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**COMMONWEALTH'S DEVELOPMENT OPPORTUNITY FUND GRANT  
PERFORMANCE AGREEMENT  
(GERBER PRODUCTS COMPANY)**

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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**"), **GERBER PRODUCTS COMPANY**, ("**Gerber**"), a Michigan corporation authorized to transact business in the Commonwealth, the **INDUSTRIAL DEVELOPMENT AUTHORITY OF ARLINGTON COUNTY** (the "**IDA**"), a political subdivision of the Commonwealth, and **VIRGINIA ECONOMIC DEVELOPMENT PARTNERSHIP AUTHORITY** (the "**VEDP**"), a political subdivision of the Commonwealth. Individually, the County, Gerber, the IDA, and VEDP may each be referred to hereinafter as the "**Party**," or collectively as the "**Parties**."

**RECITALS:**

**WHEREAS**, on April 5, 2018, 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 Gerber to relocate its Gerber Products Company's headquarters to the Gerber headquarters facility (the "**Facility**") in Arlington County, thereby causing the renovation and improvement of an additional portion of the Facility; and

**WHEREAS**, on April 10, 2018, pursuant to VEDP application procedures, Gerber submitted a letter to the County indicating, among other things, that without the support from the Fund, there is a possibility that it may locate the Gerber Products Company's headquarters outside of Virginia; and

**WHEREAS**, on April 19, 2018, the Office of the Governor of the Commonwealth of Virginia awarded a Commonwealth's Development Opportunity Fund grant in the amount of Eight Hundred Sixty-Two Thousand Five Hundred and 00/100 Dollars (\$862,500.00) (the "**COF Grant**") to the County for the purpose of inducing Gerber to locate its Gerber Products Company's headquarters to the Facility and to renovate, improve, equip and 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 Gerber, pursuant to the terms of this Agreement; and

**WHEREAS**, Gerber 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 Five Million and 00/100 Dollars

(\$5,000,000.00), which will be invested in the renovation and up-fit of the Facility, and (B) to create and Maintain a minimum of one hundred fifty (150) 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, VEDP, and Gerber 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 Gerber regarding Capital Investment and New Job creation and Maintenance, and the repayment by Gerber 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:

***“2017 COF Performance Agreement”*** means the Commonwealth’s Development Opportunity Fund Grant Performance Agreement, dated as of May 1, 2017, among the County, Nestle, the IDA, and VEDP related to a Six Million and 00/100 Dollars (\$6,000,000.00) grant from the Commonwealth’s Development Opportunity Fund for the benefit of Nestle.

***“Affiliate”*** means with regard to any Party, any corporation or other entity that directly or indirectly controls or is controlled by or is under common control with the Party. Control is defined to mean at least a 50% ownership interest.

***“Average Annual Compensation”*** means the average annual salary for the New Jobs identified by Gerber, which is determined by dividing total payroll for all identified New Jobs

(of a type included in W-2 compensation), including bonuses and the value of stock-based grants, but excluding the value of other fringe benefits, by the number of identified New Jobs.

**“Capital Investment”** means a capital expenditure on or after April 1, 2018, by or on behalf of Gerber or an Affiliate of Gerber 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 Five Million and 00/100 Dollars (\$5,000,000.00).

The Capital Investment must be in addition to the Thirty-Six Million Three Hundred Thousand and 00/100 Dollars (\$36,300,000.00) in total capital expenditures made or to be made by Nestle or an Affiliate of Nestle in connection with the renovation, improvement, and equipping of the Facility, pursuant to the 2017 COF Performance Agreement.

A capital expenditure related to a leasehold interest in real property will be considered to be made “on behalf of Gerber” if a lease between a developer (or other lessor) and Gerber 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 Gerber’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 Gerber will count as Capital Investment.

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

**“Maintain”** means, in relation to a specific New Job, that the New Job created will continue without interruption from the date of creation through the Performance Date, provided that a New Job will be treated as Maintained during periods in which such positions are not filled due to (i) temporary reductions in Gerber’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.

