

## ENCROACHMENT GRANT #2019-01

### GRANT AGREEMENT

This AGREEMENT, entered into by and between the **Commonwealth of Virginia**, acting through the Office of the Secretary of Veterans and Defense Affairs of the Commonwealth of Virginia, hereinafter referred to as "COVA" and the **City of Hampton, Virginia** hereinafter referred to as "APPLICANT" or "GRANTEE."

### WITNESSETH

WHEREAS, the Commonwealth of Virginia has been authorized to distribute and administer funds to localities to address the encroachment upon United States Air Force Bases (AFB);

WHEREAS, Langley Air Force Base (LAFB) is located within the City of Hampton, Virginia;

WHEREAS, the GRANTEE has applied to COVA for \$700,000 of COVA funds to be matched by the GRANTEE, in order to mitigate encroachment at LAFB;

WHEREAS, COVA is authorized to distribute and administer the funds authorized and appropriated in Item 464 of Chapter 2 of the 2018 Acts of Assembly;

WHEREAS, the Secretary of Veterans and Defense Affairs (VDA) will administer this AGREEMENT and monitor all post-agreement obligations and receive all reporting requirements;

WHEREAS, the LAFB project as described in GRANTEE'S Encroachment Grant application has been approved by the VDA for funding on the basis of the GRANTEE'S Application, and

Now, THEREFORE, the above mentioned parties hereto do mutually agree as follows:

1. COVA agrees to award the GRANTEE a grant in an amount of the total allowable, eligible costs in carrying out the activities included in the scope of work and Special Conditions herein described not to exceed **\$700,000**.
2. The GRANTEE will commence, carry out and complete the scope of work as described in the GRANTEE'S Work plans and Budget descriptions, including any subsequent approved written AMENDMENTS to this PROJECT, which are made as part of this AGREEMENT.
3. The GRANTEE shall **complete the work** as described in the CONTRACT DOCUMENTS, on or before the PROJECT'S "COMPLETION DATE," **June 30, 2020**. **If balances exist after the Completion Date**, the Grantee shall demonstrate that

balances are contractually committed by way of a bilaterally signed contract, memorandum of understanding "MOU" or letter of intent "LOI" no later than the PROJECT's "Completion DATE," **June 30, 2020**. If the ACTIVITIES are not completed by the COMPLETION DATE or the Grant funding is not all committed by the COMPLETION DATE, then, this AGREEMENT shall be terminated and the GRANTEE shall return all unexpended grant funds to COVA, unless an amendment to the CONTRACT DOCUMENT provides otherwise. Such amendment must comply with the NOTICE REQUIREMENTS in the "General Conditions" section of this AGREEMENT.

4. COVA and the GRANTEE agree that the Commonwealth of Virginia's share of the costs associated with environmental site assessments on properties to be purchased using this grant funding shall be no more than 25 percent.
5. COVA and the GRANTEE agree that the Commonwealth of Virginia's share of the costs associated with CAPITAL EXPENSES AND OPERATING EXPENSES related to properties to be purchased using this grant funding shall be no more than 25 percent of the acquisition price per parcel, in addition to those other costs identified in paragraphs 4 and 6 herein.
6. COVA and the GRANTEE agree that the Commonwealth of Virginia's share of costs related to environmental cleanup of any property to be purchased under this grant shall be no more than 50 percent of the remediation costs up to and not to exceed the total grant appropriation amount to the GRANTEE.
7. COVA agrees to make an initial payment of 25 percent of the award to the GRANTEE following the full execution of this Agreement. After the initial payment the VDA shall make additional periodic payments based on the progress reports as defined in Exhibit D, paragraph 4. In making subsequent payments, the VDA shall ensure the GRANTEE's match funding is being expensed at the appropriate rate for the Encroachment Grant.
8. The term CONTRACT DOCUMENTS means the following documents, certain of which are included as Exhibits, which are a part of this AGREEMENT and are incorporated by reference herein as if set out in full.
  - A. GRANTEE's Application for Langley AFB funding;
  - B. GRANT AGREEMENT;
  - C. SPECIAL CONDITIONS;
  - D. GENERAL CONDITIONS;
  - E. ASSURANCES;
  - F. AMENDMENTS;
  - G. FORM OF PROGRESS REPORTS (for subsequent disbursements);
  - H. EXPENDITURE SUMMARY SHEETS.
9. Grant outputs and outcomes- To be in compliance with this Agreement, the APPLICANT/GRANTEE agrees to the following post-reporting obligations:

