



ARLINGTON COUNTY, VIRGINIA

County Board Agenda Item Meeting of March 18, 2017

DATE: March 8, 2017

SUBJECT: Acceptance and allocation of \$6,000,000 from the Commonwealth Opportunity Fund (COF) of the Commonwealth of Virginia to be transferred to the Industrial Development Authority of Arlington County, Virginia (the Authority) and then to Nestlé, Inc. (Nestlé); and administration of economic development incentive (EDI) grant funds from Arlington County to the Authority and then to Nestlé, subject to the terms and conditions of the state and local agreements among Arlington County, the Authority and Nestlé.

C. M. RECOMMENDATIONS:

1. Authorize the County Manager to sign the attached agreements on behalf of the Arlington County Board among Arlington County, the Authority and Nestlé, which outline the disbursement and management terms and conditions of the COF grant and the EDI grant.
2. Authorize Arlington County to accept \$6,000,000 from the COF, which will be transferred to the Authority and to Nestlé, subject to the terms and conditions of the agreements among Arlington County, the Authority and Nestlé.
3. Allocate to Nestlé, subject to the terms and conditions of the agreements, \$6,000,000 received from the COF for inducing the company to relocate to Arlington, invest \$36.3 million and create 748 new jobs in Arlington.

ISSUES: There are no outstanding issues associated with the proposed approvals.

SUMMARY: Following a competitive selection process, Nestlé chose the Rosslyn submarket of Arlington for the relocation of its U.S. headquarters operation (Nestlé Arlington Facility). For the purpose of inducing Nestlé to acquire, improve, equip, operate and maintain the Nestlé Arlington Facility, the Commonwealth of Virginia has given Arlington a COF award of \$6,000,000, and Arlington County has offered a performance-based EDI grant and infrastructure improvements

County Manager:

mga/cgm

County Attorney:

SDL

Staff: Alex Iams, Assistant Director, AED
Christina Winn, Director, Business Investment Group, AED
Alex Taylor, Senior Business Development Manager, AED

The Board must authorize the County Manager to sign the attached agreements among Arlington County, the Authority and Nestlé. The Board must authorize Arlington County to accept the COF grant funds and to appropriate and administer the EDI grant.

The Board also must allocate the COF grant for distribution to Nestlé through the Authority per the terms and conditions of the agreements. The COF grant requires a match by the local jurisdiction, which Arlington will satisfy through a combination of EDI grant funds (\$4,000,000) and infrastructure improvements (\$2,000,000).

BACKGROUND: Nestlé is a leading global consumer products company whose parent company, Nestlé SA, ranks #66 in revenue among Global 500 companies. In the United States, Nestlé reports an annual revenue of \$25 billion and produces products like Crunch, Butterfinger, Baby Ruth, Purina, Gerber, Nestlé Water, Digiorno, Hot Pockets, Stouffers and many more. Nestlé is relocating to Arlington to better align its headquarters operation with its corporate strategy and to centralize activities into a single center that can offer an optimized cost structure and improved operational efficiency while maintaining the quality of talent and expertise at the firm.

The recruitment of Nestlé aligns with Arlington's strategies to fill significant office vacancies by attracting growing corporate tenants with large office footprints and to diversify the economy. Nestlé's decision to relocate to Arlington from Glendale, California, further solidifies the County's reputation as a premier business location, particularly for headquarters operations, both regionally and on a global scale. Nestlé chose 1812 North Moore Street to be the new face of its U.S. operations due to the location's prominence and unmatched views, as well as the D.C. Metro area's access to workforce and policy makers. The incentive package that Arlington and the Commonwealth of Virginia offered was critical to Nestlé's decision.

DISCUSSION: The attached agreements among Arlington County, the Authority and Nestlé outline the specific requirements that Nestlé must satisfy to receive the \$6,000,000 COF grant and the annual EDI grants. If Nestlé meets the requirements, the EDI grant disbursements will be \$2,000,000 each in Years two (2) and three (3) of the performance period.

The agreements require signatures by the County Manager on behalf of the Arlington County Board, by the Chairman of the Authority, and by a representative of Nestlé. The agreements contain the following requirements, among others:

- Nestlé must lease 205,000 square feet of office space in Arlington County;
- Nestlé must make, or have made on its behalf, a capital investment of \$36.3 million in the building at 1812 North Moore Street;
- Nestlé must create and maintain 748 new full-time jobs at the Nestlé Arlington Facility, at an average compensation of at least \$127,719 per year; and
- Nestlé must make its best efforts to ensure that at least 30% of the new jobs are offered to residents of Virginia.

COF Grant

Upon full execution of the agreements, the Virginia Economic Development Partnership (VEDP) will release the COF grant to the County; this will likely take 30-45 days. The County will disburse the \$6,000,000 to the Authority within 30 days of receiving the COF grant funds. Within 30 days of receiving the COF grant funds from the County, the Authority will disburse \$5,000,000 of the funds to Nestlé. The Authority will disburse the remaining \$1,000,000 of COF grant funds to Nestlé in coordination with VEDP's payment of the Commonwealth's Virginia Economic Development Incentive Grant (VEDIG). This will result in the Authority making five annual payments of \$200,000 each, likely beginning after July 2022.

