



COMMONWEALTH *of* VIRGINIA
Office of the
SECRETARY *of* TRANSPORTATION

Transportation Partnership Opportunity Fund (TPOF) 2023 Updated Guidelines and Criteria

John Lawson – Deputy Secretary of Transportation
May 23, 2023



Authorization and History of the Transportation Partnership Opportunity Fund (TPOF)

- **TPOF was created by Chapter 847 of the 2005 Acts of Assembly and amended by Chapter 684 of the 2015 Acts of Assembly**
 - **Purpose was to provide funds to address the transportation aspects of economic development opportunities, including, but not limited to, the creation of jobs and to promote private investment and economic development.**
- **The Act authorized monies to be awarded or directed from the fund by the Governor as grants (up to \$5 million), revolving loans (up to \$30 million), or other financing tools and equity contributions to an agency or political subdivision of the Commonwealth for qualifying projects**

Authorization and History of the Transportation Partnership Opportunity Fund (TPOF)

- Requires semi-annual reporting by the Governor and Grant specific reporting by the Secretary of Transportation to the House and Senate
- The guidelines and criteria were developed by VDOT on behalf of the Commonwealth Transportation Board in 2005 and updated in February 2016 and July 2018
- The TPOF Advisory Panel, chaired by a Deputy Secretary of Transportation, and consisting of VDOT's Chief Financial Officer, an Executive Officer of the applicable modal oversight agency (if necessary), a Deputy Secretary of Commerce and Trade, and a representative of the Department of Planning and Budget will evaluate those applications to ensure that the applicant(s) meets the transportation and economic development evaluation criteria

2023 Updates to the Guidelines and Criteria

- Updated to reflect the new purposes, uses and reporting requirements set out in Chapter 547 of the 2023 Acts of Assembly
- The existing applicant process for grants, loans and other special financing methods, funds remains unchanged
- The Governor may direct Funds to the Board for transportation projects determined to be necessary to support major economic development initiatives or to enhance the economic development opportunities of the Commonwealth's transportation programs
 - Recommended by the Secretary of Transportation and Secretary of Commerce and Trade
 - No cap on directed funds but there are additional approvals and reporting requirements
- Property acquisition and new or improved infrastructure to support economic development opportunities of the Commonwealth's transportation programs has been added as a use of the fund

2023 Updated Guidelines and Criteria Major Changes – Funds directed to the Board

- **If funds are directed from the Fund by the Governor to the Board in excess of \$5 million the Secretary of Transportation shall submit a report on it to the Chairmen of the Senate Committee on Finance and Appropriations and the House Committee on Appropriations within 30 days**
- **The report shall include:**
 - The name of the transportation project
 - The locality in which the transportation project is being developed
 - The amount of the grant or loan made or committed to the transportation project
 - The purpose for which it will be used
 - The number of jobs retained or created or projected to be retained or created by the transportation project
 - The expected rate of return on investment of the transportation project
 - The amount of a company's investment in the Commonwealth

2023 Updated Guidelines and Criteria Major Changes – Funds directed to the Board

- **If any direction of funds pursuant to this purpose in a cumulative amount in excess of \$35 million on any one project shall be submitted for review to the Major Employment and Investment (MEI) Project Approval Commission (Commission)**
 - The Commission will complete the review within 14 days
 - If the Commission recommends against such direction of funds, authorization by the General Assembly is required
 - The funds may be directed as planned if the Commission doesn't provide a recommendation concerning the Governor's planned use of the funds within 14 days

Next Steps

- **June** – CTB approval of the updated Guidelines and Criteria and direction to VDOT staff to deliver the revised Guidelines and Criteria to the Governor

Capitalization of TPOF

- **History of Previous Funding provided to TPOF - \$405 million**
 - \$23,600,000 and \$26,400,000 from the Toll Facility Revolving Account and from the Highway Construction Fund, respectively, pursuant to Chapter 951 of the Acts of Assembly of 2005;
 - \$305,000,000 pursuant to and directed by Chapter 847 of the Acts of Assembly of 2007; and,
 - \$50,000,000 made available July 1, 2011 from the Commonwealth Transportation Fund pursuant to Item 452 H. of Chapter 890 of the Acts of Assembly of 2011
 - House Bill 1887, effective July 1, 2015, provides the TPOF with one-third of all interest, dividends, and appreciation that may accrue to the Transportation Trust Fund and the Highway Maintenance and Operating Fund
- **Balance as of December 31, 2022 - \$3,940,324**
- **Most recent semi-annual report of the Fund has been included with this presentation.**



COMMONWEALTH *of* VIRGINIA
Office of the
SECRETARY *of* TRANSPORTATION

Thank you.



VIRGINIA DEPARTMENT OF RAIL
AND PUBLIC TRANSPORTATION





COMMONWEALTH of VIRGINIA

Office of the Governor

W. Sheppard Miller III
Secretary of Transportation

April 13, 2023

MEMORANDUM

TO: The Honorable Terry L. Austin
The Honorable George L. Barker
The Honorable Janet D. Howell
The Honorable Barry D. Knight
The Honorable David W. Marsden
The Honorable Roxann L. Robinson

FROM: W. Sheppard Miller, III
Secretary of Transportation

A handwritten signature in black ink, appearing to read "W. Sheppard Miller, III".

SUBJECT: Report on the Transportation Partnership Opportunity Fund

Pursuant to Section §33.2-1529.1 of the Code of Virginia, the Governor is required to submit semiannual reports on the Transportation Partnership Opportunity Fund ("TPOF" or the "Fund"). This memorandum and the related attachment constitute that report on behalf of Governor Glenn Youngkin for the period ending December 31, 2022.

During this reporting period of July 1, 2022 to December 31, 2022, the TPOF program experienced the following activity:

- Economic Development Authority ("EDA") of New Kent County submitted an application requesting \$2,000,000 to assist in constructing a roadway extension in support of an economic development project that is building a new warehouse and distribution facility. The Governor announced that AutoZone will invest \$185.2 million to construct an 800,000 square foot distribution center and direct import facility, creating 352 full-time jobs. The TPOF Advisory Panel ("the Panel") met on May 18, 2022 regarding its evaluation of the application and recommended it to the Governor for award. The EDA of New Kent was awarded a grant in the amount of \$2,000,000 by Governor Youngkin on June 28, 2022 and the related agreement between the New Kent EDA and the Department of Transportation ("VDOT") was executed on October 4, 2022.

The Honorable Terry L. Austin
The Honorable George L. Barker
The Honorable Janet D. Howell
The Honorable Barry D. Knight
The Honorable David W. Marsden
The Honorable Roxann L. Robinson

April 13, 2023

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- Stafford County submitted an application requesting \$1,392,000 to fund road improvements to Wyche Road in support of DHL's new distribution center. The Governor announced that the company will make an investment of \$72 million and create 577 full-time jobs. The Panel met on May 18, 2022 to evaluate the application and subsequently recommended the Governor award the requested grant. Governor Youngkin awarded a grant in the amount of \$1,392,000 to Stafford County on June 28, 2022 and an agreement between the County and VDOT was executed on October 4, 2022.
- The Economic Development Authority ("EDA") of Warren County submitted an application for a \$155,516 grant to complete roadway improvements to facilitate travel to a new Nature's Touch Frozen Food Production Facility. On November 16, 2021, Governor Northam announced the award of a Virginia Investment Performance ("VIP") Grant of \$400,000 to the Warren County EDA to establish the production facility. These improvements represent a \$40.3 million investment by Nature's Touch and the creation of 67 new jobs. The Panel met on May 18, 2022 regarding its evaluation of the application and recommended the Governor award the requested TPOF grant. The Economic Development Authority of Warren County was awarded a grant in the amount of \$155,516 by Governor Youngkin on June 28, 2022. An agreement is pending between the EDA of Warren County and VDOT.
- Buchanan County submitted an application on August 3, 2022 in the amount of \$3,300,000. The County subsequently determine that it no longer needed the requested funding and withdrew the application on August 10, 2022.

As of December 31, 2022, forty-nine applications related to thirty-nine separate projects have been received, requesting a total of \$228,031,970 in TPOF assistance. Governors have approved awards totaling \$105,464,265. The Fund has an uncommitted balance of \$3,940,324 remaining out of the capitalizations and interest income available for awards.

To date, the Fund has been capitalized in the amount of \$441,348,890 from the following:

- \$23,600,000 and \$26,400,000 from the Toll Facility Revolving Account and from the Highway Construction Fund, respectively, pursuant to Chapter 951 of the Acts of Assembly of 2005;
- \$305,000,000 pursuant to Chapter 847 of the Acts of Assembly of 2007 and Chapter 780 of the Acts of Assembly of 2016;
- \$50,000,000 made available July 1, 2011 from the Commonwealth Transportation Fund pursuant to Item 452 H. of Chapter 890 of the Acts of Assembly of 2011.
- TPOF is provided with one-third of all interest, dividends, and appreciation that may accrue to the Transportation Trust Fund and the Highway Maintenance and Operating Fund pursuant to Chapter 1230 of the Acts of Assembly of 2020. Through December 31, 2022, TPOF has received \$38,064,360 in interest earnings.

The Honorable Terry L. Austin
The Honorable George L. Barker
The Honorable Janet D. Howell
The Honorable Barry D. Knight
The Honorable David W. Marsden
The Honorable Roxann L. Robinson

April 13, 2023

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The \$305,000,000 contribution, as outlined by Chapter 847 of the 2007 Acts of Assembly and Chapter 780 of the 2016 Acts of Assembly, was targeted for specific projects while the remaining \$100,000,000 and the interest earnings may be used for any eligible applicant and project. The body of this report focuses on the use of the \$100,000,000, interest earnings to the fund and the dedicated revenue beginning in 2015. The attachment provides a summary and overview of the fund in its entirety as of December 31, 2022.

The Fund is one of many tools available to market the Commonwealth to prospective economic development partners. Please let me know if I can provide additional information regarding these projects or the use of the Fund.

cc:

The Honorable Caren Merrick, Secretary of Commerce and Trade
The Honorable Stephen E. Cummings, Secretary of Finance

Attachment

Attachment

Semiannual Report on the Transportation Partnership Opportunity Fund Activity/Award Details to Date

The table below summarizes the awards to date and the remaining balance from the \$100 million in capitalization as of December 31, 2022.

Capitalizations

July 1, 2006	\$50,000,000
July 1, 2011	50,000,000
Interest Earnings	38,064,360
Total Funding Available	<u>\$138,064,360</u>

Project	Amount	Type of Assistance	Award Date	Eligibility Criteria
VDOT – CFX	1,772,740	Grant	4/28/2006	PPTA Project
City of Newport News	5,000,000	Grant	8/22/2006	Economic Development
State Route 28 HTIDC	5,000,000	Grant	8/22/2006	PPTA Project
Town of Leesburg	5,000,000	Grant	2/12/2007	Design-Build Project
County of Prince George	10,000,000	Grants	5/19/2008	Economic Development
			4/3/2008	
VDOT – CFX (Hawks Nest)	9,892,200	Grants	and 2/25/2009	PPTA Project
County of Loudoun	3,000,000	Grant	5/3/2010	Design-Build Project
County of Accomack	3,250,968	Grant	9/30/2010	Economic Development
Virginia Comm. Space Flight Authority	5,000,000	Grant	9/15/2011	Economic Development
City of Winchester	47,533	Grant	12/20/2011	Economic Development
			11/14/2011	
Virginia Comm. Space Flight Authority	10,000,000	Grants	and 12/7/2012	Economic Development
County of Rockingham	5,000,000	Grant	6/5/2012	Design-Build Project
County of Prince William	4,978,062	Grant	6/5/2012	Design-Build Project
Virginia Comm. Space Flight Authority	5,000,000	Grant	1/25/2013	Economic Development
Virginia Comm. Space Flight Authority	5,000,000	Grant	2/5/2013	Economic Development
Department of Aviation	151,085	Grant	2/13/2013	Economic Development
County of Accomack	4,000,000	Grant	7/26/2013	Design-Build Project
County of Giles	724,878	Grant	7/26/2013	Economic Development
Rt. 28 HTIDC	5,000,000	Grant	7/26/2013	PPTA Project
EDA of Newport News	1,000,000	Grant	1/5/2015	Economic Development
City of Richmond*	950,000	Grant	1/11/2018	Economic Development
			1/11/2018	
County of Frederick	1,169,602	Grant	and 8/1/2018	Economic Development
Virginia Port Authority	5,000,000	Grant	10/4/2018	Transportation Service
Virginia Comm. Space Flight Authority	5,000,000	Grant	11/13/2018	Economic Development
Virginia Comm. Space Flight Authority	7,500,000	-	7/1/2020	Chapter 1289 Item 431 (a)(b)
Transportation Initiatives	20,000,000	-	7/1/2020	Chapter 552 Item 447.10 (b)
City of Hampton	979,681	Grant	1/11/2021	Economic Development
EDA of New Kent County	2,000,000	Grant	6/28/2022	Economic Development
County of Stafford	1,392,000	Grant	6/28/2022	Economic Development
EDA of Warren County*	155,516	Grant	6/28/2022	Economic Development
Total Awards	\$132,964,265			
Reductions**	<u>1,159,772</u>			
Available for Award	<u>\$3,940,324</u>			

*Grant agreement pending

**FY 2009-2022 Indirect Costs and Governor's FY 2010 Operational Efficiencies Reduction

Attachment

**Semiannual Report on the Transportation Partnership Opportunity Fund
Activity/Award Details to Date**

The following identifies the recipients, the projects and the awards made, and the actions taken from TPOF, along with their current status:

Awards/Projects with Financial Close

Recipient	Project	Location	Type of Assistance	Amount	Date of Award	Status
VDOT	Coalfields Expressway	Buchanan, Wise and Dickenson Counties	Grant	1,772,740	4/28/2006	Grant is fully disbursed. Grant awarded was \$2,000,000. Final grant amount was \$1,772,740.
State Route 28 Highway Transportation District Commission	Rt. 28 Corridor Improvements	Loudoun and Fairfax Counties	Grant	\$5,000,000	8/22/2006	Grant is fully disbursed.
Economic Development Authority of the City of Newport News	Canon Virginia, Inc. Economic Development Project	City of Newport News and County of Gloucester	Grant	\$5,000,000	8/22/2006	Grant is fully disbursed.
Town of Leesburg	Battlefield Parkway	Town of Leesburg	Grant	5,000,000	2/12/2007	Grant is fully disbursed.
VDOT	Coalfields Expressway Hawks Nest Section	Buchanan, Wise and Dickenson Counties	2 Grants-\$5,000,000 each	9,892,200	4/3/2008 and 2/25/2009	Grants are fully disbursed. Grants awarded were \$10,000,000. Final grant amount was \$9,892,200.
County of Prince George	Rolls-Royce Economic Development Project	County of Prince George	2 Grants-\$5,000,000 each	10,000,000	5/19/2008	Grants are fully disbursed.
County of Loudoun	Pacific Boulevard	County of Loudoun	Grant	3,000,000	5/3/2010	Grant is fully disbursed.
County of Accomack	Mid-Atlantic Regional Spaceport (MARS) – Orbital Sciences Corp.	County of Accomack	Grant	3,250,968	9/30/2010	Grant is fully disbursed. Grant awarded was \$3,427,412. Final grant amount was \$3,250,968.
Virginia Commercial Space Flight Authority (VCSFA)	MARS	County of Accomack	Grant	5,000,000	9/15/2011	Grant is fully disbursed.
Virginia Commercial Space Flight Authority (VCSFA)	MARS	County of Accomack	2 Grants-\$5,000,000 each	10,000,000	11/14/2011 and 12/7/2012	Grants are fully disbursed.
City of Winchester	Monticello Drive Expansion-Rubbermaid Products expansion	City of Winchester	Grant	47,533	12/20/2011	The City was unable to complete original project due to ROW issues. Grant amount is equivalent to the first disbursement made in good faith of award.
County of Rockingham	Harrisonburg Southeast Connector	County of Rockingham	Grant	5,000,000	6/5/2012	Grant is fully disbursed.
County of Prince William	USMC Heritage Center Improvements	County of Prince William	2 Grants-\$2,242,350 and \$2,735,712	4,978,062	6/5/2012	Grant is fully disbursed.

Page Total **\$67,941,503**

Attachment

**Semiannual Report on the Transportation Partnership Opportunity Fund
Activity/Award Details to Date**

Awards/Projects with Financial Close - Continued

Recipient	Project	Location	Type of Assistance	Amount	Date of Award	Status
Virginia Commercial Space Flight Authority (VCSFA)	MARS	County of Accomack	Grant	5,000,000	1/25/2013	Loan has been converted to a grant. Grant is fully disbursed.
Virginia Commercial Space Flight Authority (VCSFA)	MARS	County of Accomack	Grant	5,000,000	2/5/2013	Grant is fully disbursed.
Department of Aviation	Emporia	City of Emporia	Grant	151,085	2/13/2013	Grant is fully disbursed. Grant awarded was \$162,210. Final grant amount was \$151,085.
County of Accomack	Wallops Research Park	County of Accomack	Grant	4,000,000	7/26/2013	Grant is fully disbursed.
County of Giles	Celanese Acetate	County of Giles	Grant	724,878	7/26/2013	Grant is fully disbursed.
State Route 28 Highway Transportation Improvement District Commission	Route 28 bridge widening over the Dulles Toll Road	Loudoun and Fairfax Counties	Grant	5,000,000	7/26/2013	Grant is fully disbursed.
Economic Development Authority of the City of Newport News	Liebherr Expansion	City of Newport News and Hampton	Grant	1,000,000	1/5/2015	Grant is fully disbursed.
County of Frederick	Navy Federal Credit Union Expansion	Frederick County	Grant	1,169,602	1/11/2018 and 8/01/2018	Grant is fully disbursed. Grant awarded was \$1,290,000. Final grant amount is \$1,169,602.
Virginia Commercial Space Flight Authority	Rocket Lab- Venture Class Launch Pad	Accomack County	Grant	5,000,000	11/13/2018	Work is underway. Grant is fully disbursed.
Virginia Port Authority	Operation of second barge service at Richmond Marine Terminal	City of Richmond	Grant	5,000,000	10/4/2018	Grant is fully disbursed.
Economic Development Authority of the City of Hampton	Project Enterprise	City of Hampton	Grant	979,681	1/11/2021	Grant is fully disbursed. Grant awarded was \$979,772. Final grant amount is \$979,680.78.
Economic Development Authority of New Kent County	Project Solstice	New Kent County	Grant	2,000,000	6/28/2022	Grant is fully disbursed.
Stafford County	Projec Mover	Stafford County	Grant	1,392,000	6/28/2022	Work is underway, no disbursements made to date.
Page Total				\$36,417,246		
Prior Page Total				\$67,941,503		
Financial Close Total				\$104,358,749		

Attachment

**Semiannual Report on the Transportation Partnership Opportunity Fund
Activity/Award Details to Date**

Awards/Projects Pending Financial Close

Recipient	Project	Location	Type of Assistance	Amount	Date of Award	Status
City of Richmond	Stone Brewery Phase II	City of Richmond	Grant	950,000	1/11/2018	Decision brief was signed by Governor McAuliffe. Agreement is pending.
EDA Warren County	Nature	Warren County	Grant	155,516	6/28/2022	Decision brief was signed by Governor Youngkin. Agreement is pending.
Pending Financial Close Total				\$1,105,516		
TOTAL AWARDS APPROVED BY THE GOVERNOR				\$105,464,265		

