
**ARLINGTON COUNTY
ECONOMIC DEVELOPMENT INCENTIVE
GRANT AGREEMENT
(PHONE2ACTION, INC.)**

This **ARLINGTON COUNTY ECONOMIC DEVELOPMENT INCENTIVE GRANT AGREEMENT** (“**Agreement**”) is made, on the date of full execution (the “**Effective Date**”), by and among the **COUNTY BOARD OF ARLINGTON COUNTY, VIRGINIA** (“**County Board**”), a body corporate and politic of the Commonwealth of Virginia; the **INDUSTRIAL DEVELOPMENT AUTHORITY OF ARLINGTON COUNTY** (“**IDA**”), a political subdivision of the Commonwealth of Virginia; and **PHONE2ACTION, INC.** (“**Phone2Action**”), a Delaware Corporation authorized to transact business in the Commonwealth of Virginia, collectively the “**Parties.**”

RECITALS

WHEREAS, Phone2Action desires to expand, equip and maintain its operations in Arlington County, Virginia, and will during the course of the Agreement lease a total of at least thirteen thousand four hundred (13,400) square feet of office space at 1500 Wilson Boulevard (“**Phone2Action Arlington Facility**”); and

WHEREAS, in order to incentivize and induce Phone2Action to (i) lease the Phone2Action Arlington Facility through at least the Performance Date and (ii) create and Maintain at least one hundred seventy (170) New Jobs by the Performance Date, subject to the terms and conditions of this Agreement, the County Board has agreed, subject to appropriation and pursuant to the Industrial Development and Revenue Bond Act of the Code of Virginia of 1950, as amended, to allocate and provide up to fifty thousand dollars (\$50,000.00) in economic development incentive general funds (“**EDI Grant**”) to the IDA for the benefit of Phone2Action; and

WHEREAS, Phone2Action has agreed to accept the EDI Grant from the IDA as an incentive to lease the Phone2Action Arlington Facility through at least the Performance Date and to create and Maintain at least one hundred seventy (170) New Jobs by the Performance Date, subject to the terms and conditions of this Agreement; and

WHEREAS, the County Board, the IDA and Phone2Action desire to set forth their understanding and agreement as to the conditions, payout and use of the EDI Grant proceeds and the obligations of each of the Parties.

NOW, THEREFORE, in consideration of the foregoing and the covenants and agreements of the Parties, 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, the Parties covenant and agree as follows:

1. **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 entered into this Agreement. Accordingly, the recitals are fully incorporated into this Agreement by this reference as if fully set forth herein.

2. **Definitions.** In addition to any other capitalized term for which a meaning is expressly defined in this Agreement, the following terms shall be defined as follows:

(a) **“Baseline”** means fifty (50) full-time jobs at the Phone2Action Arlington Facility, upon which the value of the EDI Grant is based.

(b) **“Maintain”** means, in relation to a specific New Job, that the New Job will continue without interruption from the date of creation through the date on which the number of such New Jobs is being measured. A New Job will be treated as Maintained during periods in which such positions are not filled due to strikes or other temporary work stoppages.

(c) **“New Job”** means a new permanent full-time job of indefinite duration at the Phone2Action Arlington Facility that is counted by Phone2Action for the purpose of obtaining the EDI Grant from the IDA and that will increase the number of full-time jobs at the Phone2Action Arlington Facility above the Baseline. 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 Phone2Action’s operations, which must consist of at least 48 weeks or (ii) 1,680 hours of an employee’s time per year. Phone2Action must provide each employee with a New Job with competitive compensation. Seasonal or temporary positions and positions with construction contractors, vendors, suppliers and similar multiplier or spin-off jobs do not qualify as New Jobs.

(d) **“Performance Date”** means September 30, 2020.

3. **Phone2Action Covenants and Obligations.**

(a) Phone2Action covenants and agrees to lease at least thirteen thousand four hundred (13,400) square feet of office space at the Phone2Action Arlington Facility and to equip, operate and maintain the Facility until at least the Performance Date (**“Facility Lease Target”**).

