

VIRGINIA PORT AUTHORITY
A component of the PORT OF VIRGINIA ECONOMIC DEVELOPMENT PROGRAM
INTERNATIONAL TRADE FACILITY 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 Entity").

WHEREAS, in July 2023, the Virginia General Assembly established the International Trade Facility Grant Program (the "ITF 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 international trade facilities that increase qualified trade activities; and

WHEREAS, on _____, the VPA Board of Commissioners adopted the guidelines (the "Policy") for administering the ITF grant program in accordance with Virginia Code § 62.1-132.3:2.3; and

WHEREAS, in accordance with the Policy's Section II.A. and B., the Awarded Entity applied and qualified for a grant in the amount of ____ Hundred and ____ Thousand Dollars and 00/100 (\$____, ____) through the "Qualified Full-Time Employee" **or** "Capital Investment" award selection; 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) ITF grant award, in the amount of ____ Hundred and ____ Thousand Dollars and 00/100 (\$____, ____), to the Awarded Entity; and

NOW, THEREFORE, in consideration of the foregoing, the mutual promises, and undertakings of the parties to this MOU, and other valuable considerations, 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 maritime port 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. "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 Entity's employment levels (so long as there is active recruitment for open positions), (ii) strikes, or (iii) other temporary work stoppages.
- C. "Maritime port facilities" is the port facility in the Commonwealth where the cargo is first loaded to or unloaded from a ship or barge.
- 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.

Section 2. Obligations

The Awarded Entity is engaged in port-related activities including warehousing, distribution, freight forwarding and handling, and goods processing; uses maritime port facilities located within the Commonwealth; exported and imported at least 5% more of said goods through these facilities during the calendar year than was transported the preceding year; 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. Awarded Entity will operate the facility, located at _____, through the performance period.
- B. The Awarded Entity has elected the “qualified full-time employee” or “capital investment” award selection.
- C. At the execution of this MOU, the awarded entity shall have met the requirements set forth pursuant to applicable award selection. Therefore, in accordance with § 62.1-132.3:2.3, VPA has established the requirements for both maintaining the number of new, permanent full-time positions and schedule of capital investment. They are as follows:

New, Permanent Full-Time Positions

1. The Awarded Entity has qualified for \$3,500 per qualified full-time employee that resulted from increased qualified trade activities, adjusted each year by the indexing ratio.
 - a. If the qualified full-time employee works in the Commonwealth for less than 12 full months during the credit year, the amount awarded shall be multiplied by a fraction respective of the number of full months the employee worked for the International Trade Facility (x/12), as calculated on Schedule C from Form ITF.
2. The grant award is equal to: \$_____, which is determined by the following formula, \$3,500 x _____ positions the entity created, subject to verification.

3. The Awarded Entity shall maintain at least _____ new, permanent full-time positions at all times during the performance period.
4. The Awarded Entity shall complete the ITF Employment documentation file. This consists of (i) company information, as stated on the original application Form ITF, including company-wide and Virginia employment figures; (ii) a restatement of Schedule C from the original application; and (iii) 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.
5. **Reporting Requirement:** The ITF 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).
6. The Awarded Entity 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.

- OR -

Schedule of Capital Investment

1. The Awarded Entity has qualified for an amount equal to two percent (2%) of the capital investment made by the applicant to facilitate the increased qualified trade activities.
2. The grant award is equal to: \$_____, which is determined by the following formula, $2\% \times \$______$, capital investment made, rounded, subject to verification.
3. The Awarded Entity shall remain in operation at this facility at all times during the performance period.
4. The Awarded Entity shall complete the ITF Investment Documentation file. This consists of (i) company information, as stated on the original application Form ITF, including company-wide and Virginia employment figures; (ii) a restatement of Schedule D from the original application; and (iii) a summary breakdown of the capital investment into categories such as exterior construction, electrical improvements, paving, landscaping, and any other major categories of expenditures that align with the provided definition stated in the ITF policy, annually.
5. **Reporting Requirement:** The ITF Investment 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 as evidence of the capital investment including but not limited to documentation of the change in assessed value.
6. The Awarded Entity must provide written notice to the VPA indicating whether all or any portion of the capital investment has been impaired, destroyed, disposed of, sold, or otherwise at any time during the stated performance period within 90 days of said reduction.

D. The Awarded Entity shall provide, at their expense, detailed verification, reasonably satisfactory, to the VPA of the Awarded Entity'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 report to the VPA, the amount of TEU's or tonnage imported or exported by providing the Cargo Verification summary sheet from the cargo portal, or completed copies of Schedule A from Form ITF, if cargo was not moved through the Port of Virginia facilities from prior calendar year.
 - a. 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, annual wage rates, and the capital investments completed as a result of the increased qualified activities.
1. In accordance with Code of Virginia § 60.2-114, the VPA is entitled to receive the Awarded Entity'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.
 2. Any VEC information provided to VPA shall be confidential and only disclosed to employees and management of VPA for their official duties.
 3. No employee can re-disclose any such confidential information to the VPA Board or the public.
 4. Such VEC information will be used by VPA solely to verify an employment and wage claims.
- B. The VPA reserves the right to verify the capital investment data by requesting the company's real estate tax, business personal property tax, and other tax records from the local Commissioner of the Revenue in the applicable locality where the capital investment is located.
1. The Awarded Entity authorizes VPA to access this tax information and agrees to provide such other consents as may be required.
 2. In order to verify the capital investment claimed by the Awarded Entity, VPA will ask for the change in assessed value of the capital investment from the beginning to the end of the performance period and/or confirmation that the tax records reflect the capital investment reported by the Awarded Entity.
 3. If the Commissioner of Revenue requires documentation verifying the VPA's need to access the tax information, the VPA will provide a copy of the MOU or such reasonable documentation as such office may require.

4. Any tax information provided to the VPA shall be confidential and only disclosed to employees and management of VPA for their official duties.
5. No employee can re-disclose any such confidential information to the VPA Board or the public.
6. Such tax information will be used by VPA solely to verify an employment and wage claims.

Section 4. Disbursement of ITF Grant Funds.

- A. The Awarded Entity has qualified for an ITF Grant award totaling \$_____. This amount is subject to the grant amounts prescribed for other qualified entities, 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 Entity 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 Entity:
 1. Has not fully complied with the terms and conditions of this MOU;
 2. Demonstrates failure to maintain employment or investment claims, including providing the VPA written notice of change;
 3. Failure to provide supporting documentation of said employment and investment claims; or
 4. Filing by or on behalf of the Awarded Entity under Chapter 7 of the US Bankruptcy Code, the liquidation of the facility, and abandonment of the facility by the awarded entity or other similar significant event that demonstrates the Awarded Entity will be unable or is unwilling to comply with this MOU.
- C. In the event that the terms of this MOU have not been met by the applicable performance period, demand for repayment of any portion thereof, if appropriate, will be made by the VPA within (90) days of the date of verification.

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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
Entity, 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 ENTITY

By: _____

Name: _____

Title: _____

Date: _____