

Guidelines for the Major Eligible Employer Grant Program

Purpose:

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

Guiding Principles and Statutory Eligibility:

General Provisions: To be eligible for an 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 nonmanufacturing basic employers, as these terms are described below.

Investments resulting from ongoing 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.

Incentive Philosophy: These factors, among others, will be considered by VEDP when determining whether to recommend discretionary incentives, including MEE grants:

- alignment with strategic sectors and state/local strategies
- potential community impact
- maximization of community wealth
- diversification of the job base and the tax base
- solving a competitive need
- establishing a competitive advantage
- leveraging other state resources

- advancement of the quality of life

Basic Sector Projects Only: MEE grants will only be awarded for basic sector projects—i.e. projects for companies or functions that provide 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 of the Commonwealth or will be paid for with funds from outside the Commonwealth.

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

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 in one project, and (iii) the entire investment proceeds normally to completion, without extraordinary delays. If these conditions are met, the negotiated amount will reflect the entire single investment.

If the applicant participates currently in another production grant program sponsored by the Commonwealth for a project, or another grant program under the Act, as defined below, it shall not be eligible for an MEE grant for that project.

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

Definitions:

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

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

“*Capital investment*” means an investment in real property, tangible personal property, or both, on or after _____, 20__, at a manufacturing or basic nonmanufacturing facility within the Commonwealth that is capitalized by the company. Expenditures for maintenance, replacement or repair of existing machinery, tools and real property shall not constitute a capital investment; however, expenditures for the replacement of property shall not be ineligible for designation as a capital investment if such replacement results in a measurable increase in productivity. [Generally, this date will be around the announcement date.]

“*Commonwealth*” means the Commonwealth of Virginia.

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

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

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

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

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

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

“Net present value of benefits to Virginia” means the present value of the amount by which (i) the anticipated additional state tax revenue expected to accrue to the Commonwealth as a result of the capital investment and jobs created and maintained, over a period following the completion of the

capital investment not to exceed 20 years, exceeds (ii) the value of all incentives provided by the Commonwealth, including any grant under the Act, for such capital investment during that period.

“*New job*” means employment of an indefinite duration at the eligible facility, created as the direct result of the capital investment, for which the standard fringe benefits are provided by the firm for the employee, requiring a minimum of either (i) 35 hours of an employee’s time a week for the entire normal year of the firm’s operations, which “normal year” must consist of at least 48 weeks or (ii) 1,680 hours per year. Seasonal or temporary positions, positions created when a job function is shifted from an existing location in this Commonwealth to the facility, and positions with construction contractors, vendors, suppliers and similar multiplier or spin-off jobs shall not qualify as new jobs under the Act. Net new jobs for contractors or employees of contractors who are located in the Commonwealth and provide dedicated full-time service to the Company may count as new jobs, even though the Company is not directly paying the wages or providing the fringe benefits, if the other conditions set forth in this paragraph have been satisfied.

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

“*Prevailing average wage*” means that amount determined by the Virginia Employment Commission to be the average annual wage paid workers in the city or county of the Commonwealth where the project is located.

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

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

Additional Provisions Regarding New Jobs:

Existing Jobs: If there are existing jobs at the MEE grantee’s facility (or at a contractor’s facility, if applicable), it is expected that the performance

agreement will state the number of existing jobs and will require that any new jobs be in addition to the existing jobs.

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

Job Maintenance: Generally, the new jobs must be created and maintained through the payment period for the MEE grant. Accordingly, any layoffs instituted by the MEE grantee through the payment period will be taken into account in determining compliance with the MEE grantee’s new job requirement. VEDP expects to use a definition of “maintain” that substantially reads as follows:

“Maintain” means that the New Jobs created pursuant to the MEE grant will continue without interruption from the date of creation through the end of the MEE grant payment 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 MEE grantee’s employment levels (so long as there is active recruitment for open positions), (ii) strikes and (iii) other temporary work stoppages.

Contractor Job Information: If a 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.

Reduced New Job Target for High-Wage Jobs: For a major eligible employer that is a corporate headquarters or other basic employer making a capital investment of at least \$100 million and creating at least 400 jobs paying at least twice the prevailing average wage for the city or county in which the facility will be located, the 1,000 new jobs requirement for the MEE grant may be reduced in proportion to the factor by which the average annual wages for the new jobs exceed the prevailing average wage for the

area. VEDP will consider this reduction based upon the data provided by the applicant.

