

COOPERATION AGREEMENT

THIS COOPERATION AGREEMENT is made as of the ____ day of _____, 2016, by and between the Economic Development Authority of the City of Hampton, a political subdivision of the Commonwealth of Virginia (the "Authority"), and the City of Hampton, a municipal corporation of the Commonwealth of Virginia (the "City").

WITNESSETH:

WHEREAS, the Council of the City of Hampton (the "Council") has set as a priority the redevelopment of the former Riverdale Shopping Center (the "Project") to attract investment, new business and new vitality to the Coliseum Central Area of the City as set forth in the Coliseum Central Master Plan, as amended;

WHEREAS, the Authority proposes to accomplish Council's priorities through the issuance of a performance incentive grant to "KB Riverdale, LLC" (the "Developer") equivalent to a maximum of \$4,250,000.00 payable over a 10 year period based on capital investment by the Developer and reinvestment of net new incremental local sales tax revenue;

WHEREAS, the incentive grant is necessary to assist the Developer in offsetting increased costs associated with the redevelopment and repositioning of 50 acres +/- of the former Riverdale Shopping Center to include demolition of certain buildings, construction of onsite infrastructure, and site work; enhancement of aesthetics and modernization of the center; internal building renovations; and development of a commercial retail project that is flexible and can expand over time;

WHEREAS, the Authority has determined that the Project cannot be developed without inducement to private developers; and

WHEREAS, negotiations between the Authority and the Developer have culminated in an Incentive Grant Performance Agreement (the "Grant Agreement"), an executed copy of which is attached to this Cooperation Agreement.

NOW, THEREFORE, in consideration of the public benefits to accrue to the City and its citizens from the understanding and carrying out of the Project and the mutual covenants hereinafter set forth, the City and the Authority agree as follows:

1. City to Provide Funds to the Authority. Subject to appropriation by City Council and the other limitations contained in Section 5 herein, the City shall take all actions reasonably necessary to raise and to grant to the Authority sufficient funds to perform and administer its obligations under the Grant Agreement. Specifically, the City pledges its moral obligation, subject to the terms set forth in Section 5 below, to deliver to the Authority sufficient funds for

the Authority to make timely payment of the incentive grant as set forth in Paragraph 6 of the Grant Agreement.

2. Obligations of the Authority. The Authority shall faithfully perform or cause to be performed its obligations under the Grant Agreement, and shall fully enforce its rights thereunder.

3. Reports to the City. The Authority shall provide to the City, in form and substance and on a schedule acceptable to the City, reports on grant payments and progress with respect to undertaking and carrying out the responsibilities of the Authority hereunder, and under the Grant Agreement.

4. Limited Liability of the Authority. It is the intent of the parties that this Cooperation Agreement will not impose upon the Authority any responsibility other than that required to pay out the incentive grant. Accordingly, the Authority does not assume by these presence any responsibility or liability whatsoever except as specifically stated herein. Should any liability accrue to the Authority by reason of this Cooperation Agreement which is not specifically addressed in this Cooperation Agreement, the Authority will not be required to expend its funds derived from sources other than its allocable portion of any funds received from the City to discharge such liability.

5. Annual Appropriations and Payments. (a) The City pledges to the Authority, subject to appropriation by the City Council and the other limitations set forth in this Section, to deliver to the Authority sufficient funds as and when required for the Authority to make timely payment of the incentive grant required to be paid by the Authority under Paragraph 6 of the Grant Agreement. The City's pledge and all payments to be made pursuant thereto shall be subject to and are expressly conditioned upon funds being appropriated for such purpose by the City Council and shall not at any time constitute a legal obligation of the City with respect to the Grant Agreement or for the payment of money.

(b) On or before February 1st of each year while the Grant Agreement is in effect, the Director of Economic Development shall submit to the City Manager the amount which the Authority estimates will be needed to pay the incentive grant amount required to be paid by the Authority under the Grant Agreement in the fiscal year commencing on the following July 1 (the "Requested Amount"). The City Manager shall include the Requested Amount for each fiscal year in the City's annual budget to be submitted to City Council for approval and will use her best efforts to have the Requested Amount approved and appropriated by City Council at least 30 days before the beginning of that fiscal year. In the event that City Council does not approve and appropriate the full Requested Amount, the City Manager will seek from time to time as requested by the Authority such appropriations from City Council as may be necessary for complete and timely payment of the incentive grant amount required to be paid under the Grant Agreement by the Authority.

