



County of Rockbridge

County Administrator

150 South Main Street
Lexington, Virginia 24450

ECONOMIC DEVELOPMENT
(540) 464-9662
BUILDING DEPARTMENT
(540) 463-9361
DATA PROCESSING
(540) 464 1241
FISCAL SERVICES
(540) 463 4361
GEOGRAPHIC INFORMATION
SYSTEMS
(540) 464 9656
PLANNING & ZONING
(540) 464 9662
RECYCLING COORDINATOR
(540) 463 2437

SPENCER H. SUTER
County Administrator
Office: (540) 463-4361

AGENDA

ROCKBRIDGE COUNTY ECONOMIC DEVELOPMENT AUTHORITY

BOARD MEETING ROOM

July 8, 2021
2 p.m.

PLEASE TAKE NOTICE that this will be a special meeting of the Economic Development Authority (EDA). The EDA will be meeting on July 8, 2021, this meeting will be held by electronic means pursuant to the Continuity of Government Ordinance adopted by the EDA on April 20, 2020, due to the threats posed by the COVID-19 pandemic to the health, safety, and welfare of the public, and in accordance with the recommendations, guidelines, and requirements of federal, state and local authorities.

Some EDA members will be participating remotely, while others will be on-site with staff. Staff will be presenting as usual in the Board of Supervisors meeting room at 150 S. Main Street, Lexington 24450, and while the room will be open to the public, no more than ten persons, including staff, will be allowed into the room at one time due to social distancing requirements. Per the Governor of the Commonwealth of Virginia Executive Order 63, all persons over the age of ten that do not have a precluding medical condition are asked to wear a face covering.

Citizens are encouraged not to attend the meeting in person but may view or participate in the Zoom Meeting Webinar as described below:

Join the Rockbridge County Economic Development Authority Zoom webinar

When: Thursday, July 08, 2021, 02:00 p.m. Eastern Time

Please click the link below to join the webinar:

<https://us02web.zoom.us/j/83666214789?pwd=RTh3UUFTa0xBcFhOZnZxQVBjdGowQT09>

Or Telephone: Dial: +1 301 715 8592 or +1 312 626 6799 or +1 929 205 6099 or +1 253 215 8782 or +1 346 248 7799 or +1 669 900 6833

Webinar ID: 836 6621 4789

Passcode: 891762

If you have never joined a zoom webinar, you can find instructions to join at the following link:
<https://support.zoom.us/hc/en-us/articles/115004954946-Joining-and-participating-in-a-webinar-attendee->

1. Call to Order
2. Modine Manufacturing Company Performance Agreements
3. Adjourn

AT A SPECIAL MEETING OF THE ROCKBRIDGE COUNTY ECONOMIC
DEVELOPMENT AUTHORITY HELD AT THE ROCKBRIDGE COUNTY
ADMINISTRATIVE OFFICES ON THURSDAY, JULY 8, 2021

AGENDA ITEM: Modine Performance Agreement
SUBMITTED BY: Brandy Flint, Business Development Assistant
DATE: June 28, 2021

SUMMARY OF INFORMATION:

On April 29, 2021, Governor Northam announced that Modine Manufacturing Company would be converting its warehouse in Rockbridge County to a manufacturing facility. Project details include 60 net new jobs from 2021-2025, with average salary for new workers (excluding benefits) of \$47,117, capitalized investment in building construction totaling \$1,100,000, capitalized investment in machinery & tools totaling \$5,775,000, and capitalized investment in furniture, fixtures, and equipment totaling \$150,000. Total capitalized investment for the project is \$7,025,000.

The Commonwealth and the County offered the following incentives to secure the project.

Commonwealth's Development Opportunity Fund (COF) -	\$194,000
Rockbridge County (matching funds are required)	
Machinery and Tools Tax Grant	\$63,533
Local Job Creation Grant	\$92,000
Building Permit Fee Grant	\$8,467
Gas Infrastructure Improvement Grant	\$30,000
Total County Incentive -	\$194,000
Total Combined Incentive (State and Local) -	\$388,000

The corresponding performance agreements and the Approval Resolution are attached for your review.

Due to a delay in receiving the agreement before the Board meeting on June 28th, I was unable to schedule a joint meeting with the Board of Supervisors. Since the Board will not have a meeting the second week in July, we proceed with the Board approving the agreements first.*

Recommendations:

Receive a staff briefing and pose any questions you may have.
If in agreement, adopt the attached resolution approving the performance agreements. *

** As noted above, the agreement's final draft was received just before the Board of Supervisor's agenda posting on Thursday, June 24th, preventing a joint meeting with the EDA and the Board.*

COMMONWEALTH'S DEVELOPMENT OPPORTUNITY FUND

PERFORMANCE AGREEMENT

This **PERFORMANCE AGREEMENT** (the "Agreement") made and entered this 24th of February, 2021, by and among the **COUNTY OF ROCKBRIDGE** (the "Locality"), a political subdivision of the Commonwealth of Virginia (the "Commonwealth"), **MODINE MANUFACTURING COMPANY**, a Wisconsin corporation authorized to transact business in the Commonwealth (the "Company"), the **VIRGINIA ECONOMIC DEVELOPMENT PARTNERSHIP AUTHORITY** ("VEDP"), a political subdivision of the Commonwealth, and the **ECONOMIC DEVELOPMENT AUTHORITY OF ROCKBRIDGE COUNTY, VIRGINIA** (the "Authority"), a political subdivision of the Commonwealth.

WITNESSETH:

WHEREAS, the Locality has been awarded a grant of and expects to receive \$194,000 (the "COF Grant") from the Commonwealth's Development Opportunity Fund (the "Fund") through VEDP for the purpose of inducing the Company to improve an existing warehouse facility in the Locality to convert it to a production facility for industrial cooling equipment (the "Facility"), 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 Locality is willing to provide the funds to the Authority with the expectation that the Authority will provide the funds to or for the use of the Company, provided that the Company meets certain criteria relating to Capital Investment and New Jobs;

WHEREAS, the Locality, the Authority, the Company, and VEDP desire to set forth their understanding and agreement as to the payout of the COF Grant, the use of the COF Grant proceeds, and the obligations of the Company regarding Capital Investment and New Jobs;

WHEREAS, the equipping, improvement, and operation of the Facility will entail a capital expenditure by or on behalf of the Company of approximately \$7,025,000, of which approximately \$150,000 will be invested in furniture, fixtures, and business personal property, approximately \$5,775,000 will be invested in machinery and tools, and approximately \$1,100,000 will be invested in the improvement and up-fit of the building for the Facility;

WHEREAS, the equipping, improvement, and operation of the Facility will further entail the creation and Maintenance of 60 New Jobs at the Facility; and

WHEREAS, the stimulation of the additional tax revenue and economic activity to be generated by the Capital Investment and New Jobs constitutes a valid public purpose for the expenditure of public funds and is the animating purpose for the COF Grant.

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

Section 1. Definitions.

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

“Capital Investment” means a capital expenditure by or on behalf of the Company in taxable real property, taxable tangible personal property, or both, at the Facility. The purchase or lease of furniture, fixtures, and business personal property, and expected building improvement and up-fit by or on behalf of the Company will qualify as Capital Investment. The Capital Investment must be in addition to the capital improvements at the Facility as of February 1, 2021.

“Capital Investment Target” means that the Company has made or caused to be made and retained Capital Investments of at least \$7,025,000.

“Fund” means the Commonwealth’s Development Opportunity Fund.

“Grant Year” means the period from January 1 through December 31, except that the first Grant Year means the period from February 1, 2021 through December 31, 2021.