Nestlé will use the grant funds for the build-out of its new office location, employee training and any other activities as permitted by Section 2.2-115(D) of the Virginia Code.

EDI Grant

The County Board will appropriate the EDI grant funds annually and will transfer the funds to the Authority for disbursement to Nestlé by the dates set out in the EDI grant agreement.

Nestlé will use the grant funds for the build-out of its new office location, costs and start-up expenses related to relocating to the new office and recruiting and training employees.

FISCAL IMPACT: It is estimated that the 10-year cumulative gross tax benefit to Arlington will be \$18,210,000. Once the EDI grant funding is taken into account the 10-year net tax benefit will be approximately \$14,210,000 (not assuming any escalations or discounting).

Table 1: 10-Year Fiscal Impact

Gross Tax Benefit	\$18,210,000
EDI Grant Funds	(\$4,000,000)
Net Tax Benefit	\$ 14,210,000

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

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**"), **NESTLE USA, INC.** ("**Nestle**"), a Delaware 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, Nestle, the IDA and VEDP may each be referred to hereinafter as the "**Party**," or collectively as the "**Parties**."

RECITALS:

WHEREAS, on January 19, 2017, the County submitted a letter to VEDP in order to apply for certain grant funds from the Commonwealth's Development Opportunity Fund (the "**Fund**") for the purpose of inducing Nestle to renovate, improve and equip an office facility in Arlington County to be used as Nestle's North American headquarters (the "**Facility**"); and

WHEREAS, on January 18, 2017, pursuant to VEDP application procedures, Nestle submitted a letter to VEDP indicating, among other things, that without the support from the Fund, there is a possibility that it may locate its Facility outside of Virginia; and

WHEREAS, on January 26, 2017, the Office of the Governor of the Commonwealth of Virginia awarded a Commonwealth's Development Opportunity Fund grant in the amount of Six Million and 00/100 Dollars (\$6,000,000.00) (the "**COF Grant**") to the County for the purpose of inducing Nestle to renovate, improve, equip and operate 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 Nestle, pursuant to the terms of this Agreement; and

WHEREAS, Nestle 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 Thirty-Six Million Three Hundred Thousand and 00/100 Dollars (\$36,300,000.00), of which approximately Nine Million Seven Hundred Thousand and 00/100 Dollars (\$9,700,000.00) will be invested in furniture, fixtures, machinery, and equipment, and approximately Twenty-Six Million Six Hundred Thousand and 00/100 Dollars (\$26,600,000.00) will be invested in the renovation and up-fit of the

Facility, and (B) to create and Maintain a minimum of seven hundred forty-eight (748) 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 Nestle 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 Nestle regarding Capital Investment and New Job creation and Maintenance, and the repayment by Nestle 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:

“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 Nestle, 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 January 1, 2017, by or on behalf of Nestle or an Affiliate of Nestle in taxable real property, taxable tangible personal property, or both, at the Facility, excluding existing real property improvements.

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

“**Initial Performance Certification**” has the meaning set forth in Section 2(i).

“**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 Nestle’s employment levels (so long as there is active recruitment for open positions), (ii) strikes or other force majeure events, and (iii) other temporary work stoppages.

“**New Job**” means a new permanent full-time employment of an indefinite duration at the Facility for which the standard fringe benefits are provided by Nestle or an Affiliate of Nestle 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 Nestle’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 other than New Jobs located in temporary facilities in Arlington County prior to such New Job being located in the Facility as of the Performance Date, and positions with construction contractors, vendors, suppliers and similar multiplier or spin-off jobs shall not qualify as New Jobs. The Average Annual Compensation for the New Jobs identified by Nestle 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).

“**Performance Date**” means December 31, 2019. 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 Nestle to achieve the Targets, the County may agree to extend the Performance Date by up to 15 months. If the Performance Date is extended, the County shall send written notice of the extension to the IDA, Nestle 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.

“**Remaining COF**” means the COF installment payments in an aggregate amount of up to One Million and 00/100 Dollars (\$1,000,000.00) to be disbursed in accordance with Section 3 b) ii).

“**Targets**” means Nestle’s target to make or have made on its behalf Capital Investment at the Facility of at least Thirty-Six Million Three Hundred Thousand and 00/100 Dollars (\$36,300,000.00) (the “**Capital Investment Target**”) and to create and Maintain at least seven hundred forty-eight (748) 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) Nestle covenants and agrees to locate, renovate, improve, equip, operate, and maintain the Facility in Arlington County, make or have made on its behalf a Capital Investment of at least Thirty-Six Million Three Hundred Thousand and 00/100 Dollars (\$36,300,000.00) at the Facility, and create and Maintain at least seven hundred forty-eight (748) New Jobs at the Facility, all as of the Performance Date. Of the Capital Investment, approximately Nine Million Seven Hundred Thousand and 00/100 Dollars (\$9,700,000.00) will be invested in furniture, fixtures, machinery, and equipment, and approximately Twenty-Six Million Six Hundred Thousand and 00/100 Dollars (\$26,600,000.00) will be invested in renovation and up-fit of the Facility.

b) Nestle covenants and agrees that the Average Annual Compensation for all New Jobs identified by Nestle 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 Nestle acknowledges is more than the prevailing average annual wage in the County of Eighty-Five Thousand One Hundred Forty-Six and 00/100 Dollars (\$85,146.00).

c) Nestle 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) Nestle 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) Nestle acknowledges that the County is not a high-unemployment locality, with an unemployment rate for 2015, which is the last year for which such data is available, of 2.8% as compared to the 2015 statewide unemployment rate of 4.4%. Nestle further acknowledges that the County is not a high-poverty locality, with a poverty rate for 2015, which is the last year for which such data is available, of 7.1% as compared to the 2015 statewide poverty rate of 11.2%.

