

WVRIFA PARTICIPATION COMMITTEE MEETING

Friday, May 19, 2023 at 10:00 a.m.
Roanoke Valley – Alleghany Regional Commission (Top Floor Conference Room)
313 Luck Ave., SW, Roanoke VA

Note: The May 19th meeting will be a Joint Meeting with the WVRIFA Board (both meetings will be held in conjunction with each other on the same date, time and location).

AGENDA

- 1. Call Meeting to Order *Chair Cowell*
- 2. Roll Call *Virginia Mullen*
- 3. **Action Requested:** Approval of Consent Agenda Items. *Chair Cowell*
 - A. Approval of Agenda
 - B. April 21, 2023 WVRIFA Participation Committee Minutes, pp. 2 – 4
- 4. Public Comment Period..... *Chair Cowell*

The WVRIFA Participation Committee will allow a 30-minute public comment period in which a citizen may sign-up for up to three (3) minutes of speaking time.
- 5. **Action Requested:** Acceptance of the Business Ready Site Program (BRSP)..... *John Hull*

Grant Contract

 - A. Original BRSP Contract, pp. 5 – 39
 - B. Redline Version with Proposed Changes and VEDP Comments to the BRSP Contract, pp. 40 – 49
- 6. Other Business *Chair Cowell*
- 7. Adjournment

ADMINISTERED BY:

Roanoke Valley-Alleghany Regional Commission
P.O. Box 2569, Roanoke, VA 24010
540.343.4417 / info@wvrifa.org / www.wvrifa.org

MINUTES

The April meeting of the WVRIFA Participation Committee for the Wood Haven Road Project was held on Friday, April 21, 2023 at 10:00 a.m. at the Roanoke Higher Education Center (Room #212), 108 N Jefferson Street, Roanoke VA.

NOTE: *The April 21, 2023 Meetings of the WVRIFA Board of Directors and the WVRIFA Participation Committee were held simultaneously (jointly) since several items on both agendas were the same*

1. CALL MEETING TO ORDER

Chair Cowell called the meeting to order at 10:11 a.m.

2. ROLL CALL

Chair Cowell welcomed those in attendance and asked Virginia Mullen to call the roll. Ms. Mullen noted that a quorum was established.

Participation Committee Members Present: James Taliaferro, City of Salem; Bob Cowell, City of Roanoke; and Richard Caywood, Roanoke County.

Staff Present: John Hull, WVRIFA Director; Matt Miller, Roanoke Regional Partnership; Sam Darby, WVRIFA Counsel; Sherry Dean and Virginia Mullen, WVRIFA Finance/Administrative Staff.

Others Present: Gary Larrowe, Botetourt County; Christopher Whitlow, Franklin County; Megan Baker, Roanoke County; Doug Blount, Roanoke County; Marc Nelson, City of Roanoke; Rob Light, City of Salem; Tommy Miller, City of Salem; Cody Sexton, Town of Vinton; and Richard "Pete" Peters, Town of Vinton.

3. ACTION REQUESTED: APPROVAL OF CONSENT AGENDA ITEMS

The following consent agenda items were distributed earlier: (A) January 20, 2023 WVRIFA Board Minutes and (B) Financial Reports as of March 31, 2023.


Motion: by Richard Caywood to approve the consent agenda items (A), and (B), as presented. The motion was seconded by James Taliaferro.

WVRIFA Participation Committee Action: Motion carried.

4. PUBLIC COMMENT PERIOD

There were no comments.

ADMINISTERED BY:

Roanoke Valley-Alleghany Regional Commission
313 Luck Avenue, SW, Roanoke, VA 24016
info@wvrifa.org  www.wvrifa.org

5. **ACTION REQUESTED: ACCEPTANCE OF FY2023 WOODHAVEN BUDGET REVISION, FY24 WOODHAVEN BUDGET, & FY24 BOND PAYMENTS BUDGET**

Sherry Dean presented the previously distributed with the agenda packet FY2023 Woodhaven Budget Revision, FY24 Woodhaven Budget and FY24 Bond Payments Budget.

Motion: by Richard Caywood to recommend to the WVRIFA Board the approval of FY23 Woodhaven Budget Revision and FY24 Woodhaven Budget, as presented. The motion was seconded by James Taliaferro.

WVRIFA Participation Committee Action: Motion carried.

Motion: by James Taliaferro to recommend to the WVRIFA Board the approval of FY24 Bond Payments Budget, as presented. The motion was seconded by Richard Caywood.

WVRIFA Participation Committee Action: Motion carried.

6. **ACTION REQUESTED: ACCEPTANCE OF BUSINESS READY SITE PROGRAM GRANT CONTRACT**

John Hull reported that the contract has not been received yet.

7. **REQUEST FOR CLOSED MEETING**

Motion was made by Richard Caywood that the Committee convene in a Closed Meeting to discuss the potential disposition of publicly held real property, where discussion in an open meeting would adversely affect the bargaining position or negotiating strategy of the public body, pursuant to section 2.2-3711 A. 3. of the Code of Virginia (1950), as amended. The motion was seconded by James Taliaferro. The motion was adopted and carried by a vote of 3 to 0. The WVRIFA Participation Committee went into a Closed Meeting at 10:26 a.m.

8. **END OF CLOSED MEETING RECONVENE REGULAR PARTICIPATION COMMITTEE MEETING**

Motion was made by Richard Caywood and seconded by James Taliaferro that the WVRIFA Participation Committee end the Closed Meeting and return to its regular committee meeting. The motion was adopted and carried by a vote of 3 to 0. The WVRIFA Participation Committee ended the Closed Meeting and returned to its regular committee meeting at 10:43 a.m.

9. **ADOPTION OF CERTIFICATION RESOLUTION OF CLOSED MEETING**

Motion was made by Richard Caywood and seconded by James Taliaferro to adopt the following certification resolution:

ADMINISTERED BY:

Roanoke Valley-Alleghany Regional Commission
313 Luck Avenue, SW, Roanoke, VA 24016
info@wvrifa.org / www.wvrifa.org

WHEREAS, the Western Virginia Regional Industrial Facility Authority Participation Committee has convened a closed meeting on this date pursuant to an affirmative recorded vote and in accordance with the provisions of the Virginia Freedom of Information Act; and

WHEREAS, Section 2.2-3712 of the Code of Virginia requires a certification by the Western Virginia Regional Industrial Facility Authority Participation Committee that such closed meeting was conducted in conformity with Virginia law.

NOW, THEREFORE, BE IT RESOLVED, that the Western Virginia Regional Industrial Facility Authority Participation Committee hereby certifies that, to the best of each member's knowledge: (1) only public business matters lawfully exempted from open meeting requirements by Virginia law were discussed in the closed meeting to which this certification resolution applies; and (2) only such public business matters as were identified in the motion convening the closed meeting were heard, discussed, or considered by the Western Virginia Regional Industrial Facility Authority Participation Committee.

The motion was adopted by a Roll Call vote of 3 to 0 as follows:

Member & Vote

Bob Cowell – Yes

Richard Caywood – Yes

James Taliaferro – Yes

10. ACTION BY THE PARTICIPATION COMMITTEE AS A RESULT OF THE CLOSED MEETING

There was no action by the Participation Committee as a result of the closed meeting.

11. OTHER BUSINESS

No other business was discussed.

12. ADJOURNMENT OF THE WVRIFA PARTICIPATION COMMITTEE

The WVRIFA Participation Committee Meeting adjourned at 10:44 a.m.

Virginia Mullen, Recording Secretary
WVRIFA Participation Committee

ADMINISTERED BY:

Roanoke Valley-Alleghany Regional Commission
313 Luck Avenue, SW, Roanoke, VA 24016
info@wvrifa.org / www.wvrifa.org

VIRGINIA BUSINESS READY SITE PROGRAM GRANT

PERFORMANCE AGREEMENT

This **PERFORMANCE AGREEMENT** (the “Agreement”) made and entered this 1st day of May, 2023, by and among the **WESTERN VIRGINIA REGIONAL INDUSTRIAL FACILITY AUTHORITY** (“the Grantee”), a political subdivision of the Commonwealth (“the Commonwealth”), and the **VIRGINIA ECONOMIC DEVELOPMENT PARTNERSHIP AUTHORITY** (“VEDP”) (together with the Grantee, “the Parties”), a political subdivision of the Commonwealth.

1. Definitions.

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

“Grant” means a grant awarded from the Virginia Business Ready Sites Fund, established pursuant to § 2.2-2240.2:1 of the Code of Virginia.

“Performance Date” means July 1, 2025.

“Project” means the Site work for which the Grant was awarded.

“RFP” means a request for proposal issued pursuant to the Virginia Public Procurement Act (§ 2.2-4300 *et seq.* of the Code of Virginia).

“Scope of Work” means the scope of work, project timeline, and project budget summarized, collectively, in Attachment A.

“Site” means Wood Haven Technology Park at 7755 Wood Haven Road in Roanoke, Virginia.

“Tier Level” means a site’s designated VBRSP level of readiness for marking and economic development purposes.

“VBRSP” means the Virginia Business Ready Sites Program (“VBRSP”), established pursuant to § 2.2-2240.2:1 of the Code of Virginia.

2. Award of Grant.

The Grantee has been awarded a Grant of and expects to receive \$504,149 through VEDP for the purpose of site development of the Site. The Grant is awarded in accordance with the VBRSP, and receipt of the Grant is subject to the terms and conditions set forth herein. The proceeds of the Grant shall be used to reimburse the Grantee for necessary and reasonable costs expended in connection with the Scope of Work, and shall not be used for any other purposes.

3. Local Match.

As a condition of receipt of the Grant, the Grantee shall be required to provide a local match at least equal to 100 percent of the amount of the Grant disbursed. Such match shall be paid towards the costs of the Scope of Work on or before the Performance Date. Additionally, the Grantee shall be responsible for any costs necessary to complete the Scope of Work not covered by the proceeds of the Grant, any costs incurred due to changes not approved pursuant to Section 4 of this Agreement, and any costs associated with the reporting required by this Agreement.

