment made, copies of invoices related to the new capital investment paid by or on behalf of the company accompanied by a summary of the invoices and a certification by the company that such copies are true, accurate, and complete.



- h) Either (i) the number of new jobs created in a qualified locality or qualified localities beginning on or after January 1, 2018, a list of the new jobs, and the wage associated with each such new job, or (ii) in the case of re-certification, whether the new jobs have been substantially maintained.
    - i) A copy of the company's four most recent Employer's Quarterly Tax Reports (Form FC-20) filed with the Virginia Employment Commission.
    - j) A certification and evidence that the company is a traded-sector company.
  3. Consultation with Virginia Department of Taxation (TAX): VEDP may consult with TAX regarding the additional state and local tax revenue expected to be generated by the company.

#### **I. Distribution of Grant Proceeds to Employees**

1. Per Subsection J. of COV § 2.2-115, the New Company Incentive Program requires that a Company distribute at least 50% of all Grant proceeds to its employees in jobs located in a Qualified Locality.
2. It is expected that the distribution to the employees will take place in the calendar year in which the COF Grant proceeds were received by the Company. The Company has latitude to determine how, when and in what manner to make the distribution to the employees. In each Company Application, the Company will indicate how, when and in what manner the distribution is to be made. In the next Company Application, following receipt of COF Grant proceeds by the Company, the Company will report to VEDP how, when and in what manner the distribution was made to the Company's employees.
3. While the Company may determine how, when and in what manner to make the distribution to the employees, VEDP will consider the following factors in determining the appropriateness of any distribution:
  - a) VEDP does not consider the payment of wages for hours worked, or contractual commissions, or piece-work payments or the provision of standard fringe benefits to be in the spirit of the Program;
  - b) VEDP would consider extraordinary training opportunities for employees (such as certification programs through the local community college), beyond training commonly provided by the Company, to be in the spirit of the Program; and
  - c) VEDP does not consider the payment of bonuses to the management or executive team members to be in the spirit of the Program, unless bonuses are provided to all employees on a pro-rata basis or on a basis inverse to salary.

**J. Failure to Distribute Funds and Demand for Payment**

1. If the Company fails to make the distribution or if the distribution was not made in the spirit of the Program, VEDP may not re-certify the Company as an Eligible Company for the following year(s) and will require repayment of any amount in excess of what was distributed to employees, such that 50% of the Grant retained by the Company was distributed to the employees.
2. The repayment will be due within 90 days of the request by VEDP for the repayment. The amount repaid will be redeposited by VEDP to the Commonwealth's Development Opportunity Fund. At VEDP's discretion, any required repayment may be made by a reduction of any COF Grant Payment for the next Grant Year.
3. If appropriate, VEDP may agree to accept repayment in installments. The Board may direct the Office of the Attorney General to assist with the enforcement of a repayment.

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## Exhibit A - Checklist for PRACC

Key information to be gathered by the PM will generally include:

- Company name
- Company address
- Company Federal Employer Identification Number
- Company website URL
- Company stock ticker (if applicable)
- Company key management or principals
- Company contact phone number and email address
- Date the company was established and locations
- Nature of the business
- NAICS code
- Unique needs of the project
- Expected exports
- Factors which will drive the business' decision
- Project information
  - Number of new jobs by year (if applicable)
  - Traded-sector employer: Y or N (Provide source of confirmation)
  - Compensation and benefits for the new jobs
  - Proposed capital investment
  - Schedule for implementation

**Tier 1:** Additionally, for any project where VEDP is considering any pre-performance incentives or for any project where any individual post-performance incentive is \$100,000 or more, VEDP will generally request:

- Three years of the company's audited financial statements and interim financial statements if the prospective company is six months into the current fiscal year.
- If audited financial statements are not available, then the company should provide CPA-reviewed or compiled statements, supported by company tax returns.
- Any financial statements provided to VEDP should be in English, converted to U.S. dollars (where applicable), and prepared according to Generally Accepted Accounting Principles (GAAP) (if possible).
- Foreign-owned companies should provide financial statements prepared according to International Financial Reporting Standards (IFRS) (where applicable).

**Tier 2:** Additionally, for any project where VEDP is considering post-performance incentives and all individual incentives are under \$100,000 but one or more are \$30,000 or more, VEDP will generally request:

- One year of the company's financial statements

**Tier 3:** Additionally, for any project where VEDP is considering post-performance incentives and all individual incentives under \$30,000, VEDP will generally not need to request financial statements from the Company.

VEDP may request additional information, particularly in circumstances where the company is less than two years old or the company has never been profitable. Examples of what VEDP may request in these situations include:

- A business plan
- Three years of cash flow projections (month-by-month the first year, quarterly thereafter)
- Three years of projected balance sheets and profit and loss statements
- Evidence of equity and its source(s) (e.g., executed term sheet, bank statements, executed investor agreements)
- Schedule of debt and schedule of future debt needed to finance the project
- Copies of commitment letters/term sheets (if available)
- Bank references, to include the contact information of the financial institution and the relationship manager
- Name, address, and contact information of the company's CPA firm
- Name, address, and contact information of the company's legal counsel

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## Exhibit B - Application for Certification of Companies Eligible to Decrease Income Taxed by Virginia by Modifying Apportionment Factor(s)

### Please include:

- Name
- FEIN
- Street address
- Entity type  corporation  pass through entity
- North American Industry Classification System (NAICS) Code
- Industry description
- General corporate information including the names of officers, directors, owners, partners, or members as may be applicable
- Copy of articles of incorporation, articles of organization, or other corporate formation document as applicable
- Copy of certificate of good standing, certificate of fact, or certificate of fact of registration from the Virginia State Corporation Commission as applicable
- Certify no existing property or payroll  yes  no
- Taxable year for which certification is sought
- Has the company been certified an eligible company previously  yes  no
- In which years has the company been certified an eligible company
- Qualified locality or qualified localities where new capital investment made or new jobs created
- Amount of new capital investment or amount of capital investment substantially retained
- Summary breakdown of new capital investment
- Real estate tax record attached  yes  no
- Copies of invoices attached
- Certification that the invoices are true, accurate, and complete  yes  no
- Number of new jobs or number of new jobs substantially maintained
- List of each new job position
- Wage associated with each new job
- FC-20s attached  yes  no
- Certification that the company is a traded-sector company  yes  no