

Guidelines for the Virginia Investment Partnership Grant Program

Purpose:

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

Guiding Principles and Statutory Eligibility:

General Provisions: 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.

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.

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.

Incentive Philosophy: These factors, among others, will be considered by VEDP when determining whether to recommend discretionary incentives, including VIP 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: VIP 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 VIP is the Governor's premier tool for encouraging an existing manufacturer or research and development company 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 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 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 a VIP 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 a VIP 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.

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

“*Capital investment*” means an investment in real property, tangible personal property, or both, on or after _____, 20__, at a manufacturing or research and development services facility within the Commonwealth that is capitalized by the company and that increases the productivity of the manufacturing facility, results in the creation, development or utilization of a more advanced technology than is in use immediately prior to such investment, or both. In order to qualify as a capital investment, an investment in technology shall result in a measurable increase in capacity or productivity, a measurable decrease in the production of flawed product, or both. Expenditures for maintenance, replacement or repair of existing machinery, tools and real property shall not constitute a capital investment; however, expenditures for the replacement of property shall not be

ineligible for designation as a capital investment if such replacement results in a measurable increase in productivity. [Generally, this date will be around the announcement date.]

“Commonwealth” means the Commonwealth of Virginia.

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

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

“Fiscally stressed locality” means (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 that VEDP provides a proposal to a company indicating that a VIP grant is available to the company. Once so determined, that status will not change through the pay-out of the VIP 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>).

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

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

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

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

“New job” means employment of an indefinite duration at the eligible facility, created as the direct result of the capital investment, for which the standard fringe benefits are 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 VIP grantee memorializing, among other things, the performance expected from the VIP grantee and the anticipated VIP grant payments from the Commonwealth.

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

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

“VEDP” means the Virginia Economic Development Partnership Authority.

Additional Provisions Regarding New Jobs:

Existing Jobs: If there are existing jobs at the firm’s facility (or at a contractor’s facility, if applicable), it is expected that the performance agreement will state the number of existing jobs and will require that 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, if there are new jobs associated with the project, the new jobs must be created and maintained through the payment period for the VIP grant. Accordingly, any layoffs instituted by the company through the payment period will be taken into account 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 created pursuant to the VIP Grant will continue without interruption from the date of creation through the end of the VIP 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 VIP 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.

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. 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.

Application Process:

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:

1. The amount and timing of the expected capital investment;
2. 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;
3. The number of new jobs expected to be created and maintained because of the capital investment, if any, and a timeline for their creation;
4. (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) the amount by which the expected average annual wages exceed the average manufacturing wage for the locality or region;
5. The amount of other incentives requested of, or offered by, the Commonwealth and the locality, including grants, tax credits or exemptions, and other cost-avoidance incentives;

6. General corporate information about the applicant, including date of establishment, tenure and nature of presence in Virginia, and amount of previous capital investment and existing employment; and
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 VIP 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. The company is also likely to be asked to provide satisfactory evidence of its ability to finance, implement and operate the project. VEDP may request additional financial information from the company.

Due Diligence Review: Each project for which a VIP 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 ability to finance, implement and operate the project;
- The Project Review and Credit Committee ("PRACC") will review the project parameters and financial viability and the company's ability to finance, implement and operate 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 Expansion, the Vice President of Business Attraction, the Vice President of Research, 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.

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 VIP Grant Award:

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 from July 1, 2009 to June 30, 2015 cannot exceed \$30 million. The total aggregate amount of outstanding VIP grants approved after July 1, 2015 cannot exceed \$20 million.

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

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

- Considerable capital investment
- Likelihood of attracting a significant supply chain or other significant follow-on opportunities

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

The VIP grant will be paid in five annual installments at the times described below under “Performance Agreement – *VIP Grant Payout Schedule*.”

Performance Agreement:

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 by the Governor. The performance agreement will set forth the performance goals and require the VIP grantee to provide annual notice to VEDP of its progress on meeting the performance goals.

Projected Completion 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 and shall be determined solely at VEDP’s discretion.

Initial Company Notification: The performance agreement will require the VIP grantee to notify VEDP in writing within 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”).

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.

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

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 shall 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.

Conditions to Payouts of VIP Grants; Reductions:

Annual Appropriation: VIP grant installment payments are subject to annual appropriation by the Virginia General Assembly. If there are insufficient moneys in the Fund’s Investment Performance Grant subfund to pay all VIP 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: 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 clauses (i), (iii) or (iv) come into play, 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.

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.

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.

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.

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

Local Matches:

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. In very unique circumstances, the Governor may waive or reduce the requirement for a local match for projects that the Governor has determined are of statewide or regional interest. Criteria such as vacancy and unemployment or poverty rates in the immediate area of the proposed site may be considered in the decision-making process.

Local 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.

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.

Special Reporting Provisions:

For VEDP to demonstrate the value of the VIP grant program and other economic development incentives, it would be helpful for the VIP grantee to

share with VEDP the Virginia corporate income taxes paid by the VIP grantee. VEDP has no access to this information, unless the VIP 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 pay-out period for the VIP grant, the VIP grantee will likely be asked by VEDP annually to verify that the capital investment has remained in place, that the new jobs have remained in place, and that 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 VIP grantee should expect to receive periodic requests from VEDP or the locality for information regarding the VIP grantee's progress.

Miscellaneous:

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

Assignment: A VIP 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 capital investment, and the net present value of benefits to Virginia will remain substantially the same.

Change in Law: The VIP grant provisions described in these guidelines reflect the VIP grant provisions in the Virginia Code as of July 1, 2016. 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 VIP grantees with written notice of any such changes.

Confidentiality: Each VIP 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.