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**COMMONWEALTH'S DEVELOPMENT OPPORTUNITY FUND GRANT  
PERFORMANCE AGREEMENT  
(AMERICAN INSTITUTES FOR RESEARCH IN THE BEHAVIORAL SCIENCES)**

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This **COMMONWEALTH'S DEVELOPMENT OPPORTUNITY FUND GRANT PERFORMANCE AGREEMENT** (this "**Agreement**") is made on the date of full execution (the "**Effective Date**"), by and among the **COUNTY BOARD OF ARLINGTON, VIRGINIA** (the "**County**"), a body corporate and politic of the Commonwealth of Virginia (the "**Commonwealth**"), the **AMERICAN INSTITUTES FOR RESEARCH IN THE BEHAVIORAL SCIENCES** ("**AIR**"), a Pennsylvania corporation authorized to transact business in the Commonwealth, and the **INDUSTRIAL DEVELOPMENT AUTHORITY OF ARLINGTON COUNTY** (the "**IDA**"), a political subdivision of the Commonwealth. Individually, the County, AIR, and the IDA may each be referred to hereinafter as the "**Party**," or collectively as the "**Parties**."

**RECITALS:**

**WHEREAS**, on November 3, 2017, the County submitted a letter to VEDP in order to apply for certain grant funds from the Commonwealth's Development Opportunity Fund (the "**Fund**") for the purpose of inducing AIR to locate, renovate, improve, and equip an office and headquarters facility in Arlington County to be used as AIR's national headquarters (the "**Facility**"); and

**WHEREAS**, on October 30, 2017, pursuant to VEDP application procedures, AIR submitted a letter to VEDP indicating, among other things, that without the support from the Fund, there is a possibility that it may locate its Facility outside of Virginia; and

**WHEREAS**, on November 16, 2017, the Office of the Governor of the Commonwealth of Virginia awarded a Commonwealth's Development Opportunity Fund grant in the amount of Five Hundred Thousand and 00/100 Dollars (\$500,000.00) (the "**COF Grant**") to the County for the purpose of inducing AIR to locate, renovate, improve, equip, operate, and maintain the Facility in Arlington County through making a Capital Investment, as hereinafter defined, and creating and Maintaining, as hereinafter defined, New Jobs, as hereinafter defined; and

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

**WHEREAS**, AIR has agreed to accept the COF Grant from the IDA as an incentive (A) to make or have made on its behalf a Capital Investment of at least Twelve Million Five Hundred Thousand and 00/100 Dollars (\$12,500,000.00), of which approximately Five Million and 00/100 Dollars (\$5,000,000.00) will be invested in furniture, fixtures, and equipment, and approximately Seven Million Five Hundred Thousand and 00/100 Dollars (\$7,500,000.00) will be invested in the renovation and building up-fit of the Facility, and (B) to create and Maintain at least three hundred

twenty (320) New Jobs at the Facility, all as of the Performance Date, as hereinafter defined, pursuant and subject to the terms and conditions of this Agreement; and

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

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

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

## **SECTION 1. INCORPORATION OF RECITALS AND DEFINITIONS.**

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

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

***“Capital Investment”*** means a capital expenditure on or after January 1, 2018, by or on behalf of AIR in taxable real property, taxable tangible personal property, or both, at the Facility, excluding existing real property improvements.

Capital Investment, as referred to in this Agreement, is the expected capital expenditure of Twelve Million Five Hundred Thousand and 00/100 Dollars (\$12,500,000.00).

A capital expenditure related to a leasehold interest in real property will be considered to be made “on behalf of AIR” if a lease between a developer (or other lessor) and AIR is a capital lease or is an operating lease having a term of at least ten (10) years, and the real property would not have been constructed or improved but for AIR’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 AIR will count as Capital Investment.

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

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

“*New Job*” means a new permanent full-time employment of an indefinite duration at the Facility for which the standard fringe benefits are provided by AIR for the employee, and for which AIR pays an average annual wage of at least Ninety Thousand and 00/100 Dollars (\$90,000.00). Each New Job must require a minimum of either (i) 35 hours of an employee’s time per week for the entire normal year of AIR’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.

