

Guidelines for Major Eligible Employer Grant

Purpose:

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

Statutory Eligibility:

To be eligible for an MEE, a minimum capital investment of \$100 million and the creation of at least 1,000 new full-time jobs are required, although the job creation threshold can be lowered for exceptionally high-paying new jobs, as described below. The MEE is available to existing Virginia manufacturers and other nonmanufacturing basic employers, and these terms are described below.

An applicant may be granted more than one MEE 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 MEE 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 an MEE for that project.

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

Definitions:

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

“*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 basic nonmanufacturing facility within the Commonwealth that is capitalized by the company. Expenditures for maintenance, replacement or repair of existing machinery, tools and real property shall not constitute a capital investment; however, expenditures for the replacement of property shall not be ineligible for designation as a capital investment if such replacement results in a measurable increase in productivity.

“*Commonwealth*” means the Commonwealth of Virginia.

“*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 an MEE is available to the company. Once so determined, that status will not change through the pay-out of the MEE.

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

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

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

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

"Productivity" means the number of hours of labor required to produce a unit of goods.

Application Process:

The applicant shall submit a detailed letter of application for an MEE 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, if any, and a timeline for their creation;

3. (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 prevailing average wage for the area;
4. 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;
5. 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
6. 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. If the applicant has been in business less than three years, it may be asked to provide the historical financial statements that may be available.

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.

For a major eligible employer that is a corporate headquarters or other basic employer making a capital investment of at least \$100 million and creating at least 400 jobs paying at least twice the prevailing average wage for the city or county in which the facility will be located, the 1,000 new jobs requirement for the MEE grant may be reduced in proportion to the factor by which the wages for the new jobs exceed the prevailing average wage for the area. The Partnership will consider this reduction based upon the data provided by the applicant.

Once negotiated and agreed upon, the amount, terms and conditions of an MEE 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. Prior to entering into a performance agreement for an MEE, the Commonwealth's Secretary of Commerce and Trade will consult with the Virginia General Assembly's House Appropriations Committee and Senate Finance Committee and offer those Committees an opportunity to review the performance agreement prior to its execution by the Commonwealth.

Limits, Verifications and Payouts for MEE:

MEE grants may not exceed \$25 million per project.

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 and new jobs creation, certifying the amount of capital investment and providing the number of new employees at the facility at the completion of the capital investment, the average annual wage paid to such employees and a summary of the fringe benefits

package offered by the grantee to a typical employee (a “Company Notification”).

Beginning with the fiscal year in which the verified Company Notification has been on file at the Partnership for six years (or four years, as described below), and pursuant to the provisions of the Act, the Commonwealth shall make five-to-seven equal annual grant payments to the grantee. Although payouts of MEE grants generally will begin in the sixth year following a Company Notification, in fiscally stressed areas, payouts can begin in the fourth year after the Company Notification has been submitted and verified.

The performance agreement shall contain an end-date by which the capital investment and 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.

Conditions to Payouts of MEE Grants; Assignment; Reductions:

MEE 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 new jobs are maintained during the payment period, and (C) the facility continues to operate throughout the payment period at substantially the same level as existed at the time of the Company Notification. If the capital investment or jobs do 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 MEE 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 MEE grantee does not achieve the statutory minimum capital investment requirement of \$100 million or the statutory minimum number of new jobs, no MEE grant payment will be made. If the MEE grantee

achieves the statutory minimums, but does not achieve at least 50% of the capital investment or jobs targets stated in the performance agreement, no MEE grant payment will be made. If the MEE grantee achieves the statutory minimums and achieves between 50% and 100% of the targeted capital investment and new jobs, the total MEE 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 and jobs remain 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 application for the first grant installment. For this purpose, in the performance agreement, the MEE grant shall be allocated between the capital investment goal and the job creation goal. Generally, the MEE grant will be allocated one-half to the capital investment goal and one-half to the job creation goal. If the grantee achieves, say, 60% of its capital investment goal and 75% of its job 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 created, to be paid out on the schedule described above.

If the actual average wages paid for the new jobs exceed the target average salaries provided by the MEE grantee 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 MEE 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.

If there are insufficient moneys in the Fund's Major Eligible Employer Grant subfund to pay all MEE 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 Major Eligible Employer 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 MEE 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>).