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

This **COMMONWEALTH'S DEVELOPMENT OPPORTUNITY FUND GRANT PERFORMANCE AGREEMENT** (this "Agreement") is made and entered this 1st day of November 2015, by and among the **COUNTY BOARD OF ARLINGTON COUNTY, VIRGINIA** (the "County"), a body corporate and politic of the Commonwealth of Virginia (the "Commonwealth"), **LIDL US, LLC**, a Delaware limited liability company authorized to transact business in the Commonwealth and its affiliates (collectively, "Lidl"), and the **INDUSTRIAL DEVELOPMENT AUTHORITY OF ARLINGTON COUNTY**, a political subdivision of the Commonwealth (the "IDA"). Individually, the County, Lidl, and the IDA may each be referred to hereinafter as the "Party," or collectively as the "Parties."

RECITALS:

WHEREAS, on March 27, 2015, the County submitted a letter to the Virginia Economic Development Partnership Authority ("VEDP") in order to apply for certain grant funds from the Commonwealth's Development Opportunity Fund (the "Fund") for the purpose of inducing Lidl to acquire, improve, and equip an existing building located at 3500 South Clark Street in Arlington County, Virginia to be operated as its U. S. headquarters (the "Lidl Facility"); and

WHEREAS, on April 1, 2015, pursuant to the VEDP application procedures, Lidl 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 U.S. headquarters outside of Virginia; and

WHEREAS, on April 16, 2015, the Office of the Governor of the Commonwealth of Virginia awarded a Commonwealth's Development Opportunity Fund grant in the amount of Four Million and 00/100 Dollars (\$4,000,000.00) (the "COF Grant") to the County for the purpose of inducing Lidl to acquire, improve, equip, operate, and maintain the Lidl Facility in Arlington County, thereby making a significant Capital Investment, as hereinafter defined, and creating and Maintaining, as hereinafter defined, a significant number of 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 hereby agrees to disburse the COF Grant to the IDA, and the IDA hereby agrees to accept and disburse the COF Grant to Lidl, pursuant to the terms of this Agreement; and

WHEREAS, Lidl has agreed to accept the COF Grant from the IDA as an incentive (A) to make or have made on its behalf a capital expenditure by the Performance Date of at least Seventy-Seven Million and 00/100 Dollars (\$77,000,000.00), of which approximately Five Million and 00/100 Dollars (\$5,000,000) will be invested in equipment and personal property, approximately Fifty-Six Million Six Hundred Thousand and 00/100 Dollars (\$56,600,000) will be invested in the purchase of the Lidl Facility, and approximately Fifteen Million Four Hundred Thousand and 00/100 Dollars (\$15,400,000) will be invested in the up-fit of the Lidl Facility, and (B) to create

and Maintain by and through the Performance Date a minimum of five hundred (500) New Jobs, pursuant and subject to the terms and conditions of this Agreement; and

WHEREAS, the County, the IDA, and Lidl 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 Lidl regarding Capital Investment and New Job creation and Maintenance, and the repayment by Lidl 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:

“Base Assessment Value” means the assessed value of the Lidl Facility for calendar year 2015, prior to the approximately \$15.4 million Capital Investment “up-fit”, which the Arlington County Department of Real Estate Assessments has determined to be Twenty Eight Million Nine Hundred Fifty Five Thousand Nine Hundred and 00/100 (\$28,955,900.00).

“Capital Investment” means a capital expenditure on or after February 1, 2015, by or on behalf of Lidl in taxable real property, taxable tangible personal property, or both, at the Lidl Facility.

“Capital Investment,” as referred to in this Agreement, is the expected capital expenditure of Seventy-Seven Million and 00/100 Dollars (\$77,000,000.00), which reflects approximately Five Million and 00/100 Dollars (\$5,000,000) for equipment and personal property, approximately Fifty-Six Million Six Hundred Thousand and 00/100 Dollars (\$56,600,000) for the purchase of the Lidl Facility, and approximately Fifteen Million Four Hundred Thousand and 00/100 Dollars (\$15,400,000) for the up-fit of the Lidl Facility.