“*Performance Date*” means February 1, 2021. If the County, in consultation with the IDA and VEDP, deems that good faith and reasonable efforts have been made and are being made by AIR to achieve the Targets, the County may request an extension of the Performance Date by up to 15 months. Any extension of the Performance Date shall require the prior approval of the Board of Directors of VEDP. If the Performance Date is extended, the County shall send written notice of the extension to the IDA and AIR and the date to which the Performance Date has been extended shall be the latest “Performance Date” for the purposes of this Agreement.

“*Targets*” means AIR’s obligations to make or have made on its behalf Capital Investment at the Facility of at least Twelve Million Five Hundred Thousand and 00/100 Dollars (\$12,500,000.00) (the “**Capital Investment Target**”) and to create and Maintain at least three hundred twenty (320) New Jobs at the Facility (the “**New Jobs Target**”), all as of the Performance Date. Together, the Capital Investment Target and the New Jobs Target may be referred to hereinafter as the “Targets.”

## **SECTION 2. TARGETS.**

a) AIR covenants and agrees to locate, renovate, improve, equip, operate, and maintain the Facility in Arlington County, make or have made on its behalf a Capital Investment of at least Twelve Thousand Five Hundred Thousand and 00/100 Dollars (\$12,500,000.00) at the Facility, and create and Maintain at least three hundred twenty (320) New Jobs at the Facility, all as of the Performance Date. Of the Capital Investment, approximately Five Million and 00/100 Dollars (\$5,000,000.00) will be invested in furniture, fixtures, and equipment, and approximately Seven Million Five Hundred Thousand and 00/100 Dollars (\$7,500,000.00) will be invested in renovation and up-fit of the Facility.

b) AIR covenants and agrees that the average annual wage for all New Jobs identified by AIR as of the Performance Date will be at least Ninety Thousand and 00/100 Dollars (\$90,000.00), which is more than the prevailing average annual wage in the County of Eighty-Seven Thousand Four Hundred Seventy-Three and 00/100 Dollars (\$87,473.00).

AIR covenants and agrees to use its best efforts to ensure that at least two hundred twenty-four (224) of the New Jobs at the Facility are filled by "Residents" of the Commonwealth, as defined in Virginia Code Section 58.1-302. In pertinent part, that definition includes natural persons domiciled in Virginia or natural persons who, for an aggregate of more than 183 days of the year, maintained a place of abode within the Commonwealth, whether domiciled in the Commonwealth or not.

c) AIR covenants and agrees to use its reasonable efforts to assist the County and the IDA from time-to-time in promoting the County's attributes as a place to do business.

d) The County is not a high-unemployment locality, with an unemployment rate for 2016, which is the last year for which such data is available, of 2.6% as compared to the 2016 statewide unemployment rate of 4.0%. The County is not a high-poverty locality, with a poverty rate for 2015, which is the last year for which such data is available, of 7.1% as compared to the 2015 statewide poverty rate of 11.2%.

e) AIR acknowledges that the name of AIR will be shared by VEDP with the Governor of Virginia, and any campaign committee or political action committee associated with the Governor. AIR acknowledges that within 18 months of the date of this Performance Agreement, the Governor, his campaign committee, and his political action committee will submit to the Virginia Conflict of Interest and Ethics Advisory Council a report listing any contribution, gift, or other item with a value greater than \$100 provided by AIR to the Governor, his campaign committee, or his political action committee, respectively, during the period from the date of AIR's application for the COF Grant through the one-year period immediately after the date of this Agreement.

