

LOCAL PERFORMANCE AGREEMENT

This **LOCAL PERFORMANCE AGREEMENT** (the “Agreement” or “Local Performance Agreement”) is by and among the **CITY OF ALEXANDRIA, VIRGINIA** (the “Locality”), a political subdivision of the Commonwealth of Virginia (the “Commonwealth”), **SYSTEMS PLANNING AND ANALYSIS, INC.**, a Maryland corporation authorized to transact business in the Commonwealth (the “Company”), and the **ALEXANDRIA ECONOMIC DEVELOPMENT PARTNERSHIP** (the “Partnership”), a Virginia non-profit organization.

WITNESSETH:

WHEREAS, the Locality has been awarded a grant of and expects to receive \$1,700,000 (the “COF Grant”) from the Commonwealth’s Development Opportunity Fund (the “Fund”) for the purpose of inducing the Company to expand, equip, improve, and operate its corporate headquarters facility in the Locality (the “Facility”) at 2001 N. Beauregard Street in Alexandria, Virginia, thereby making a significant Capital Investment, and creating and Maintaining a significant number of New Jobs, as such capitalized terms are hereinafter defined;

WHEREAS, the Partnership is a nonprofit organized to promote and administer economic development activities on behalf of the Locality, and the Locality has designated the Partnership to act as the COF Grant administrator on the Locality’s behalf, including coordinating compliance, reporting, and related administration;

WHEREAS, the Locality will provide the funds to the Partnership with the expectation that the Partnership will provide the funds to or for the use of the Company, provided that the Company meets certain criteria relating to Capital Investment, New Jobs, and other investments in Alexandria;

WHEREAS, the Parties, as well as the Virginia Economic Development Partnership Authority (“VEDP”), have or will execute a COF Grant Performance Agreement concurrently with this Local Performance Agreement which further details the obligations of the Company and which is incorporated by reference into this Local Performance Agreement and attached as **Exhibit A** (the “COF Agreement”); and

WHEREAS, This Local Performance Agreement sets forth the Locality’s and Partnership’s conditions for disbursement of local funds in coordination with the COF Agreement, which the Locality finds to be in the best interest of the residents of Alexandria.

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. Incorporation of Commonwealth Opportunity Fund Agreement

The COF Agreement, executed by the Company, the Commonwealth, the Locality, and the Partnership is hereby incorporated by reference as **Exhibit A**. The Company's eligibility for local incentives under this Agreement is expressly conditioned on its compliance with the COF Agreement.

Section 2. Definitions

Unless otherwise noted, this Local Performance Agreement incorporates and adopts the definitions used in the COF Agreement.

Section 3. Company Commitments to Investment to Alexandria

(a) *Commitment to Investment in Alexandria.* In addition to job creation and capital expenditure targets detailed in the COF Agreement, the Company shall commit to and complete a number of investments directly in the City of Alexandria. The below list includes existing and planned partnerships the Company shall undertake that are beneficial to the local community:

- (1) *Youth Serving Partnerships.* Formalize partnerships that support and expose Alexandria youth to future careers and employment opportunities. Partners may include Alexandria City Public Schools (ACPS), private schools and nonprofit organizations; activities such as:
 - a. Book drives;
 - b. Girls on the Run;
 - c. STEM programming; and
 - d. Others as mutually agreed to between the Company and partner.
- (2) *Work-Based Learning Partnerships.* Create partnerships with Northern Virginia Community College Alexandria Campus (NVCC) and Virginia Tech Institute for Advanced Computing (both based in Alexandria) on work-based learning opportunities for their students and alumni. The partnerships should include, but not be limited to, internships, job shadowing, mentoring, workplace tours, and project-based learning experiences.
- (3) *Alexandria First.* Make a commitment to "Alexandria First" including the following initiatives:
 - a. Register as an employer with the City of Alexandria Workforce Development Center ("Center") and offer priority interviews to qualified candidates presented to the Company by the Center.
 - b. Company shall show preference for Alexandria qualified vendors (hotels, restaurants, and other small businesses) when procuring goods and services for corporate events. Company shall make best efforts to engage the Partnership and/or Visit Alexandria in planning to host large groups at the

corporate headquarters (conferences, retreats, team building) in an effort to prioritize Alexandria hotels and venues.

(4) Consider, and report to the Partnership, other local investments made by the Company that benefit the Alexandria community including, but not limited to, the following.

- e. Arts and culture in/around West End of Alexandria;
- f. Support of local nonprofit organizations; and
- g. Other items determined to be mutually beneficial to the Company and the City of Alexandria.

