

INTRODUCED: April 11, 2022

AN ORDINANCE No. 2022-116

To authorize the Chief Administrative Officer, for and on behalf of the City of Richmond, to execute a Commonwealth's Development Opportunity Fund Performance Agreement between the City of Richmond, Aditxt, Inc., the Economic Development Authority of the City of Richmond, and the Virginia Economic Development Partnership Authority for the purpose of providing Aditxt, Inc. with incentives to establish a clinical laboratory, research and administrative facility and to improve, equip, and operate a new facility in the city of Richmond.

Patron – Mayor Stoney

Approved as to form and legality
by the City Attorney

PUBLIC HEARING: APR 25 2022 AT 6 P.M.

THE CITY OF RICHMOND HEREBY ORDAINS:

§ 1. That the Chief Administrative Officer, for and on behalf of the City of Richmond, be and is hereby authorized to execute a Commonwealth's Development Opportunity Fund Performance Agreement between the City of Richmond, Virginia, Aditxt, Inc., the Economic Development Authority of the City of Richmond, and the Virginia Economic Development Partnership Authority for the purpose of providing Aditxt, Inc. with incentives to establish a clinical laboratory, research and administrative facility and to improve, equip, and operate a new

AYES: 8 NOES: 0 ABSTAIN: _____

ADOPTED: APR 25 2022 REJECTED: _____ STRICKEN: _____

facility in the city of Richmond. The Commonwealth's Development Opportunity Fund Performance Agreement shall be approved as to form by the City Attorney and shall be substantially in the form of the document attached to this ordinance.

§ 2. This ordinance shall be in force and effect upon adoption.

A TRUE COPY:
TESTE:
Amelia D. Reed
City Clerk



O&R REQUEST

DATE: April 1, 2022

EDITION: 1

TO: The Honorable Members of City Council

THROUGH: The Honorable Levar M. Stoney, Mayor

THROUGH: Lincoln Saunders, Chief Administrative Officer

THROUGH: Sabrina Joy-Hogg, Deputy Chief Administrative Officer for Finance and Administration

THROUGH: Sheila White, Director of the Department of Finance

THROUGH: Jason May, Director of the Department of Budget and Strategic Planning

THROUGH: Sharon L. Ebert, Deputy Chief Administrative Officer for Planning and Economic Development

FROM: Leonard L. Sledge, Director of the Department of Economic Development

RE: Approval of Commonwealth Opportunity Fund Performance Agreement for Aditxt, Inc.

ORD. OR RES. No. _____

PURPOSE: To approve the Commonwealth Development Opportunity Fund Performance Agreement for Aditxt, Inc.

REASON: To authorize the Chief Administrative Officer to sign the Commonwealth Opportunity Fund Performance Agreement for Aditxt, Inc. by and between the City of Richmond, Virginia, the Economic Development Authority of the City of Richmond, Aditxt, Inc., and the Virginia Economic Development Partnership.

RECOMMENDATION: Approval is requested by the Administration.

BACKGROUND: In May 2021 Aditx Therapeutics, Inc. announced that the company is establishing its immune monitoring center in the City of Richmond at the Bio+Tech Park. The Commonwealth of Virginia has approved a \$1.3 million performance based grant from the Commonwealth Development Opportunity Fund to induce the company's decision to make a capital investment of approximately \$31,545,800 and create 347 jobs with an average annual wage of \$78,399 in the city. The City is required to make a 1:1 match to the Commonwealth Development Opportunity Fund grant. The City's 1:1 match will be from the company applying to receive benefits from the City's existing Local Enterprise Zone Program and the Business Professional Occupational License (BPOL) Tax Exemption for two years.

FISCAL IMPACT / COST: The project is estimated to generate \$1.8 million in new General Fund revenue over the first five years of the project (not including BPOL tax revenue). The required 1:1 local match to the Commonwealth Development Opportunity Fund grant is \$1.3 million. The local match will be made through the existing Local Enterprise Zone Program and the Business Occupational License (BPOL) Tax Exemption for two years.

FISCAL IMPLICATIONS: Adoption of this Ordinance will not negatively affect the fiscal status of the City (including the City's debt capacity, bond rating, or long-term expenditures). Adoption of the Ordinance does result in increasing General Fund revenue for the City.

BUDGET AMENDMENT NECESSARY: No

REVENUE TO CITY: The project is estimated to generate \$1.8 million in new General Fund revenue over the first five years of the project (not including BPOL tax revenue).

DESIRED EFFECTIVE DATE: Upon adoption.

REQUESTED INTRODUCTION DATE: April 11, 2022

CITY COUNCIL PUBLIC HEARING DATE: April 25, 2022

REQUESTED AGENDA: Consent.

RECOMMENDED COUNCIL COMMITTEE: Finance and Economic Development

CONSIDERATION BY OTHER GOVERNMENTAL ENTITIES: The Economic Development Authority.

