AGREEMENT BY AND AMONG
THE CITY OF NEWPORT NEWS, VIRGINIA,
THE CITY OF HAMPTON, VIRGINIA,
AND
PENINSULA INDUSTRIAL FINANCE CORPORATION

THIS AGREEMENT is made this ___ day of ___, 2021, by and among the CITY OF NEWPORT NEWS, VIRGINIA, a Municipal Corporation of the Commonwealth of Virginia, party of the first part, hereinafter referred to as "Grantee"; the CITY OF HAMPTON, VIRGINIA, a Municipal Corporation of the Commonwealth of Virginia, party of the second part, hereinafter referred to as "Subgrantee"; and PENINSULA INDUSTRIAL FINANCE CORPORATION, a Virginia non-stock corporation, hereinafter referred to as "PIFC".

WHEREAS, the Economic Development Administration of the United States Department of Commerce (hereinafter "EDA") has awarded Grantee, after Grantee made application ("the Application"), a grant as part of the EDA's CARES Act Recovery Assistance to prevent, prepare for, and respond to the coronavirus ("COVID-19") pandemic ("the Grant"), identified by the EDA as Investment No. 01-79-14981. The scope of work for the Grant is to establish a new Peninsula Cares Act Revolving Loan Fund (hereinafter "the RLF"), to alleviate sudden and severe economic dislocation caused by the coronavirus (COVID-19) pandemic, and to provide permanent resources to support economic resiliency; and

WHEREAS, the amount of the Grant is One Million Five Hundred Ninety Six Thousand DOLLARS ($1,596,000) for:

a) Grantee and Subgrantee jointly: Peninsula Cares Act Revolving Loan Fund: $1,500,000
b) Administrative funds: $96,000; and

WHEREAS, as the administrative delays and costs inherent in administering the implementation of the RLF projects are reduced by having a single administering agency, the Newport News Department of Development will serve as the Fund Administrator and shall be compensated as is appropriate; and

WHEREAS, the Grantee and Subgrantee desire to utilize the facilities, expertise and capacity of PIFC for the management, operation and approval of loans referred to the RLF.

NOW, THEREFORE, in consideration of the mutual covenants and conditions herein contained, and the public benefits to accrue to the Grantee, Subgrantee, and their citizens, the parties hereto agree as follows:

ARTICLE I.
General; Single Applicant

Grantee was the sole applicant for the Grant and shall administer the Grant program, in cooperation with the PIFC, and subject to input from Subgrantee. EDA's approval of the Application confirms the City of Newport News as the Grantee, but reflects collaboration with the City of Hampton.

All parties to this Agreement agree that the RLF shall be administered in accordance with the Award Letter and Specific Award Conditions issued by the EDA, the EDA's Revolving Loan Fund Standard Terms and Conditions, the City of Newport News Administrative Plan Peninsula Revolving Loan Fund, and the Amendment to Administrative Plan Peninsula Revolving Loan Fund, collectively referred to as "the Conditions" and attached hereto and made a part hereof as **Exhibit A**. This Agreement is further subject to all applicable federal laws, rules, and regulations.

ARTICLE II.
Forms and Documents

The Subgrantee shall prepare and transmit to the Grantee all forms and documents and information necessary for required EDA reporting, in accordance with the Conditions.

ARTICLE III.
Purpose of Funds

Any pass-through funds made available by the Grantee to the Subgrantee shall be used to carry out the purposes of the RLF described in the Application.

As loans are approved, the Grantee shall disburse to awardees approved by the PIFC in accordance with Article IV. A maximum amount of $900,000 in pass-through EDA funds may be awarded to businesses within the jurisdiction of Subgrantee in accordance with the Conditions. If either the Grantee or Subgrantee wishes to utilize more than 60% of the RLF, approval is required from the other City.

ARTICLE IV.
Operation

A. Pursuant to the Conditions, the Grantee and Subgrantee will receive loan applications and prepare said applications for presentation to the PIFC Board.

B. The Grantee and Subgrantee will present all loan applications to the PIFC Board of Directors or its designated loan committee at a regular or duly called special meeting for approval or denial based upon application and criteria established in the Conditions.

C. Until the entire initial fund capital of $1,500,000 is obligated, the City of Newport News shall act as the initial recipient of grant funds drawn by either check, draft letter of credit or other means for the benefit of participating businesses and shall pass through funds to businesses recommended by the Subgrantee as approved and directed by the PIFC Board.

D. As loans are repaid by the participating businesses, and funds become available for relending and cash management, the Grantee, Subgrantee, and PIFC Board of Directors, will consider applications for loans, as funds are available and pursuant to criteria set forth in the Conditions.

ARTICLE V.

