



Date of Council Meeting: August 12, 2014

**TOWN OF LEESBURG
TOWN COUNCIL WORKSESSION**

Subject: Governor's Development Opportunity Fund Grant ("GOF") Performance Agreement.

Staff Contact: Marantha Edwards, Economic Development Director

Recommendation: Authorize the Mayor to execute the GOF Performance Agreement.

Issue: Whether the Town Council should authorize the Mayor to execute the Governor's Development Opportunity Fund Grant Performance Agreement ("Agreement") which obligates the Town to provide certain incentives to a certain business that is considering locating its headquarters in the Oaklawn Development.

Fiscal Impact: Under the Agreement, the Town has committed to: 1) Approximately \$77,000 in land development fee waivers; and 2) To apply for a Virginia Department of Transportation ("VDOT") Economic Development Access Program Award ("EDAP") which will require matching funds from the Town in the amount of \$150,000.00. These funds will be used to construct a portion of Hope Parkway in the Oaklawn Development.

Background: The Governor's Opportunity Fund (GOF) is a discretionary incentive available to the Governor to secure a business location or expansion project in Virginia. Grants are awarded to localities on a local matching basis with the expectation that the grant will result in a favorable location decision for the Commonwealth. The fund's requirements are set forth in Code of Virginia, Section 2.2-115 entitled "Governor's Development Opportunity Fund".

In order to receive a grant from this fund, both Loudoun County and the Town have committed to certain matching funds. The County will make a cash grant in the amount of \$340,000 and waive certain fees and costs (building and development fees) estimated to have a value of \$110,000. The Town will waive all land development fees estimated to be approximately \$77,000 and will also provide matching funds to an EDAP grant from VDOT in the amount of \$150,000. Under the Agreement, if these matching funds and fee waivers are provided by the County and Town, the Commonwealth will provide the company with a cash grant in the amount of \$450,000.

The Agreement sets forth certain enumerated targets which the Company must meet in order to obtain the GOF funds. The Company must construct a facility with a capital investment of \$28,400,000, and add at least 97 new jobs with an annual salary of at least \$103,000. If these targets are not met, the Company must return a portion the entire GOF grant and a portion of the town and county incentives.

Section 2.2-115 of the Virginia Code requires that the Company make a Capital Investment of at least \$5,000,000 in the Facility and create and maintain at least 50 new jobs at the facility in order to be eligible for the GOF Grant. Failure by the Company to meet either of these statutory minimum

eligibility requirements constitutes a breach of the Agreement. In the event of such breach, the entire GOF Grant and **aggregate value** of the County and Town Incentives must be repaid by the Company. The aggregate value is based upon a repayment formula: the Town incentives are to be allocated as 50% for the Company's Capital Investment Target and 50% for its New Jobs Target. If the Company has met at least 90% of both of the targets, then the Company is no longer obligated to repay any portion of the Town Incentives. If the Company has not met at least 90% of either or both of its targets, the Company shall repay to the Town that part of the aggregate value of the Town Incentives that is proportional to the targets for which there is a shortfall. For example, if the Capital Investment is only \$14,200,000 and only 59 New Jobs have been created and maintained, the Company shall repay to the Town 50% of the value of the Town Incentives allocated to the Capital Investment Target and 39% of the value of the Town Incentives allocated to the New Jobs Target.

At the time of the writing of this Agenda Memo, the Agreement is still in draft form and has not yet been approved by all parties.

Attachments: Resolution
GOF Performance Agreement

FGOVERNOR'S DEVELOPMENT OPPORTUNITY FUND GRANT

COUNTY OF LOUDOUN INCENTIVES

TOWN OF LEESBURG INCENTIVES

PERFORMANCE AGREEMENT

This **PERFORMANCE AGREEMENT** made and entered this ____ day of _____ 2014, by and among the **COUNTY OF LOUDOUN, VIRGINIA** (the "County"), a political subdivision of the Commonwealth of Virginia (the "Commonwealth"), the **ECONOMIC DEVELOPMENT AUTHORITY OF LOUDOUN COUNTY, VIRGINIA** (the "Authority"), a political subdivision of the Commonwealth, the **TOWN OF LEESBURG, VIRGINIA** (the "Town"), a municipal corporation of the Commonwealth, and **COMPANY'S NAME, INC.** (the "Company"), a Delaware corporation authorized to transact business in the Commonwealth.