Funding Initiatives

Funding to Virginia Commercial Space Flight Authority to provide assistance for construction of a hangar for unmanned vehicle operations and to support the development of an improved launch team maintenance facility complex	7,500,000	Appropriated in Item 431 A. and B. of Chapter 1289 (2020 Appropriation Act), Effective July 1, 2020.
Funding for various Transportation Initiatives	20,000,000	Appropriated in Item 447.10 B of Chapter 552 (2021 Special Session Appropriation Act), Effective July 1, 2021.
Funding Initiatives Total		\$27,500,000
TOTAL AWARDS/ FUNDING PROVIDED BY FUND		\$132,964,265

Awards/Projects Unable to Reach Financial Close

Recipient	Project	Location	Type of Assistance	Amount	Date of Award	Status
Flour Virginia, Inc and Transurban USA Development, Inc.	1-95/I-395 HOT Lanes	Spotsylvania, Stafford, Prince William and Fairfax Counties	Loan	\$10,000,000	8/22/2006	TPOF loan could not be executed in accordance with the business agreement between VDOT, Fluor and Transurban at the preliminary stage of project development under TPOF's statutory requirements. A State Infrastructure Bank (SIB) loan was approved for the project and repaid at closing
City of Newport News	Wolseley Economic Development Project	City of Newport News	Grant	2,700,000	8/22/2006	Due to the decline in the economy the plans for expansion were suspended.
VDOT	Coalfields Expressway Rockhouse Section	Buchanan, Wise and Dickenson Counties	2 Grants-\$5,000,000 each	10,000,000	4/11/2007 and 2/25/2009	Project was unable to receive FHWA approval and the funds have been rescinded.
VDOT	Coalfields Expressway and U.S. Route 460 Connector	Buchanan, Wise and Dickenson Counties	2 Grants-\$5,000,000 each	10,000,000	8/12/2011	Project has become eligible for 100% federal funding. TPOF funds have been rescinded since they were no longer needed.
Chesterfield County	I-95/ Willis Road Interchange	Chesterfield County	Grant	\$5,000,000	8/16/2016	Grant returned. Economic Development project withdrawn, no longer eligible for TPOF.
County of Frederick	Renaissance Drive Extension	Frederick County	Grant	1,995,682	3/1/2017	Grant Returned. Scope of project changed and TPOF was no longer needed.
Unable to Reach Financial Close Total				\$39,695,682		

Attachment

Awards/Projects Not Receiving Award

Recipient	Project	Location	Type of Assistance	Amount	Status
County of Rockingham	Southeast Connector	County of Rockingham	Grant	\$4,980,938	The project was denied award due to ARRA funding received for Port Republic Road in the area.
City of Virginia Beach	Atlantic Avenue	City of Virginia Beach	Grant	2,497,000	The fund was not open to applications at the time of submittal.
City of Virginia Beach	Atlantic Avenue	City of Virginia Beach	Grant	2,744,000	The project was denied award because City-controlled state transportation funds were available for the project and TPOF cannot be used to supplant existing or programmed funds.
Not Receiving Award Total				<u>\$10,221,938</u>	

Awards/Projects Not TPOF Eligible

Recipient	Project	Location	Type of Assistance	Amount	Status
Virginia Port Authority	Western Freeway Rail Relocation	Commonwealth of Virginia	Grant	\$4,800,000	The project did not meet Transportation or Economic Development Evaluation Criteria.
Holliday Properties	Capital Region Center	County of Hanover	Grant	5,000,000	There were several statutory conflicts with the application and project.
The Olde Dominion Agriculture Foundation, Inc	Old Dominion Ag Complex	County of Pittsylvania	Grant	300,000	There were several statutory conflicts with the application and project. Other funding has been identified for the project.
The Route 28 Highway Transportation Improvement District Commission	Rt. 28 Corridor Improvements-Northbound Widening	Loudoun and Fairfax Counties	Grant	5,000,000	The project did not meet the Economic Development Criteria.
County of Prince William	Commuter Parking Garage	County of Prince William	Grant	5,000,000	The project did not meet the Economic Development Criteria.
Not Eligible Total				<u>\$20,100,000</u>	

Attachment

Semiannual Report on the Transportation Partnership Opportunity Fund Activity/Award Details to Date

Chapter 847 of the Acts of Assembly of 2007 and Chapter 780 of the Acts of Assembly of 2016 Item 449.10 and Item 453 G - \$305,000,000 Appropriation

Through Item 449.10 of Chapter 847 of the Acts of Assembly of 2007, \$305,000,000 was allotted to TPOF out of the \$500,000,000 for the 2007 Transportation Initiative (the "Initiative") projects.

In 2008, the General Assembly, through Item 462 of Chapter 879 of the Acts of Assembly of 2008, reappropriated \$180,000,000 of the \$500,000,000 back to the Commonwealth of Virginia's General Fund. To substitute for these monies, Item 459 H. of Chapter 879 of the Acts of Assembly of 2008 authorized the issuance of \$180,000,000 of Capital Projects Revenue bonds.

Item 453 G of Chapter 780 of the Acts of Assembly of 2016 dedicated the \$31,070,647 that was remaining from the previous allocation to Road Improvements at military installations and improvements at interstate rest areas throughout the Commonwealth.

Item 437 C and Item 4-1.03 of Chapter 836 of the Acts of Assembly of 2017 dedicated the any funds deposited pursuant to Item 453 G.2 of Chapter 836 of the Acts of Assembly of 2017 to fund additional facilities at Mid-Atlantic Regional Spaceport.

The following are the 2007 TPOF's Initiative projects receiving award and their status:

Project	Grant Amount	Location	Status
I-495 Capital Beltway HOT Lanes	\$157,207,586	Northern Virginia	Grant is fully disbursed.
Route 58 Hillsville Bypass	77,000,000	Town of Hillsville	Grant is fully disbursed.
Route 50 Widening	14,721,767	County of Fairfax	Grant is fully disbursed.
Norfolk Southern Corporation (NSC) - Right-of-Way Acquisition	20,000,000	City of Virginia Beach	The funds were paid out in August 2011 based on the grant agreement with the City. The funds were returned in March 2017 because the project did not advance and repayment was required. See Chapter 836 (2017), Item 453 G.1.
I-295/Meadowville Interchange	5,000,000	County of Chesterfield	Grant is fully disbursed.
Total	\$273,929,353		

The remaining projects identified for funding through the 2007 Initiative and their respective status follow:

Project	Location	Status
Environmental Impact Statement (EIS) for Route 37 - Eastern Bypass	County of Frederick	It was determined that the project did not qualify for TPOF and other funds were identified to perform EIS.
I-64/I-264 Interchange	City of Virginia Beach	A mutual agreement was reached between the City and the Secretary of Transportation to fund the NSC ROW acquisition at \$20,000,000 instead of the I-64/I-264 Interchange. The funds were paid out in August 2011 based on the grant agreement with the City. The funds were returned in March 2017 because the project did not advance and repayment was required.

Attachment

**Semiannual Report on the Transportation Partnership Opportunity Fund
Activity/Award Details to Date**

The following table summarizes the current awards from the \$305,000,000 appropriation:

Project	Grant Amount	Type of Assistance	Eligibility Criteria
I-495 Capital Beltway HOT Lanes	\$157,207,586	Grant	PPTA Project
U.S. Route 58 - Hillsville Bypass	77,000,000	Grant	PPTA Project
U.S. Route 50 Widening	14,721,767	Grant	Design-Build Project
NSC Right-of-Way Acquisition*	0	Grant	Per FTA Requirements
I-295/Meadowville Interchange	5,000,000	Grant	Design-Build Project
Road Improvements to military installations	23,110,000	Grant	Item 453, G. of Chapter 780, 2016 Acts of Assembly
Improvements at interstate rest areas	7,960,647	Grant	Item 453, G. of Chapter 780, 2016 Acts of Assembly
Mid-Atlantic Regional Spaceport	20,000,000	Grant	Item 437, C. of Chapter 836, 2017 Acts of Assembly
Total Awards	\$305,000,000		
Authorization Balance	\$0		

*See Norfolk Southern Corporation Right-of-Way Acquisition on page 6

The Commonwealth of Virginia

The
Transportation Partnership
Opportunity Fund

Guidelines and Criteria

July ~~18, 2018~~1, 2023

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| Appendix A: Chapter [684546](#) of the [20152023](#) Acts of Assembly

Appendix B: Assistance Application

Appendix C: Transportation Partnership Opportunity Fund – Draft Grant Agreement

Appendix D: The Commonwealth’s Opportunity Fund Guidelines

Appendix E: The Virginia Investment Partnership Grant Program Guidelines

Introduction

Chapter ~~684~~546 of the ~~2015~~2023 Acts of Assembly (the “Act”) is the legal framework creating the Transportation Partnership Opportunity Fund (“TPOF” or the “Fund”). The Fund is to be used by the Governor to provide funds to address the transportation aspects of economic development opportunities or to enhance the economic development opportunities of the Commonwealth transportation programs.

The Act

The Act authorizes monies to be awarded from the Fund by the Governor as grants, revolving loans, or other financing tools and equity contributions to an agency or political subdivision of the Commonwealth of Virginia.

It is the intent of the Act to provide funds to address the transportation aspects of economic development opportunities, including, but not limited to, the creation of jobs and to promote private investment and economic development.

The following guidelines and criteria have been developed by the Commonwealth Transportation Board (the “CTB”~~or “Board”~~), in consultation with the Secretary of Transportation and the Secretary of Commerce and Trade to guide the process of applying for and receiving financial assistance from the Fund.

The complete text of the Act has been included as Appendix A to these guidelines. Although guidance is provided herein with regard to application of the Act, it will be incumbent upon all entities to read the Act in its entirety, and to comply with the provisions of the Act.

Transportation Partnership Opportunity Fund Administration

Monies in the Fund ~~will~~may be awarded by the Governor to Applicants in the form of grants, (up to \$5 million), revolving loans or other financing tools and equity contributions. Loans from the Fund will be interest free and are available up to the maximum of \$30 million, based on funding availability. Loan terms will vary but shall not exceed seven (7) years. ~~The Act also authorizes the Governor to award grants of up to five (5) million dollars.~~

The Act also authorizes the Governor to direct funds to the Board for transportation projects determined to be necessary to support major economic development initiatives or to enhance the economic development opportunities of the Commonwealth’s transportation programs when recommended by the Secretary of Transportation and Secretary of Commerce and Trade.

Assistance or commitments from the Fund will be limited to the total value of money that is available in the Fund. The fund shall consist of (i) one-third of all interest, dividends, and appreciation that may accrue to the Transportation Trust Fund and the Highway Maintenance and Operating Fund and (ii) any funds appropriated to it by the general appropriation act and revenue from any other source, public or private. Funding available

will also include repayments to the Fund of loans, any revocation of assistance provided to entities that fail to meet performance criteria, any interest and dividends earned on the Fund and any other appropriations may be used for additional loans or grants for other projects.

After award to an Applicant or direction to the Board by the Governor, the Fund will be administered by the CTB acting through the Virginia Department of Transportation (“VDOT”), in consultation with the Secretary of Commerce and Trade. VDOT will manage the overall administration of the TPOF, with the Secretary of Commerce and Trade and the Virginia Economic Development Partnership providing guidance with respect to the economic development features of the program.

Eligible Applicants

Financial assistance from the Fund may be awarded to any agency or political subdivision of the Commonwealth of Virginia.

Eligible Projects

~~The financial assistance~~ Grants or revolving loans to Applicants or Funds directed to the Board may be used for transportation capacity development, on and off site; road, rail, mass transit or other transportation access costs beyond the funding capability of existing programs; studies of transportation projects including but not limited to environmental analysis, geotechnical assessment, survey, design and engineering, advance right-of-way acquisition, traffic analysis, toll sensitivity studies, financial analysis, property acquisition and new or improved infrastructure to support economic development opportunities of the Commonwealth’s transportation programs, or any else permitted by law. Funds may be used for any transportation project or any transportation facility within the Commonwealth of Virginia.

Transportation aspects of economic development projects that are also eligible for funding through the Revenue Sharing Program, the Economic Development Access Program, the Rail Industrial Access Program, the Rail Preservation Program or the Rail Enhancement Program, may be eligible to receive financial assistance from the Fund. However, it must be demonstrated that such additional funding is necessary. Amounts received from these other funding sources, or used to leverage additional monies from the Fund, may not also be used for the required non-state match.

Monies from the Fund are not to be used to supplant existing or programmed funds from other existing public sources, but are to be used to support projects and activities beyond the funding capability of existing programs.

Monies awarded to Applicants from the Fund that are to be used for transportation aspects of an economic development project must meet the economic development criteria of the *Commonwealth’s Opportunity Fund Or*, in cases where the project is solely retaining jobs, the project must meet the economic development criteria of the *Virginia Investment Partnership Grant Program Or*, for state agency transportation services that provide non-

highway alternatives for the movement of freight, the service must enhance economic development opportunities and regional connectivity within the Commonwealth.

Funds used to match the Commonwealth's Opportunity Fund **CANNOT** be used to match the TPOF, although both sources of monies can be used for a project. Funds from the Virginia Tobacco Indemnification and Community Revitalization Commission may be allowed as matching funds for this purpose.

Project Ownership

Projects that are developed with monies from the Fund shall not become private property and shall be maintained by the appropriate entity pursuant to applicable agreements following completion. Any reports, studies, analysis, and other forms of intellectual property created or developed using monies from the Fund shall become property of the Commonwealth.

Application Process

VDOT, in cooperation with the Secretary of Commerce and Trade and the Virginia Economic Development Partnership, will accept applications from eligible applicants for consideration. A copy of the application is provided as Appendix B. All applications for assistance from the Fund shall be sent to VDOT's Chief Financial Officer (the "CFO") and addressed as follows:

Transportation Partnership Opportunity Fund
Attn: Chief Financial Officer
Virginia Department of Transportation
1401 East Broad Street
Richmond, Virginia 23219-2000

All applications will be reviewed to determine that the minimum eligibility requirements have been satisfied. The minimum eligibility requirements are as follows:

Application Assistance Requirements

For an applicant to be eligible for assistance the applicant must meet the mandatory requirements PLUS one of the other listed criteria

Mandatory Requirements

- The applicant **MUST** be an agency or political subdivision of the Commonwealth,
- The project addresses the needs identified in the appropriate state, regional or local transportation plan.

PLUS ONE of the following:

- The project meets the economic development criteria of the **Commonwealth's Opportunity Fund**.
- In cases where the project is solely retaining jobs; the project must meet the economic development criteria of the **Virginia Investment Partnership Grant Program**.
- In cases where the funding is for state agency transportation services that provide non-highway alternatives for the movement of freight, the service must enhance economic development opportunities and regional connectivity within the Commonwealth.

Following an applicant's selection for evaluation, meetings may be conducted with the applicant. The purpose of the meetings will be to review and confirm the information contained in the application. Representatives of the applicant, VDOT staff and staff from the applicable modal oversight agency and the Virginia Economic Development Partnership staff, as appropriate, shall participate in the meetings.

Application Evaluation Criteria

Following receipt of the applications and a review by staff to assure the basic statutory requirements have been met, a TPOF Advisory Panel, chaired by a Deputy Secretary of Transportation, and consisting of VDOT's Chief Financial Officer, an Executive Officer of the applicable modal oversight agency, ~~a Deputy Secretary of Transportation, (if necessary)~~, a Deputy Secretary of Commerce and Trade, and a representative of the Department of Planning and Budget will evaluate those applications to ensure that the applicant(s) meets the transportation and economic development evaluation criteria. Applicants meeting the evaluation criteria become eligible to receive assistance, subject to the availability of funding. In circumstances where the total amount of assistance requested exceeds the total amount of funding available, eligible applications that include applicant matching funds or equity contributions and projects that are in an advanced state of readiness-to-proceed, will receive priority consideration for assistance.

General Evaluation Criteria

- Projects with a high level of matching funds will be considered highly desirable.
- Projects that clearly show how funds will advance the development of a transportation facility will be considered highly desirable.
- Financial feasibility of the project plan of finance, including the capacity to repay any loan and mitigate risks.
- Extent to which funding would advance the project's or facility's schedule to an earlier completion date.

Transportation Evaluation Criteria

- The entity's experience implementing similar projects, including the use of new technologies.

- Comparative benefits resulting from the development of the proposed transportation project or facility.
- Evidence that the state agency transportation service has provided and/or will provide non-highway alternatives for the movement of freight and has enhanced economic development opportunities and will enhance future economic development in the impacted areas.

Economic Development Evaluation Criteria

- Project must meet minimum criteria established in the Commonwealth's Opportunity Fund Guidelines. Or,
- For projects in which no net new jobs are being created, the project must meet minimum criteria established in the Virginia Investment Partnership Grant Program Guidelines. Or,
- For state agency transportation service applicants, provide evidence that the service has supported economic development and job creation and will continue to enhance future economic development opportunities that will support job creation and capital investment.

Advisory Panel Notification

Following evaluation by the TPOF Advisory Panel, the VDOT Chief Financial Officer shall provide findings and recommendations of the Panel to the Secretary of Transportation, the Secretary of Commerce and Trade and the applicable modal oversight board and agencies.

Awarded Financing ~~Commitment~~ Notification

Following notification by the TPOF Advisory Panel, the Secretary of Transportation and the Secretary of Commerce and Trade will submit to the Governor a recommendation of funding for the successful applicants. Once assistance from the Fund is approved and awarded by the Governor, a ~~written commitment~~ ~~(the~~ ~~“Financing Commitment”~~~~)~~ notification will be provided to the potential recipient. The ~~commitment~~ notification will outline the type of assistance to be provided and in the case of a loan, the required security provisions, the loan term and payment provisions, the amount of assistance to be provided and any conditions that must be met by the applicant prior to loan closing or grant award. The ~~commitment~~ notification must be acknowledged and accepted and signed by the potential recipient ~~and returned to VDOT~~ within ~~thirty (30)~~ 10 business days of the ~~commitment~~ notification date to preserve the funding. ~~The Financing Commitment, once executed, establishes a legal obligation for~~ Once the funding subject to appropriation and notification is accepted, the terms and conditions of the Financing Commitment, as well as the recipient’s legal obligation to perform. ~~Department and applicant will enter into an agreement.~~

Loan/Grant Award Agreement for Economic Development Transportation Projects

An agreement shall be executed between the Commissioner of the Virginia Department of Transportation and the appropriate local government, state agency, or political subdivision that receives the principal benefit of financing from the Fund before disbursement of any monies awarded to an Applicant.

In the case where project is qualifying based on COF or VIP, the agreement will include a statement that the recipient will reach the specified job creation or retention and/or capital investment levels within thirty-six (36) months after final disbursement of funds ~~and maintain those levels at least throughout the thirty-six (36) month period~~ or in accordance with the corresponding COF or VIP agreement.

If those performance criteria are not met, the entity shall repay to the Fund, an amount as required by the terms and conditions of the Grant/Loan & Performance Agreement (Award Agreement). The Commissioner may, however, in consultation with the Secretary of Transportation and the Secretary of Commerce and Trade, grant a partial or total waiver to the repayment or extend the performance period if it can be demonstrated that the transportation improvements developed with monies from the Fund had other economic benefits to a locality of the Commonwealth beyond that directly attributable to the private entity which was the basis for an application for monies from the Fund.

In the case of state agency transportation services, the anticipated benefits to the Commonwealth will be defined in the agreement and should be met within eighteen (18) months of final disbursement. If that performance criteria is not met, the applicant will become ineligible for future funds until the agreed upon benefit is met.

Loan Closing/Grant Award/Agreement

A Loan

~~Any conditions or prerequisites to receiving the assistance that are outlined in the Financing Commitment must be met prior to execution of the Award Agreement. VDOT and the applicant will enter into an agreement for the funds. The~~ Award Agreement will include the security provisions for the assistance, repayment terms along with the amortization schedule, representations and warranties, finance plan requirements, borrower covenants, disbursement requirements, monitoring and reporting requirements and will specify any other terms and conditions for the financial assistance.

