
**COMMONWEALTH'S DEVELOPMENT OPPORTUNITY FUND GRANT
PERFORMANCE AGREEMENT**

This **COMMONWEALTH'S DEVELOPMENT OPPORTUNITY FUND GRANT PERFORMANCE AGREEMENT** (this "**Agreement**") made and entered this ____ day of _____, 2016, by and among the **COUNTY BOARD OF ARLINGTON, VIRGINIA** (the "**County**"), a body corporate and politic of the Commonwealth of Virginia (the "**Commonwealth**"), **GRANT THORNTON LLP** ("**Grant Thornton**"), an Illinois limited liability partnership authorized to transact business in the Commonwealth, and the **INDUSTRIAL DEVELOPMENT AUTHORITY OF ARLINGTON COUNTY** (the "**IDA**"), a political subdivision of the Commonwealth. Individually, the County, Grant Thornton, and the IDA may each be referred to hereinafter as the "**Party**," or collectively as the "**Parties**."

WITNESSETH:

WHEREAS, on March 24, 2016, the County submitted a letter to the Virginia Economic Development Partnership Authority ("**VEDP**") in order to apply for certain grant funds from the Commonwealth's Development Opportunity Fund (the "**Fund**") for the purpose of inducing Grant Thornton to consolidate its office facilities and to locate, build-out, equip, improve, and operate an office facility in Arlington County (the "**Facility**"); and

WHEREAS, on March 18, 2016, pursuant to the VEDP application procedures, Grant Thornton submitted a letter to VEDP indicating, among other things, that without the support from the Fund, there is a possibility that it may locate its Facility outside of Virginia; and

WHEREAS, on April 14, 2016, the Office of the Governor of the Commonwealth of Virginia awarded a Commonwealth's Development Opportunity Fund grant in the amount of One Million and 00/100 Dollars (\$1,000,000.00) (the "**COF Grant**") to the County for the purpose of inducing Grant Thornton to locate, build-out, equip, improve, and operate the Facility in Arlington County, thereby making a significant Capital Investment, retaining a significant number of Baseline Jobs in the Commonwealth, and creating and Maintaining a significant number of New Jobs, as all such capitalized terms are hereinafter defined; and

WHEREAS, pursuant to Section 2.2-115 of the Code of Virginia of 1950, as amended ("**Virginia Code**"), the County has agreed to disburse the COF Grant to the IDA, and the IDA has agreed to accept and disburse the COF Grant to Grant Thornton, pursuant to the terms of this Agreement; and

WHEREAS, Grant Thornton has agreed to accept the COF Grant from the IDA as an incentive (i) to make or have made on its behalf a Capital Investment of at least Fifteen Million Seven Hundred Fifty Thousand and 00/100 Dollars (\$15,750,000.00), of which approximately Four Million Nine Hundred Fifty and 00/100 Dollars (\$4,950,000) will be invested in furniture, fixtures, and equipment and approximately Ten Million Eight Hundred Thousand and 00/100

Dollars (\$10,800,000) will be invested in the up-fit of the Facility, (ii) to retain Nine Hundred Twenty-Two (922) Baseline Jobs and relocate such jobs to the Facility, and (iii) to create and Maintain a minimum of Three Hundred Forty-Eight (348) New Jobs, all by and through the Performance Date, pursuant and subject to the terms and conditions of this Agreement;

WHEREAS, the County, the IDA, and Grant Thornton desire to set forth their understanding and agreement as to the payout of the COF Grant, the use of the COF Grant proceeds, the obligations of Grant Thornton regarding Capital Investment, Baseline Job retention and relocation, and New Job creation and Maintenance, and the repayment by Grant Thornton of all or part of the COF Grant under certain circumstances; and

WHEREAS, the stimulation of the additional tax revenue and economic activity to be generated by the Capital Investment, Baseline Jobs, and New Jobs constitutes a valid public purpose for the expenditure of public funds and is the animating purpose for the COF Grant.