WITNESSETH:

WHEREAS, the County has been awarded a grant of and expects to receive \$450,000 from the Governor's Development Opportunity Fund (a "GOF Grant") through the Virginia Economic Development Partnership Authority ("VEDP") for the purpose of inducing the Company to expand its current corporate headquarters, manufacturing and research and development facility by constructing, equipping and operating a new such facility in the Town located in the County (the "Facility"), thereby making a significant Capital Investment and creating and Maintaining a significant number of New Jobs, as such capitalized terms are hereinafter defined;

WHEREAS, the County desires to make a cash grant in the amount of \$340,000 (the "County Grant") and to waive certain fees and costs related to permits required for site development and construction of the Facility, estimated to have a value of approximately \$110,000 (the "County Fee Waivers" and together with the County Grant, the "County Incentives") for the purpose of inducing the Company to construct, equip and operate the Facility, thereby making a significant Capital Investment and creating and Maintaining a significant number of New Jobs;

WHEREAS, the Town desires to provide matching funds to the \$650,000 Economic Development Access Program (the "EDAP") Award from the Virginia Department of Transportation ("VDOT") in the amount of \$150,000 (the "Town EDAP Matching Funds") in order to design and construct certain road improvements for access to the Facility; and to waive certain fees and costs related to land development applications and permits estimated to have a value of approximately \$77,000, as listed in Section 3(c) below (the "Town Fee Waivers" and together with the Town EDAP Matching Funds, the "Town Incentives") for the purpose of inducing the Company to construct, equip and operate the Facility, thereby making a significant Capital Investment and creating and Maintaining a significant number of New Jobs;

WHEREAS, the County is willing to provide the GOF Grant and the County Grant (together, the “Grants”) to the Authority with the expectation that the Authority will provide the funds to or for the use of the Company at the Facility and to provide the County Fee Waivers to the Company, provided that the Company promises to meet certain criteria relating to Capital Investment and New Jobs;

WHEREAS, the Town is willing to provide the Town Incentives, provided that the Company promises to meet certain criteria relating to Capital Investment and New Jobs;

WHEREAS, the County, the Authority, the Town and the Company desire to set forth their understanding and agreement as to the payout or provision of the GOF Grant, the County Incentives and the Town Incentives, the use of the proceeds of the Grants, the obligations of the Company regarding Capital Investment and New Job creation and Maintenance, and the repayment by the Company of all or part of the GOF Grant, the County Incentives and the Town Incentives under certain circumstances;

WHEREAS, the construction, equipping and operation of the Facility will entail a capital expenditure of approximately \$28,400,000, of which approximately \$24,000,000 will be invested in the construction of a new building and approximately \$4,400,000 will be invested in machinery and equipment and personal property, by the Performance Date as hereinafter defined;

WHEREAS, the construction, equipping and operation of the Facility will further entail the creation and Maintenance of 97 New Jobs at the Facility by the Performance Date; and

WHEREAS, the stimulation of the additional tax revenue and economic activity to be generated by the Capital Investment and New Jobs constitutes a valid public purpose for the expenditure of public funds and is the animating purpose for the GOF Grant, the County Incentives and the Town Incentives:

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

Section 1. Definitions.

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

“Capital Investment” means a capital expenditure by or on behalf of the Company on or after July 1, 2014 in taxable real property, taxable tangible personal property, or both, at the Facility, excluding land and existing real property improvements. A capital expenditure related to a leasehold interest in real property will be considered to be made “on behalf of the Company” if a lease between a developer and the Company is a capital lease, or is an operating lease having a term of at least ten years, and the real property would not have been constructed or improved

but for the Company's interest in leasing some or all of the real property. Only the capital expenditures allocated to the portion of the real property to be leased by the Company will count as "Capital Investment." The purchase or lease of furniture, fixtures, machinery and equipment, including under an operating lease, by or on behalf of the Company will qualify as Capital Investment. The total expected capital expenditure of \$28,400,000 is referred to in this Agreement as the "Capital Investment."