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

“Maintain” means that the New Jobs created will continue without interruption from the date of creation through the Performance Date. Positions for the New Jobs will be treated as Maintained during periods in which such positions are not filled due to (i) temporary reductions in Lidl’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 Lidl Facility for which the standard fringe benefits are provided by Lidl for the employee, and for which Lidl pays an average annual wage of at least One Hundred Twenty Eight Thousand and 00/100 Dollars (\$128,000.00) for all New Jobs as of the Performance Date. 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 Lidl’s operations, which “normal year” must consist of at least 48 weeks, or (ii) 1,680 hours per year. Except as provided below, seasonal or temporary positions, positions created when a job function is shifted from an existing location in the Commonwealth, and positions with construction contractors, vendors, suppliers and similar multiplier or spin-off jobs shall not qualify as New Jobs. The New Jobs include the full-time employees of the Company in the United States, whose jobs were created prior to the date of this Agreement and who are expected to relocate to the Facility from another location in the Commonwealth.

“Performance Date” means June 30, 2020. The Performance Date may not be extended beyond June 30, 2020.

“Revised Assessment Value” means the assessed value of the Lidl Facility upon completion of the approximately \$15.4 million Capital Investment “up-fit”, as determined by the Arlington County Department of Real Estate Assessments.

“Targets” means Lidl’s obligations to make or have made on its behalf Capital Investment at the Lidl Facility of at least Seventy-Seven Million and 00/100 Dollars (\$77,000,000.00) (the **“Capital Investment Target”**) and to create and Maintain at least five hundred (500) New Jobs at the Lidl 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) Lidl covenants and agrees to acquire, improve, equip, operate, and maintain the Lidl Facility in Arlington County, make or have made on its behalf a Capital Investment of at least Seventy-Seven Million and 00/100 Dollars (\$77,000,000.00), and create and Maintain at least five hundred (500) New Jobs at the Lidl Facility, all as of the Performance Date.

b) Lidl covenants and agrees to use its best efforts to ensure that at least thirty percent (30%) of the New Jobs are offered to “Residents” of the Commonwealth, as defined in

Virginia Code Section 58.1-302. In pertinent part, that definition includes natural persons domiciled in Virginia or natural persons who, for an aggregate of more than 183 days of the year, maintained a place of abode within the Commonwealth, whether domiciled in the Commonwealth or not.

c) Lidl covenants and agrees that the average annual wage of the New Jobs will be at least One Hundred Twenty Eight Thousand and 00/100 Dollars (\$128,000.00) by the Performance Date, which is more than the prevailing average annual wage in the County of Eighty One Thousand One Hundred Ninety Nine and 00/100 Dollars (\$81,199.00).

d) 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 3.6% as compared to the 2013 statewide unemployment rate of 5.5%. The County is not a high-poverty locality, with a poverty rate for 2013, which is the last year for which such data is available, of 8.5% as compared to the 2013 statewide poverty rate of 11.7%.

SECTION 3. DISBURSEMENT OF COF GRANT.

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

b) It is anticipated that, upon request as set forth above, VEDP will transfer to the County the COF Grant in the amount of Four Million and 00/100 Dollars (\$4,000,000.00). Within 30 days of the County's receipt of the COF Grant proceeds, the County will disburse the COF Grant proceeds to the IDA. Within 30 days of its receipt of the COF Grant proceeds, the IDA will disburse the COF Grant proceeds to Lidl as an inducement to Lidl to achieve the Targets at the Lidl Facility.

c) Lidl shall use the COF Grant proceeds for build-out of the Lidl Facility, employee training, or any other activities as permitted by Section 2.2-115(D) of the Virginia Code.