(b) Phone2Action covenants and agrees to create and Maintain at least one hundred seventy (170) New Jobs at the Phone2Action Arlington Facility by the Performance Date (**“New Jobs Target”**).

(c) Phone2Action covenants and agrees to use the EDI Grant proceeds to pay for or reimburse the cost of relocating to the Phone2Action Arlington Facility, including build-out, start-up, recruiting and training expenses.

(d) Phone2Action covenants and agrees to use its reasonable efforts to assist the Arlington County staff and the IDA from time-to-time in promoting Arlington County’s attributes as a place to do business.

(e) Phone2Action covenants and agrees to remain current on all applicable property, business, professional and occupational license taxes assessed to Phone2Action by Arlington County.

(f) Phone2Action covenants and agrees to provide the County Manager or his designee, on or before January 15, 2018; January 15, 2019; January 15, 2020; and October 15, 2020 each a “**Grant Reporting Deadline**”), with a notarized affidavit, a *sample* of which is attached as **Exhibit A**, declaring, among other things:

- The cumulative number of New Jobs created and Maintained by Phone2Action as of the corresponding EDI Grant Reporting Deadline; and
- The cumulative amount of square footage leased and occupied by Phone2Action at the Phone2Action Arlington Facility as of the corresponding EDI Grant Reporting Deadline.

4. **IDA Covenants and Obligations.** Upon receipt of the requisite monies from the County Board to fund the EDI Grant payment to Phone2Action, the IDA shall, subject to the Disbursement Prerequisites in Section 5, disburse the EDI Grant payment to Phone2Action pursuant to Section 6. Should Phone2Action not fulfill the Disbursement Prerequisites within one hundred eighty (180) days of the Effective Date, the IDA will return the monies to the County.

5. **Disbursement Prerequisites.** The obligation of the IDA to disburse the EDI Grant to Phone2Action is subject to and conditioned on Phone2Action’s fulfillment of the following preconditions (“**Disbursement Prerequisites**”) within one hundred eighty (180) days of the Effective Date.

(a) **Business License.** Phone2Action must provide to the County Manager or his designee a copy of Phone2Action’s Arlington County Business License.

(b) **Certificate of Occupancy.** Phone2Action must provide to the County Manager or his designee a copy of Phone2Action’s certificate of occupancy at the Phone2Action Arlington Facility.

(c) **Signed Lease.** Phone2Action must provide to the County Manager or his designee a copy of Phone2Action’s lease for the Phone2Action Arlington Facility. The lease must be for at least thirteen thousand four hundred (13,400) square feet of office space and run until at least the Performance Date.

(d) Release of Tax Information. Phone2Action must sign and provide to the County Manager or his designee the Authorization to Release Confidential Tax Information (attached as **Exhibit B**) to authorize the Arlington County Office of Commissioner of Revenue to release Phone2Action's business license tax (BPOL) and business tangible personal property tax information to Arlington County Economic Development and the Arlington County Department of Management and Finance beginning with tax year 2017 and continuing for ten years or the length of Phone2Action's lease at the Phone2Action Arlington Facility, whichever is greater. The County will treat the tax information as confidential and will not release it to the public, except as part of composite real estate and employee-related revenue data in accordance with Section 8(m).

6. Disbursement of EDI Grant. Within thirty (30) days of Phone2Action's satisfaction of the Disbursement Prerequisites in Section 5 the IDA will disburse the EDI Grant to Phone2Action.

7. Repayment of EDI Grant.

(a) New Jobs Target. Phone2Action must Maintain at least eighty-five (85) cumulative New Jobs as of the Performance Date or repay to the IDA twenty-five thousand dollars (\$25,000.00).

(b) Facility Lease Target. Phone2Action must lease at least twelve thousand sixty (12,060) square feet of office space at the Phone2Action Arlington Facility by the Performance Date or repay to the IDA twenty-five thousand dollars (\$25,000.00).

(c) If the County Manager, in consultation with the IDA, deems that Phone2Action has made and continues to make good faith and reasonable efforts to achieve the Facility Lease Target and the New Jobs Target, the County Manager may agree to extend the Performance Date by up to six (6) months. If the Performance Date is extended, the County shall send written notice of the extension to Phone2Action and the IDA.

