

COOPERATION AGREEMENT

THIS COOPERATION AGREEMENT (the "Agreement") is effective as of the 27th day of May, 2020, by and between the Economic Development Authority of the City of Hampton, Virginia, 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").

RECITALS:

WHEREAS, the Authority proposes to further Council's priorities through the acquisition of that certain parcel of property, comprised of 0.16± acres, located in the City of Hampton Virginia (the "City"), identified as parcel 12001320, and more commonly referred to as 1 South Mallory Street, Hampton, Virginia (the "Property");

WHEREAS, the Property includes approximately 13,677 square feet of commercial space, divided among two (2) floors, the first of which is primarily leased by the City pursuant to that certain Lease dated October 15, 2014 for the purpose of operating the Phoebus Branch of the Hampton Public Library (the "Library");

WHEREAS, the City receives community benefit from the operation of the Library;

WHEREAS, on December 17, 2019 the Authority approved the acquisition of the Property for the total amount of \$925,000;

WHEREAS, Old Point National Bank (the "Seller") will finance the purchase of the Property with a 10-year seller financed note, accruing interest at a rate of two percent (2%) per annum;

WHEREAS, the Authority and Seller are entering into that certain Agreement of Sale ("Purchase Agreement"), a copy of which is attached hereto and incorporated herein as Exhibit A for the purpose of sale of the Property by Seller and purchase of the Property by the Authority;

WHEREAS, the City desires to continue to operate the Library at the Property, and for that purpose the Authority and the City are entering into a 10--year lease agreement ("Lease Agreement"), in substantially the form attached hereto as Exhibit B, to provide for the continuous operation of the Library and under which the City shall be obligated to pay rent to the Authority on an annual basis throughout the term of that Lease Agreement in amount sufficient for the Authority to satisfy its obligation to the Seller;

WHEREAS, the Authority, as the legal owner of the Property, will incur certain financial obligations, including, but not limited to, insurance premiums, and certain repair and capital improvement costs; and

WHEREAS, the City is willing to fund the Authority's purchase of the Property pursuant to the Purchase Agreement and the ongoing financial obligations of the Authority related to the

ownership of the Property, subject to those certain terms and conditions more fully set forth below.

NOW, THEREFORE, in consideration of the public benefits to accrue to the City and its citizens from the Authority's ownership of the Property and the mutual covenants hereinafter set forth, the City and the Authority agree as follows:

1. Recitals. The recitals to this Agreement are incorporated as a substantive part of this Agreement, and the parties hereby acknowledge the accuracy of such Recitals.

2. 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 grant to the Authority sufficient funds to perform and administer its obligations under the Purchase Agreement and the Lease Agreement. Specifically, the City agrees, subject to the terms set forth in Section 6 below, to deliver to the Authority sufficient funds for the Authority to make timely payment or otherwise provide for any obligations arising as the owner of the Property and/or under the terms of the Lease Agreement.

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

4. Obligations of the Parties Pertaining to Rents, Property Maintenance, Repair & Improvements, and other Responsibilities of the Authority as the Property Owner.

(a) Rental of the Property by the Authority.

(i) The Authority shall retain all rents and other charges received from others for the use of the Property. Those funds shall first be used to satisfy the Authority's debt obligation associated with the acquisition of the Property. Any remaining funds shall be retained and used by the Authority for the maintenance, repair, and improvement of the Property.

(ii) Subject to the limitations set forth in Section 6 and the offset set forth in subsection (iii), the City shall pay to the Authority all rents due the Authority pursuant to the Lease Agreement and any other subsequent lease agreement(s) that may be entered into between the City and the Authority for use of all or a portion of the Property.

(iii) Any rent received by the Authority from a party other than the City shall be used first used by the Authority to offset any rent then owed to the Authority by the City, with any remainder retained by the Authority for the maintenance, repair, and improvement of the Property.

(b) To the extent any and all rents received by the Authority are insufficient to satisfy the Authority's debt obligation, and to maintain, repair, and improve the Property, the City shall pay or otherwise provide for all obligations of the Authority with respect to

undertaking and carrying out the responsibilities of the Authority under the Purchase Agreement, Lease Agreement, and as may otherwise be incurred by the Authority as the owner of the Property.

(c) In addition, the City shall conduct semi-annual inspections of the Property, and upon review of the inspection reports, shall in its discretion, and upon consultation with the EDA Designee, determine necessary repairs, replacements, and improvements, and establish a schedule therefore.

5. 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 of the Authority as the owner of the Property, including, but not limited to, the responsibility to charge and collect rent. Accordingly, the Authority does not assume 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.

6. Annual Appropriations and Payments.

(a) The City hereby 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 or to otherwise provide for as and when required for the Authority to meet its obligations under the Purchase Agreement, Lease Agreement, and as otherwise incurred by the Authority as the owner of the Property. The City's pledge and all payments to be made pursuant thereto, including rent owed under the Lease Agreement, 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 Purchase Agreement, Lease Agreement, or for the payment of money.

(b) Money appropriated by City Council for payment thereof shall be paid to the Authority, and shall be applied solely to the payment obligations to be paid by the Authority pursuant to the Purchase Agreement, Lease Agreement, or as otherwise incurred by the Authority as the owner of the Property for which such appropriation was made ("Requested Amount"), and shall be used by the Authority for no other purpose.

(c) In the event that the amount actually needed to pay the full amount of any the required obligation exceeds the Requested Amount, the City Manager may submit a supplemental request to the City Council for the amount needed to satisfy such a deficit or take such other measures as appropriate to satisfy any deficit.

(d) The City Council hereby undertakes a non-binding obligation to appropriate to the Authority such amounts as may be requested for time to time 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.

(e) 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.

7. 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 obligation to provide funding for the purchase and lease of the Property as stated in the Purchase Agreement and Lease 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 Purchase Agreement and/or Lease Agreement.

8. 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, Virginia
One Franklin Street, Suite 600
Hampton, Virginia 23669
Attention: Secretary, Economic Development Authority

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.

9. 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.

10. 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.

11. 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.

ECONOMIC DEVELOPMENT AUTHORITY
OF THE CITY OF HAMPTON, VIRGINIA

By: _____
Chair/Vice-Chair

CITY OF HAMPTON, VIRGINIA

By: _____
City Manager/Authorized Designee

Approved as to form and
legal sufficiency:

Senior Deputy City Attorney

Approved as to Content:

City Director of Finance

Representative of the
Economic Development Authority

EXHIBIT A
PURCHASE AGREEMENT

EXHIBIT B
LEASE AGREEMENT