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

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

b) **State Incentives.** In addition to the COF Grant, in order to induce Lidl to make a Capital Investment of at least Seventy-Seven Million and 00/100 Dollars (\$77,000,000.00), and to create and Maintain a minimum of five hundred (500) New Jobs by acquiring, improving, equipping, operating, and maintaining the Lidl Facility in Arlington County as of the Performance

Date, the parties mutually understand the Commonwealth has stated its intention to provide the following additional incentives to Lidl:

(i) an estimated Five Hundred Thousand and 00/100 Dollars (\$500,000.00) from the Virginia Jobs Investment Program, which shall be used by Lidl to pay or reimburse itself for recruitment and training costs; and

(ii) an estimated Two Million and 00/100 Dollars (\$2,000,000.00) Virginia Economic Development Incentive Grant, the proceeds of which may be used by Lidl for any lawful purpose.

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 Lidl, the County has agreed to match the COF Grant by making available the following local incentives:

(i) **Access to ConnectArlington Dark Fiber Network.** Upon Lidl's execution of the County's standard "Dark Fiber License Agreement", as part of the required local matching funds, subject to appropriation, the County, through the IDA, will reimburse the construction costs incurred by Lidl, up to a maximum of Thirty Two Thousand Two Hundred and 00/100 Dollars (\$32,200.00), to connect the Lidl Facility to the ConnectArlington "dark fiber" network ("**Fiber Access**"). In the event the County fails to appropriate funds sufficient to cover the Fiber Access incentive pursuant to this Agreement, then the County will make best efforts to fulfill its commitments using funds from other legally available sources. The County Manager will take all appropriate steps, and the IDA shall cooperate with the County Manager, as necessary, to seek County appropriations required to fund the Fiber Access incentive.

(ii) **BPOL Reduction Incentive Grant.**

A. In addition to the Fiber Access local incentive, as part of the required local matching funds, subject to appropriation, the County, through the IDA, will fund an annual incentive grant which will effectively reduce Lidl's business, professional and occupational license tax payments to Arlington County for up to ten (10) calendar tax years (the "**BPOL Reduction Incentive Grant**").

B. The BPOL Reduction Incentive Grant, which will be disbursed through the IDA, will have value to Lidl through the Performance Date of an amount determined pursuant to this Agreement. For purposes of determining any Local Catch Up Grant (as defined below) pursuant to subsection e) below, Lidl and the County will calculate the actual amount of BPOL Reduction Incentive Grants disbursed to Lidl through the Performance Date. In the event the County fails to appropriate funds sufficient to cover the annual BPOL Reduction Incentive Grants due to Lidl pursuant to this Agreement, then the County will make best efforts to fulfill its commitments using funds from other legally available sources. The County Manager will take all appropriate steps, and the IDA shall cooperate with the County Manager, as necessary, to seek County appropriations required to fund the annual BPOL Reduction Incentive Grants.

(iii) Commercial Rehabilitation Incentive Grant.

A. In addition to the Fiber Access local incentive and the BPOL Reduction Incentive Grant, as part of the required local matching funds, subject to appropriation, the County, through the IDA, will fund an annual incentive grant, for up to ten (10) calendar tax years, effectively reducing all or a portion of the increase in Lidl's Arlington County real estate taxes resulting from the increase, if any, in the assessed value of the Lidl Facility, which is determined by the Arlington County Department of Real Estate Assessments to be directly attributable to the approximately \$15.4 million "up fit" of the Lidl Facility as part of the Capital Investment (the "**Commercial Rehabilitation Incentive Grant**" and together with the BPOL Reduction Incentive Grant, the "**Arlington County Incentive Grants**").

B. The Commercial Rehabilitation Incentive Grant will have an estimated value to Lidl through the Performance Date of approximately One Million Four Hundred Fifty Thousand and 00/100 Dollars (\$1,450,000.00). The actual amount of the Commercial Rehabilitation Incentive Grant will be determined pursuant to subsection d) (ii) below. In the event the County fails to appropriate funds sufficient to cover the Commercial Rehabilitation Incentive Grants due to Lidl pursuant to this Agreement, then the County will make best efforts to fulfill its commitments using funds from other legally available sources. The County Manager will take all appropriate steps, and the IDA shall cooperate with the County Manager, as necessary, to seek County appropriations required to fund the annual grants.