4. Scope of Work.

Only expenditures set forth in the Scope of Work shall be considered eligible expenses that may be reimbursed by VEDP from the Grant. The Grantee shall notify VEDP immediately if it determines that there will likely be changes to the Scope of Work.

The Grantee shall submit proposed changes to the Scope of Work using the form in Attachment B. The Scope of Work shall only be amended upon agreement of both parties, in writing, prior to the commencement of the work related to the change. Grant Funds shall not be used to reimburse the Grantee for any work commenced prior to an approved change in the Scope of Work. All agreed upon changes to the Scope of Work shall be incorporated into this Agreement and shall be subject to all terms and conditions set forth herein.

The total amount of the Grant awarded to the Grantee shall not be subject to amendment. However, the Grantee shall notify VEDP immediately if it reasonably determines that cost increases will prohibit the completion of the agreed upon Scope of Work.

5. Progress Meetings.

The Grantee and VEDP shall meet regularly throughout the Project to discuss Project progress. The agendas for such meetings shall include discussions of the work accomplished since the previous progress meeting, the detailed look-ahead schedule of work planned through the next progress meeting, the overall Scope of Work, potential delays or impediments to the completion of the Project by the Performance Date, applications for progress payments, any questions raised by either Party, and any other issues deemed relevant or necessary by the Parties. Such meetings may be held at the request of the Grantee or VEDP. In lieu of a progress meeting, VEDP may request a progress report documenting the agenda topics typically discussed in the progress meetings.

6. Time of Completion.

The Parties agree that time is of the essence in completing the Scope of Work, and the Grantee shall be responsible for completing the Scope of Work on or before the Performance Date. The Performance Date contemplates ordinary delays for construction work, and such ordinary delays shall not relieve the Grantee from the obligation to complete the Scope of Work by the Performance Date. For extraordinary delays, aside from events of force majeure as set forth in Section 20(f) of this agreement, the Grantee shall submit in writing to VEDP a request for an extension of time of the Performance Date. Any such request shall set forth the particulars of the cause and details of the delay, and include documentation supporting the request. If VEDP determine that the request is reasonable, it may, in writing, grant an extension of the Performance Date set forth in this Agreement.

7. Performance.

The Grantee shall comply with the applicable provisions of the Virginia Public Procurement Act as set forth in Chapter 43 of Title 2.2 (§ 2.2-4300 et seq.) of the Code of Virginia. The Grantee is ultimately responsible for selecting responsive, qualified bidders to complete the Scope of Work; however, the Grantee shall not issue an RFP until VEDP has reviewed and approved such RFP to ensure alignment with the Scope of Work.

Responsive contractors selected to complete the work set forth in the Scope of Work shall be licensed and bonded, and shall have performed three projects over the last ten years of similar size and complexity. The Grantee shall require any responsive bidder to the RFP to supply to the Grantee, upon request, the

details of such projects, including scope of work, location, period of performance and contract amount, as well as references for such projects.

8. Access to Site.

Representatives of VEDP shall have access to the Site at reasonable times for their observation, inspection, and testing. The Grantee shall provide proper and safe conditions for such access.

9. Inspections.

If the Scope of Work, or any relevant federal, state, or local laws, regulations, or ordinances, requires any part of the work to be inspected, tested, or approved, the Grantee shall assume full responsibility for arranging for and obtaining such inspections, tests, or approvals, and shall furnish VEDP with certificates of completed inspections, tests, or approvals. The Grantee shall provide VEDP with at least three-days' notice of the planned schedule for all inspections, tests, and approvals, unless circumstances reasonably require less than three-days' notice. In accordance with Section 8, VEDP shall be granted access to the Site to observe inspections, tests, and approvals.

10. Progress Payments and Reports.

- (a) The Grantee shall submit quarterly requests for reimbursement, using the form attached as Exhibit C, beginning with the request due October 1, 2023. Subsequent requests shall be due on the first day of January, April, and July for the duration of the project until the final request for reimbursement is submitted pursuant to subsection 13. The Grantee shall provide receipts with sufficient detail as to allow VEDP to identify goods and services for which reimbursement is requested based upon the Scope of Work. VEDP may request any additional documentation reasonably necessary to authorize reimbursement.
- (b) If payment is requested for materials and equipment not incorporated into the work completed to date, but delivered and suitably stored at the Project site or at another location agreed to by the Grantee and a contractor in writing, the request for reimbursement shall be accompanied by a bill of sale, invoice, or other documentation warranting that the Grantee has received the materials and equipment free and clear of all liens. In receiving such materials, the Grantee shall ensure that the materials and equipment are covered by appropriate property insurance.
- (c) Within 10 business days of receipt of a request for disbursement, VEDP shall indicate in writing the acceptance of the application and state that the request is being processed for payment, or return the request to the Grantee indicating, in writing, the reasons that the request is being rejected. If the request is deemed acceptable, VEDP shall submit approved reimbursements for payment within 30 days of receipt of the request.
- (d) VEDP may reject a request for reimbursement for failure to provide substantive documentation for the requested reimbursement, or may refuse to make the entire reimbursement, or a portion thereof, to the extent that VEDP is made aware that construction has been found to be defective, or completed construction has been damaged and requires correction or replacement. VEDP shall promptly pay the amount of reimbursement withheld when Grantee remedies the situation that required the withholding.

- (e) VEDP may withhold up to five percent from each application for payment as retainage. Such amount shall be included in the final payment after completion of the Scope of Work.
- (f) The Grantee shall submit a progress report along with each request for a progress payment, using the form attached as Exhibit D. The report shall outline progress to-date and progress towards milestones set forth in the Scope of Work, and shall include photographs of the progress at the Site, copies of any inspections completed since the previous progress report, proof that suppliers were paid, and copies of contractor invoices. If the Grantee does not have any expenses to for which to request a reimbursement at the time that such a request is due pursuant to subsection (a), the Grantee shall still be required to submit a report pursuant to this Section, and shall explain in the report why there are no expenses reported for the prior quarter.

11. Substantial Completion.

When the Grantee considers the Project complete, the Grantee shall notify VEDP in writing that the work is substantially complete, except for any items specifically noted by Grantee to be incomplete, and shall request that VEDP issue a certificate of substantial completion. Promptly thereafter, VEDP and the Grantee shall inspect the work to determine the status of completion. If VEDP does not consider the work to be substantially complete, it shall notify the Grantee in writing, providing the reasons for the determination. If VEDP considers the work to be substantially complete, it shall issue a certificate of substantial completion, which shall fix the date of substantial completion, and shall provide, in writing, a list of items to be completed or corrected before final payment will be issued.

12. Final Inspection.

Upon written notice from the Grantee that the Scope of Work is complete, including the correction or completion of any items noted with the certificate of substantial completion issued pursuant to Section 11, VEDP shall make a visual inspection of the site. VEDP shall notify the Grantee of any issues revealed by the visual inspection to be incomplete or defective. Such visual inspection shall not replace any federal, state, or locally-mandated inspections.

13. Final Reimbursement.

After the Grantee has completed all corrections to the satisfaction of VEDP and delivered all required documentation, the Grantee may make application for final payment following the procedure for progress payments. The total aggregate amount of payments made to the Grantee shall not exceed \$504,149. If the total amount expended by the Grantee that is eligible for reimbursement is less than \$504,149, the Grantee shall only be entitled to payment equal to its actual expenses. If VEDP is satisfied that the Grantee has completed the Scope of Work and all other obligations under this Agreement have been fulfilled, VEDP shall, within 10 days of receipt of the final application for payment, provide notice to the Grantee that the work is acceptable and shall submit approved reimbursements for payment within 30 days of receipt of the request. Otherwise, VEDP shall indicate in writing the reasons for refusing to process the final grant payment, in which case the Grantee shall make the necessary corrections and resubmit the application.

14. Final Performance Report.

Within 30 days after the Performance Date, or the date of the completion of the Scope of Work if prior to the Performance Date, the Grantee shall submit a Final Performance Report, using the form attached as Exhibit E. The Final Performance Report shall include the following information:

- i. A summary of the work accomplished through the expenditure of the proceeds of the Grant;
- ii. A summary of any changes to the Scope of Work approved during the performance period, with an explanation of each such change;
- iii. If applicable, documentation confirming that the costs of the Scope of Work were less than anticipated, with an indication of the amount of the Grant proceeds not to be disbursed;
- iv. Documentation identifying and confirming that the required local cash match has been provided in full, or, if such match has not been provided in full, the reduction of the amount of the Grant necessary to achieve the required local cash match;
- v. Copies of all analyses, reports, and inspections related to the Scope of Work;
- vi. A letter from a licensed engineer or equivalent who has inspected the Site after completion of the Scope of Work indicating that the Site's Tier Level has increased, or, if it did not increase, establishing that it has advanced towards the next Tier Level and indicating what steps would be necessary to advance to such Tier Level; and
- vii. Plans for marketing the Site and a description of any new interest in the Site from prospective economic development projects.

The final payment due under this Agreement shall not be made unless and until such Performance Report is submitted in a timely manner.

15. Adjustments and Repayment.

The Grantee shall make any repayment due under this Section within 60 days of receipt of written notice from VEDP that repayment is due.