“Maintain” means that the New Jobs will continue without interruption from the date of creation through the end of each Grant Year, including the Performance Date. Positions for the New Jobs will be treated as Maintained during periods in which such positions are not filled due to (i) temporary reductions in the Company’s employment levels (so long as there is active recruitment for open positions), (ii) strikes, and (iii) other temporary work stoppages.

“New Job” means new permanent full-time employment of an indefinite duration at the Facility for which the standard fringe benefits are provided by the Company for the employee, and for which the Company pays an average annual wage of at least \$47,117. Average annual wage means the average annual salary of full-time positions at the Facility determined by dividing total payroll (of a type included in W-2 compensation) provided to full-time positions at the Facility by the number of full-time positions 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 the Company’s operations, which “normal year” must consist of at least 48 weeks, or (ii) 1,680 hours per year. Seasonal or temporary positions, positions created when a job function is shifted from an existing location in the Commonwealth (except as noted in the next sentence), and positions with construction contractors, vendors, suppliers and similar multiplier or spin-off jobs shall not qualify as New Jobs. A full-time position that is shifted from another Company facility to the Facility may be considered as a New Job if the original position is backfilled.

“New Job Target” means that the Company has created and maintained at least 60 New Jobs.

“Performance Date” means December 31, 2025. If the Locality, in consultation with VEDP, deems that good faith and reasonable efforts have been made and are being made by the Company to achieve the Targets, on or before the Performance Date the Locality may request an extension of the Performance Date by up to 15 months. Any extension of the Performance Date shall require the prior approval of the Company and the Board of Directors of VEDP (the “Board”). If the Performance Date is extended, the Locality shall send written notice of the extension to the Authority, the Company and VEDP and the date to which the Performance Date has been extended shall be the “Performance Date” for the purposes of this Agreement.

“Performance Report” means a report to be filed by the Company in accordance with Section 5. The “Final Performance Report” is to be filed within 90 days after the Performance Date. As noted in Section 5, the Locality, the Authority and VEDP may each request a Performance Report at other dates prior to the Performance Date.

“Statutory Minimum Requirements” means the statutory minimum requirements for a COF Grant in the Locality: (1) making and retaining a Capital Investment of at least \$2,500,000 and (2) creating and maintaining at least 25 New Jobs.

“Targets” means the Capital Investment Target and the New Jobs Target, all to be achieved as of the Performance Date.

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

Section 2. Targets; Statutory Criteria.

(a) *Targets:* The Company will equip, improve, and operate the Facility, and achieve the Targets.

(b) *Encouragement to Offer New Jobs to Residents of the Commonwealth:* The Locality, the Authority, and VEDP hereby strongly encourage the Company to ensure that at least 30% of the New Jobs are offered 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.

(c) *Prevailing Wage; Unemployment and Poverty Rates:* The average annual wage of the New Jobs of at least \$47,117 is more than the prevailing average annual wage in the Locality of \$34,177. The Locality is not a high-unemployment locality, with an unemployment rate for 2019, which is the last year for which such data is available, of 2.7% as compared to the 2019 statewide unemployment rate of 2.8%. The Locality is a high-poverty locality, with a poverty rate for 2019, which is the last year for which such data is available, of 11.5% as compared to the 2019 statewide poverty rate of 9.9%.

(d) *Disclosure of Political Contributions:* The Company acknowledges that the name of the Company will be shared by VEDP with the Governor of Virginia, and any campaign

committee or political action committee associated with the Governor. The Company acknowledges that within 18 months of the date of this 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 the Company to the Governor, his campaign committee, or his political action committee, respectively, during the period from the date of the Company’s application for the COF Grant through the one-year period immediately after the date of this Agreement.

(e) *Support for Virginia’s and Locality’s Economic Development Efforts:* Recognizing that it is in the best interest of all parties for the Commonwealth and the Locality to achieve sustained economic growth, the parties will periodically engage with one another to advise on economic development strategies and initiatives for the Commonwealth and the Locality, such as promoting the attributes of the Commonwealth and the Locality as places to do business, or highlighting important industry trends and/or business development opportunities that the Commonwealth or the Locality may wish to pursue. Such engagement would include the Company’s participation in occasional business retention and expansion visits from VEDP personnel, as deemed appropriate based on the project parameters and nature of the incentives provided to the Company.

Section 3. Disbursement of COF Grant.

(a) *General Provisions:* The disbursement of the COF Grant proceeds to the Company will serve as an inducement to the Company to achieve the Targets.

The COF Grant is to be allocated as 10% (\$19,400) for the Company’s Capital Investment Target, and 90% (\$174,600) for the Company’s New Jobs Target.

The COF Grant proceeds shall be retained in the Fund until needed for disbursement or the COF Grant is withdrawn in accordance with the terms of this Agreement.

(b) *Disbursement of the Portion of the COF Grant to be disbursed for New Jobs:*

(A) Grant Year Ending December 31	(B) New Jobs Expected at End of Grant Year (Cumulative)	(C) Expected Grant Payment for Grant Year to be Disbursed for New Jobs	(D) Maximum Cumulative Grant Payment Available through Grant Year for New Jobs
2021	19	\$ 0	\$ 0
2022	35	31,500	31,500
2023	47	42,300	73,800
2024	52	46,800	120,600
2025	60	54,000	174,600

If the verified Performance Report for the Grant Year ending December 31, 2022 indicates that the Company has achieved the Statutory Minimum Requirements, the Company will qualify for a disbursement of the COF Grant equal to \$900 per New Job created and Maintained as of December 31, 2022, but not for more than 35 New Jobs (no more than \$31,500). If the Company has qualified for less than \$31,500, the amount not paid (the “2022 Grant Rollover Amount”) will be rolled over to, and available for disbursement in, the next year.

The \$42,300 Expected Grant Payment for the Grant Year ending December 31, 2023, *plus* the 2022 Grant Rollover Amount (if any) from the 2022 Grant Year is the “Grant Amount Available for 2023.” If the verified Performance Report for the Grant Year ending December 31, 2023, indicates that the Company has achieved the Statutory Minimum Requirements, the Company will qualify for a disbursement of the COF Grant equal to \$900 per New Job created and Maintained as of December 31, 2023, up to the Grant Amount Available for 2023. If the Company has qualified for less than the Grant Amount Available for 2023, the amount not paid (the “2023 Grant Rollover Amount”) will be rolled over to, and available for disbursement in, the next year.

The \$46,800 Expected Grant Payment for the Grant Year ending December 31, 2024, *plus* the 2023 Grant Rollover Amount (if any) from the 2023 Grant Year is the “Grant Amount Available for 2024.” If the verified Final Performance Report for the Grant Year Ending December 31, 2024, indicates that the Company has achieved the Statutory Minimum Requirements, the Company will qualify for a disbursement of the COF Grant equal to \$900 per New Job created and Maintained as of December 31, 2024, up to the Grant Amount Available for 2024. If the Company has qualified for less than the Grant Amount Available for 2024, the amount not paid (the “2024 Grant Rollover Amount”) will be rolled over to, and available for disbursement in, the next year.

The \$54,000 Expected Grant Payment for the Grant Year ending December 31, 2025, *plus* the 2024 Grant Rollover Amount (if any) from the 2024 Grant Year is the “Grant Amount Available for 2025.” If the verified Final Performance Report for the Grant Year Ending December 31, 2025, indicates that the Company has achieved the Statutory Minimum Requirements, the Company will qualify for a disbursement of the COF Grant equal to \$900 per New Job created and Maintained as of December 31, 2025, up to the Grant Amount Available for 2025.

Any disbursements to the Company under this subsection (b) will be considered to be earned when paid, and will not be subject to any repayment or claw back.