(iv) Local Infrastructure Match. In addition to the Fiber Access incentive and the Arlington County Incentive Grants, the County will, as part of its Crystal City streets program infrastructure project, convert Crystal Drive between US 1 and 27th Street South to 26th Street South to two directions, and rebuild the intersection Crystal Drive and US 1, this section includes the intersection of 27th Street South and S. Clark Street, which is adjacent to the National Gateway building (the "**Infrastructure Match**"). The project will benefit the Lidl employees that commute to the area and improve the work environment. The Infrastructure Match will have an estimated value to Lidl through the Performance Date of approximately Three Million Two Hundred Fifty Thousand and 00/100 Dollars (\$3,250,000.00).

d) Disbursement of the Arlington County Incentive Grants.

(i) BPOL Reduction Incentive Grant.

A. Beginning April 30, 2017, the IDA, subject to the conditions below, will disburse the initial BPOL Reduction Incentive Grant to Lidl in order to effectively reduce Lidl's business, professional and occupational license taxes for the preceding calendar year by fifty percent (50%). Thereafter, no later than April 30th of each subsequent year until April 30, 2021, the IDA, subject to the conditions below, will disburse an annual BPOL Reduction Incentive Grant to Lidl in order to effectively reduce Lidl's business, professional and occupational license taxes for the preceding calendar year by fifty percent (50%).

B. Beginning April 30, 2022, and continuing on April 30th of each subsequent year until April 30, 2026, the IDA, subject to the conditions below, will disburse

an annual BPOL Reduction Incentive Grant to Lidl in order to effectively reduce Lidl’s business, professional and occupational license taxes for the preceding calendar year based on the number of permanent full-time employees at the Lidl Facility with an average annual wage of at least One Hundred Twenty Eight Thousand and 00/100 Dollars (\$128,000.00) and who receive standard fringe benefits offered by Lidl. The amount of the BPOL Reduction Incentive Grant will be calculated as follows:

# of qualified full-time employees:	Amount of the BPOL Reduction Incentive Grant:
Between one (1) and five hundred (500) employees	Up to fifty percent (50%) of the actual business, professional and occupational license tax payment made by Lidl to Arlington County for the preceding calendar year, reduced, on a pro rata basis, for the actual number of qualified full-time employees (e.g., if there are 400 actual qualified full-time employees, the BPOL Reduction Grant will be 40% (50% x 400/500)).
Between five hundred one (501) and one thousand (1000) employees	Sixty percent (60%) of the actual business, professional and occupational license tax payment made by Lidl to Arlington County for the preceding calendar year
More than one thousand (1,000) employees	Seventy percent (70%) of the actual business, professional and occupational license tax payment made by Lidl to Arlington County for the preceding calendar year

(ii) Commercial Rehabilitation Incentive Grant.

A. Upon completion of the approximately \$15.4 million Capital Investment “up fit” of the Lidl Facility, beginning April 30th of the following calendar year, and continuing April 30th of each subsequent year until April 30, 2026, the IDA, subject to the conditions below, will disburse an annual Commercial Rehabilitation Incentive Grant to Lidl in order to effectively reduce all or a portion of the increase in Lidl’s Arlington County real estate taxes resulting from the increase, if any, in the assessed value of the Lidl Facility, which is determined by the Arlington County Department of Real Estate Assessments to be directly attributable to the approximately \$15.4 million “up fit” of the Lidl Facility as part of the Capital Investment.

B. The amount of the annual Commercial Rehabilitation Incentive Grant will be determined by calculating the difference between (I) the amount of the real estate taxes on the Lidl Facility that would have been due to Arlington County based solely on the Revised Assessment Value and (II) the amount of the real estate taxes that would have been due to Arlington County based solely on the Base Assessment Value (the “**Base Assessment Real Estate Taxes**”). Such difference shall constitute the annual Commercial Rehabilitation Incentive Grant, provided, however, that the amount of the annual Commercial Rehabilitation Incentive Grant shall not exceed one hundred percent (100%) of the Base Assessment Real Estate Taxes.

