

## INDEPENDENT SUB-AWARD AGREEMENT

This Independent Sub-Award Agreement (the “Agreement”) is entered into as of \_\_\_\_\_ (the “Effective Date”) between Chesapeake Bay Foundation, Inc. (“CBF”), a Maryland non-profit corporation, located at Philip Merrill Environmental Center, 6 Herndon Avenue, Annapolis, MD 21403, and the City of Hampton, a municipal corporation of the Commonwealth of Virginia (“Sub-Awardee”), located at 22 Lincoln Street in Hampton, Virginia.

WHEREAS, CBF is a non-profit, charitable organization dedicated to the conservation of the Chesapeake Bay and its rivers and streams;

WHEREAS, Sub-Awardee is a municipal corporation of the Commonwealth of Virginia;

WHEREAS, CBF wishes to award Sub-Awardee a portion of Private Grant funds for the successful completion of the Project described in detail below; and

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties, intending to be legally bound, do hereby agree as follows:

1. **The Project.** Sub-Awardee will manage the project as set forth on the attached Statement of Work (referred to as “SOW”) and will provide for the accomplishment of various objectives, and/or deliverables to CBF, on a timeline mutually agreed upon between the parties, made a part hereof, and attached hereto as Attachment A. The parties may modify the SOW at any time upon the mutual written agreement of the parties. CBF understands that any modifications to any SOW may result in a change in the award amount and the timeline.

2. **Conditions.** This Agreement involves Private Funds from an Anonymous Private Grantor. Sub-Awardee’s financial management system must comply with Sub-Awardee’s documented internal control requirements including but not limited to cash receipts, cash disbursements, indirect costs, procurement, labor costs and interest earned on contract funds. Sub-Awardee agrees to manage the Project in accordance with said provisions and other applicable State and Local laws.

3. **Term and Termination.** The Term of this Agreement shall begin on the Effective Date as stated in the SOW and shall end upon CBF’s acceptance of all the deliverables and within the time frame set forth in the SOW, and upon complete payment by CBF of all costs and expenses, unless earlier terminated as provided herein. Each party shall have the right to terminate this Agreement upon a material breach by the other party, if the breach remains uncured after thirty (30) days following the breaching party’s receipt of written notice from the non-breaching party outlining the nature of the breach. In addition, either party may terminate this Agreement at any time upon written notice to the other party provided that all completed or still outstanding tasks pursuant to the SOW shall be identified and specifically itemized for either payment to Sub-Awardee or reimbursement to CBF as set out below. Furthermore, CBF may terminate this Agreement at any time upon written notice to Sub-Awardee if CBF’s funding for the Project is terminated. In the event of early termination for any reason all fees shall be prorated based on the amount of work satisfactorily completed as of the effective date of termination. If CBF has overpaid, Sub-Awardee shall pay CBF the overage within twenty (20) days of the effective date of termination.

If CBF has underpaid, CBF shall pay the balance due within twenty (20) days of the effective date of termination.

**4. Compensation and Expenses.** As consideration and compensation of Sub-Awardee's satisfactory performance in accordance with this Agreement, CBF agrees to pay Sub-Awardee the amounts set forth in the SOW according to the payment plan in the SOW. Sub-Awardee must submit a completed W-9 to CBF before payment will be made. All invoices must include current and cumulative costs and must be sent to CBF's Financial Contact, **Adrienne Hull**, by email to [ahull@cbf.org](mailto:ahull@cbf.org). Sub-Awardee shall be responsible for all expenses relating to accomplishing the objectives and providing the deliverables, unless specified otherwise in any SOW. A final statement of cumulative costs, marked "FINAL," must be submitted to CBF's Financial Contact, not later than ten (10) days after the Services set forth in the SOW have been completed. The final statement of cumulative costs shall constitute Sub-Awardee's final financial report.

**5. Representations and Warranties.** Sub-Awardee represents and warrants that the Project will be managed in a timely and professional manner and will conform to standards generally observed in the industry for similar Projects. In addition, Sub-Awardee represents and warrants that no deliverables or content provided by Sub-Awardee to CBF in connection with this Agreement will contain material that is an infringement of any third party's intellectual property rights or otherwise violates any law. CBF represents and warrants that no content provided by CBF to Sub-Awardee in connection with this Agreement will contain material that is an infringement of any third party's intellectual property right or otherwise violates any law.

