Guidelines for the
Virginia Economic Development Incentive Grant Program

Purpose:

The Virginia Economic Development Incentive Grant Program ("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.

Guiding Principles and Statutory Eligibility:

General Provisions: The VEDIG program has two separate eligibility requirements. Companies located in a Metropolitan Statistical Area with a population of 300,000 or more in the most recently preceding decennial census, must:

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

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

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

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

Basic Sector Projects Only: VEDIGs 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 VEDIG is the Governor's premier tool for encouraging significant headquarters, administrative, research and development and/or similar service operations to come to or to grow in Virginia, rather than another state or county. 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: 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. An applicant that has an active VEDIG but separately meets the investment threshold and employment requirements for a new project may apply for an additional VEDIG. For a project investment and employment occurring in phases or stages, however, the Commonwealth will consider it as one project if: (i) the entire investment and employment is announced at one time, (ii) the phases are clearly related to one project, and (iii) the entire investment and employment proceeds normally to substantial completion, without extraordinary delays. If these conditions are met, the negotiated amount will reflect the entire single investment.

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

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 most recently preceding decennial 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 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 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 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 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.

"*Performance agreement*" means a memorandum of understanding or other performance agreement between the Commonwealth and the VEDIG grantee memorializing, among other things, the performance expected from the VEDIG grantee and the anticipated VEDIG 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.

"*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 the 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 VEDIG. Accordingly, any layoffs instituted by the VEDIG grantee through the payment period will be taken into account in determining compliance with the VEDIG 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 VEDIG will continue without interruption from the date of creation through the end of the VEDIG 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 VEDIG 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 eligible company shall submit a detailed letter of application for a VEDIG 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. The average annual wages expected to be paid for the new jobs, the amount by which the expected average annual wages exceed the prevailing average wage for the locality at the time of the project announcement, and a summary of the expected fringe benefits;

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

6. 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, 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 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.

Amount of VEDIG Award:

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.

Performance Agreement:

General Provisions: Once negotiated and agreed upon, the amount and terms of the VEDIG shall be reflected in the performance agreement expected to be executed by the eligible company no later than 120 days after the public announcement 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 date will be three years, but no more than five years, from the date the performance agreement is signed, but extensions will be considered on a case by case basis and shall be determined solely at VEDP's discretion.

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

Projected Completion Date: The performance agreement shall contain an end-date by which the capital investment and new jobs targets must have been achieved. It is VEDP's strong preference that this date will be three years, but no more than five years, from the date the performance agreement is signed, but extensions will be considered on a case by case basis and shall be determined solely at VEDP's discretion.

Company Notification: The performance agreement will require that the VEDIG grantee file with the President and Chief Executive Officer of VEDP a written notice of the completion of the capital investment and the new job creation, within 90 days of such completion (a "Company Notification"). The Company Notification shall include appropriate documentation of the capital investment, new employment, and average salaries paid.

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

Conditions to Payouts of VEDIG Grants; Reductions:

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

No Payouts: No VEDIG payment in any amount shall be forthcoming if the VEDIG grantee fails to achieve by the end-date stated in the performance agreement:

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

(B) the greater of (i) the statutory minimum new jobs requirement with average salaries at least 50% or 100% greater than the prevailing average wage in the locality, as applicable, and (ii) 50% of its goal of new jobs with average salaries at least 50% or 100% greater than the prevailing average wage in the locality, as applicable.

Reduced Payouts; Allocations: To the extent that the VEDIG grantee 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 remains in place **and** the new jobs are maintained during the payment period, **and** the facility continues to operate throughout the payment period at substantially the same level as existed at the time of the completion of the capital investment. For this purpose, in the performance agreement, it is expected that the VEDIG will 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.

For example, if the VEDIG grantee achieves 60% of its capital investment goal and 75% of its new job creation goal, the VEDIG will be diminished proportionately to 60% of that portion allocable to the capital investment and 75% of that portion allocable to the new jobs created and maintained, to be paid out on the schedule set forth above.

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 VEDIG grantee by at least 20%, then the new job creation and maintenance 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. The amount of the reduction will depend upon the net present value of benefits to Virginia derived from the VEDIG grantee's facility.

Special Reporting Provision:

For VEDP to demonstrate the value of the VEDIG program and other economic development incentives, it would be helpful for the VEDIG grantee to share with VEDP the Virginia corporate income taxes paid by the VEDIG grantee. VEDP has no access to this information, unless the VEDIG 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 VEDIG grantee shall report to VEDP the amount paid by the VEDIG grantee in the prior calendar year in Virginia corporate income tax. VEDP hereby represents to VEDIG grantee 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.

Miscellaneous:

Federal 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 VEDIG grantee with various federal legal requirements, those federal legal requirements will be deemed to be read into the performance agreement.

Assignment: A VEDIG 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 VEDIG provisions described in these guidelines reflect the VEDIG provisions in the Virginia Code as of July 1, 2015. 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 VEDIG grantees with written notice of any such changes.