ARLINGTON COUNTY, VIRGINIA

County Board Agenda Item
Meeting of July 21, 2012

DATE: June 26, 2012

SUBJECT: Authorize the acceptance of and the allocation of $1 million from the Governor's Opportunity Fund (GOF) of the Commonwealth of Virginia to be transferred to the Industrial Development Authority of Arlington County, Virginia (the Authority) and then to DRS Technologies (DRS) subject to the terms and conditions of the Agreement among Arlington County, the Authority, and DRS.

C. M. RECOMMENDATION:

1. Authorize the County Manager to sign the attached Agreement on behalf of the Arlington County Board among Arlington County, the Authority, and DRS that outlines the disbursement and management terms and conditions of this Governor's Opportunity Fund grant.

2. Authorize the acceptance of $1 million from the GOF that will eventually be transferred to the Authority and to DRS, subject to the terms and conditions of the Agreement among Arlington County, the Authority and DRS.

3. Allocate the $1 million received from the GOF for inducing said company to locate in Arlington, sign a 7-year lease at 2345 Crystal Drive and employ a significant number of persons creating new jobs and investment in Arlington, subject to the terms and conditions of the Agreement among Arlington County, the Authority, and DRS.

ISSUES: None.

SUMMARY: DRS has chosen to relocate its headquarters from Parsippany, New Jersey to 2345 Crystal Drive in Arlington. In order to assist DRS with the costs of leasehold improvements and employee recruitment associated with making this new development a showcase for a corporate headquarters of this caliber, the Commonwealth of Virginia has awarded Arlington a Governor's Opportunity Fund (GOF) award of $1,000,000. Authorization is needed for the County Manager to sign the Agreement (attached) among Arlington County,

County Manager: BMD/mjs

County Attorney:

32.

Staff: Jennifer Ives, AED
Jason Fries, DMF

the Authority, and DRS and for Arlington County to accept the grant money. Once the $1,000,000 is received, it must be allocated for distribution to DRS through the Authority according to the terms and conditions of the Agreement.

BACKGROUND: DRS Technologies is a leading supplier of integrated products, services and support to military forces, intelligence agencies and prime contractors worldwide. Focused on defense technology, the Company develops, manufactures and supports a broad range of systems for mission critical and military sustainment requirements, as well as homeland security. Finmeccanica, Italy's leading aerospace & defense company, acquired DRS in 2008 for approximately US$5.2billion.

DRS currently employs 9,000 in the US, including 26 people at their Crystal City location. The company is relocating the corporate headquarters from New Jersey and consolidating other corporate offices into a headquarters location in Arlington County. Competition for the consolidation is Maryland and the District of Columbia where both DRS and Finmeccanica have existing offices. The consolidation is the top priority for recently hired CEO Bill Lynn. Mr. Lynn was Deputy Secretary of Defense (2009-2011) to Defense Secretary Bob Gates and has been tasked with reorganizing DRS's and Finmeccanica's US operations in order to improve their competitive positioning in the face of reduced defense spending. DRS had 2011 revenues of $3.2billion.

DISCUSSION: The Performance Agreement among Arlington County, the Authority and DRS outlines the specific requirements that need to be satisfied by June 30, 2017, in order for the $1 million to be transferred to DRS. The Agreement is to be signed by the County Manager on behalf of the Arlington Board, the Chairman of the Authority on behalf of IDA, and representative of DRS. The requirements outlined in the Agreement are as follows:

- DRS will relocate its headquarters from Parsippany, New Jersey into 92,834 square feet through a 7 year lease at 2345 Crystal Drive in the Crystal City area of Arlington;
- By 4th quarter 2012, DRS will move approximately 38 current employees from their New Jersey headquarters to be added to their existing 26 employees at Crystal City; increasing to at least 151 jobs within 60 months of receipt of the GOF grant.
- The average annual salary compensation for the new jobs is expected to be $165,000, of which the positions are mostly senior level consisting of executives, corporate officers, corporate managers, and corporate support staff. The company also offers a full benefits package.
- DRS is to invest a total of $12,800,000 of which approximately $9,800,000 will be invested in new furniture, fixtures, equipment, renovation or improvement of the Facility; approximately $3,000,000 will represent the value of furniture, fixtures and equipment to be moved by the Company to the Facility from the Company's location outside of the Commonwealth.