Repayment shall be required under any of the following circumstances:

- (a) If the Final Report indicates, or evidence reveals, that the local match actually provided is less than the required level of local match as set forth in Section 3 of this Agreement, the amount of the Grant shall be reduced by the amount necessary for the actual local match to reach the required level. If the Grant was previously disbursed, the Grantee shall repay to VEDP the amount necessary to make the local cash match actually provided equal the required level of the local match.
- (b) If VEDP reasonably determines that the Grantee is unable or unwilling to complete the Scope of Work by the Performance Date, VEDP may terminate this Agreement by delivering written notice of termination to the Grantee, and in such case the Grantee may, at the discretion of VEDP, be required to repay all or a portion of the Grant proceeds disbursed.
- (c) If the locality in which the Site is located rezones the Site or otherwise makes local land use actions such that the Site may not be used for an industrial or manufacturing purpose, the Grantee shall repay a portion of the Grant proceeds as follows:

Within one year of the Performance Date, 100% of the Grant;

Within two years of the Performance Date, 90% of the Grant;

Within three years of the Performance Date, 80% of the Grant;

Within four years of the Performance Date, 70% of the Grant;

Within five years of the Performance Date, 60% of the Grant;
Within six years of the Performance Date, 50% of the Grant;
Within seven years of the Performance Date, 40% of the Grant;
Within eight years of the Performance Date, 30% of the Grant;
Within nine years of the Performance Date, 20% of the Grant;
Within 10 years of the Performance Date, 10% of the Grant.

In its discretion, VEDP may waive such repayment obligation under this subsection (c).

16. Termination of Agreement.

VEDP may terminate this agreement for cause. Cause will be justified if the Grantee fails to perform the work in accordance with the Scope of Work, including failure to ensure sufficient skilled workers, failure to abide by industry standards, failure to obtain suitable materials or equipment, or failure to adhere to the progress scheduled established under the Scope of Work (as it may be amended pursuant to this agreement). VEDP shall notify the Grantee in writing of the intent to terminate. The Agreement shall not be terminated if the Grantee sends written notice to VEDP within seven days of receipt of the intent to terminate, and begins, within those seven days, to correct its failure to perform and proceeds diligently to cure such failure within 30 days of receipt of the notice of intent to terminate. If the Agreement is terminated under this agreement, the Grantee shall not be entitled to receive any further payment, and may be required to repay pursuant to Section 15(b) of this Agreement any Grant amounts previously received.

17. Stop Work.

If, through no act or fault of the Grantee, progress towards completion of the Scope of Work is suspended for a period of more than 90 days by VEDP or under an order of a court or other local, state, or federal legal authority, this Agreement may be terminated upon written agreement of the Parties. If the Agreement is terminated pursuant to this section, the Grantee shall be entitled to receive Grant payments equal to the costs incurred by the locality pursuant to the Scope of Work as of the day of the termination.

18. Notices.

Formal notices and communications between 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 electronic mail (email) with transmittal confirmation and confirmation of delivery, addressed as noted below. Notices and communications personally delivered or delivered by document delivery service shall be deemed effective upon receipt. Notices and communications mailed shall be deemed effective on the second business day following deposit in the United States mail. Notices and communications delivered by 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 and communications shall be addressed to:

if to the Grantee, to:

Roanoke Regional Partnership
111 Franklin Road SE
Roanoke, Virginia 24011
Email: john@roanoke.org
Attention: John Hull, Executive Director

if to VEDP, to:

with a copy to:

Virginia Economic Development Partnership
One James Center, Suite 900
901 East Cary Street
Richmond, Virginia 23219
Email: mdreiling@vedp.org
Attention: Michael Dreiling, Vice President,
Real Estate Solutions

Virginia Economic Development Partnership
One James Center, Suite 900
901 East Cary Street
Richmond, Virginia 23219
Email: generalcounsel@vedp.org
Attention: General Counsel

Each party may change the address for service of notice upon it by a notice in writing to the other parties hereto.

19. VEDP Not Responsible for Infrastructure Improvement.

The Grantee acknowledges and agrees that VEDP bears no responsibility for work performed related to due diligence, site characterization, or site development of the Site. VEDP shall not be liable to any contractor, subcontractor, supplier, laborer, architect, engineer, tenant, or other party for services performed or materials supplied in connection with any work performed related to due diligence, site characterization, or site development. VEDP shall not be liable for any debts or claims accruing in favor of any such parties against the Grantee or others or against any improvements made on the Site. VEDP shall not be an agent of the Grantee for any purposes and the Grantee shall not be deemed partners or joint venturers with VEDP. VEDP shall not be deemed to be in privity of contract with any contractor or provider of services related to site characterization or site development. VEDP shall have no liability, obligation, or responsibility whatsoever with respect to due diligence, site characterization, or site development activities. Any inspections of the site improvements made by or through VEDP are solely for purposes of administration of the Grant, and neither the Grantee or any third party is entitled to rely upon the same with respect to the quality, adequacy, or suitability of materials or workmanship, conformity with the plans and specifications, state of completion, or otherwise.

20. Miscellaneous.

- (a) This Agreement constitutes the entire agreement among the parties hereto as to the Grant and may not be amended or modified, except in writing, signed by each of the parties hereto. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. The Grantee may not assign its rights and obligations under this Agreement without the prior written consent of VEDP.
- (b) 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 City of Richmond, and such litigation shall be brought only in such court.

- (c) 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) If any provision of this Agreement 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) Attorney's fees shall be paid by the party incurring such fees.
- (f) Notwithstanding the foregoing provisions of this Agreement, if the Grantee does not complete work on the Project by the Performance Date or take any action required under this Agreement because of an "Event of Force Majeure" (as defined below), the time for achieving the applicable Target or taking such action will be extended day-for-day by the delay in meeting the applicable Target or taking such action caused by the Event of Force Majeure. "Event of Force Majeure" means without limitation, any of the following: acts of God; strikes, lockouts or other industrial disturbances; act of public enemies; orders of any kind of the government of the United States of America or of the Commonwealth or any of their respective departments, agencies, political subdivisions or officials, or any civil or military authority; insurrections; riots; epidemics; pandemics; landslides; lightning; earthquakes; fires; hurricanes; tornadoes; storms; floods; washouts; droughts; arrests; restraint of government and people; civil disturbances; explosions; breakage or accident to machinery, transmission pipes or canals not caused by the Company; partial or entire failure of utilities; or any other cause or event not reasonably within the control of the Company.
- (g) If the Site subject to the Project is privately owned or otherwise not under the ownership and control of the Grantee, the Grantee shall provide evidence to VEDP prior to the start of work that the Grantee has obtained the necessary property interest in the land on which the Scope of Work is to be performed. If failure to provide such evidence results in a delay of the start of Work, the Grantee shall have no claim for compensation or additional damages on account of such delay, but shall be entitled to request an extension of the Performance Date as set forth in Section 6.

[THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

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

**WESTERN VIRGINIA
REGIONAL INDUSTRIAL
FACILITY AUTHORITY**

By _____
Name: _____
Title: _____
Date: _____

**VIRGINIA ECONOMIC
DEVELOPMENT PARTNERSHIP
AUTHORITY**

By _____
Name: _____
Title: _____
Date: _____

- Attachment A: Scope of Work
- Attachment B: Change Order Form
- Attachment C: Progress Payment Application
- Attachment D: Progress Report
- Attachment E: Final Performance Report

EXHIBIT A
SCOPE OF WORK

The Western Virginia Regional Industrial Facility Authority was granted \$504,149 during the FY 2023 round of Virginia Business Ready Sites Program. The Authority will utilize VBRSP funding at Wood Haven Technology Park to obtain an option agreement with an adjacent landowner. If an option agreement is successful, the Authority can implement and seek reimbursement for work to mitigate wetlands in the area of future pad development.

Budget

Option agreement, wetlands mitigation and removal

Expenditure Description	Grant Funding Request	Matching Source 1	Total
		Name: WVRIFA Source Type: Previous Expenditures - \$504,149	
Option Agreement	\$100,000		\$100,000
Design and Permitting for stream mitigation	\$18,000		\$18,000
Construction of stream mitigation project	\$386,149		\$386,149
Totals	\$504,149	\$0	\$504,149

Deadlines

The following Schedule lists the target dates and performance milestones for the preparation and delivery of the Scope of Work.

Performance Milestone (Due Diligence and Design)	Target Delivery Date
Signed Performance Agreement	0
Project Start	+3 weeks
Negotiation of an Option Agreement	+12 months
Draft Deliverable (Complete design)	+17 months
Bidding and Permitting	+19 months
Final Construction Completion	+25 months
Financial Closeout (Performance Date)	+27 months

EXHIBIT B

**CHANGE ORDER FORM
VIRGINIA BUSINESS READY SITES PROGRAM**

This is a request for a change to the Scope of Work document in the performance agreement for the grant funding from the Virginia Business Ready Site Program (VBRSP) Site Development Grant. We (grantee and property owner) acknowledge that the grant funding amount will not increase due to any cost change represented here and any additional cost accrued due to this change is our (the grantee and property owner) responsibility. Any change in cost requires the funding source is identified to VEDP; any additional funding will not result in any additional fees. The request for change in scope does not automatically mean the change to the scope of work is approved.