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

"New Job" means new permanent full-time employment of an indefinite duration at the Facility for which the standard fringe benefits are paid by the Company for the employee, and for which the Company pays an average annual wage of at least \$103,000. Each New Job must require a minimum of either (i) 35 hours of an employee's time per week for the entire normal year of the Company's operations, which "normal year" must consist of at least 48 weeks, or (ii) 1,680 hours per year. Seasonal or temporary positions, positions created when a job function is shifted from an existing location in the Commonwealth, and positions with construction contractors, vendors, suppliers and similar multiplier or spin-off jobs shall not qualify as New Jobs. A New Job must be a position which is filled or for which the Company is actively recruiting to fill. The New Jobs must be in addition to the 268 full-time jobs existing at the Company's current corporate headquarters and manufacturing and research and development facility in the Town as of July 1, 2014.

"Performance Date" means December 31, 2017. If the County, in consultation with the Authority, the Town and VEDP, deems that good faith and reasonable efforts have been made and are being made by the Company to achieve the Targets, the County may agree to extend the Performance Date by up to 15 months. If the Performance Date is extended, the County shall send written notice of the extension to the Authority, the Town, the Company and VEDP and the date to which the Performance Date has been extended shall be the "Performance Date" for the purposes of this Agreement.

"Targets" means the Company's obligations to make or cause to be made Capital Investments of at least \$28,400,000 and to create and Maintain at least 97 New Jobs, all as of the Performance Date.

"Virginia Code" means the Code of Virginia of 1950, as amended.

Section 2. Targets.

The Company will construct or cause the construction of the Facility and will equip and operate the Facility, make a Capital Investment of at least \$28,400,000, and create and Maintain at least 97 New Jobs at the Facility, all as of the Performance Date. The Company agrees that

the average annual wage of the New Jobs will be at least \$103,000. The average annual wage does not include fringe benefits and will be calculated as of the Performance Date.

The County, the Authority and the Town hereby strongly encourage the Company to ensure that at least 30% of the New Jobs are offered to “Residents” of the Commonwealth, as defined in Virginia Code Section 58.1-302. In pertinent part, that definition includes natural persons domiciled in Virginia or natural persons who, for an aggregate of more than 183 days of the year, maintained a place of abode within the Commonwealth, whether domiciled in the Commonwealth or not.

The average annual wage of the New Jobs of at least \$103,000 is more than the prevailing average annual wage in the County of \$59,310. The County is not a high-unemployment locality, with an unemployment rate for 2013, which is the last year for which such data is available, of 4.2% as compared to the 2013 statewide unemployment rate of 5.5%. The County is not a high-poverty locality, with a poverty rate for 2012, which is the last year for which such data is available, of 4.0% as compared to the 2012 statewide poverty rate of 11.8%.

Section 3. Disbursement and Use of the GOF Grant, the County Incentives and the Town Incentives

(a) *GOF Grant:* By no later than November 27, 2014, the County will request the disbursement to it of the GOF Grant. If not so requested by the County by November 27, 2014, 2014, this Agreement will terminate. The County and the Company will be entitled to reapply for a GOF Grant thereafter, based upon the terms, conditions and availability of funds at that time.

The GOF Grant in the amount of \$450,000 will be paid to the County, upon its request. Within 30 days of its receipt of the GOF Grant proceeds, the County will disburse the GOF Grant proceeds to the Authority. Within 30 days of its receipt of the GOF Grant proceeds, the Authority will disburse the GOF Grant proceeds to the Company as an inducement to the Company to achieve the Targets at the Facility. The Company will use the GOF Grant proceeds for site preparation and construction costs at the Facility, as permitted by Section 2.2-115(D) of the Virginia Code.