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

g) As to the COF Grant, Nestle's sole and exclusive liability and the County's, the IDA's and VEDP's sole and exclusive remedy for Nestle'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 Nestle have any other liability, beyond the repayment liabilities described in Section 5, for any failure to meet its covenants in Sections numbered 2(a) through 2(d) or elsewhere in this Agreement.

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

i) Nestle shall notify the County and VEDP in writing within ninety (90) days of the earlier to occur of (i) its achievement of the Targets or (ii) the Performance Date, certifying (the "**Initial Performance Certification**") (a) the Capital Investments made by major category, (b) the number of New Jobs created and Maintained and (c) the Average Annual Compensation paid to those employees.

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 Nestle 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 Six Million and 00/100 Dollars (\$6,000,000.00).

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

(i) Nestle will provide notice and evidence reasonably satisfactory to the County, the IDA and VEDP that it has received a Certificate of Occupancy for 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 Five Million and 00/100 Dollars (\$5,000,000.00) of the COF Grant proceeds to the IDA. Within thirty (30) days of its receipt of such COF Grant proceeds, the IDA will disburse such COF Grant proceeds to Nestle.

(ii) Nestle will provide the Initial Performance Certificate and evidence reasonably satisfactory to the County, the IDA and VEDP that it has achieved the Targets by no later than April 1, 2021. Such evidence will be subject to verification by the County, the IDA and VEDP. Within thirty (30) days of the verification, VEDP agrees to notify the County of the expected dates on which the Commonwealth anticipates making to Nestle the five annual installment payments of the Four Million and 00/100 Dollar (\$4,000,000.00) Virginia Economic Development Incentive Grant (the “**VEDIG**”). In accordance with the next paragraph below, it is intended that the Remaining COF will be paid in five annual installment payments at approximately the same dates (the “**Remaining COF Dates**”) that the VEDIG installment payments will be made.

Within thirty (30) days of each of the Remaining COF Dates, the County will disburse Two Hundred Thousand and 00/100 Dollars (\$200,000.00) of the Remaining COF proceeds to the IDA. Within thirty (30) days of its receipt of such Remaining COF proceeds, the IDA will disburse such Remaining COF proceeds to Nestle. If, during the payout of the Remaining COF proceeds, the VEDIG installment payments are subject to cessation, due to a substantial reduction in Capital Investment or New Jobs at the Facility, VEDP agrees to notify the County, the IDA and Nestle. Upon such notification, the County will cease making these Remaining COF installment payments.

c) **Return of COF Grant Proceeds Not Disbursed.** If Nestle has not achieved the Targets as of April 1, 2021 and, therefore, will not be receiving any disbursements of the COF Grant under subsection b). ii) above, the One Million and 00/100 Dollars (\$1,000,000.00) of Remaining COF proceeds will be promptly returned by the County to VEDP for redeposit to the Commonwealth’s Development Opportunity Fund. If VEDP has notified the County that the VEDIG installments have ceased, due to a substantial reduction in Capital Investment or New Jobs at the Facility, any Remaining COF installment proceeds not theretofore disbursed by the County to Nestle through the IDA will be promptly returned by the County to VEDP for redeposit to the Commonwealth’s Development Opportunity Fund.

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

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

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

b) State Incentives. In addition to the COF Grant, in order to induce Nestle 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:

(i) VJIP: up to One Million One Hundred Twenty-Two Thousand and 00/100 Dollars (\$1,122,000.00) from the Virginia Jobs Investment Program (“**VJIP**”), which shall be used by Nestle to pay or reimburse itself for recruitment and training costs for such New Jobs. Nestle will receive One Thousand Five Hundred and 00/100 Dollars (\$1,500.00) per each qualifying New Job from the Virginia Jobs Investment Program, to be paid by the Commonwealth promptly following an application by Nestle following the New Job having been employed by Nestle for at least ninety (90) days; and

(ii) VEDIG: up to a Four Million and 00/100 Dollars (\$4,000,000.00) VEDIG, payable in five annual installments of up to Eight Hundred Thousand and 00/100 Dollars (\$800,000.00) each, to be paid by the Commonwealth to Nestle commencing in the third fiscal year after Nestle has achieved its Targets.

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

(i) Infrastructure Improvements. As part of the required local matching funds and incentives, the County has agreed to provide 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 will relocate one bus station and shift 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 Infrastructure Incentive has an estimated value to Nestle of approximately Two Million and 00/100 Dollars (\$2,000,000.00).