**“Nestle”** means Nestle USA, Inc., a Delaware corporation.

**“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 Gerber or an Affiliate of Gerber for the employee that increases the number of full-time jobs at the Facility. 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 Gerber’s operations, which “normal year” must consist of at least 48 weeks, or (ii) 1,680 hours per year. The Average Annual Compensation for the New Jobs identified by Gerber as of the Performance Date must be equal to or greater than One Hundred Twenty-Seven Thousand Seven Hundred Nineteen and 00/100 Dollars (\$127,719.00). 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 must be in addition to the seven hundred forty-eight (748) full-time jobs at the Facility at an average annual compensation of at least One Hundred Twenty-Seven Thousand Seven Hundred Nineteen and 00/100 Dollars (\$127,719.00) promised to be created and maintained by Nestle or an Affiliate of Nestle pursuant to the 2017 COF Performance Agreement.

**“Performance Date”** means December 31, 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 Gerber 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 (the “Board”). If the Performance Date is extended, the County shall send written notice of the extension to the IDA, Gerber and VEDP 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 Gerber’s target to make or have made on its behalf Capital Investment at the Facility of at least Five Million and 00/100 Dollars (\$5,000,000.00) (the “**Capital Investment Target**”) and to create and Maintain at least one hundred fifty (150) 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) Gerber covenants and agrees to relocate its Gerber Products Company’s headquarters to and to further renovate, improve, equip, operate, and maintain the Facility in Arlington County, make or have made on its behalf a Capital Investment of at least Five Million and 00/100 Dollars (\$5,000,000.00) at the Facility, and create and Maintain at least one hundred fifty (150) New Jobs at the Facility, all as of the Performance Date. All Five Million and 00/100 Dollars (\$5,000,000.00) of the Capital Investment are expected to be invested in the renovation and up-fit of the Facility.

b) Gerber covenants and agrees that the Average Annual Compensation for all New Jobs identified by Gerber as of the Performance Date will be at least One Hundred Twenty-Seven Thousand Seven Hundred Nineteen and 00/100 Dollars (\$127,719.00), which Gerber acknowledges is more than the prevailing average annual wage in the County of Eighty-Eight Thousand Forty-Nine and 00/100 Dollars (\$88,049.00).

c) Gerber acknowledges that it is encouraged to offer at least thirty percent (30%) of the New Jobs 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.

d) Gerber 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.

e) Gerber acknowledges that 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%. Gerber further acknowledges that the County is not a high-poverty locality, with a poverty rate for 2016, which is the last year for which such data is available, of 7.5% as compared to the 2016 statewide poverty rate of 11.0%.

f) Gerber acknowledges that the name of Gerber will be shared by VEDP with the Governor of Virginia, and any campaign committee or political action committee associated with the Governor. Gerber 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 Gerber to the Governor, his campaign committee, or his political action committee, respectively, during the period from the date of Gerber's application for the COF Grant through the one-year period immediately after the date of this Agreement.

g) As to the COF Grant, Gerber's sole and exclusive liability and the County's, the IDA's and VEDP's sole and exclusive remedy for Gerber's failure to achieve the Targets or comply with any obligation in this Agreement will be as set forth in Section 5. In no event will Gerber have any other liability, beyond the repayment liabilities described in Section 5, for any failure to meet its covenants in Sections numbered 2(a), 2(b), and 2(d) or elsewhere in this Agreement.

h) For clarity, for the purpose of Gerber meeting its obligations hereunder, Capital Investment made by an Affiliate of Gerber or by the lessor under its lease of the Facility and New Jobs at the Facility where a Gerber Affiliate is the employer will be considered for purposes of this Agreement to have been performed by Gerber.

### **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 Gerber that the time period for the disbursement of the COF Grant from the Commonwealth to the County is likely to be thirty (30) to forty-five (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 Eight Hundred Sixty-Two Thousand Five Hundred and 00/100 Dollars (\$862,500.00).

