

**AMENDED AND RESTATED
MEMORANDUM OF UNDERSTANDING
BY AND AMONG THE CITY OF HAMPTON, VIRGINIA, THE ECONOMIC
DEVELOPMENT AUTHORITY OF THE CITY OF HAMPTON, VIRGINIA
AND HAMPTON UNIVERSITY**

THIS AMENDED AND RESTATED MEMORANDUM OF UNDERSTANDING (“MOU”) executed this ____ day of _____, 2019, memorializes the relationship and respective obligations among the CITY OF HAMPTON, a municipal corporation of the Commonwealth of Virginia (the “City”), THE ECONOMIC DEVELOPMENT AUTHORITY OF THE CITY OF HAMPTON, VIRGINIA, a political subdivision of the Commonwealth of Virginia (the “EDA”), and HAMPTON UNIVERSITY (formerly HAMPTON INSTITUTE), a private, non-stock Virginia corporation, (“HU”) as they pertain to a reader card system for a proposed shuttle bus service for HU students.

WHEREAS, the EDA, through a cooperation agreement with the City, has agreed to provide special shuttle bus service to mutually agreed-upon locations in Coliseum Central and Downtown Hampton for HU students during the official semester term(s) of the university, which the EDA believes furthers its economic development purposes as prescribed by the Code of Virginia, as well as the priority of the City’s Council to invest in amenities that enhance and expand retail shopping in Downtown Hampton and the Coliseum Central Business District as reflected in the City’s Community Plan;

WHEREAS, the EDA underwent a request for proposals solicitation process pursuant to the Virginia Public Procurement Act seeking a third party operator to provide the shuttle bus service (the “HU Shuttle”), and awarded a contract to Fun Tours, Incorporated;

WHEREAS, Fun Tours, Incorporated operated the HU Shuttle during school semesters in 2017 and 2018, but unexpectedly ceased operations in December, 2018;

WHEREAS, the EDA desires to have the ability to continue the Project by using any statutorily prescribed means to procure appropriate vendors to operate the HU Shuttle, and the City, through a cooperation agreement with the EDA, has agreed to fund that effort, subject to appropriation;

WHEREAS, the MOU, as first entered into in 2017 is directly connected to the EDA’s contract with Fun Tours, Incorporated; and

WHEREAS, it is in the best interest of all parties to amend and restate that agreement so it more generally applies to the HU Shuttle, without limiting the agreement to a specific vendor.

NOW, THEREFORE, in consideration of the recitals stated herein and the mutual promises and covenants set forth below, the City, EDA, and HU agree as follows:

1. Unless otherwise terminated pursuant to paragraph 18, this MOU shall be effective throughout the term or terms of any contract entered into by the EDA for purposes set forth herein.
2. The EDA shall, in its sole cost and discretion, solicit and contract for operators of the HU Shuttle. Neither the City nor the EDA shall have any responsibility whatsoever for an interruption or termination in service resulting from any breach, default, or other act or omission of any operator selected by the EDA for this purpose.
3. The operating cost of the HU Shuttle will be covered primarily by ridership fees, and accordingly, every HU rider will be required to pay an agreed upon fare (initially set at \$2.00) each time they enter the HU Shuttle. HU students and HU parents will pay the fare using the HU issued "Pirate Card" (a debit-type card). The Pirate Card is HU's swipe card device and system (the "Swipe Card System") to be used to process fares for the use of the HU Shuttle. The operator of the HU Shuttle will not accept any other form of payment, including cash.
4. At its own cost and in cooperation with the EDA and any vendor selected by the EDA pursuant to paragraph 2, HU will supply and install or cause to be installed the Swipe Card System necessary to collect fares from the HU students and HU parents as they enter the HU Shuttle.
5. All fares collected by the Swipe Card System will be processed daily by HU and remitted to the EDA's designated bank account on a daily basis.
6. HU shall provide a parking space for the HU Shuttle operator for the bus between service times and dates, as set forth in a contract between the EDA and that operator.
7. Use of the HU Shuttle shall be limited to HU students with a Pirate Card and to HU parents that also have use of the Pirate Card.
8. HU shall maintain insurance coverage for the Swipe Card System to cover any physical damage. Neither the City nor the EDA shall have any responsibility or liability for the Swipe Card System. Any issues or problems with the Swipe Card System shall be addressed immediately by HU upon written or verbal notice to avoid interruption of service. Neither the City nor the EDA shall have any responsibility whatsoever for an interruption in service due to a defective or damaged or malfunctioning Swipe Card System. Failure to repair or replace a defective Swipe Card System immediately shall constitute a material breach of this MOU.
9. HU will indemnify and hold harmless the City and the EDA, and their respective agents, employees, volunteers, servants, members, directors and officials from and against any loss, damage, injury, or death, and any expense, including reasonable attorney's fees and litigation expenses related to any loss, damage, injury or death, arising from or related in any

way to the use of the Swipe Card System, including any contractual claims from any third parties pertaining to the processing of the fares and any defects with the Swipe Card System.

10. For purposes of this MOU, the City Representative shall be the Director of Convention & Visitor's Bureau or her designee ("City Representative"), the EDA Representative shall be the Director of Economic Development or his designee ("EDA Representative"), and the HU Representative shall be the Vice President for Business Affairs or her designee.

11. The City, the EDA, and HU acknowledge that no entity is the agent, employee, partner, joint venture or associate of each or any other.