Directed Funds to the Board

Upon the direction of funds to the Board in excess of \$5 million, the Secretary of Transportation shall within 30 days submit a report on such direction of funds to the Chairmen of the Senate Committee on Finance and Appropriations and the House Committee on Appropriations. The report content will comply with all requirements set forth in the Code of Virginia.

Any funds directed to the Board in a cumulative amount in excess of \$35 million on any one project, shall be submitted for review to the MEI Project Approval Commission (the "Commission"). The Commission shall completed such review within 14 days.

Disbursement Process

Disbursement of the awarded financial assistance can begin following execution of an Award Agreement. Assistance from the Fund may be paid to the recipient based on costs incurred for the project. In some instances, disbursement may be allowed on a lump sum basis, subject to sufficient justification, where a portion, up to the maximum amount of assistance approved, could be disbursed at a single time.

Recipients will submit a disbursement request to VDOT. VDOT will review the request for completeness and if acceptable approve the request for disbursement. VDOT will notify the recipient within thirty (30) days of any deficiencies in any disbursement request. Upon approving the disbursement request, VDOT will then forward the request to the Virginia Department of the Treasury (the "Treasury") for payment.

Directed funds recommended by the Governor will be allocated to the project through the Six-Year Improvement Program and administered by the Virginia Department of Transportation or the applicable locality.

Loan Term/Repayment

Loans from the Fund will have their term set by the Governor. Terms and repayment provisions will vary depending on the type of project and the availability of revenues or other funds. All loans must be repaid within seven (7) years of the date of loan closing. The frequency of payments of principal will vary according to the recipient and will be established as a part of the loan closing process. Loan recipients will make their payments to the Treasury.

VDOT will be responsible for monitoring and ensuring repayment of the loans.

Recipient Reporting Requirements

Recipients of TPOF awarded assistance will be required to provide VDOT and the Secretary of Commerce and Trade with various reports, certificates and documents during the project development phase as well as throughout the life of any loan.

Submittals of annual audited and interim, unaudited financial statements, approved budgets and use of funds reporting may be required as a condition of accepting assistance from the Fund. In addition, the recipient shall provide disclosure of any material events that could affect its ability to complete and, if applicable, operate the project.

Submittal of an annual and interim social economic report will be required in order to properly document and track job creation or retention, investment and general economic improvements of the project.

Other special reporting requirements may be required on a case-by-case basis.

All reporting requirements will be included in the financing agreement. Recipient reports will be due April 1 and October 1 during the term of any outstanding loan or, for awarded grant recipients, until completion of the assisted project or ~~thirty-six (36) months~~ completion of the capital investment and job creation period, whichever comes ~~first~~last. VDOT shall seek to minimize reporting requirements for smaller grants and loans.

|

Appendix A

Chapter ~~684546~~ of the ~~20152023~~ Acts of Assembly

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding a section numbered 33.2-1529.1 as follows:

§ 33.2-1529.1. Transportation Partnership Opportunity Fund

A. There is hereby created the Transportation Partnership Opportunity Fund (the Fund) to be used by the Governor to provide funds to address the transportation aspects of economic development opportunities. ~~The Fund shall consist of (i) one-third of all interest, dividends, and appreciation that may accrue to the Transportation Trust Fund and the Highway Maintenance and Operating Fund or to enhance the economic development opportunities of the Commonwealth's transportation programs. The Fund shall consist of (i) funds pursuant to subdivision B 3 of § 33.2-1524 and (ii) any funds appropriated to it by the general appropriation act and revenue from any other source, public or private. The Fund shall be established on the books of the Comptroller, and any funds remaining in the Fund at the end of a biennium shall not revert to the general fund but shall remain in the Fund. All interest and dividends that are earned on the Fund shall be credited to the Fund. The Governor shall report to the Chairmen of the House Committees on Appropriations, Finance, and Transportation and the Senate Committees on Finance and Appropriations and on Transportation as funds are awarded in accordance with this section.~~

B. The Fund shall be a subfund of the Transportation Trust Fund. Provisions of this title and Title 58.1 relating to the allocations or disbursements of proceeds of the Commonwealth Transportation Fund, the Transportation Trust Fund, or the Highway Maintenance and Operating Fund shall not apply to the Fund.

C. 1. Funds shall be awarded from the Fund by the Governor as grants, revolving loans, or other financing tools and equity contributions to an agency or political subdivision of the Commonwealth. Loans shall be approved by the Governor and made in accordance with procedures established by the Board and approved by the Comptroller. Loans shall be interest-free and shall be repaid to the Fund. The Governor may establish the duration of any loan, but such term shall not exceed seven years. The Department shall be responsible for monitoring repayment of such loans and reporting the receivables to the Comptroller as required.

2. The Governor may direct funds from the Fund to the Board for transportation projects determined to be necessary to support major economic development initiatives or to enhance the economic development opportunities of the Commonwealth's transportation programs when recommended by the Secretary of Transportation and Secretary of Commerce and Trade. Upon the direction of funds pursuant to this subdivision in excess of \$5 million, the Secretary of Transportation shall within 30 days submit a report on such direction of funds to the Chairmen of the Senate Committee on Finance and Appropriations and the House Committee on Appropriations. Such report shall be sent to the Chairmen and the staff directors of such committees. Such report shall include the name of the transportation project to which the funds are being directed, the locality in which the transportation project is being developed, the amount of the grant or loan made or committed to the transportation project from the Fund and the purpose for which it will be used, the number of jobs retained or created or projected to be retained or created by the transportation project, the expected rate of return on investment of the transportation project, and the amount of a company's investment in the Commonwealth. Any direction of funds pursuant to this subdivision in a cumulative amount in excess of \$35 million on any one project shall be submitted for review to the MEI Project Approval Commission (the Commission) established pursuant to § 30-309. The Commission shall complete such review within 14 days. In the event that the Commission does not recommend such direction of funds, such direction of funds shall not be made unless subsequently authorized by the General Assembly. Absent a recommendation within such 14-day period that the funds should not be directed, or in the event that the Commission does not provide a recommendation within such 14-day period, the funds shall be directed.

D. Grants, funds directed to the Board, or revolving loans may be used for transportation capacity development on and off site; road, rail, mass transit, or other transportation access costs beyond the funding capability of existing programs; studies of transportation projects, including environmental analysis, geotechnical assessment, survey, design and engineering, advance right-of-way acquisition, traffic analysis, toll sensitivity studies, and financial analysis; property acquisition and new or improved infrastructure to support economic development opportunities of the Commonwealth's transportation programs; or anything else permitted by law. Funds may be used for any transportation project or any transportation facility. Any transportation infrastructure completed with moneys from the Fund shall not become private property, and the results of any studies or analysis completed as a result of a grant or loan from the Fund shall be property of the Commonwealth.

E. The Board, in consultation with the Secretary of Transportation and the Secretary of Commerce and Trade, shall develop guidelines and criteria that shall be used in awarding grants or making loans from the Fund; however, no grant—provided pursuant to subdivision C 1 shall exceed \$5 million and no loan—provided pursuant to subdivision C 1 shall exceed \$30 million. No grant or loan shall be awarded until the Governor has provided copies of the guidelines and criteria to the Chairmen of the House Committees on Appropriations, Finance, and Transportation and the Senate Committees on Finance and Appropriations and on Transportation. The guidelines and criteria shall include provisions including the number of jobs and amounts of investment that must be committed in the event moneys are being used for an economic development project, a statement of

how the studies and analysis to be completed using moneys from the Fund will advance the development of a transportation facility, a process for the application for and review of grant and loan requests, a timeframe for completion of any work, the comparative benefit resulting from the development of a transportation project, assessment of the ability of the recipient to repay any loan funds, and other criteria as necessary to support the timely development of transportation projects. The criteria shall also include incentives to encourage matching funds from any other local, federal, or private source.

F. Within 30 days of each six-month period ending June 30 and December 31, the Governor shall provide a report to the Chairmen of the House Committees on Appropriations, Finance, and Transportation and the Senate Committees on Finance and Appropriations and on Transportation that shall include the following information: the locality in which the project is being developed, the amount of the grant or loan made or committed from the Fund and the purpose for which it will be used, the number of jobs created or projected to be created, and the amount of a company's investment in the Commonwealth if the project is part of an economic development opportunity.

G. The Governor shall provide grants and commitments from the Fund in an amount not to exceed the total value of the moneys contained in the Fund. If the Governor commits funds for years beyond the fiscal years covered under the existing appropriation act, the State Treasurer shall set aside and reserve the funds the Governor has committed, and the funds set aside and reserved shall remain in the Fund for those future fiscal years. No grant or loan shall be payable in the years beyond the existing appropriation act unless the funds are currently available in the Fund.

H. Nothing herein shall be construed to authorize the use of eminent domain for any purposes prohibited by § 1-219.1 or Article I, Section 11 of the Constitution of Virginia.

Appendix B

The Commonwealth of Virginia

The
Transportation Partnership
Opportunity Fund

Assistance Application

July ~~2018~~2023

THE COMMONWEALTH OF VIRGINIA

**APPLICANTS MUST COMPLETE ALL SECTIONS
PLEASE READ THE INSTRUCTIONS PRIOR TO COMPLETING THIS
APPLICATION**

SECTION 1 – Contact Information	
Applicant's Legal Name:	
Other Names Under Which Applicant Does Business:	
Federal Tax Identification Number:	
Business Address:	
Mailing Address (If different from above):	
Contact Person Name:	
Contact Person Title:	
Contact Person Mailing Address (If different from above):	
Telephone Number:	(xxx) xxx-xxxx
Fax Number:	(xxx) xxx-xxxx
E-mail Address:	

SECTION 2 – Assistance Requested	
Type of Assistance Requested. (GRANT / LOAN)	
Amount of Assistance Requested. (In WORDS)	xxxxxx Dollars
Amount of Assistance Requested. (In Numbers)	\$0,000,000.00

State how the project addresses the needs identified in the appropriate state, regional or local transportation plan.

State in detail how the project meets one of the following requirements:

- The project meets the economic development criteria of the Commonwealth’s Opportunity Fund.

OR

- In cases where the project is solely retaining jobs, the project must meet the economic development criteria of the Virginia Investment Partnership Grant Program.

OR

- For state agency transportation service applicants, provide evidence that the service has supported economic development and job creation and will continue to enhance future economic development opportunities that will support job creation and capital investment.

SECTION 3 – Project Information

Please ensure that you have reviewed the instructions prior to commencing this section

1. Project Name.

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2. Project Executive Summary. (Maximum 2 Pages)

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3. Project Location and General Description of the Environment. (Mark if required as Exhibit A)

--

4. Project Development Process.

--

5. Purpose of TPOF Assistance.

--

6. Project Description.

--

7. Project Social and Economic Impact.
8. Project Schedule. (Mark if required as Exhibit B)
9. Permits and Approvals. (Mark if required as Exhibit C)
10. Project Management and Compliance Monitoring Plan. (Mark if required as Exhibit D)
11. Maintenance and Operations Plans. (Mark if required as Exhibit E)

SECTION 4 – Plan of Finance

Please ensure that you have reviewed the instructions prior to commencing this section

1. Estimated Project Cost. (Uses of Funds) (Mark if required as Exhibit F)

--

2. Sources of Funds.

--

3. Pro Forma Cash Flow. (Mark if required as Exhibit G)

--

4. Risks and Mitigation. (Mark if required as Exhibit H)

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5. Financial Statements (if applicable) (Mark if required as Exhibit I)

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SECTION 5 – Applicant Organization Information

Please ensure that you have reviewed the instructions prior to commencing this section

1. Describe the applicant’s legal framework including past history and ownership structure. (Mark if required as Exhibit J)

2. Describe the legal authority of the applicant to carry out the proposed project activities.

3. Identify whether governmental entities, other than the applicant, must approve the submission of the application package, the funding of activities or the carrying out of activities described in the application. Provide documentation in the form of an exhibit as applicable

4. Describe the applicant’s organizational structure and the applicant’s relationship to any subsidiaries or affiliates. (Mark if required as Exhibit K)

5. Provide an organization chart (Mark if required as Exhibit L)

6. Describe the applicant’s prior 5 experience as it relates to carrying out projects similar to that being proposed (Mark if required as Exhibit M)

Project:
Year:
Description:
Project Cost:

Project Status:

Project:

Year:

Description:

Project Cost:

Project Status:

Project:

Year:

Description:

Project Cost:

Project Status:

Project:

Year:

Description:

Project Cost:

Project Status:

Project:

Year:

Description:

Project Cost:

Project Status:

7. Describe any current, threatened, or pending litigation involving the applicant related to permitting, public involvement, environmental irregularities, construction defects, securities fraud, conflict of interest, failure to perform under a state or federal contract, or other charges which may reflect on the applicant's financial position or ability to complete the project **(Mark if required as Mark Exhibit N)**

Applicant may be required to provide documentation regarding this section.

APPLICATION INSTRUCTIONS

GENERAL

- Please provide detailed answer to all application questions (where applicable) in the space provided. Applicants can use more space than provided to answer the questions in this application.
- If additional exhibits or attachments are needed, please mark and make note of the attachments within the space provided in the application.
- It is important that application complete all applicable sections of this application.
- Application should be completed in Times New Roman 12 Size Font.

SECTION 3 – Project Information

This section requires narrative information and exhibits. To help avoid any delays in the processing this application it is important that ALL attached and numbered exhibits correspond to their respective items.

1. **Project Name.** Assign a short name to the project for identification purposes.
2. **Project Executive Summary.** (Maximum 2 Pages)
3. **Project Location and General Description of the Environment.** Describe the location of the project, including major intersecting highway and rail routes. Attach a map as Exhibit A. Include the county or counties that the project will serve.
4. **Project Development Process.** Is this project to address the transportation aspects of an economic development opportunity?
5. **Purpose of TPOF Assistance.** Describe what aspect of the project for which the assistance will be used. Provide a breakdown of the proposed use of the assistance.
6. **Project Description.** Describe the need for the project, its basic design features and what the project is intended to accomplish. Include an assessment of the current condition of all transportation facilities relating to the project. For a construction project, describe the difference in the current project scope as compared to any approved environmental documents or study alternatives. If no environmental assessments or reviews have been completed on the project, provide an explanation and a schedule outlining the steps to comply with the National Environmental Policy Act. Describe how the funds provided will enhance the transportation aspects of economic development opportunities for the local area and the State in general.

7. **Project Social and Economic Impact.** Describe how the project will improve or enhance the current social and economic situation within the project area. This section should include,– the number of jobs created (if qualifying under COF criteria) or retained (if qualifying under the VIP criteria) as a result of the project and the amounts of investment that will be committed in the event that the funds are being used for an economic development project. Include a statement as to how the studies and analyses to be completed using moneys from the TPOF will advance social and economic development.
8. **Project Schedule.** Provide a timeline that shows the estimated start and completion dates for each major phase or milestone of the project development, construction and/or acquisition. Indicate the applicant’s current status with respect to the timeline. Indicate the extent to which TPOF assistance will expedite the schedule or aid in meeting the schedule. List any other critical path issues. (Exhibit B)
9. **Permits and Approvals.** List all major permits and approvals necessary for construction of the project and the date, or projected date of the applicant’s receipt of such permits and approvals. The list should include permits and approvals required under local, regional, state and federal laws and regulations. Indicate when outstanding approvals by the governing entities are expected. Describe the status of the environmental review documents. *Copies of ALL permits and approvals will be required upon execution of a financing agreement.* (Exhibit C)
10. **Project Management and Compliance Monitoring Plan.** Include a comprehensive project management and monitoring plan that will assure the project sponsor’s ability to deliver the project as planned, fulfill all project commitments and ensure compliance with all terms of the financing agreement, including all applicable regulations and provisions of law. (Exhibit D)
11. **Maintenance and Operations Plans.** Include a description of the maintenance and operations plan for the project. Include projections of maintenance and operations expenses and the source of payment for these expenses. (Exhibit E)

SECTION 4 – Plan of Finance

This section pertains to the plan of finance for the project. This section also requests narrative information and exhibits. To help avoid any delays in the processing this application it is important that ALL attached and numbered exhibits correspond to their respective items.

1. **Estimated Project Cost (Uses of Funds).** Provide a detailed budget for the project. The budget should include all applicable and anticipated expenses and cost for administrative services, feasibility studies, preliminary engineering and environmental assessments, right-of-way acquisition, vehicle acquisition, construction, construction administration, project management and inspection and other engineering or technical services, contingencies and any other cost categories as may be necessary. All cost estimates should be shown on a year-of-expenditure, cash basis that include any necessary explanations as to assumptions used to determine estimates. (Exhibit F)
2. **Sources of Funds.** Provide a table that reflects the amount of funding from each source of funds for the project, including the TPOF funding. Include, as applicable, federal grants and/or loans, state grants and/or loans, local grants and/or loans, private investment and/or equity contributions, bond proceeds, other borrowings and any other sources of funding that will be used for the project. In addition, provide in narrative form the following information for each source of funding. Supplement the narrative with a chart showing the flow of funds.

Description of TPOF Funding:

- The entity requesting the grant or loan.
- If a grant is being requested, outline when the funding is expected or needed.
- If a loan is being requested, outline the following:
 - Evidence of authorization to commit to loan repayment(s);
 - The source of repayment(s) for the TPOF loan;
 - If project revenues are the source of repayment, the priority of repayment of the loan with respect to project revenues;
 - If non-project revenues are the source of repayment (e.g. general revenues, appropriations, etc.), the priority of repayment of the loan with respect to borrowing entity's other liabilities;
 - The security features for the loan, including any pledged revenues and collateral;
 - Debt service coverage on the loan.
 - Whether the source of repayment is contingent on the project's completion;
 - Whether the source of repayment is subject to future allocations, appropriation and/or governing body approval; and
 - Proposed payment schedule.

Description of other governmental grants and or assistance:

- The specific governmental entity providing the grant.
- The timing for receipt of the grant, including the key steps that must occur in order to receive the grant, such as environmental permits, receipt of other funding, resolutions adopted by the entity, budget appropriations, etc. Provide relevant documentation for those steps that have occurred.
- Any known level of commitment associated with the grant.
- Requirements that will be imposed by the entity on the use of the grant monies or the project.

Description of other loans, debt or other borrowing:

- The lender and legal entity borrowing the money.
- The source of repayment for all other debt and the priority of payment relative to other project borrowing.
- Security features for all other debt, including any pledged revenues and collateral.
- Covenants related to the financial or operational performance of the project, such as coverage levels, and the incurrence of additional debt.
- Structure, including the term, amortization and whether the loan will be fixed or variable rate and expected fixed rate or expected spread to specified index for variable rate debt.
- Anticipated credit ratings if funds are to be borrowed through a public debt offering.
- Any credit enhancement or other guarantees.
- The timing for the borrowing or issuance of debt, including the key steps that must occur. Provide relevant documentation for those steps that have occurred.

Description of equity and private investment:

- The entity, or entities, providing the equity or private investment.
- The mechanism(s) for how the investor(s) will be repaid, for example from excess cash flow, periodic scheduled payments, lump-sum payment from additional debt incurred in the future, etc.
- The expected rate of return and justification for the rate of return.
- Any anticipated revenue sharing with any entity.
- The timing for receipt of the investment, including the key steps that must occur in order to receive the funds. Provide relevant documentation for those steps that have occurred.
- Any major conditions or requirements that will be imposed by the investor(s) on the project.

Description of any other form of assistance not covered above.