(b) *County Incentives:* The County will disburse the County Grant to the Authority contemporaneously with the GOF Grant proceeds and provide the County Fee Waivers as inducements to the Company to achieve the Targets at the Facility. The Company will use the County Grant proceeds for site preparation and construction costs at the Facility. The County Fee Waivers will reduce the cost to the Company of certain fees and costs related to permits required for site development and construction of the Facility. The County will keep track of the value of the County Fee Waivers provided to the Company and will report the aggregate value of the County Fee Waivers to the Company, upon request.

(c) *Town Incentives:* The Town will provide the Town EDAP Matching Funds for road upgrades and transportation improvements, and provide the Town Fee Waivers as inducements to the Company to achieve the Targets at the Facility. The Town will use the Town

EDAP Matching Funds to offset the costs associated with qualifying road upgrades and transportation improvements to serve the site of the Facility. The Town Fee Waivers will reduce the cost to the Company of certain fees and costs related to land development applications and permits. The Town Permit Fees which will be waived by the Town on behalf of the Company are as follows:

Concept and Development Application Fee	\$10,000
Proffer Amendment Application Fee	10,000
Minor Site Plan Application/Grading Plan Fee	3,500
Minor Site Plan Signature Set	2,500
Site Plan Application Fee (1st submission)	25,000
Signature Set	2,500
Easement Plat (1st submission)	2,500
Signature Set	500
Right of Way Dedication Plat (1st submission)	2,500
Signature Set	500
Revision of Construction Plans (Hope Parkway)	5,000
Signature Set	2,500
Revision of ROW Dedication Plat (Hope Parkway)	500
Signature Set	500
DCSM Modifications (assumes 5 @ \$1,250 each)	6,250
Zoning Permit Fee	50
Sign Permit Fees (estimate)	300
Right of Way Permit Fees (Inspection Fees included)	300

TOTAL ESTIMATED FEES + /- \$76,950

The Town will keep track of the value of the Town Fee Waivers provided to the Company and will report the aggregate value of the Town Fee Waivers to the Company, upon request.

Section 4. Break-Even Point; State, County and Town Incentives.

VEDP has estimated that the Commonwealth will reach its “break-even point” by the Performance Date. The break-even point compares new revenues realized as a result of the Capital Investment and New Jobs at the Facility with the Commonwealth’s expenditures on incentives, including but not limited to the GOF Grant. With regard to the Facility, the Commonwealth expects to provide incentives in the following amounts:

<u>Category of Incentive:</u>	<u>Total Amount</u>
GOF Grant	\$450,000
Virginia Investment Partnership Program Grant (“VIP Grant”) (Estimated)	400,000
EDAP Award (Estimated)	575,000

The County and the Town expect to provide the following incentives, as matching grants or otherwise, for the Facility:

<u>Category of Incentive:</u>	<u>Total Amount</u>
County Grant	\$340,000
County Fee Waivers (Estimated)	110,000
Town EDAP Matching Funds	150,000
Town Fee Waivers (Estimated)	77,000

If, by the Performance Date, the aggregate amount of the County Grant and the County Fee Waivers actually provided to the Company total less than the \$450,000 GOF Grant local match requirement, and so long as the Company has met its Targets, the County will make an additional cash grant to the Authority in the amount of the difference, with the expectation that the Authority will provide such funds to or for use by the Company at the Facility. Notwithstanding the foregoing, the County's obligation to make an additional cash grant as provided in the immediately preceding sentence shall be conditioned upon and subject to the Board of Supervisors of Loudoun County making an appropriation of funds for that purpose. The County shall not be liable for any additional cash grant as provided herein unless and until such funds have been appropriated for payment and only to the extent thereof.

The proceeds of the GOF Grant, the County Incentives and the Town Incentives shall be used for the purposes described in Section 3. The VIP Grant proceeds may be used by the Company for any lawful purpose. The EDAP Award shall be used to offset the costs associated with qualifying road upgrades and transportation improvements to serve the site of the Facility.

Section 5. Repayment Obligation.