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

Gerber will provide notice and evidence reasonably satisfactory to the County, the IDA, and VEDP that it has completed the move of the Gerber Products Company's headquarters to the Facility. The completion of the move may be evidenced by items such as a certificate of occupancy for the space to be occupied by Gerber Products Company and evidence that the Chief Executive Officer of Gerber Products Company has moved his or her office and operations to 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 Eight Hundred Sixty-Two Thousand Five Hundred and 00/100 Dollars (\$862,500.00) 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 Gerber.

c) **Return of COF Grant Proceeds Not Disbursed.** If any COF Grant proceeds have not been disbursed to Gerber within ninety (90) days after the Performance Date, the County shall return such proceeds 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 well as recruitment and training at 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.** In addition to the COF Grant, in order to induce Gerber to meet the Capital Investment Target and the New Jobs Target by expanding, improving, equipping, operating, and maintaining the Facility in Arlington County, the Commonwealth will provide:

*VJIP:* up to One Hundred Twelve Thousand Five Hundred and 00/100 Dollars (\$112,500.00) from the Virginia Jobs Investment Program ("VJIP"), which shall be used by Gerber to pay or reimburse itself for recruitment and training costs for such New Jobs. Gerber will receive Seven Hundred Fifty and 00/100 Dollars (\$750.00) per each qualifying New Job from VJIP, to be paid by the Commonwealth promptly following an application by Gerber following the New Job having been employed by Gerber for at least ninety (90) days.

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 Gerber, the County has agreed to match the COF Grant by making the following local incentive:

*Infrastructure Improvements:* The County has provided infrastructure investments in the vicinity of the Facility on an accelerated development schedule, including the Lynn Street Esplanade and the Custis Trail Improvements project. Further, the County relocated one bus station and shifted two additional stations to open up the frontage of the Facility on North Moore Street. Together, all of these improvements make up the "Infrastructure Incentive." The cost of the Infrastructure Incentive was approximately Six Million and 00/100 Dollars (\$6,000,000.00). Two Million and 00/100 Dollars (\$2,000,000.00) of such costs was allocated to the local matching funds required by the 2017 COF Performance Agreement. Eight Hundred Sixty-Two Thousand Five Hundred and 00/100 Dollars (\$862,500.00) of the remaining Four Million and 00/100 Dollars (\$4,000,000.00) of the cost of the Infrastructure Incentive will be allocated to the local match and incentive required by this Agreement. Gerber acknowledges that Eight Hundred Sixty-Two Thousand Five Hundred and 00/100 Dollars (\$862,500.00) in Infrastructure Incentive benefits Gerber.

d) **Other Incentives.** This Agreement relates solely to the COF Grant and the Local Infrastructure Incentive. The qualification for, and payment of all State-Level Incentives, except for the COF Grant, will be governed by separate arrangements between the Company and the entities 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 Gerber 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 Gerber to meet either of these statutory minimum eligibility requirements by the Performance Date shall constitute a breach of this Agreement and Gerber must repay to the IDA all of the COF Grant proceeds previously disbursed to Gerber. In such event, the County will repay to VEDP all of the COF Grant proceeds not previously disbursed through the IDA to Gerber.

b) **Allocation of COF Proceeds.** For purposes of repayment under subsection (c), the COF Grant is to be allocated as Four Hundred Thirty-One Thousand Two Hundred Fifty and 00/100 Dollars (\$431,250.00), or fifty percent (50%), to the Company's Capital Investment Target and Four Hundred Thirty-One Thousand Two Hundred Fifty and 00/100 Dollars (\$431,250.00), or fifty percent (50%), to the Company's New Jobs Target.