Change Order No. _____

Date of Issuance:

Site Name:

Grantee:

Grantee Contact Name:

Address:

Grantee Phone:

Grantee Email:

The Scope of Work is modified as follows upon execution of this Change Order:

Description/Reason for Change:

Benefits of Change:

Cost of Not Doing the Change:

Attachments: *[List documents supporting change]*

CHANGE IN SCOPE OF WORK COST	CHANGE IN SCOPE OF WORK TIMELINE <i>[note changes in Milestones if applicable]</i>
Original Price: \$ _____	Original Timeline: Substantial Completion: _____ Ready for Final Payment: _____ days or dates
Price prior to this Change Order: \$ _____	Contract Times prior to this Change Order: Substantial Completion: _____ Ready for Final Payment: _____ days or dates
[Increase] [Decrease] of this Change Order: \$ _____	[Increase] [Decrease] of this Change Order: Substantial Completion: _____ Ready for Final Payment: _____ days or dates
New Price incorporating this Change Order: \$ _____	Contract Times with all approved Change Orders: Substantial Completion: _____ Ready for Final Payment: _____

EXHIBIT C

**PROGRESS PAYMENT AND REMITTANCE FORM
VIRGINIA BUSINESS READY SITES PROGRAM**

Cover Sheet Sample:

EXHIBIT C						
Site Name						
Grantee						
Grantee Point of Contact						
Point of Contact Phone						
Point of Contact Email						

Description of Expense/Invoice	Vendor	Documentation Submitted	Date of Expense/Invoice	Invoice Total	Amount Requested from BRSP	Amount Documented as Match

Transmission Log Sample:

VIRGINIA BUSINESS READY SITE PROGRAM					
Transaction/Invoice	VBRSP Budget (\$)	Previously Paid (\$)	Available Funds (\$)	VEDP Request (\$)	Total Paid After Remittance
	\$ -		\$ -		\$ -
	\$ -		\$ -		\$ -
	\$ -		\$ -		\$ -
	\$ -		\$ -		\$ -
	\$ -		\$ -		\$ -
	\$ -		\$ -		\$ -
	\$ -		\$ -		\$ -
	\$ -		\$ -		\$ -
	\$ -		\$ -		\$ -
	\$ -		\$ -		\$ -
Total Award	\$ -	\$ -	\$ -	\$ -	\$ -

MATCHING FUNDS				
Expenditure Category	Other Funding: Committed Match (\$)	Other Funding: Previous Match (\$)	Other Funding: Current Match (\$)	Other Funding: Total Match (\$)
	\$ -		\$ -	\$ -
	\$ -		\$ -	\$ -
	\$ -		\$ -	\$ -
	\$ -		\$ -	\$ -

EXHIBIT D

**PROGRESS REPORT FORM
VIRGINIA BUSINESS READY SITES PROGRAM**

PROJECT SUMMARY:

Project	
Grantee	
Performance Date	

SUMMARY OF SCOPE OF WORK

- 1) **Provide a brief description of the current stage of project and any completed work with the BRSP funds or matching funds to date.**

- 2) **Please include a percentage of the project completed to date.**

- 3) **What are the immediately planned works?**

- 4) **Has the site been successfully marketed to a new economic development prospect and generated any additional private investment and job creation?**

- 5) **What is required next to complete all tasks by Performance Date?**

TO BE CERTIFIED BY AN OFFICER OF THE GRANTEE:

I certify that I have examined this report and to the best of my knowledge and belief, it is true, correct, and complete.

Grantee: _____

By: _____

Name: _____

Title: _____

Date: _____

Please return to: Leah P. Harrison, Grants Manager – Incentives - Virginia Economic Development Partnership, 804.213.6682, lharrison@vedp.org.

EXHIBIT E

**FINAL REPORT FORM
VIRGINIA BUSINESS READY SITES PROGRAM**

PROJECT SUMMARY:

Project	
Grantee	
Performance Date	

PROJECT PERFORMANCE:¹

Performance Measurement	Pre-Award	Post Award
Contiguous Acreage		
Zoning		
Site Tier:²		
Project Cost		

¹ Final, actual performance will be reported on VEDP’s public reporting website.

² Attach the site’s updated Characterization Letter.

Project Investment Breakdown	Amount
Total BRSP Funds Expended	\$
Total Match Expended	
Total Project Investment	\$

Total linear feet of ROW acquired	
Total linear feet of gas line constructed	
Total linear feet of water line constructed	
Total linear feet of sewer line constructed	
Total linear feet of rail line constructed	
Total linear feet of electrical line constructed	
Linear feet of road constructed	
Acreage of pad created	
Total increase in natural gas capacity (above starting)	
Total increase in water capacity (above starting)	
Total increase in sewer capacity (above starting)	
Total increase in electrical capacity (above starting)	
Engineering studies and reports completed	
Other work completed (Such as buildings demolished, water tanks constructed, traffic light installation, etc.)	

- 2) Please provide a brief description of the full scope of work completed with matching funds, if scope differs from BRSP.

- 3) What was the biggest obstacle to project completion?

- 4) What additional scope of work, if any, is required to advance sire readiness? Has any funding been identified for this scope of work?

- 5) Please describe any additional prospect activity that has occurred during or since the project.

TO BE CERTIFIED BY AN OFFICER OF THE GRANTEE:

I certify that I have examined this report and to the best of my knowledge and belief, it is true, correct, and complete.

Grantee: _____

By: _____

Name: _____

Title: _____

Date: _____

Please return to: Leah P. Harrison, Grants Manager – Incentives - Virginia Economic Development Partnership, 804.213.6682, lharrison@vedp.org.

VIRGINIA BUSINESS READY SITE PROGRAM GRANT
PERFORMANCE AGREEMENT

This **PERFORMANCE AGREEMENT** (the “Agreement”) made and entered this 1st day of May, 2023, by and among the **WESTERN VIRGINIA REGIONAL INDUSTRIAL FACILITY AUTHORITY** (“the Grantee”), a political subdivision of the Commonwealth (“the Commonwealth”), and the **VIRGINIA ECONOMIC DEVELOPMENT PARTNERSHIP AUTHORITY** (“VEDP”) (together with the Grantee, “the Parties”), a political subdivision of the Commonwealth.

1. Definitions.

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

“Grant” means a grant awarded from the Virginia Business Ready Sites Fund, established pursuant to § 2.2-2240.2:1 of the Code of Virginia.

“Performance Date” means July 1, 2025.

“Project” means the Site work for which the Grant was awarded.

“RFP” means a request for proposal issued pursuant to the Virginia Public Procurement Act (§ 2.2-4300 *et seq.* of the Code of Virginia).

“Scope of Work” means the scope of work, project timeline, and project budget summarized, collectively, in Attachment A.

“Site” means Wood Haven Technology Park at 7755 Wood Haven Road in Roanoke, Virginia.

“Tier Level” means a site’s designated VBRSP level of readiness for marking and economic development purposes.

“VBRSP” means the Virginia Business Ready Sites Program (“VBRSP”), established pursuant to § 2.2-2240.2:1 of the Code of Virginia.

2. Award of Grant.

The Grantee has been awarded a Grant of and expects to receive \$504,149 through VEDP for the purpose of site development of the Site. The Grant is awarded in accordance with the VBRSP, and receipt of the Grant is subject to the terms and conditions set forth herein. The proceeds of the Grant shall be used to reimburse the Grantee for necessary and reasonable costs expended in connection with the Scope of Work, and shall not be used for any other purposes.

3. Local Match.

As a condition of receipt of the Grant, the Grantee shall be required to provide a local match at least equal to 100 percent of the amount of the Grant disbursed. Such match shall be paid towards the costs of the Scope of Work on or before the Performance Date. Additionally, the Grantee shall be responsible for any costs necessary to complete the Scope of Work not covered by the proceeds of the Grant, any costs incurred due to changes not approved pursuant to Section 4 of this Agreement, and any costs associated with the reporting required by this Agreement.

4. Scope of Work.

Only expenditures set forth in the Scope of Work shall be considered eligible expenses that may be reimbursed by VEDP from the Grant. The Grantee shall notify VEDP immediately if it determines that there will likely be changes to the Scope of Work.

The Grantee shall submit proposed changes to the Scope of Work using the form in Attachment B. The Scope of Work shall only be amended upon agreement of both parties, in writing, prior to the commencement of the work related to the change. Grant Funds shall not be used to reimburse the Grantee for any work commenced prior to an approved change in the Scope of Work. All agreed upon changes to the Scope of Work shall be incorporated into this Agreement and shall be subject to all terms and conditions set forth herein.

The total amount of the Grant awarded to the Grantee shall not be subject to amendment. However, the Grantee shall notify VEDP immediately if it reasonably determines that cost increases will prohibit the completion of the agreed upon Scope of Work.

5. Progress Meetings.

The Grantee and VEDP shall meet regularly throughout the Project to discuss Project progress. The agendas for such meetings shall include discussions of the work accomplished since the previous progress meeting, the detailed look-ahead schedule of work planned through the next progress meeting, the overall Scope of Work, potential delays or impediments to the completion of the Project by the Performance Date, applications for progress payments, any questions raised by either Party, and any other issues deemed relevant or necessary by the Parties. Such meetings may be held at the request of the Grantee or VEDP. In lieu of a progress meeting, VEDP may request a progress report documenting the agenda topics typically discussed in the progress meetings.

6. Time of Completion.

The Parties agree that time is of the essence in completing the Scope of Work, and the Grantee shall be responsible for completing the Scope of Work on or before the Performance Date. The Performance Date contemplates ordinary delays for construction work, and such ordinary delays shall not relieve the Grantee from the obligation to complete the Scope of Work by the Performance Date. For extraordinary delays, aside from events of force majeure as set forth in Section 20(f) of this agreement, the Grantee shall submit in writing to VEDP a request for an extension of time of the Performance Date. Any such request shall set forth the particulars of the cause and details of the delay, and include documentation supporting the request. If VEDP determine that the request is reasonable, it may, in writing, grant an extension of the Performance Date set forth in this Agreement.

7. Performance.

The Grantee shall comply with the applicable provisions of the Virginia Public Procurement Act as set forth in Chapter 43 of Title 2.2 (§ 2.2-4300 et seq.) of the Code of Virginia. The Grantee is ultimately responsible for selecting responsive, qualified bidders to complete the Scope of Work; however, the Grantee shall not issue an RFP until VEDP has reviewed and approved such RFP to ensure alignment with the Scope of Work.

Responsive contractors selected to complete the work set forth in the Scope of Work shall be licensed and bonded, and shall have performed three projects over the last ten years of similar size and complexity. The Grantee shall require any responsive bidder to the RFP to supply to the Grantee, upon request, the

details of such projects, including scope of work, location, period of performance and contract amount, as well as references for such projects.

8. Access to Site.

Representatives of VEDP shall have access to the Site at reasonable times for their observation, inspection, and testing. The Grantee shall provide proper and safe conditions for such access.

9. Inspections.

If the Scope of Work, or any relevant federal, state, or local laws, regulations, or ordinances, requires any part of the work to be inspected, tested, or approved, the Grantee shall assume full responsibility for arranging for and obtaining such inspections, tests, or approvals, and shall furnish VEDP with certificates of completed inspections, tests, or approvals. The Grantee shall provide VEDP with at least three-days' notice of the planned schedule for all inspections, tests, and approvals, unless circumstances reasonably require less than three-days' notice. In accordance with Section 8, VEDP shall be granted access to the Site to observe inspections, tests, and approvals.