### **SECTION 3. DISBURSEMENT OF COF GRANT.**

a) **Disbursement to the County.** By its signature below, the County requests of VEDP the disbursement of the COF Grant. VEDP has informed the County and AIR that the time period for the disbursement of the COF Grant from the Commonwealth to the County is likely to be 30-45 days. It is anticipated that, upon request as set forth above, VEDP will transfer to the County the COF Grant in the amount of Five Hundred Thousand and 00/100 Dollars (\$500,000.00).

b) **Disbursement to AIR.** The COF Grant proceeds shall be retained by the County and disbursed as follows:

AIR will provide notice and evidence reasonably satisfactory to the County, the IDA, and VEDP that it has (i) made Capital Investments in the total amount of at

least Ten Million and 00/100 Dollars (\$10,000,000.00) (at least Seven Million Five Hundred Thousand and 00/100 Dollars (\$7,500,000.00) in renovation and building upfit and at least Two Million Five Hundred Thousand and 00/100 Dollars (\$2,500,000.00) in furniture, fixtures, and equipment), and (ii) relocated, created and Maintained at least one hundred (100) New Jobs at the Facility. Such evidence will be subject to verification by the County, the IDA, and VEDP. Within thirty (30) days of the verification, the County will disburse all Five Hundred Thousand and 00/100 Dollars (\$500,000.00) of the COF Grant proceeds to the IDA. Within thirty (30) days of its receipt of such COF Grant proceeds, the IDA will disburse such COF Grant proceeds to AIR.

c) **Return of COF Grant Proceeds Not Disbursed.** Any COF Grant proceeds not disbursed by the IDA within ninety (90) days after the Performance Date will be promptly returned by the County to VEDP for redeposit to the Commonwealth's Development Opportunity Fund.

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

#### **SECTION 4. BREAK-EVEN POINT; STATE AND LOCAL INCENTIVES.**

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

b) **State Incentives.** The COF Grant is the only incentive being offered by the Commonwealth to AIR to induce AIR to make a Capital Investment of at least Twelve Million Five Hundred Thousand and 00/100 Dollars (\$12,500,000.00) and to create and Maintain at least three hundred twenty (320) New Jobs by locating, renovating, improving, equipping, operating, and maintaining the Facility, all as of the Performance Date. The proceeds of the COF Grant shall be used for the purposes described in Section 3(d).

c) **Local Matching Funds and Incentives.** As permitted by Virginia Code Section 2.2-115 and required by VEDP's Commonwealth's Development Opportunity Fund Guidelines, and as an additional inducement to AIR, the County has agreed to match the COF Grant by making the following local incentives:

*IDA Grant.* As part of the required local matching funds and incentives, subject to appropriation, the County, through the IDA, will fund an incentive grant (the "IDA Grant") of up to Five Hundred Thousand and 00/100 Dollars (\$500,000.00) pursuant to the terms of the Arlington County Economic Development Incentive Grant Agreement among the County, the IDA, and AIR.

The IDA Grant shall be disbursed in two payments of Two Hundred Fifty Thousand and 00/100 Dollars (\$250,000.00) each. The first payment shall be after the date of second anniversary of the date of this Agreement, but before the date of the third anniversary of the date of this Agreement. The second payment shall be after the date of third anniversary of the date of this Agreement, but before the date of the fourth anniversary of the date of this Agreement.

If, by the Performance Date, the value of the IDA Grant paid or committed to be paid by the County totals less than the Five Hundred Thousand and 00/100 Dollars (\$500,000.00) COF Grant local match requirement, subject to appropriation, the County, through the IDA, will make an additional grant to AIR of the difference at the Performance Date, as long as AIR has met its Targets.

d) **Use of the IDA Grant Proceeds.** The IDA Grant proceeds shall be used to pay for or reimburse the cost of relocating to the Facility, including build-out, start-up, recruiting, and training expenses.

e) **Other Incentives.** This Agreement relates solely to the COF Grant. The qualification for, and payment of the IDA Grant and any other incentives that may be offered, will be governed by separate arrangements between AIR and the entity offering the other incentives.