8. Miscellaneous Provisions.

(a) Notices, Demands, and Communications between the Parties. Formal notices, demands and communications among the Parties shall be given by (i) personal service; (ii) reputable document delivery service, such as Federal Express, with a receipt showing date and time of delivery; or (iii) certified or first-class United States mail, postage prepaid, with a receipt showing date and time of delivery:

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

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

Arlington County
Arlington 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 Phone2Action: Phone2Action
1500 Wilson Boulevard
Arlington, VA 22209
Attn: Ximena Hartsock
Email: x@phone2action.com

With a Copy to: Phone2Action
1500 Wilson Boulevard
Arlington, VA 22209
Attn: Jeb Ory
Email: jeb@phone2action.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

Written notices, demands and communications shall be sent in the same manner to other addresses that any Party designates in writing.

(b) Entire Agreement: Amendments. This Agreement constitutes the entire agreement among the Parties as to the EDI Grant and may not be amended or modified, except in writing signed by each of the Parties. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and assigns. Phone2Action may not assign its rights and obligations under this Agreement without the prior written consent of the County Board and the IDA.

(c) Governing Law; Venue. This Agreement is made and is intended to be performed in Arlington County, Virginia, and shall be construed and enforced by the laws of the Commonwealth of Virginia. Jurisdiction and venue for any litigation arising out of or involving this Agreement shall lie in the Circuit Court of the County of Arlington or in the United States District Court for the Eastern District of Virginia, and such litigation shall not be brought in any other court.

(d) 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, whether as a third-party beneficiary or otherwise.

(e) Relationship of Parties. The provisions of this Agreement are intended solely for the purpose of defining the relative rights of the Parties and do not create any partnership, joint venture or other joint enterprise among the Parties.

(f) 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 other provisions will remain in force, to the extent that they are not rendered impractical to perform, taking into consideration the purposes of this Agreement.

(g) Interpretation. The terms of this Agreement shall be construed in accordance with the meaning of the language used and not for or against any Party by reason of the authorship or any other rule of construction that 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.

(h) Determinations; Disbursements.

(i) Any determination by the County Manager of fulfillment or non-fulfillment of the terms of this Agreement by Phone2Action 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 Phone2Action beyond the amount that the IDA has received from or on behalf of the County Board for the purpose.

(i) Non-Liability of Officials, Employees and Agents. No member, official, employee or agent of the County Board or of the IDA shall be personally liable to Phone2Action in the event of any default or breach by the County Board or by the IDA or for any amount that may become due to Phone2Action or its successors or assigns under the terms of this Agreement.

(j) Attorney's Fees. Each Party shall pay its own attorney's fees.

(k) Business Day Convention. If the date of any required action falls upon a weekend day or a holiday when the New York Stock Exchange is not open for business, the required action may be deferred to the next business day.

(l) Force Majeure. No Party will be held responsible for failing to fulfill an obligation under this Agreement if such failure is a result of a fire, riot, rebellion, natural disaster, war, act of terrorism or act of God that is beyond the control of the Party and that makes performance impossible or illegal.

(m) Confidentiality. Unless otherwise required by applicable law or regulation, the County Board and the IDA will use reasonable efforts to keep all reports and other information submitted by Phone2Action confidential and will not make such reports available publicly or as part of any Virginia Freedom of Information Act request, except that the County may include in periodic reporting to the County Board Phone2Action's reported information concerning jobs added, square feet leased, incentives that the County has paid to Phone2Action and composite tax and revenue data. If Phone2Action's confidential reports and information are otherwise required to be made public or disclosed, the County Board or the IDA will notify Phone2Action and will cooperate with Phone2Action to redact any information that is legally permitted to be redacted.

(n) 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.