10. Progress Payments and Reports.

- (a) The Grantee shall submit quarterly requests for reimbursement, using the form attached as Exhibit C, beginning with the request due October 1, 2023. Subsequent requests shall be due on the first day of January, April, and July for the duration of the project until the final request for reimbursement is submitted pursuant to subsection 13. The Grantee shall provide receipts with sufficient detail as to allow VEDP to identify goods and services for which reimbursement is requested based upon the Scope of Work. VEDP may request any additional documentation reasonably necessary to authorize reimbursement.
- (b) If payment is requested for materials and equipment not incorporated into the work completed to date, but delivered and suitably stored at the Project site or at another location agreed to by the Grantee and a contractor in writing, the request for reimbursement shall be accompanied by a bill of sale, invoice, or other documentation warranting that the Grantee has received the materials and equipment free and clear of all liens. In receiving such materials, the Grantee shall ensure that the materials and equipment are covered by appropriate property insurance.
- (c) Within 10 business days of receipt of a request for disbursement, VEDP shall indicate in writing the acceptance of the application and state that the request is being processed for payment, or return the request to the Grantee indicating, in writing, the reasons that the request is being rejected. If the request is deemed acceptable, VEDP shall submit approved reimbursements for payment within 30 days of receipt of the request.
- (d) VEDP may reject a request for reimbursement for failure to provide substantive documentation for the requested reimbursement, or may refuse to make the entire reimbursement, or a portion thereof, to the extent that VEDP is made aware that construction has been found to be defective, or completed construction has been damaged and requires correction or replacement. VEDP shall promptly pay the amount of reimbursement withheld when Grantee remedies the situation that required the withholding.

- (e) VEDP may withhold up to five percent from each application for payment as retainage. Such amount shall be included in the final payment after completion of the Scope of Work.
- (f) The Grantee shall submit a progress report along with each request for a progress payment, using the form attached as Exhibit D. The report shall outline progress to-date and progress towards milestones set forth in the Scope of Work, and shall include photographs of the progress at the Site, copies of any inspections completed since the previous progress report, proof that suppliers were paid, and copies of contractor invoices. If the Grantee does not have any expenses to for which to request a reimbursement at the time that such a request is due pursuant to subsection (a), the Grantee shall still be required to submit a report pursuant to this Section, and shall explain in the report why there are no expenses reported for the prior quarter.

11. Substantial Completion.

When the Grantee considers the Project complete, the Grantee shall notify VEDP in writing that the work is substantially complete, except for any items specifically noted by Grantee to be incomplete, and shall request that VEDP issue a certificate of substantial completion. Promptly thereafter, VEDP and the Grantee shall inspect the work to determine the status of completion. If VEDP does not consider the work to be substantially complete, it shall notify the Grantee in writing, providing the reasons for the determination. If VEDP considers the work to be substantially complete, it shall issue a certificate of substantial completion, which shall fix the date of substantial completion, and shall provide, in writing, a list of items to be completed or corrected before final payment will be issued.

12. Final Inspection.

Upon written notice from the Grantee that the Scope of Work is complete, including the correction or completion of any items noted with the certificate of substantial completion issued pursuant to Section 11, VEDP shall make a visual inspection of the site. VEDP shall notify the Grantee of any issues revealed by the visual inspection to be incomplete or defective. Such visual inspection shall not replace any federal, state, or locally-mandated inspections.

13. Final Reimbursement.

After the Grantee has completed all corrections to the satisfaction of VEDP and delivered all required documentation, the Grantee may make application for final payment following the procedure for progress payments. The total aggregate amount of payments made to the Grantee shall not exceed \$504,149. If the total amount expended by the Grantee that is eligible for reimbursement is less than \$504,149, the Grantee shall only be entitled to payment equal to its actual expenses. If VEDP is satisfied that the Grantee has completed the Scope of Work and all other obligations under this Agreement have been fulfilled, VEDP shall, within 10 days of receipt of the final application for payment, provide notice to the Grantee that the work is acceptable and shall submit approved reimbursements for payment within 30 days of receipt of the request. Otherwise, VEDP shall indicate in writing the reasons for refusing to process the final grant payment, in which case the Grantee shall make the necessary corrections and resubmit the application.

14. Final Performance Report.

Within 30 days after the Performance Date, or the date of the completion of the Scope of Work if prior to the Performance Date, the Grantee shall submit a Final Performance Report, using the form attached as Exhibit E. The Final Performance Report shall include the following information:

- i. A summary of the work accomplished through the expenditure of the proceeds of the Grant;
- ii. A summary of any changes to the Scope of Work approved during the performance period, with an explanation of each such change;
- iii. If applicable, documentation confirming that the costs of the Scope of Work were less than anticipated, with an indication of the amount of the Grant proceeds not to be disbursed;
- iv. Documentation identifying and confirming that the required local cash match has been provided in full, or, if such match has not been provided in full, the reduction of the amount of the Grant necessary to achieve the required local cash match;
- v. Copies of all analyses, reports, and inspections related to the Scope of Work;
- vi. A letter from a licensed engineer or equivalent who has inspected the Site after completion of the Scope of Work indicating that the Site's Tier Level has increased, or, if it did not increase, establishing that it has advanced towards the next Tier Level and indicating what steps would be necessary to advance to such Tier Level; and
- vii. Plans for marketing the Site and a description of any new interest in the Site from prospective economic development projects.

The final payment due under this Agreement shall not be made unless and until such Performance Report is submitted in a timely manner.

15. Adjustments and Repayment.

The Grantee shall make any repayment due under this Section within 60 days of receipt of written notice from VEDP that repayment is due.

Repayment shall be required under any of the following circumstances:

- (a) If the Final Report indicates, or evidence reveals, that the local match actually provided is less than the required level of local match as set forth in Section 3 of this Agreement, the amount of the Grant shall be reduced by the amount necessary for the actual local match to reach the required level. If the Grant was previously disbursed, the Grantee shall repay to VEDP the amount necessary to make the local cash match actually provided equal the required level of the local match.
- (b) If VEDP reasonably determines that the Grantee is unable or unwilling to complete the Scope of Work by the Performance Date, VEDP may terminate this Agreement by delivering written notice of termination to the Grantee, and in such case the Grantee may, at the discretion of VEDP, be required to repay all or a portion of the Grant proceeds disbursed.
- (c) If the locality in which the Site is located rezones the Site or otherwise makes local land use actions such that the Site may not be used for an industrial or manufacturing purpose, the Grantee shall repay a portion of the Grant proceeds as follows:

Within one year of the Performance Date, 100% of the Grant;

Within two years of the Performance Date, 90% of the Grant;

Within three years of the Performance Date, 80% of the Grant;

Within four years of the Performance Date, 70% of the Grant;

Within five years of the Performance Date, 60% of the Grant;
Within six years of the Performance Date, 50% of the Grant;
Within seven years of the Performance Date, 40% of the Grant;
Within eight years of the Performance Date, 30% of the Grant;
Within nine years of the Performance Date, 20% of the Grant;
Within 10 years of the Performance Date, 10% of the Grant.

In its discretion, VEDP may waive such repayment obligation under this subsection (c).

16. Termination of Agreement.

VEDP may terminate this agreement for cause. Cause will be justified if the Grantee fails to perform the work in accordance with the Scope of Work, including failure to ensure sufficient skilled workers, failure to abide by industry standards, failure to obtain suitable materials or equipment, or failure to adhere to the progress scheduled established under the Scope of Work (as it may be amended pursuant to this agreement). VEDP shall notify the Grantee in writing of the intent to terminate. The Agreement shall not be terminated if the Grantee sends written notice to VEDP within seven days of receipt of the intent to terminate, and begins, within those seven days, to correct its failure to perform and proceeds diligently to cure such failure within 30 days of receipt of the notice of intent to terminate. If the Agreement is terminated under this agreement, the Grantee shall not be entitled to receive any further payment, and may be required to repay pursuant to Section 15(b) of this Agreement any Grant amounts previously received.

17. Stop Work.

If, through no act or fault of the Grantee, progress towards completion of the Scope of Work is suspended for a period of more than 90 days by VEDP or under an order of a court or other local, state, or federal legal authority, this Agreement may be terminated upon written agreement of the Parties. If the Agreement is terminated pursuant to this section, the Grantee shall be entitled to receive Grant payments equal to the costs incurred by the locality pursuant to the Scope of Work as of the day of the termination.

18. Notices.

Formal notices and communications between 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 electronic mail (email) with transmittal confirmation and confirmation of delivery, addressed as noted below. Notices and communications personally delivered or delivered by document delivery service shall be deemed effective upon receipt. Notices and communications mailed shall be deemed effective on the second business day following deposit in the United States mail. Notices and communications delivered by 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 and communications shall be addressed to:

if to the Grantee, to:

Roanoke Regional Partnership
111 Franklin Road SE
Roanoke, Virginia 24011
Email: john@roanoke.org
Attention: John Hull, Executive Director

if to VEDP, to:

with a copy to:

Virginia Economic Development Partnership
One James Center, Suite 900
901 East Cary Street
Richmond, Virginia 23219
Email: mdreiling@vedp.org
Attention: Michael Dreiling, Vice President,
Real Estate Solutions

Virginia Economic Development Partnership
One James Center, Suite 900
901 East Cary Street
Richmond, Virginia 23219
Email: generalcounsel@vedp.org
Attention: General Counsel

Each party may change the address for service of notice upon it by a notice in writing to the other parties hereto.