#### **SECTION 5. REPAYMENT OBLIGATION.**

a) **If Statutory Minimum Eligibility Requirements are Not Met.** Section 2.2-115 of the Virginia Code requires that AIR make a Capital Investment of at least Five Million and 00/100 Dollars (\$5,000,000.00) in the Facility and create and Maintain at least 50 New Jobs at the Facility in order to be eligible for the COF Grant. Failure by AIR to meet either of these statutory minimum eligibility requirements by the Performance Date shall constitute a breach of this Agreement and AIR must repay to the IDA all of the COF Grant proceeds previously disbursed to AIR. In such event, the County will repay to VEDP all of the COF Grant proceeds not previously disbursed to AIR.

b) **Allocation of COF Proceeds.** For purposes of repayment under subsection (c), the COF Grant is to be allocated as Two Hundred Fifty Thousand and 00/100 Dollars (\$250,000.00) or fifty percent (50%) to the Capital Investment Target and Two Hundred Fifty Thousand and 00/100 Dollars (\$250,000.00) or fifty percent (50%) to the New Jobs Target.

c) **If Statutory Minimum Eligibility Requirements are Met.** The provisions of this subsection c) are applicable only if AIR has met the statutory minimum eligibility requirements set forth in subsection a). If AIR has met at least ninety percent (90%) of both of the Targets as of the Performance Date, then and thereafter AIR is no longer obligated to repay any part of this portion of the COF Grant. If AIR has not met at least ninety percent (90%) of either or both of its Targets as of the Performance Date, AIR shall repay to the IDA that part of this portion of the COF Grant that is proportional to the shortfall. For example, if as of the Performance Date, AIR has received all Five Hundred Thousand and 00/100 Dollars (\$500,000.00)

of the COF Grant proceeds, but the Capital Investment is only Ten Million and 00/100 Dollars (\$10,000,000.00) or eighty percent (80%) of the Capital Investment Target, and only two hundred forty (240) New Jobs have been Maintained or seventy-five percent (75%) of the New Jobs Target, AIR shall repay to the IDA twenty percent (20%) of the moneys that it received from the portion of the COF Grant allocated to the Capital Investment Target or Fifty Thousand and 00/100 Dollars (\$50,000.00) and twenty-five percent (25%) of the moneys that it received from the portion of the COF Grant allocated to the New Jobs Target or Sixty-Two Thousand Five Hundred and 00/100 Dollars (\$62,500.00). In such event, the County will repay to VEDP all of the COF Grant proceeds not previously disbursed through the IDA to AIR.

d) **Determination of Inability to Comply.** If the County, the IDA, or VEDP shall reasonably believe in good faith at any time prior to the Performance Date (the “**Determination Date**”) that AIR is unable or unwilling to meet the Targets by and through the Performance Date, and if the County, the IDA, or VEDP shall have promptly notified AIR of such determination, AIR must repay to the IDA the COF Grant proceeds previously disbursed to AIR. Such a determination will be based only on such circumstances as a filing by or on behalf of AIR under Chapter 7 of the U.S. Bankruptcy Code, the total liquidation of AIR, or abandonment of the Facility by AIR, or other similar significant event that demonstrated that AIR will be unable or unwilling to satisfy the Targets for the COF Grant. In such case, the County will repay to VEDP all of the COF Grant proceeds not previously disbursed through the IDA to AIR.

e) **Repayment Dates.** *Such repayment shall be due from AIR to the IDA within ninety (90) days after the Performance Date or the Determination Date, as applicable.* Any moneys repaid by AIR to the IDA hereunder shall be repaid by the IDA to the County. The County shall repay any moneys received from the IDA or any moneys being held for disbursement promptly to VEDP for redeposit into the Commonwealth’s Development Opportunity Fund. The County and IDA shall use its best efforts to recover such funds, including legal action for breach of this Agreement. Neither the County nor the IDA shall have any responsibility for the repayment of any sums due from AIR hereunder unless said sums have been received by the IDA from AIR.