(c) *Disbursement of the Portion of the COF Grant to be disbursed for Capital Investment:* If the verified Final Performance Report for the Grant Year ending December 31, 2025 indicates that the Company has achieved the Statutory Minimum Requirements, and has achieved the \$7,025,000 Capital Investment Target, the Company will qualify for a disbursement of COF Grant equal to \$19,400. If the verified Final Performance Report for the Grant Year ending December 31, 2025, indicates that the Company has achieved the Statutory Minimum Requirements, but has not achieved the \$7,025,000 Capital Investment Target, the Company will qualify for a reduced disbursement of the COF Grant allocated to the Capital Investment which

is proportional to the shortfall. For example, if as of the Performance Date, only \$5,620,000 of the Capital Investment has been made and retained (reflecting achievement of 80% of the Capital Investment Target), the Company will receive \$15,520 (reflecting 80% of the \$19,400 allocated to the Capital Investment Target).

Any disbursements to the Company under this subsection (c) will be considered to be earned when paid, and will not be subject to any repayment or claw back.

(d) *Disbursement:* Within 30 days after verification of the Performance Report or Final Performance Report, if any amount of COF Grant proceeds are available for disbursement to the Company, as determined in accordance with the foregoing calculations, VEDP will disburse that amount to the Locality. Within 30 days after receipt of such amount, the Locality will disburse such COF Grant proceeds to the Authority. Within 30 days after receipt of such amount, the Authority will disburse such COF Grant proceeds to the Company.

If any amount of COF Grant proceeds have not been earned by the Company, the amount not disbursed will be retained in the Fund and will be available for other economic development projects.

(e) *Use of the COF Grant Proceeds:* The Company will use the COF Grant proceeds to pay or reimburse the cost of construction or build-out of publicly or privately owned buildings for the Facility, as permitted by Section 2.2-115(D) of the Virginia Code.

Section 4. Break-Even Point; State and Local Incentives.

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

<u>Category of Incentive:</u>	<u>Total Amount</u>
COF Grant	\$194,000
Virginia Talent Accelerator Program (“VTAP”) (Estimated)	228,000

The proceeds of the COF Grant shall be used for the purposes described in Section 3(e). The VTAP estimate reflects cost savings to the Company for recruitment and training services.

(b) *Local-Level Incentives:* The Locality and the Authority expect to provide the following incentives, as matching grants or otherwise, for the Facility by the Performance Date:

<u>Category of Incentive:</u>	<u>Total Amount</u>
Machinery and Tools Tax Grant (Up To)	\$63,533
Local Jobs Creation Grant	92,000
Building Permit Fee Grant (Up To)	8,467
Natural Gas Infrastructure Improvements Grant (Up To)	30,000

If, by the Performance Date, the total value of all Local-Level Incentives disbursed or provided, or committed to be disbursed or provided, by the Locality to the Company is less than the \$194,000 COF Grant local match requirement, the Locality, subject to appropriation, will make an additional grant to the Company of the difference promptly after Performance Date, so long as the Company has met its Targets.

The proceeds of all Local-Level Incentives described herein, when disbursed or provided to the Company, may be used by the Company for any lawful purpose.

(c) *Other Incentives:* This Agreement relates solely to the COF Grant. The qualification for, and payment of all State-Level Incentives and Local-Level Incentives, except for the COF Grant, will be governed by separate arrangements between the Company and the entities offering the other incentives.

Section 5. Company Reporting.

(a) *Performance Reporting:* The Company shall provide, at the Company's expense, in the form attached hereto as Exhibit A, detailed Performance Reports satisfactory to the Locality, the Authority and VEDP of the Company's progress on the Targets. The Performance Reports are due by each April 1, commencing April 1, 2022, reflecting the Company's progress toward the Targets as of the prior December 31. Further, the Company shall provide such Performance Reports at such other times as the Locality, the Authority or VEDP may require.

(b) *Final Performance Report:* The Company shall provide, at the Company's expense, in the form attached hereto as Exhibit B, a detailed Final Performance Report satisfactory to the Locality, the Authority and VEDP of the Company's achievement of the Targets as of the Performance Date. This Performance Date Report shall be filed within 90 days after the Performance Date.

Should the Company be unable to file the Final Performance Report within the 90-day timeframe, the Company may request a 60-day delay in filing the Final Performance Report. VEDP will require a \$3,000 fee, payable to VEDP, to process the request for the filing delay. Should the Company not file the Final Performance Report within the 90-day window nor request a filing delay (including payment of the required fee), or if the Company requests a filing delay but does not file the Final Performance Report prior to the new filing deadline, VEDP will withhold any COF Grant payment that might otherwise be due, and all rights of the Company under this Agreement will automatically terminate.

(c) *Virginia Corporate Income Tax Information:* With each such Performance Report or Final Performance Date Report, the Company shall report to VEDP the amount paid by the Company (or for a pass-through entity, by its shareholders, members, or partners) in the prior calendar year in Virginia corporate (or for a pass-through entity, personal) income tax. VEDP hereby represents to the Company that it considers such information to be confidential proprietary information that is exempt from public disclosure under the Virginia Freedom of Information Act and that such information will be used by VEDP solely in calculating aggregate return on invested capital analyses for purposes of gauging the overall effectiveness of economic development incentives.

Section 6. Verification of Targets.

(a) *Verification of Capital Investment:* The Company hereby authorizes the Locality, including the Locality's Treasurer and Commissioner of the Revenue, to release to VEDP the Company's real estate tax, business personal property tax and machinery and tools tax information. Such information shall be marked and considered confidential and proprietary and shall be used by VEDP solely for verifying satisfaction of the Capital Investment Target. If the Locality or the Locality's Treasurer or Commissioner of the Revenue should require additional documentation or consents from the Company to access such information, the Company shall promptly provide, at the Company's expense, such additional documentation or consents as the Locality or VEDP may request. In accordance with Virginia Code Section 58.1-3122.3, VEDP is entitled to receive the Company's real estate tax, business personal property tax and machinery and tools tax information from the Locality's Commissioner of the Revenue.

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

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

(c) *Additional Documentation:* In addition to the verification data described above, in the sole discretion of the Locality, the Authority or VEDP, the Locality, the Authority or VEDP, may each require such other documentation or audits as may be required to properly verify the Capital Investment or New Jobs.

Section 7. Possible Termination of this Agreement and Redeployment of COF Grant Proceeds. If the Locality, the Authority or VEDP shall determine at any time prior to the Performance Date that the Company is unable or unwilling to meet and Maintain its Targets by and through the Performance Date, and if the Locality, the Authority or VEDP shall have promptly notified the Company of such determination, this Agreement will be terminated, no further disbursements of the COF Grant proceeds will be made to the Company, and the amount

not disbursed will be retained in the Fund and made available for other economic development projects. Such a determination will be based on such circumstances as a filing by or on behalf of the Company under Chapter 7 of the U.S. Bankruptcy Code, the liquidation of the Company, an abandonment of the Facility by the Company or other similar significant event that demonstrates that the Company will be unable or is unwilling to satisfy the Targets for the COF Grant.

Section 8. 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:

Modine Manufacturing Company
1221 Magnolia Ave.
Buena Vista, VA 24416-3317
Email: Matthew.a.niebur@modine.com
Attention: Matthew Niebur, Plant Manager

with a copy to:

Modine Manufacturing Company
1500 DeKoven Ave.
Racine, WI 53403
Email: Geoffrey.R.Schiveley@modine.com
Attention: Geoffrey Schiveley, Associate
General Counsel

If to the Locality, to:

County of Rockbridge
150 S. Main Street
Lexington, Virginia 24450
Email: ssuter@rockbridgecountyva.gov
Attention: County Administrator

with a copy to:

County of Rockbridge
150 South Main Street
Lexington, Virginia 24450
Email: vhuffman@rockbridgecountyva.gov
Attention: County Attorney

If to the Authority, to:

Economic Development Authority of
Rockbridge County
150 South Main Street
Lexington, Virginia 24450
Email: bflint@rockbridgecountyva.gov
Attention: EDA Secretary

with a copy to:

Economic Development Authority of
Rockbridge County
150 South Main Street
Lexington, Virginia 24450
Email: vhuffman@rockbridgecountyva.gov
Attention: Counsel to EDA

If to VEDP, to:

with a copy to:

Virginia Economic Development Partnership
One James Center, Suite 900
901 East Cary Street
Richmond, Virginia 23219
Email: moret@vedp.org
Attention: President and CEO

Virginia Economic Development Partnership
One James Center, Suite 900
901 East Cary Street
Richmond, Virginia 23219
Email: smcninch@vedp.org
Attention: General Counsel

Section 9. Miscellaneous.

