

**VIRGINIA BROWNFIELDS RESTORATION AND ECONOMIC
REDEVELOPMENT ASSISTANCE FUND PROGRAM**

SITE ASSESSMENT AND PLANNING GRANT

PERFORMANCE AGREEMENT

This **PERFORMANCE AGREEMENT** made and entered this ____ day of _____, 2017, by and between the **VIRGINIA ECONOMIC DEVELOPMENT PARTNERSHIP AUTHORITY** (“VEDP”), a political subdivision of the Commonwealth of Virginia (the “Commonwealth”) and the **CITY OF HAMPTON, VIRGINIA** (the “Grantee”), a political subdivision of the Commonwealth.

WITNESSETH:

WHEREAS, the Virginia Brownfields Restoration and Economic Redevelopment Assistance Fund (the “VBAF”) was established pursuant to § 10.1-1237 of the Code of Virginia of 1950, as amended (the “Virginia Code”), to promote the restoration and redevelopment of brownfield sites in the Commonwealth and to address environmental problems or obstacles to reuse so that such sites can be effectively marketed to new economic development prospects;

WHEREAS, the VBAF is administered by the Virginia Resources Authority (“VRA”), and VEDP directs the distribution of grants from the VBAF;

WHEREAS, VEDP, in consultation with the Virginia Department of Environmental Quality (“DEQ”), has established guidelines for the awarding of Site Assessment and Planning Grants from the VBAF;

WHEREAS, VEDP, in consultation with DEQ, has approved an application submitted by the Grantee for assistance with the costs of soil borings and soil samplings and a report defining the extent of contamination and recommending any necessary remedial actions (the “Project”) at two parcels of land, known as Lot 19 and Lot 20 (LRSNs 6000824 and 6000822), associated with a required clear zone for Langley Air Force Base in Hampton, Virginia (the “Site”);

WHEREAS, VEDP, in consultation with DEQ and based upon the VBAF priorities, has awarded a Site Assessment and Planning Grant in the amount of \$21,615 (the “Grant”) to the Grantee for the Project;

WHEREAS, VEDP and the Grantee desire to set forth their understanding and agreement as to the payout of the Grant, the use of the Grant proceeds, the obligations of the Grantee, and the repayment by the Grantee of all or part of the Grant under certain circumstances; and

WHEREAS, the restoration and redevelopment of brownfield sites and addressing environmental problems or obstacles to reuse constitutes a valid public purpose for the expenditure of public funds and is the animating purpose in making the 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:

“Investment” means expenditures by or on behalf of the Grantee associated with the Project, including the Grant proceeds and the Local Match, set forth on Exhibit A.

“Local Match” means the required one-to-one match by the Grantee of the amount of the Grant from public and/or private sources in either cash or documented reasonable and necessary costs associated with the Project.

“Performance Date” means October 1, 2017, which is the date by which the Grantee expects to have completed the Project. If VEDP, in consultation with DEQ, deems that good faith and reasonable efforts have been made and are being made by the Grantee to complete the Project, the Performance Date may be extended by up to 15 months and the date to which the Performance Date has been extended shall be the “Performance Date” for the purposes of this Agreement.

Section 2. Disbursement of Grant; Use of Grant Proceeds.

(a) *Disbursement:* The Grant will be paid to the Grantee in one payment of \$21,615. Promptly upon the execution and delivery of this Agreement by the Grantee, VEDP will forward to VRA a copy of this Agreement, together with a direction to disburse \$21,615 to the Grantee.

(b) *Use of Grant Proceeds:* The Grantee will expend the proceeds of the Grant only as permitted by § 10.1-1237 of the Virginia Code and as part of the Investment as outlined on Exhibit A.

Section 3. Investment; Supplemental Grant.

(a) *Investment:* The Grantee is expected to make the Investment and to complete the Project on or before the Performance Date. As the Project is undertaken, adjustments to the Investment may be needed. Except for *de minimis* adjustments (adjustments impacting, in the aggregate, less than 10% of the Grant proceeds), adjustments to the Investment require the prior written approval of VEDP and must be reflected on a revised Exhibit A provided to VEDP.

(b) *Local Match:* Evidence provided by the Grantee to VEDP demonstrates that the Grantee has made or will make the Local Match on or before the Performance Date.

(c) *Supplemental Grant*: If the Investment proves insufficient to allow the Grantee to complete the Project or other associated work identified through the results of the Project, a supplemental grant in an amount of up to 20% of the Grant may be awarded if that additional amount, plus other identified funds, will be sufficient to allow completion and if monies are available from the VBAF. If such a supplemental Site Assessment and Planning Grant is awarded, the Grantee must provide an additional Local Match.

Section 4. Reporting.

(a) *Grant Report*: The Grantee may provide a written detailed report reasonably satisfactory to VEDP and DEQ indicating that the Project is complete, the Grant proceeds have been expended, and the Local Match has been made (“Grant Report”) at any time prior to the Performance Date. The Grantee must provide the Grant Report no later than December 1, 2017.