## **SECTION 6. AIR REPORTING.**

a) **Progress Reporting.** AIR shall provide, at AIR’s expense, detailed verification reasonably satisfactory to the County, the IDA, and VEDP of AIR’s progress on the Targets. Such progress reports will be provided annually, starting at May 1, 2019, and covering the period through the prior February 1. Further, AIR shall provide progress reports at such other times as the County, the IDA, or VEDP may reasonably require. Although not required, the report may be in the form attached hereto as Exhibit A.

b) **Capital Investment Documentation.** As applicable, AIR shall be responsible for assembling and distributing the documentation necessary to verify the Capital Investments made on its behalf.

c) **Virginia Corporate Income Tax.** With each progress report, AIR shall report to VEDP the amount paid by AIR in the prior calendar year in Virginia corporate income tax. VEDP represents to AIR 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.

d) **Verification of Capital Investment.** AIR hereby authorizes the County's Department of Real Estate Assessment and Commissioner of Revenue's Business Tax Division to release to VEDP, AIR's real estate tax, business personal property tax, and machinery and tools tax information. Such information shall be marked and considered confidential and proprietary and shall be used by VEDP solely for verifying satisfaction of the Capital Investment Target. If VEDP should require additional documentation or consents from AIR to access such information, AIR shall promptly provide, at AIR's expense, such additional documentation or consents as the County, the IDA, or VEDP may request. In accordance with Virginia Code Section 58.1-3122.3, VEDP is entitled to receive AIR's real estate tax, business personal property tax and machinery and tools tax information from the County.

In addition to the verification data described above, the County, the IDA, and VEDP may request such other documentation or audits as may be required to properly verify the Capital Investment.

e) **Verification of New Jobs and Wages.** If requested by VEDP, AIR shall provide to VEDP copies of AIR's quarterly filings with the Virginia Employment Commission covering the period from December 1, 2017 through the Performance Date.

Since AIR has more than one business location in the Commonwealth, AIR agrees that it will report to the Virginia Employment Commission with respect to its employees at the Facility will be reported at the Facility-level and not at the company-level.

In addition to the verification data described above, the County, the IDA, and VEDP may request such other documentation or audits as may be required to properly verify the creation and Maintenance of New Jobs.

## **SECTION 7. NOTICES.**

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



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

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

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

**To AIR:** American Institutes for Research in the Behavioral Sciences  
1000 Thomas Jefferson Street, NW  
Washington DC 20007  
Attn: Marijo Ahlgrimm, Chief Financial Officer  
Fax: 855-459-6213  
Email: mahlgrimm@air.org

**With a Copy to :** American Institutes for Research in the Behavioral Sciences  
1000 Thomas Jefferson Street, NW  
Washington, DC 20007  
Attn: Case Runolfson, Sr. Dir., Facilities Mgmt  
Fax: 855-459-6213  
Email: crunolfson@air.org

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

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

To VEDP: Virginia Economic Development Partnership Authority  
901 East Cary Street, Suite 900  
Post Office Box 798 (zip: 23218-0798)  
Richmond, Virginia 23219  
Attn: Stephen Moret, President and CEO  
Fax: (804) 545-5611  
Email: moret@yesvirginia.org

With a Copy to: Virginia Economic Development Partnership Authority  
901 East Cary Street, Suite 900  
Richmond, Virginia 23219  
Post Office Box 798 (zip: 23218-0798)  
Attn: Sandra Jones McNinch, General Counsel  
Fax: (804) 545-5611  
Email: smcninch@yesvirginia.org

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

#### **SECTION 8. MISCELLANEOUS.**

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

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

Agreement shall lie in the Circuit Court of the County of Arlington, and such litigation shall be brought only in such court.

c) **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be an original, and all of which together shall be one and the same instrument. A facsimile, .pdf copy or other electronic signature (e.g., docusign) of this Agreement, when signed in compliance with this section, is an enforceable, original agreement for all purposes.

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

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

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

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

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

i) **Force Majeure.** If AIR is delayed or prevented in whole or in part from meeting any Target as a direct result of an event not reasonably within its control (e.g., acts of God, acts of terrorism whether actual or threatened, damage or destruction to a Facility or potential Facility

rendering such Facility either non-operational or aesthetically unsatisfactory in the determination of AIR in its reasonable discretion, or acts of any governmental body), AIR will notify the County and the Parties will discuss such event and situation in good faith to discuss potential modifications to the Targets, timeline, and repayment obligations under Section 5.