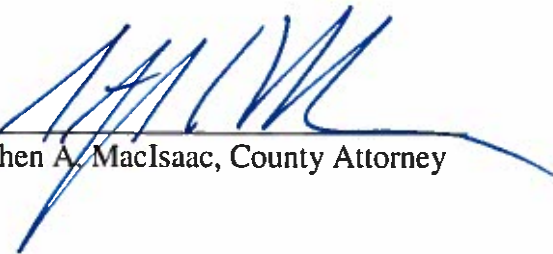
(o) Dispute Resolution. In the event of any dispute, controversy or claim of any kind arising under this Agreement, upon the written request of either Party, each of the Parties will designate a senior executive to meet with the other Party's designee in good faith and as necessary to attempt to resolve the dispute without formal proceedings. If the negotiated resolution of the dispute requires any Party to take, cause to be taken or cease taking some action, the 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(c) of this Agreement and may pursue any other remedy available at law or in equity. Nothing in this Section 8(o) 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.

[Signatures and acknowledgments appear on the following pages]

IN WITNESS WHEREOF, the County Board, the IDA and Phone2Action have each executed or caused to be executed, in duplicate, this Economic Development Incentive Grant Agreement.

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

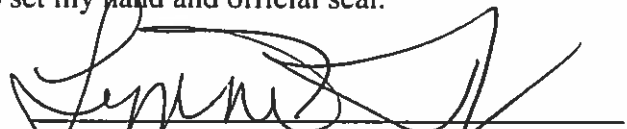
By: 
Mark Schwartz, County Manager

ACKNOWLEDGMENT

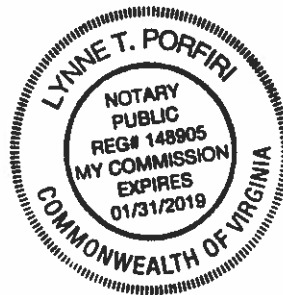
COMMONWEALTH OF VIRGINIA
COUNTY OF ARLINGTON

On this the 1st day of December, 2017, before me personally appeared Mark Schwartz, who acknowledged himself to be the County Manager of Arlington County, Virginia, and, being authorized so to do, executed the foregoing instrument 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, VIRGINIA**, a political
subdivision of the Commonwealth of
Virginia

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

ACKNOWLEDGMENT

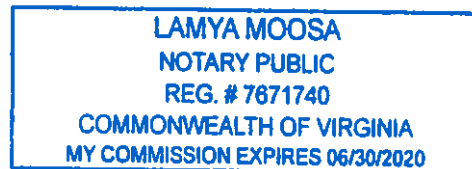
COMMONWEALTH OF VIRGINIA
COUNTY OF ARLINGTON

On this the 7 day of November, 2017, before me personally appeared Elizabeth Wildhack, who acknowledged herself to be the Chair of the Industrial Development Authority of Arlington County, Virginia, and, being authorized so to do, executed the foregoing instrument by signing the name of the Industrial Development Authority of Arlington County, Virginia, a political subdivision of the Commonwealth of Virginia, by herself as Chair of the Industrial Development Authority of Arlington County, Virginia.

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

Lamya Moosa
Notary Public

My Commission Expires: 06/30/2020



PHONE2ACTION, INC, a Delaware Corporation

By: [Signature]
Jeb Ory, CEO

ACKNOWLEDGMENT

STATE OF Virginia
COUNTY OF Arlington

On this the 15 day of February, 2018, before me personally appeared Jeb Ory, who acknowledged himself to be the CEO of Phone2Action and, being authorized so to do, executed the foregoing instrument by signing the name of Phone2Action, a Delaware Corporation authorized to transact business in the Commonwealth of Virginia, by himself as CEO of Phone2Action.