(a) *If Statutory Minimum Eligibility Requirements are Not Met:* Section 2.2-115 of the Virginia Code requires that the Company make a Capital Investment of at least \$5,000,000 in the Facility and create and Maintain at least 50 New Jobs at the Facility in order to be eligible for the GOF Grant. Failure by the Company to meet either of these statutory minimum eligibility requirements by the Performance Date shall constitute a breach of this Agreement. In the event of such breach, the entire GOF Grant and aggregate value of the County Incentives must be repaid by the Company to the Authority, and the aggregate value of the Town Incentives must be repaid by the Company to the Town.

(b) *GOF Grant - If Statutory Minimum Eligibility Requirements are Met:* The provisions of this subsection (b) are applicable only if the Company has met the statutory minimum eligibility requirements for a GOF Grant, as set forth in subsection (a). For purposes of repayment, the GOF Grant is to be allocated as \$225,000 (50%) for the Company's Capital Investment Target and \$225,000 (50%) for its New Jobs Target. If the Company has met at least 90% of both of the Targets at the Performance Date, then and thereafter the Company is no longer obligated to repay any portion the GOF Grant. If the Company has not met at least 90% of either or both of its Targets at the Performance Date, the Company shall repay to the

Authority that part of the GOF Grant that is proportional to the Target or Targets for which there is a shortfall. For example, if at the Performance Date, the Capital Investment is only \$21,300,000 and only 78 New Jobs have been created and Maintained, the Company shall repay to the Authority 25% of the moneys allocated to the Capital Investment Target (\$56,250) and 20% of the moneys allocated to the New Jobs Target (\$45,000).

(c) *County Incentives – If Statutory Minimum Eligibility Requirements are Met:* The provisions of this subsection (c) are applicable only if the Company has met the statutory minimum eligibility requirements for a GOF Grant, as set forth in subsection (a). For purposes of repayment, the aggregate value of the County Incentives is to be allocated as 50% for the Company's Capital Investment Target and 50% for its New Jobs Target. If the Company has met at least 90% of both of the Targets at the Performance Date, then and thereafter the Company is no longer obligated to repay any portion of the County Incentives. If the Company has not met at least 90% of either or both of its Targets at the Performance Date, the Company shall repay to the Authority that part of the aggregate value of the County Incentives that is proportional to the Target or Targets for which there is a shortfall. For example, if at the Performance Date, the Capital Investment is only \$14,200,000 and only 59 New Jobs have been created and Maintained, the Company shall repay to the Authority 50% of the value of the County Incentives allocated to the Capital Investment Target and 39% of the value of the County Incentives allocated to the New Jobs Target.

(d) *Town Incentives – If Statutory Minimum Eligibility Requirements are Met:* The provisions of this subsection (d) are applicable only if the Company has met the statutory minimum eligibility requirements for a GOF Grant, as set forth in subsection (a). For purposes of repayment, the aggregate value of the Town Incentives is to be allocated as 50% for the Company's Capital Investment Target and 50% for its New Jobs Target. If the Company has met at least 90% of both of the Targets at the Performance Date, then and thereafter the Company is no longer obligated to repay any portion of the Town Incentives. If the Company has not met at least 90% of either or both of its Targets at the Performance Date, the Company shall repay to the Town that part of the aggregate value of the Town Incentives that is proportional to the Target or Targets for which there is a shortfall. For example, if at the Initial Performance Date, the Capital Investment is only \$14,200,000 and only 59 New Jobs have been created and Maintained, the Company shall repay to the Town 50% of the value of the Town Incentives allocated to the Capital Investment Target and 39% of the value of the Town Incentives allocated to the New Jobs Target.

(e) *Determination of Inability to Comply:* If the County, the Town or VEDP shall determine at any time prior to the Performance Date (a "Determination Date") that the Company is unable or unwilling to meet and Maintain its Targets by and through the Performance Date, and if the County, the Town, the Authority or VEDP shall have promptly notified the Company of such determination, the Company must repay the entire GOF Grant and the aggregate value of the County Incentives to the Authority, and the Company must repay the aggregate value of the Town Incentives to the Town. Such a determination will be based on such circumstances as a filing by or on behalf of the Company under Chapter 7 of the U.S. Bankruptcy Code, the liquidation of the Company, an abandonment of the Facility by the Company or other similar

significant event that demonstrates that the Company will be unable or is unwilling to satisfy the Targets.