c) **If Statutory Minimum Eligibility Requirements are Met.** The provisions of this subsection (c) are applicable only if Gerber has met the statutory minimum eligibility requirements set forth in subsection (a). If Gerber has met the statutory minimum Five Million and 00/100 Dollars (\$5,000,000.00) Capital Investment Target and at least ninety percent (90%) of the New Jobs Target as of the Performance Date, then and thereafter Gerber is no longer obligated to repay any part of this portion of the COF Grant. If Gerber has met the statutory minimum Five Million and 00/100 Dollars (\$5,000,000.00) Capital Investment Target, but has not met at least ninety percent (90%) of the New Jobs Target as of the Performance Date, Gerber shall repay to the IDA that part of this COF Grant allocated to the New Jobs Target that is proportional to the shortfall. For example, if as of the Performance Date, Gerber has received all Eight Hundred Sixty-Two Thousand Five Hundred and 00/100 Dollars (\$862,500.00) of the COF Grant proceeds and has Capital Investments of at least Five Million and 00/100 Dollars (\$5,000,000.00), but only one hundred five (105) New Jobs have been Maintained or seventy percent (70%) of the New Jobs Target, Gerber shall repay to the IDA thirty percent (30%) of the moneys that it received from this COF Grant allocated to the New Jobs Target, or One Hundred Twenty-Nine Thousand Three Hundred Seventy-Five and 00/100 Dollars (\$129,375.00). In such event, the County will repay to VEDP all of the COF Grant proceeds not previously disbursed through the IDA to Gerber.

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 that Gerber is unable or unwilling to meet the Targets by and through the Performance Date, the County, the IDA, or VEDP shall promptly notify Gerber of such determination in writing and the parties shall use commercially reasonable efforts to meet within thirty (30) days to discuss such situation. If Gerber is unable to provide reasonable evidence or data that it is able and willing to meet the Targets, the County, the IDA, and VEDP may notify Gerber in writing that Gerber will be deemed to not have met the Targets (the date such writing is received, the “**Determination Date**”) and, Gerber must repay to the IDA the COF Grant proceeds previously disbursed to Gerber; such repayment to be in full if the statutory minimum requirements set forth in clause 5(a) have not been achieved or in part if the statutory minimum requirements have been achieved, using the formula set forth in clause 5(c). Such a determination will be based only on significant circumstances such as a filing by or on behalf of Gerber under Chapter 7 of the U.S. Bankruptcy Code, the total liquidation of Gerber, or abandonment of all or substantially all of the Facility by Gerber. In such event, the County will repay to VEDP all of the COF Grant proceeds not previously disbursed through the IDA to Gerber.

e) **Repayment Dates.** *Such repayment shall be due from Gerber to the IDA within one hundred twenty (120) days after the Performance Date or the Determination Date, as applicable.* Any moneys repaid by Gerber 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 Gerber hereunder unless said sums have been received by the IDA from Gerber.



f) **Failure to Repay.** If any repayment due pursuant to this Section 5 is not made by Gerber when due, the Board may determine that further collection action is required, and the Board may refer the matter to the Office of the Attorney General (the “OAG”) for collection pursuant to Section 2.2-518 of the Virginia Code. In such event, by their signatures below, the County and the IDA will be deemed to have assigned to the Commonwealth all of their rights, title and interest in and to this Section 5. In any matter referred to the OAG for collection, the Company shall be liable to pay interest, administrative charges, attorney fees and other applicable fees. Interest on any outstanding repayment referred to the OAG shall accrue at the rate set forth in Section 6.2-301 A. of the Virginia Code (currently 6.0% per year) for the period from the Performance Date or the Determination Date, as applicable, until paid.

**SECTION 6. GERBER REPORTING.**

a) **Progress Reports.** Gerber shall provide, at Gerber’s expense, in the form attached hereto as Exhibit A, detailed verification reasonably satisfactory to the County, the IDA, and VEDP of Gerber’s progress on the Targets. Such progress reports will be provided annually, starting at April 1, 2020, and covering the period through the prior December 31. Further, Gerber shall provide progress reports at such other times as the County, the IDA or VEDP may reasonably require.