AFFECTED AGENCIES: Finance; Budget and Strategic Planning; and Economic Development

RELATIONSHIP TO EXISTING ORD. OR RES.: N/A

REQUIRED CHANGES TO WORK PROGRAM(S): None

ATTACHMENTS: Commonwealth Development Opportunity Fund Performance Agreement

STAFF: Leonard Sledge, Director of Economic Development – (804) 646-7576

COMMONWEALTH'S DEVELOPMENT OPPORTUNITY FUND

PERFORMANCE AGREEMENT

This **PERFORMANCE AGREEMENT** (the "Agreement") made and entered as of this first day of October, 2021, by and among the **CITY OF RICHMOND, VIRGINIA** (the "Locality"), a municipal corporation of the Commonwealth of Virginia (the "Commonwealth"), **ADITXT, INC.**, a Delaware 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 THE CITY OF RICHMOND, VIRGINIA** (the "Authority"), a political subdivision of the Commonwealth.

WITNESSETH:

WHEREAS, the Locality has been awarded a grant of and expects to receive \$1,300,000 (the "COF Grant") from the Commonwealth's Development Opportunity Fund (the "Fund") through VEDP for the purpose of inducing the Company to lease, equip, improve, and operate a clinical laboratory, research and administrative facility in the Locality (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 leasing, equipping, improvement, and operation of the Facility will entail a capital expenditure by or on behalf of the Company of approximately \$31,545,800, of which approximately \$28,400,000 will be invested in machinery and tools, approximately \$2,020,800 will be invested in furniture, fixtures and business personal property, and approximately \$1,125,000 will be invested in the improvement and up-fit of the building space for the Facility;

WHEREAS, the leasing, equipping, improvement, and operation of the Facility will further entail the creation and Maintenance of 347 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 machinery and tools or furniture, fixtures, and business personal property, including under an operating lease, 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 March 1, 2021.

“Capital Investment Target” means that the Company has made or caused to be made and retained Capital Investments of at least \$31,545,800. If a significant amount of capital assets (having a value of \$3 million or more) are sold, transferred, abandoned or otherwise disposed of in a Grant Year, the Company will replace, restore or reinvest in other tangible capital assets at the Facility having a value at least equal to 75% of the disposed assets.

“Grant Year” means the period from October 1 of one calendar year through September 30 of the next calendar year, except that the first Grant Year means the period from March 1, 2021 through September 30, 2022.

“Maintain” means that the New Jobs will continue without interruption from the date of creation through the date that the level of achievement of the New Jobs Target is being tested (i.e., September 30, 2022 and September 30, 2023), including the Performance Date. Positions for the New Jobs will be treated as Maintained without interruption 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 and slowdowns.

“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 (averaged over all full-time positions) of at least \$78,399. 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, and positions with construction contractors, vendors, suppliers and similar multiplier or spin-off jobs shall not

qualify as New Jobs. The New Jobs must be in addition to the 24 full-time jobs as of March 1, 2021 at a temporary facility being used by the Company in Central Virginia, which jobs are expected to be transferred to the Facility once the Facility is ready for occupancy.

“New Job Target” means that the Company has created and Maintained at least 347 New Jobs.

“Performance Date” means September 30, 2024. 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 \$1,500,000 and (2) creating and Maintaining at least 15 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 lease, 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 \$78,399 is more than the prevailing average annual wage in the Locality of \$68,015. The Locality is a high-unemployment locality, with an unemployment rate for 2019, which is the last year for which such data is available, of 3.3% 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 19.2% 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 14.1% (\$183,500) for the Company's Capital Investment Target, and 85.9% (\$1,116,500) for the Company's New Jobs Target.

The COF Grant proceeds shall be retained in the Commonwealth's Development Opportunity 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 September 30	(B) New Jobs Expected at End of Grant Year	(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
2022	72	\$138,600	\$ 138,600
2023	161	309,925	448,525
2024	347	667,975	1,116,500

If the verified Performance Report for the Grant Year ending September 30, 2022 indicates that the Company has achieved the Statutory Minimum Requirements, the Company will qualify for a disbursement of the COF Grant equal to \$1,925 per New Job created and Maintained as of September 30, 2022, but not for more than 72 New Jobs (no more than \$138,600). If the Company has qualified for less than \$138,600, the amount not paid (the “2022 Grant Rollover Amount”) will be rolled over to, and available for disbursement in, the next year.

The \$309,925 Expected Grant Payment for the Grant Year ending September 30, 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 September 30, 2023 indicates that the Company has achieved the Statutory Minimum Requirements, the Company will qualify for a disbursement of the COF Grant equal to \$1,925 per New Job created and Maintained as of September 30, 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 \$667,975 Expected Grant Payment for the Grant Year ending September 30, 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 September 30, 2024 indicates that the Company has achieved the Statutory Minimum Requirements, the Company will qualify for a disbursement of the COF Grant equal to \$1,925 per New Job created and Maintained as of September 30, 2024, up to the Grant Amount Available for 2024.

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 clawback.