3. **Pro Forma Cash Flow.** Provide pro forma cash flows, reflecting the flow of funds and showing revenues, all debt repayment, (if applicable), including any loans under the TPOF, (if applicable), maintenance and operations expenses and any payments to equity/private investors. Provide a detailed description of assumptions and justification of the assumptions. (Exhibit G)
4. **Risks and Mitigation.** Identify the risks to the project completion and the sufficiency of revenues to repay the loan. Samples of these types of risk could include cost escalation, timing of approvals and permits, litigation, and availability of other funding. Identify the mitigation strategies for any acknowledged risks, including any payment and performance guarantees. (Exhibit H)
5. **Financial Statements.** Provide year-end audited financial statements for the past three years for each project team member and the parent entities. (Exhibit I)

SECTION 5 – Applicant Organization Information

This section requests narrative information and exhibits. To help avoid any delays in the processing this application, it is important that ALL attached and numbered exhibits correspond to their respective items.

1. Describe the applicant’s legal framework. Include a copy of the statutory authority under which the entity was created. If applicant is the lead applicant, provide details of the agreement with any other entities. (Exhibit J)
2. Describe the legal authority of the applicant to carry out the proposed project activities. This description should include discussion of the applicant’s ability to levy taxes, issue debt, charge tolls or other fees and/or receive assistance from the Transportation Partnership Opportunity Fund. Provide documentation in the form of an exhibit as applicable.
3. Identify whether governmental entities, other than the applicant, must approve the submission of the application package, the funding of activities or the carrying out of activities described in the application. Provide documentation in the form of an exhibit as applicable.
4. Describe the applicant’s organizational structure and the applicant’s relationship to any subsidiaries or affiliates. Include the legal names of key principals and staff and any recent or proposed changes to the organization structure. If applicant is part of a joint venture, identify all partners and each partner’s relationship to any subsidiaries or affiliates. (Exhibit K)
5. Provide an organization chart, in the form of an exhibit, to include the major parties involved in any aspect of the project. Include the major service contractors that have been, or will be, retained for the project. (Exhibit L)
6. Describe the applicant’s prior experience as it relates to carrying out projects similar to that being proposed. Include prior experience in relation to the implementation of any new technology and the success of the use of such technology. (Exhibit M)
7. Describe any current, threatened, or pending litigation involving the applicant related to permitting, public involvement, environmental irregularities, construction defects, securities fraud, conflict of interest, failure to perform under a state or federal contract, or other charges which may reflect on the applicant’s financial position or ability to complete the project. (Exhibit N)

Appendix C

TRANSPORTATION PARTNERSHIP OPPORTUNITY FUND DRAFT AWARD AGREEMENT

This **Award Agreement** (this “Agreement”) is made and entered into as of **MONTH DAY YEAR**, by and among the **Virginia Department of Transportation** (“VDOT” or the “Department”), an agency of the Commonwealth of Virginia (the “Commonwealth”) and the _____ (the “Recipient” or the “County, City, Agency, EDA”).

Explanatory Statement

A. The Transportation Partnership Opportunity Fund (“TPOF” or the “Fund”) was created under Section §33.2-1529.11 of the Code of Virginia (the “Code”) to provide funds to address transportation aspects of economic development opportunities.

B. The Governor is authorized to award assistance from the Fund in various forms to an agency or political subdivision of the Commonwealth.

C. The Recipient is a duly created and validly existing political subdivision of the Commonwealth and is eligible to receive financial assistance from the Fund.

D. The Recipient submitted an application requesting **SUM IN WORDS (\$x,xxx,xxx.00)** in the form of a grant from the Fund to assist in **NAME OF THE PROJECT** as defined in Exhibit A (the “Project Description” or the “Project”). The Project facilitates an economic development opportunity for the Commonwealth, thereby meeting the Transportation Evaluation Criteria established for the Fund, and will be administered by the Recipient. The projected costs of the Project are identified in Exhibit B (the “Project Budget and Sources of Funds”) to this Agreement.

E. The TPOF Advisory Panel (the “Panel”) has evaluated the application and has found that it meets the requirements of the Code and the Transportation Evaluation Criteria established in the Fund’s Guidelines and Criteria, dated ~~January 2016~~ July 2023. The Panel recommended on **MONTH DAY YEAR** to the Secretary of Transportation and the Secretary of Commerce and Trade, an award by the Governor of a **SUM IN WORDS (\$x,xxx,xxx.00)** grant, subject to certain conditions.

F. On **MONTH DAY YEAR** the Governor approved the award of the **SUM IN WORDS (\$x,xxx,xxx.00)** grant (the “Grant”) to the Recipient. A copy of the Decision Brief signed by the Governor is provided as Exhibit C.

G. Sufficient monies exist in the Fund to consider the recipient’s request for financial assistance.

NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which are acknowledged by the parties, the parties agree as follows:

1. Purpose of Agreement. The purpose of this Agreement is to provide for the terms and conditions required for making the grant, the disbursement and application or use of the proceeds of the Grant and other matters related thereto.

2. Disbursement Authorization and Application and Use of TPOF Grant Proceeds.

(a) Requisition. In order to requisition disbursement of the Grant proceeds, the Recipient shall submit to VDOT, a completed requisition for disbursement of the Grant proceeds signed by an authorized representative of the Recipient. The requisition will contain all information called for by, and otherwise be substantially in the form of Exhibit D (the “Requisition For Disbursement”) to this Agreement.

(b) Disbursement. Disbursement of the grant proceeds will be on a *reimbursable* basis, with a frequency of no more than one (1) requisition for disbursement per month.

(c) Application and Use of Grant Proceeds. The Grant proceeds shall be used for the sole purpose of funding the cost and expenses of the activities and tasks undertaken by the Recipient in the development and procurement of the Project as generally summarized in the Project Budget and described in more detail in the Recipient’s TPOF application (the “Work” or “Work Product”). Project expenditures, will be composed of but not limited to right-of-way acquisition, professional and inspection services, construction contractor payments and a contingency. The Grant will be limited to **SUM IN WORDS (\$x,xxx,xxx.00)** and along with the other identified monies, is expected to be adequate to fully fund the tasks identified in the Project Budget. Any Project cost exceeding the amount of the Grant shall be paid for by the Recipient using its own monies.

(d) Performance Date. Means xxx xxx, 20xx. ~~If the Recipient, in cooperation with VDOT, deems that full faith and reasonable efforts have been made and are being made by the Recipient to achieve the Targets, VDOT may extend the Performance Date by Six (6) Months. If the Performance date is extended, this new Performance Date will for the purpose of this agreement will be the Performance Date.~~

~~The performance date shall only be extended twice during the life of the project.~~

(e) Targets. The Recipient agrees that the capital investment will be \$XXX and the number of jobs created/retained will be XXX. These amounts will be achieved on or prior to the Performance date ~~and shall be maintained for a total of thirty-six (36) months after the Performance Date.~~

The average annual wage of new jobs will be \$xxxxx.xx and the % of new jobs sourced from the local community shall be xxx%.

The capital investment is limited to the capital investment specific for this grant.

(f) Reporting Period. The reporting period is from the date of this Agreement to ~~thirty six (36) months after~~ the Performance Date.

3. Project Schedule.

Every good faith effort shall be made by the Recipient to cause the completion of components of the Work no later **MONTH DAY YEAR.**

4. Reports and Records.

(a) Maintenance Requirements. Full and detailed accounts and records shall be maintained, as appropriate, by the Recipient for the Project and the Grant and such controls shall be exercised as may be necessary for proper financial management, using accounting and control systems in accordance with generally accepted accounting principles and standards, so as to provide complete records to fully support the use of the Grant proceeds to pay any cost and/or expense charged to the Work. During the performance of the Work, access shall be afforded by the parties to each other and their representatives and agents to the records, books, correspondence, receipts, subcontracts, purchase orders, vouchers, memoranda and other data, including but not limited to electronic schedules and other electronic data (all collectively referred to as the "Books and Records") relating to the Work. Such Books and Records shall be maintained at the [Insert: Recipient's address]

(b) Periodic Reports. On April 1 and October 1 of each year until the End of the Reporting Period, the Recipient shall provide to VDOT's Chief Financial Officer a summary outlining the use of the TPOF monies and the status of the Project. This report should also provide an update on all progress made in order to achieve the projects investment and employment targets. In addition, the Recipient shall promptly notify VDOT of any material events that could affect the Recipient's ability to meet its financial obligations toward the Project.

5. Extension in the Performance Date. If ~~Date~~ If the Recipient has not achieved at least 90% of its new jobs and capital investment targets by the Performance Date set forth in this agreement, an extension may be granted, as long as the Recipient can provide sufficient evidence to VDOT that a full faith effort is underway in achieving its Targets. Generally, an extension will be granted only in circumstances under which it is reasonable to believe that the Recipient is likely to make significant progress toward meeting its performance targets by the extension date.

6. Failure of Compliance: If Targets criteria are not met, the Recipient will be issued a Notice of Failure and will be held responsible for any repayments as calculated by VDOT. The recipient will have a period of Thirty (30) days to respond to a failure and repayment notice, after which time the Recipient will be required and responsible for

returning the grant monies to the Commonwealth within ninety (90) days of the Notice of Failure.

7. Repayment Obligation. Repayment obligations will be assessed based on an equal weighting of the targets. In the event that the project covers Jobs and Investment, each Target is weighted at 50% and the repayment obligation will be based on the combined level of failure of the Targets. For projects that only have a single Target, this target will be the only calculation for repayment obligation.

The formula for calculating the failure for Job Targets

$$\frac{\text{Target Jobs less Actual Jobs}}{\text{Target Jobs}}$$

The formula for calculating the failure in Capital Investment Targets

$$\frac{\text{Target Capital Investment less Actual Capital Investment}}{\text{Target Capital Investment}}$$

A 100% claw back may be required if at any time VDOT concludes that the Recipient will be unable to meet its new jobs and capital investment targets by the Performance Date OR a failure of reaching Targets is equal or greater than 75% of the combined target failures.

8. Representations. The Recipient further represents, covenants and agrees as follows:

(a) The Recipient has full right, power and authority to execute and deliver this Agreement, to perform its obligations under the Agreement and to carry out the tasks associated with the Work and the Project.

(b) Any of the transportation improvements completed with TPOF funds shall be accomplished using applicable industry standards and specifications.

(c) To the best of the Recipient's knowledge, there are no pending or threatened suits or actions of any nature that may have an adverse effect on the Recipient's condition (financial or otherwise) or its ability to perform under the Agreement and there has been no material adverse change in the financial condition of the Recipient as indicated in the information furnished to VDOT.

(d) The Recipient shall be responsible for all activities necessary to complete the Project and shall coordinate with Department staff for all reviews, approvals and necessary oversight as required.

9. Public Property. The Work Product shall not become private property, but shall become or remain public property following completion.

10. Amendment. The provisions of this Agreement may be amended, modified or waived only by written instrument executed by both parties.

11. Applicable Law. This Agreement shall be governed by and construed under the laws of the Commonwealth of Virginia.

12. Permits. The Recipient shall obtain all necessary permits for all Work associated with the Project.

13. Notices. All notices, approvals, consents, requests and other communications under this Agreement shall be in writing and shall be deemed to have been given when delivered in person, or when sent by Federal Express or a comparable express courier service, or when mailed by registered or certified mail, postage prepaid, addressed to the parties at the following addresses or such other addresses as a party may designate by prior written notice to the other:

(a) if to VDOT:

Virginia Department of Transportation
1401 East Broad Street
Richmond, Virginia 23219
Attn: Chief Financial Officer

with a copy to:

Virginia Department of Transportation
1401 East Broad Street
Richmond, Virginia 23219
Attn: Director, Financial Planning Division

and

Office of the Attorney General
900 East Main Street
Richmond, Virginia 23219
Attn: Senior Assistant Attorney General, Chief - Transportation Section

(b) if to the Recipient:

14. Entire Agreement. This Agreement, together with the Exhibits, constitutes the entire agreement of the parties with respect to its subject matter and supersedes all prior or contemporaneous, oral or written agreements or understanding with respect to such subject matter.

15. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but of which together shall constitute one and the same agreement.

IN WITNESS WHEREOF, the parties, intending to be legally bound, have executed this Agreement on the date first written above.

VIRGINIA DEPARTMENT OF TRANSPORTATION

By: _____

Name: Stephen C. Brich, P.E.

Title: Commissioner of Highways

Recipient

By: _____

Name:

Title:

EXHIBIT A
PROJECT DESCRIPTION

**EXHIBIT B
PROJECT BUDGET
AND SOURCES OF FUNDS**

TPOF Project Budget	
Task	Estimated Cost
Total	\$

Sources of Funds	
Source	Amount
Transportation Partnership Opportunity Fund	\$
Total	\$

EXHIBIT C
EXECUTED DECISION BRIEF

**EXHIBIT D
REQUISITION FOR DISBURSEMENT**

[ON RECIPIENT LETTERHEAD]

[Date]

Mrs. ~~Laura A. Farmer, Director~~ Misty Upson,
Debt & Finance Manager
Financial Planning Division
Virginia Department of Transportation
1401 East Broad Street
~~Old Highway Building—4th Floor~~
Richmond, Virginia 23219

Re: Transportation Partnership Opportunity Fund

Dear Mrs. ~~Farmer~~ Upson:

This requisition, Number _____, is submitted in connection with the Grant Agreement dated as of _____ (the "Agreement"), between the Virginia Department of Transportation and _____ (the "Recipient").

The undersigned authorized representative of the Recipient hereby requests disbursement of proceeds under the Agreement in the amount of \$ _____, for the purposes of payment of project costs as set forth in Schedule 1 attached hereto.

Attached hereto are the invoices relating to the items for which payment is requested and that have been approved by the Recipient.

The undersigned certifies that i) the amounts requested by the requisition will be applied solely and exclusively to the payment, or to the reimbursement of the Recipient for the payment of project costs, and ii) any materials, supplies or equipment covered by this requisition are not subject to any lien or security interest or such lien or security interest will be released upon payment of the requisition.

This requisition includes an accompanying Certificate of the Project Manager/Project Engineer as to the performance of work.

Sincerely,

Recipient's Authorized Representative
Title

Attachments

**SCHEDULE 1
TRANSPORTATION PARTNERSHIP OPPORTUNITY FUND
FORM TO ACCOMPANY REQUEST FOR DISBURSEMENT**

REQUISITION NUMBER: _____

RECIPIENT:

PROJECT NAME:

CERTIFYING SIGNATURE: _____

TITLE: _____

Cost Category	Amount Budgeted	Previous Disbursements	Expenditures This Period	Total Expenditures To Date	Net Balance Available
TOTALS					

Total Amount of Assistance

Previous Disbursements

Balance

This Request

Proceeds Remaining

**TRANSPORTATION PARTNERSHIP OPPORTUNITY FUND
CERTIFICATE OF THE PROJECT MANAGER/PROJECT ENGINEER
FORM TO ACCOMPANY REQUEST FOR DISBURSEMENT**

This Certificate is being executed and delivered in connection with Requisition Number __, dated _____, 20 __, submitted by the _____ (the "Recipient"), pursuant to the Grant Agreement dated _____, between the Virginia Department of Transportation and the Recipient.

The undersigned consulting engineer for the Recipient hereby certifies that, insofar as the amounts covered by this requisition include payments for labor or to contractors, builders or materialmen, i) such work was actually performed or such materials, supplies and/or equipment were actually furnished to or installed in the construction portion of the Transportation Partnership Opportunity Fund project and ii) expenditures for such work have not been submitted as a part of a previous requisition.

[Project Manager/Project Engineer Firm]

By: _____

Date: _____, 20 ____

Appendix D

GUIDELINES FOR THE COMMONWEALTH'S DEVELOPMENT OPPORTUNITY FUND PROGRAM

The Commonwealth's Development Opportunity Fund (COF) is a "deal-closing" fund to be employed at the Governor's discretion to secure a company location or expansion in Virginia. Administered by the Virginia Economic Development Partnership (VEDP), the COF serves as a final resource for Virginia in the face of serious competition from other states or countries.

The COF grant is a negotiated amount determined by the Secretary of Commerce and Trade, based on the recommendation of VEDP, and subject to approval of the Governor.

Guiding Principles:

1. General: COF grants are made at the discretion of the Governor with the expectation that grants awarded to a locality or authority will result in a favorable decision for Virginia. Although the COF may be used to make loans, the practice has been to use the COF for grants.
2. Allocations: In accordance with COV § 2.2-115 C "Beginning with the five fiscal years from fiscal year 2006-2007 through fiscal year 2010-2011, and for every five fiscal years' period thereafter, in general, no less than one-third of the moneys appropriated to the Fund in every such five-year period shall be awarded to counties and cities having an annual average unemployment rate that is greater than the final statewide average unemployment rate for the calendar year that immediately precedes the calendar year of the award. However, if such one-third requirement will not be met because economic development prospects in such counties and cities are unable to fulfill the applicable minimum private investment and new jobs requirements set forth in this section, then any funds remaining in the Fund at the end of the five-year period that would have otherwise been awarded to such counties and cities shall be made available for awards in the next five fiscal years' period." VEDP will compile a report at each fiscal year end to include the most current five-year period to ensure compliance is maintained.

COV § 2.2-115 F.1.: "The guidelines and criteria shall include provisions for geographic diversity and a cap on the amount of funds to be provided to any individual project. At the discretion of the Governor, this cap may be waived for qualifying projects of regional or statewide interest. In developing the guidelines and criteria, the VEDP shall use the measure for Fiscal Stress published by the Commission on Local Government of the Department of Housing and Community Development for the locality in which the project is located or will be located as one method of determining the amount of assistance a locality shall receive from the Fund." The maximum amount of a COF grant through June 30, 2019 is \$1,500,000. In very unique circumstances, this limit may be exceeded for projects that are determined to be of statewide or regional interest.

3. Multiple Grants: Localities may receive more than one COF grant during a fiscal year. Grants may be made for more than one project for a single company, but the projects must clearly represent separate investments for separate projects.
4. Relocations: COV § 2.2-115 D “...the Fund shall not be used for any economic development project in which a business relocates or expands its operations in one or more Virginia localities and simultaneously closes its operations or substantially reduces the number of its employees in another Virginia locality, unless the procedures set forth in § 30-310 are followed. The Secretary of Commerce and Trade shall enforce this policy and for any exception thereto shall, pursuant to § 30-310, submit such projects to the MEI Project Approval Commission established pursuant to § 30-309.”
5. Downsizing: If the company has existing operations in Virginia and has closed, downsized, consolidated, or laid off employees within the past 30 months prior to such company filing a COF application, there may be a bias toward not approving such application. The company will be offered an opportunity to explain such actions and to provide assurances regarding the expected new jobs and capital investment.
6. Hiring of Virginia Residents: In the performance agreement for the COF grant, the company will be strongly encouraged to ensure that at least 30% of the new jobs are offered to “Residents” of the Commonwealth, as defined in COV § 58.1-302.
7. Use of COF Proceeds: In accordance with COV § 2.2-115 D of the COF Act, COF Proceeds “may be used for public and private utility extension or capacity development on and off site; public and private installation, extension, or capacity development of high-speed or broadband Internet access, whether on or off site; road, rail, or other transportation access costs beyond the funding capability of existing programs; site acquisition; grading, drainage, paving, and any other activity required to prepare a site for construction; construction of publicly or privately owned buildings or build-out of publicly or privately owned buildings; training; or grants or loans to an industrial development authority, housing and redevelopment authority, or other political subdivision for purposes directly relating to any of the foregoing. In no case may COF proceeds be used, directly or indirectly, to pay or guarantee the payment for any rental, lease, license, or other contractual right to the use of any property.”
8. Political Contributions: For a company receiving a COF grant based upon an application made on or after July 1, 2016, there is a notification requirement for certain political contributions. For any political contributions, gifts or other items with a value greater than \$100 made by the company to the Governor or his/her political action committee or his/her campaign committee from the date of the application for the COF grant until one year after the COF grant is awarded, the Governor, or his/her political action committee or campaign committee must notify the Virginia Conflict of Interest and Ethics Advisory Council that such a contribution, gift or other item of value over \$100 has been received.