Verification of New Jobs: Companies will be asked to report the number of jobs created and maintained through the performance period and the payment period, and the average annual wage for those jobs. Companies should understand that the information provided by them will be verified by VEDP with the Virginia Employment Commission. In accordance with Virginia Code Section 60.2-114, VEDP is entitled to receive a company's employment level and wage information from the Virginia Employment Commission. Companies may be requested to provide copies to VEDP of the employer's quarterly reports provided to the Virginia Employment Commission.

Additional Provisions Regarding Capital Investment:

Private Capital Investment: Capital expenditures funded with the proceeds of a grant or other contributions by governmental entities shall not count toward a company's required "capital investment."

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 of 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.

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

VEDP may, in its discretion, determine that the value of the construction or improvement of real property leased under an operating lease will qualify as a capital investment, but is likely to do so only in circumstances in which (1) the operating lease is for at least the longer of five years or twice the

period of time until VEDP has estimated that the Commonwealth will “break-even” on the project, taking into account all incentives offered to the company by the Commonwealth, (2) the real property would not be constructed or improved “but for” the company’s interest in leasing some or all of the facility, and (3) the improvements will significantly increase the taxable value of the property. Only that portion of the construction or improvement costs related to the portion of the facility to be leased to the company may qualify.

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

Capital Leases: Capital investment will include the value of the construction or improvement of real or personal property leased under a capital lease.

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

Verification of Capital Investment: Companies will be asked to report the amount and type of capital investment made through the performance period, by broad categories (such as: land, land improvement or machinery, fixtures and equipment). Companies should understand that the information provided by them will be verified by VEDP with the locality. The performance agreement is likely to contain language authorizing VEDP to access the company’s tax records at the locality, that reads substantially as follows:

The Company hereby authorizes the Locality, including the [Offices of the Commissioner of the Revenue and the Treasurer for the Locality], to release to VEDP the Company’s real estate tax, business personal property tax and machinery and tools tax information. Such information shall be marked and considered confidential and proprietary and shall be used by VEDP solely for verifying satisfaction of the capital investment target. If the Locality, [the Office of the Commissioner of the Revenue or the Office of the Treasurer]

should require additional documentation or consents from the Company to access such information, the Company shall promptly provide, at the Company's expense, such additional documentation or consents as the Locality or VEDP may request.

In accordance with Virginia Code Section 58.1-3122.3, VEDP is entitled to receive a company's real estate tax, business personal property tax and machinery and tools tax information from the locality's Commissioner of the Revenue.

Application Process:

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

1. The amount and timing of the expected capital investment;
2. The number of new jobs expected to be created and maintained because of the capital investment, and a timeline for their creation;
3. If the company has existing operations in Virginia, whether it has closed, downsized, consolidated, or laid off employees within the past 30 months prior to the application date;
4. (A) The average annual wages expected to be paid for the new jobs, (B) whether a package of fringe benefits will be provided by the applicant to a typical employee (the statute requires standard fringe benefits), and (C) the amount by which the expected average annual wages exceed the prevailing average wage for the area;
5. The amount of other incentives requested of, or offered by, the Commonwealth and the locality, including grants, tax credits or exemptions, and other cost-avoidance incentives;
6. General corporate information about the applicant, including date of establishment, tenure and nature of presence in Virginia, and amount of previous capital investment and existing employment; and

7. Other factors as may be presented and demonstrated by the applicant that might affect the calculation of the net present value of benefits to Virginia. Specifically, applicants may present marginal corporate income (or analogous) tax revenues to Virginia attributable to the investment for which the MEE grant is made. If accepted, these revenues would be included in the calculation of the net present value of benefits to Virginia.

Together with the letter from the applicant described above, the applicant is likely to be asked to provide three years of historical financial statements, covering the three years prior to the application, and three years of pro forma financial statements, covering the three years following the application. If the applicant has been in business less than three years, it may be asked to provide the historical financial statements that may be available. The company is also likely to be asked to provide satisfactory evidence of its ability to finance the project. VEDP may request additional financial information from the company.

Due Diligence Review: Each project for which an MEE grant may be recommended will be subject to a due diligence review process.

