

AMENDED AND RESTATED COOPERATION AGREEMENT

THIS AMENDED AND RESTATED COOPERATION AGREEMENT is made as of the ____ day of _____, 2019, by and between the Economic Development Authority of the City of Hampton, a political subdivision of the Commonwealth of Virginia (the "EDA"), 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 investing in amenities that will enhance and expand retail shopping in Downtown Hampton and the Coliseum Central Business District as reflected in its Community Plan;

WHEREAS, the Council recognizes that Hampton University students who have no alternative transportation are limited in their ability to experience shopping and restaurant opportunities offered in Downtown Hampton and the Coliseum Central Business District;

WHEREAS, the EDA was created for the purpose of promoting industry and developing trade by inducing manufacturing, industrial, governmental, nonprofit enterprises, commercial enterprises, and institutions of higher learning to locate or remain in the City, as well as to promote and encourage the creation and development of new businesses in the City;

WHEREAS, one of the ways the EDA accomplished Council's priority was to provide and operate a limited shuttle bus service from Hampton University to Downtown Hampton and the Coliseum Central Business District on the weekends (the "Project") by issuing a Request for Proposals ("RFP") 17-55 EA;

WHEREAS, the successful respondent to RFP 17-55 EA was Fun Tours, Incorporated, and negotiations between the EDA and Contractor culminated in an award of a contract for the bus shuttle operation that operated regularly during school semesters occurring in most of 2017 and 2018;

WHEREAS, Hampton University ("HU") has participated in the Project by providing a card reader to Fun Tours, Incorporated to collect rider fees from the HU students using the bus shuttle and to remit said fees to the EDA, which terms of said proposal are memorialized in a Memorandum of Understanding ("MOU") by and among the City, the EDA, and HU;

WHEREAS, initial funding for the Project was provided by the EDA through a "Cooperation Agreement" with the City entered into in 2017 which was specific in funding only a contract with Fun Tours, Incorporated;

WHEREAS, Fun Tours, Incorporated 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 for that purpose; and

WHEREAS, the EDA and the City agree it is best to continue the Project, without limiting the City's financial support to a single-named vendor.

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 EDA agree as follows:

1. City to Provide Funds to the EDA. Subject to appropriation by Council and the other limitations contained in Section 6 herein, the City shall take all actions reasonably necessary to raise and to grant to the EDA sufficient funds to perform and administer its financial obligations under any contract awarded for the Project (the "Contract") and the MOU.

2. Obligations of the EDA. The EDA shall faithfully perform or cause to be performed its obligations under the Contract and the MOU, and shall fully enforce its rights thereunder, and keep the City periodically informed as to progress of the Project.

3. Provision of Personnel. The EDA and the City collectively and cooperatively shall provide or cause to be provided all personnel, reasonably necessary to fulfill their obligations and exercise their rights under the Contract, the MOU, and any related agreements, including, but not limited to, providing contract review and administration, Project inspections, and all administration and accounting functions and related activities as may be necessary to carry out their respective roles in the implementation of the Project, in a timely manner. To the extent that the aforesaid obligations cause the EDA to exceed amounts available to it, the City shall advance such amounts to the EDA or reimburse the EDA for any and all such excesses.

4. Reports to the City. The EDA shall provide to the City, in form and substance and on a schedule acceptable to the City, reports on expenditures and progress with respect to undertaking and carrying out the responsibilities of the EDA hereunder.

5. Limited Liability of the EDA. It is the intent of the parties that this Agreement will not impose upon the EDA any responsibility other than that required for the undertaking and completion of the EDA and City obligations under the Contract and the MOU. Accordingly, the EDA does not assume by these presence any responsibility or liability whatsoever except as specifically stated herein. Should any liability accrue to the EDA by reason of this Agreement which is not specifically addressed in this Agreement, the Contract or the MOU, the EDA 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 pledges to the EDA, subject to appropriation by the Council and the other limitations set forth in this Section, to deliver to the EDA sufficient funds as and when required for the EDA to make timely payment of all amounts required to be paid by the EDA

under the Contract or the MOU. 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 Council and shall not at any time constitute a legal obligation of the City with respect to the Contract, the MOU or for the payment of money.

(b) On or before February 1st of each year while the Contract and MOU are in effect, as applicable, the City Manager shall determine the amount which the City estimates will be needed to pay all amounts required to be paid by the EDA under the Contract in the fiscal year commencing on the following July 1st (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 Council for approval and will use her best efforts to have the Requested Amount approved and appropriated by Council at least 30 days before the beginning of that fiscal year. In the event that Council does not approve and appropriate the full Requested Amount, the City Manager will seek from time to time such appropriations from Council as may be necessary for complete and timely payment of all amounts required to be paid under the Contract or the MOU by the EDA.

(c) Money appropriated by Council for payment thereof shall be paid to the EDA at least 15 days before the same are due, to be applied solely to the payment of amounts required to be paid by the EDA under the Contract or the MOU for which such appropriation was made, and shall be used by the EDA for no other purpose. Any funds not required for payment of amounts required by the Contract or the MOU shall be promptly returned by the EDA to the City unless the Council directs otherwise.

(d) In the event that the amount actually needed to pay the full amount of the required payments exceeds the Requested Amount, the City Manager shall submit a supplemental request to the 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 Council shall undertake a non-binding obligation to appropriate to the EDA such amounts as may be requested from time to time pursuant to this Section and elsewhere in this Agreement to the fullest degree and in such manner as is consistent with the Constitution and laws of the Commonwealth of Virginia. The Council, while recognizing that it is not empowered to make any binding commitment to make such appropriations in future fiscal years, states its intent to make such appropriations in future fiscal years, and recommends that future Councils do likewise.

(g) Nothing in this Agreement is or shall be deemed to be a lending of the credit of the City to the EDA or to any other person, and nothing in this 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 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 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 is held invalid by a court of competent jurisdiction, this Agreement will

terminate and the EDA may take whatever steps it deems necessary or appropriate to minimize its actual or perceived liability in connection with the Project and its obligations under the Contract and the MOU.

8. Notices. All notices, certificates, requests or other communications under this 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 EDA:

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 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 Agreement will be governed by the laws of the Commonwealth of Virginia, and may be amended only by written agreement of the parties. In carrying out this Agreement, the City and the EDA agree not to discriminate against any employee or applicant because of race, color, religion, sex, national origin, age or disability. This 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 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 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 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 EDA under this Agreement shall not inure to the benefit of the Contractor.

THE ECONOMIC DEVELOPMENT AUTHORITY
OF THE CITY OF HAMPTON

By: _____
Chair/ Vice-Chair

CITY OF HAMPTON

By: _____
City Manager or Designee

Approved as to form and legal sufficiency:

Patricia A. Melochick, Sr. Deputy City Attorney
Counsel for the EDA

Approved as to substance:

Charles E. Rigney,
Secretary for the EDA

Brian DeProfio, Assistant City Manager

[End of Signatures.]