(a) *Entire Agreement; Amendments:* This Agreement constitutes the entire agreement among the parties hereto as to the COF Grant and may not be amended or modified, except in writing, signed by each of the parties hereto. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. The Company may not assign its rights and obligations under this Agreement without the prior written consent of the Locality, the Authority and VEDP.

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

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

COUNTY OF ROCKBRIDGE, VIRGINIA

Approved as to form:

Rockbridge County Attorney

By _____
Name: _____
Title: _____
Date: _____

**ECONOMIC DEVELOPMENT AUTHORITY
OF ROCKBRIDGE COUNTY**

By _____
Name: _____
Title: _____
Date: _____

**MODINE MANUFACTURING
COMPANY**

By _____
Name: _____
Title: _____
Date: _____

**VIRGINIA ECONOMIC
DEVELOPMENT PARTNERSHIP
AUTHORITY**

By _____
Name: _____
Title: _____
Date: _____

- Exhibit A: Performance Report Form
- Exhibit B: Final Performance Report Form

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

PROJECT SUMMARY:

Project	
Location	
Amount of Grant	
Performance Reporting Period	
Performance Date	

PROJECT PERFORMANCE⁴:

Performance Measurement	Target	As of _____	% Complete
New Jobs (over ___ baseline) ¹			
Confidence level target will be reached by Performance Date shown above (check one)	High <input type="checkbox"/>	Moderate <input type="checkbox"/>	Low <input type="checkbox"/>
Capital Investment (provide breakdown below) ²			
Confidence level target will be reached by Performance Date shown above (check one)	High <input type="checkbox"/>	Moderate <input type="checkbox"/>	Low <input type="checkbox"/>
Average Annual Wage			N/A
Confidence level target will be reached by Performance Date shown above (check one)	High <input type="checkbox"/>	Moderate <input type="checkbox"/>	Low <input type="checkbox"/>
Standard Fringe Benefits (check one)	Yes <input type="checkbox"/>	No <input type="checkbox"/>	N/A
Virginia Corporate Income Tax Paid in Prior Calendar Year³	\$		

¹Data will be verified using Virginia Employment Commission records. Attach the company's four most recent Quarterly Tax Reports (Form FC-20) filed with the Virginia Employment Commission.

²Data will be verified with locality records.

³This confidential information is protected from disclosure pursuant to § 2.2-3705.6 of FOIA.

⁴Final, actual performance will be reported on VEDP's public reporting website.

Capital Investment Breakdown	Amount
Land	\$
Land Improvements	
New Construction or Expansion	
Renovation or Building Up-fit	
Production Machinery and Tools	
Furniture, Fixtures and Equipment	
Other	
Total	\$

COMMENTS:

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

TO BE CERTIFIED BY AN OFFICER OF THE COMPANY:

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

Company: _____

Submitted By: _____
Signature of Official

Name: _____
Print Name

Title: _____

Date: _____

Please return to:

Kim Ellett, Incentives Compliance Manager, Virginia Economic Development Partnership,
804.545.5618, kellett@vedp.org

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

PROJECT SUMMARY:

Project	
Location	
Amount of Grant	
Performance Date	

PROJECT PERFORMANCE:¹

Performance Measurement	Target	As of _____, 20__	% Complete
New Jobs (over ___ baseline) ²			
Capital Investment (provide breakdown below) ³			
Average Annual Wage			N/A
Standard Fringe Benefits			
Virginia Corporate Income Tax Paid in Prior Calendar Year ⁴	\$		

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

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

³ Data will be verified using records from the Commissioner of the Revenue and invoices.

⁴This confidential information is protected from disclosure pursuant to § 2.2-3705.6 of FOIA

Capital Investment Breakdown	Amount
Land	\$
Land Improvements	
New Construction or Expansion	
Renovation or Building Up-fit	
Production Machinery and Tools	
Furniture, Fixtures and Equipment	
Other	
Total	\$

LOCAL MATCH:

Goal	
Actual	

COMMENTS:

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

TO BE CERTIFIED BY AN OFFICER OF THE COMPANY:

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

Company: _____

Submitted By: _____
Signature of Official

Name: _____
Print Name

Title: _____

Date: _____

Please return to:

Kim Ellett, Incentives Compliance Manager, Virginia Economic Development Partnership,
804.545.5618, kelllett@vedp.org

PERFORMANCE AGREEMENT

This Performance Agreement (this "Agreement"), made and entered into this 28th day of June, 2021, by and between the COUNTY OF ROCKBRIDGE, VIRGINIA (the "Locality" or the "County"); the ECONOMIC DEVELOPMENT AUTHORITY OF ROCKBRIDGE COUNTY, VIRGINIA (the "Authority"); and **MODINE MANUFACTURING COMPANY**, a Wisconsin corporation authorized to transact business in the Commonwealth ("Modine" or the "Company").

WITNESSETH

WHEREAS, the County of Rockbridge, Virginia, and the Economic Development Authority of Rockbridge County, Virginia, desire to promote and encourage the economic development and vitality of the County through the recruitment of new industry and the expansion of existing business and through the creation of employment opportunities for the citizens of Rockbridge County, in order to provide for increased employment and corporate investment in the County; and

WHEREAS, the Company desires to support the economic development efforts of the County and the Authority, and proposes to substantially expand its manufacturing facility in Rockbridge County, Virginia, located at 360 Collierstown Road, (the "Facility"), to equip, improve, expand, and operate its manufacturing facility, and to create and maintain a significant number of new jobs (hereinafter referred to as the "Project"); and

WHEREAS, the County has been awarded a grant of and expects to receive \$194,000 from the Commonwealth's Development Opportunity Fund (a "COF Grant") through the Virginia Economic Development Partnership Authority ("VEDP") for the purpose of inducing the Company to complete the Project; and

WHEREAS, the County will match the COF Grant and provide additional assistance as set forth herein; and

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

WHEREAS, the County, the Authority and the Company have entered into the Commonwealth's Development Opportunity Fund Performance Agreement (the "COF Performance Agreement") dated February 24, 2021, 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 the Company regarding Capital Investment and New Jobs, and the repayment by the Company of all or part of the COF Grant under certain circumstances, a copy of which is attached hereto as Exhibit C; and,

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

WHEREAS, the equipping, improvement, expansion, and operation of the Facility will entail a capital expenditure by or on behalf of the Company of at least \$7,025,000, of which approximately \$5,775,000 will be invested in machinery and tools, approximately \$150,000 will be invested in furniture, fixtures, and business personal property, and approximately \$1,100,000 will be invested in the improvement and up-fit of the building for the Facility; and

WHEREAS, the equipping, improvement, expansion, and operation of the Facility will further entail the creation and Maintenance of at least 60 New Jobs at the Facility; and

WHEREAS, the stimulation of the additional tax revenue and economic activity to be generated by the Capital Investment and New Jobs constitutes a valid public purpose for the expenditure of public funds and is the animating purpose for the COF Grant.

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

Section 1. Definitions.