Basis of Payment

All requests for pass-through grant disbursements shall be submitted to the Grantee by the Subgrantee, in an agreed upon format, signed by the Subgrantee's Economic Development Director along with approval documentation from PIFC. All disbursements to businesses within the jurisdiction of Subgrantee are subject to Subgrantee's compliance with this Agreement and applicable federal laws, rules, and regulations.

The Grantee must receive payment from EDA before pass-through funds are paid to any loan applicant. Upon final audit, if any expenditures are determined to be ineligible expenses, the Subgrantee shall reimburse to EDA, through the Grantee, all of those ineligible costs paid by the Grantee to the Subgrantee. For this purpose, the Subgrantee shall have the right to recapture funds from any loan applicant directly responsible for the ineligible expense and Grantee and PIFC agree to include this obligation in all loan agreements. In no event will Grantee's liability hereunder exceed the amount of Grant funds it receives from EDA.

The costs of RLF administration borne by the Grantee, Subgrantee or PIFC shall be paid or reimbursed with RLF administrative funds if deemed eligible by Grantee, and shall not exceed a total of $96,000.

ARTICLE VI.
Retention of Cost Records

The Subgrantee shall, and shall require any businesses receiving loans through Subgrantee to, maintain all books, documents, papers, accounting records, and any other evidence supporting the costs incurred for loans issued to business located in the City of Hampton. Such information shall be consistent with the provisions of requirements for approved projects contained in the Conditions and shall be made available at their respective offices at reasonable times during the contract period and for a period of three (3) years from the date of final payment from the Grantee on behalf of the Subgrantee for inspection and audit by any authorized representative of the Grantee, the EDA or the Comptroller General of the United States. For this purpose, Grantee and PIFC shall include in all loan agreements associated with loan payments to successful loan applicants a term which requires each loan applicant to comply with the terms of this Article VI. Copies of such information shall be furnished to the EDA though the Grantee upon request by EDA.

ARTICLE VII.
Audit

Unless otherwise advised by EDA, the Grantee shall be required to conduct an audit of the RLF. The costs of the audit incurred by the Grantee shall be assessed to PIFC and are eligible to be paid from RLF administrative funds.

ARTICLE VIII.

Reporting

The Grantee shall render reports and accounts of its stewardship to PIFC, Subgrantee and EDA agencies as required by the Conditions and all applicable federal laws, rules, and regulations.

PIFC may render recommendations from time-to-time to the Grantee, Subgrantee and EDA agencies for the modification of the RLF program to accommodate changes in the lending market, or national and regional economics, which affect the marketability of the program.

ARTICLE IX.
Termination

The Grantee reserves the right, upon reasonable written notice to the Subgrantee and PIFC and approval by the EDA, to suspend or terminate all or part of the financial assistance herein provided if the Subgrantee is, or has been, in violation of the terms of this Agreement. Termination of any part of the Grant will not invalidate obligations properly incurred by the Subgrantee prior to the date of termination, to the extent those obligations are noncancellable. The acceptance of a remittance by the Grantee of any or all project funds previously received by the Subgrantee or the closing out of Federal financial participation in the Grant shall not constitute a waiver of any claim which the Grantee may otherwise have arising out of the Agreement.

ARTICLE X.
Amendments

Amendments to this Agreement may be made by written agreement between the parties subject to appropriate review.

ARTICLE X.

IN WITNESS WHEREOF, the City of Newport News, Virginia, has caused its name to be signed hereto by its City Manager, and its corporate seal to be affixed and attested to by its Clerk, they having been authorized so to do at a duly held meeting of the Council of the City of Newport News on the __ day of __, 2021; the City of Hampton, Virginia, has caused its name to be signed hereto by its City Manager, and its corporate seal to be affixed and attested to by its Clerk, they have been authorized so to do at a duly held meeting of the Council of the City of Hampton on the __ day of __, 2021; and the Peninsula Industrial Finance Corporation, has caused its name to be signed hereto by its Chair, and attested to by its Secretary/Treasurer, they having been authorized so to do at a duly held meeting on ___ day of _____2021.

[SIGNATURE PAGE FOLLOWS]

CITY OF NEWPORT NEWS, VIRGINIA

Name: _____

Title: _____

ATTEST: _____
     City Clerk

APPROVED AS TO FORM:

_____
     City Attorney

CITY OF HAMPTON, VIRGINIA

Name: _____

Title: _____

ATTEST: _____
     City Clerk

APPROVED AS TO FORM:

_____
     City Attorney

PENINSULA INDUSTRIAL FINANCE CORPORATION

Name: _____

Title: _____

ATTEST: _____
     Secretary/Treasurer

APPROVED AS TO FORM:

_____
PIFC Counsel

EXHIBIT A