(ii) IDA Grant. In addition to the Infrastructure Incentive, as part of the required local matching funds, subject to appropriation, the County, through the IDA, will fund an incentive grant (the “**IDA Grant**”) of up to Four Million and 00/100 Dollars (\$4,000,000.00) pursuant to the terms of the Arlington County Economic Development Incentive Grant Agreement among the County, the IDA and Nestle.

If, by the Performance Date, the value of the Infrastructure Incentive and the IDA Grant paid or committed to be paid by the County total less than the Six Million and 00/100 Dollars (\$6,000,000.00) COF Grant local match requirement, subject to appropriation, the County, through

the IDA, will make an additional grant to Nestle of the difference at the Performance Date, as long as Nestle has met its Targets.

SECTION 5. REPAYMENT OBLIGATION.

a) **If Statutory Minimum Eligibility Requirements are Not Met.** Section 2.2-115 of the Virginia Code requires that Nestle make a Capital Investment of at least \$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 Nestle to meet either of these statutory minimum eligibility requirements by the Performance Date shall constitute a breach of this Agreement and Nestle must repay to the IDA all of the COF Grant proceeds previously disbursed to Nestle. In such event, the County will repay to VEDP all of the COF Grant proceeds not previously disbursed through the IDA to Nestle including the One Million and 00/100 Dollars (\$1,000,000.00) for the Remaining COF described in Section 3. b). ii).

b) **If Statutory Minimum Eligibility Requirements are Met.** The provisions of this subsection b) are applicable only if Nestle has met the statutory minimum eligibility requirements set forth in subsection a) and are applicable only as to the first Five Million and 00/100 Dollars (\$5,000,000.00) of the COF Grant proceeds. For purposes of repayment, this portion of the COF Grant is to be allocated as Two Million Five Hundred Thousand and 00/100 Dollars (\$2,500,000.00) or fifty percent (50%) to the Capital Investment Target and Two Million Five Hundred Thousand and 00/100 Dollars (\$2,500,000.00) or fifty percent (50%) to the New Jobs Target. If Nestle has met at least ninety percent (90%) of both of the Targets as of the Performance Date, then and thereafter Nestle is no longer obligated to repay any part of this portion of the COF Grant. If Nestle has not met at least ninety percent (90%) of either or both of its Targets as of the Performance Date, Nestle shall repay to the IDA that part of this portion of the COF Grant that is proportional to the shortfall. For example, if as of the Performance Date, Nestle has received all Five Million and 00/100 Dollars (\$5,000,000.00) of this portion of the COF Grant proceeds, but the Capital Investment is only Twenty-Seven Million Two Hundred Twenty-Five Thousand and 00/100 Dollars (\$27,225,000.00) or seventy-five percent (75%) of the Capital Investment Target, and only three hundred seventy-four (374) New Jobs have been Maintained or fifty percent (50%) of the New Jobs Target, Nestle shall repay to the IDA twenty-five percent (25%) of the moneys that it received from this portion of the COF Grant allocated to the Capital Investment Target or Six Hundred Twenty-Five Thousand and 00/100 Dollars (\$625,000.00) and fifty percent (50%) of the moneys that it received from this portion of the COF Grant allocated to the New Jobs Target or One Million Two Hundred Fifty Thousand and 00/100 Dollars (\$1,250,000.00). In such event, the County will repay to VEDP all of the COF Grant proceeds not previously disbursed through the IDA to Nestle, including the One Million and 00/100 Dollars (\$1,000,000.00) Remaining COF described in Section 3. b). ii).

c) **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 Nestle is unable or unwilling to meet the Targets by and through the Performance Date, the County, the

IDA, or VEDP shall promptly notify Nestle of such determination in writing and the parties shall use commercially reasonable efforts to meet within thirty (30) days to discuss such situation. If Nestle 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 Nestle in writing that Nestle will be deemed to not have met the Targets (the date such writing is received, the “**Determination Date**”) and, Nestle must repay to the IDA the COF Grant proceeds previously disbursed to Nestle; 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(b). Such a determination will be based only on significant circumstances such as a filing by or on behalf of Nestle under Chapter 7 of the U.S. Bankruptcy Code, the total liquidation of Nestle, or abandonment of all or substantially all of the Facility by Nestle. In such event, the County will repay to VEDP all of the COF Grant proceeds not previously disbursed through the IDA to Nestle, including the One Million and 00/100 Dollars (\$1,000,000.00) Remaining COF described in Section 3. b). ii).

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

SECTION 6. NESTLE REPORTING.

a) Nestle shall provide, at Nestle’s expense, detailed verification reasonably satisfactory to the County, the IDA, and VEDP of Nestle’s progress on the Targets. Such progress reports will be provided annually, starting at April 1, 2018, and covering the period through the prior December 31. Further, Nestle shall provide progress reports at such other times as the County, the IDA or VEDP may reasonably require.

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

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

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

e) If requested by VEDP, Nestle shall provide to VEDP copies of Nestle's quarterly filings with the Virginia Employment Commission covering the period from the date of this Agreement through the Performance Date.

f) 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 Nestle 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 Nestle and cooperate with Nestle to redact any components of such reports or information that are legally permitted to be redacted. For clarity, nothing in this subsection (f) 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.