(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 September 30, 2024 indicates that the Company has achieved the Statutory Minimum Requirements, and has achieved the \$31,545,800 Capital Investment Target, the Company will qualify for a disbursement of COF Grant equal to \$183,500. If the verified Final Performance Report for the

Grant Year ending September 30, 2024 indicates that the Company has achieved the Statutory Minimum Requirements, but has not achieved the \$31,545,800 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 \$25,236,640 of the Capital Investment has been made and retained (reflecting achievement of 80% of the Capital Investment Target), the Company will receive \$146,800 (reflecting 80% of the \$183,500 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 clawback.

(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, “receipt” meaning both acceptance of the COF Grant proceeds by the City Council of the City of Richmond, Virginia (“Council”) and the appropriation by Council of such COF Grant proceeds to the Authority, 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 or for training, all 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	\$1,300,000
Enterprise Zone Real Property Investment Grant (“EZRPIC”) (Estimated)	41,985
Enterprise Zone Job Creation Grant (“EZJCG”) (Estimated)	1,223,200
VEDP Talent Accelerator Program (“VTAP”) (Approximate Value)	917,000

The proceeds of the COF Grant shall be used for the purposes described in Section 3(e). The EZRPIG and EZJCG proceeds may be used by the Company for any lawful purpose. The VTAP represents the value to the Company of workforce development services expected to be provided by VEDP to the Company for recruitment and training.

(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>
Business, Professional Occupational License Tax Exemptions (Estimated)	\$1,260,000
Local Enterprise Zone Benefits (Estimated)	_42,400

Notwithstanding anything contained in this Agreement to the contrary, the Company and VEDP acknowledge and agree that the value of the Local-Level Incentives are based upon the estimated value of the availability of that incentive to the Company and are conditioned upon the application for, approval of, and utilization of such incentives by the Company. The Company and VEDP further acknowledge and agree that the Locality shall be deemed to have met its obligations related thereto and met its local match requirement in the amount corresponding thereto, regardless of whether the Company applies for, is approved for, or utilizes the incentives. Under no circumstance will the Locality be obligated to make any additional grant to the Company of the difference between the estimated value of the Local-Level Incentives and the actual amount of such incentives received by the Company or in any amount whatsoever.

The Local-Level Incentives will reflect cost savings to the Company.

(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 January 1, commencing January 1, 2023, reflecting the Company's progress toward the Targets as of the prior September 30. 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 extension in filing the Final Performance Report. VEDP will require a \$3,000 fee, payable to VEDP, to process the request for the filing extension. Should the Company not file the Final Performance Report within the 90-day window nor request a filing extension (including payment of the required fee), or if the Company requests a filing extension 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 Department of Finance, 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 Department of Finance 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 Department of Finance.

(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; provided, however, that any audits conducted by the Locality, the Authority or VEDP shall be limited to one (1) in every twelve (12) month period, and to the extent such audit requires the Locality, the Authority or VEDP to be present on-site at the Company, the Locality, the Authority or VEDP shall provide reasonable advance written notice to the Company of such audit, and such audit shall be conducted during normal business hours and with the least amount of interference to the Company's business operations as possible.

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 in writing with sufficient detail of such determination and Company failed to cure any such deficiency within sixty (60) days of receipt of such notice, 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:

Aditxt, Inc.
737 N. Fifth St., Suite 200
Richmond, VA 23219
Email: aalbanna@aditxt.com
Attention: Amro Albanna

with a copy to:

Sheppard Mullin
30 Rockefeller Plaza
New York, NY 10112-0015
Email: mshatzkes@sheppardmullin.com
Attention: Matthew Shatzkes

Aditxt, Inc.
737 N. Fifth St., Suite 200
Richmond, VA 23219
Email: ralbanna@aditxt.com
Attention: Rowena Albanna

if to the Locality, to:

with a copy to:

City of Richmond, Virginia
900 E. Broad St., Suite 201
Richmond, Virginia 23219
Email: rvamayor@richmondgov.com
Attention: Mayor

City of Richmond, Virginia
900 E. Broad St., Suite 400
Richmond, Virginia 23219
Email: bonnie.ashley@richmondgov.com
Attention: City Attorney

if to the Authority, to:

with a copy to:

Economic Development Authority of the City
of Richmond, Virginia
1500 East Main Street
Suite 400
Richmond, Virginia 23219
Email: John.Molster@truist.com
Attention: Chair, Board of Directors

Economic Development Authority of the
City of Richmond, Virginia
1500 East Main Street
Suite 400
Richmond, Virginia 23219
Email: carla.childs@richmondgov.com
Attention: Management Analyst, Senior

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.

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

CITY OF RICHMOND, VIRGINIA

APPROVED AS TO FORM:




Deputy City Attorney

By _____
Name: _____
Title: _____
Date: _____

**ECONOMIC DEVELOPMENT AUTHORITY
OF THE CITY OF RICHMOND, VIRGINIA**

By _____
Name: _____
Title: _____
Date: _____

ADITXT, INC.

By  _____
Name: Amro Albanna
Title: CEO
Date: September 27, 2021

**VIRGINIA ECONOMIC
DEVELOPMENT PARTNERSHIP
AUTHORITY**

By _____
Name: _____
Title: _____
Date: _____

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

Exhibit A

**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

Exhibit B

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 Year⁴	\$		

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