

## **Guidelines for Virginia Economic Development Incentive Grant**

### **Purpose:**

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

### **Statutory Eligibility:**

This VEDIG program has two separate eligibility requirements. Companies located in a Metropolitan Statistical Area with a population of 300,000 or more in the 2000 census, must:

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

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

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

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

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

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

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

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

### **Definitions:**

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

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

“*Commonwealth*” means the Commonwealth of Virginia.

*“Eligible company”* means, for companies located in a Metropolitan Statistical Area with a population of 300,000 or more in the 2000 census, a Virginia employer that:

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

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

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

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

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

*“New job”* means employment of an indefinite duration at the eligible facility, created as the direct result of the capital investment, for which the standard fringe benefits are paid by the firm for the employee, requiring a minimum of either (i) 35 hours of an employee’s time a week for the entire normal year of the firm’s operations, which “normal year” must consist of at least 48 weeks or (ii) 1,680 hours per year. Seasonal or temporary positions, positions created when a job function is shifted from an existing

location in the Commonwealth to the facility, and positions with construction contractors, vendors, suppliers and similar multiplier or spin-off jobs shall not qualify as new jobs. Net new jobs for contractors or employees of contractors who are located in the Commonwealth and provide dedicated full-time service to the grantee may count as New Jobs, even though the grantee is not directly paying the wages or providing the fringe benefits, if the other conditions set forth in this paragraph have been satisfied.

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

*"Partnership"* means the Virginia Economic Development Partnership Authority.

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

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

*"Secretary"* means the Secretary of Commerce and Trade.

### **Application Process:**

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

1. The amount and timing of the capital investment;
2. The number of new jobs created by the capital investment and a timeline for their creation;

3. The average salaries paid for the new jobs, the amount by which the average salaries exceed the prevailing average wage for the locality at the time of the project announcement, and a summary of the anticipated fringe benefits;

4. The amount of other incentives requested of, or offered by, the Commonwealth and the locality; and

5. General corporate information about the company, including the date of establishment, tenure and nature of presence in Virginia, and amount of previous capital investment and existing employment; and specific information indicating the importance of the facility to the economy of the locality or region, and other factors as may be presented and demonstrated by the company that might affect the calculation of the net present value of benefits to Virginia. Specifically, companies may present marginal corporate income (or analogous) tax revenues to Virginia attributable to the investment for which the VEDIG is made. If accepted and verified, these revenues would be included in the calculation of the net present value of benefits to Virginia.

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

Using the above data, the Partnership will determine the net present value of benefits to Virginia over a 20-year period with respect to the capital investments made and the new jobs created. The Partnership reserves the right independently to validate or verify any figures or information provided by a company or request further information or certifications from or on behalf of the company. The discount rate applied will be based initially on the 20-year Treasury Bill rate and then will factor in the relative risk of the individual project, as determined by the Partnership. Sales and use tax and other applicable tax revenues accruing to the Commonwealth in connection with the investment will also be included in the calculation. This calculation

will subtract all direct fiscal benefits provided by the Commonwealth, such as training grants, Governor's Opportunity Fund grants, Enterprise Zone grants, Tobacco Region Opportunity Fund grants or Community Development Block Grants. If marginal income tax revenues are used in the calculation, then Virginia tax credits will be factored in as well.

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

### **Pay-Outs; Reductions:**

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

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

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

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

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

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

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

If the company achieves, say, 60% of its capital investment goal and 75% of its new job creation goal, the grants will be diminished proportionately to 60% of that portion allocable to the capital investment and 75% of that portion allocable to the new jobs created, to be paid out on the schedule set forth above.

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

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

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

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

### **Special Reporting Provision:**

For VEDP to demonstrate the value of the VEDIG program and other economic development incentives, it would be helpful for the company to share with VEDP the 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 \_\_\_\_\_ 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.