(iii) Disbursement Conditions. Notwithstanding any other provision of this Agreement to the contrary, the obligations of the IDA to disburse the Arlington County Incentive Grants to Lidl hereunder is subject to the fulfillment of the following conditions:

A. The County must have appropriated and transferred moneys to the IDA that are sufficient to fund the disbursement of the annual BPOL Reduction Incentive Grant and Commercial Rehabilitation Incentive Grant. The IDA will have no responsibility to transfer funds to Lidl beyond such funds as are transferred by the County to the IDA.

B. The Arlington County Department of Management and Finance must have calculated the Arlington County Incentive Grants using the current applicable tax rates adopted by the County.

C. Lidl must have paid all business, professional and occupational license taxes and all real estate taxes assessed to and due by Lidl to Arlington County for the previous calendar year.

D. Beginning September 30, 2016, and continuing thereafter each September 30th until September 30, 2019, Lidl must have provided the County Manager, or his designee, with a detailed verification of Lidl's progress on meeting the Targets.

E. Beginning December 31, 2020, and continuing thereafter each December 31st until December 31, 2025, Lidl must have provided the County Manager, or his designee, with a notarized affidavit declaring the number of permanent full-time employees at the Lidl Facility with an average annual wage of at least One Hundred Twenty Eight Thousand and 00/100 Dollars (\$128,000.00) and that receives standard fringe benefits offered by Lidl.

F. The Arlington County Department of Real Estate Assessments must have (I) determined the Revised Assessment Value of the Lidl Facility following completion of the Capital Investment "up fit" and (II) confirmed that the assessed value of the Lidl Facility from the Base Assessment Value attributable to the approximately \$15.4 million Capital Investment "up fit" of the Lidl Facility is not less than 10% of the Base Assessment Value.

(iv) Distribution of the Arlington County Incentive Grants by the IDA to Lidl shall not be construed to provide Lidl with an exemption, deferral, offset or other relief from any Arlington County tax, levy, or assessment which is now or which may hereafter be authorized by law.

e) **Local Catch-Up.** If, by the Performance Date, the total value of the COF Grant local match requirement paid or committed, consisting of the Fiber Access, the Arlington County Incentive Grants, and the Infrastructure Match, is less than the Four Million and 00/100 Dollar (\$4,000,000.00) COF Grant local match requirement, subject to County appropriation and transfer to the IDA, the County, through the IDA, will fund an additional grant ("**Local Catch-Up Grant**"), for the benefit of Lidl, of the difference at the Performance Date, so long as Lidl has met its Targets.

SECTION 5. REPAYMENT OBLIGATION.

a) **If Statutory Minimum Eligibility Requirements are Not Met.** Section 2.2-115 of the Virginia Code requires that Lidl make a Capital Investment of at least \$5,000,000

in the Lidl Facility and create and Maintain at least 50 New Jobs at the Lidl Facility in order to be eligible for the COF Grant. Failure by Lidl to meet either of these statutory minimum eligibility requirements by the Performance Date shall constitute a breach of this Agreement and the entire COF Grant must be repaid by Lidl to the IDA.