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

“Capital Investment” means a capital expenditure by or on behalf of the Company in taxable real property, taxable tangible personal property, or both, at the Facility. The purchase or lease of furniture, fixtures, and business personal property, and expected building improvement and up-fit by or on behalf of the Company will qualify as Capital Investment. The Capital Investment must be in addition to the capital improvements at the Facility as of February 1, 2021.

“Capital Investment Target” means that the Company has made or caused to be made and retained Capital Investments of at least \$7,025,000.

“Fund” means the Commonwealth’s Development Opportunity Fund.

“Grant Year” means the period from January 1 through December 31, except that the first Grant Year means the period from February 1, 2021, through December 31, 2021.

“Maintain” means that the New Jobs will continue without interruption from the date of creation through the end of each Grant Year, including the Performance Date. Positions for the New Jobs will be treated as Maintained during periods in which such positions are not filled due to (i) temporary reductions in the Company’s employment levels (so long as there is active recruitment for open positions), (ii) strikes, and (iii) other temporary work stoppages.

“New Job” means new permanent full-time employment of an indefinite duration at the Facility for which the standard fringe benefits are provided by the Company for the employee, and for which the Company pays an average annual wage of at least \$47,117. Average annual wage means the average annual salary of full-time positions at the Facility determined by dividing total payroll (of a

type included in W-2 compensation) provided to full-time positions at the Facility by the number of full-time positions 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 the Company's operations, which "normal year" must consist of at least 48 weeks, or (ii) 1,680 hours per year. Seasonal or temporary positions, positions created when a job function is shifted from an existing location in the Commonwealth (except as noted in the next sentence), and positions with construction contractors, vendors, suppliers and similar multiplier or spin-off jobs shall not qualify as New Jobs. A full-time position that is shifted from another Company facility to the Facility may be considered as a New Job if the original position is backfilled.

"New Job Target" means that the Company has created and maintained at least 60 New Jobs.

"Performance Date" means December 31, 2025. If the Locality, in consultation with the Authority and VEDP, deems that good faith and reasonable efforts have been made and are being made by the Company to achieve the Targets, on or before the Performance Date the Locality may request an extension of the Performance Date by up to 15 months. Any extension of the Performance Date shall require the prior approval of the Company and the Board of Directors of VEDP (the "Board"). If the Performance Date is extended, the Locality shall send written notice of the extension to the Authority, the Company and VEDP and the date to which the Performance Date has been extended shall be the "Performance Date" for the purposes of this Agreement.

"Performance Report" means a report to be filed by the Company in accordance with Section 5. The "Final Performance Report" is to be filed within 90 days after the Performance Date. As noted in Section 5, the Locality, the Authority and VEDP may each request a Performance Report at other dates prior to the Performance Date.

"Statutory Minimum Requirements" means the statutory minimum requirements for a COF Grant in the Locality: (1) making and retaining a Capital Investment of at least \$2,500,000 and (2) creating and maintaining at least 25 New Jobs.

"Targets" means the Capital Investment Target and the New Jobs Target, all to be achieved as of the Performance Date.

"Virginia Code" means the Code of Virginia of 1950, as amended.

Section 2. Targets; Statutory Criteria.

(a) *Targets:* The Company will equip, improve, and operate the Facility, and achieve the Targets.

(b) *Encouragement to Offer New Jobs to Residents of the Commonwealth:* The Locality, the Authority, and VEDP hereby strongly encourage the Company to ensure that at least 30% of the New Jobs are offered 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.

(c) *Prevailing Wage; Unemployment and Poverty Rates:* The average annual wage of the New Jobs of at least \$47,117 is more than the prevailing average annual wage in the Locality of \$34,177. The Locality is not a high-unemployment locality, with an unemployment rate for 2019, which is the last year for which such data is available, of 2.7% as compared to the 2019 statewide unemployment rate of 2.8%. The Locality is a high-poverty locality, with a poverty rate for 2019, which is the last year for which such data is available, of 11.5% as compared to the 2019 statewide poverty rate of 9.9%.

(d) *Disclosure:* The Company acknowledges that the name of the Company will be shared by the Locality and the Authority, and this Agreement will be subject to disclosure under the Virginia Freedom of Information Act.

Section 3. Disbursement of COF Grant.

(a) *Disbursement of the COF Grant:* The Locality has requested that the COF Grant be disbursed to it. The Locality will then disburse the funds to the Authority to be disbursed to the Company as an inducement to the Company to achieve the Targets at the Facility, pursuant to the COF Performance Agreement dated February 24, 2021, and attached hereto as Exhibit C.

(b) *Use of the COF Grant Proceeds and Grant Match Funds:* The Company will use the COF Grant proceeds and Grant Match Funds to pay or reimburse the cost of construction or build-out of publicly or privately owned buildings, and public or private utility extension or capacity development on and off site, for the Facility, as permitted by Section 2.2-115(D) of the Virginia Code.

Section 4. County Grant Match

(a) During the period from the date hereof through December 31, 2025, the County agrees to appropriate Grant Match Funds, up to the sum of \$194,000, to the Authority for its use in providing incentives for the Company to undertake the Project. Appropriations shall be made either annually, or as needed, for the Authority to make reimbursements of the Grant Match Funds as provided in Section 5 below.

Section 5. Authority Incentive Funding

(a) *Grant Match Funds.* The Authority, subject to its receipt of the Grant Match Funds from the County, shall appropriate the Grant Match Funds when necessary for reimbursement to the Company as provided herein, in the total amount of \$194,000, as an incentive package to the Company to undertake the Project in the form of reimbursements. The Grant Match Funds shall be allocated by the Authority for use in furtherance of the Project as follows:

<u>Category of Incentive:</u>	<u>Total Amount</u>
Local Jobs Creation Grant	\$ 92,000
Machinery & Tools Tax Grant (“M&T Grant) (Up To)	\$ 63,533

Building Permit Fee Grant (Up To)	\$ 8,467
Natural Gas Infrastructure Improvements Grant (Up To)	\$ 30,000

The Local Jobs Creation Grant of up to \$92,000 shall be available and disbursed to the Company as provided in subsection (b).

The M&T Grant shall be in a total amount of up to \$63,533, available to the Company for reimbursement of Machinery and Tools Tax payments to the County, in the following amounts per year:

<u>2021</u>	<u>2022</u>	<u>2023</u>	<u>2024</u>	<u>2025</u>	<u>Total</u>
\$9,014	\$11,564	\$14,114	\$14,114	\$14,727	\$63,533

The Building Permit Fee Grant of up to \$8,467 shall be available for reimbursement of Company expenditures for building permit fees expended in furtherance of the Project, beginning as of February 1, 2021.

The Natural Gas Infrastructure Improvements Grant of up to \$30,000 shall be available for reimbursement of Company expenditures for construction and installation of exterior natural gas infrastructure improvements to or for the benefit of the Facility in furtherance of the Project, beginning as of February 1, 2021.

The Grant Match Funds shall be available to the Company for use from the date hereof until March 31, 2026. However, for the Company to use the Grant Match Funds after the Performance Date, the Company shall have met and maintained its Targets.

To obtain the Grant Match Funds, the Company shall submit to the Authority all requests for reimbursement of the specified taxes and fees with proper documentation of such bills or expenses, and receipts as evidence of payment thereof. All such requests by the Company shall be sent to the Secretary of the Economic Development Authority, or such other person as the Authority may designate by providing written Notice to the Company. The Authority shall make such payments to the Company within thirty (30) days of its receipt of properly documented requests therefor from the Company.