12. The City and the EDA shall have the right to audit all books and records (in whatever form they may be kept, whether written, electronic or other) relating or pertaining to this MOU (including any and all documents and other materials, in whatever form they may be kept, which support or underlie those books and records), kept by or under the control of HU, including, but not limited to those kept by HU, its employees, agents, assigns, successors and subcontractors. HU shall maintain such books and records, together with such supporting or underlying documents and materials, for the duration of this MOU and for at least three (3) years following the termination or expiration of this MOU. The books and records, together with the supporting or underlying documents and materials shall be made available, upon request, to the City Representative or the EDA Representative or their respective designees, during normal business hours at HU's office or place of business in the City. In the event that no such location is available, then the books and records pertaining to this MOU, together with the supporting or underlying documents and records, shall be made available for audit at a time and location in Hampton, Virginia, which is convenient for the City or the EDA.

13. This MOU shall be deemed to be a Virginia contract and shall be governed as to all matters whether of validity, interpretations, obligations, performance or otherwise exclusively by the laws of the Commonwealth of Virginia, and all questions arising with respect thereto shall be determined in accordance with such laws. Regardless of where actually delivered and accepted, this MOU shall be deemed to have been delivered and accepted by the parties in the Commonwealth of Virginia. Any and all suits for any claims or for any and every breach or dispute arising out of this MOU shall be maintained in the appropriate court of competent jurisdiction in the City of Hampton, Virginia.

14. Neither the officers nor employees of the City or the EDA nor members of the Board of Directors or officers and employees of HU shall be personally liable for any costs, losses, damages or liabilities caused or subsequently incurred by HU, or any officer, director or agent thereof in connection with or as a result of this MOU.

15. There may be no modification of this MOU, except in writing, executed by the authorized representatives of the parties.

16. (a) If HU fails to perform, observe or comply with any covenant, obligation, condition or agreement on its part under this MOU, and such failure continues for a period of 10 days after the date on which written notice of such failure, requiring same to be remedied, shall have been given to HU by the City or the EDA, such failure shall be deemed to be a material

breach of this MOU. Provided, however, that if such performance, observation or compliance requires work to be done, action to be taken , or conditions to be remedied which by their nature cannot be reasonably done, taken or remedied, as the case may be, within such 10-day period, no material breach of this MOU shall be deemed to have occurred or to exist if, and so long as, HU has commenced such performance, observation or compliance within such period and shall diligently and continuously prosecute the same to completion.

(b) In the case of a material breach of this MOU by HU the City or the EDA may take whatever action at law or in equity necessary or desirable to enforce the performance, observation or compliance by HU with any covenant, obligation, condition, or agreement by the HU under this MOU, including but not limited to, terminating this MOU.

17. This MOU may be terminated for any reason by any party to the MOU with 30 days written notice to the other parties. In the event of termination of the MOU or at the expiration of any term in the underlying contract or the expiration of the underlying contract for the HU Shuttle, at its own cost and expense, HU shall remove or cause to be removed the Swipe Card System from the bus(es). Any damage to the bus(es) arising from the removal of the Swipe Card System shall be the responsibility and liability of HU.

18. A notice, communication, or request under this MOU by HU to the City or the EDA or by the City or the EDA to HU shall be sufficiently given or delivered if dispatched by either (a) certified mail, postage prepaid, return receipt requested, (b) nationally recognized overnight delivery service (next business day service), or (c) hand-delivery (if receipt is evidenced by a signature of the addressee or authorized agent), and addressed to the applicable parties as follows:

As to City: City of Hampton, Virginia
City Manager
Eighth Floor
22 Lincoln Street
Hampton, VA 23669

As to EDA: Economic Development Authority
of the City of Hampton, Virginia
One Franklin Street, Suite 600
Hampton, VA 23669
Attn: Charles E. Rigney, Secretary

Copy to: Patricia A. Melochick,
Sr. Deputy City Attorney
22 Lincoln Street, 8th Floor
Hampton, VA 23669

As to HU: Hampton University
Attn: Mrs. Doretha J. Spells,
Vice President for Business Affairs and Treasurer
100 E. Queen Street

Hampton, VA 23668

Copy to: Faye Hardy-Lucas, Esq.
Vice President and General Counsel
Hampton University
100 E. Queen Street
Hampton, VA 23668

Any notice, communication, or request so sent shall be deemed to have been "given" (a) as of the next business day after being sent, if sent by nationally recognized express mail service, (b) as of the fifth business days after being sent, if sent by Registered or Certified U.S. Mail or (c) upon receipt, if sent by hand delivery. Either party may change its address for notice purposes by giving notice thereof to the other parties, except that such change of address notice shall not be deemed to have been given until actually received by the addressee thereof.

19. HU shall not assign its rights and duties under this MOU without the prior written consent of the City and the EDA.

As evidence of their agreement to the terms and conditions set forth herein, the parties affix their authorized signatures hereto:

CITY OF HAMPTON

By: _____
City Manager/Authorized Designee

**ECONOMIC DEVELOPMENT AUTHORITY
OF THE CITY OF HAMPTON**

By: _____
Chair/Vice-Chair

[Signatures continue on the following page.]

HAMPTON UNIVERSITY (formerly known as
Hampton Institute)

By: _____

Its: _____

COMMONWEALTH OF VIRGINIA
CITY OF HAMPTON, to-wit:

The foregoing instrument was acknowledged before me this ____ day of _____, 2019, by _____, _____ of Hampton University (formerly known as Hampton Institute) on its behalf. He/She is personally known to me or produced _____ as identification.

Notary Public

My commission expires: _____

Registration Number: _____

[Signatures continue on the following page.]

APPROVED AS TO CONTENT:

Director, Convention & Visitor's Bureau

APPROVED AS TO CONTENT:

**Economic Development Director &
Secretary to the EDA**

**APPROVED AS TO FORM &
LEGAL SUFFICIENCY:**

**Sr. Deputy City Attorney &
Legal Counsel To the EDA**

**APPROVED AS TO
LEGAL SUFFICIENCY:**

Counsel for HU

[End of Signatures.]