NOW, THEREFORE, in consideration of the foregoing and the covenants and agreements of the Parties hereto, as are hereinafter set forth, and for other good and valuable considerations, mutual benefits, promises and undertakings of the Parties to this Agreement, the receipt and adequacy of which are hereby acknowledged by each Party hereto, the Parties covenant and agree as follows:

SECTION 1. INCORPORATION OF RECITALS AND DEFINITIONS.

a) **Incorporation of Recitals.** The foregoing recitals are an integral part of this Agreement and set forth the intentions of the Parties and the premises on which the Parties have decided to enter into this Agreement. Accordingly, the foregoing recitals are fully incorporated into this Agreement by this reference as if fully set forth herein.

b) **Specific.** In addition to any other capitalized term for which a meaning is expressly defined in this Agreement, each of the following terms shall have the meaning assigned to it, such definitions to be applicable equally to the singular and the plural forms of such terms and to all genders:

“Baseline Job” means an existing full-time position located at Grant Thornton’s current office facilities in the City of Alexandria, Virginia (“Alexandria”) and the County of Fairfax, Virginia (“Fairfax”). When Grant Thornton relocates such office facilities to the County, the Baseline Jobs will be relocated to and will be retained at the Facility.

“Capital Investment” means a capital expenditure on or after March 1, 2016 by or on behalf of Grant Thornton in taxable real property, taxable tangible personal property, or both, at the Facility, excluding existing real property improvements.

“Capital Investment,” as referred to in this Agreement, is the expected capital expenditure of least Fifteen Million Seven Hundred Fifty Thousand and 00/100 Dollars (\$15,750,000.00), which reflects approximately Four Million Nine

Hundred Fifty and 00/100 Dollars (\$4,950,000) to be invested in furniture, fixtures, and machinery and equipment and approximately Ten Million Eight Hundred Thousand and 00/100 Dollars (\$10,800,000) to be invested in the up-fit of the Facility.

A capital expenditure related to a leasehold interest in real property will be considered to be made “on behalf of Grant Thornton” if a lease between a developer (or other lessor) and Grant Thornton is a capital lease or is an operating lease having a term of at least ten years, and the real property would not have been constructed or improved but for Grant Thornton’s interest in leasing some or all of the real property. Only the capital expenditures allocated to the portion of the real property to be leased by Grant Thornton will count as Capital Investment.

The purchase or lease of furniture, fixtures, machinery and equipment, including under an operating lease, and expected tenant improvements and building up-fit by or on behalf of Grant Thornton, will qualify as Capital Investment.

“**Maintain**” means that the New Jobs created will continue without interruption from the date of creation through the Performance Date. Positions for the New Jobs will be treated as Maintained during periods in which such positions are not filled due to (i) temporary reductions in Grant Thornton’s employment levels (so long as there is active recruitment for open positions), (ii) strikes, and (iii) other temporary work stoppages.

“**New Job**” means new permanent full-time employment of an indefinite duration at the Facility for which the standard fringe benefits are provided by Grant Thornton for the employee, and for which Grant Thornton pays an average annual wage of at least Eighty-Seven Thousand and 00/100 Dollars (\$87,000.00). Each New Job must require a minimum of either (i) 35 hours of an employee’s time per week for the entire normal year of Grant Thornton’s operations, which “normal year” must consist of at least 48 weeks, or (ii) 1,680 hours per year. Seasonal or temporary positions, positions created when a job function is shifted from an existing location in the Commonwealth, and positions with construction contractors, vendors, suppliers and similar multiplier or spin-off jobs shall not qualify as New Jobs. The New Jobs must be in addition to the 922 Baseline Jobs.

“**Performance Date**” means March 1, 2020. If the County, in consultation with the IDA and VEDP, deems that good faith and reasonable efforts have been made and are being made by Grant Thornton to achieve the Targets, the County may agree to extend the Performance Date by up to 15 months. If the Performance Date is extended, the County shall send written notice of the extension to the IDA, Grant Thornton, and VEDP and the date to which the Performance Date has been extended shall be the “Performance Date” for the purposes of this Agreement.

