

Guidelines for Virginia Investment Partnership Grant

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.

Statutory Eligibility:

To be eligible for a VIP, a minimum of \$25 million in capital investment by an existing Virginia company is required. Although no minimum job creation is required for a VIP, the investment must not result in any net reduction in employment from the date of the completion of the capital investment until one year from the date of completion. New job creation may, however, result in an increased negotiated benefit under this program. The VIP is available to eligible manufacturers and to research and development services, and these terms are defined below. The VIP cannot be used by a company that is eligible for a Major Eligible Employer (MEE) grant.

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 but separately meets the investment threshold and employment requirements for a new project may apply for an additional 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 (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 VIP for that project.

Investments resulting from ongoing VEDP projects will be eligible for consideration for a VIP, 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.

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 manufacturing workers in a locality or region of the Commonwealth.

“*Basic employment*” means employment 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, 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.

“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 five years prior to making the announcement of the capital investment that makes it an eligible manufacturer.

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

“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 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 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.

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.

“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.

Application Process:

The applicant shall submit a detailed letter of application for a VIP 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 extent to which, if applicable, the 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 created by the capital investment, if any, and a timeline for their creation;
4. (A) The wages paid for the new jobs, (B) a summary of the expected fringe benefits package to be provided by the applicant to a typical employee (the statute requires standard fringe benefits), and (C) the amount by which the 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 specific

information indicating the importance of the facility to the economy of the locality or region; 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 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 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.

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 may independently validate or verify any figures or information provided by an applicant, or request further information or certifications from or on behalf of the applicant. 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. The negotiated amount of the grants will be based on this calculation.

Once negotiated and agreed upon, the amount, terms and conditions of a VIP shall be reflected in a performance agreement to be executed by the applicant no later than 120 days after the public announcement by the Governor.

Limits, Verifications and Payouts for VIP:

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 grants may be paid-out in any one year. The total aggregate amount of outstanding VIP grants approved since July 1, 2009 cannot exceed \$30 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 performance agreement will require the grantee to provide annual notice to VEDP of the grantee's progress on meeting its performance goals.

The grantee shall notify the Partnership in writing within 90 days of completion of the capital investment, certifying the amount of capital investment and providing the number of retained employees and new employees at the facility at the completion of the capital investment, the average annual wage rates paid to such employees and a summary of the fringe benefits package offered by the grantee to a typical employee (an "Initial Company Notification").

One year after the Initial Company Notification, the grantee shall certify to the Partnership 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.

Beginning with the fiscal year in which the verified Initial Company Notification has been on file at the Partnership for 36 months, and pursuant to the provisions of the Act, the Commonwealth shall make five equal annual grant payments to the grantee. In fiscally stressed localities, payouts can begin in the fiscal year in which the verified Initial Company Notification has been on file at the Partnership for 24 months.

The performance agreement shall contain an end-date by which the capital investment must have been completed. 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.

Conditions to Payouts of VIP Grants; Assignment; Reductions:

VIP payments are subject to annual appropriation by the Virginia General Assembly and are subject also to the conditions that (A) the capital investment remains in place during the payment period, (B) the Subsequent Company Notification has not revealed a net reduction in employment, and (C) the facility continues to operate throughout the payment period at substantially the same level as existed at the time of the Initial Company Notification. If the capital investment does not remain in place or if the facility is no longer so operated, the grantee shall provide immediate notice to the Partnership.

A company participating in the VIP grant 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 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 target and any jobs target stated in the performance agreement, no VIP grant payment will be made. If the VIP grantee achieves the statutory minimum capital investment and maintains steady employment and achieves between 50% and 100% of the targeted capital investment and jobs, the total VIP grant to be paid shall be diminished proportionately, but will still be paid out as provided in the Act, so long as the capital investment remains in place 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 Initial Company Notification. For this purpose, in the performance agreement, the VIP grant shall 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. If the grantee achieves, say, 60% of its capital investment goal and 75% of its job retention and creation goal, the 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.

If the actual average wages paid for the new jobs exceed the target average salaries provided by the VIP grantee by at least 20%, then the new job creation 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 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 grantee's facility.

If there are insufficient moneys in the Fund's Investment Performance Grant subfund to pay all VIP 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 Investment Performance 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 VIP 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.

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>).