Statutory Eligibility:

1. The COF has several levels of qualification based on such measures as a locality's unemployment rate and poverty rate.

General Eligibility Thresholds: COV § 2.2-115 E.1.a. and E.1.b.

- a) 50 new jobs/\$5 million capital investment; or
- b) 25 new jobs/\$100 million capital investment
- c) The average annual wage for the new jobs must be at least equal to the prevailing average annual wage in the locality, excluding fringe benefits
- d) If the average annual wage is twice the prevailing average annual wage, the Governor may reduce the new jobs threshold to as low as 25

2. Eligibility Thresholds in Localities with Above-Average Unemployment or Above-Average Poverty (so-called distressed localities): COV § 2.2-115 E.2 and E.4

- a) For a locality with an unemployment rate for the most recent calendar year for which such data is available above the average statewide unemployment rate for that calendar year or with a poverty rate for the most recent calendar year for which such data is available above the statewide average poverty rate for that calendar year, the thresholds are:
 - a) 25 new jobs / \$2.5 million capital investment
 - b) Jobs may pay below the prevailing average annual wage in the locality, but must pay at least 85% of such prevailing average annual wage
 - c) If the average annual wage of the new jobs is less than 85% of the prevailing average annual wage, but the customary employee benefits are offered, the Governor may still award a grant or loan, but the Secretary of Commerce and Trade must furnish a written explanation to the Chairmen of the Senate Finance and House Appropriations Committees setting forth the urgent need to provide a grant or loan to that project

3. Eligibility Thresholds in Localities with Above-Average Unemployment and Above-Average Poverty (so-called double distressed): COV § 2.2-115 E.3. and E.4

- a) For a locality with an unemployment rate for the most recent calendar year for which such data is available above the average statewide unemployment rate for that calendar year and with a poverty rate for the most recent calendar year for which such data is available above the statewide average poverty rate for that calendar year, the thresholds are:
 - (1) 15 new jobs / \$1.5 million capital investment
 - (2) Jobs may pay below the prevailing average annual wage in the locality, but must pay at least 85% of such prevailing average annual wage
 - (3) If the average annual wage of the new jobs is less than 85% of the prevailing average annual wage, but the customary employee benefits are offered, the Governor may still award a grant or loan, but the Secretary of Commerce and Trade must furnish a written explanation to the Chairmen of the Senate Finance

and House Appropriations Committees setting forth the urgent need to provide a grant or loan to that project

4. In accordance with COV § 2.2-115 A "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 economic development project is located. The prevailing average wage shall be determined without regard to any fringe benefits.
5. Data from the Bureau of Labor Statistics' Local Area Unemployment Statistics (LAUS) is the primary source of annual unemployment rates (<https://data.virginialmi.com>).
6. Capital Investment Waiver for Remote Work: In circumstances where a company will create at least the minimum number of new jobs required by Code, and at least 75% of those jobs will be new teleworking jobs for which the majority of the work is performed remotely, the Governor may reduce or waive the COF capital investment requirement. For new teleworking jobs to be considered, the jobs must be held by Virginia residents and pay at least 120% of the Virginia Minimum Wage as defined by the Virginia Minimum Wage Act (§ 40.1-28.8 et seq.)

Local Matches:

1. Qualifying Local Matches: Localities must at least match dollar-for-dollar with local funds the amount requested from the COF. Previously invested local funds, grants of moneys from other government sources (except as noted below with respect to the Tobacco Region Opportunity Fund), 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.
2. Local Match Waiver: 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. If the minimum private capital investment is reduced or waived for a company creating jobs of which at least 75% will be new teleworking jobs in Virginia, the Governor may provide full or partial relief from the local matching requirement as well.
3. 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.
4. Grants for a project made to the locality from the Tobacco Region Opportunity Fund may be used as up to one-half of the local match for the COF grant.
5. 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.

Application Process

1. Once the due diligence process is complete and a COF grant has been pre-approved for a company, the company can submit an application to VEDP.
2. Two Documents: Applications should consist of two documents: 1) a community letter sent by the chief appointed official of any county, city, town or other applicable political subdivision to the President and Chief Executive Officer of VEDP, and (2) a letter sent by the company to the locality where the project will be located. The company letter should accompany the community letter.
3. Community Letter: It is expected that the letter from the community will use the following format and include the following information:
 - a) A summary statement presenting the importance of the project to the community and why support from the COF is being sought;
 - b) Amount requested;
 - c) The expected use of the funds;
 - d) Description of the project, including:
 - (1) Company name and information (website, stock exchange ticker)
 - (2) Type of operation (i.e. manufacturing, distribution, etc.)
 - (3) Headquarters location
 - (4) Virginia operations (if any exist)
 - (5) What the company is planning to do in Virginia
 - (6) Employment impact on current operations in Virginia
 - e) Location of the project, including the community, and its population, current unemployment and poverty rates and prevailing average annual wage;
 - f) Details of capital investment, including, but not limited to, the value of property to be leased under a capital lease, or other investments of capital that add to the local tax revenues;
 - g) Jobs anticipated to be created and maintained by the company's performance date (generally three years after the locality receives a grant payment), information on "jobs saved," average salary level and total yearly payroll of jobs created;
 - h) Local and state financial participation, specifying new moneys to be allocated to the project and how those funds will be used;
 - i) Description of other public funds that have been or will be expended for the project, such as training or past public expenditures for road, utility extension or site development;
 - j) If the project for which a COF grant is being requested involves the relocation of a business from one Virginia locality to another, the community applying for the grant must officially notify the community from which the business is moving. For such projects, a statement must be included in the COF application that this notification has taken place, and must also provide the reasons for the move and the out-of-state competition;

- k) If applicable, an acknowledgement that the COF grant proceeds will be disbursed in installments, as certain milestones are achieved; and
 - l) Any other current or background information pertinent to the project that might assist the Governor in making an informed decision based on complete knowledge. Communities are obliged to disclose any information that could reflect negatively on the project.
4. Company Letter: It is expected that the letter from the company will use the following format and include the following information:
- a) An indication from the company that without support from the COF, there is a possibility that the project could be located outside of Virginia and that only one site in Virginia is under consideration for the project;
 - b) An indication from the company of the number of new jobs expected to be created (and saved, if any) and maintained, payroll and salary levels and a statement confirming the company offers its employees a standard package of fringe benefits;
 - c) An indication of the capital investment expected to be made by or on behalf of the company at the facility in the community by the performance date, which is generally three years, including an indication of the extent to which the company expects to make the capital investment through the use of operating or capital leases;
 - d) An affirmation that the proposed project will not result in a closing, loss of jobs, consolidation, or change to any existing operations in Virginia for the duration of the performance period;
 - e) If applicable, an acknowledgement that the COF grant proceeds will be disbursed in installments, as certain milestones are achieved;
 - f) An affirmation that the company has not closed, downsized, consolidated, or laid off employees at existing operations in Virginia within the past 12 months prior to the application date, or, if it has, additional assurances regarding the stability of the new jobs and capital investment.
 - g) A copy of the company's W-9.

Performance Agreement

1. Performance Agreement Between VEDP, Community and Company: Since a COF grant is awarded to a community, the community is required to enter into a performance agreement with the company before it may receive the COF grant. This is to ensure that the company will meet the new job and capital investment levels as stated in its application and as agreed to. It is expected that the performance agreement will also have the community's industrial or economic development authority, and VEDP as parties. (§2.2- 115 F.2.a.).
2. Targets and Statutory Criteria: The performance agreement will set forth the (i) capital investment target; (ii) new jobs target; (iii) wage target; (iv) fair market value of all funds the Commonwealth is expected to provide; (v) fair market value of the local match; (vi) prevailing average wage in locality; (vii) performance date; (viii) reporting and target verification procedures; and (ix) any repayment obligations.

3. Disbursement of COF Grant: The performance agreement generally will call for the COF grant to be disbursed by VEDP to the locality. The performance agreement will then contain the terms and conditions under which the locality may cause the COF grant proceeds to be disbursed to the company. In some circumstances, but only with the consent of the locality, VEDP may cause the COF grant proceeds to be disbursed directly to the company, upon the terms and conditions to be set forth in the performance agreement.
4. Performance Date: The performance agreement will include an end-date by which the company will achieve the capital investment and new jobs targets (“Performance Date”). The Performance Date is generally 36 months after the date the project is announced. Further, if the date by which the Commonwealth is expected to reach its break-even point, as determined by a return-on-investment analysis prepared by VEDP, is later than the Performance Date, there will be another obligation of the company to maintain its new jobs through the break-even date. If the company has not achieved at least 90% of its new jobs and capital investment targets by the Performance Date set forth in the performance agreement, the locality, in consultation with VEDP, may request an extension of up to 15 months. Any extension of the Performance Date requires prior approval by VEDP’s Project Review and Credit Committee (“PRACC”) and the VEDP Board of Directors. Any additional extensions must be approved by PRACC, the VEDP Board, and the Major Employment and Investment (MEI) Project Approval Commission. COV § 2.2-115 F.2.b. and 2.2-2237.2.
5. Business Income Tax Information: For VEDP to demonstrate the value of the COF program and other economic development incentives, it would be helpful for the company to share with VEDP the Virginia 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 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 [or, as applicable, shall provide to VEDP a copy of its Virginia income tax form filed with respect to its status as a passthrough entity]. VEDP has represented 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-investment capital analyses for purposes of gauging the overall effectiveness of economic development incentives.
6. Office of the Attorney General (OAG) Review: Once VEDP, the locality and the company are comfortable with the language of the performance agreement, the performance agreement must be presented to the OAG for review of proper legal form. The OAG will have up to seven (7) days to provide written comments regarding the performance agreement.

To find out more about the Commonwealth's Development Opportunity Fund (COF):
[Commonwealth's Development Opportunity Fund \(COF\) | Virginia Economic
Development Partnership \(vedp.org\)](#)

Appendix E

GUIDELINES FOR THE VIRGINIA INVESTMENT PERFORMANCE GRANT PROGRAM

The Virginia Investment Performance Grant (VIP) encourages continued capital investment by existing Virginia companies, resulting in added capacity, modernization, increased productivity, or the creation, development, and utilization of advanced technology. The program targets existing manufacturers or research and development services supporting manufacturing. There must be an active and realistic competition between Virginia and another state or country for attracting the project, and matching local financial participation is expected.

The amount of each VIP grant is determined by the Secretary of Commerce and Trade, based in part on the Virginia Economic Development Partnership's (VEDP) Return-on-Investment analysis and recommendation, and is subject to the approval of the Governor.

Guiding Principles

1. General: 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.
2. 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.
3. 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.
4. Allocations: COV § 2.2-5101, A through C references that the fund is subject to the appropriation by the General Assembly of sufficient moneys to the Investment Performance Grant sub-fund, any eligible manufacturer or research and development service that is not eligible for a MEE grant under COV § 2.2-5102 shall be eligible for an investment performance grant as provided in this section. VEDP established an application process by which eligible manufacturers and research and development services may apply for a grant. An application for a VIP grant shall not be approved for payment until VEDP has verified that the capital investment has been completed. The amount of the VIP grant that an eligible manufacturer or research and development service shall be eligible to receive shall be determined by the Secretary of Commerce & Trade (SCT), based on the recommendation of VEDP, and contingent upon approval by the Governor. The determination of the appropriate amount of a VIP grant shall be based on the application of guidelines that establish criteria for correlating the amount of a VIP grant to the relative value to the Commonwealth of the eligible investment.

5. 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 to 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.

Application Process

1. Once the due diligence process is complete and a VIP grant has been pre-approved for a company, the company can submit an application to VEDP.
2. 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:
 - a) The amount and timing of the expected capital investment;
 - b) 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;
 - c) The number of new jobs expected to be created and maintained because of the capital investment, if any, and a timeline for their creation;
 - d) (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) a comparison of the expected average annual wages with the average manufacturing wage for the locality or region;
 - e) 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;
 - f) 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
 - g) 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.

Amount of VIP Grant Award

1. Except as provided in the next paragraph, no one VIP grant may exceed \$3,000,000. In the aggregate, no more than \$-4 million in total VIP grants may be paid-out in any one year. The total aggregate amount of outstanding VIP grants approved after July 1, 2019 cannot exceed \$20 million.
2. 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 extraordinary characteristics set forth below:
 - a) Desirable workforce characteristics (e.g. significant job numbers, especially high wage levels, or sophisticated skill sets)
 - b) Strategic industry sector
 - c) Significant impact on or transformation of the local/regional economy
 - d) Significant R&D component, especially if in concert with Virginia’s public higher educational institutions
 - e) Considerable capital investment
 - f) Likelihood of attracting a significant supply chain or other significant follow-on opportunities
3. The maximum \$5 million grant is intended to be reserved for special projects deemed meritorious of such a significant investment by the Commonwealth.
4. The VIP grant will be paid in five annual installments at the times described below under “Performance Agreement – VIP Grant Payout Schedule.”

Performance Agreement

1. 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 of the project by the Governor.
2. Targets and Statutory Criteria: The performance agreement will set forth the (i) capital investment target; (ii) new jobs target, if applicable; (iii) wage target, if applicable; (iv) prevailing average manufacturing wage in the locality; (v) expected performance date; (vi) reporting and target verification procedures; and (vii) any grant reduction circumstances.
3. Performance 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.
4. Any extension of the Projected Completion Date shall require the prior approval of VEDP’s Project Review and Credit Committee (“PRACC”) and the Board of Directors of VEDP. If the Projected Completion Date is extended, VEDP will notify the company of any such extension. Generally, the extension should be granted only in circumstances under which it is reasonable to believe that the company is likely to make significant progress toward meeting its performance targets by the extension date. In the unlikely event that a second extension request will be considered, that extension will require the approval of PRACC, the Board of Directors of VEDP and the Major Employment and Investment (MEI) Project Approval Commission.

5. **Initial Company Notification:** The performance agreement will require the VIP grantee to notify VEDP in writing within ninety (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”).
6. **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.
7. The performance agreement will likely require other notices to VEDP as may be necessary to administer the VIP grant program.
8. **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 will 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

1. **Annual Appropriation:** VIP grant installment payments are subject to annual appropriation by the Virginia General Assembly. If there are insufficient moneys in the Investment Performance Grant subfund to pay all VIP grant payments due to intended recipients, the provisions of COV § 2.2-5104 of the Act shall govern the distribution of the available funds.
2. **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 conditions (i), (iii) or (iv) are not met, 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.
3. **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.

4. **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.
5. 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.

Local Matches

1. **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. 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.
2. **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 to five years.

To find out more about the Virginia Investment Performance Grant (VIP): [Virginia Investment Performance Grant \(VIP\) | Virginia Economic Development Partnership \(vedp.org\)](https://www.vedp.org)

The Commonwealth of Virginia

The
Transportation Partnership
Opportunity Fund

Guidelines and Criteria

July 1, 2023

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Appendix A: Chapter 546 of the 2023 Acts of Assembly

Appendix B: Assistance Application

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Introduction

Chapter 546 of the 2023 Acts of Assembly (the “Act”) is the legal framework creating the Transportation Partnership Opportunity Fund (“TPOF” or the “Fund”). The Fund is to be used by the Governor to provide funds to address the transportation aspects of economic development opportunities or to enhance the economic development opportunities of the Commonwealth transportation programs.

The Act

The Act authorizes monies to be awarded from the Fund by the Governor as grants, revolving loans, or other financing tools and equity contributions to an agency or political subdivision of the Commonwealth of Virginia.

It is the intent of the Act to provide funds to address the transportation aspects of economic development opportunities, including, but not limited to, the creation of jobs and to promote private investment and economic development.

The following guidelines and criteria have been developed by the Commonwealth Transportation Board (the “CTB” or “Board”), in consultation with the Secretary of Transportation and the Secretary of Commerce and Trade to guide the process of applying for and receiving financial assistance from the Fund.

The complete text of the Act has been included as Appendix A to these guidelines. Although guidance is provided herein with regard to application of the Act, it will be incumbent upon all entities to read the Act in its entirety, and to comply with the provisions of the Act.

Transportation Partnership Opportunity Fund Administration

Monies in the Fund may be awarded by the Governor to Applicants in the form of grants (up to \$5 million), revolving loans or other financing tools and equity contributions. Loans from the Fund will be interest free and are available up to the maximum of \$30 million, based on funding availability. Loan terms will vary but shall not exceed seven (7) years.

The Act also authorizes the Governor to direct funds to the Board for transportation projects determined to be necessary to support major economic development initiatives or to enhance the economic development opportunities of the Commonwealth’s transportation programs when recommended by the Secretary of Transportation and Secretary of Commerce and Trade.

Assistance or commitments from the Fund will be limited to the total value of money that is available in the Fund. The fund shall consist of (i) one-third of all interest, dividends, and appreciation that may accrue to the Transportation Trust Fund and the Highway Maintenance and Operating Fund and (ii) any funds appropriated to it by the general appropriation act and revenue from any other source, public or private. Funding available will also include repayments to the Fund of loans, any revocation of assistance provided to

entities that fail to meet performance criteria, any interest and dividends earned on the Fund and any other appropriations may be used for additional loans or grants for other projects.

After award to an Applicant or direction to the Board by the Governor, the Fund will be administered by the CTB acting through the Virginia Department of Transportation (“VDOT”), in consultation with the Secretary of Commerce and Trade. VDOT will manage the overall administration of the TPOF, with the Secretary of Commerce and Trade and the Virginia Economic Development Partnership providing guidance with respect to the economic development features of the program.

Eligible Applicants

Financial assistance from the Fund may be awarded to any agency or political subdivision of the Commonwealth of Virginia.

Eligible Projects

Grants or revolving loans to Applicants or Funds directed to the Board may be used for transportation capacity development, on and off site; road, rail, mass transit or other transportation access costs beyond the funding capability of existing programs; studies of transportation projects including but not limited to environmental analysis, geotechnical assessment, survey, design and engineering, advance right-of-way acquisition, traffic analysis, toll sensitivity studies, financial analysis, property acquisition and new or improved infrastructure to support economic development opportunities of the Commonwealth’s transportation programs, or any else permitted by law. Funds may be used for any transportation project or any transportation facility within the Commonwealth of Virginia.

Transportation aspects of economic development projects that are also eligible for funding through the Revenue Sharing Program, the Economic Development Access Program, the Rail Industrial Access Program, the Rail Preservation Program or the Rail Enhancement Program, may be eligible to receive financial assistance from the Fund. However, it must be demonstrated that such additional funding is necessary. Amounts received from these other funding sources, or used to leverage additional monies from the Fund, may not also be used for the required non-state match.

Monies from the Fund are not to be used to supplant existing or programmed funds from other existing public sources but are to be used to support projects and activities beyond the funding capability of existing programs.

Monies awarded to Applicants from the Fund that are to be used for transportation aspects of an economic development project must meet the economic development criteria of the *Commonwealth’s Opportunity Fund* **Or**, in cases where the project is solely retaining jobs, the project must meet the economic development criteria of the *Virginia Investment Partnership Grant Program* **Or**, for state agency transportation services that provide non-highway alternatives for the movement of freight, the service must enhance economic development opportunities and regional connectivity within the Commonwealth.

Funds used to match the Commonwealth’s Opportunity Fund **CANNOT** be used to match the TPOF, although both sources of monies can be used for a project. Funds from the Virginia Tobacco Indemnification and Community Revitalization Commission may be allowed as matching funds for this purpose.

Project Ownership

Projects that are developed with monies from the Fund shall not become private property and shall be maintained by the appropriate entity pursuant to applicable agreements following completion. Any reports, studies, analysis, and other forms of intellectual property created or developed using monies from the Fund shall become property of the Commonwealth.