“**Targets**” means Grant Thornton’s obligations to make or have made on its behalf Capital Investment at the Facility of at least Fifteen Million Seven Hundred Fifty Thousand and 00/100 Dollars (\$15,750,000.00) (the “**Capital Investment Target**”), to retain Nine Hundred

Twenty-Two (922) Baseline Jobs and relocate such jobs to the Facility (the “**Baseline Jobs Target**”), and to create and Maintain at least Three Hundred Forty-Eight (348) New Jobs (the “**New Jobs Target**”), all as of the Performance Date. Together, the Capital Investment Target, the Baseline Jobs Target, and the New Jobs Target may be referred to hereinafter as the “Targets.”

SECTION 2. TARGETS.

a) **Targets.** Grant Thornton covenants and agrees (i) to build-out, equip, improve, and maintain the Facility in Arlington County, (ii) to make or have made on its behalf a Capital Investment of at least Fifteen Million Seven Hundred Fifty Thousand and 00/100 Dollars (\$15,750,000.00), (iii) to retain Nine Hundred Twenty-Two (922) Baseline Jobs and relocate such jobs to the Facility, and (iv) to create and Maintain at least Three Hundred Forty-Eight (348) New Jobs, all as of the Performance Date.

b) **Hiring of Residents of the Commonwealth.** Grant Thornton covenants and agrees to use its best efforts to ensure that at least thirty percent (30%) of the New Jobs are offered to “Residents” of the Commonwealth, as defined in Virginia Code Section 58.1-302. In pertinent part, that definition includes natural persons domiciled in Virginia or natural persons who, for an aggregate of more than 183 days of the year, maintained a place of abode within the Commonwealth, whether domiciled in the Commonwealth or not.

c) **Promotional Assistance.** Grant Thornton covenants and agrees to use its reasonable best efforts to assist the County and the IDA from time-to-time in promoting the County’s attributes as a place to do business.

d) **Locality Average Annual Wage and Unemployment and Poverty Levels.** The average annual wage of the New Jobs will be at least Eighty Seven Thousand and 00/100 Dollars (\$87,000.00), which is more than the prevailing average annual wage in the County of Eighty-Three Thousand Seven Hundred Twenty and 00/100 Dollars (\$83,720.00). The County is not a high-unemployment locality, with an unemployment rate for 2014, which is the last year for which such data is available, of 3.2% as compared to the 2014 statewide unemployment rate of 5.2%. The County is not a high-poverty locality, with a poverty rate for 2014, which is the last year for which such data is available, of 8.5% as compared to the 2014 statewide poverty rate of 11.8%.

e) **Relocation.** The Commonwealth’s Secretary of Commerce and Trade has delivered to the Co-Chairs of the Senate Finance Committee and the Chair of the House Appropriations Committee a letter indicating that although Grant Thornton is moving its office facilities from Alexandria and Fairfax to the County, the reasons for the move and the desire to retain Grant Thornton’s operations in Virginia justify the use of incentives to move Grant Thornton from two Virginia localities to another. The County and VEDP have informed Alexandria and Fairfax of the move and of the use of incentives.

f) **Contributions.** When Grant Thornton applied for the COF Grant on March 18, 2016, it entered into an Agreement with VEDP regarding the application (the “Certification Agreement”). In the Certification Agreement, Grant Thornton agreed that neither Grant Thornton, nor its officers, directors, and owners of or who have a controlling ownership interest in Grant Thornton (the “Applicant Group”), would make a Contribution during the No Contribution Period, as such capitalized terms are defined in the Certification Agreement. The No Contribution Period ends one year from the date of this Agreement. If Grant Thornton is made aware that any member of the Applicant Group has made a Contribution during the No Contribution Period, Grant Thornton shall provide immediate notice to VEDP. With the September 1, 2017, report described in Section 6 below, Grant Thornton shall certify whether any member of the Applicant Group made any Contribution during the No Contribution Period. Such certification will be in the form attached to this Agreement as Appendix A. If VEDP has possession of other evidence indicating that a member of the Applicant Group made a Contribution during the No Contribution Period, VEDP will provide such evidence to Grant Thornton. If any member or members of the Applicant Group made a Contribution during the No Contribution Period, Grant Thornton shall repay the entire COF Grant to the IDA within 90 days of the earlier of the date of (i) Grant Thornton’s notice to VEDP, (ii) certification due in accordance with Section 6 below, or (iii) delivery by VEDP to Grant Thornton of evidence in the possession of VEDP indicating that a member of the Applicant Group made a Contribution during the No Contribution Period (the “**Contribution Notification Date**”). Further, Grant Thornton shall assist with the implementation of the civil penalties to be paid by the member or members of the Applicant Group who made such Contributions.