SECTION 7. NOTICES.

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

To the County: 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 Nestle: Nestle USA, Inc.
800 North Brand Blvd.
Glendale, California 91203
Attn: Head of Corporate Real Estate and Facilities
Fax: (818) 484-2087
Email : dawn.striff@us.nestle.com

and

Nestle USA, Inc.
800 North Brand Blvd.
Glendale, California 91203
Attn: Head of North America Contracts Center
Fax: (818) 5533520
Email : natalie.erwin@us.nestle.com

until Nestle has commenced beneficial use of the Facility

and

Nestle USA, Inc.
1812 North Moore Street
Arlington, Virginia 22209
Attn: Head of Corporate Real Estate & Facilities
Email : dawn.striff@us.nestle.com

and

Nestle USA, Inc.
1812 North Moore Street
Arlington, Virginia 22209
Attn: General Counsel
Email : daniel.nugent@us.nestle.com

after Nestle has commenced beneficial use of the Facility

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: mgraft@mcguirewoods.com

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

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

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

SECTION 8. MISCELLANEOUS.

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

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

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

d) **Severability.** If any term, provision, covenant, or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of this Agreement shall not be affected thereby to the extent such remaining provisions are not rendered impractical to perform taking into consideration the purposes of this Agreement. In the event that all or any portion of this Agreement is found to be unenforceable, this Agreement or that portion which is found to be unenforceable shall be deemed to be a statement of intention

by the Parties; and the Parties further agree that in such event, and to the maximum extent permitted by law, they shall take all steps necessary to comply with such procedures or requirements as may be necessary in order to make valid this Agreement or that portion which is found to be unenforceable.

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

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

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

h) **Non-Liability of Officials, Employees and Agents.** No member, official, employee or agent of the Arlington County Board, the IDA or VEDP shall be personally liable to Nestle 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 Nestle or its successors or assigns or on any obligation under the terms of this Agreement.

i) **Force Majeure.** If Nestle 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 Nestle in its reasonable discretion, or acts of any governmental body), Nestle will notify the County and the Parties will discuss such event and situation in good faith to discuss potential modifications to the Targets, timeline, and repayment obligations under Section 5.

j) **Dispute Resolution.** In the event of any dispute, controversy or claim of any kind or nature arising under this Agreement, upon the written request of any Party, each of the Parties will designate a senior executive to meet with the other Parties' designees in good faith and as necessary to attempt to resolve the dispute without formal proceedings. If the negotiated resolution of the dispute requires any Party to take, or cause to be taken or to cease taking, some action, such Party must do so within a reasonable period of time, not to exceed ninety (90) days. No Party may initiate formal proceedings for the resolution of a dispute until the earlier of (a) a good faith mutual conclusion by the executives that amicable resolution through continued

negotiation of the matter does not appear likely, or (b) the 90th day after the initial request to negotiate the dispute. After either condition has occurred, a Party may file an action in the jurisdiction and venue stipulated in Section 8(b) of this Agreement, and may pursue any other remedy available at law or in equity. Nothing in this Section 8(j) will, however, prevent or delay a Party from instituting formal proceedings to (i) avoid the expiration of any applicable limitations period or (ii) seek injunctive relief.

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

[Signatures and acknowledgments appear on the following pages]

IN WITNESS WHEREOF, the County, the IDA, VEDP, and Nestle 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 ____ day of _____, 2017, 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: _____

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

By: _____
John Washington, Chairman

ACKNOWLEDGMENT

COMMONWEALTH OF VIRGINIA
COUNTY OF ARLINGTON

On this the ____ day of _____, 2017, before me, personally appeared John Washington, who acknowledged himself to be the Chairman of the Industrial Development Authority of Arlington County in the above instrument, and that he, as Chairman, being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of the Industrial Development Authority of Arlington County, a political subdivision of the Commonwealth of Virginia by himself as Chairman of the Industrial Development Authority of Arlington County.

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

Notary Public

My Commission Expires: _____

**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 ____ day of _____, 2017, 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: _____

NESTLE USA, INC. a Delaware
corporation

By: _____
Steve Presely, Chief Financial Officer

ACKNOWLEDGMENT

STATE OF _____
COUNTY OF _____

On this the ____ day of _____, 2017, before me, personally appeared Steve Presley, who acknowledged himself to be the Chief Financial Officer of Nestle USA, Inc. 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 Nestle USA, Inc. by himself as Chief Financial Officer of Nestle USA, Inc.

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

Notary Public

My Commission Expires: _____

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

This **ARLINGTON COUNTY ECONOMIC DEVELOPMENT INCENTIVE GRANT AGREEMENT** (“**Agreement**”) is made, on the date of full execution (“**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 **NESTLÉ USA, INC. (“Nestlé”)**, a Delaware corporation authorized to transact business in the Commonwealth of Virginia, individually a “**Party**” and collectively the “**Parties**”.