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

c) **Final Report.** The Company shall provide, at the Company’s expense, in the form attached hereto as Exhibit B, detailed information reasonably satisfactory to the County, the IDA, and VEDP of the Company’s achievement of the Targets. The final report shall be filed at April 1, 2022.

d) **Confidentiality.** Unless otherwise required by applicable law, VEDP, the County, and IDA will use reasonable efforts to keep all reports and other proprietary information submitted by Gerber as confidential and not make such reports available publicly or as part of any Virginia Freedom of Information Act request. If such reports and information are required to be made public or otherwise disclosed, VEDP, the County, or IDA will notify Gerber and cooperate with Gerber to redact any components of such reports or information that are legally permitted to be redacted. For clarity, nothing in this subsection (d) is intended to prohibit VEDP, the County, or IDA from fulfilling any applicable requirement under an applicable law or regulation or from sharing confidential information with the Joint Legislative Audit and Review Commission. The Company understands that the information in the final report required by

subsection (c) above regarding its achievement of the Targets will be reported on VEDP's public reporting website.

## **SECTION 7. VERIFICATION OF TARGETS.**

a) **Verification of Capital Investment.** Nestle hereby authorizes the County's Department of Real Estate Assessment and Commissioner of Revenue's Business Tax Division to release to VEDP Gerber'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 the County, the IDA or VEDP should require additional documentation or consents from Gerber to access such information, Nestle shall promptly provide, at Gerber's expense, such additional documentation or consents as requested. In accordance with Virginia Code Section 58.1-3122.3, VEDP is entitled to receive Nestle's real estate tax, business personal property tax and machinery and tools tax information from the County's Department of Real Estate Assessment and Commissioner of Revenue's Business Tax Division.

In the sole discretion of the County, the IDA or VEDP, and in addition to the verification data described above, the County, the IDA or VEDP, respectively, may require such other documentation, including invoices or audits, as may be required to properly verify the Capital Investment.

As applicable, Gerber shall be responsible for assembling and distributing the documentation necessary to verify the Capital Investments made on its behalf.

b) **Verification of New Jobs and Wages.** Gerber must submit a copy of its four most recent Employer's Quarterly Tax Reports (Form FC-20) with the Virginia Employment Commission with each progress report and with the final report. The form shall be marked and considered confidential and proprietary and shall be used by VEDP solely for verifying satisfaction of the New Jobs Target. In accordance with Virginia Code Section 60.2-114, VEDP is entitled to receive Gerber's employment level and wage information from the Virginia Employment Commission.

The Company agrees that it will report to the Virginia Employment Commission with respect to its employees at a facility level, rather than at the company level.

In the sole discretion of the County, the IDA, or VEDP, and in addition to the verification data described above, the County, the IDA, or VEDP, respectively, may require such other documentation or audits as may be required to properly verify the New Jobs.

## **SECTION 8. 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:** Arlington County  
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 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

Arlington County  
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 Gerber:** Nestle Nutrition North America  
1812 North Moore Street  
Arlington, Virginia 22209  
Attn: Ramon Vega, CFO  
Email: Ramon.Vega@US.nestle.com

and

Nestle USA, Inc.  
1812 North Moore Street  
Arlington, Virginia 22209  
Attn: Kevin L. Goldberg, General Counsel  
Email: Kevin.Goldberg@US.nestle.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

**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: mgraff@mcguirewoods.com

**To VEDP:** Virginia Economic Development Partnership Authority  
901 East Cary Street, Suite 900  
Richmond, Virginia 23219  
Attn: Stephen Moret, President and CEO  
Fax: (804) 545-5611  
Email: moret@vedp.org

**With a Copy to:** Virginia Economic Development Partnership Authority  
901 East Cary Street, Suite 900  
Richmond, Virginia 23219  
Attn: Sandra Jones McNinch, General Counsel  
Fax: (804) 545-5611  
Email: smcninch@vedp.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. Gerber 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 9. 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. Gerber 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 subsection, 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 Gerber 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 Gerber or its successors or assigns or on any obligation under the terms of this Agreement.