Application Process

VDOT, in cooperation with the Secretary of Commerce and Trade and the Virginia Economic Development Partnership, will accept applications from eligible applicants for consideration. A copy of the application is provided as Appendix B. All applications for assistance from the Fund shall be sent to VDOT’s Chief Financial Officer (the “CFO”) and addressed as follows:

Transportation Partnership Opportunity Fund
Attn: Chief Financial Officer
Virginia Department of Transportation
1401 East Broad Street
Richmond, Virginia 23219-2000

All applications will be reviewed to determine that the minimum eligibility requirements have been satisfied. The minimum eligibility requirements are as follows:

Application Assistance Requirements

For an applicant to be eligible for assistance the applicant must meet the mandatory requirements PLUS one of the other listed criteria

Mandatory Requirements

- The applicant **MUST** be an agency or political subdivision of the Commonwealth,
- The project addresses the needs identified in the appropriate state, regional or local transportation plan.

PLUS ONE of the following:

- The project meets the economic development criteria of the **Commonwealth’s Opportunity Fund**.

- In cases where the project is solely retaining jobs; the project must meet the economic development criteria of the **Virginia Investment Partnership Grant Program**.
- In cases where the funding is for state agency transportation services that provide non-highway alternatives for the movement of freight, the service must enhance economic development opportunities and regional connectivity within the Commonwealth.

Following an applicant's selection for evaluation, meetings may be conducted with the applicant. The purpose of the meetings will be to review and confirm the information contained in the application. Representatives of the applicant, VDOT staff and staff from the applicable modal oversight agency and the Virginia Economic Development Partnership staff, as appropriate, shall participate in the meetings.

Application Evaluation Criteria

Following receipt of the applications and a review by staff to assure the basic statutory requirements have been met, a TPOF Advisory Panel, chaired by a Deputy Secretary of Transportation, and consisting of VDOT's Chief Financial Officer, an Executive Officer of the applicable modal oversight agency (if necessary), a Deputy Secretary of Commerce and Trade, and a representative of the Department of Planning and Budget will evaluate those applications to ensure that the applicant(s) meets the transportation and economic development evaluation criteria. Applicants meeting the evaluation criteria become eligible to receive assistance, subject to the availability of funding. In circumstances where the total amount of assistance requested exceeds the total amount of funding available, eligible applications that include applicant matching funds or equity contributions and projects that are in an advanced state of readiness-to-proceed, will receive priority consideration for assistance.

General Evaluation Criteria

- Projects with a high level of matching funds will be considered highly desirable.
- Projects that clearly show how funds will advance the development of a transportation facility will be considered highly desirable.
- Financial feasibility of the project plan of finance, including the capacity to repay any loan and mitigate risks.
- Extent to which funding would advance the project's or facility's schedule to an earlier completion date.

Transportation Evaluation Criteria

- The entity's experience implementing similar projects, including the use of new technologies.
- Comparative benefits resulting from the development of the proposed transportation project or facility.

- Evidence that the state agency transportation service has provided and/or will provide non-highway alternatives for the movement of freight and has enhanced economic development opportunities and will enhance future economic development in the impacted areas.

Economic Development Evaluation Criteria

- Project must meet minimum criteria established in the Commonwealth's Opportunity Fund Guidelines. Or,
- For projects in which no net new jobs are being created, the project must meet minimum criteria established in the Virginia Investment Partnership Grant Program Guidelines. Or,
- For state agency transportation service applicants, provide evidence that the service has supported economic development and job creation and will continue to enhance future economic development opportunities that will support job creation and capital investment.

Advisory Panel Notification

Following evaluation by the TPOF Advisory Panel, the VDOT Chief Financial Officer shall provide findings and recommendations of the Panel to the Secretary of Transportation, the Secretary of Commerce and Trade and the applicable modal oversight board and agencies.

Awarded Financing Notification

Following notification by the TPOF Advisory Panel, the Secretary of Transportation and the Secretary of Commerce and Trade will submit to the Governor a recommendation of funding for the successful applicants. Once assistance from the Fund is approved and awarded by the Governor, written notification will be provided to the potential recipient. The notification will outline the type of assistance to be provided and in the case of a loan, the required security provisions, the loan term and payment provisions, the amount of assistance to be provided and any conditions that must be met by the applicant prior to loan closing or grant award. The notification must be acknowledged and accepted by the potential recipient within 10 business days of the notification date to preserve the funding. Once the notification is accepted, the Department and applicant will enter into an agreement.

Loan/Grant Award Agreement for Economic Development Transportation Projects

An agreement shall be executed between the Commissioner of the Virginia Department of Transportation and the appropriate local government, state agency, or political subdivision that receives the principal benefit of financing from the Fund before disbursement of any monies awarded to an Applicant.

In the case where project is qualifying based on COF or VIP, the agreement will include a statement that the recipient will reach the specified job creation or retention and/or capital

investment levels within thirty-six (36) months after final disbursement of funds or in accordance with the corresponding COF or VIP agreement.

If those performance criteria are not met, the entity shall repay to the Fund, an amount as required by the terms and conditions of the Grant/Loan & Performance Agreement (Award Agreement). The Commissioner may, however, in consultation with the Secretary of Transportation and the Secretary of Commerce and Trade, grant a partial or total waiver to the repayment or extend the performance period if it can be demonstrated that the transportation improvements developed with monies from the Fund had other economic benefits to a locality of the Commonwealth beyond that directly attributable to the private entity which was the basis for an application for monies from the Fund.

In the case of state agency transportation services, the anticipated benefits to the Commonwealth will be defined in the agreement and should be met within eighteen (18) months of final disbursement. If that performance criteria is not met, the applicant will become ineligible for future funds until the agreed upon benefit is met.

A Loan Award Agreement will include the security provisions for the assistance, repayment terms along with the amortization schedule, representations and warranties, finance plan requirements, borrower covenants, disbursement requirements, monitoring and reporting requirements and will specify any other terms and conditions for the financial assistance.

Directed Funds to the Board

Upon the direction of funds to the Board in excess of \$5 million, the Secretary of Transportation shall within 30 days submit a report on such direction of funds to the Chairmen of the Senate Committee on Finance and Appropriations and the House Committee on Appropriations. The report content will comply with all requirements set forth in the Code of Virginia.

Any funds directed to the Board in a cumulative amount in excess of \$35 million on any one project, shall be submitted for review to the MEI Project Approval Commission (the "Commission"). The Commission shall completed such review within 14 days.

Disbursement Process

Disbursement of the awarded financial assistance can begin following execution of an Award Agreement. Assistance from the Fund may be paid to the recipient based on costs incurred for the project. In some instances, disbursement may be allowed on a lump sum basis, subject to sufficient justification, where a portion, up to the maximum amount of assistance approved, could be disbursed at a single time.

Recipients will submit a disbursement request to VDOT. VDOT will review the request for completeness and if acceptable approve the request for disbursement. VDOT will notify the recipient within thirty (30) days of any deficiencies in any disbursement request.

Upon approving the disbursement request, VDOT will then forward the request to the Virginia Department of the Treasury (the “Treasury”) for payment.

Directed funds recommended by the Governor will be allocated to the project through the Six-Year Improvement Program and administered by the Virginia Department of Transportation or the applicable locality.

Loan Term/Repayment

Loans from the Fund will have their term set by the Governor. Terms and repayment provisions will vary depending on the type of project and the availability of revenues or other funds. All loans must be repaid within seven (7) years of the date of loan closing. The frequency of payments of principal will vary according to the recipient and will be established as a part of the loan closing process. Loan recipients will make their payments to the Treasury.

VDOT will be responsible for monitoring and ensuring repayment of the loans.

Recipient Reporting Requirements

Recipients of TPOF awarded assistance will be required to provide VDOT and the Secretary of Commerce and Trade with various reports, certificates and documents during the project development phase as well as throughout the life of any loan.

Submittals of annual audited and interim, unaudited financial statements, approved budgets and use of funds reporting may be required as a condition of accepting assistance from the Fund. In addition, the recipient shall provide disclosure of any material events that could affect its ability to complete and, if applicable, operate the project.

Submittal of an annual and interim social economic report will be required in order to properly document and track job creation or retention, investment and general economic improvements of the project.

Other special reporting requirements may be required on a case-by-case basis.

All reporting requirements will be included in the financing agreement. Recipient reports will be due April 1 and October 1 during the term of any outstanding loan or, for awarded grant recipients, until completion of the assisted project or completion of the capital investment and job creation period, whichever comes last. VDOT shall seek to minimize reporting requirements for smaller grants and loans.

Appendix A

Chapter 546 of the 2023 Acts of Assembly

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding a section numbered 33.2-1529.1 as follows:

§ 33.2-1529.1. Transportation Partnership Opportunity Fund

A. There is hereby created the Transportation Partnership Opportunity Fund (the Fund) to be used by the Governor to provide funds to address the transportation aspects of economic development opportunities or to enhance the economic development opportunities of the Commonwealth's transportation programs. The Fund shall consist of (i) funds pursuant to subdivision B 3 of § [33.2-1524](#) and (ii) any funds appropriated to it by the general appropriation act and revenue from any other source, public or private. The Fund shall be established on the books of the Comptroller, and any funds remaining in the Fund at the end of a biennium shall not revert to the general fund but shall remain in the Fund. All interest and dividends that are earned on the Fund shall be credited to the Fund. The Governor shall report to the Chairmen of the House Committees on Appropriations, Finance, and Transportation and the Senate Committees on Finance and Appropriations and on Transportation as funds are awarded in accordance with this section.

B. The Fund shall be a subfund of the Transportation Trust Fund. Provisions of this title and Title 58.1 relating to the allocations or disbursements of proceeds of the Commonwealth Transportation Fund, the Transportation Trust Fund, or the Highway Maintenance and Operating Fund shall not apply to the Fund.

C. 1. Funds shall be awarded from the Fund by the Governor as grants, revolving loans, or other financing tools and equity contributions to an agency or political subdivision of the Commonwealth. Loans shall be approved by the Governor and made in accordance with procedures established by the Board and approved by the Comptroller. Loans shall be interest-free and shall be repaid to the Fund. The Governor may establish the duration of any loan, but such term shall not exceed seven years. The Department shall be responsible for monitoring repayment of such loans and reporting the receivables to the Comptroller as required.

2. The Governor may direct funds from the Fund to the Board for transportation projects determined to be necessary to support major economic development initiatives or to enhance the economic development opportunities of the Commonwealth's transportation programs when recommended by the Secretary of Transportation and Secretary of Commerce and Trade. Upon the direction of funds pursuant to this subdivision in excess of \$5 million, the Secretary of Transportation shall within 30 days submit a report on such direction of funds to the Chairmen of the Senate Committee on Finance and Appropriations and the House Committee on Appropriations. Such report shall be sent to the Chairmen

and the staff directors of such committees. Such report shall include the name of the transportation project to which the funds are being directed, the locality in which the transportation project is being developed, the amount of the grant or loan made or committed to the transportation project from the Fund and the purpose for which it will be used, the number of jobs retained or created or projected to be retained or created by the transportation project, the expected rate of return on investment of the transportation project, and the amount of a company's investment in the Commonwealth. Any direction of funds pursuant to this subdivision in a cumulative amount in excess of \$35 million on any one project shall be submitted for review to the MEI Project Approval Commission (the Commission) established pursuant to § [30-309](#). The Commission shall complete such review within 14 days. In the event that the Commission does not recommend such direction of funds, such direction of funds shall not be made unless subsequently authorized by the General Assembly. Absent a recommendation within such 14-day period that the funds should not be directed, or in the event that the Commission does not provide a recommendation within such 14-day period, the funds shall be directed.

D. Grants, funds directed to the Board, or revolving loans may be used for transportation capacity development on and off site; road, rail, mass transit, or other transportation access costs beyond the funding capability of existing programs; studies of transportation projects, including environmental analysis, geotechnical assessment, survey, design and engineering, advance right-of-way acquisition, traffic analysis, toll sensitivity studies, and financial analysis; property acquisition and new or improved infrastructure to support economic development opportunities of the Commonwealth's transportation programs; or anything else permitted by law. Funds may be used for any transportation project or any transportation facility. Any transportation infrastructure completed with moneys from the Fund shall not become private property, and the results of any studies or analysis completed as a result of a grant or loan from the Fund shall be property of the Commonwealth.

E. The Board, in consultation with the Secretary of Transportation and the Secretary of Commerce and Trade, shall develop guidelines and criteria that shall be used in awarding grants or making loans from the Fund; however, no grant provided pursuant to subdivision C 1 shall exceed \$5 million and no loan provided pursuant to subdivision C 1 shall exceed \$30 million. No grant or loan shall be awarded until the Governor has provided copies of the guidelines and criteria to the Chairmen of the House Committees on Appropriations, Finance, and Transportation and the Senate Committees on Finance and Appropriations and on Transportation. The guidelines and criteria shall include provisions including the number of jobs and amounts of investment that must be committed in the event moneys are being used for an economic development project, a statement of how the studies and analysis to be completed using moneys from the Fund will advance the development of a transportation facility, a process for the application for and review of grant and loan requests, a timeframe for completion of any work, the comparative benefit resulting from the development of a transportation project, assessment of the ability of the recipient to repay any loan funds, and other criteria as necessary to support the timely development of transportation projects. The criteria shall also include incentives to encourage matching funds from any other local, federal, or private source.

F. Within 30 days of each six-month period ending June 30 and December 31, the Governor shall provide a report to the Chairmen of the House Committees on Appropriations, Finance, and Transportation and the Senate Committees on Finance and Appropriations and on Transportation that shall include the following information: the locality in which the project is being developed, the amount of the grant or loan made or committed from the Fund and the purpose for which it will be used, the number of jobs created or projected to be created, and the amount of a company's investment in the Commonwealth if the project is part of an economic development opportunity.

G. The Governor shall provide grants and commitments from the Fund in an amount not to exceed the total value of the moneys contained in the Fund. If the Governor commits funds for years beyond the fiscal years covered under the existing appropriation act, the State Treasurer shall set aside and reserve the funds the Governor has committed, and the funds set aside and reserved shall remain in the Fund for those future fiscal years. No grant or loan shall be payable in the years beyond the existing appropriation act unless the funds are currently available in the Fund.

H. Nothing herein shall be construed to authorize the use of eminent domain for any purposes prohibited by § [1-219.1](#) or Article I, Section 11 of the Constitution of Virginia.

The Commonwealth of Virginia

The
Transportation Partnership
Opportunity Fund

Assistance Application

July 2023

THE COMMONWEALTH OF VIRGINIA

**APPLICANTS MUST COMPLETE ALL SECTIONS
PLEASE READ THE INSTRUCTIONS PRIOR TO COMPLETING THIS
APPLICATION**

SECTION 1 – Contact Information	
Applicant's Legal Name:	
Other Names Under Which Applicant Does Business:	
Federal Tax Identification Number:	
Business Address:	
Mailing Address (If different from above):	
Contact Person Name:	
Contact Person Title:	
Contact Person Mailing Address (If different from above):	
Telephone Number:	(xxx) xxx-xxxx
Fax Number:	(xxx) xxx-xxxx
E-mail Address:	

SECTION 2 – Assistance Requested	
Type of Assistance Requested. (GRANT / LOAN)	
Amount of Assistance Requested. (In WORDS)	xxxxxx Dollars
Amount of Assistance Requested. (In Numbers)	\$0,000,000.00

State how the project addresses the needs identified in the appropriate state, regional or local transportation plan.

State in detail how the project meets one of the following requirements:

- **The project meets the economic development criteria of the Commonwealth’s Opportunity Fund.**

OR

- **In cases where the project is solely retaining jobs, the project must meet the economic development criteria of the Virginia Investment Partnership Grant Program.**

OR

- **For state agency transportation service applicants, provide evidence that the service has supported economic development and job creation and will continue to enhance future economic development opportunities that will support job creation and capital investment.**

SECTION 3 – Project Information

Please ensure that you have reviewed the instructions prior to commencing this section

1. Project Name.

--

2. Project Executive Summary. (Maximum 2 Pages)

--

3. Project Location and General Description of the Environment. (Mark if required as Exhibit A)

--

4. Project Development Process.

--

5. Purpose of TPOF Assistance.

--

6. Project Description.

--

7. Project Social and Economic Impact.
8. Project Schedule. (Mark if required as Exhibit B)
9. Permits and Approvals. (Mark if required as Exhibit C)
10. Project Management and Compliance Monitoring Plan. (Mark if required as Exhibit D)
11. Maintenance and Operations Plans. (Mark if required as Exhibit E)

SECTION 4 – Plan of Finance

Please ensure that you have reviewed the instructions prior to commencing this section

1. Estimated Project Cost. (Uses of Funds) (Mark if required as Exhibit F)

--

2. Sources of Funds.

--

3. Pro Forma Cash Flow. (Mark if required as Exhibit G)

--

4. Risks and Mitigation. (Mark if required as Exhibit H)

--

5. Financial Statements (if applicable) (Mark if required as Exhibit I)

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SECTION 5 – Applicant Organization Information

Please ensure that you have reviewed the instructions prior to commencing this section

1. Describe the applicant’s legal framework including past history and ownership structure. (Mark if required as Exhibit J)

2. Describe the legal authority of the applicant to carry out the proposed project activities.

3. Identify whether governmental entities, other than the applicant, must approve the submission of the application package, the funding of activities or the carrying out of activities described in the application. Provide documentation in the form of an exhibit as applicable

4. Describe the applicant’s organizational structure and the applicant’s relationship to any subsidiaries or affiliates. (Mark if required as Exhibit K)

5. Provide an organization chart (Mark if required as Exhibit L)

6. Describe the applicant’s prior 5 experience as it relates to carrying out projects similar to that being proposed (Mark if required as Exhibit M)

Project:
Year:
Description:
Project Cost:

Project Status:

Project:

Year:

Description:

Project Cost:

Project Status:

Project:

Year:

Description:

Project Cost:

Project Status:

Project:

Year:

Description:

Project Cost:

Project Status:

Project:

Year:

Description:

Project Cost:

Project Status:

7. Describe any current, threatened, or pending litigation involving the applicant related to permitting, public involvement, environmental irregularities, construction defects, securities fraud, conflict of interest, failure to perform under a state or federal contract, or other charges which may reflect on the applicant's financial position or ability to complete the project **(Mark if required as Mark Exhibit N)**

Applicant may be required to provide documentation regarding this section.

APPLICATION INSTRUCTIONS

GENERAL

- Please provide detailed answer to all application questions (where applicable) in the space provided. Applicants can use more space than provided to answer the questions in this application.
- If additional exhibits or attachments are needed, please mark and make note of the attachments within the space provided in the application.
- It is important that application complete all applicable sections of this application.
- Application should be completed in Times New Roman 12 Size Font.

SECTION 3 – Project Information

This section requires narrative information and exhibits. To help avoid any delays in the processing this application it is important that ALL attached and numbered exhibits correspond to their respective items.

1. **Project Name.** Assign a short name to the project for identification purposes.
2. **Project Executive Summary.** (Maximum 2 Pages)
3. **Project Location and General Description of the Environment.** Describe the location of the project, including major intersecting highway and rail routes. Attach a map as Exhibit A. Include the county or counties that the project will serve.
4. **Project Development Process.** Is this project to address the transportation aspects of an economic development opportunity?
5. **Purpose of TPOF Assistance.** Describe what aspect of the project for which the assistance will be used. Provide a breakdown of the proposed use of the assistance.
6. **Project Description.** Describe the need for the project, its basic design features and what the project is intended to accomplish. Include an assessment of the current condition of all transportation facilities relating to the project. For a construction project, describe the difference in the current project scope as compared to any approved environmental documents or study alternatives. If no environmental assessments or reviews have been completed on the project, provide an explanation and a schedule outlining the steps to comply with the National Environmental Policy Act. Describe how the funds provided will enhance the transportation aspects of economic development opportunities for the local area and the State in general.