(f) *Repayment Dates: Such repayment shall be due from the Company to the Authority within ninety days after the Performance Date or the Determination Date, as applicable.* Any moneys repaid by the Company to the Authority hereunder allocable to the GOF Grant shall be repaid by the Authority to the County and shall be repaid by the County promptly to VEDP for redeposit into the Governor's Development Opportunity Fund. Any moneys repaid by the Company to the Authority hereunder allocable to the County Incentives shall be repaid by the Authority promptly to the County. The County and the Authority shall use their best efforts to recover such funds, including legal action for breach of this Agreement. The County shall assume primary responsibility for filing and prosecuting any such legal action, and the Authority shall cooperate with the County's efforts. Neither the County nor the Authority shall have any responsibility for the repayment of any sums hereunder unless said sums have been received by the Authority from the Company.

Section 6. Company Reporting.

The Company shall provide, at the Company's expense, detailed verification reasonably satisfactory to the County, the Town, the Authority and VEDP of the Company's progress on the Targets. Such progress reports will be provided annually, starting at April 1, 2015 and covering the period through the prior December 31. Further, the Company shall provide progress reports at such other times as the County, the Town, the Authority or VEDP may reasonably require. If the Company wishes to count as Capital Investment the capital expenditures made on its behalf by a developer of the Facility, the Company is responsible for assembling and distributing the documentation necessary to verify the capital expenditures made on behalf of the Company.

With each such progress report, the Company shall report to VEDP the amount paid by the Company in the prior calendar year in Virginia corporate income tax. VEDP has represented to the Company that it considers such information to be confidential proprietary information that is exempt from public disclosure under the Virginia Freedom of Information Act and that such information will be used by VEDP solely in calculating aggregate return on invested capital analyses for purposes of gauging the overall effectiveness of economic development incentives.

Section 7. Notices.

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

if to the Company, to:

with a copy to:

[PLEASE PROVIDE] _____

Attention: _____

Attention: _____

if to the County, to:

with a copy to:

County of Loudoun, Virginia
1 Harrison Street SE
Mail Stop #02
Leesburg, VA 20175
Attention: County Administrator

County of Loudoun, Virginia
1 Harrison Street SE
Mail Stop #06
Leesburg, VA 20175
Attention: County Attorney

if to the Authority, to:

with a copy to:

Economic Development Authority
of Loudoun County, Virginia
P.O. Box 7
Leesburg, VA 20178
Attention: Chair

Economic Development Authority of Loudoun
County, Virginia
141 Woodberry Road, N.E.
Leesburg, VA 20175
Attention: Stephen Robin, General Counsel

if to the Town, to:

with a copy to:

Town of Leesburg, Virginia
25 West Market Street
Leesburg, VA 20176
Attention: Town Manager

Town of Leesburg, Virginia
25 West Market Street
Leesburg, VA 20176
Attention: Town Attorney

if to VEDP, to:

with a copy to:

Virginia Economic Development Partnership
901 East Byrd Street, 19th Floor
Post Office Box 798 (zip: 23218-0798)
Richmond, Virginia 23219
Attention: President and CEO

Virginia Economic Development Partnership
901 East Byrd Street, 19th Floor
Post Office Box 798 (zip: 23218-0798)
Richmond, Virginia 23219
Attention: General Counsel

Section 8. Miscellaneous.

(a) *Entire Agreement; Amendments:* This Agreement constitutes the entire agreement among the parties hereto as to the GOF Grant, the County Incentives and the Town Incentives 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 Company may not assign its rights and obligations under this Agreement without the prior written consent of the County, the Town, the Authority and VEDP. Pursuant to Virginia Code Section 2.2-115(F)(2)(c), this Agreement shall be amended to reflect any and all changes, other than *de minimis* changes, in the funds and incentives agreed to be provided by the Commonwealth, the County or the Town.

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

(c) *Counterparts:* This Agreement may be executed in one or more counterparts, each of which shall be an original, and all of which together shall be one and the same instrument.