SECTION 3. DISBURSEMENT OF COF GRANT.

a) By its signature below, the County requests of VEDP the release of the COF Grant. VEDP has informed the County and Grant Thornton that the time period for the disbursement of the COF Grant from the Commonwealth to the County is likely to be 30-45 days.

b) It is anticipated that, upon request as set forth above, VEDP will transfer to the County the COF Grant in the amount of One Million and 00/100 Dollars (\$1,000,000.00).

c) The County shall retain the COF Grant proceeds and will disburse the COF Grant proceeds as described herein. The Company will provide notice and evidence reasonably satisfactory to the County, the IDA, and VEDP of the issuance of the Certificate of Occupancy (“CO”) for the Facility. Such evidence will be subject to verification by the County. Within 30 days of the verification of the issuance of the CO, the County will disburse the One Million and 00/100 Dollars (\$1,000,000.00) of COF Grant proceeds to the IDA. Within 30 days of its receipt of such COF Grant proceeds, the IDA will disburse such COF Grant proceeds to Grant Thornton.

d) Any COF Grant proceeds not disbursed to the IDA within 90 days of the Performance Date will be promptly returned by the County to VEDP for redeposit to the Commonwealth’s Development Opportunity Fund.

e) The COF Grant proceeds shall be used to pay for or to reimburse the cost for build-out of the Facility, as permitted by Section 2.2-115(D) of the Virginia Code.

SECTION 4. BREAK-EVEN POINT; STATE AND LOCAL INCENTIVES; LOCAL IN-KIND MATCH.

a) **Break-Even Point.** VEDP has estimated that the Commonwealth will reach its “break-even point” by the Performance Date. According to VEDP, the break-even point compares new revenues realized as a result of the Capital Investment and New Jobs at the Facility with the Commonwealth’s expenditures on incentives, including but not limited to the COF Grant.

b) **State Incentives.** In addition to the COF Grant, in order to induce Grant Thornton to make or have made on its behalf a Capital Investment of at least Fifteen Million Seven Hundred Fifty Thousand and 00/100 Dollars (\$15,750,000.00), to retain at least Nine Hundred Twenty-Two (922) Baseline Jobs and the relocate such jobs to the Facility, and to create and Maintain at least Three Hundred Forty-Eight (348) New Jobs, all by and through the Performance Date, the Commonwealth expects to provide an estimated Three Hundred Forty-Eight Thousand and 00/100 Dollars (\$348,000.00) from the Virginia Jobs Investment Program, which shall be used by Grant Thornton to pay or reimburse itself for recruitment and training costs.

c) **Local Incentives.** As permitted by Virginia Code Section 2.2-115 and required by VEDP’s Commonwealth’s Development Opportunity Fund guidelines, and as an additional inducement to Grant Thornton, the County, through the IDA, will fund an incentive grant (the “**IDA Grant**”) in the total amount of One Million and 00/100 (\$1,000,000.00).

If, by the Performance Date, the IDA Grant proceeds paid or committed to be paid by the County total less than the One Million and 00/100 Dollars (\$1,000,000.00) COF Grant local match requirement, the County through the IDA, subject to appropriation, will make an additional grant to Grant Thornton of the difference at the Performance Date, so long as Grant Thornton has met its Targets.

