

**Authority to Loan Funds to Virginia Tech Innovations Corporation
and Its Subsidiary(ies)**

FINANCE AND RESOURCE MANAGEMENT COMMITTEE

May 23, 2021

Background:

Virginia Tech's strategic plan reaffirms the institution's commitment to the expansion of the research enterprise through advancing regional, national and global impact where Virginia Tech will be globally recognized for its research strengths, world-class faculty, and ability to integrate its learning, discovery, and engagement missions as a comprehensive research land-grant university.

To promote the university's role in providing a pipeline for science and technology innovation that spawn new enterprises, Code of Virginia §23.1-301 (C) 5 of *Preparing for the Top Jobs of the 21st Century: The Virginia Higher Education Opportunity Act of 2011 (TJ21)* encourages the university to promote university-based research that produces outside investment in Virginia, fuels economic advances, triggers commercialization of new products and processes, fosters the formation of new businesses, leads businesses to bring their facilities and jobs to Virginia, and in other ways helps place the Commonwealth on the leading edge in the knowledge-driven economy.

Established in 2011 as a private, non-stock, Virginia corporation, Virginia Tech Innovations Corporation (VTIC) was created for the purpose of promoting the welfare of the university by developing emerging technologies and furthering research. VTIC serves as a parent and guiding organization for nonprofit subsidiaries and for-profit spinoff organizations that embark on university-related research and technology projects. In May 2020, the Board of Visitors extended the affiliation agreement with VTIC through June 30, 2024. VTIC is one of the key strategies for growth in research through a corporate structure which enables the pursuit of research opportunities that cannot easily be accomplished within the university environment due to regulatory constraints that often accompany federal government contracts or laws and regulations of foreign governments.

Center for International Research, Education and Development (CIRED), a part of the university's Outreach and International Affairs division, received an award from the United States Agency for International Development in 2018 requiring in-country services in Afghanistan. During the four-month start-up period, the university requested VTIC to establish a new legal nonprofit and nongovernmental organization (NGO) under the name AET Global, LLC (AET) as a subsidiary of VTIC and executed a services agreement on behalf of CIRED. This entity was registered with the Ministry of Foreign Affairs and the Ministry of Economy's international NGO office. AET hired a chief of party, deputy chief of party, and other technical and administrative staff. It established a program office, registered with the Ministry of Finance to receive a Tax Identification Number, and opened a bank

account. AET is fully established and authorized to conduct business in Afghanistan. Since 2018, AET has administered in-country activities using prepayments from the grant. This practice of prepayment has proven to be challenging regarding compliance due to federal regulations for cash management. Further, the university has received a second award requiring similar services in Afghanistan and has additional need for working capital.

The Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards commonly referred to as the Uniform Guidance requires the university in 2 CFR 200.305 to "maintain both written procedures that minimize the time elapsing between the transfer of funds and disbursement by the non-Federal entity, and financial management systems that meet the standards for fund control and accountability as established in this part. Advance payments to a non-Federal entity must be limited to the minimum amounts needed and be timed to be in accordance with the actual, immediate cash requirements of the non-Federal entity in carrying out the purpose of the approved program or project. The timing and amount of advance payments must be as close as is administratively feasible to the actual disbursements by the non-Federal entity for direct program or project costs and the proportionate share of any allowable indirect costs."

Although the university frequently makes "internal loans" to operating units within the university to support start-up or operational costs related to the units or specific initiatives, this would be the third time the university has made such a loan to an outside related organization. The university has earlier provided a similar loan to VTT, LLC to support its tire and automotive research activities and Virginia Tech Applied Research Corporation to provide start-up financing for working capital.

Section 23-1.1010 of the Restructuring Act titled "Covered institutions; operational authority; creation of entities and participation in joint ventures" provides the Board of Visitors authority to approve loans or obligate university funds to or on behalf of its affiliated organizations or joint venture activities. The referenced language under section 23-1.1010 providing this authority to the Board of Visitors is displayed in Attachment A. Further, the university believes this action is an appropriate step for supporting the university's research mission through VTIC/VTIC Subsidiary(ies).

Therefore, the university requests authorization to provide working capital loan(s) of up to three months expenditures and maximum of \$2.5 million to VTIC/VTIC Subsidiary(ies) to finance operations outside the United States for grants or contracts awarded to the university otherwise on cost reimbursable basis.

