

VIRGINIA PORT AUTHORITY
A component of the PORT OF VIRGINIA ECONOMIC DEVELOPMENT PROGRAM
ECONOMIC AND INFRASTRUCTURE DEVELOPMENT GRANT PROGRAM

MEMORANDUM of UNDERSTANDING

This **Memorandum of Understanding**, is effective as of the ____ day of _____, 2025 (the "MOU"), entered into by and between the Virginia Port Authority, a political subdivision of the Commonwealth of Virginia (the "VPA"), and _____ (the "Awarded Company"), a corporation authorized to transact business in the Commonwealth.

WHEREAS, in July 2023, the Virginia General Assembly established the Economic and Infrastructure Development Grant Program (the "EID Grant"), as a component of the Port of Virginia Economic Development Program (the "Program"), to be administered by the VPA, in order to provide grant funding for those companies which locate or expand in the Commonwealth and ship cargo through The Port of Virginia (POV); and

WHEREAS, on _____, the VPA Board of Commissioners adopted the guidelines (the "Policy") for administering the EID grant program in accordance with Virginia Code § 62.1-132.3:2.2; and

WHEREAS, in accordance with the Policy's Section II.A. and B., the Awarded Company has submitted an application and qualified for a grant, in the amount of ____ Hundred and ____ Thousand Dollars and 00/100 (\$__, ____); and

WHEREAS the Awarded Company agrees to meet the performance criteria as outlined in the obligations section of this MOU; and

WHEREAS, on _____, the VPA, through the approval given by VPA's Chief Executive Officer granted the ____ (year) EID grant award, in the amount of ____ Hundred and ____ Thousand Dollars and 00/100 (\$__, ____), to the Awarded Company; and

NOW, THEREFORE, in consideration of the foregoing, the mutual promises and undertakings of the parties to this MOU, and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows.

Section 1. **Definitions.**

For the purposes of this MOU, the following terms shall have the following definitions:

- A. “Baseline volume” means the volume of cargo moved through the Port of Virginia facilities within the previous calendar year of which the applicant has applied for a grant award.
 - 1. This is measured from January 1 through December 31 of the qualifying award year.
- B. “Commencement date” – for the purpose of this grant, shall mean the following:
 - 1. For a new *warehouse or manufacturing center* location, refer to the date the qualified company receives its first international container through the Port of Virginia facilities; evidenced by the bill of lading.
 - 2. For an expanded *warehouse or manufacturing center*, refer to the date of the qualified company’s formal public announcement of said expansion.
- C. “Maintain” means that the New, Permanent Full-Time Positions resulting from the increased qualified trade activities will continue without interruption at all times during the performance period.
 - 1. Positions for the New, Permanent Full-Time Positions will be treated as maintained during periods in which such positions are not filled due to (i) temporary reductions, not longer than two consecutive quarters in a calendar year, in the Awarded Company’s employment levels (so long as there is active recruitment for open positions), (ii) strikes, or (iii) other temporary work stoppages.
- D. “New, Permanent Full-Time Position” means a job of an indefinite duration, created by a qualified company as a result of operations within the Commonwealth, requiring a minimum of 35 hours of an employee's time per week for the entire normal year of the company's operations, which normal year shall consist of at least 48 weeks, or a position of indefinite duration that requires a minimum of 35 hours of an employee's time per week for the portion of the taxable year in which the employee was initially hired for the qualified company's location within the Commonwealth.
 - 1. Includes security positions as required within a foreign trade zone, established pursuant to Foreign Trade Zones Act of 1934, as amended (19 U.S.C. §§ 81a through 81u).
 - 2. Does not include:
 - a. Seasonal or temporary positions;
 - b. Jobs created when a position is shifted from an existing location in the Commonwealth to the qualified company's new or expanded location; or
 - c. Positions in building and grounds maintenance or other positions that are ancillary to the principal activities performed by the employees at the qualified company's location within the Commonwealth.

- E. "Performance Period" means June 1st of the award year, ____, through July 31st, ____; representing three (3) years from the month the grant award was issued.
- F. "Qualified full-time employee" means an employee filling a new, permanent full-time position in the qualified company's location within the Commonwealth.
1. Does not include an employee:
 - a. For whom a tax credit was previously earned pursuant to § 58.1-439 or 58.1-439.12:06 by a related party as listed in § 267(b) of the Internal Revenue Code or by a trade or business under common control as defined in regulations issued pursuant to § 52(b) of the Internal Revenue Code;
 - b. Who was previously employed in the same job function at an existing location in the Commonwealth by a related party as listed in § 267(b) of the Internal Revenue Code; or
 - c. Whose job function was previously performed at a different location in the Commonwealth by an employee of a related party as listed in § 267(b) of the Internal Revenue Code or a trade or business under common control as defined in regulations issued pursuant to § 52(b) of the Internal Revenue Code.
- G. "The Port of Virginia" means, for the purpose of this grant, port facilities to include Norfolk International Terminals, Virginia International Gateway, Newport News Marine Terminal, Richmond Marine Terminal, and the Virginia Inland Port.