- A. APPLICANT/GRANTEE shall maintain a case file for its applications and the PROJECT.
- B. APPLICANT/GRANTEE shall maintain a case file that contains documentation concerning the appropriate expenditure of the grant awards made.
- C. APPLICANT/GRANTEE shall maintain case files for these GRANTs for three years from the date of the last disbursement.
- D. APPLICANT/GRANTEE shall disclose fully all grant records upon request by the Commonwealth (i.e., state audits).
- E. APPLICANT/GRANTEE shall supply progress reports to the Secretary of Veterans and Defense Affairs as needed to justify additional disbursements from the COVA, quarterly reports in accordance to Item 9, paragraph B. to indicate progress in obtaining properties, an oral presentation upon request of the Commonwealth, and a Final Report to the Governor within 30 days of the date that the term of grant expires. The Final Report shall include how the grants were expended and the resulting measure (listing of properties procured and costs incurred using required grant match and grant award funding).
- F. The term of this grant, which begins upon execution of this AGREEMENT, ends on June 30, 2020 and is subject to appropriation for the grant monies.

10. COMMUNICATIONS - WRITTEN NOTICES shall constitute the only means of binding statements of fact or condition between the parties of this agreement. All required reports and requests to be issued by the GRANTEE must be made by way of a WRITTEN NOTICE unless other means are specified in the CONTRACT DOCUMENTS. All directives, findings and other formal issuance by the Department of Planning and Budget must be transmitted through a WRITTEN NOTICE unless otherwise specified in the CONTRACT DOCUMENTS.

- A. The following should receive any and all written notices, correspondence and amendment proposals from the GRANTEE and FISCAL AGENT:
  - i. Secretary of Veterans and Defense Affairs, State Capitol, 3<sup>rd</sup> Floor, Richmond, VA 23219
  - ii. Secretary of Finance, 1111 East Broad Street, 3<sup>rd</sup> Floor, Richmond, VA 23219
  - iii. Director, Department of Planning and Budget, 1111 East Broad Street, 5<sup>th</sup> Floor, Richmond, VA 23219
- B. The following should also receive and be copied on all quarterly reporting updates from the GRANTEE and FISCAL AGENT:
  - i. Secretary of Veterans and Defense Affairs, State Capitol, 3<sup>rd</sup> Floor, Richmond, VA 23219
  - ii. Secretary of Finance, 1111 East Broad Street, 3<sup>rd</sup> Floor, Richmond, VA 23219
  - iii. Director, Department of Planning and Budget, 1111 East Broad Street, 5<sup>th</sup> Floor, Richmond, VA 23219
  - iv. Director, Senate Finance Committee, 900 East Main Street, 14<sup>th</sup> Floor, Richmond, VA 23219

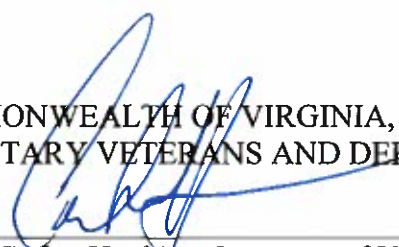
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- v. Director, House Appropriations Committee, 900 East Main Street, 13<sup>th</sup> Floor, Richmond, VA 23219

C. NOTIFICATION REQUIREMENTS – WRITTEN NOTICE must be provided to the Secretary of Veterans and Defense Affairs within ten (10) business days of GRANTEE's intent to: (1) amend the CONTRACT DOCUMENTS or (2) modify the COMMITMENT of MATCHING FUNDS. WRITTEN NOTICES shall be signed by and addressed to the appropriate authorized official and shall be considered transmitted when delivered in person or through the United States mail, Federal Express or UPS.

- 11. The GRANTEE shall act upon and respond to WRITTEN NOTICES promptly as directed.
- 12. The GRANTEE will (1) use the \$700,000 by June 30, 2020, or (2) have any remaining award balances and associated matching funds committed under contract for the purpose of procuring properties by June 30, 2020, or (3) if, at total PROJECT completion, there are unspent award balances remaining, these balances shall revert to COVA within 30 days of PROJECT completion.

[SIGNATURES ON FOLLOWING PAGES]

COMMONWEALTH OF VIRGINIA,  
SECRETARY VETERANS AND DEFENSE AFFAIRS


BY:  DATE: 22 Jan 2019  
Carlos Hopkins, Secretary of Veterans and Defense Affairs

City of Richmond,  
Commonwealth of Virginia

I do certify that Carlos Hopkins personally appeared before me and made oath that he is the Secretary of Veterans and Defense Affairs of the Commonwealth of Virginia and that he is duly authorized to execute the foregoing document.

My commission expires: 02/28/2019.

Given under my hand this 22 day of JANUARY, 2019.