RECITALS

WHEREAS, Nestlé desires to locate, equip and maintain its operations in Arlington County, Virginia, and will during the course of the Agreement execute a lease for a total of at least Two Hundred Five Thousand (205,000) square feet of rentable space at 1812 North Moore Street (“**Nestlé Arlington Facility**”); and

WHEREAS, in order to incentivize and induce Nestlé to (i) lease the Nestlé Arlington Facility through at least December 31, 2019, and (ii) create and Maintain at least Seven Hundred Forty-Eight (748) New Jobs by December 31, 2019, 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 Four Million Dollars (\$4,000,000.00) in economic development incentive general funds (“**EDI Grant**”) to the IDA for the benefit of Nestlé; and

WHEREAS, Nestlé has agreed to accept the EDI Grant from the IDA as an incentive to lease the Nestlé Arlington Facility through at least December 31, 2019, and to create and Maintain at least Seven Hundred Forty-Eight (748) New Jobs by December 31, 2019, subject to the terms and conditions of this Agreement; and

WHEREAS, the County Board, the IDA and Nestlé 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) **“Affiliate”** means with regard to either 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.

(b) **“Average Annual Compensation”** means the average annual salary for the New Jobs identified by Nestle, 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.

(c) **“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 (i) temporary reductions in Nestlé’s employment levels (so long as there is active recruitment for open positions) or (ii) strikes or other force majeure events and other temporary work stoppages.

(d) **“New Job”** means a new permanent full-time job of indefinite duration at the Nestlé Arlington Facility for which standard fringe benefits are provided for the employee by Nestlé and that is counted by Nestlé for the purpose of obtaining the EDI Grant from the IDA. 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 Nestlé’s operations, which must consist of at least 48 weeks, or (ii) 1,680 hours of an employee’s time per year. Seasonal or temporary positions and positions with construction contractors, vendors, suppliers and similar multiplier or spin-off jobs do not qualify as New Jobs. The Average Annual Compensation for the New Jobs identified by Nestle as of the EDI Grant Confirmation Deadline defined in Section 5(a) must be equal to or greater than One Hundred Twenty-Seven Thousand, Seven Hundred Nineteen Dollars (\$127,719.00).

(e) **“Targets”** means the Facility Lease Target and the New Jobs Targets defined in Section 3, collectively.

3. **Nestlé Covenants and Obligations.**

(a) Nestlé covenants and agrees to lease at least Two Hundred Five Thousand (205,000) square feet of rentable space at the Nestlé Arlington Facility and to equip, operate and maintain the Facility until at least December 31, 2019 (**“Facility Lease Target”**).

(b) Nestlé covenants and agrees to have created and Maintained, at a minimum, the following numbers of cumulative New Jobs at the Nestlé Arlington Facility (“**New Jobs Targets**”):

- Three Hundred Seventy-Four (374) New Jobs by June 30, 2018;
- Seven Hundred Forty-Eight (748) cumulative New Jobs by June 30, 2019; and
- Seven Hundred Forty-Eight (748) cumulative New Jobs by December 31, 2019.

(c) For the purpose of Nestlé meeting its New Jobs obligations under this Agreement, employees of Nestlé Affiliates at the Nestlé Arlington Facility will be attributed to Nestlé. In addition, New Jobs that are located in temporary facilities in Arlington County before those New Jobs can be located in the Nestlé Arlington Facility will be considered to be located in the Nestlé Arlington Facility.

(d) Nestlé covenants and agrees that the Average Annual Compensation of the New Jobs as of December 31, 2019, will be at least One Hundred Twenty-Seven Thousand, Seven Hundred Nineteen Dollars (\$127,719.00), which is more than the prevailing average annual wage in Arlington County of Eighty-Five Thousand, One Hundred Sixty-Four Dollars (\$85,164.00).

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

(f) Nestlé 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.

4. IDA Covenants and Obligations. Upon receipt of the requisite moneys from the County Board to fund the EDI Grant payments to Nestlé, the IDA shall, subject to the Disbursement Prerequisites in Section 5, disburse the EDI Grant payments to Nestlé pursuant to Section 6.

5. Disbursement Prerequisites. The obligation of the IDA to disburse all or the earned portion of an EDI Grant to Nestlé on the applicable EDI Grant Distribution Date, as set forth in the Grant Distribution Schedule in Section 6(a), are subject to and conditioned on the fulfillment of the following preconditions (“**Disbursement Prerequisites**”):

(a) Receipt of Notarized Affidavit. On or before July 15, 2018; July 15, 2019; and January 15, 2020 (each a “**Grant Confirmation Deadline**”), Nestlé must have provided the County Manager or his designee with a notarized affidavit, a *sample* of which is attached as **Exhibit A**, declaring, among other things:

(i) The cumulative number of New Jobs created and Maintained by Nestlé as of the corresponding EDI Grant Confirmation Deadline;

(ii) The cumulative amount of rentable area square footage leased and occupied by Nestlé at the Nestlé Arlington Facility as of the corresponding EDI Grant Confirmation Deadline;

(iii) Whether Nestlé has fulfilled the milestones set forth in Section 3 in advance of the corresponding EDI Grant Confirmation Deadline.