The basic conditions and requirements for the loan(s) would include:

- the loan(s) will be made in accordance with established university procedures for authorizing internal loans to operating units;
- the loan(s) will be for up to three months of planned operating expenses per grant;
- the loan(s) will not carry an interest rate;

- the repayment on the university's loan(s) will occur no later than at the conclusion of the individual grant or contract;
- the University department requiring third party, in country operations outside of the United States is responsible for repayment if at the end of the award or through an audit certain costs are disallowed or unallocable to the grant fund(s); and
- the loan(s) would be underwritten by the university's research overhead funds, a nongeneral fund revenue source

The Vice President for Finance, in coordination with the Vice President for Research and Innovation, will be responsible for finalizing these terms, authorizing specific advances, and may alter the terms as needed in the future to achieve the objectives of the research initiative(s). The Office of Sponsored Programs will oversee the financial performance of grants, review documentation of ongoing grant expenditures, adjust the working capital loan(s) to minimize the funds advanced, and ensure repayment of the working capital advance(s) prior to closing the corresponding project(s).

RESOLUTION FOR AUTHORITY TO LOAN FUNDS TO VIRGINIA TECH INNOVATIONS CORPORATION AND ITS SUBSIDIARY(IES)

WHEREAS, the university's strategic plan envisions the expansion of the research enterprise through development of innovative and cutting-edge technology; and

WHEREAS, the university established Virginia Tech Innovations Corporation (VTIC) as a university related corporation to serve as a parent and guiding organization for nonprofit subsidiaries and for-profit spinoff organizations that embark on university-related research and technology projects not easily accomplished within the university structure and to leverage the basic and scholarly research performed within the university; and

WHEREAS, external research grants may require the university to perform work on a reimbursement basis necessitating advance working capital; and

WHEREAS, the university anticipates obtaining significant external research funding requiring global, third party in-country operations outside the United States and employers of record; and

WHEREAS, the university desires to advance three months working capital for university research awards through the provision of funding from nongeneral fund sources of up to \$2.5 million in loans to VTIC or its subsidiary(ies); and

WHEREAS, the university advance and repayment schedules will begin and end with the initiation and conclusion of individual grants or contracts requiring in-country presence outside of the United States and third-party employer of record; and

WHEREAS, under section 23-1.1010 of Restructured Higher Education Financial and Administrative Operations Act of the Code of Virginia the Board of Visitors has the authority to authorize such transactions,

NOW, THEREFORE BE IT RESOLVED, that the Board of Visitors authorizes, at the President's discretion, the negotiation and execution service agreements and promissory notes or loan agreements to advance three months working capital from the university to VTIC or its subsidiary(ies) for up to \$2.5 million to be repaid without interest at the conclusion of individual grants; and

FURTHER RESOLVED, the Vice President of Finance, in coordination with the Vice President for Research and Innovation, is authorized to structure the loan including repayment terms, and to execute the loan transactions to VTIC or its subsidiaries, contingent upon requirements of individual external research grants or contracts requiring presence outside the United States and third-party employer of record.

RECOMMENDATION:

That the resolution authorizing the university to loan three months working capital up to \$2.5 million to VTIC/VTIC subsidiary(ies) be approved.

June 8, 2021

ATTACHMENT A

Agreement to Loan Funds to VTIC/VTIC Subsidiary(ies)
Excerpt of Restructured Higher Education Financial and Administrative Operations Act

§ 23.1-1010. Covered institutions; operational authority; creation of entities and participation in joint ventures.

Each covered institution may:

1. Create or assist in the creation of; own in whole or in part or otherwise control; participate in or with any entities, public or private; and purchase, receive, subscribe for, own, hold, vote, use, employ, sell, mortgage, lend, pledge, or otherwise acquire or dispose of any (i) shares or obligations of, or other interests in, any entity organized for any purpose within or outside the Commonwealth and (ii) obligations of any person or corporation. No part of the assets or net earnings of such institution shall inure to the benefit of, or be distributable to, any private individual except that reasonable compensation may be paid for services rendered to or for such institution in furtherance of its public purposes and benefits may be conferred that are in conformity with its public purposes.
2. Participate in joint ventures with individuals, corporations, governmental bodies or agencies, partnerships, associations, insurers, or other entities to facilitate any activities or programs consistent with its public purposes and the intent of this article.
3. Create or continue the existence of one or more nonprofit entities for the purpose of soliciting, accepting, managing, and administering grants and gifts and bequests, including endowment gifts and bequests and gifts and bequests in trust.
4. In carrying out any activities authorized by this article, provide appropriate assistance, including (i) making loans from its funds, other than general fund appropriations or proceeds of bonds issued under Article X, Section 9 (a), 9 (b), or 9 (c) of the Constitution of Virginia or under Article X, Section 9 (d) of the Constitution of Virginia if such issuance is supported by general funds and (ii) providing the time of its employees to corporations, partnerships, associations, joint ventures, or other entities whether such entities are owned or controlled in whole or in part or directly or indirectly by such institution.