i) **Force Majeure.** If Gerber 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 Gerber in its reasonable discretion, or acts of any governmental body), Gerber 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 9(b) of this Agreement, and may pursue any other remedy available at law or in equity. Nothing in this Section 9(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.** Except as provided in Section 5(f), 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, VEDP, and Gerber 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

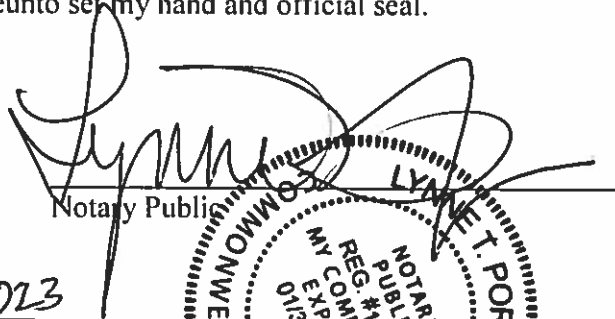
By:   
Mark Schwartz, County Manager

**ACKNOWLEDGMENT**

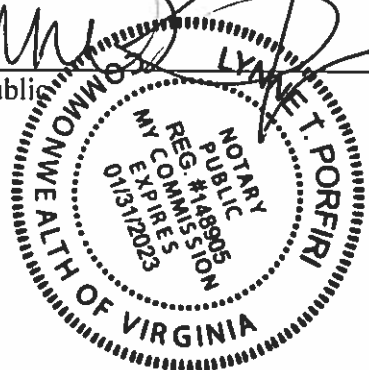
COMMONWEALTH OF VIRGINIA  
COUNTY OF ARLINGTON

On this the 7<sup>th</sup> day of May, 2019, 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: 1/31/2023



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

By: Edwin L Fountain  
Edwin Fountain, Chair

**ACKNOWLEDGMENT**

COMMONWEALTH OF VIRGINIA  
COUNTY OF ARLINGTON

On this the 13 day of June, 2019, before me, personally appeared Edwin Fountain, who acknowledged himself to be the Chair of the Industrial Development Authority of Arlington County in the above instrument, and that he, 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 himself as Chair of the Industrial Development Authority of Arlington County.

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

Jennifer Patricia Harris  
Notary Public

My Commission Expires: 5/31/2020





**VIRGINIA ECONOMIC  
DEVELOPMENT PARTNERSHIP  
AUTHORITY**, a political subdivision of  
the Commonwealth of Virginia

By:   
Stephen Moret, President and Chief  
Executive Officer

**ACKNOWLEDGMENT**

COMMONWEALTH OF VIRGINIA  
CITY OF RICHMOND

On this the 20th day of May, 2019, before me, personally appeared Stephen Moret, who acknowledged himself to be the President and Chief Executive Officer of the Virginia Economic Development Partnership Authority in the above instrument, and that he, as President and Chief Executive Officer, being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of the Virginia Economic Development Partnership Authority by himself as President and Chief Executive Officer of the Virginia Economic Development Partnership Authority.

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

  
Notary Public

My Commission Expires: 1.31.2021



**GERBER PRODUCTS COMPANY, a**  
Michigan corporation

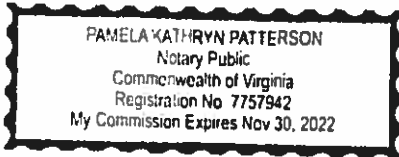
By:   
Ramon Vega, Chief Financial Officer



**ACKNOWLEDGMENT**

STATE OF Virginia  
COUNTY OF Arlington

On this the 6<sup>th</sup> day of May, 2019, before me, personally appeared Ramon Vega, who acknowledged himself to be the Chief Financial Officer of Gerber Products Company in the above instrument, and that he, as Chief Financial Officer, being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of Gerber Products Company, by himself as Chief Financial Officer of Gerber Products Company.