The Grant Report must include:

- (i) a brief summary of the outcome of the Project;
- (ii) whether or not the Site may be effectively marketed to new economic development prospects;
- (iii) any adjustments made to the Investment, a statement that the Local Match requirement has been fulfilled, and whether a supplemental grant may be desired;
- (iv) whether any repayment of the Grant is required;
- (v) if the Site was not enrolled in the Virginia Voluntary Remediation Program (“VRP”), certification that Project has met remediation and risk standards of care for reuse of the Site and that the Grantee will maintain all records for facilitating potential future brownfields revitalization of the Site, to demonstrate appropriate care, and to facilitate potential future VRP enrollment if necessary; and
- (vi) a statement that data collected reflects certification by the Virginia Environmental Laboratory Accreditation Program (“VELAP”).

(b) *Status Report*: The Grantee must provide a written detailed report reasonably satisfactory to VEDP and DEQ providing an update on the Site including whether the Site was successfully marketed to a new economic development prospect and the Project generated any additional private investment and job creation, at such other time as VEDP and DEQ may reasonably require, including after the Performance Date.

(c) *Costs of Reporting*: The cost of reporting will be borne by the Grantee.

Section 5. Repayment Obligations.

(a) *If Investment is Less than Expected:* If the Grant Report indicates that the Grantee was able to complete the Project for less than the expected Investment, such that the amount of the Grant proceeds exceeds the Local Match or the Grantee will not need all of the Grant proceeds previously disbursed to the Grantee, the Grantee must repay to VEDP an amount equal to the excess amount or the amount of the Grant proceeds no longer required.

(b) *If Grant Proceeds are Misspent:* If the Grant Report indicates, or any evidence gathered by VEDP reveals, that any Grant proceeds have been expended on anything other than the expected Investment, the Grantee must repay to VEDP the amount so misspent.

(c) *Failure to Complete by Performance Date:* If it is determined that the Grantee is unable to complete the Project and expend the Grant proceeds by the Performance Date and the Performance Date is not extended, the Grantee must repay to VEDP the unspent proceeds of the Grant as of the Performance Date.

(d) *Repayments to Fund:* VEDP will provide written notification to the Grantee if any repayment is due from the Grantee to VEDP under this Agreement. Within 60 days of receiving such notification, the Grantee will make the repayment to VEDP, subject to appropriation. Any repayment received by VEDP will be promptly transferred by VEDP to the VRA for redeposit to the Fund.

Section 6. Notices.

Formal notices and communications among 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 facsimile or 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 Grantee, to:

City of Hampton, Virginia
City Manager's Office
22 Lincoln Street
Hampton, Virginia 23669
Email: bsturk@hampton.gov
Attention: Bruce Sturk, Director, Federal
Facilities Support

with a copy to:

Vanessa T. Valdejuli, City Attorney
City Attorney's Office
22 Lincoln Street
Hampton, Virginia 23669
Email: vvaldejuli@hampton.gov

if to VEDP, to:

Virginia Economic Development Partnership
One James Center, Suite 900
901 East Cary Street
Post Office Box 798 (zip: 23218-0798)
Richmond, Virginia 23219
Facsimile: 804.545.5611
Email: dgundersen@yesvirginia.org
Attention: Chief Operating Officer

with a copy to:

Virginia Economic Development Partnership
One James Center, Suite 900
901 East Cary Street
Post Office Box 798 (zip: 23218-0798)
Richmond, Virginia 23219
Facsimile: 804.545.5611
Email: smcninch@yesvirginia.org
Attention: General Counsel

Section 7. Miscellaneous.

(a) *Entire Agreement; Amendments:* This Agreement constitutes the entire agreement between the parties hereto as to the 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 Grantee may not assign its rights and obligations under this Agreement without the prior written consent of 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. In the event this Agreement is subject to litigation, each party shall be responsible for its own attorney's fees.

(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.

[THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

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

**VIRGINIA ECONOMIC
DEVELOPMENT PARTNERSHIP
AUTHORITY**

By _____
Name: Daniel C. Gundersen
Title: Chief Operating Officer
Date: _____, 2017

CITY OF HAMPTON, VIRGINIA

By _____
Name: _____
Title: _____
Date: _____, 2017

SEEN AND ACKNOWLEDGED:

VIRGINIA RESOURCES AUTHORITY

By _____
Name: _____
Title: _____
Date: _____, 2017

**VIRGINIA DEPARTMENT OF
ENVIRONMENTAL QUALITY**

By _____
Name: _____
Title: _____
Date: _____, 2017

Exhibit A: Investment

EXHIBIT A
INVESTMENT

Cost Item*	Amount
Task I - Soil Borings and Soil Samplings	\$8,380.32
Task II - Report	9,660
Outside Services and Expenses - Soil Analysis, Photo-Ionization Detector, and Related Expenses	25,189
Total	\$43,229

*The work associated with each Cost Item will be performed in accordance with VRP requirements and approved work plan.