SECTION 5. REPAYMENT OBLIGATION.

a) **Applicability.** The provisions of this Section 5 are applicable only if the COF Grant proceeds were distributed to Grant Thornton as described in Section 3.

b) **If Statutory Minimum Eligibility Requirements are Not Met.** Section 2.2-115 of the Virginia Code requires that Grant Thornton make a Capital Investment of at least \$5,000,000 in the Facility and create and Maintain at least 50 New Jobs at the Facility in order to be eligible for the COF Grant. Failure by Grant Thornton to meet either of these statutory minimum eligibility requirements by the Performance Date shall constitute a breach of this Agreement and the entire COF Grant must be repaid. Grant Thornton must repay any COF Grant proceeds received from the IDA. The County must repay to VEDP any COF Grant proceeds received from the IDA and any COF Grant proceeds being held for disbursement.

b) **If Statutory Minimum Eligibility Requirements are Met.** The provisions of this subsection b) shall become applicable only if Grant Thornton has met the statutory minimum eligibility requirements set forth in subsection a). For purposes of repayment, the COF Grant is to be allocated as Five Hundred Thousand and 00/100 Dollars (\$500,000.00) or fifty percent (50%) for the Capital Investment Target and Five Hundred Thousand and 00/100 Dollars (\$500,000.00) or fifty percent (50%) for the New Jobs Target. If Grant Thornton has met at least 90% of both of the Targets as of the Performance Date, then and thereafter Grant Thornton is no longer obligated to repay any portion the COF Grant. If Grant Thornton has not met at least 90% of either or both of these Targets as of the Performance Date, Grant Thornton shall repay to the IDA that part of the COF Grant that is proportional to the shortfall from the Target or Targets for which it received COF proceeds. For example, if as of the Performance Date, Grant Thornton had received all One Million and 00/100 Dollars (\$1,000,000) of the COF proceeds, but Capital Investment is only Eleven Million Eight Hundred Twelve Thousand Five Hundred and 00/100 Dollars (\$8,812,000) or seventy-five percent (75%) of the Capital Investment Target, and only two hundred sixty-one (261) New Jobs have been Maintained or seventy-five percent (75%) of the New Jobs Target, Grant Thornton shall repay to the IDA twenty-five percent (25%) of the moneys that it received allocated to the Capital Investment Target or One Hundred Twenty-Five Thousand and 00/100 Dollars (\$125,000) and twenty-five percent (25%) of the moneys that it received allocated to the New Jobs Target or One Hundred Twenty-Five Thousand and 00/100 Dollars (\$125,000)

c) **Determination of Inability to Comply.** If the County, the IDA, or VEDP shall determine at any time prior to the Performance Date (the “**Determination Date**”) that Grant Thornton is unable or unwilling to meet the Targets by and through the Performance Date, and if the County, the IDA or VEDP shall have promptly notified Grant Thornton of such determination, Grant Thornton must repay the entire COF Grant to the IDA. Such a determination will be based on such circumstances as a filing by or on behalf of Grant Thornton under Chapter 7 of the U.S. Bankruptcy Code, the liquidation of Thornton, an abandonment of the Facility by Grant Thornton or other similar significant event that demonstrates that Grant Thornton will be unable or is unwilling to satisfy the Targets for the COF Grant.

d) **Repayment Due to Contributions.** As described in Section 2, if any member of the Applicant Group made a Contribution during the No Contribution Period, Grant Thornton shall repay to the IDA within 90 Days of the Contribution Notification Date any COF Grant proceeds received from the IDA. The County will repay to VEDP any COF Grant proceeds received from the IDA and any COF Grant proceeds being held for disbursement.

e) **Repayment Dates.** *Such repayment shall be due from Grant Thornton to the IDA within ninety days after the Performance Date, the Contribution Notification Date, or the Determination Date, as applicable.* Any moneys repaid by Grant Thornton to the IDA hereunder shall be repaid by the IDA to the County. The County shall repay any moneys received from the IDA or any moneys being held for disbursement promptly to VEDP for redeposit into the

COF Grant Fund. The County and IDA shall use its best efforts to recover such funds, including legal action for breach of this Agreement. Neither the County nor the IDA shall have any responsibility for the repayment of any sums payable by Grant Thornton hereunder unless said sums have been received by the IDA from Grant Thornton or are being held for disbursement by the County.