(b) Release of Tax Information. Nestlé must sign the Authorization to Release Confidential Tax Information (attached as **Exhibit B**) to authorize the Arlington County Office of Commissioner of Revenue to release Nestlé'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 Nestlé's lease at the Nestlé 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 9(m).

(c) Payment of Taxes. On or before July 15, 2018; July 15, 2019; and January 15, 2020, Nestlé must be current on all applicable property, business, professional and occupational license taxes assessed to Nestlé by Arlington County.

6. Disbursement of EDI Grants.

(a) Upon Nestlé's satisfaction of the Disbursement Prerequisites in Section 5, on August 15, 2018; August 15, 2019; and February 15, 2020 (each an "**EDI Grant Distribution Date**"), the IDA shall disburse to Nestlé all or the earned portion of the EDI Grant in accordance with the following Grant Distribution Schedule and subject to the Grant Distribution Conditions set forth in Section 6(b):

Grant Distribution Schedule

EDI Grant Confirmation Deadline	EDI Grant Distribution Date	EDI Grant Distribution Amount	Cumulative New Jobs	Cumulative Leased Rentable Area Square Feet
7 /15/2018	8 /15/2018	\$2,000,000	374	205,000
7 /15/2019	8 /15/2019	\$2,000,000	748	205,000
1/15/2020	2 /15/2020	\$0	748	205,000

(b) Grant Distribution Conditions.

(i) *Full Distribution of EDI Grant.*

A. New Jobs Target. If, as of the applicable EDI Grant Confirmation Deadline, Nestlé has created and Maintained at least ninety percent (90%) of the required cumulative New Jobs, then, on the corresponding EDI Grant Distribution Date, the IDA shall disburse to Nestlé fifty percent (50%) of the total corresponding Grant amount.

B. Facility Lease Target. If, as of the applicable EDI Grant Confirmation Deadline, Nestlé has leased at the Nestlé Arlington Facility at least ninety percent (90%) of the required cumulative leased rentable area square feet, then, on the corresponding EDI Grant Distribution Date, the IDA shall disburse to Nestlé fifty percent (50%) of the total corresponding Grant amount.

(ii) *Partial Distribution of EDI Grant.*

A. New Jobs Target. If, as of the applicable EDI Grant Confirmation Deadline, Nestlé has created and Maintained between fifty percent (50%) and eighty-nine percent (89%) of the required cumulative New Jobs, then, on the corresponding EDI Grant Distribution Date, the IDA shall disburse to Nestlé an amount equal to the actual percentage of total New Jobs created and Maintained as of the corresponding EDI Grant Confirmation Deadline multiplied by fifty percent (50%) of the total corresponding Grant amount.

B. Facility Lease Target. If, as of the applicable EDI Grant Confirmation Deadline, Nestlé has leased at the Nestlé Arlington Facility between fifty percent (50%) and eighty-nine percent (89%) of the required cumulative leased rentable area square feet, then, on the corresponding EDI Grant Distribution Date, the IDA shall disburse to Nestlé an amount equal to the actual percentage of rentable area square feet leased by Nestlé at the Nestlé Arlington Facility as of the corresponding EDI Grant Confirmation Deadline multiplied by fifty percent (50%) of the total corresponding Grant amount.

(iii) *No Distribution of EDI Grant.*

A. New Jobs Target. If, as of an EDI Grant Confirmation Deadline, Nestlé has not created and Maintained at least fifty percent (50%) of the required cumulative New Jobs, then on the corresponding EDI Grant Distribution Date, the IDA shall not disburse any amount to Nestlé for the New Jobs portion of the EDI Grant.

B. Facility Lease Target. If, as of an EDI Grant Confirmation Deadline, Nestlé has not leased at the Nestlé Arlington Facility at least fifty percent (50%) of the required cumulative leased rentable square feet, then on the corresponding EDI Grant Distribution Date, the IDA shall not disburse any amount to Nestlé for the Facility Lease portion of the EDI Grant.

7. Repayment of EDI Grant.

(a) New Jobs Target. Nestlé must Maintain at least Three Hundred Seventy-Four (374) cumulative New Jobs as of December 31, 2019, or repay to the IDA all EDI Grant money that Nestlé received in connection with the New Jobs Target.

(b) Facility Lease Target. Nestlé must lease at least One Hundred Two Thousand, Five Hundred (102,500) cumulative leased rentable square feet of office space at the Nestlé Arlington Facility by December 31, 2019, or repay to the IDA all EDI Grant money that Nestlé received in connection with the Facility Lease Target.

(c) Potential Extension of Dates. If the County, in consultation with the IDA and Virginia Economic Development Partnership (“VEDP”) deems that Nestlé has made and continues to make good faith and reasonable efforts to achieve the Targets, the County Board may agree to extend any or all Grant Confirmation Deadlines and the corresponding EDI Grant Distribution Date by up to 15 months. If any Grant Confirmation Deadline is extended, the County shall send written notice of the extension to Nestlé, VEDP and the IDA, and the extended Grant Confirmation Deadline and EDI Grant Distribution Date will become the applicable dates for purposes of this Agreement.