Section 2. Obligations

The Awarded Company has located or expanded a facility within the Commonwealth; created at least 25 new, permanent full-time positions for qualified full-time employees at a facility within the Commonwealth during its first year of operation or during the year when the expansion occurred; is involved in maritime commerce or exports or imports manufactured goods through The Port of Virginia; is engaged in the distribution, freight forwarding, freight handling, goods processing, manufacturing, warehousing, crossdocking, transloading, or wholesaling of goods exports or imported through The Port of Virginia or shipbuilding and ship repair, dredging, marine construction, or offshore energy exploration or extraction; and pays a minimum entry-level wage rate per hour of at least 1.2 times the federal minimum wage or the Virginia minimum wage, as required by the Virginia Minimum Wage Act, whichever is higher.

- A. The Awarded Company will operate the facility, located at _____, through the performance period.
1. The company commenced development | expansion of the facility in calendar year _____.
- B. At the execution of this MOU, the Awarded Company shall meet the requirements set forth pursuant to the grant award. Therefore, in accordance with § 62.1-132.3:2.2, VPA has established the requirements for maintaining the number of new, permanent full-time positions for qualified employees at the qualified company's location within the Commonwealth.
- C. A qualified company that locates or expands a facility within the Commonwealth shall be eligible to apply for a one-time grant from the Fund, in an amount determined as follows:

1. If the qualified company creates at least 25 new, permanent full-time positions for qualified full-time employees during its first year of operation or during the year in which the expansion occurs, \$1,000 per new, permanent full-time position;
2. If the qualified company creates at least 50 new, permanent full-time positions for qualified full-time employees during its first year of operation or during the year in which the expansion occurs, \$1,500 per new, permanent full-time position;
3. If the qualified company creates at least 75 new, permanent full-time positions for qualified full-time employees during its first year of operation or during the year in which the expansion occurs, \$2,000 per new, permanent full-time position; or
4. If the qualified company creates at least 100 new, permanent full-time positions for qualified full-time employees during its first year of operation or during the year in which the expansion occurs, \$3,000 per new, permanent full-time position.

D. As such, the Awarded Company,

1. At the commencement of the facility in ____ (year), had ____ new, permanent full-time positions; and
2. After one year of operation of the facility in ____ (year), had ____ new, permanent full-time positions.
3. Therefore, the grant award is equal to: \$_____, which is determined by the following formula, \$____ x ____ positions the company created; subject to verification and appropriation.

E. The Awarded Company shall Maintain at least _____ new, permanent full-time positions at all times during the performance period.

F. The Awarded Company shall complete the EID Employment documentation file. This consists of (i) company information, such as company name, FEIN and facility location, including company-wide and Virginia employment figures; and (ii) a summary of the new, full-time positions created and maintained at the facility, net of any baseline positions, and the average annual wage of such new positions, annually.

G. **Reporting Requirement:** The EID Employment documentation file shall be submitted to the VPA, via email correspondence, every year in June, within the stated performance period. If requested and applicable, any other documentation the company has of evidence including, but not limited to copies of employee quarterly payroll reports that have been provided to the Virginia Employment Commission (VEC).

H. The Awarded Company must provide written notice to the VPA indicating whether there has been a net reduction in employment in any year since the creation of qualified full-time employee positions at any time during the stated performance period within 90 days of said reduction.

I. The Awarded Company shall provide, at their expense, detailed verification, reasonably satisfactory, to the VPA of the Awarded Company's progress on the performance measures as outlined in the

Obligations section of this MOU. This further describes the Reporting Requirement:

1. Such reporting will be provided annually, by July 31st, for three years within the performance period, covering the prior employment periods of July 1 – June 30.
2. With each report, the company shall use and provide the Cargo Verification summary sheet from the cargo portal to the VPA, which is the amount of TEU's, or tonnage imported or exported through The Port of Virginia from the prior calendar year.
 - a. If the company is involved in maritime commerce such as ship building and ship repair, dredging, marine construction, or offshore energy exploration and extraction, the applicant shall provide a statement of the impact the facility has on growth at The Port of Virginia in lieu of cargo verification.
 - b. The Awarded Company shall, at a minimum, remain at Baseline volume for each year during the performance period.

Section 3. Due Diligence and Verification.

- A. The VPA reserves the right to require such other documentation as may be necessary to evidence the qualified full-time employees and annual wage rates, created as a result of the facility development or facility expansion.
 1. In accordance with Code of Virginia § 60.2-114, the VPA is entitled to receive the Awarded Company's employment level and wage information from the VEC as it may be required to facilitate the administration and enforcement by VPA of a MOU with said company that has received an incentive award.
- B. Any VEC information provided to VPA shall be confidential and only disclosed to employees and management of VPA for their official duties.
- C. No employee can re-disclose any such confidential information to the VPA Board or the public.
- D. Such VEC information will be used by VPA solely to verify employment and wage claims.