SECTION 6. COMPANY REPORTING.

a) Grant Thornton shall provide, at Grant Thornton's expense, detailed verification reasonably satisfactory to the County, the IDA and VEDP of the Grant Thornton's progress on the Targets. Such progress reports will be provided annually, starting at June 1, 2017, and covering the period through the prior March 1. Further, Grant Thornton shall provide progress reports at such other times as the County, the IDA or VEDP may reasonably require.

b) On or before September 1, 2017, Grant Thornton shall certify in the form attached to this Agreement as Appendix A whether any member of the Applicant Group made a Contribution during the No Contribution Period.

c) As applicable, Grant Thornton shall be responsible for assembling and distributing the documentation necessary to verify the capital expenditures made on its behalf.

d) With each such annual progress report, Grant Thornton shall report to VEDP the amount paid by Grant Thornton 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 pass-through entity. VEDP has represented to Grant Thornton that it considers such information to be confidential proprietary information that is exempt from public disclosure under the Virginia Freedom of Information Act and that such information will be used by VEDP solely in calculating aggregate return on invested capital analyses for purposes of gauging the overall effectiveness of economic development incentives.

e) Grant Thornton hereby authorizes the County's Department of Real Estate Assessment and Commissioner of Revenue's Business Tax Division to release to VEDP Grant Thornton's real estate tax, business personal property tax and machinery and tools tax information. Such information shall be marked and considered confidential and proprietary and shall be used by VEDP solely for verifying satisfaction of the Capital Investment Target. If VEDP should require additional documentation or consents from Grant Thornton to access such information, Grant Thornton shall promptly provide, at Grant Thornton's expense, such additional documentation or consents as the County, the IDA, or VEDP may request.

f) If requested by VEDP, Grant Thornton shall provide to VEDP copies of Grant Thornton's quarterly filings with the Virginia Employment Commission covering the period from March 1, 2016 through the Performance Date.

SECTION 7. NOTICES.

a) **Notices, Demands, and Communications Between the Parties.** Formal notices and communications among the Parties shall be given either by (i) personal service, (ii) delivery by a reputable document delivery service that provides a receipt showing date and time of delivery, (iii) mailing utilizing a certified or first class mail postage prepaid service of the United States Postal Service that provides a receipt showing date and time of delivery or (iv) delivery by facsimile or electronic mail (email) with transmittal confirmation and confirmation of delivery, addressed to:

To the County: County of Arlington
2100 Clarendon Blvd, Suite 302
Arlington, Virginia 22201
Attn: Mark Schwartz, County Manager
Fax: (703) 228-3218
Email: MSchwartz@ArlingtonVA.US

With Copies to: County of Arlington
Office of the Arlington County Attorney
2100 Clarendon Blvd, Suite 403
Arlington, Virginia 22201
Attn: Susan D. Stout, Assistant County Attorney
Fax: (703) 228-7106
Email: SStout@ArlingtonVA.US

County of Arlington
Department of Economic Development
1100 North Glebe Rd, Suite 1500
Arlington, Virginia 22201
Attn: Victor L. Hoskins, Director
Fax: (703) 228-0805
Email: VHoskins@ArlingtonVA.US

To Grant Thornton: Grant Thornton LLP
1375 East 9th Street, Suite 1500
Cleveland, Ohio 44114
Attn: Steve Carter
Fax: (216)771-1409
Email: steve.carter@us.gt.com

With a Copy to: Grant Thornton LLP
1901 S Meyers Road, Suite 455Oakbrook Illinois 60181
Attn: Larry Szafasz
Fax: (630) 873-2500
Email: Larry.szafasz@us.gt.com@us.gt.com