  
Notary Public

7316565  
Registration Number



[SIGNATURES CONTINUE ON FOLLOWING PAGE]

CITY OF HAMPTON as GRANTEE and Fiscal Agent for receipt of funds and source of Matching Funds.

BY: Mary B. Bunting DATE: 1/15/19

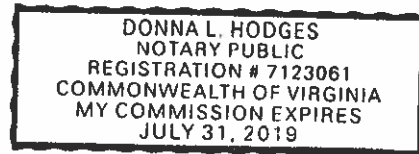
City/County/Town of Hampton,  
Commonwealth of Virginia

I do certify that Mary B. Bunting personally appeared before me and made oath that he/she is City Manager of the City of Hampton and that he/she is duly authorized to execute the foregoing document.

My commission expires: July 31, 2019.

Given under my hand this 15<sup>th</sup> day of January, 2019.

7123061  
Notary Public Registration Number



Approved as to Content:

Bruce D. [Signature]  
Director of Federal Facilities Support

1/14/19  
Date

Approved as to Legal Sufficiency:

Bonnie Brown  
Deputy City Attorney

1/14/19  
Date

**EXHIBIT A  
SPECIAL CONDITIONS**

1. The effective date of this authorization is January 1, 2019.
2. A total of **\$700,000 for FY2019** in matching funds is on hand, freely available and committed to this project by the GRANTEE. The balance of matching funds may include sources such as local, non-general fund and private resources. To be eligible, to utilize matching funds, GRANTEE must use such funds to support eligible expenses, such as OPERATING EXPENSES or CAPITAL EXPENSES as defined in Exhibit F, General Conditions, of this Agreement.
3. GRANTEE agrees to provide quarterly performance reports to the Secretary of Veterans and Defense Affairs. Reports must be received starting 30 days following quarterly ending periods of March 31, June 30, September 30, and December 31 for each year the grant is in effect. Reports shall include progress of the PROJECT reflecting achievements in meeting performance goals as indicated in the approved grant proposal and an update on matching funds expended during that specific period.
4. If requested, GRANTEE may be required to provide a final presentation on the outcome of the PROJECT in Richmond, Virginia. At any time during the Grant period, the Secretary of Veterans and Defense Affairs may request and shall be provided copies of any documents pertaining to the use of grant monies.
5. The forms to establish electronic payment with DOA are available at [www.doa.virginia.gov](http://www.doa.virginia.gov). At the home page, click on the Electronic Data Interchange (EDI) link button on the right. Scroll down to the Trading Partner Agreement and Enrollment form for Localities and Grantees. Print the form, fill it out and submit it. Instructions on filling out the form are on the third page of the document. For further information or alternative disbursement method, please contact the Secretary of Veterans and Defense Affairs.
6. COVA reserves the right to end funding at any point should the project prove nonviable. This includes, but may not be limited to, lack of progress in conformance with the approved project proposal.
7. Should any properties acquired with this grant be subsequently sold or leased, one half of all proceeds received from the subsequent sale or lease must be returned to COVA.
8. GRANTEE agrees to recognize COVA's support for this program in all communications with the media and its marketing publications. The following statement is suggested: ***"This program/project was funded/supported in collaboration with the Commonwealth of Virginia"***

**EXHIBIT B**  
**GENERAL CONDITIONS**

1. **DEFINITIONS** - Whenever used in the Contract Documents the following terms when written in all capital letters shall have the meanings indicated and shall be applicable to both the singular and plural thereof:
  - A. **ACTIVITY** - A PROGRAM activity which constitutes a specific portion of the PROGRAM, and as such is covered by its own budget account.
  - B. **AMENDMENT** - A formal addition or modification to the Contract Documents which has been approved in writing by both parties, and which affects the scope, objectives or completion date of the PROJECT, or which affects the manner in which the PROJECT is to be carried out.
  - C. **APPLICANT** - The entity which made the proposal for funding and accepted responsibility for assuring compliance and performance of all conditions.
  - D. **CAPITAL EXPENSES** – means expenditures for acquisition and purchase of land and structures, construction of buildings, renovation of buildings, major repairs, and other capital purposes. It includes equipment association with construction and renovation of buildings.
  - E. **AFB GRANT** -The funds, the PROJECT and PRODUCTS to be funded, and all conditions, laws and regulations affecting administration of funds currently in effect or as subsequently amended, and provided by Virginia Department of Planning and Budget to the GRANTEE
  - F. **CONTRACT DOCUMENTS** - The legal agreement between COVA and the GRANTEE including the AGREEMENT and all referenced documents
  - G. **GRANTEE** - The entity which is the recipient of funds and as such must comply with CONTRACT DOCUMENTS.
  - H. **OPERATING EXPENSES** – means payment of salaries and benefits, purchase of supplies, heat, light, power and other expenses of normal maintenance and operation. It includes equipment for normal operation, included but not limited to typewriters, computers, calculators, and computer software.
  - I. **PROJECT/PROGRAM** - The physical activities undertaken to meet the overall stated objective for which funding is to be utilized.
  - J. **WORK PLAN** - A plan prepared by the GRANTEE, which identifies key tasks and dates for task implementation and completion,