b) If Statutory Minimum Eligibility Requirements are Met. The provisions of this subsection b) are applicable only if Lidl has met the statutory minimum eligibility requirements set forth in subsection a). For purposes of repayment, the COF Grant is to be allocated as Two Million and 00/100 Dollars (\$2,000,000.00) or fifty percent (50%) to Lidl's Capital Investment Target and Two Million and 00/100 Dollars (\$2,000,000.00) or fifty percent (50%) to Lidl's New Jobs Target. If Lidl has met at least ninety percent (90%) of both of the Targets at the Performance Date, then and thereafter Lidl is no longer obligated to repay any portion the COF Grant. If Lidl has not met at least ninety percent (90%) of either or both of its Targets at the Performance Date, Lidl shall repay to the IDA that part of the COF 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 Fifty-Seven Million Seven Hundred Fifty Thousand and 00/100 Dollars (\$57,750,000.00) and only Three Hundred Seventy-Five (375) New Jobs have been created and Maintained, Lidl shall repay to the IDA twenty-five percent (25%) of the moneys allocated to the Capital Investment Target or Five Hundred Thousand and 00/100 Dollars (\$500,000.00) and twenty-five percent (25%) of the moneys allocated to the New Jobs Target or Five Hundred Thousand and 00/100 Dollars (\$500,000.00).

c) Determination of Inability to Comply. If the County or VEDP shall determine at any time prior to the Performance Date (the "**Determination Date**") that Lidl 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 Lidl of such determination, Lidl must repay the entire COF Grant and any funds disbursed by the IDA for the Fiber Access incentive and the Arlington County Incentive Grants, to the IDA. 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 Lidl Facility by the Company, or other similar significant event that demonstrates that the Company will be unable or is unwilling to satisfy the Targets for the COF Grant.

d) Repayment Dates. *Such repayment shall be due from Lidl to the IDA within ninety days after the Performance Date or the Determination Date, as applicable.* Any COF Grant moneys repaid by Lidl to the IDA hereunder shall be repaid by the IDA to the County and shall be repaid by the County promptly to VEDP for redeposit into the COF Grant Fund. Any Arlington County Incentive Grant and Fiber Access incentive moneys repaid by Lidl to the IDA hereunder shall be repaid by the IDA to the County. The County 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 hereunder unless said sums have been received by the IDA from Lidl.

SECTION 6. COMPANY REPORTING.

a) Lidl shall provide, at Lidl’s expense, detailed verification reasonably satisfactory to the County, the IDA, and VEDP of Lidl’s progress on the Targets. Such progress reports will be provided annually, starting at September 30, 2016, and covering the period through the prior June 30. Further, Lidl shall provide progress reports at such other times as the County, the IDA or VEDP may reasonably require.

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

c) With each such progress report, Lidl shall report to VEDP the amount paid by Lidl in the prior calendar year in Virginia corporate income tax. VEDP has represented to Lidl 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) Lidl hereby authorizes the County’s Department of Real Estate Assessment and Commissioner of Revenue’s Business Tax Division to release to VEDP, Arlington Economic Development (“AED”) and the Arlington County Department of Management and Finance (“DMF”) Lidl’s real estate tax, business personal property tax, gross receipts related to Business, Professional, and Occupational License tax information 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 and by AED and DMF to calculate the Arlington County Incentive Grant amounts.

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, Acting 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: Robert E. Dawson, Assistant County Attorney
Fax: (703) 228-7106
Email: RDawson@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 Lidl: Lidl US, LLC
3500 South Clark Street
Arlington, VA 22202
Attn: Robert Lester
Email: Robert.Lester@lidl.us

With a Copy to: McGuireWoods Consulting, LLC
800 East Canal Street
Richmond, VA 23219
Attn: Christopher D. Lloyd
Fax: 804-698-2270
Email: clloyd@mwellc.com

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

To VEDP: Virginia Development Economic Partnership
901 East Byrd Street, 19th Floor
Post Office Box 798 (zip: 23218-0798)
Richmond, Virginia 23219
Attn: Martin J. Briley, President and CEO
Fax: (804) 545-5611
Email: mbriley@yesvirginia.org

With a Copy to: Virginia Development Economic Partnership
901 East Byrd Street, 19th Floor
Richmond, Virginia 23219
Post Office Box 798 (zip: 23218-0798)

Attn: Sandra Jones McNinch, General Counsel
Fax: (804) 545-5611
Email: smcninch@yesvirginia.org

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

SECTION 8. MISCELLANEOUS.