**j) Dispute Resolution.** In the event of any dispute, controversy or claim of any kind or nature arising under this Agreement, upon the written request of any Party, each of the Parties will designate a senior executive to meet with the other Parties' designees in good faith and as necessary to attempt to resolve the dispute without formal proceedings. If the negotiated resolution of the dispute requires any Party to take, or cause to be taken or to cease taking, some action, such Party must do so within a reasonable period of time, not to exceed ninety (90) days. No Party may initiate formal proceedings for the resolution of a dispute until the earlier of (a) a good faith mutual conclusion by the executives that amicable resolution through continued negotiation of the matter does not appear likely, or (b) the 90th day after the initial request to negotiate the dispute. After either condition has occurred, a Party may file an action in the jurisdiction and venue stipulated in Section 8(b) of this Agreement, and may pursue any other remedy available at law or in equity. Nothing in this Section 8(j) will, however, prevent or delay a Party from instituting formal proceedings to (i) avoid the expiration of any applicable limitations period or (ii) seek injunctive relief.

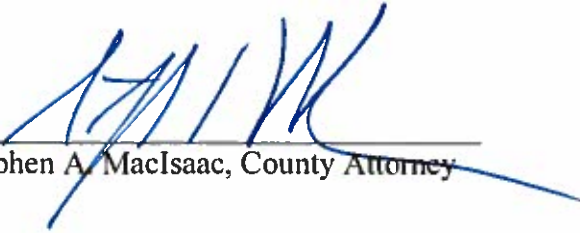
**k) Attorney's Fees.** Attorney's fees shall be paid by the party incurring such fees.

**[Signatures and acknowledgments appear on the following pages]**

IN WITNESS WHEREOF, the County, the IDA, and AIR have each executed, or caused to be duly executed, this Commonwealth's Development Opportunity Fund Grant Performance Agreement under seal in duplicate, in the name and behalf of each of them (acting individually or by their respective officers or appropriate legal representatives, as the case may be, thereunto duly authorized) as of the Effective Date, which the last date this Agreement is signed below.

Approved as to form:

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

  
Stephen A. MacIsaac, County Attorney

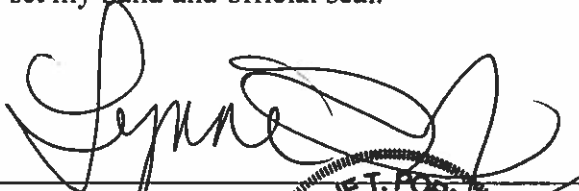
By:   
Mark Schwartz, County Manager

**ACKNOWLEDGMENT**

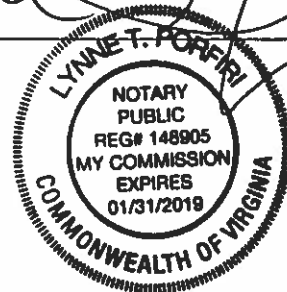
COMMONWEALTH OF VIRGINIA  
COUNTY OF ARLINGTON

On this the 1<sup>st</sup> day of January, 2018, before me, personally appeared Mark Schwartz, who acknowledged himself to be the County Manager of Arlington County in the above instrument, and that he, as County Manager, being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of the County Board of Arlington County, Virginia, a body corporate and politic of the Commonwealth of Virginia by himself as County Manager of Arlington County, Virginia.