The County will request the disbursement to it of the GOF Grant by no later than September 1, 2012. If not so requested by the County by September 1, 2012, this Agreement will terminate. The GOF Grant will be paid by the Authority to DRS in two equal installments of $500,000 each. The first $500,000 installment will be paid within 60 days of the Authority's receipt of the GOF Grant proceeds. The second $500,000 installment will be paid to DRS on or about June 30, 2017, but only after the Company has demonstrated to the Authority that the Company has made Capital Investments of at least $12.8 million, and has created and maintained at least 125 new jobs.

FISCAL IMPACT: It is estimated that the ten year cumulative commercial real estate tax benefit for Arlington is approximately $692,560 along with $759,500 in tangible personal property taxes. The average annual salary of the new jobs is expected to be $165,000, which is above Arlington County's prevailing average wage of $82,154. Also DRS's combined capital investment is expected to be $12,800,000. The net benefit to the Commonwealth of Virginia is projected to be approximately $18,000,000 for ten years: of which $13,000,000 is from income and sales tax from direct workers, $5,700,000 from indirect workers, and $77,000 from sales and use tax for furniture, fixtures and equipment. There is no projected negative fiscal impact to Arlington County.

GOVERNOR'S DEVELOPMENT OPPORTUNITY FUND

PERFORMANCE AGREEMENT

This **PERFORMANCE AGREEMENT** made and entered this **____** day of __________, 2012, by and among the **COUNTY OF ARLINGTON, VIRGINIA** (the "Locality")**,** a political subdivision of the Commonwealth of Virginia (the "Commonwealth"), the **INDUSTRIAL DEVELOPMENT AUTHORITY OF ARLINGTON COUNTY** (the "Authority"), a political subdivision of the Commonwealth, and **DRS TECHNOLOGIES, INC.**, a Delaware corporation authorized to transact business in the Commonwealth, and its Affiliates, as hereinafter defined (together, the "Company").

WITNESSETH:

WHEREAS, the Locality has been awarded a grant of and expects to receive $1,000,000 from the Governor's Development Opportunity Fund (a "GOF Grant") through the Virginia Economic Development Partnership Authority ("VEDP") for the purpose of inducing the Company to renovate and improve a corporate office facility in the Locality (the "Facility"), thereby making or causing to be made a significant Capital Investment, as hereinafter defined, and creating a significant number of New Jobs, as hereinafter defined;

WHEREAS, the Locality is willing to provide the funds to the Authority with the expectation that the Authority will provide the funds to or for the use of the Company, provided that the Company promises to meet certain criteria relating to Capital Investment and New Jobs;

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

WHEREAS, the renovation, improvement and operation of the Facility will entail a capital expenditure of approximately $12,800,000, of which approximately $9,800,000 will be invested in new furniture, fixtures, equipment, renovation or improvement of the Facility; approximately $3,000,000 will represent the value of furniture, fixtures and equipment to be moved by the Company to the Facility from the Company's location outside of the Commonwealth;

WHEREAS, the renovation, improvement and operation of the Facility will further entail the creation and retention of 151 jobs, including the preservation of 26 existing jobs at the Facility; and

WHEREAS, the stimulation of the additional tax revenue and economic activity to be generated by the Capital Investment and New Jobs constitutes a valid public purpose for the expenditure of public funds and is the animating purpose for the GOF Grant and the local match to be provided by or on behalf of the Locality and the Authority:

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

Section 1. Definitions.

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

"Affiliate" means any entity that would be considered affiliated for purposes of filing a consolidated or combined corporate income tax return with the Company in the Commonwealth.

"Capital Investment" means a capital expenditure by or on behalf of the Company in taxable real property, taxable tangible personal property, or both, at the Facility, including the taxable value of furniture, fixtures and equipment to be moved by the Company to the Facility from the Company's locations outside of the Commonwealth. The Capital Investment must be in addition to the capital improvements at the Facility as of April 1, 2012. A capital expenditure related to a leasehold interest in real property will be considered to be made "on behalf of the Company" if a lease between a developer and the Company is a capital lease, or is an operating lease having a term of at least seven years, and the real property would not have been renovated or improved but for the Company's interest in leasing the real property. The total expected capital expenditure and transferred equipment of $12,800,000, is referred to in this Agreement as the "Capital Investment."