To the IDA: Industrial Development Authority of Arlington County
2100 Clarendon Blvd, Suite 501
Arlington, Virginia 22201
Attn: Jason Friess, Secretary/Treasurer
Fax: (703) 224-3401
Email: JFriess@arlingtonva.us

With a Copy to: McGuireWoods, LLP
1750 Tysons Blvd, Suite 1800
Tysons Corner, Virginia 22102
Attn: Michael W. Graff, Jr.
Fax: (703) 712-5191
Email: mgraff@mcguirewoods.com

To VEDP: Virginia Development Economic Partnership
One James Center, 9th Floor
901 East Cary Street
Post Office Box 798 (zip: 23218-0798)
Richmond, Virginia 23219
Attn: Daniel C. Gundersen, Interim President and CEO and COO
Fax: (804) 545-5611
Email: dgundesen@yesvirginia.org

With a Copy to: Virginia Development Economic Partnership
One James Center, 9th Floor
901 East Cary Street
Richmond, Virginia 23219
Post Office Box 798 (zip: 23218-0798)
Attn: Sandra Jones McNinch, General Counsel
Fax: (804) 545-5611
Email: smcninch@yesvirginia.org

b) Notices personally delivered or delivered by document delivery service shall be deemed effective upon receipt. Notices mailed shall be deemed effective on the second business day following deposit in the United States mail. Notices delivered by facsimile or email shall be deemed effective the next business day, not less than 24 hours, following the date of transmittal and confirmation of delivery to the intended recipient. Such written notices, demands, and communications shall be sent in the same manner to such other addresses as any Party may from time to time designate in writing.

SECTION 8. MISCELLANEOUS.

a) **Entire Agreement; Amendments.** This Agreement constitutes the entire agreement among the Parties hereto as to the COF Grant and may not be amended or modified, except in writing, signed by each of the Parties hereto, and acknowledged by VEDP. This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and assigns. Grant Thornton may not assign its rights and obligations under this Agreement without the prior written consent of the County, the IDA and VEDP.

b) **Governing Law; Venue.** This Agreement is made, and is intended to be performed, in the Commonwealth and shall be construed and enforced by the laws of the Commonwealth. Jurisdiction and venue for any litigation arising out of or involving this Agreement shall lie in the Circuit Court of the County of Arlington, and such litigation shall be brought only in such court.

c) **Counterparts.** This Agreement 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 term, provision, covenant, or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of this Agreement shall not be affected thereby to the extent such remaining provisions are not rendered impractical to perform taking into consideration the purposes of this Agreement. In the event that all or any portion of this Agreement is found to be unenforceable, this Agreement or that portion which is found to be unenforceable shall be deemed to be a statement of intention by the Parties; and the Parties further agree that in such event, and to the maximum extent permitted by law, they shall take all steps necessary to comply with such procedures or requirements as may be necessary in order to make valid this Agreement or that portion which is found to be unenforceable.

e) **Relationship of Parties.** The provisions of this Agreement are intended solely for the purpose of defining the relative rights of the Parties and no relationship of partnership, joint venture, or other joint enterprise shall be deemed to be created hereby by and among the Parties pursuant to this Agreement.

f) **Interpretation.** The terms of this Agreement shall be construed in accordance with the meaning of the language used and shall not be construed for or against any Party by reason of the authorship of this Agreement or any other rule of construction which might otherwise apply. The Section headings are for purposes of convenience only, and shall not be construed to limit or extend the meaning of this Agreement.

g) **No Waiver of Sovereign Immunity by County.** Notwithstanding any other provisions of this Agreement to the contrary, nothing in this Agreement nor any action taken by the County pursuant to this Agreement nor any document which arises out of this Agreement shall constitute or be construed as a waiver of either the sovereign immunity or governmental immunity of the County's elected and appointed officials, officers and employees.

h) **Non-Liability of Officials, Employees and Agents.** No member, official, employee or agent of the County Board or the IDA shall be personally liable to Grant Thornton in the event of any default or breach by the County Board or the IDA or for any amount that may become due to the Grant Thornton or its successors or assigns or on any obligation under the terms of this Agreement.

i) **Attorney's Fees.** Attorney's fees shall be paid by the party incurring such fees.