(c) Money appropriated by City Council for payment thereof shall be paid to the Authority at least 15 days before the same are due, to be applied solely to the payment of the incentive grant required to be paid by the Authority under Paragraph 6 of the Grant Agreement for which such appropriation was made, and shall be used by the Authority for no other purpose.

Any funds not required for payment of amounts required by the Grant Agreement shall be promptly returned by the Authority to the City unless the City Council directs otherwise.

(d) In the event that the amount actually needed to pay the full amount of the required incentive grant exceeds the Requested Amount, the City Manager shall submit a supplemental request to the City Council for the amount needed to satisfy such a deficit.

(e) All amounts appropriated by the City hereunder shall not be subject to diminishment, set-off or abatement in any event.

(f) The City Council hereby undertakes a non-binding obligation to appropriate to the Authority the Requested Amount pursuant to this Section and elsewhere in this Cooperation Agreement to the fullest degree and in such manner as is consistent with the Constitution and laws of the Commonwealth of Virginia. The City Council, while recognizing that it is not empowered to make any binding commitment to make such appropriations in future fiscal years, hereby states its intent to make such appropriations in future fiscal years, and hereby recommends that future City Councils do likewise.

(g) Nothing in this Cooperation Agreement is or shall be deemed to be a lending of the credit of the City to the Authority or to any other person, and nothing in this Cooperation Agreement is or shall be deemed to be a pledge of the faith and credit or the taxing power of the City.

6. Severability of Invalid Provisions. If any clause, provision or section of this Cooperation Agreement is held to be illegal or invalid by any court, the invalidity of the clause, provision or section will not affect any of the remaining clauses, provisions or sections, and this Cooperation Agreement will be construed and enforced as if the illegal or invalid clause, provision or section had not been contained in it. Notwithstanding the foregoing, if the City's moral obligation to provide funding for the Project as stated in Paragraph 6 of the Grant Agreement is held invalid by a court of competent jurisdiction, this Cooperation Agreement will terminate and the Authority may take whatever steps it deems necessary or appropriate to minimize its actual or perceived liability in connection with the Grant Agreement.

7. Notices. All notices, certificates, requests or other communications under this Cooperation Agreement must be in writing and will be deemed given when mailed by first class, registered or certified mail, return receipt requested, to the addresses set forth below.

If to the Authority:

Economic Development Authority of the City of Hampton
One Franklin Street, Suite 600
Hampton, Virginia 23669
Attention: Director of Economic Development

If to the City:

City of Hampton, Virginia
22 Lincoln Street

Hampton, Virginia 23669
Attention: City Manager

The parties may by notice given under this section designate such other addresses as they deem appropriate for the receipt of notices under this Cooperation Agreement.

If by reason of the suspension of or irregularities in regular mail service it is impractical to mail notice of any event when notice is required to be given, then any manner of giving notices which is satisfactory to the intended recipient will be deemed sufficient.

8. General Provisions. This Cooperation Agreement will be governed by the laws of the Commonwealth of Virginia, and may be amended only by written agreement of the parties. This Cooperation Agreement may be executed in any number of counterparts, each of which when so executed and delivered, will be an original, and the counterparts taken together will constitute one and the same instrument.

9. Waiver. Any waiver by any party of its rights under this Cooperation Agreement must be in writing and shall not be deemed a waiver with respect to any matter not specifically covered therein.

10. Successors and Assigns; Third Party Rights. This Cooperation Agreement shall be binding upon and shall inure to the benefit of the successors and permitted assigns of the parties hereto; provided, however, that in no event may this Cooperation Agreement or any of the rights, benefits, duties or obligations of the parties hereto be assigned, transferred or otherwise disposed of without the prior written consent of the other, which consent neither party shall be obligated to give. The rights and remedies available to the Authority under this Cooperation Agreement shall inure to the benefit of the Developer; provided, however, such rights granted to the Developer shall terminate on the date the maximum incentive grant required under the Grant Agreement is paid in full in a timely manner.

ECONOMIC DEVELOPMENT AUTHORITY
OF THE CITY OF HAMPTON

By: _____
Chair/Vice-Chair

CITY OF HAMPTON

By: _____
City Manager/Authorized Designee

Approved as to form and
legal sufficiency:

City Attorney