19. VEDP Not Responsible for Infrastructure Improvement.

The Grantee acknowledges and agrees that VEDP bears no responsibility for work performed related to due diligence, site characterization, or site development of the Site. VEDP shall not be liable to any contractor, subcontractor, supplier, laborer, architect, engineer, tenant, or other party for services performed or materials supplied in connection with any work performed related to due diligence, site characterization, or site development. VEDP shall not be liable for any debts or claims accruing in favor of any such parties against the Grantee or others or against any improvements made on the Site. VEDP shall not be an agent of the Grantee for any purposes and the Grantee shall not be deemed partners or joint venturers with VEDP. VEDP shall not be deemed to be in privity of contract with any contractor or provider of services related to site characterization or site development. VEDP shall have no liability, obligation, or responsibility whatsoever with respect to due diligence, site characterization, or site development activities. Any inspections of the site improvements made by or through VEDP are solely for purposes of administration of the Grant, and neither the Grantee or any third party is entitled to rely upon the same with respect to the quality, adequacy, or suitability of materials or workmanship, conformity with the plans and specifications, state of completion, or otherwise.

20. Miscellaneous.

- (a) This Agreement constitutes the entire agreement among the parties hereto as to the Grant and may not be amended or modified, except in writing, signed by each of the parties hereto. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. The Grantee may not assign its rights and obligations under this Agreement without the prior written consent of VEDP.

- (b) 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 City of Richmond, and such litigation shall be brought only in such court.

- (c) 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) If any provision of this Agreement 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) Attorney's fees shall be paid by the party incurring such fees.
- (f) Notwithstanding the foregoing provisions of this Agreement, if the Grantee does not complete work on the Project by the Performance Date or take any action required under this Agreement because of an "Event of Force Majeure" (as defined below), the time for achieving the applicable Target or taking such action will be extended day-for-day by the delay in meeting the applicable Target or taking such action caused by the Event of Force Majeure. "Event of Force Majeure" means without limitation, any of the following: acts of God; strikes, lockouts or other industrial disturbances; act of public enemies; orders of any kind of the government of the United States of America or of the Commonwealth or any of their respective departments, agencies, political subdivisions or officials, or any civil or military authority; insurrections; riots; epidemics; pandemics; landslides; lightning; earthquakes; fires; hurricanes; tornadoes; storms; floods; washouts; droughts; arrests; restraint of government and people; civil disturbances; explosions; breakage or accident to machinery, transmission pipes or canals not caused by the Company; partial or entire failure of utilities; or any other cause or event not reasonably within the control of the Company.
- (g) If the Site subject to the Project is privately owned or otherwise not under the ownership and control of the Grantee, the Grantee shall provide evidence to VEDP prior to the start of work that the Grantee has obtained the necessary property interest in the land on which the Scope of Work is to be performed. If failure to provide such evidence results in a delay of the start of Work, the Grantee shall have no claim for compensation or additional damages on account of such delay, but shall be entitled to request an extension of the Performance Date as set forth in Section 6.

[THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

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

**WESTERN VIRGINIA
REGIONAL INDUSTRIAL
FACILITY AUTHORITY**

By _____
Name: _____
Title: _____
Date: _____

**VIRGINIA ECONOMIC
DEVELOPMENT PARTNERSHIP
AUTHORITY**

By _____
Name: _____
Title: _____
Date: _____

- Attachment A: Scope of Work
- Attachment B: Change Order Form
- Attachment C: Progress Payment Application
- Attachment D: Progress Report
- Attachment E: Final Performance Report

EXHIBIT A
SCOPE OF WORK

The Western Virginia Regional Industrial Facility Authority was granted \$504,149 during the FY 2023 round of Virginia Business Ready Sites Program. The Authority will utilize VBRSP funding at Wood Haven Technology Park to obtain an option agreement with an adjacent landowner. If an option agreement is successful, the Authority can implement and seek reimbursement for work to mitigate wetlands in the area of future pad development.

Budget

Option agreement, wetlands mitigation and removal

Expenditure Description	Grant Funding Request	Matching Source 1	Total
		Name: WVRIFA Source Type: Previous Expenditures - \$504,149	
Option Agreement	\$100,000		\$100,000
Design and Permitting for stream mitigation	\$18,000		\$18,000
Construction of stream mitigation project	\$386,149		\$386,149
Totals	\$504,149	\$0	\$504,149

Deadlines

The following Schedule lists the target dates and performance milestones for the preparation and delivery of the Scope of Work.

Performance Milestone (Due Diligence and Design)	Target Delivery Date
Signed Performance Agreement	0
Project Start	+3 weeks
Negotiation of an Option Agreement	+12 months
Draft Deliverable (Complete design)	+17 months
Bidding and Permitting	+19 months
Final Construction Completion	+25 months
Financial Closeout (Performance Date)	+27 months

EXHIBIT B

**CHANGE ORDER FORM
VIRGINIA BUSINESS READY SITES PROGRAM**

This is a request for a change to the Scope of Work document in the performance agreement for the grant funding from the Virginia Business Ready Site Program (VBRSP) Site Development Grant. We (grantee and property owner) acknowledge that the grant funding amount will not increase due to any cost change represented here and any additional cost accrued due to this change is our (the grantee and property owner) responsibility. Any change in cost requires the funding source is identified to VEDP; any additional funding will not result in any additional fees. The request for change in scope does not automatically mean the change to the scope of work is approved.

Change Order No. _____

Date of Issuance:

Site Name:

Grantee:

Grantee Contact Name:

Address:

Grantee Phone:

Grantee Email:

The Scope of Work is modified as follows upon execution of this Change Order:

Description/Reason for Change:

Benefits of Change:

Cost of Not Doing the Change:

Attachments: *[List documents supporting change]*

CHANGE IN SCOPE OF WORK COST	CHANGE IN SCOPE OF WORK TIMELINE <i>[note changes in Milestones if applicable]</i>
Original Price: \$ _____	Original Timeline: Substantial Completion: _____ Ready for Final Payment: _____ days or dates
Price prior to this Change Order: \$ _____	Contract Times prior to this Change Order: Substantial Completion: _____ Ready for Final Payment: _____ days or dates
[Increase] [Decrease] of this Change Order: \$ _____	[Increase] [Decrease] of this Change Order: Substantial Completion: _____ Ready for Final Payment: _____ days or dates
New Price incorporating this Change Order: \$ _____	Contract Times with all approved Change Orders: Substantial Completion: _____ Ready for Final Payment: _____

EXHIBIT C

**PROGRESS PAYMENT AND REMITTANCE FORM
VIRGINIA BUSINESS READY SITES PROGRAM**

Cover Sheet Sample:

EXHIBIT C

Site Name	
Grantee	
Grantee Point of Contact	
Point of Contact Phone	
Point of Contact Email	

Description of Expense/Invoice	Vendor	Documentation Submitted	Date of Expense/Invoice	Invoice Total	Amount Requested from BRSP	Amount Documented as Match

Transmission Log Sample:

VIRGINIA BUSINESS READY SITE PROGRAM					
Transaction/Invoice	VBRSP Budget (\$)	Previously Paid (\$)	Available Funds (\$)	VEDP Request (\$)	Total Paid After Remittance
	\$ -		\$ -		\$ -
	\$ -		\$ -		\$ -
	\$ -		\$ -		\$ -
	\$ -		\$ -		\$ -
	\$ -		\$ -		\$ -
	\$ -		\$ -		\$ -
	\$ -		\$ -		\$ -
	\$ -		\$ -		\$ -
	Total Award	Total Paid	Total Available	Total Requested	Total Paid After Remittance

MATCHING FUNDS				
Expenditure Category	Other Funding:		Other Funding:	
	Committed Match (\$)	Previous Match (\$)	Current Match (\$)	Total Match (\$)
	\$ -		\$ -	\$ -
	\$ -		\$ -	\$ -
	\$ -		\$ -	\$ -
	\$ -		\$ -	\$ -

EXHIBIT D

**PROGRESS REPORT FORM
VIRGINIA BUSINESS READY SITES PROGRAM**

PROJECT SUMMARY:

Project	
Grantee	
Performance Date	

SUMMARY OF SCOPE OF WORK

- 1) Provide a brief description of the current stage of project and any completed work with the BRSP funds or matching funds to date.**

- 2) Please include a percentage of the project completed to date.**

- 3) What are the immediately planned works?**

- 4) Has the site been successfully marketed to a new economic development prospect and generated any additional private investment and job creation?**

- 5) What is required next to complete all tasks by Performance Date?**

TO BE CERTIFIED BY AN OFFICER OF THE GRANTEE:

I certify that I have examined this report and to the best of my knowledge and belief, it is true, correct, and complete.

Grantee: _____

By: _____

Name: _____

Title: _____

Date: _____

Please return to: Leah P. Harrison, Grants Manager – Incentives - Virginia Economic Development Partnership, 804.213.6682, lharrison@vedp.org.

EXHIBIT E

**FINAL REPORT FORM
VIRGINIA BUSINESS READY SITES PROGRAM**

PROJECT SUMMARY:

Project	
Grantee	
Performance Date	

PROJECT PERFORMANCE:¹

Performance Measurement	Pre-Award	Post Award
Contiguous Acreage		
Zoning		
Site Tier:²		
Project Cost		

¹ Final, actual performance will be reported on VEDP’s public reporting website.

² Attach the site’s updated Characterization Letter.

Project Investment Breakdown	Amount
Total BRSP Funds Expended	\$
Total Match Expended	
Total Project Investment	\$

Total linear feet of ROW acquired	
Total linear feet of gas line constructed	
Total linear feet of water line constructed	
Total linear feet of sewer line constructed	
Total linear feet of rail line constructed	
Total linear feet of electrical line constructed	
Linear feet of road constructed	
Acreage of pad created	
Total increase in natural gas capacity (above starting)	
Total increase in water capacity (above starting)	
Total increase in sewer capacity (above starting)	
Total increase in electrical capacity (above starting)	
Engineering studies and reports completed	
Other work completed (Such as buildings demolished, water tanks constructed, traffic light installation, etc.)	

