

## COOPERATION AGREEMENT

THIS COOPERATION AGREEMENT (the "Agreement") is made as of the \_\_\_\_ day of October, 2017, 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 is the owner of a parcel of land containing approximately 10.1± acres located in the City of Hampton at Armistead Point Parkway (LRSN: 13002046), approximately 4.2± acres of that parcel were leased to the Boo Williams Sportsplex, LLC ("BWS LLC") pursuant to that certain Ground Lease dated July 19, 2007 for the purpose of the construction and operation of an indoor sports facility for basketball, volleyball, indoor track, and other sports-related uses (the "Facility");

WHEREAS, the Facility is primarily operated by the Boo Williams Summer League, Ltd. (the "Summer League"), a non-profit amateur sports organization designed to provide young athletes with a forum to develop and display their basketball skills and talents through Amateur Athletic Union tournaments and other means under the direction of Marcellus S. Williams, Jr. ("Williams"), and individual who lives and grew up in the City and is a prominent athlete, coach, and youth sports advocate;

WHEREAS, the City receives economic and community benefit from the operation of the Facility, including, but not limited to, use of the basketball courts and indoor track by the City's schools, and (as indicated by an economic impact study commissioned by BWS LLC) an estimated \$9.3 million a year in direct spending and 25,600 hotel nights booked annually;

WHEREAS, on September 13, 2017, the City Council of the City of Hampton approved and authorized the issuance of general obligation bond anticipation notes in a maximum principal amount of \$9,250,000 to fund the purchase of the Facility, which will later be paid in full through the issuance of general obligation bonds that will be used for that purpose as well as to fund other capital projects;

WHEREAS, the BWS LLC financed the construction of the Facility with a 10-year loan commitment that matures on October 25, 2017 and the BWS LLC members would now like to sell the Facility to the Authority;

WHEREAS, the Authority and BWS LLC are entering into that certain Real Estate and Purchase Agreement ("Purchase Agreement") for the purpose of sale of the Facility by BWS LLC and purchase of the Facility by the Authority;

WHEREAS, Williams and the Summer League desire to continue to operate the Facility;

WHEREAS, the Authority and the Summer League are entering into a 15-year lease agreement ("Lease Agreement") to provide for the continuous operation of the Facility and under

which the Summer League shall be obligated to pay rent to the Authority on a monthly basis throughout the term of that Lease Agreement;

WHEREAS, the Authority, as the legal owner of the Facility, will incur certain financial obligations, including, but not limited to, insurance premiums, and certain repair and capital improvement costs as set forth under that Lease Agreement; and

WHEREAS, the City is willing to fund the Authority's purchase of the Facility pursuant to the Purchase Agreement and the ongoing financial obligations of the Authority related to the ownership of the Facility throughout the term of the Lease Agreement on the condition that the Authority pay to the City all rents received from the Summer League, 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 continued operation of the Facility 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 Facility 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, Facility Maintenance, Repair & Improvements, and other Responsibilities of the Authority the Facility Owner.

(a) The Authority shall pay to the City all rents received pursuant to the Lease Agreement ("Rent"). The Authority shall not be liable to the City or otherwise responsible for Rent, except to the extent Rent is paid to and received by the Authority pursuant to the Lease Agreement. In addition, the Authority designates the City, through its Director of Finance, as its fiscal agent for the purpose of the collection of all Rent and other charges that may be due to the Authority pursuant to the Lease Agreement. The authority granted the Director of Finance shall include, but not be limited to, the discretion to impose or waive any and all late charges and/or interest assessable on any balances due, upon consultation with the EDA Designee.

(b) 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 Facility. In addition, the City shall conduct semi-annual inspections of the Facility, 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 Facility, including, but not limited to, the responsibility to charge and collect rent. 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.

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 Facility. 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 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 Facility 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 Facility 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: 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.

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. The rights and remedies available to the Authority under this Cooperation Agreement shall inure to the benefit of the Summer League; provided, however, such rights granted to the Summer League shall terminate simultaneous with the termination of the Lease Agreement.

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