8. Limitation of Liability. The County Board’s and the IDA’s sole and exclusive remedy for Nestlé failure to achieve any or all of the Targets or to comply with any obligation in this Agreement will be as set forth in Sections 6(b)(ii) and (iii). In no event will Nestlé have any other liability beyond the repayment liabilities described in Section 7 for any failure to meet its covenants in Sections 3(a) through 3(f) or elsewhere in this Agreement.

9. Miscellaneous Provisions.

(a) Notices, Demands, and Communications between the Parties. Formal notices, demands and communications between 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 Nestlé:

NESTLÉ USA, INC.
800 North Brand Blvd
Glendale, California 91203
Attn: Head of Corporate Real Estate & Facilities
Fax: (818) 484-2087
Email: dawn.striff@us.nestle.com

and

NESTLÉ USA, INC.
800 North Brand Blvd
Glendale, California 91203
Attn: Head of North America Contracts Center
Fax: (818) 553-3520
Email: natalie.erwin@us.nestle.com

until Nestlé has commenced beneficial use of the Nestlé Arlington Facility

and

NESTLÉ USA, INC.
1812 North Moore Street
Arlington, Virginia 22209
Attn: Head of Corporate Real Estate & Facilities
Email: dawn.striff@us.nestle.com

and

NESTLÉ USA, INC.
1812 North Moore Street
Arlington, Virginia 22209
Attn: General Counsel
Email: Daniel.nugent@us.nestle.com

after Nestlé has commenced beneficial use of the Nestlé Arlington Facility

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. Nestlé may not assign its rights and obligations under this Agreement without the prior written consent of the County Board and the IDA, which consent shall not be unreasonably withheld, conditioned or delayed.

(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 Nestlé 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 Nestlé 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 Nestlé 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 Nestlé 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, act of God or other cause 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 Nestlé 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 Nestlé's reported information concerning jobs added, square feet leased, incentives that the County has paid to Nestlé and composite tax and revenue data. If Nestlé's confidential reports and information are otherwise required to be made public or disclosed, the County Board or the IDA will notify Nestlé and will cooperate with Nestlé 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. A facsimile, .pdf copy or other electronic signature (e.g., docuSign) of this Agreement, when signed in compliance with this Section, is an enforceable, original agreement for all purposes.

(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 9(c) of this Agreement and may pursue any other remedy available at law or in equity. Nothing in this Section 9(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 Nestlé have each executed or caused to be executed, in duplicate, this Economic Development Incentive Grant Agreement, as of the day and year first written above.

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 ____ day of _____, 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: _____

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

By: _____
John Washington, Chairman

ACKNOWLEDGMENT

COMMONWEALTH OF VIRGINIA
COUNTY OF ARLINGTON

On this the ____ day of _____, 2017, before me personally appeared John Washington, who acknowledged himself to be the Chairman 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 himself as Chairman of the Industrial Development Authority of Arlington County, Virginia.

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

Notary Public

My Commission Expires: _____

NESTLÉ USA, INC., a Delaware
corporation

By: _____
Steve Presley, Chief Financial Officer

ACKNOWLEDGMENT

STATE OF _____
COUNTY OF _____

On this the ____ day of _____, 2017, before me personally appeared Steve Presley, who acknowledged himself to be the Chief Financial Officer of Nestlé and, being authorized so to do, executed the foregoing instrument by signing the name of Nestlé USA, Inc., a Delaware corporation authorized to transact business in the Commonwealth of Virginia, by himself as Chief Financial Officer of Nestlé.

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

Notary Public

My Commission Expires: _____

Exhibit A
Sample of the Required
NOTARIZED AFFIDAVIT

**AFFIDAVIT
OF
[INSERT NAME OF GRANTEE]**

COMMONWEALTH OF VIRGINIA
CITY/COUNTY OF _____

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

[**INSERT NAME**], [*Insert Title*] of **NESTLÉ USA, INC.** (“**Nestlé**”), 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 Nestlé and as [*Insert Title*] has been duly authorized to execute and deliver this Affidavit for and on behalf of Nestlé. The Affidavit is a requirement of the Arlington County Economic Development Incentive Grant Agreement dated _____, 20__, by and among the County Board of Arlington County, Virginia, the Industrial Development Authority of Arlington County and Nestlé (“**Grant Agreement**”). All actions required under Nestlé’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 Confirmation Deadline**”):
- (i) Nestlé has created and Maintained a total of _____ (____) cumulative New Jobs at the Nestlé Arlington Facility;
 - (ii) Nestlé has leased and occupied _____ (____) cumulative rentable area square feet at the Nestlé Arlington Facility; and
- (c) As of the EDI Grant Confirmation Deadline, Nestlé [has / has not] fulfilled the milestones set forth in Section 3 of the Grant Agreement for the preceding EDI Grant Performance Period.

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_____.

Exhibit A
Sample of the Required
NOTARIZED AFFIDAVIT

My commission expires:

[*Reproducible Notarial Seal*]

Notary Public

Notary Registration No. _____

Exhibit A
Sample of the Required
NOTARIZED AFFIDAVIT

Attachment 1

Cumulative New Jobs Created and Maintained as of the EDI Grant Confirmation Deadline

Employee Number	Salary	Start Date
-----------------	--------	------------

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



OTILIO 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