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



  
Notary Public  


My Commission Expires: Nov. 30, 2022

## ANNUAL PROGRESS REPORT COMMONWEALTH'S DEVELOPMENT OPPORTUNITY FUND

**PROJECT SUMMARY:**

Project	
Location	
Amount of Grant	
Performance Reporting Period	
Performance Date	

**PROJECT PERFORMANCE:**

Performance Measurement	Target	As of	% Complete
<b>New Jobs (over baseline)<sup>1</sup></b>			
Confidence level target will be reached by Performance Date shown above (check one)	High <input type="checkbox"/>	Moderate <input type="checkbox"/>	Low <input type="checkbox"/>
<b>Capital Investment (provide breakdown below)<sup>2</sup></b>			
Confidence level target will be reached by Performance Date shown above (check one)	High <input type="checkbox"/>	Moderate <input type="checkbox"/>	Low <input type="checkbox"/>
<b>Average Annual Wage</b>			N/A
Confidence level target will be reached by Performance Date shown above (check one)	High <input type="checkbox"/>	Moderate <input type="checkbox"/>	Low <input type="checkbox"/>
<b>Standard Fringe Benefits</b>			
<b>Virginia Corporate Income Tax Paid in Prior Calendar Year<sup>3</sup></b>			

Capital Investment Breakdown	Amount
Renovation or Up-fit	\$
Production Machinery and Tools	\$
Other Furniture, Fixtures and Equipment	\$
<b>Total</b>	<b>\$</b>

<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 FOIA.

**COMMENTS:**

Discuss project status, including the current level of new jobs and capital investment, progress on the targets, changes or likely changes in the project's nature that may impact achievement of the targets, and other information relevant to the project performance. If the project is not on track to meet the targets, please provide an explanation.

**TO BE CERTIFIED BY AN OFFICER OF THE COMPANY:**

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

Company: \_\_\_\_\_

Submitted By: \_\_\_\_\_  
Signature of Official

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

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

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

Please return to:

Kim Ellett  
Incentives Coordinator  
Virginia Economic Development Partnership  
804.545.5618  
kellett@vedp.org

**FINAL REPORT  
COMMONWEALTH'S DEVELOPMENT OPPORTUNITY FUND**

**PROJECT SUMMARY:**

Project	
Location	
Amount of Grant	
Performance Date	
Subsequent Performance Date	If applicable

**PROJECT PERFORMANCE:<sup>1</sup>**

Performance Measurement	Target	As of	% Complete
New Jobs (over __ baseline) <sup>2</sup>			
Capital Investment (provide breakdown below) <sup>3</sup>			
Average Annual Wage			N/A
Standard Fringe Benefits (check one)	Yes <input type="checkbox"/>	No <input type="checkbox"/>	N/A
Virginia Corporate Income Tax Paid in Prior Calendar Year <sup>4</sup>	\$		

Capital Investment Breakdown	Amount
Renovation or Up-fit	\$
Production Machinery and Tools	\$
Other Furniture, Fixtures and Equipment	\$
<b>Total</b>	\$

<sup>1</sup>Final, actual performance will be reported on VEDP's public reporting website.

<sup>2</sup> Attach the company's four most recent Quarterly Tax Reports (Form FC-20) filed with the Virginia Employment Commission.

<sup>3</sup> Data will be verified using records from the Commissioner of the Revenue and invoices.

<sup>4</sup>This confidential information is protected from disclosure pursuant to § 2.2-3705.6 of FOIA.

**LOCAL MATCH:**

Committed	
Actual	

**COMMENTS:**

Discuss the project status or the importance of the project to the locality and the region.

**TO BE CERTIFIED BY AN OFFICER OF THE COMPANY:**

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

Company: \_\_\_\_\_

Submitted By: \_\_\_\_\_  
Signature of Official

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

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

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

Please return to:

Kim Ellett  
Incentives Coordinator  
Virginia Economic Development Partnership  
804.545.5618  
kellett@vedp.org