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

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

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

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

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

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

g) **No Third-Party Beneficiaries.** No provision of this Agreement shall be construed to confer any rights upon any person or entity who is not a Party hereto, whether a third-party beneficiary or otherwise.

h) **Determinations; Disbursements.**

(i) Any determination by the County Manager of fulfillment or non-fulfillment of the terms of this Agreement by Lidl shall be binding on the IDA. The IDA may request such determinations by the County Manager as necessary.

(ii) The IDA shall have no responsibility to disburse any funds to Lidl beyond the amount the IDA has received from or on behalf of the County for the purpose.


i) **No Waiver of Sovereign Immunity by County or IDA.** Notwithstanding any other provisions of this Agreement to the contrary, nothing in this Agreement nor any action taken by the County or the IDA 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 or the IDA's respective elected and appointed officials, officers and employees.

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

Approved as to form:


Stephen A. MacIsaac, County Attorney

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

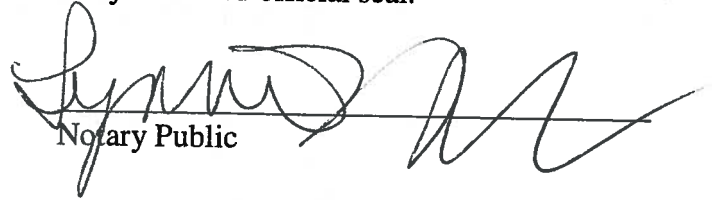
By: 
Mark Schwartz, Acting County Manager

ACKNOWLEDGMENT

COMMONWEALTH OF VIRGINIA
COUNTY OF ARLINGTON

On this the 25th day of November, 2015, before me, personally appeared Mark Schwartz, who acknowledged himself to be the Acting County Manager of Arlington County in the above instrument, and that he, as Acting 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 Acting County Manager of Arlington County, Virginia

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


Notary Public

My Commission Expires: 11/31/19



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

By: *Gustavo A. Vega*
Name: GUSTAVO A. VEGA
Title: Chairman

ACKNOWLEDGMENT

COMMONWEALTH OF VIRGINIA
COUNTY OF ARLINGTON

On this the 13th day of November, 2015, before me, personally appeared Gustavo Vega, who acknowledged himself to be the Chairman of the Industrial Development Authority of Arlington County, Virginia in the above instrument, and that he, as Chairman, being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of the Industrial Development Authority of Arlington County, Virginia, a political subdivision of the Commonwealth of Virginia by himself as Chairman of the Industrial Development Authority of Arlington County, Virginia.

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

Lusonja Jackson
NOTARY PUBLIC
Registration # 7336413
COMMONWEALTH OF VIRGINIA
March 31, 2018

Lusonja Jackson
Notary Public

My Commission Expires: 03/31/2018

LIDL US LLC, a Delaware limited liability company

By: [Signature]
Name: Gareth Reed
Title: EU

ACKNOWLEDGMENT

STATE OF Virginia
COUNTY OF Arlington

On this the 13 day of April, 2016, before me, personally appeared Gareth Reed, who acknowledged himself to be the EXP Central Services of Lidl US, LLC in the above instrument, and that he, as officer, being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of Lidl US, LLC, a Delaware limited liability company by himself as officer of Lidl US, LLC.

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

[Signature] Jessica Miller
Notary Public

My Commission Expires: 2/28/19



[Signature]

LIDL US LLC, a Delaware limited liability company

By: [Signature]
Name: Brendan Proctor
Title: President & CEO

ACKNOWLEDGMENT

STATE OF Virginia
COUNTY OF Arlington

On this the 13 day of April, 2016, before me, personally appeared Brendan Proctor, who acknowledged himself to be the CEO/President of Lidl US, LLC in the above instrument, and that he, as officer, being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of Lidl US, LLC, a Delaware limited liability company by himself as officer of Lidl US, LLC.

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

[Signature] Jessica Miller
Notary Public

My Commission Expires: 2/28/19



[Signature]