Basic Structure:

- The VEDP Project Manager will get from the company the project parameters, and evidence of the company's financial viability and the company's financial ability to implement the project;
- The Project Review and Credit Committee ("PRACC") will review the project parameters and financial viability and ability to implement the project (see below for the PRACC process);
- If approved by PRACC, a briefing memo, project information, and the Return on Investment analysis ("ROI") will be conveyed to the Secretary of Commerce and Trade ("SCT") for preliminary approval;
- A proposal will be delivered to the company outlining incentives and requirements; and
- If the proposal is acceptable to the company, the Governor will be asked to provide his final approval.

PRACC Process:

The PRACC team consists of the Chief Executive Officer, the Chief Operating Officer, the Vice President of Business Investment, the Assistant Vice President of Business Investment, the Vice President of Research, the Managing Director of the Division of Incentives, the General Counsel, the Project Research Manager, the Senior Economist, and the Executive Director of the Virginia Small Business Financing Authority. PRACC will review all elements of the project, consider strategic, competitive, and financial implications, and evaluate the risk assessment and ROI analysis. PRACC will review these elements through the lens of VEDP's incentive philosophy, as described above in "Guiding Principles and Statutory Eligibility – *Incentive Philosophy*."

PRACC will determine whether to seek the SCT's preliminary approval. If appropriate, PRACC will work with the SCT to seek the approval of the MEI Project Approval Commission.

The findings of the risk assessment performed by the Senior Economist and the Executive Director of the Virginia Small Business Financing Authority will be documented in VEDP's Salesforce database and shared with local and regional partners.

Amount of MEE Grant Award:

No one MEE grant may exceed \$25,000,000.

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

Performance Agreement:

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

those Committees an opportunity to review the performance agreement prior to its execution by the Commonwealth.

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.

Projected Completion Date: The performance agreement shall contain an end-date by which the capital investment and jobs goals 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.

Any extension of the Projected Completion Date shall require the prior approval of 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 MEI Project Approval Commission.

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

The performance agreement will likely require other notices to VEDP as may be necessary to administer the MEE grant program.

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

Conditions to Payouts of MEE Grants; Reductions:

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

Conditions to Payouts: MEE grant installment payments are subject to the conditions that (i) the capital investment remains in place during the payment period, (ii) the new jobs are maintained during the payment period, and (iii) the facility continues to operate throughout the payment period at substantially the same level as existed at the time of the Company Notification. If the capital investment does not remain in place, if the new jobs are not maintained, or if the facility is no longer so operated, the performance agreement will require the MEE grantee to provide immediate notice to VEDP. In the event that clauses (i), (ii) or (iii) come into play, the installment payments on the MEE grant will cease, but the MEE grantee will not be required to return any MEE grant installments previously paid.

No Payouts: If the MEE grantee does not achieve the statutory minimum capital investment requirement of \$100 million or the statutory minimum number of new jobs, no MEE grant payment will be made. If the MEE grantee achieves the statutory minimums, but does not achieve at least 50% of the capital investment or jobs goals stated in the performance agreement, no MEE grant payment will be made.

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

In the event that the total MEE grant is reduced, the MEE grant will still be paid out as provided in the Act, so long as the capital investment remains in place and the new jobs are maintained during the payment period and the facility continues to operate throughout the payment period at substantially the same level as existed at the time of application for the first grant installment. For this purpose, in the performance agreement, it is expected

that the MEE grant will be allocated between the capital investment goal and the job creation and maintenance goal. Generally, the MEE grant will be allocated one-half to the capital investment goal and one-half to the new job creation and maintenance goal. For example, if the MEE grantee achieves 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.

Special Reporting Provisions:

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

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

During the performance period and the pay-out period for the MEE grant, the MEE grantee will likely be asked by VEDP annually to verify the level of capital investment, new jobs and wages and (during the payment period) to note whether the facility continues to be operated at substantially the same level as existed at the time that the capital investment was completed. In addition, the MEE grantee should expect to receive periodic requests from VEDP or the locality for information regarding the MEE grantee's progress.

Miscellaneous:

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

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

Change in Law: The MEE provisions described in these guidelines reflect the MEE provisions in the Virginia Code as of July 1, 2017. Changes made by the General Assembly in the applicable provisions of the Virginia Code will be read into, and will be deemed to amend, these guidelines. As necessary, VEDP will provide the MEE grantees with written notice of any such changes.

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