[Signatures and acknowledgments appear on the following pages]

IN WITNESS WHEREOF, the County, the IDA, and Grant Thornton have each executed, or caused to be duly executed, this Commonwealth's Development Opportunity Fund Grant Performance Agreement under seal in duplicate, in the name and behalf of each of them (acting individually or by their respective officers or appropriate legal representatives, as the case may be, thereunto duly authorized) as of the day and year first written above.

Approved as to form:

**THE COUNTY BOARD OF
ARLINGTON COUNTY, VIRGINIA**, a
body corporate and politic of the
Commonwealth of Virginia

Stephen A. MacIsaac, County Attorney

By: _____
Mark Schwartz, County Manager

ACKNOWLEDGMENT

COMMONWEALTH OF VIRGINIA
COUNTY OF ARLINGTON

On this the ___ day of _____, 2016, before me, personally appeared Mark Schwartz, who acknowledged himself to be the County Manager of Arlington County in the above instrument, and that he, as County Manager, being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of the County Board of Arlington County, Virginia, a body corporate and politic of the Commonwealth of Virginia by himself as County Manager of Arlington County, Virginia

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Notary Public

My Commission Expires: _____

**INDUSTRIAL DEVELOPMENT
AUTHORITY OF ARLINGTON
COUNTY**, a political subdivision of the
Commonwealth of Virginia

By: _____
John Washington, Chair

ACKNOWLEDGMENT

COMMONWEALTH OF VIRGINIA
COUNTY OF ARLINGTON

On this the ___ day of _____, 2016, before me, personally appeared Gustavo Vega, who acknowledged himself to be the Chair of the Industrial Development Authority of Arlington County, Virginia in the above instrument, and that he, as Chair, being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of the Industrial Development Authority of Arlington County, Virginia, a political subdivision of the Commonwealth of Virginia by himself as Chair- of the Industrial Development Authority of Arlington County, Virginia.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Notary Public

My Commission Expires: _____

GRANT THORNTON LLP, an Illinois
limited liability partnership

By: _____
Jamie Fowler, Managing Partner

ACKNOWLEDGMENT

STATE OF _____
COUNTY OF _____

On this the ____ day of _____, 2016, before me, personally appeared _____, who acknowledged himself to be the _____ of Grant Thornton LLP in the above instrument, and that he, as _____, being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of Grant Thornton LLP, a Delaware corporation by himself as _____ of Grant Thornton LLP.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Notary Public

My Commission Expires: _____

COMMONWEALTH’S DEVELOPMENT OPPORTUNITY FUND

PERFORMANCE AGREEMENT

APPENDIX A

NO CONTRIBUTION CERTIFICATION

Grant Thornton LLP (the “Company”), and the Virginia Economic Development Partnership Authority (“VEDP”) entered into an Agreement dated March 18, 2016 (the “Certification Agreement”), with respect to the Company’s application for a grant from the Commonwealth’s Development Opportunity Fund (a “COF Grant”).

Pursuant to the Certification Agreement, the Company and the Company’s officers, directors, and owners of or who have a controlling ownership interest in the Company (the “Applicant Group”), listed in the Appendix to the Certification Agreement, made certain certifications and covenants in accordance with Section 2.2-115 I. of the Code of Virginia of 1950, as amended. These certifications and covenants ensure that no member of the Applicant Group made a Contribution during the No Contribution Period, as such capitalized terms are defined in the Agreement.

By its signature below, the Company hereby certifies to VEDP that, to the best of its knowledge, no member of Applicant Group made a Contribution during the No Contribution Period.

OR

By its signature below, the Company hereby certifies to VEDP that to the best of its knowledge the following members of the Applicant Group made the following contributions during the No Contribution Period:

Name	Amount of Contribution	Date of Contribution
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The Company will repay the entire COF Grant to the Industrial Development Authority of Arlington County within 90 days of this Certification.

GRANT THORNTON LLP

By _____
Name: _____
Title: _____
Date: _____