TO BE CERTIFIED BY AN OFFICER OF THE GRANTEE:

I certify that I have examined this report and to the best of my knowledge and belief, it is true, correct, and complete.

Grantee: _____

By: _____

Name: _____

Title: _____

Date: _____

Please return to: Leah P. Harrison, Grants Manager – Incentives - Virginia Economic Development Partnership, 804.213.6682, lharrison@vedp.org.

VIRGINIA BUSINESS READY SITE PROGRAM GRANT
PERFORMANCE AGREEMENT
REDLINE COMMENTS 5/4/2023

This **PERFORMANCE AGREEMENT** (the "Agreement") made and entered this 1st day of May, 2023, by and among the **WESTERN VIRGINIA REGIONAL INDUSTRIAL FACILITY AUTHORITY** ("the Grantee"), a political subdivision of the Commonwealth ("the Commonwealth"), and the **VIRGINIA ECONOMIC DEVELOPMENT PARTNERSHIP AUTHORITY** ("VEDP") (together with the Grantee, "the Parties"), a political subdivision of the Commonwealth.

1. Definitions.

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

"Grant" means a grant awarded from the Virginia Business Ready Sites Fund, established pursuant to § 2.2-2240.2:1 of the Code of Virginia.

"Performance Date" means July 1, 2025.

"Project" means the Site work for which the Grant was awarded.

"RFP" means a request for proposal issued pursuant to the Virginia Public Procurement Act (§ 2.2-4300 *et seq.* of the Code of Virginia).

"Scope of Work" means the scope of work, project timeline, and project budget summarized, collectively, in Attachment A.

"Site" means Wood Haven Technology Park at 7755 Wood Haven Road in Roanoke, Virginia.

"Tier Level" means a site's designated VBRSP level of readiness for marking and economic development purposes.

"VBRSP" means the Virginia Business Ready Sites Program ("VBRSP"), established pursuant to § 2.22240.2:1 of the Code of Virginia.

2. Award of Grant.

The Grantee has been awarded a Grant of and expects to receive \$504,149 through VEDP for the purpose of site development of the Site. The Grant is awarded in accordance with the VBRSP, and receipt of the Grant is subject to the terms and conditions set forth herein. The proceeds of the Grant shall be used to reimburse the Grantee for necessary and reasonable costs expended in connection with the Scope of Work, and shall not be used for any other purposes.

3. Local Match.

As a condition of receipt of the Grant, the Grantee shall be required to provide a local match ~~which may be made with prior expenditures by Grantee for the site~~ at least equal to 100 percent of the amount of the Grant disbursed. Such match shall be paid towards the costs of the Scope of Work on or before the Performance Date. Additionally, the Grantee shall be responsible for any costs necessary to complete the Scope of Work not covered by the proceeds of the Grant, any costs incurred due to changes not approved

Commented [DM1]: This should be implicit in the contract and also referenced in the VBRSP guidelines. If the RIFA would like this called out directly in the contract, this can be added to the SOW budget table using the march column.

pursuant to Section 4 of this Agreement, and any costs associated with the reporting required by this Agreement.

4. Scope of Work.

Only expenditures set forth in the Scope of Work shall be considered eligible expenses that may be reimbursed by VEDP from the Grant. The Grantee shall notify VEDP immediately if it determines that there will likely be changes to the Scope of Work.

The Grantee shall submit proposed changes to the Scope of Work using the form in Attachment B. The Scope of Work shall only be amended upon agreement of both parties, in writing, prior to the commencement of the work related to the change. Grant Funds shall not be used to reimburse the Grantee for any work commenced prior to an approved change in the Scope of Work. All agreed upon changes to the Scope of Work shall be incorporated into this Agreement and shall be subject to all terms and conditions set forth herein.

The total amount of the Grant awarded to the Grantee shall not be subject to amendment. However, the Grantee shall notify VEDP immediately if it reasonably determines that cost increases will prohibit the completion of the agreed upon Scope of Work.

5. Progress Meetings.

The Grantee and VEDP shall meet regularly throughout the Project to discuss Project progress. The agendas for such meetings shall include discussions of the work accomplished since the previous progress meeting, the detailed look-ahead schedule of work planned through the next progress meeting, the overall Scope of Work, potential delays or impediments to the completion of the Project by the Performance Date, applications for progress payments, any questions raised by either Party, and any other issues deemed relevant or necessary by the Parties. Such meetings may be held at the request of the Grantee or VEDP. In lieu of a progress meeting, VEDP may request a progress report documenting the agenda topics typically discussed in the progress meetings.

6. Time of Completion.

The Parties agree that time is of the essence in completing the Scope of Work, and the Grantee shall be responsible for completing the Scope of Work on or before the Performance Date. The Performance Date contemplates ordinary delays for construction work, and such ordinary delays shall not relieve the Grantee from the obligation to complete the Scope of Work by the Performance Date. For extraordinary delays, aside from events of force majeure as set forth in Section 20(f) of this agreement, the Grantee shall submit in writing to VEDP a request for an extension of time of the Performance Date. Any such request shall set forth the particulars of the cause and details of the delay, and include documentation supporting the request. If VEDP determine that the request is reasonable, it may, in writing, grant an extension of the Performance Date set forth in this Agreement.

7. Performance.

The Grantee shall comply with the applicable provisions of the Virginia Public Procurement Act as set forth in Chapter 43 of Title 2.2 (§ 2.2-4300 et seq.) of the Code of Virginia. The Grantee is ultimately responsible for selecting responsive, qualified bidders to complete the Scope of Work; however, the Grantee shall not issue an RFP until VEDP has reviewed and approved such RFP to ensure alignment with the Scope of Work unless both Parties waive, in writing, the requirement for

~~such review and approval. If VEDP does not complete its review and approval or disapproval is not given within two (2) weeks, such RFP shall be deemed to have been approved.~~

Responsive contractors selected to complete the work set forth in the Scope of Work shall be licensed and bonded, and shall have performed three projects over the last ten years of similar size and complexity. The Grantee shall require any responsive bidder to the REP to supply to the Grantee, upon request, the details of such projects, including scope of work, location, period of performance and contract amount, as well as references for such projects.

8. Access to Site.

Representatives of VEDP shall have access to the Site at reasonable times for their observation, inspection, and testing. The Grantee shall provide proper and safe conditions for such access.

9. Inspections.

If the Scope of Work, or any relevant federal, state, or local laws, regulations, or ordinances, requires any part of the work to be inspected, tested, or approved, the Grantee shall assume full responsibility for arranging for and obtaining such inspections, tests, or approvals, and shall furnish VEDP with certificates of completed inspections, tests, or approvals. The Grantee shall provide VEDP with at least three-days' notice of the planned schedule for all inspections, tests, and approvals, unless circumstances reasonably require less than three-days' notice. In accordance with Section 8, VEDP shall be granted access to the Site to observe inspections, tests, and approvals.

10. Progress Payments and Reports.

- (a) The Grantee shall submit quarterly requests for reimbursement, using the form attached as Exhibit C, beginning with the request due October 1, 2023. Subsequent requests shall be due on the first day of January, April, and July for the duration of the project until the final request for reimbursement is submitted pursuant to subsection 13. The Grantee shall provide receipts with sufficient detail as to allow VEDP to identify goods and services for which reimbursement is requested based upon the Scope of Work. VEDP may request any additional documentation reasonably necessary to authorize reimbursement.
- (b) If payment is requested for materials and equipment not incorporated into the work completed to date, but delivered and suitably stored at the Project site or at another location agreed to by the Grantee and a contractor in writing, the request for reimbursement shall be accompanied by a bill of sale, invoice, or other documentation warranting that the Grantee has received the materials and equipment free and clear of all liens. In receiving such materials, the Grantee shall ensure that the materials and equipment are covered by appropriate property insurance.
- (c) Within 10 business days of receipt of a request for disbursement, VEDP shall indicate in writing the acceptance of the application and state that the request is being processed for payment, or return the request to the Grantee indicating, in writing, the reasons that the request is being rejected. If the request is deemed acceptable, VEDP shall submit approved reimbursements for payment within 30 days of receipt of the request.
- (d) VEDP may reject a request for reimbursement for failure to provide substantive documentation for the requested reimbursement, or may refuse to make the entire reimbursement, or a portion

thereof, to the extent that VEDP is made aware that construction has been found to be defective, or completed construction has been damaged and requires correction or replacement. VEDP shall promptly pay the amount of reimbursement withheld when Grantee remedies the situation that required the withholding.

- (e) VEDP may withhold up to five percent from each application for payment as retainage. Such amount shall be included in the final payment after completion of the Scope of Work.
- (f) The Grantee shall submit a progress report along with each request for a progress payment, using the form attached as Exhibit D. The report shall outline progress to-date and progress towards milestones set forth in the Scope of Work, and shall include photographs of the progress at the Site, copies of any inspections completed since the previous progress report, proof that suppliers were paid, and copies of contractor invoices. If the Grantee does not have any expenses to for which to request a reimbursement at the time that such a request is due pursuant to subsection (a), the Grantee shall still be required to submit a report pursuant to this Section, and shall explain in the report why there are no expenses reported for the prior quarter.

11. Substantial Completion.

When the Grantee considers the Project complete, the Grantee shall notify VEDP in writing that the work is substantially complete, except for any items specifically noted by Grantee to be incomplete, and shall request that VEDP issue a certificate of substantial completion. Promptly thereafter, VEDP and the Grantee shall inspect the work to determine the status of completion. If VEDP does not consider the work to be substantially complete, it shall notify the Grantee in writing, providing the reasons for the determination. If VEDP considers the work to be substantially complete, it shall issue a certificate of substantial completion, which shall fix the date of substantial completion, and shall provide, in writing, a list of items to be completed or corrected before final payment will be issued.

12. Final Inspection.

Upon written notice from the Grantee that the Scope of Work is complete, including the correction or completion of any items noted with the certificate of substantial completion issued pursuant to Section 11, VEDP shall make a visual inspection of the site. VEDP shall notify the Grantee of any issues revealed by the visual inspection to be incomplete or defective. Such visual inspection shall not replace any federal, state, or locally-mandated inspections.