(5) Offer Company leadership support of the Partnership's ongoing efforts to attract additional employers to the City including, but not limited to, the following:

- h. Provide interviews and/or quotes to press and media, speaking with businesses considering an Alexandria location;
- i. Company may consider sharing information about or providing introductions to businesses that may have interest in evaluating Alexandria for a new location.

(6) The Company shall provide a summary of the above activities annually to the Partnership, to coincide with submission of the Performance Report under the COF Agreement. Failure to provide such report to the Partnership shall be an event of default under the Agreement which could result in suspension of payment of Local Incentives, as that term is defined below.

Section 4. Local-Level Incentives

Provided that the Company is in compliance with the COF Agreement, as verified by VEDP, and this Agreement, the Locality expects to provide the following incentives, as matching grants or otherwise, for the Facility by the Performance Date (collectively, the "Local Incentives"):

<u>Category of Local Incentive:</u>	<u>Total Amount</u>
Permit fee waivers	\$227,000
Infrastructure improvements	\$979,000
Performance-based cash grant	\$494,000

(1) *Permit Fee Waivers.* Waiver of Locality permit fees shall be provided in the form of a reimbursement to the Company for eligible permit fees actually paid to the City. The amount of said reimbursement shall not exceed \$227,000 in the aggregate. The Company shall be required to provide documentation to the Partnership, such as receipts demonstrating the amount of permit fees paid. Reimbursement shall be limited to permit fees related to construction, expansion, and

alteration/up-fit of the Facility. Upon verification, the Partnership shall reimburse the Company within 30 days of receipt of funds by the Locality.

(2) *Infrastructure Improvements.* The Locality shall expend \$979,000 to fund the design, permitting, procurement, and construction of the Rayburn Ave and N. Beauregard St. Intersection infrastructure improvements (the “Infrastructure Improvements”), with substantial completion by the Performance Date. Nothing herein shall obligate the Locality to expend funds beyond amounts appropriated by the Alexandria City Council or to guarantee a specific completion date. Upon request of the Company, the Locality will provide a summary of the amount of funds expended for the Infrastructure Improvements. The Parties acknowledge that no Infrastructure Improvement funds shall be provided to the Company.

(3) *Performance-Based Cash Grant.* The Performance-based cash grant shall be paid annually at a rate of \$1,000 per New Job above the Alexandria jobs baseline of 590 employees, as demonstrated in the COF Agreement “Performance Report” attached to the COF Agreement as Exhibit A, at an amount not to exceed \$494,000. Such payments shall be made within 60 days following receipt of the annual Performance Report by VEDP and the Locality. Such Performance Report shall include both a Virginia jobs number and an Alexandria jobs number so that the change over the baseline of 590 employees may be verified. The Company shall provide to the Locality and the Partnership copies of all reports and other documentation submitted to VEDP under the COF Agreement. The Locality or Partnership may require such reasonable additional documentation as may be needed, verifying the number of New Jobs created and the amount of Capital Investment made.

a. In the event the Company fails to achieve or maintain the performance obligations by the Performance Date set forth in the COF Agreement, including but not limited to New Jobs Target, the Company shall be required to repay all or a portion of the Performance-based cash grant previously disbursed. Repayment shall be proportional, based on the Company’s actual performance compared to the required performance, using the same methodology. Repayment shall be due within thirty (30) days of written notice by the Locality or the Partnership to the Company.

(4) *COF Agreement Compliance.* Disbursement of any Locality Incentive under this Agreement is expressly conditioned upon the Company’s execution and continued compliance with the COF Agreement. If the COF Agreement is terminated or if the Commonwealth demands repayment of COF funds, the Locality shall have the right to terminate this Agreement immediately and to require repayment of any Performance-based cash grant already disbursed. A default by the Company under the COF Agreement shall constitute a default under this Agreement.

(5) *Compliance with all Laws.* The Company shall comply with all federal, state, and local laws relevant to this Agreement. If any taxes, fees, charges, or assessments owed to the Locality by the Company at the time any Local Incentives are to be paid are outstanding and overdue, the Locality and Partnership may withhold Local Incentive payments until such account becomes current.