"Maintain" means that the New Jobs created pursuant to the GOF Grant 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 temporary reductions in the Company's employment levels in connection with recruitment for open positions or strikes and other work stoppages.

"New Job" means new permanent full-time employment of an indefinite duration at the Facility for which the standard fringe benefits are paid or provided by the Company for the employee, and for which the Company pays an average annual wage of at least $165,000. Each New Job must require a minimum of either (i) 35 hours of an employee's time per week for the entire normal year of the Company's operations, which "normal year" must consist of at least 48 weeks, or (ii) 1,680 hours per year. Seasonal or temporary positions, positions created when a job function is shifted from an existing location in the Commonwealth, and positions with construction contractors, vendors, suppliers and similar multiplier or spin-off jobs shall not qualify as New Jobs. The New Jobs must be in addition to the 26 full-time jobs at the Company's existing facilities in the Locality as of April 1, 2012.

"Performance Date" means June 30, 2017. The Performance Date may not be extended beyond June 30, 2017.

“Targets” means the Company’s obligations to make Capital Investments at the Facility of at least $12,800,000 and to create and Maintain at least 125 New Jobs at the Facility, all as of the Performance Date.

“Virginia Code” means the Code of Virginia of 1950, as amended.

Section 2. <u>Targets</u>.

The Company will renovate, improve and operate the Facility in the Locality, make a Capital Investment of at least $12,800,000, and create and Maintain at least 125 New Jobs at the Facility, all as of the Performance Date. The Company intends to move its employees currently working in the Locality to the Facility by the Performance Date.

The average annual wage of the New Jobs of at least $165,000 is more than the prevailing average annual wage in the Locality of $81,617. The Locality is neither a high-unemployment locality nor a high-poverty locality.

Section 3. <u>Disbursement of GOF Grant</u>.

By no later than September 1, 2012, the Locality will request the disbursement to it of the GOF Grant. If not so requested by the Locality by September 1, 2012, this Agreement will terminate. The Locality and the Company will be entitled to reapply for a GOF Grant thereafter, based upon the terms, conditions and availability of funds at that time.

The GOF Grant in the amount of $1,000,000 will be paid to the Locality upon its request. Within 60 days of its receipt of the GOF Grant proceeds, the Locality will disburse the GOF Grant proceeds to the Authority. The GOF Grant will be paid by the Authority to the Company in two equal installments of $500,000 each. The first $500,000 installment will be paid within 60 days of the Authority’s receipt of the GOF Grant proceeds. The second $500,000 installment will be paid to Company on or about the Performance Date, but only after the Company has demonstrated to the Authority that the Company has made Capital Investments of at least $12.8 million, and has created and Maintained at least 125 New Jobs.

The Company will use the GOF Grant proceeds to pay the costs of training and the costs of the renovation and build-out of the Facility, as permitted by Section 2.2-115(D) of the Virginia Code.

Section 4. <u>Break-Even Point; State and Local Incentives</u>.

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

Category of Incentive:	Total Amount
GOF Grant	$1,000,000
Virginia Jobs Investment Program ("VJIP") (Estimated)	125,000

The Locality expects to provide at least the following incentives, as matching grants or otherwise, for the Facility:

Category of Incentive:	Total Amount
Capital Expenditures near 2345 Crystal Drive	$1,000,000

If, by the Performance Date, the value of improvements, services or support from or on behalf of the Locality to the Company totals less than the $1,000,000 GOF Grant local match requirement, the Locality, subject to appropriation, will provide additional improvements, services or support to the Company of the difference at the Performance Date, so long as the Company has met its Targets.

The proceeds of the GOF Grant shall be used for the purposes described in Section 3. The VJIP grant proceeds shall be used by the Company to pay or reimburse itself for recruitment and training costs. The improvements, services or support to be provided by or on behalf of the Locality to the Company will offset the cost to the Company of procuring such improvements, services or support.

Section 5. <u>Repayment Obligation</u>.