13. Final Reimbursement.

After the Grantee has completed all corrections to the satisfaction of VEDP and delivered all required documentation, the Grantee may make application for final payment following the procedure for progress payments. The total aggregate amount of payments made to the Grantee shall not exceed \$504,149. If the total amount expended by the Grantee that is eligible for reimbursement is less than \$504,149, the Grantee shall only be entitled to payment equal to its actual expenses. If VEDP is satisfied that the Grantee has completed the Scope of Work and all other obligations under this Agreement have been fulfilled, VEDP shall, within 10 days of receipt of the final application for payment, provide notice to the Grantee that the work is acceptable and shall submit approved reimbursements for payment within 30 days of receipt of the request. Otherwise, VEDP shall indicate in writing the reasons for refusing to process the final grant payment, in which case the Grantee shall make the necessary corrections and resubmit the application.

14. Final Performance Report.

Within 30 days after the Performance Date, or the date of the completion of the Scope of Work if prior to the Performance Date, the Grantee shall submit a Final Performance Report, using the form attached as Exhibit E. The Final Performance Report shall include the following information:

- i. A summary of the work accomplished through the expenditure of the proceeds of the Grant;
- ii. A summary of any changes to the Scope of Work approved during the performance period, with an explanation of each such change;
- iii. If applicable, documentation confirming that the costs of the Scope of Work were less than anticipated, with an indication of the amount of the Grant proceeds not to be disbursed;
- iv. Documentation identifying and confirming that the required local cash match has been provided in full, or, if such match has not been provided in full, the reduction of the amount of the Grant necessary to achieve the required local cash match;
- v. Copies of all analyses, reports, and inspections related to the Scope of Work;
- vi. A letter from a licensed engineer or equivalent who has inspected the Site after completion of the Scope of Work indicating that the Site's Tier Level has increased, or, if it did not increase, establishing that it has advanced towards the next Tier Level and indicating what steps would be necessary to advance to such Tier Level; and
- vii. Plans for marketing the Site and a description of any new interest in the Site from prospective economic development projects.

The final payment due under this Agreement shall not be made unless and until such Performance Report is submitted in a timely manner.

15. Adjustments and Repayment.

The Grantee shall make any repayment due under this Section within 60 days of receipt of written notice from VEDP that repayment is due.

Repayment shall be required under any of the following circumstances:

- (a) If the Final Report indicates, or evidence reveals, that the local match actually provided is less than the required level of local match as set forth in Section 3 of this Agreement, the amount of the Grant shall be reduced by the amount necessary for the actual local match to reach the required level. If the Grant was previously disbursed, the Grantee shall repay to VEDP the amount necessary to make the local cash match actually provided equal the required level of the local match.
- (b) If VEDP reasonably determines that the Grantee is unable or unwilling to complete the Scope of Work by the Performance Date, VEDP may terminate this Agreement by delivering written notice of termination to the Grantee, and in such case the Grantee may, at the discretion of VEDP, be required to repay all or a portion of the Grant proceeds disbursed.
- (c) If the locality in which the Site is located rezones the Site or otherwise makes local land use actions such that the Site may not be used for an industrial or manufacturing purpose, the Grantee shall repay a portion of the Grant proceeds as follows:

Within one year of the Performance Date, 100% of the Grant;
Within two years of the Performance Date, 90% of the Grant;
Within three years of the Performance Date, 80% of the Grant;
Within four years of the Performance Date, 70% of the Grant;
Within five years of the Performance Date, 60% of the Grant;
Within six years of the Performance Date, 50% of the Grant;
Within seven years of the Performance Date, 40% of the Grant;
Within eight years of the Performance Date, 30% of the Grant;
Within nine years of the Performance Date, 20% of the Grant;
Within 10 years of the Performance Date, 10% of the Grant.

In its discretion, VEDP may waive such repayment obligation under this subsection (c).

16. Termination of Agreement.

VEDP may terminate this agreement for cause. Cause will be justified if the Grantee fails to perform the work in accordance with the Scope of Work, including failure to ensure sufficient skilled workers, failure to abide by industry standards, failure to obtain suitable materials or equipment, or failure to adhere to the progress scheduled established under the Scope of Work (as it may be amended pursuant to this agreement). VEDP shall notify the Grantee in writing of the intent to terminate. The Agreement shall not be terminated if the Grantee sends written notice to VEDP within seven days of receipt of the intent to terminate, and begins, within those seven days, to correct its failure to perform and proceeds diligently to cure such failure within 30 days of receipt of the notice of intent to terminate. If the Agreement is terminated under this agreement, the Grantee shall not be entitled to receive any further payment, and may be required to repay pursuant to Section 15(b) of this Agreement any Grant amounts previously received.

17. Stop Work.

If, through no act or fault of the Grantee, progress towards completion of the Scope of Work is suspended for a period of more than 90 days by VEDP or under an order of a court or other local, state, or federal legal authority, this Agreement may be terminated upon written agreement of the Parties. If the Agreement is terminated pursuant to this section, the Grantee shall be entitled to receive Grant payments equal to the costs incurred by the locality pursuant to the Scope of Work as of the day of the termination.

18. Notices.

Formal notices and communications between 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 electronic mail (email) with transmittal confirmation and confirmation of delivery, addressed as noted below. Notices and communications personally delivered or delivered by document delivery service shall be deemed effective upon receipt. Notices and communications mailed shall be deemed effective on the second business day following deposit in the United States mail. Notices and communications delivered

by 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 and communications shall be addressed to:

if to the Grantee, to:

[Western Virginia Regional Industrial Facility Authority](#)
c/o Roanoke Regional Partnership
111 Franklin Road SE
Roanoke, Virginia 24011
[Email: john@roanoke.org](mailto:john@roanoke.org)
Attention: John Hull, Executive Director

if to VEDP, to:

Virginia Economic Development Partnership
One James Center, Suite 900
901 East Cary Street
Richmond, Virginia 23219
[Email: mdreiling@vedp.org](mailto:mdreiling@vedp.org)
Attention: Michael Dreiling, Vice President,
Real Estate Solutions

with a copy to:

Virginia Economic Development Partnership
One James Center, Suite 900
901 East Cary Street
Richmond, Virginia 23219
[Email: generalcounsel@vedp.org](mailto:generalcounsel@vedp.org)
Attention: General Counsel

Each party may change the address for service of notice upon it by a notice in writing to the other parties hereto.

19. VEDP Not Responsible for Infrastructure Improvement.

The Grantee acknowledges and agrees that VEDP bears no responsibility for work performed related to due diligence, site characterization, or site development of the Site. VEDP shall not be liable to any contractor, subcontractor, supplier, laborer, architect, engineer, tenant, or other party for services performed or materials supplied in connection with any work performed related to due diligence, site characterization, or site development. VEDP shall not be liable for any debts or claims accruing in favor of any such parties against the Grantee or others or against any improvements made on the Site. VEDP shall not be an agent of the Grantee for any purposes and the Grantee shall not be deemed partners or joint venturers with VEDP. VEDP shall not be deemed to be in privity of contract with any contractor or provider of services related to site characterization or site development. VEDP shall have no liability, obligation, or responsibility whatsoever with respect to due diligence, site characterization, or site development activities. Any inspections of the site improvements made by or through VEDP are solely for purposes of administration of the Grant, and neither the Grantee or any third party is entitled to rely upon the same with respect to the quality, adequacy, or suitability of materials or workmanship, conformity with the plans and specifications, state of completion, or otherwise.

20. Miscellaneous.

- (a) This Agreement constitutes the entire agreement among the parties hereto as to the Grant and may not be amended or modified, except in writing, signed by each of the parties hereto. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. The Grantee may not assign its rights and obligations under this Agreement without the prior written consent of VEDP.
- (b) 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 City of Richmond, and such litigation shall be brought only in such court.
- (c) 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) If any provision of this Agreement 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) Attorney's fees shall be paid by the party incurring such fees.
- (f) Notwithstanding the foregoing provisions of this Agreement, if the Grantee does not complete work on the Project by the Performance Date or take any action required under this Agreement because of an "Event of Force Majeure" (as defined below), the time for achieving the applicable Target or taking such action will be extended day-for-day by the delay in meeting the applicable Target or taking such action caused by the Event of Force Majeure. "Event of Force Majeure" means without limitation, any of the following: acts of God; strikes, lockouts or other industrial disturbances; act of public enemies; orders of any kind of the government of the United States of America or of the Commonwealth or any of their respective departments, agencies, political subdivisions or officials, or any civil or military authority; insurrections; riots; epidemics; pandemics; landslides; lightning; earthquakes; fires; hurricanes; tornadoes; storms; floods; washouts; droughts; arrests; restraint of government and people; civil disturbances; explosions; breakage or accident to machinery, transmission pipes or canals not caused by the Company; partial or entire failure of utilities; or any other cause or event not reasonably within the control of the Company.
- (g) If the Site subject to the Project is privately owned or otherwise not under the ownership and control of the Grantee, the Grantee shall provide evidence to VEDP prior to the start of work that the Grantee has obtained the necessary property interest in the land on which the Scope of Work is to be performed. If failure to provide such evidence results in a delay of the start of Work, the Grantee shall have no claim for compensation or additional damages on account of such delay, but shall be entitled to request an extension of the Performance Date as set forth in Section 6.

[THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

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

**WESTERN VIRGINIA
REGIONAL INDUSTRIAL
FACILITY AUTHORITY**

By _____
Name: _____
Title: _____
Date: _____

**VIRGINIA ECONOMIC
DEVELOPMENT PARTNERSHIP AUTHORITY**

By _____
Name: _____
Title: _____
Date: _____

- Attachment A: Scope of Work
- Attachment B: Change Order Form
- Attachment C: Progress Payment Application
- Attachment D: Progress Report
- Attachment E: Final Performance Report