**6. Confidentiality.** During the course of the Project for CBF hereunder, Sub-Awardee may have access to Confidential Information. "Confidential Information" shall mean all information belonging to CBF, whether disclosed orally, visually, in writing or electronically, that is identified to Sub-Awardee as being confidential or proprietary information or that Sub-Awardee should reasonably understand, based on the nature of the information and the manner of disclosure, to be confidential or proprietary information. Confidential Information includes, without limitation, business plans, marketing plans, distribution plans, technical data, trade secrets and know-how, including, but not limited to, research, product and strategic plans, source code, products, services, member lists, markets, software, developments, inventions, processes, formulas, technology, designs, drawings, engineering, hardware configuration information, marketing, financial and other business information.

During the Term and thereafter, so long as the information continues to be Confidential Information, Sub-Awardee shall hold in confidence and not directly or indirectly copy, disclose or use any Confidential Information, except to the extent required by the Virginia Freedom of Information Act and any court or administrative agency, other than as reasonably necessary or appropriate in connection with Sub-Awardee's performance of its duties hereunder. All records, files, documents, and other materials or copies thereof relating to CBF's business that Sub-Awardee shall prepare or use or come into contact with shall be and remain the sole property of CBF and shall be returned to CBF upon termination of this Agreement.

The obligations of Sub-Awardee specified in this Section shall not apply to any Confidential Information to the extent such Confidential Information: (i) is generally known to the public at the time of disclosure or becomes generally known through no wrongful act of Sub-Awardee; (ii) is in Sub-Awardee's possession at the time of disclosure other than as a result of Sub-Awardee's breach of any

legal obligation; (iii) becomes known to Sub-Awardee through disclosure by sources other than CBF that are not known by Sub-Awardee to be under a duty of confidentiality with respect to the Confidential Information so disclosed; (iv) is independently developed by Sub-Awardee without reference to or reliance upon the Confidential Information; or (v) is required to be disclosed by Sub-Awardee to comply with applicable laws or governmental or regulatory regulations, including but not limited to the Virginia Freedom of Information Act, provided, however, that Contractor provides prior written notice of such disclosure to CBF so that CBF may seek a protective order or other appropriate remedy.

**7. Conflicts of Interest.** Sub-Awardee represents and warrants that it is free to enter into this Agreement, and that this engagement does not violate the terms of any agreement between Sub-Awardee and any third party. During the Term of this Agreement, Sub-Awardee shall devote as much of its productive time, energy and abilities to the performance of its duties hereunder as is necessary to perform the required duties in a timely and productive manner. Sub-Awardee is expressly free to undertake projects and perform city services as necessary while undertaking this project with support from CBF.

**8. Publicity.** Sub-Awardee shall not issue a press release nor other public announcement concerning this Agreement or materials produced hereunder without prior written permission of CBF.

**9. Indemnification.** To the extent permitted by law and without waiving its defense of sovereign immunity or any other defense available to municipal corporations of the Commonwealth of Virginia, the City agrees to be responsible for all actions of its volunteers, employees, agents, and representatives related to all claims, demands, losses, and liabilities arising out of this Agreement.

**10. Independent Sub-Awardee.** Sub-Awardee is an independent Sub-Awardee. This Agreement shall not render Sub-Awardee an employee, partner, agent of, or joint-venturer with CBF for any purpose. Sub-Awardee will not be eligible for any employee benefits from CBF, nor will CBF make deductions from fees for taxes, insurance, bonds or the like.

**11. Severability.** If any provision of this Agreement is determined to be invalid or otherwise unenforceable by a court of competent jurisdiction, such provision shall be restated in accordance with applicable law to best reflect the intentions of the parties and it shall not affect the validity or enforceability of any other provision.

**12. Entire Agreement.** This Agreement contains the entire understanding between the parties regarding the subject matter of this Agreement and supersedes any prior or contemporaneous agreement, whether oral or written, regarding said subject matter.