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

  
Notary Public

My Commission Expires: 1/31/19



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

By: *E.L. Wildhack*  
Elizabeth Wildhack, Chair

**ACKNOWLEDGMENT**

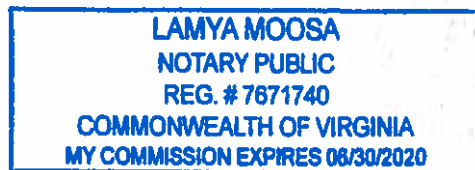
COMMONWEALTH OF VIRGINIA  
COUNTY OF ARLINGTON

On this the 6 day of February, 2018, before me, personally appeared Elizabeth Wildhack who acknowledged herself to be the Chair of the Industrial Development Authority of Arlington County in the above instrument, and that she, as Chair, being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of the Industrial Development Authority of Arlington County, a political subdivision of the Commonwealth of Virginia by herself as Chair of the Industrial Development Authority of Arlington County.

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

*Lamya Moosa*  
Notary Public

My Commission Expires: 06/30/2020



**AMERICAN INSTITUTES FOR  
RESEARCH IN THE BEHAVIORAL  
SCIENCES**, a Pennsylvania corporation

By: Marijo Ahlgrim  
Marijo Ahlgrim, CFO

**ACKNOWLEDGMENT**

STATE OF Washington  
COUNTY OF District of Columbia

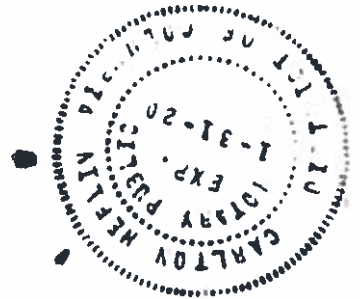
On this the 7<sup>th</sup> day of February, 2018, before me, personally appeared Marijo Ahlgrim, who acknowledged herself to be the Chief Financial Officer of the American Institutes for Research in the Behavioral Sciences, in the above instrument, and that she, as Chief Financial Officer, being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of the American Institutes for Research in the Behavioral Sciences., by herself as Chief Financial Officer of the American Institutes for Research in the Behavioral Sciences.

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

Carlton Heflin

Notary Public

My Commission Expires: \_\_\_\_\_  
CARLTON HEFLIN  
NOTARY PUBLIC DISTRICT OF COLUMBIA  
My Commission Expires January 31, 2020



## ANNUAL PROGRESS REPORT

## COMMONWEALTH'S DEVELOPMENT OPPORTUNITY FUND

As required by Section 6 of the Commonwealth's Development Opportunity Fund (COF) Performance Agreement to which this Exhibit A is attached, AIR is required to report annually towards its progress in meeting the Targets for making Capital Investments and creating and Maintaining New Jobs. Please return this form to:

Kim Ellett  
Incentives Coordinator  
Virginia Economic Development Partnership  
[kelllett@yesvirginia.org](mailto:kelllett@yesvirginia.org)

## PROJECT SUMMARY:

Project	American Institutes for Research in the Behavioral Sciences
Location	Arlington County, Virginia
Amount of COF Grant	\$500,000
Performance Reporting Period	Through May 1, 20
Performance Date	February 1, 2021

## PROJECT PERFORMANCE:

Performance Measurement	Target	As of February 1, 20	% Complete
New Jobs <sup>1</sup>	320		
Average Annual Wage	\$90,000		
Capital Investment (provide breakdown below) <sup>2</sup>	\$12,500,000		
Virginia Corporate Income Tax Paid in Prior Calendar Year <sup>3</sup>	\$ _____		

*\*Please attached detailed documentation on the capital investment breakdown*

<sup>1</sup> Data will be verified using Virginia Employment Commission records.

<sup>2</sup> Data will be verified with locality records.

<sup>3</sup> This confidential information is protected from disclosure pursuant to § 2.2-3705.6 of the Virginia Freedom of Information Act.



Capital Investment Breakdown:	Amount
Renovation or Build-Out	\$
Furniture, Fixtures and Equipment	\$
Other	\$

**COMMENTS:**

(Discuss project status, including current level of New Jobs and Capital Investment, progress on Targets, changes or likely changes in project’s nature that may impact the achievement of Targets, and other information relevant to project performance. If the project is not on track to meet the Targets, please provide an explanation.)

**AMERICAN INSTITUTES FOR RESEARCH IN THE  
BEHAVIORAL SCIENCES**

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_