7. **Project Social and Economic Impact.** Describe how the project will improve or enhance the current social and economic situation within the project area. This section should include, the number of jobs created (if qualifying under COF criteria) or retained (if qualifying under the VIP criteria) as a result of the project and the amounts of investment that will be committed in the event that the funds are being used for an economic development project. Include a statement as to how the studies and analyses to be completed using moneys from the TPOF will advance social and economic development.
8. **Project Schedule.** Provide a timeline that shows the estimated start and completion dates for each major phase or milestone of the project development, construction and/or acquisition. Indicate the applicant's current status with respect to the timeline. Indicate the extent to which TPOF assistance will expedite the schedule or aid in meeting the schedule. List any other critical path issues. (Exhibit B)
9. **Permits and Approvals.** List all major permits and approvals necessary for construction of the project and the date, or projected date of the applicant's receipt of such permits and approvals. The list should include permits and approvals required under local, regional, state and federal laws and regulations. Indicate when outstanding approvals by the governing entities are expected. Describe the status of the environmental review documents. *Copies of ALL permits and approvals will be required upon execution of a financing agreement.* (Exhibit C)
10. **Project Management and Compliance Monitoring Plan.** Include a comprehensive project management and monitoring plan that will assure the project sponsor's ability to deliver the project as planned, fulfill all project commitments and ensure compliance with all terms of the financing agreement, including all applicable regulations and provisions of law. (Exhibit D)
11. **Maintenance and Operations Plans.** Include a description of the maintenance and operations plan for the project. Include projections of maintenance and operations expenses and the source of payment for these expenses. (Exhibit E)

SECTION 4 – Plan of Finance

This section pertains to the plan of finance for the project. This section also requests narrative information and exhibits. To help avoid any delays in the processing this application it is important that ALL attached and numbered exhibits correspond to their respective items.

1. **Estimated Project Cost (Uses of Funds).** Provide a detailed budget for the project. The budget should include all applicable and anticipated expenses and cost for administrative services, feasibility studies, preliminary engineering and environmental assessments, right-of-way acquisition, vehicle acquisition, construction, construction administration, project management and inspection and other engineering or technical services, contingencies and any other cost categories as may be necessary. All cost estimates should be shown on a year-of-expenditure, cash basis that include any necessary explanations as to assumptions used to determine estimates. (Exhibit F)
2. **Sources of Funds.** Provide a table that reflects the amount of funding from each source of funds for the project, including the TPOF funding. Include, as applicable, federal grants and/or loans, state grants and/or loans, local grants and/or loans, private investment and/or equity contributions, bond proceeds, other borrowings and any other sources of funding that will be used for the project. In addition, provide in narrative form the following information for each source of funding. Supplement the narrative with a chart showing the flow of funds.

Description of TPOF Funding:

- The entity requesting the grant or loan.
- If a grant is being requested, outline when the funding is expected or needed.
- If a loan is being requested, outline the following:
 - Evidence of authorization to commit to loan repayment(s);
 - The source of repayment(s) for the TPOF loan;
 - If project revenues are the source of repayment, the priority of repayment of the loan with respect to project revenues;
 - If non-project revenues are the source of repayment (e.g. general revenues, appropriations, etc.), the priority of repayment of the loan with respect to borrowing entity's other liabilities;
 - The security features for the loan, including any pledged revenues and collateral;
 - Debt service coverage on the loan.
 - Whether the source of repayment is contingent on the project's completion;
 - Whether the source of repayment is subject to future allocations, appropriation and/or governing body approval; and
 - Proposed payment schedule.

Description of other governmental grants and or assistance:

- The specific governmental entity providing the grant.
- The timing for receipt of the grant, including the key steps that must occur in order to receive the grant, such as environmental permits, receipt of other funding, resolutions adopted by the entity, budget appropriations, etc. Provide relevant documentation for those steps that have occurred.
- Any known level of commitment associated with the grant.
- Requirements that will be imposed by the entity on the use of the grant monies or the project.

Description of other loans, debt or other borrowing:

- The lender and legal entity borrowing the money.
- The source of repayment for all other debt and the priority of payment relative to other project borrowing.
- Security features for all other debt, including any pledged revenues and collateral.
- Covenants related to the financial or operational performance of the project, such as coverage levels, and the incurrence of additional debt.
- Structure, including the term, amortization and whether the loan will be fixed or variable rate and expected fixed rate or expected spread to specified index for variable rate debt.
- Anticipated credit ratings if funds are to be borrowed through a public debt offering.
- Any credit enhancement or other guarantees.
- The timing for the borrowing or issuance of debt, including the key steps that must occur. Provide relevant documentation for those steps that have occurred.

Description of equity and private investment:

- The entity, or entities, providing the equity or private investment.
- The mechanism(s) for how the investor(s) will be repaid, for example from excess cash flow, periodic scheduled payments, lump-sum payment from additional debt incurred in the future, etc.
- The expected rate of return and justification for the rate of return.
- Any anticipated revenue sharing with any entity.
- The timing for receipt of the investment, including the key steps that must occur in order to receive the funds. Provide relevant documentation for those steps that have occurred.
- Any major conditions or requirements that will be imposed by the investor(s) on the project.

Description of any other form of assistance not covered above.

3. **Pro Forma Cash Flow.** Provide pro forma cash flows, reflecting the flow of funds and showing revenues, all debt repayment (if applicable), including any loans under the TPOF (if applicable), maintenance and operations expenses and any payments to equity/private investors. Provide a detailed description of assumptions and justification of the assumptions. (Exhibit G)
4. **Risks and Mitigation.** Identify the risks to the project completion and the sufficiency of revenues to repay the loan. Samples of these types of risk could include cost escalation, timing of approvals and permits, litigation, and availability of other funding. Identify the mitigation strategies for any acknowledged risks, including any payment and performance guarantees. (Exhibit H)
5. **Financial Statements.** Provide year-end audited financial statements for the past three years for each project team member and the parent entities. (Exhibit I)

SECTION 5 – Applicant Organization Information

This section requests narrative information and exhibits. To help avoid any delays in the processing this application, it is important that ALL attached and numbered exhibits correspond to their respective items.

1. Describe the applicant’s legal framework. Include a copy of the statutory authority under which the entity was created. If applicant is the lead applicant, provide details of the agreement with any other entities. (Exhibit J)
2. Describe the legal authority of the applicant to carry out the proposed project activities. This description should include discussion of the applicant’s ability to levy taxes, issue debt, charge tolls or other fees and/or receive assistance from the Transportation Partnership Opportunity Fund. Provide documentation in the form of an exhibit as applicable.
3. Identify whether governmental entities, other than the applicant, must approve the submission of the application package, the funding of activities or the carrying out of activities described in the application. Provide documentation in the form of an exhibit as applicable.
4. Describe the applicant’s organizational structure and the applicant’s relationship to any subsidiaries or affiliates. Include the legal names of key principals and staff and any recent or proposed changes to the organization structure. If applicant is part of a joint venture, identify all partners and each partner’s relationship to any subsidiaries or affiliates. (Exhibit K)
5. Provide an organization chart, in the form of an exhibit, to include the major parties involved in any aspect of the project. Include the major service contractors that have been, or will be, retained for the project. (Exhibit L)
6. Describe the applicant’s prior experience as it relates to carrying out projects similar to that being proposed. Include prior experience in relation to the implementation of any new technology and the success of the use of such technology. (Exhibit M)
7. Describe any current, threatened, or pending litigation involving the applicant related to permitting, public involvement, environmental irregularities, construction defects, securities fraud, conflict of interest, failure to perform under a state or federal contract, or other charges which may reflect on the applicant’s financial position or ability to complete the project. (Exhibit N)

Appendix C

TRANSPORTATION PARTNERSHIP OPPORTUNITY FUND
DRAFT AWARD AGREEMENT

This **Award Agreement** (this “Agreement”) is made and entered into as of **MONTH DAY YEAR**, by and among the **Virginia Department of Transportation** (“VDOT” or the “Department”), an agency of the Commonwealth of Virginia (the “Commonwealth”) and the _____ (the “Recipient” or the “County, City, Agency, EDA”).

Explanatory Statement

A. The Transportation Partnership Opportunity Fund (“TPOF” or the “Fund”) was created under Section §33.2-1529.11 of the Code of Virginia (the “Code”) to provide funds to address transportation aspects of economic development opportunities.

B. The Governor is authorized to award assistance from the Fund in various forms to an agency or political subdivision of the Commonwealth.

C. The Recipient is a duly created and validly existing political subdivision of the Commonwealth and is eligible to receive financial assistance from the Fund.

D. The Recipient submitted an application requesting **SUM IN WORDS (\$x,xxx,xxx.00)** in the form of a grant from the Fund to assist in **NAME OF THE PROJECT** as defined in Exhibit A (the “Project Description” or the “Project”). The Project facilitates an economic development opportunity for the Commonwealth, thereby meeting the Transportation Evaluation Criteria established for the Fund, and will be administered by the Recipient. The projected costs of the Project are identified in Exhibit B (the “Project Budget and Sources of Funds”) to this Agreement.

E. The TPOF Advisory Panel (the “Panel”) has evaluated the application and has found that it meets the requirements of the Code and the Transportation Evaluation Criteria established in the Fund’s Guidelines and Criteria, dated July 2023. The Panel recommended on **MONTH DAY YEAR** to the Secretary of Transportation and the Secretary of Commerce and Trade, an award by the Governor of a **SUM IN WORDS (\$x,xxx,xxx.00)** grant, subject to certain conditions.

F. On **MONTH DAY YEAR** the Governor approved the award of the **SUM IN WORDS (\$x,xxx,xxx.00)** grant (the “Grant”) to the Recipient. A copy of the Decision Brief signed by the Governor is provided as Exhibit C.

G. Sufficient monies exist in the Fund to consider the recipient’s request for financial assistance.

NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which are acknowledged by the parties, the parties agree as follows:

1. Purpose of Agreement. The purpose of this Agreement is to provide for the terms and conditions required for making the grant, the disbursement and application or use of the proceeds of the Grant and other matters related thereto.

2. Disbursement Authorization and Application and Use of TPOF Grant Proceeds.

(a) Requisition. In order to requisition disbursement of the Grant proceeds, the Recipient shall submit to VDOT, a completed requisition for disbursement of the Grant proceeds signed by an authorized representative of the Recipient. The requisition will contain all information called for by, and otherwise be substantially in the form of Exhibit D (the “Requisition For Disbursement”) to this Agreement.

(b) Disbursement. Disbursement of the grant proceeds will be on a *reimbursable* basis, with a frequency of no more than one (1) requisition for disbursement per month.

(c) Application and Use of Grant Proceeds. The Grant proceeds shall be used for the sole purpose of funding the cost and expenses of the activities and tasks undertaken by the Recipient in the development and procurement of the Project as generally summarized in the Project Budget and described in more detail in the Recipient’s TPOF application (the “Work” or “Work Product”). Project expenditures, will be composed of but not limited to right-of-way acquisition, professional and inspection services, construction contractor payments and a contingency. The Grant will be limited to **SUM IN WORDS (\$x,xxx,xxx.00)** and along with the other identified monies, is expected to be adequate to fully fund the tasks identified in the Project Budget. Any Project cost exceeding the amount of the Grant shall be paid for by the Recipient using its own monies.

(d) Performance Date. Means xxx xxx, 20xx.

(e) Targets. The Recipient agrees that the capital investment will be \$XXX and the number of jobs created/retained will be XXX. These amounts will be achieved on or prior to the Performance date.

The average annual wage of new jobs will be \$xxxxx.xx and the % of new jobs sourced from the local community shall be xxx%.

The capital investment is limited to the capital investment specific for this grant.

(f) Reporting Period. The reporting period is from the date of this Agreement to the Performance Date.

3. Project Schedule.

Every good faith effort shall be made by the Recipient to cause the completion of components of the Work no later **MONTH DAY YEAR.**

4. Reports and Records.

(a) Maintenance Requirements. Full and detailed accounts and records shall be maintained, as appropriate, by the Recipient for the Project and the Grant and such controls shall be exercised as may be necessary for proper financial management, using accounting and control systems in accordance with generally accepted accounting principles and standards, so as to provide complete records to fully support the use of the Grant proceeds to pay any cost and/or expense charged to the Work. During the performance of the Work, access shall be afforded by the parties to each other and their representatives and agents to the records, books, correspondence, receipts, subcontracts, purchase orders, vouchers, memoranda and other data, including but not limited to electronic schedules and other electronic data (all collectively referred to as the "Books and Records") relating to the Work. Such Books and Records shall be maintained at the [Insert: Recipient's address]

(b) Periodic Reports. On April 1 and October 1 of each year until the End of the Reporting Period, the Recipient shall provide to VDOT's Chief Financial Officer a summary outlining the use of the TPOF monies and the status of the Project. This report should also provide an update on all progress made in order to achieve the projects investment and employment targets. In addition, the Recipient shall promptly notify VDOT of any material events that could affect the Recipient's ability to meet its financial obligations toward the Project.

5. Extension in the Performance Date. If the Recipient has not achieved at least 90% of its new jobs and capital investment targets by the Performance Date set forth in this agreement, an extension may be granted, as long as the Recipient can provide sufficient evidence to VDOT that a full faith effort is underway in achieving its Targets. Generally, an extension will be granted only in circumstances under which it is reasonable to believe that the Recipient is likely to make significant progress toward meeting its performance targets by the extension date.

6. Failure of Compliance: If Targets criteria are not met, the Recipient will be issued a Notice of Failure and will be held responsible for any repayments as calculated by VDOT. The recipient will have a period of Thirty (30) days to respond to a failure and repayment notice, after which time the Recipient will be required and responsible for returning the grant monies to the Commonwealth within ninety (90) days of the Notice of Failure.

7. Repayment Obligation. Repayment obligations will be assessed based on an equal weighting of the targets. In the event that the project covers Jobs and Investment, each Target is weighted at 50% and the repayment obligation will be based on the combined level of failure of the Targets. For projects that only have a single Target, this target will be the only calculation for repayment obligation.

The formula for calculating the failure for Job Targets

$$\frac{\text{Target Jobs less Actual Jobs}}{\text{Target Jobs}}$$

The formula for calculating the failure in Capital Investment Targets

$$\frac{\text{Target Capital Investment less Actual Capital Investment}}{\text{Target Capital Investment}}$$

A 100% claw back may be required if at any time VDOT concludes that the Recipient will be unable to meet its new jobs and capital investment targets by the Performance Date OR a failure of reaching Targets is equal or greater than 75% of the combined target failures.

8. Representations. The Recipient further represents, covenants and agrees as follows:

(a) The Recipient has full right, power and authority to execute and deliver this Agreement, to perform its obligations under the Agreement and to carry out the tasks associated with the Work and the Project.

(b) Any of the transportation improvements completed with TPOF funds shall be accomplished using applicable industry standards and specifications.

(c) To the best of the Recipient's knowledge, there are no pending or threatened suits or actions of any nature that may have an adverse effect on the Recipient's condition (financial or otherwise) or its ability to perform under the Agreement and there has been no material adverse change in the financial condition of the Recipient as indicated in the information furnished to VDOT.

(d) The Recipient shall be responsible for all activities necessary to complete the Project and shall coordinate with Department staff for all reviews, approvals and necessary oversight as required.

9. Public Property. The Work Product shall not become private property, but shall become or remain public property following completion.

10. Amendment. The provisions of this Agreement may be amended, modified or waived only by written instrument executed by both parties.

11. Applicable Law. This Agreement shall be governed by and construed under the laws of the Commonwealth of Virginia.

12. Permits. The Recipient shall obtain all necessary permits for all Work associated with the Project.

13. Notices. All notices, approvals, consents, requests and other communications under this Agreement shall be in writing and shall be deemed to have been given when delivered in person, or when sent by Federal Express or a comparable express courier service, or when mailed by registered or certified mail, postage prepaid, addressed to the parties at the following addresses or such other addresses as a party may designate by prior written notice to the other:

(a) if to VDOT:

Virginia Department of Transportation
1401 East Broad Street
Richmond, Virginia 23219
Attn: Chief Financial Officer

with a copy to:

Virginia Department of Transportation
1401 East Broad Street
Richmond, Virginia 23219
Attn: Director, Financial Planning Division

and

Office of the Attorney General
900 East Main Street
Richmond, Virginia 23219
Attn: Senior Assistant Attorney General, Chief - Transportation Section

(b) if to the Recipient:

14. Entire Agreement. This Agreement, together with the Exhibits, constitutes the entire agreement of the parties with respect to its subject matter and supersedes all prior or contemporaneous, oral or written agreements or understanding with respect to such subject matter.

15. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but of which together shall constitute one and the same agreement.

IN WITNESS WHEREOF, the parties, intending to be legally bound, have executed this Agreement on the date first written above.

VIRGINIA DEPARTMENT OF TRANSPORTATION

By: _____

Name: Stephen C. Brich, P.E.

Title: Commissioner of Highways

Recipient

By: _____

Name:

Title:

EXHIBIT A
PROJECT DESCRIPTION

**EXHIBIT B
PROJECT BUDGET
AND SOURCES OF FUNDS**

TPOF Project Budget	
Task	Estimated Cost
Total	\$

Sources of Funds	
Source	Amount
Transportation Partnership Opportunity Fund	\$
Total	\$

EXHIBIT C
EXECUTED DECISION BRIEF

**EXHIBIT D
REQUISITION FOR DISBURSEMENT**

[ON RECIPIENT LETTERHEAD]

[Date]

Mrs. Misty Upson,
Debt & Finance Manager
Financial Planning Division
Virginia Department of Transportation
1401 East Broad Street
Richmond, Virginia 23219

Re: Transportation Partnership Opportunity Fund

Dear Mrs. Upson:

This requisition, Number _____, is submitted in connection with the Grant Agreement dated as of _____ (the "Agreement"), between the Virginia Department of Transportation and _____ (the "Recipient").

The undersigned authorized representative of the Recipient hereby requests disbursement of proceeds under the Agreement in the amount of \$ _____, for the purposes of payment of project costs as set forth in Schedule 1 attached hereto.

Attached hereto are the invoices relating to the items for which payment is requested and that have been approved by the Recipient.

The undersigned certifies that i) the amounts requested by the requisition will be applied solely and exclusively to the payment, or to the reimbursement of the Recipient for the payment of project costs, and ii) any materials, supplies or equipment covered by this requisition are not subject to any lien or security interest or such lien or security interest will be released upon payment of the requisition.

This requisition includes an accompanying Certificate of the Project Manager/Project Engineer as to the performance of work.

Sincerely,

Recipient's Authorized Representative
Title

Attachments

**SCHEDULE 1
TRANSPORTATION PARTNERSHIP OPPORTUNITY FUND
FORM TO ACCOMPANY REQUEST FOR DISBURSEMENT**

REQUISITION NUMBER: _____

RECIPIENT:

PROJECT NAME:

CERTIFYING SIGNATURE: _____

TITLE: _____

Cost Category	Amount Budgeted	Previous Disbursements	Expenditures This Period	Total Expenditures To Date	Net Balance Available
TOTALS					

Total Amount of Assistance
 Previous Disbursements
 Balance
 This Request
 Proceeds Remaining

**TRANSPORTATION PARTNERSHIP OPPORTUNITY FUND
CERTIFICATE OF THE PROJECT MANAGER/PROJECT ENGINEER
FORM TO ACCOMPANY REQUEST FOR DISBURSEMENT**

This Certificate is being executed and delivered in connection with Requisition Number __, dated _____, 20 __, submitted by the _____ (the "Recipient"), pursuant to the Grant Agreement dated _____, between the Virginia Department of Transportation and the Recipient.