If, by the Performance Date, the proceeds of the Grant Match Funds disbursed or provided, or committed to be disbursed or provided, by the Locality to the Company total less than the \$194,000 COF Grant local match requirement, the Authority, subject to appropriation, will make an additional grant to the Company of the difference at the Performance Date, so long as the Company has met its Targets. In such event, the additional grant to the Company shall constitute a portion of the Grant Match Funds not yet used by the Company, which shall thereafter be credited against the remaining Grant Match Funds. Accordingly, under no circumstances shall the Grant Match Funds exceed the amount set forth above.

(b) *Disbursement of the Local Jobs Creation Grant:*

(A) Grant Year Ending December 31	(B) New Jobs Expected at End of Grant Year (Cumulative)	(C) Expected Grant Match Payment for Grant Year to be Disbursed for New Jobs	(D) Maximum Cumulative Grant Payment Available through Grant Year for New Jobs
2021	19	\$ 0	\$ 0
2022	35	53,666.55	53,666.55
2023	47	18,399.96	72,066.51
2024	52	7,666.65	79,733.16
2025	60	12,266.84	92,000

If the verified Performance Report for the Grant Match Year ending December 31, 2022, indicates that the Company has achieved the Statutory Minimum Requirements, the Company will qualify for a disbursement of the COF Grant Match equal to \$1,533.33 per New Job created and Maintained as of December 31, 2022, but not for more than 35 New Jobs (no more than \$53,666.55). If the Company has qualified for less than \$53,666.55, the amount not paid (the “2022 Grant Match Rollover Amount”) will be rolled over to, and available for disbursement in, the next year.

The \$18,399.96 Expected Grant Match Payment for the Grant Match Year ending December 31, 2023, *plus* the 2022 Grant Match Rollover Amount (if any) from the 2022 Grant Year is the “Grant Match Amount Available for 2023.” If the verified Performance Report for the Grant Year ending December 31, 2023, indicates that the Company has achieved the Statutory Minimum Requirements, the Company will qualify for a disbursement of the COF Grant Match equal to \$1,533.33 per New Job created and Maintained as of December 31, 2023, up to the Grant Match Amount Available for 2023. If the Company has qualified for less than the Grant Match Amount Available for 2023, the amount not paid (the “2023 Grant Match Rollover Amount”) will be rolled over to, and available for disbursement in, the next year.

The \$7,666.65 Expected Grant Match Payment for the Grant Year ending December 31, 2024, *plus* the 2023 Grant Match Rollover Amount (if any) from the 2023 Grant Year is the “Grant Match Amount Available for 2024.” If the verified Final Performance Report for the Grant Year Ending December 31, 2024, indicates that the Company has achieved the Statutory Minimum Requirements, the Company will qualify for a disbursement of the COF Grant Match equal to \$1,533.33 per New Job created and Maintained as of December 31, 2024, up to the Grant Match Amount Available for 2024. If the Company has qualified for less than the Grant Match Amount Available for 2024, the amount not paid (the “2024 Grant Match Rollover Amount”) will be rolled over to, and available for disbursement in, the next year.

The \$12,266.84 Expected Grant Match Payment for the Grant Year ending December 31, 2025, *plus* the 2024 Grant Match Rollover Amount (if any) from the 2024 Grant Year is the

“Grant Match Amount Available for 2025.” If the verified Final Performance Report for the Grant Year Ending December 31, 2025, indicates that the Company has achieved the Statutory Minimum Requirements, the Company will qualify for a disbursement of the COF Grant Match equal to \$1,533.33 per New Job created and Maintained as of December 31, 2025, up to the Grant Match Amount Available for 2025, plus any difference between the Grant Match Amount Available for 2025 and the total Local Jobs Creation Grant of \$92,000.

Any disbursements to the Company under this subsection (b) will be considered to be earned when paid, and will not be subject to any repayment or claw back.

(c) *Interpretation of Agreements:* This Agreement relates solely to County’s Grant Match and disbursement of the Grant Match Funds. In regard to the COF Grant and payment of the funds received pursuant thereto, the COF Performance Agreement shall be controlling. Should there be any conflict between the agreements, the Commonwealth’s Development Opportunity Fund Performance Agreement shall control.

Section 6. Company Reporting.

(a) *Performance Reporting:* The Company shall provide, at the Company’s expense, in the form attached hereto as Exhibit A, detailed Performance Reports satisfactory to the Locality, the Authority and VEDP of the Company’s progress on the Targets. The Performance Reports are due by each April 1, commencing April 1, 2022, reflecting the Company’s progress toward the Targets as of the prior December 31. Further, the Company shall provide such Performance Reports at such other times as the Locality, the Authority or VEDP may require.

(b) *Final Performance Report:* The Company shall provide, at the Company’s expense, in the form attached hereto as Exhibit B, a detailed Final Performance Report satisfactory to the Locality, the Authority and VEDP of the Company’s achievement of the Targets as of the Performance Date. This Performance Date Report shall be filed within 90 days after the Performance Date.

Should the Company be unable to file the Final Performance Report within the 90-day timeframe, the Company may request a 60-day delay in filing the Final Performance Report. VEDP will require a \$3,000 fee, payable to VEDP, to process the request for the filing delay. Should the Company not file the Final Performance Report within the 90-day window nor request a filing delay (including payment of the required fee), or if the Company requests a filing delay but does not file the Final Performance Report prior to the new filing deadline, the County and the Authority will withhold any Grant Match Payment that might otherwise be due, and all rights of the Company under this Agreement will automatically terminate.

(c) *Virginia Corporate Income Tax Information:* With each such Performance Report or Final Performance Date Report, the Company shall report to VEDP the amount paid by the Company (or for a pass-through entity, by its shareholders, members, or partners) in the prior calendar year in Virginia corporate (or for a pass-through entity, personal) income tax. VEDP hereby represents to the Company that it considers such information to be confidential proprietary information that is exempt from public disclosure under the Virginia Freedom of Information Act and that such information will

be used by VEDP solely in calculating aggregate return on invested capital analyses for purposes of gauging the overall effectiveness of economic development incentives.

Section 7. Verification of Targets.

(a) *Verification of Capital Investment:* The Company hereby authorizes the Locality, including the Locality's Commissioner of the Revenue and Treasurer, to release to VEDP, the County or the Authority the Company'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, the County and the Authority solely for verifying satisfaction of the Capital Investment Target. If the Locality, the Office of the Commissioner of the Revenue or the Office of the Treasurer should require additional documentation or consents from the Company to access such information, the Company shall promptly provide, at the Company's expense, such additional documentation or consents as the Locality, the Authority or VEDP may request. In accordance with Virginia Code Section 58.1-3122.3, VEDP is entitled to receive the Company's real estate tax, business personal property tax and machinery and tools tax information from the Locality's Commissioner of the Revenue.

(b) *Verification of New Jobs and Wages:* The Company must submit a copy of its four most recent Quarterly Payroll Report (Form FC-21) with the Virginia Employment Commission with the Final Report. The form shall be marked and considered confidential and proprietary and shall be used by VEDP solely for verifying satisfaction of the New Jobs Target. In accordance with Virginia Code Section 60.2-114, VEDP is entitled to receive the Company's employment level and wage information from the Virginia Employment Commission.

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

(c) *Additional Documentation:* In addition to the verification data described above, in the sole discretion of the Locality, the Authority or VEDP, the Locality, the Authority or VEDP, may each require such other documentation or audits as may be required to properly verify the Capital Investment or New Jobs.

Section 8. Repayment Obligation.

(a) The Company agrees to be bound by any Repayment Obligations set forth in the Commonwealth's Development Opportunity Fund Performance Agreement (Exhibit C) as well as the following provisions specifically related to the Grant Match Funds made available as the COF Grant Match.