Section 5. Notices. Formal notices and communications between 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 electronic mail (email) with transmittal confirmation and confirmation of delivery, addressed as noted below. Notices and communications personally delivered or delivered by document delivery service shall be deemed effective upon receipt. Notices and communications mailed shall be deemed effective on the second business day following deposit in the United States mail. Notices and communications delivered by email shall be deemed effective the next business day, not less than 24 hours, following the date of transmittal and confirmation of delivery to the intended recipient. Such written notices and communications shall be addressed to:

If to the Company, to:

Systems Planning and Analysis, Inc.
2001 N. Beauregard Street
Alexandria, VA 22311
Email: Daniel.muse@spa.com
Attention: Dan Muse, CFO

With Copy to:

Systems Planning and Analysis, Inc.
2001 N. Beauregard Street
Alexandria, VA 22311
Email: tbenedict@spa.com
Attention: Terry Benedict, President

If to the Locality to:

City of Alexandria, Virginia
301 King Street
Alexandria, Virginia 22314
Attention: James F. Parajon, City Manager

With Copy to:

City of Alexandria, Virginia
301 King Street
Alexandria, Virginia 22314
Attention: Cheran Ivery, City Attorney

If to the Partnership, to:

Alexandria Economic Development Partnership
1940 Duke Street
Alexandria, VA 22314
Attn: Stephanie Landrum, CEO

Each party may change the address for service of notice upon it by a notice in writing to the other parties hereto.

Section 6. Default.

In the event of a default by the Company, the Locality or Partnership shall provide written notice to the Company describing the nature of the default. The Company shall have thirty (30) days from receipt of such notice to cure the default to the satisfaction of the Locality. If the default is not cured within such period, the Locality may terminate this Agreement, suspend payment of any unpaid Local Incentive funds, and enforce clawback provisions contained in Section 4? The Company's obligation to repay Local Incentives shall survive the termination of this Agreement.

Section 7. Miscellaneous.

(a) *Entire Agreement; Amendments:* This Agreement constitutes the entire agreement among the parties hereto 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 and the Partnership.

(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 City of Alexandria, 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.

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

(f) *Force Majeure:* Notwithstanding the foregoing provisions of this Agreement, if the Company does not achieve a Target or take any action required under this Agreement because of an "Event of Force Majeure" (as defined below), the time for achieving the applicable Target or taking such action will be extended day-for-day by the delay in meeting the applicable Target or taking such action caused by the Event of Force Majeure. "Event of Force Majeure" means without limitation, any of the following: acts of God; strikes, lockouts or other industrial disturbances; act of public enemies; orders of any kind of the government of the United States of America or of the Commonwealth or any of their respective departments, agencies, political subdivisions or officials, or any civil or military authority; insurrections; riots; epidemics; pandemics; landslides; lightning; earthquakes; fires; hurricanes; tornadoes; storms; floods; washouts; droughts; arrests; restraint of government and people; civil disturbances; explosions; breakage or accident to machinery, transmission pipes or canals not caused by the Company;

partial or entire failure of utilities; or any other cause or event not reasonably within the control of the Company.

(g) *Subject to Appropriation.* Notwithstanding all of the foregoing, any and all payments which the Locality or Partnership is required to make under this Agreement, the COF Agreement, or other related documents shall be subject to City Council appropriation and other availability of funds.

(h) *No Liability of Public Employees.* Notwithstanding any other provisions of this Agreement to the contrary, nothing in this Agreement nor any action taken by the Locality or Partnership pursuant to this Agreement nor any document which arises out of this Agreement shall give rise to personal liability to any of the City's or Partnership's elected or appointed officials, officers, and employees.

(i) *Sovereign Immunity.* Nothing contained in this Agreement shall be deemed to be, or have the effect of being, a waiver by the Locality of such sovereign immunity it may have under the laws of the Commonwealth of Virginia or of the United States.

(j) *No Waiver.* No failure on the part of the Locality or AEDP to enforce any covenant or provision contained in the Agreement nor any waiver of any right under this Agreement shall discharge or invalidate such covenant or provision or affect the right of the other party to enforce the same in the event of any subsequent default.

(k) *Successors and Assigns.* This Agreement shall be binding upon and inure to the benefit of the Parties and their respective permitted successors and assigns. The Company shall not assign or transfer its rights or obligations under this Agreement without the prior written consent of the Locality, which consent may be reasonably withheld in the Locality's sole discretion. Any permitted successor shall expressly assume in writing all obligations of the Company hereunder.

[THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

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

CITY OF ALEXANDRIA, VIRGINIA

By _____
Name: _____
Title: _____
Date: _____

**ALEXANDRIA ECONOMIC
DEVELOPMENT PARTNERSHIP**

By _____
Name: _____
Title: _____
Date: _____

SYSTEMS PLANNING & ANALYSIS

By _____
Name: _____
Title: _____
Date: _____