Section 4. Disbursement of EID Grant Funds.

- A. The Awarded Company has qualified for an EID Grant award totaling \$_____. This amount is subject to the grant amounts prescribed for other qualified companies, fund availability from the yearly legislatively appropriated amounts and at the discretion of the VPA.
- B. The grant award will be paid by the VPA, signed by the Chief Executive Officer of the VPA, to the Awarded Company within 30 days of the execution and delivery of this MOU and prescribed obligations found in Section 2. This amount was determined by considering the amount of funds available.

Section 5. Repayment / Claw-Backs

- A. The VPA reserves the right to modify or withhold any portion to be made under this grant award or to require a total or partial refund of any grant funds.
- B. In the VPA's sole discretion, such action is necessary, if the Awarded Company:
 - 1. Has not fully complied with the terms and conditions of this MOU;
 - 2. Demonstrates failure to maintain employment claims, including providing the VPA written notice of change;
 - 3. Failure to provide supporting documentation of said employment claims; or
 - 4. Filing by or on behalf of the Awarded Company under Chapter 7 of the US Bankruptcy Code, the liquidation of the facility, and abandonment of the facility by the Awarded Company or other similar significant event that demonstrates the Awarded Company will be unable or is unwilling to comply with this MOU.
- C. The awarded Company has created and agreed to maintain, at all times during the performance period, at least ____ permanent full-time positions; consequently if, for any of the time within the performance period, the company has maintained fewer than ____ permanent full-time positions, the Company must provide a written notice of change to the VPA as stated in Section 2H. If the VPA deems it necessary, the Awarded Company shall repay all or a portion of the EID grant, as follows:
 - 1. If, for any of the years within the performance period, fewer than 25 new, permanent full-time positions have been maintained, the full amount of the EID Grant shall be repaid by the company to the VPA; or
 - 2. If the number of new, permanent full-time positions are greater than 24 but less than 50, an amount equal to \$1,000 times the number of new, permanent full-time positions that have been reduced shall be repaid by the company to the VPA; or
 - 3. If the number of new, permanent full-time positions are greater than 49 but less than 75, an amount equal to \$1,500 times the number of new, permanent full-time positions that have been reduced shall be repaid by the company to the VPA; or
 - 4. If the number of new, permanent full-time positions are greater than 74 but less than 100, an amount equal to \$2,000 times the number of new, permanent full-time positions that have been reduced shall be repaid by the company to the VPA; or
 - 5. If the number of new, permanent full-time positions are greater than 100, an amount equal to \$3,000 times the number of new, permanent full-time positions that have been reduced shall be repaid by the company to the VPA.
- D. In the event that the terms of this MOU have not been met during the applicable performance period, demand for repayment, if appropriate, will be made by the VPA within (90) days of the date of verification.

Section 6. Notices.

Any notices required or permitted under this MOU shall be given in writing, and shall be deemed to be received upon receipt or refusal after mailing of the same in the United States Mail by certified mail, postage fully pre-paid or by overnight courier (refusal shall mean return of certified mail or overnight courier package not accepted by the addressee) in addition to submission by email to _____ :

If to the Awarded
Company, to:

With a copy to:

If to the VPA, to:

With a copy to:

Section 7. Miscellaneous.

- A. “Entire Understanding; Amendments”: this MOU constitutes the entire agreement between the parties hereto as to the VPA Grant and may not be amended or modified, except in writing, signed by each of the parties hereto. This MOU shall be binding upon and insure to the benefit of the parties hereto and their respective successors and assigns. Except to an affiliate of the County, the County may not assign its rights and obligations under this MOU without the prior written consent of the VPA which shall not be unreasonably withheld, conditioned, or delayed.
- B. “Governing Law; Venue”: This MOU is made, and is intended to be performed, in the Commonwealth of Virginia and shall be construed and enforced by the laws of the Commonwealth. Jurisdiction and venue for any litigation arising out of or involving this MOU shall lie in the Circuit Court of the City of Norfolk, and such litigation shall be brought only in such court.
- C. “Counterparts”: This MOU may be executed in one or more counterparts, each of which shall be an original, and all of which together shall be one and the same instrument.
- D. “Severability”: If any provision of this MOU is determined to be unenforceable, invalid or illegal, then the enforceability, validity and legality of the remaining provisions will not in any way be affected or impaired, and such provision will be deemed to be restated to reflect the original intentions of the parties as nearly as possible in accordance with applicable law.
- E. “Subject to Available Funds”: This MOU is subject to appropriations by the Virginia General Assembly.

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IN WITNESS WHEREOF, the parties hereto have executed this Memorandum of Understanding as of the date first written above.

VIRGINIA PORT AUTHORITY

By: _____

Name: _____

Title: _____

Date: _____

AWARDED COMPANY

By: _____

Name: _____

Title: _____

Date: _____