(b) *Determination of Inability to Comply:* If the Locality, the Authority or VEDP shall determine at any time prior to the Performance Date (a "Determination Date") that the Company is unable or unwilling to meet and Maintain its Targets by and through the Performance Date, and if the Locality, the Authority or VEDP shall have promptly notified the Company of such determination, the Company must repay to the Authority all of the COF Grant proceeds and Grant Match funds previously disbursed to the Company. In such event, the Authority will repay to the Locality all of the COF Grant

proceeds and Grant Match funds repaid to the Authority by the Company and all of the COF Grant proceeds and Grant Match funds not previously disbursed to the Company. The Locality will repay to VEDP all of the COF Grant proceeds repaid by the Company and/or not previously disbursed to the Company. Such a determination will be based on such circumstances as a filing by or on behalf of the Company under Chapter 7 of the U.S. Bankruptcy Code, the liquidation of the Company, an abandonment of the Facility by the Company or other similar significant event that demonstrates that the Company will be unable or is unwilling to satisfy the Targets for the COF Grant.

(c) *Allocation of COF Grant Match Funds:* For purposes of repayment under subsection (d), the COF Grant Match is to be allocated as \$92,000 for the Company's New Jobs Target, which will be disbursed to the Company as earned, and \$102,000 (the M&T Grant, the Building Permit Fee Grant and the Natural Gas Infrastructure Grant) for the Company's Capital Investment Target.

(d) *If Statutory Minimum Eligibility Requirements are Met:* The provisions of this subsection (d) shall become applicable only if the Company has met the Statutory Minimum Requirements.

If the Company has met at least ninety percent (90%) of the Capital Investment Target at the Performance Date and has met 100% of its New Jobs Target at the Performance Date, then and thereafter the Company is no longer obligated to repay any portion the COF Grant Match.

If the Company has not met at least ninety percent (90%) of the Capital Investment Target, but has achieved 100% of its New Jobs Target at the Performance Date, the Company shall repay to the Authority that part of the COF Grant Match (allocated to the Capital Investment Target) previously disbursed to the Company that is proportional to the shortfall in the Capital Investment Target. For example, if as of the Performance Date, the Company has received \$102,000 of the COF Grant Match funds, and has achieved its 60 New Jobs at the Facility, but the Capital Investment retained is only \$5,620,000 (representing 80% of the Capital Investment Target), the Company shall repay to the Authority \$20,400 (20%) of the COF Grant Match proceeds that it received allocated to the Capital Investment Target. (i.e., this amount represents the percentage of the shortfall from the expected amount of Capital Investment, multiplied by the portion of the COF Grant Match proceeds that the Company received allocated to the Capital Investment Target $(\$7,025,000 - \$5,620,000) / \$7,025,000 \times 102,000 = \$20,400$). In such event, the Authority will repay to the Locality all of the COF Grant Match funds repaid by the Company to the Authority and all Grant Match funds not previously disbursed to the Company.

(e) *Repayment:* The sole remedy available to the Locality, the VEDP and/or the Commonwealth, in the event that the Company does not fully achieve its Targets, shall be repayment of all or a portion of the COF Grant or the COF Grant Match, and the Company shall be liable for any repayment of all or a portion of the COF Grant or COF Grant Match, as described in this Section 8. ***Such repayment shall be due from the Company to the Authority within ninety (90) days of the Performance Date or the Determination Date, as applicable.*** Any moneys repaid by the Company to the Authority hereunder shall be repaid by the Authority to the Locality; any portion of such moneys that are COF Grant proceeds shall be repaid by the Locality promptly to VEDP for redeposit into the Commonwealth's Development Opportunity Fund. The Locality and the Authority shall use their best efforts to recover such funds, including legal action for breach of this Agreement. Neither the Locality

nor the Authority shall have any responsibility for the repayment of any sums payable by the Company hereunder unless said sums have been received by the Authority from the Company.

Section 9. 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 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. Such written notices and communications shall be addressed to:

If to the Company, to:

Modine Manufacturing Company
1221 Magnolia Ave.
Buena Vista, VA 24416-3317
Email: Matthew.a.niebur@modine.com
Attention: Matthew Niebur, Plant Manager

with a copy to:

Modine Manufacturing Company
1500 DeKoven Ave.
Racine, WI 53403
Email: Geoffrey.R.Schiveley@modine.com
Attention: Geoffrey Schiveley, Associate General Counsel

If to the Locality, to:

County of Rockbridge
150 S. Main Street
Lexington, Virginia 24450
Email: ssuter@rockbridgecountyva.gov
Attention: County Administrator

with a copy to:

County of Rockbridge
150 South Main Street
Lexington, Virginia 24450
Email: vhuffman@rockbridgecountyva.gov
Attention: County Attorney

If to the Authority, to:

Economic Development Authority of
Rockbridge County
150 South Main Street
Lexington, Virginia 24450
Email: bflint@rockbridgecountyva.gov
Attention: EDA Secretary

with a copy to:

Economic Development Authority of
Rockbridge County
150 South Main Street
Lexington, Virginia 24450
Email: vhuffman@rockbridgecountyva.gov
Attention: Counsel to EDA

If to VEDP, to:

with a copy to:

Virginia Economic Development Partnership
One James Center, Suite 900
901 East Cary Street
Richmond, Virginia 23219
Email: moret@vedp.org
Attention: President and CEO

Virginia Economic Development Partnership
One James Center, Suite 900
901 East Cary Street
Richmond, Virginia 23219
Email: smcninch@vedp.org
Attention: General Counsel

Section 10. Miscellaneous.

(a) *Entire Agreement; Amendments:* This Agreement constitutes the entire agreement among the parties hereto as to the COF Grant Match and may not be amended or modified, except in writing, signed by each of the parties hereto and consented to by VEDP. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. The Company may not assign its rights and obligations under this Agreement without the prior written consent of the Locality, the Authority and VEDP.

(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 Rockbridge, Virginia, 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.

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

COUNTY OF ROCKBRIDGE

By _____
Name: _____
Title: _____
Date: _____

Approved as to form:

Rockbridge County Attorney

**ECONOMIC DEVELOPMENT AUTHORITY
OF ROCKBRIDGE COUNTY**

By _____
Name: _____
Title: _____
Date: _____

MODINE MANUFACTURING COMPANY

By _____
Name: _____
Title: _____
Date: _____

- Exhibit A: Performance Report Form
- Exhibit B: Final Performance Report Form
- Exhibit C: Commonwealth's Development Opportunity Fund
Performance Agreement dated February 24, 2021

PERFORMANCE REPORT COMMONWEALTH'S DEVELOPMENT OPPORTUNITY FUND

PROJECT SUMMARY:

Project	
Location	
Amount of Grant	
Performance Reporting Period	
Performance Date	

PROJECT PERFORMANCE⁴:

Performance Measurement	Target	As of _____	% Complete
New Jobs (over ___ baseline) ¹			
Confidence level target will be reached by Performance Date shown above (check one)	High <input type="checkbox"/>	Moderate <input type="checkbox"/>	Low <input type="checkbox"/>
Capital Investment (provide breakdown below) ²			
Confidence level target will be reached by Performance Date shown above (check one)	High <input type="checkbox"/>	Moderate <input type="checkbox"/>	Low <input type="checkbox"/>
Average Annual Wage			N/A
Confidence level target will be reached by Performance Date shown above (check one)	High <input type="checkbox"/>	Moderate <input type="checkbox"/>	Low <input type="checkbox"/>
Standard Fringe Benefits (check one)	Yes <input type="checkbox"/>	No <input type="checkbox"/>	N/A
Virginia Corporate Income Tax Paid in Prior Calendar Year³	\$		

¹Data will be verified using Virginia Employment Commission records. Attach the company's four most recent Quarterly Tax Reports (Form FC-20) filed with the Virginia Employment Commission.

²Data will be verified with locality records.

³This confidential information is protected from disclosure pursuant to § 2.2-3705.6 of FOIA.