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

(b) *If Statutory Minimum Requirements are Met:* For purposes of repayment, the first $500,000 installment of the GOF Grant is to be allocated as (1) fifty percent (50%) for the Company's achievement of at least $9,000,000 in Capital Investment and (2) fifty percent (50%) for the Company's creation and Maintenance of at least 61 New Jobs. If the Company has met at least ninety percent (90%) of both of these criteria at the Performance Date, then and thereafter the Company is no longer obligated to repay any portion the first installment of the GOF Grant. If the Company has not met at least ninety percent (90%) of either or both of these criteria at the Performance Date, the Company shall repay to the Authority that part of the first installment of the GOF Grant that is proportional to the shortfall. For example, if at the Performance Date, the Capital Investment is only $7,200,000 and only 37 New Jobs have been created and Maintained, the Company shall repay to the Authority twenty percent (20%) of the moneys allocated to the Capital Investment Target ($250,000 x .2 = $50,000) and forty percent (40%) of the moneys allocated to the New Jobs Target ($250,000 x .4 = $100,000).

Since the second $500,000 installment of the GOF Grant will not be paid to the Company until the Targets have been met in full, the Company has no repayment obligation with respect to the second installment.

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

(d) *Repayment Dates:* Such repayment shall be due from the Company to the Authority within ninety days of the Performance Date or the Determination Date, as applicable. Any moneys repaid by the Company to the Authority hereunder shall be repaid by the Authority to the Locality, together with the second $500,000 installment of the GOF Grant, yet to be paid by the Authority to the Company. Such moneys shall be repaid by the Locality promptly to VEDP for redeposit into the Governor's Development Opportunity Fund. The Locality and the Authority shall use their best efforts to recover such funds, including legal action for breach of this Agreement. Neither the Locality nor the Authority shall have any responsibility for the repayment of any sums hereunder by the Company unless said sums have been received by the Authority from the Company.

Section 6. Company Reporting.

The Company shall provide, at the Company's expense, detailed verification reasonably satisfactory to the Locality, the Authority and VEDP of the Company's progress on the Targets. Such progress reports will be provided annually, starting at September 1, 2012 and covering the period through the prior June 30, and at such other times as the Locality, the Authority or VEDP may reasonably require.

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

Section 7. Notices.

Any notices required or permitted under this Agreement shall be given in writing, and shall be deemed to be received upon receipt or refusal after mailing of the same in the United

States Mail by certified mail, postage fully pre-paid or by overnight courier (refusal shall mean return of certified mail or overnight courier package not accepted by the addressee):

if to the Company, to:

____
____
____
____
Attention: _______________

with a copy to:

____
____
____
____
Attention: _______________

if to the Locality, to:

County of Arlington
2100 Clarendon Blvd., Suite 302
Arlington, VA 22201
Attention: County Manager

with a copy to:

County of Arlington
2100 Clarendon Blvd., Suite 403
Arlington, VA 22201
Attention: County Attorney

Arlington Economic Development
1100 N. Glebe Road. Suite 1500
Arlington, VA 22201
Attention: Director

if to the Authority, to:

Industrial Development Authority of
Arlington County
2100 Clarendon Blvd, suite 501
Arlington, Virginia 22201
Attention: Director. Management and Finance

with a copy to:

McGuireWoods LLP
1750 Tysons Boulevard, Suite 1800
Tysons Corner, VA 22102
Attn: Michael W. Graff, Jr.

if to VEDP, to:

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

with a copy to:

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

Section 8. <u>Miscellaneous</u>.

(a) *Entire Agreement; Amendments*: This Agreement constitutes the entire agreement among the parties hereto as to the GOF 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. The Company may not assign its rights and obligations under this Agreement without the prior written consent of the Locality, the Authority and VEDP. DRS Technologies, Inc. and its Affiliates may assign the rights and obligations of the Company under this Agreement among themselves with notice to, but without the prior written consent of, the Locality, the Authority 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 provision of this Agreement is determined to be unenforceable, invalid or illegal, then the enforceability, validity and legality of the remaining provisions will not in any way be affected or impaired, and such provision will be deemed to be restated to reflect the original intentions of the parties as nearly as possible in accordance with applicable law.

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

Approved as to Form

____
County Attorney

COUNTY OF ARLINGTON, VIRGINIA

By ___________________________________
Name: _____________________________
Title: _____________________________
Date: _________________________________

INDUSTRIAL DEVELOPMENT AUTHORITY OF ARLINGTON COUNTY

By ___________________________________
Name: _____________________________
Title: _____________________________
Date: _________________________________

DRS TECHNOLOGIES, INC.
On behalf of itself and its Affiliates

By ___________________________________
Name: _____________________________
Title: _____________________________
Date: _________________________________