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

[Signature]
Notary Public

My Commission Expires: 3/31/2020



Exhibit A
Sample of the Required
NOTARIZED AFFIDAVIT
AFFIDAVIT
OF
[PHONE2ACTION, INC]

COMMONWEALTH OF VIRGINIA
CITY/COUNTY OF _____

Subscribed and sworn before me this ____ day of _____, 20__

[INSERT NAME], [Insert Title] of PHONE2ACTION, INC (“Phone2Action”), a Delaware Corporation authorized to transact business in the Commonwealth of Virginia, after first being duly sworn, appeared before the undersigned authority and affirmed the following facts under oath:

- (a) *[Insert Name]* is *[Insert Title]* of Phone2Action and as *[Insert Title]* has been duly authorized to execute and deliver this Affidavit for and on behalf of Phone2Action. The Affidavit is a requirement of the Arlington County Economic Development Incentive Grant Agreement dated _____, _____, by and among the County Board of Arlington County, Virginia, the Industrial Development Authority of Arlington County and Phone2Action (“**Grant Agreement**”). All actions required under Phone2Action’s organizational documents and applicable governing law for the authorization, execution and delivery of this Affidavit have been duly taken (to the extent required) as of the date of execution and delivery of this Affidavit. All terms in this Affidavit are defined as in the Grant Agreement.
- (b) As of _____, 20__ (the “**EDI Grant Reporting Deadline**”):
- (i) Phone2Action has created and Maintained a total of _____ (____) cumulative New Jobs at the Phone2Action Arlington Facility;
 - (ii) Phone2Action has leased and occupied _____ (____) cumulative square feet at the Phone2Action Arlington Facility; and
 - (iii) Phone2Action [has / has not] fulfilled the criteria set forth in Section 3 of the Grant Agreement

I, _____, a notary public, do hereby certify that _____, the affiant whose name is subscribed to the foregoing affidavit duly swore and made oath that the facts contained therein are true and correct to the best of his/her information, knowledge and belief, before me in the said City/County of _____, Commonwealth of Virginia, this _____ day of _____, 20__

My commission expires:

Notary Public
Notary Registration No. _____

Exhibit A
Sample of the Required
NOTARIZED AFFIDAVIT

[Reproducible Notarial Seal]

Exhibit A
Sample of the Required
NOTARIZED AFFIDAVIT

Attachment 1

**List of Full-time employees (by employee number) at the
Phone2Action Arlington Facility as of the EDI Grant Reporting Deadline**

Employee Number	Title	Salary
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Exhibit B
Sample of the Required
AUTHORIZATION TO RELEASE CONFIDENTIAL TAX INFORMATION



INGRID H. MORROY
COMMISSIONER

ARLINGTON COUNTY, VIRGINIA
OFFICE OF COMMISSIONER OF REVENUE
BUSINESS TAX DIVISION
2100 CLARENDON BOULEVARD, SUITE 208
ARLINGTON, VA 22201



OTRILIO SABILLÓN
DEPUTY COMMISSIONER

AUTHORIZATION TO RELEASE CONFIDENTIAL TAX INFORMATION

Name of taxpayer entity (please give the corporate or personal name which is used for the tax accounts): _____ Trade name (if any) _____

Last four digits of taxpayer ID number (TIN, EIN or SS # to help locate the records): _____

The above named taxpayer gives the office of the Arlington County Commissioner of Revenue permission to share the following confidential tax information with:
[Enter the names of persons or entities allowed to receive the information]

This permission is effective for the following types of taxes:

All information about taxes assessed by the Arlington County Commissioner of Revenue,
OR

Only the following specific tax information (initial each that apply):

BPOL Tax information, including gross receipts and BPOL taxes assessed

Meals Taxes collected and remitted

Transient Occupancy Taxes collected and remitted

Information about personal property tax assessed. (Note, the total amount of personal property tax assessed to any taxpayer is already public information.)

This permission is for tax years:

All tax years OR

The following specific tax years: _____

This permission:

Includes future tax years until revoked, or

Does not include future tax years.

Read before signing. The person signing this form affirms that she/he is authorized to waive tax confidentiality for the named taxpayer and is acting with the explicit authorization of the taxpayer. Fraudulent use of this form could subject the signer to civil and criminal liability.

[Please attach a page of company letterhead or a business card to this form.]

Signature of authorized representative

Print Name of Authorized Representative

Title (i.e. "CFO", "President", "Owner", etc.)

Date:

Telephone: _____ Email: _____

e-mail: business@arlingtonva.us phone: 703-228-3060 fax: 703-228-7048
Visit us on the Web at www.arlingtonva.us/cor