⁴Final, actual performance will be reported on VEDP's public reporting website.

Capital Investment Breakdown	Amount
Land	\$
Land Improvements	
New Construction or Expansion	
Renovation or Building Up-fit	
Production Machinery and Tools	
Furniture, Fixtures and Equipment	
Other	
Total	\$

COMMENTS:

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

TO BE CERTIFIED BY AN OFFICER OF THE COMPANY:

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

Company: _____

Submitted By: _____
Signature of Official

Name: _____
Print Name

Title: _____

Date: _____

Please return to:

Kim Ellett, Incentives Compliance Manager, Virginia Economic Development Partnership,
804.545.5618, kellett@vedp.org

**FINAL PERFORMANCE REPORT
COMMONWEALTH’S DEVELOPMENT OPPORTUNITY FUND**

PROJECT SUMMARY:

Project	
Location	
Amount of Grant	
Performance Date	

PROJECT PERFORMANCE: ¹

Performance Measurement	Target	As of _____, 20__	% Complete
New Jobs (over ___ baseline) ²			
Capital Investment (provide breakdown below) ³			
Average Annual Wage			N/A
Standard Fringe Benefits			
Virginia Corporate Income Tax Paid in Prior Calendar Year ⁴	\$		

¹Final, actual performance will be reported on VEDP’s public reporting website.
² Attach the company’s four most recent Quarterly Tax Reports (Form FC-20) filed with the Virginia Employment Commission.
³ Data will be verified using records from the Commissioner of the Revenue and invoices.
⁴This confidential information is protected from disclosure pursuant to § 2.2-3705.6 of FOIA

Capital Investment Breakdown	Amount
Land	\$
Land Improvements	
New Construction or Expansion	
Renovation or Building Up-fit	
Production Machinery and Tools	
Furniture, Fixtures and Equipment	
Other	
Total	\$

LOCAL MATCH:

Goal	
Actual	

COMMENTS:

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

TO BE CERTIFIED BY AN OFFICER OF THE COMPANY:

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

Company: _____

Submitted By: _____
Signature of Official

Name: _____
Print Name

Title: _____

Date: _____

Please return to:

Kim Ellett, Incentives Compliance Manager, Virginia Economic Development Partnership,
804.545.5618, kelllett@vedp.org

AT A SPECIAL MEETING OF THE ECONOMIC DEVELOPMENT AUTHORITY OF
ROCKBRIDGE COUNTY, VIRGINIA, HELD AT THE ROCKBRIDGE COUNTY
ADMINISTRATION CENTER, JULY 8, 2021

Resolution to Approve a Performance Agreement Between the County of Rockbridge, Virginia, Modine Manufacturing Company, Virginia Economic Development Partnership Authority, and the Economic Development Authority of Rockbridge County for a Commonwealth's Development Opportunity Fund Grant in the amount of \$194,000, and to Approve a Performance Agreement Between the County of Rockbridge, Virginia, the Economic Development Authority of Rockbridge County, and Modine Manufacturing Company, for a Local Grant Match of the Commonwealth's Development Opportunity Fund Grant in the amount of \$194,000, for Economic Development Purposes

WHEREAS, the County of Rockbridge, Virginia (the "County"), and the Economic Development Authority of Rockbridge County, Virginia (the "Authority"), desire to promote and encourage the economic development and vitality of the County through the recruitment of new industry and the expansion of existing business and through the creation of employment opportunities for the citizens of Rockbridge County, in order to provide for increased employment and corporate investment in the County; and,

WHEREAS, Modine Manufacturing Company ("Modine" or the "Company") desires to support the economic development efforts of the County and the Authority, and proposes to improve its existing warehouse facility in the County to convert it to a production facility for industrial cooling equipment (the "Facility"), thereby making a significant capital investment to equip, improve, expand and operate its manufacturing facility, and to create and maintain a significant number of new jobs (hereinafter referred to as the "Project"); and,

WHEREAS, the County has been awarded a grant of and expects to receive \$194,000 from the Commonwealth's Development Opportunity Fund (a "COF Grant") through the Virginia Economic Development Partnership Authority ("VEDP") for the purpose of inducing the Company to complete the Project; and,

WHEREAS, the County will match the COF Grant and provide additional assistance as set forth in the proposed Performance Agreement; and,

WHEREAS, the County is willing to provide the COF Grant funds and the local Grant Match funds (the "Grant Match") to the Authority with the expectation that the Authority will provide the funds to or for the use of the Company, provided that the Company promises to meet certain criteria relating to Capital Investment and New Jobs; and,

WHEREAS, the County, the Authority, the Company and the VEDP propose to enter into the Commonwealth's Development Opportunity Fund Performance Agreement (the "COF Performance Agreement") dated February 24, 2021, to set forth their understanding and agreement as to the payout of the COF Grant, the use of the COF Grant proceeds, and the obligations of the Company regarding Capital Investment and New Jobs, a copy of which is attached hereto as Exhibit 1; and,

WHEREAS, the County, the Authority, and the Company propose to enter into a Performance Agreement (the "Local Grant Match Performance Agreement") dated June 28, 2021, to set forth their understanding and agreement as to the payout of the COF Grant Match, the use of the Grant Match proceeds, the obligations of the Company regarding Capital Investment and New Jobs, and the repayment by the Company of all or part of the Grant Match under certain circumstances, a copy of which is attached hereto as Exhibit 2; and,

WHEREAS, the equipping, improvement, expansion, and operation of the Facility will entail a capital expenditure by or on behalf of the Company of at least \$7,025,000, of which approximately \$5,775,000 will be invested in machinery and tools, approximately \$150,000 will be invested in furniture, fixtures, and business personal property, and

approximately \$1,100,000 will be invested in the improvement and up-fit of the building;
and,

WHEREAS, the equipping, improvement, expansion, and operation of the Facility will further entail the creation and Maintenance of at least 60 New Jobs at the Facility;
and,

WHEREAS, the stimulation of the additional tax revenue and economic activity to be generated by the Capital Investment and New Jobs constitutes a valid public purpose for the expenditure of public funds and is the animating purpose for the COF Grant and the local COF Grant Match.

NOW THEREFORE, BE IT RESOLVED by the Directors of the Economic Development Authority of Rockbridge County, Virginia, as follows:

1. That the terms and provisions of the Commonwealth's Development Opportunity Fund Performance Agreement dated February 24, 2021, and attached hereto as Exhibit 1, between the County of Rockbridge, Virginia, Modine Manufacturing Company, the Economic Development Authority of Rockbridge County, and the Virginia Economic Development Partnership Authority, are hereby authorized and approved.

2. That the terms and provisions of the Performance Agreement dated June 28, 2021, and attached hereto as Exhibit 2, between the County of Rockbridge, Virginia, the Economic Development Authority of Rockbridge County, and Modine Manufacturing Company, for the local COF Grant Match, are hereby authorized and approved.

3. That appropriation of the COF Grant Funds and the local COF Grant Match Funds shall be considered as provided in the Performance Agreements.

4. That the Chairman or the Vice-Chairman is hereby authorized to execute the Performance Agreements approved in paragraphs 1 and 2 above, in substantial conformity to the proposed agreements herewith, and to execute such other and further

documents and to take such further actions as are necessary to accomplish this transaction on behalf of the Economic Development Authority of Rockbridge County.

5. That this resolution shall be effective on and from the date of its adoption.

Adopted this 8th day of July, 2021.

Recorded Vote:

AYES:

NAYES:

ABSENT:

ABSTAIN:

ECONOMIC DEVELOPMENT AUTHORITY
OF ROCKBRIDGE COUNTY

By: _____
J. Lingon Jones, Jr., Chairman

Attest: _____
Brandon L. Flint, Secretary