(d) *Severability:* If any 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:* Attorney's fees shall be paid by the party incurring such fees.

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

COUNTY OF LOUDOUN, VIRGINIA

By _____
Name: _____
Title: _____
Date: _____

**ECONOMIC DEVELOPMENT
AUTHORITY OF LOUDOUN
COUNTY, VIRGINIA**

By _____
Name: _____
Title: _____
Date: _____

TOWN OF LEESBURG, VIRGINIA

By _____
Name: _____
Title: _____
Date: _____

COMPANY'S NAME, INC.

By _____
Name: _____
Title: _____
Date: _____

PRESENTED August 12, 2014

RESOLUTION NO. 2014-

ADOPTED _____

A RESOLUTION: **AUTHORIZING THE MAYOR OR TOWN MANAGER TO EXECUTE
THE GOVERNOR’S DEVELOPMENT OPPORTUNITY FUND GRANT
(GOF) PERFORMANCE AGREEMENT**

WHEREAS, Code of Virginia of 1950, as amended, § 2.2-115 entitled, “Governor’s Development Opportunity Fund” (“GOF”) authorizes the Governor to use funds from the Governor’s Development Opportunity Fund to attract economic development prospects and secure the expansion of existing industry in the Commonwealth; and

WHEREAS, an existing business operating within the Town (the “Company”) indicated that the Town is one of three (3) localities where the Company is considering expanding its business by building its corporate headquarters and adding new jobs;

WHEREAS, in order to induce the Company into remaining in the Town and building its corporate headquarters in the Town, the Governor has selected the Company to receive GOF funds; and

WHEREAS, a GOF award requires matching funds from the localities which seek to benefit from the GOF funds; and

WHEREAS, the County of Loudoun, the Economic Development Authority of Loudoun County, and the Town wish to provide these matching funds and incentives to the Company to induce the Company to expand within the Town; and

WHEREAS, the Virginia State Code requires that a Governor’s Development Opportunity Fund Grant Performance Agreement (“Agreement”) be executed by the parties in order for the

A RESOLUTION: AUTHORIZING THE MAYOR OR TOWN MANAGER TO EXECUTE THE GOVERNOR'S DEVELOPMENT OPPORTUNITY FUND GRANT (GOF) PERFORMANCE AGREEMENT

Company to obtain the GOF funds, the County incentives and the Town incentives; and

WHEREAS, the parties to the Agreement are the Town of Leesburg, the County of Loudoun, the Economic Development Authority of Loudoun and the Company; and

WHEREAS, the terms of the Agreement provide that the County will commit to a cash grant to the Company in the amount of \$340,000 and to grant permit and fee waivers in the amount of \$110,000; and

WHEREAS, the terms of the Agreement provide that the Town will commit to matching funds in the amount of \$150,000 towards a Virginia Department of Transportation ("VDOT") Economic Development Access Program ("EDAP") award (to be used towards the construction of a portion of Hope Parkway) and to grant permit and fee waivers in the amount of \$77,000; and

WHEREAS, the Agreement contains certain "clawback" provisions whereby if the Company does not locate within the Town, the Agreement is terminated and if the Company does not meet certain targets (capital investment and the addition of new jobs), a certain percentage of the funds and incentives must be repaid; and

WHEREAS, the Town Attorney has reviewed all drafts of the Agreement; and

WHEREAS, providing the funds and incentives contained within the Agreement to the Company to expand its corporate headquarters in the Town will result in substantial economic benefits to the Town and its residents.

THEREFORE, RESOLVED, by the Council of the Town of Leesburg in Virginia that the Mayor or Town Manager is authorized to execute the Governor's Development Opportunity Fund Grant Performance Agreement so long as the final draft has been approved by the Town Attorney.

A RESOLUTION: AUTHORIZING THE MAYOR OR TOWN MANAGER TO EXECUTE
THE GOVERNOR'S DEVELOPMENT OPPORTUNITY FUND GRANT
(GOF) PERFORMANCE AGREEMENT

PASSED the ____ day of August, 2014.

Kristen C. Umstattd, Mayor
Town of Leesburg

ATTEST:

Clerk of Council