The undersigned consulting engineer for the Recipient hereby certifies that, insofar as the amounts covered by this requisition include payments for labor or to contractors, builders or materialmen, i) such work was actually performed or such materials, supplies and/or equipment were actually furnished to or installed in the construction portion of the Transportation Partnership Opportunity Fund project and ii) expenditures for such work have not been submitted as a part of a previous requisition.

[Project Manager/Project Engineer Firm]

By: _____

Date: _____, 20 ____

Appendix D

GUIDELINES FOR THE COMMONWEALTH'S DEVELOPMENT OPPORTUNITY FUND PROGRAM

The Commonwealth's Development Opportunity Fund (COF) is a "deal-closing" fund to be employed at the Governor's discretion to secure a company location or expansion in Virginia. Administered by the Virginia Economic Development Partnership (VEDP), the COF serves as a final resource for Virginia in the face of serious competition from other states or countries.

The COF grant is a negotiated amount determined by the Secretary of Commerce and Trade, based on the recommendation of VEDP, and subject to approval of the Governor.

Guiding Principles:

1. General: COF grants are made at the discretion of the Governor with the expectation that grants awarded to a locality or authority will result in a favorable decision for Virginia. Although the COF may be used to make loans, the practice has been to use the COF for grants.
2. Allocations: In accordance with COV § 2.2-115 C "Beginning with the five fiscal years from fiscal year 2006-2007 through fiscal year 2010-2011, and for every five fiscal years' period thereafter, in general, no less than one-third of the moneys appropriated to the Fund in every such five-year period shall be awarded to counties and cities having an annual average unemployment rate that is greater than the final statewide average unemployment rate for the calendar year that immediately precedes the calendar year of the award. However, if such one-third requirement will not be met because economic development prospects in such counties and cities are unable to fulfill the applicable minimum private investment and new jobs requirements set forth in this section, then any funds remaining in the Fund at the end of the five-year period that would have otherwise been awarded to such counties and cities shall be made available for awards in the next five fiscal years' period." VEDP will compile a report at each fiscal year end to include the most current five-year period to ensure compliance is maintained.

COV § 2.2-115 F.1.: "The guidelines and criteria shall include provisions for geographic diversity and a cap on the amount of funds to be provided to any individual project. At the discretion of the Governor, this cap may be waived for qualifying projects of regional or statewide interest. In developing the guidelines and criteria, the VEDP shall use the measure for Fiscal Stress published by the Commission on Local Government of the Department of Housing and Community Development for the locality in which the project is located or will be located as one method of determining the amount of assistance a locality shall receive from the Fund." The maximum amount of a COF grant through June 30, 2019 is \$1,500,000. In very unique circumstances, this limit may be exceeded for projects that are determined to be of statewide or regional interest.

3. Multiple Grants: Localities may receive more than one COF grant during a fiscal year. Grants may be made for more than one project for a single company, but the projects must clearly represent separate investments for separate projects.
4. Relocations: COV § 2.2-115 D “...the Fund shall not be used for any economic development project in which a business relocates or expands its operations in one or more Virginia localities and simultaneously closes its operations or substantially reduces the number of its employees in another Virginia locality, unless the procedures set forth in § 30-310 are followed. The Secretary of Commerce and Trade shall enforce this policy and for any exception thereto shall, pursuant to § 30-310, submit such projects to the MEI Project Approval Commission established pursuant to § 30-309.”
5. Downsizing: If the company has existing operations in Virginia and has closed, downsized, consolidated, or laid off employees within the past 30 months prior to such company filing a COF application, there may be a bias toward not approving such application. The company will be offered an opportunity to explain such actions and to provide assurances regarding the expected new jobs and capital investment.
6. Hiring of Virginia Residents: In the performance agreement for the COF grant, the company will be strongly encouraged to ensure that at least 30% of the new jobs are offered to “Residents” of the Commonwealth, as defined in COV § 58.1-302.
7. Use of COF Proceeds: In accordance with COV § 2.2-115 D of the COF Act, COF Proceeds “may be used for public and private utility extension or capacity development on and off site; public and private installation, extension, or capacity development of high-speed or broadband Internet access, whether on or off site; road, rail, or other transportation access costs beyond the funding capability of existing programs; site acquisition; grading, drainage, paving, and any other activity required to prepare a site for construction; construction of publicly or privately owned buildings or build-out of publicly or privately owned buildings; training; or grants or loans to an industrial development authority, housing and redevelopment authority, or other political subdivision for purposes directly relating to any of the foregoing. In no case may COF proceeds be used, directly or indirectly, to pay or guarantee the payment for any rental, lease, license, or other contractual right to the use of any property.”
8. Political Contributions: For a company receiving a COF grant based upon an application made on or after July 1, 2016, there is a notification requirement for certain political contributions. For any political contributions, gifts or other items with a value greater than \$100 made by the company to the Governor or his/her political action committee or his/her campaign committee from the date of the application for the COF grant until one year after the COF grant is awarded, the Governor, or his/her political action committee or campaign committee must notify the Virginia Conflict of Interest and Ethics Advisory Council that such a contribution, gift or other item of value over \$100 has been received.

Statutory Eligibility:

1. The COF has several levels of qualification based on such measures as a locality's unemployment rate and poverty rate.

General Eligibility Thresholds: COV § 2.2-115 E.1.a. and E.1.b.

- a) 50 new jobs/\$5 million capital investment; or
- b) 25 new jobs/\$100 million capital investment
- c) The average annual wage for the new jobs must be at least equal to the prevailing average annual wage in the locality, excluding fringe benefits
- d) If the average annual wage is twice the prevailing average annual wage, the Governor may reduce the new jobs threshold to as low as 25

2. Eligibility Thresholds in Localities with Above-Average Unemployment or Above-Average Poverty (so-called distressed localities): COV § 2.2-115 E.2 and E.4

- a) For a locality with an unemployment rate for the most recent calendar year for which such data is available above the average statewide unemployment rate for that calendar year or with a poverty rate for the most recent calendar year for which such data is available above the statewide average poverty rate for that calendar year, the thresholds are:

- a) 25 new jobs / \$2.5 million capital investment
- b) Jobs may pay below the prevailing average annual wage in the locality, but must pay at least 85% of such prevailing average annual wage
- c) If the average annual wage of the new jobs is less than 85% of the prevailing average annual wage, but the customary employee benefits are offered, the Governor may still award a grant or loan, but the Secretary of Commerce and Trade must furnish a written explanation to the Chairmen of the Senate Finance and House Appropriations Committees setting forth the urgent need to provide a grant or loan to that project

3. Eligibility Thresholds in Localities with Above-Average Unemployment and Above-Average Poverty (so-called double distressed): COV § 2.2-115 E.3. and E.4

- a) For a locality with an unemployment rate for the most recent calendar year for which such data is available above the average statewide unemployment rate for that calendar year and with a poverty rate for the most recent calendar year for which such data is available above the statewide average poverty rate for that calendar year, the thresholds are:

- (1) 15 new jobs / \$1.5 million capital investment
- (2) Jobs may pay below the prevailing average annual wage in the locality, but must pay at least 85% of such prevailing average annual wage
- (3) If the average annual wage of the new jobs is less than 85% of the prevailing average annual wage, but the customary employee benefits are offered, the Governor may still award a grant or loan, but the Secretary of Commerce and Trade must furnish a written explanation to the Chairmen of the Senate Finance

and House Appropriations Committees setting forth the urgent need to provide a grant or loan to that project

4. In accordance with COV § 2.2-115 A "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 economic development project is located. The prevailing average wage shall be determined without regard to any fringe benefits.
5. Data from the Bureau of Labor Statistics' Local Area Unemployment Statistics (LAUS) is the primary source of annual unemployment rates (<https://data.virginialmi.com>).
6. Capital Investment Waiver for Remote Work: In circumstances where a company will create at least the minimum number of new jobs required by Code, and at least 75% of those jobs will be new teleworking jobs for which the majority of the work is performed remotely, the Governor may reduce or waive the COF capital investment requirement. For new teleworking jobs to be considered, the jobs must be held by Virginia residents and pay at least 120% of the Virginia Minimum Wage as defined by the Virginia Minimum Wage Act (§ 40.1-28.8 et seq.)

Local Matches:

1. Qualifying Local Matches: Localities must at least match dollar-for-dollar with local funds the amount requested from the COF. Previously invested local funds, grants of moneys from other government sources (except as noted below with respect to the Tobacco Region Opportunity Fund), 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.
2. Local Match Waiver: 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. If the minimum private capital investment is reduced or waived for a company creating jobs of which at least 75% will be new teleworking jobs in Virginia, the Governor may provide full or partial relief from the local matching requirement as well.
3. 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.
4. Grants for a project made to the locality from the Tobacco Region Opportunity Fund may be used as up to one-half of the local match for the COF grant.
5. 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.

Application Process

1. Once the due diligence process is complete and a COF grant has been pre-approved for a company, the company can submit an application to VEDP.
2. Two Documents: Applications should consist of two documents: 1) a community letter sent by the chief appointed official of any county, city, town or other applicable political subdivision to the President and Chief Executive Officer of VEDP, and (2) a letter sent by the company to the locality where the project will be located. The company letter should accompany the community letter.
3. Community Letter: It is expected that the letter from the community will use the following format and include the following information:
 - a) A summary statement presenting the importance of the project to the community and why support from the COF is being sought;
 - b) Amount requested;
 - c) The expected use of the funds;
 - d) Description of the project, including:
 - (1) Company name and information (website, stock exchange ticker)
 - (2) Type of operation (i.e. manufacturing, distribution, etc.)
 - (3) Headquarters location
 - (4) Virginia operations (if any exist)
 - (5) What the company is planning to do in Virginia
 - (6) Employment impact on current operations in Virginia
 - e) Location of the project, including the community, and its population, current unemployment and poverty rates and prevailing average annual wage;
 - f) Details of capital investment, including, but not limited to, the value of property to be leased under a capital lease, or other investments of capital that add to the local tax revenues;
 - g) Jobs anticipated to be created and maintained by the company's performance date (generally three years after the locality receives a grant payment), information on "jobs saved," average salary level and total yearly payroll of jobs created;
 - h) Local and state financial participation, specifying new moneys to be allocated to the project and how those funds will be used;
 - i) Description of other public funds that have been or will be expended for the project, such as training or past public expenditures for road, utility extension or site development;
 - j) If the project for which a COF grant is being requested involves the relocation of a business from one Virginia locality to another, the community applying for the grant must officially notify the community from which the business is moving. For such projects, a statement must be included in the COF application that this notification has taken place, and must also provide the reasons for the move and the out-of-state competition;

- k) If applicable, an acknowledgement that the COF grant proceeds will be disbursed in installments, as certain milestones are achieved; and
 - l) Any other current or background information pertinent to the project that might assist the Governor in making an informed decision based on complete knowledge. Communities are obliged to disclose any information that could reflect negatively on the project.
4. Company Letter: It is expected that the letter from the company will use the following format and include the following information:
- a) An indication from the company that without support from the COF, there is a possibility that the project could be located outside of Virginia and that only one site in Virginia is under consideration for the project;
 - b) An indication from the company of the number of new jobs expected to be created (and saved, if any) and maintained, payroll and salary levels and a statement confirming the company offers its employees a standard package of fringe benefits;
 - c) An indication of the capital investment expected to be made by or on behalf of the company at the facility in the community by the performance date, which is generally three years, including an indication of the extent to which the company expects to make the capital investment through the use of operating or capital leases;
 - d) An affirmation that the proposed project will not result in a closing, loss of jobs, consolidation, or change to any existing operations in Virginia for the duration of the performance period;
 - e) If applicable, an acknowledgement that the COF grant proceeds will be disbursed in installments, as certain milestones are achieved;
 - f) An affirmation that the company has not closed, downsized, consolidated, or laid off employees at existing operations in Virginia within the past 12 months prior to the application date, or, if it has, additional assurances regarding the stability of the new jobs and capital investment.
 - g) A copy of the company's W-9.

Performance Agreement

1. Performance Agreement Between VEDP, Community and Company: Since a COF grant is awarded to a community, the community is required to enter into a performance agreement with the company before it may receive the COF grant. This is to ensure that the company will meet the new job and capital investment levels as stated in its application and as agreed to. It is expected that the performance agreement will also have the community's industrial or economic development authority, and VEDP as parties. (§2.2- 115 F.2.a.).
2. Targets and Statutory Criteria: The performance agreement will set forth the (i) capital investment target; (ii) new jobs target; (iii) wage target; (iv) fair market value of all funds the Commonwealth is expected to provide; (v) fair market value of the local match; (vi) prevailing average wage in locality; (vii) performance date; (viii) reporting and target verification procedures; and (ix) any repayment obligations.

3. Disbursement of COF Grant: The performance agreement generally will call for the COF grant to be disbursed by VEDP to the locality. The performance agreement will then contain the terms and conditions under which the locality may cause the COF grant proceeds to be disbursed to the company. In some circumstances, but only with the consent of the locality, VEDP may cause the COF grant proceeds to be disbursed directly to the company, upon the terms and conditions to be set forth in the performance agreement.
4. Performance Date: The performance agreement will include an end-date by which the company will achieve the capital investment and new jobs targets (“Performance Date”). The Performance Date is generally 36 months after the date the project is announced. Further, if the date by which the Commonwealth is expected to reach its break-even point, as determined by a return-on-investment analysis prepared by VEDP, is later than the Performance Date, there will be another obligation of the company to maintain its new jobs through the break-even date. If the company has not achieved at least 90% of its new jobs and capital investment targets by the Performance Date set forth in the performance agreement, the locality, in consultation with VEDP, may request an extension of up to 15 months. Any extension of the Performance Date requires prior approval by VEDP’s Project Review and Credit Committee (“PRACC”) and the VEDP Board of Directors. Any additional extensions must be approved by PRACC, the VEDP Board, and the Major Employment and Investment (MEI) Project Approval Commission. COV § 2.2-115 F.2.b. and 2.2-2237.2.
5. Business Income Tax Information: For VEDP to demonstrate the value of the COF program and other economic development incentives, it would be helpful for the company to share with VEDP the Virginia 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 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 [or, as applicable, shall provide to VEDP a copy of its Virginia income tax form filed with respect to its status as a passthrough entity]. VEDP has represented 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-investment capital analyses for purposes of gauging the overall effectiveness of economic development incentives.
6. Office of the Attorney General (OAG) Review: Once VEDP, the locality and the company are comfortable with the language of the performance agreement, the performance agreement must be presented to the OAG for review of proper legal form. The OAG will have up to seven (7) days to provide written comments regarding the performance agreement.

To find out more about the Commonwealth's Development Opportunity Fund (COF):
[Commonwealth's Development Opportunity Fund \(COF\) | Virginia Economic
Development Partnership \(vedp.org\)](#)

Appendix E

GUIDELINES FOR THE VIRGINIA INVESTMENT PERFORMANCE GRANT PROGRAM

The Virginia Investment Performance Grant (VIP) encourages continued capital investment by existing Virginia companies, resulting in added capacity, modernization, increased productivity, or the creation, development, and utilization of advanced technology. The program targets existing manufacturers or research and development services supporting manufacturing. There must be an active and realistic competition between Virginia and another state or country for attracting the project, and matching local financial participation is expected.

The amount of each VIP grant is determined by the Secretary of Commerce and Trade, based in part on the Virginia Economic Development Partnership's (VEDP) Return-on-Investment analysis and recommendation, and is subject to the approval of the Governor.

Guiding Principles

1. General: 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.
2. 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.
3. 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.
4. Allocations: COV § 2.2-5101, A through C references that the fund is subject to the appropriation by the General Assembly of sufficient moneys to the Investment Performance Grant sub-fund, any eligible manufacturer or research and development service that is not eligible for a MEE grant under COV § 2.2-5102 shall be eligible for an investment performance grant as provided in this section. VEDP established an application process by which eligible manufacturers and research and development services may apply for a grant. An application for a VIP grant shall not be approved for payment until VEDP has verified that the capital investment has been completed. The amount of the VIP grant that an eligible manufacturer or research and development service shall be eligible to receive shall be determined by the Secretary of Commerce & Trade (SCT), based on the recommendation of VEDP, and contingent upon approval by the Governor. The determination of the appropriate amount of a VIP grant shall be based on the application of guidelines that establish criteria for correlating the amount of a VIP grant to the relative value to the Commonwealth of the eligible investment.

5. **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 to 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.

Application Process

1. Once the due diligence process is complete and a VIP grant has been pre-approved for a company, the company can submit an application to VEDP.
2. 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:
 - a) The amount and timing of the expected capital investment;
 - b) 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;
 - c) The number of new jobs expected to be created and maintained because of the capital investment, if any, and a timeline for their creation;
 - d) (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) a comparison of the expected average annual wages with the average manufacturing wage for the locality or region;
 - e) 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;
 - f) 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
 - g) 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.

Amount of VIP Grant Award

1. Except as provided in the next paragraph, no one VIP grant may exceed \$3,000,000. In the aggregate, no more than \$-4 million in total VIP grants may be paid-out in any one year. The total aggregate amount of outstanding VIP grants approved after July 1, 2019 cannot exceed \$20 million.
2. 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 extraordinary characteristics set forth below:
 - a) Desirable workforce characteristics (e.g. significant job numbers, especially high wage levels, or sophisticated skill sets)
 - b) Strategic industry sector
 - c) Significant impact on or transformation of the local/regional economy
 - d) Significant R&D component, especially if in concert with Virginia’s public higher educational institutions
 - e) Considerable capital investment
 - f) Likelihood of attracting a significant supply chain or other significant follow-on opportunities
3. The maximum \$5 million grant is intended to be reserved for special projects deemed meritorious of such a significant investment by the Commonwealth.
4. The VIP grant will be paid in five annual installments at the times described below under “Performance Agreement – VIP Grant Payout Schedule.”

Performance Agreement

1. 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 of the project by the Governor.
2. Targets and Statutory Criteria: The performance agreement will set forth the (i) capital investment target; (ii) new jobs target, if applicable; (iii) wage target, if applicable; (iv) prevailing average manufacturing wage in the locality; (v) expected performance date; (vi) reporting and target verification procedures; and (vii) any grant reduction circumstances.
3. Performance 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.
4. Any extension of the Projected Completion Date shall require the prior approval of VEDP’s Project Review and Credit Committee (“PRACC”) and the Board of Directors of VEDP. If the Projected Completion Date is extended, VEDP will notify the company of any such extension. Generally, the extension should be granted only in circumstances under which it is reasonable to believe that the company is likely to make significant progress toward meeting its performance targets by the extension date. In the unlikely event that a second extension request will be considered, that extension will require the approval of PRACC, the Board of Directors of VEDP and the Major Employment and Investment (MEI) Project Approval Commission.

5. **Initial Company Notification:** The performance agreement will require the VIP grantee to notify VEDP in writing within ninety (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”).
6. **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.
7. The performance agreement will likely require other notices to VEDP as may be necessary to administer the VIP grant program.
8. **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 will 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

1. **Annual Appropriation:** VIP grant installment payments are subject to annual appropriation by the Virginia General Assembly. If there are insufficient moneys in the Investment Performance Grant subfund to pay all VIP grant payments due to intended recipients, the provisions of COV § 2.2-5104 of the Act shall govern the distribution of the available funds.
2. **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 conditions (i), (iii) or (iv) are not met, 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.
3. **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.

4. **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.
5. 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.

Local Matches

1. **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. 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.
2. **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 to five years.

To find out more about the Virginia Investment Performance Grant (VIP): [Virginia Investment Performance Grant \(VIP\) | Virginia Economic Development Partnership \(vedp.org\)](https://www.vedp.org)