**13. Governing Law & Venue:** This Agreement, and any dispute arising under or in connection with this Agreement, shall be governed by, construed and enforced in accordance with the laws of the Commonwealth of Virginia. Each party hereby consents and submits to the personal jurisdiction of any local or federal court of competent jurisdiction sitting in the Commonwealth of Virginia, waives any

objection to venue in such court, and consents to service of process by registered or certified mail, return receipt requested, at the last known address of such party.

14. **Waivers.** All waivers must be in writing, signed by a representative of the party granting the waiver.

15. **Assignment.** Sub-Awardee shall not assign any of its rights under this Agreement, nor delegate the performance of any of its duties hereunder, without CBF's prior written consent.

16. **Notices.** Any and all notices, demands, or other communications required or desired to be given hereunder by either party shall be in writing and shall be validly given or made to the other party if personally served, or if deposited in the United States mail, certified or registered, postage prepaid, return receipt requested, or if sent via email with confirmation of receipt. Notice shall be deemed given as of receipt and shall be addressed as follows:

*If to CBF:*

William Agee  
Vice President, Administration  
Chesapeake Bay Foundation  
Philip Merrill Environmental Center  
6 Herndon Avenue  
Annapolis, MD 21403  
[wagee@cbf.org](mailto:wagee@cbf.org)

*If to Subawardee:*

Mary Bunting  
City Manager  
22 Lincoln Street  
Hampton, VA 23669  
[mbunting@hampton.gov](mailto:mbunting@hampton.gov)

Copy to:

Terry O'Neill  
Director, Community Development Department  
22 Lincoln Street  
Hampton, VA 23669  
[toneill@hampton.gov](mailto:toneill@hampton.gov)

Copy to:

Cheran Cordell Ivery  
City Attorney  
22 Lincoln Street  
Hampton, VA 23669  
[cheran.ivery@hampton.gov](mailto:cheran.ivery@hampton.gov)

Any party may change its address for purposes of this paragraph by written notice given in the manner

provided above.

17. **Modification or Amendment.** No amendment, change or modification of this Agreement shall be valid unless in writing signed by both parties.

18. **Survival.** Those provisions that by their nature survive the termination or expiration of this Agreement shall survive.

19. **Voluntary Agreement.** The parties acknowledge that they are entering into this Agreement freely and voluntarily and that they thoroughly understand and consent to all provisions hereof. Each party has reviewed this Agreement and has had an opportunity to consult with counsel and, accordingly, the rule of construction to the effect that any ambiguities are to be resolved against the drafting party will not be employed in any interpretation of this Agreement.

20. **Insurance:** Sub-Awardee shall provide evidence of its Self-Insurance Program to CBF, with CBF as an Additional Insured, and include a Waiver of Subrogation. The evidence of Self-Insurance must indicate that the following coverages are in force prior to the start of any work under this Agreement. The Sub-Awardee agrees to maintain such insurance throughout the contract term. For the coverages set out below, minimum insurance coverage shall be:

Commercial General Liability: At least \$1,000,000 Combined Single Limit coverage on an occurrence basis covering all premises and operations of Sub-Awardee. CBF and all of its agents, servants, and employees are to be named as Additional Insured.

Workers Compensation: Statutory benefits as required by Virginia or federal law.

21. **Safety Precautions:** Sub-Awardee shall be responsible for initiating, maintaining and supervising all safety precautions and programs, including all those required by law in connection with performance of this Agreement. Sub-Awardee shall promptly remedy any damage and loss to property caused in whole or in part by the Sub-Awardee, or by anyone acting on behalf of the Sub-Awardee.

CHESAPEAKE BAY FOUNDATION, INC.

SUB-AWARDEE

By: \_\_\_\_\_  
William Agee  
Vice President, Administration

By: \_\_\_\_\_

Date: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

CHESAPEAKE BAY FOUNDATION, INC.

By: \_\_\_\_\_  
Dave Fogle  
CFO

Date: \_\_\_\_\_

DRAFT

**STATEMENT OF WORK Attachment A**  
(Insert Statement of Work here)

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