- K. **WORK** - All labor, equipment and materials necessary to produce the construction of the Project as required by the **CONTRACT DOCUMENTS**.
- L. **WRITTEN NOTICE** - Any notice from one party to the **AGREEMENT** to the other signed by an authorized official which transmits binding statements of fact or condition and is delivered to the appropriate authorized official either in person or when delivered in person or through the United States mail, Federal Express or UPS.
2. **ADMINISTRATIVE PROCEDURES** - The **GRANTEE** shall perform all contracted **WORK** and administer all grant funds and activities in conformance with the general terms and special conditions set forth
3. **ACCOUNTING RECORDS** - The **GRANTEE** shall establish and maintain separate accounts within its existing accounting system. The **GRANTEE** shall record in its accounting system all Grant payments received by it pursuant to this Grant and all other funds provided for, accruing to, or otherwise received on account of the Grant.

All costs, including paid services contributed by the **GRANTEE** or others, charged to the Grant shall be supported by properly executed payrolls, time records, invoices, contracts, or vouchers evidencing in proper detail the nature and propriety of the charges. All checks, payrolls, invoices, contracts, vouchers, orders, or other accounting documents pertaining in whole or in part to the Grant shall be clearly identified, readily accessible, and separate and distinct from all other such documents. Such documents shall reside at the offices of the **GRANTEE** fiscal agent locality.

4. **COSTS INCURRED PRIOR TO GRANT AGREEMENT EXECUTION** – Since this is a follow on grant, any costs incurred since January 1, 2018, will be allowable costs.
5. **PROGRAM BUDGET** - The **GRANTEE** shall carry out activities and incur costs only in conformance with the latest approved budget for the Grant and subject to the provisions of these **CONTRACT DOCUMENTS**. The budget may be revised through written notice.
6. **RECORDS** - The **GRANTEE** shall maintain such records that are readily accessible to the Secretary of Veterans and Defense Affairs, appropriate State and Federal agencies, and the general public during the course of the project and shall remain intact and accessible for three years from final closeout. Except if any litigation claim or audit is started before the expiration of the three year period the records shall be retained until such action is resolved. Notwithstanding, records

of any nonexpendable property must be retained for a three year period following final disposition.

7. **REPORTS** - The GRANTEE shall furnish, regularly and in such form as the Secretary of Veterans and Defense Affairs may require, reports concerning the status of project activities and grant funds. Such reports shall be submitted in the form and manner as prescribed by the Secretary of Veterans and Defense Affairs.

All reports shall be completed in full and submitted at the time prescribed by the Secretary of Veterans and Defense Affairs. Reports shall contain accurate information and shall detail any problems, delays or adverse conditions experienced.

8. **QUALITY CONTROL** - The GRANTEE accepts the responsibility to assure that all grant funded PRODUCTS shall be implemented with the highest possible degree of competence, workmanship, quality and cost effectiveness.
9. **COMMUNICATIONS - WRITTEN NOTICES** shall constitute the only means of binding statements of fact or condition between the parties of this agreement. All required reports and requests to be issued by the GRANTEE must be made by way of a WRITTEN NOTICE unless other means are specified in the CONTRACT DOCUMENTS. All directives, findings and other formal issuance by the Secretary of Veterans and Defense Affairs must be transmitted through a WRITTEN NOTICE unless otherwise specified in the CONTRACT DOCUMENTS.

**NOTIFICATION REQUIREMENTS – WRITTEN NOTICE** must be provided to the Secretary of Veterans and Defense Affairs within ten (10) business days of GRANTEE's intent to: (1) amend the CONTRACT DOCUMENTS or (2) modify the COMMITMENT of MATCHING FUNDS or proceeds of the grant monies in any material way.

WRITTEN NOTICES shall be signed by and addressed to the appropriate authorized official and shall be considered transmitted when delivered in person or through the United States mail, Federal Express or UPS.

The GRANTEE shall act upon and respond to WRITTEN NOTICES promptly as directed.

10. **BUDGET REVISIONS/AMENDMENTS** - The GRANTEE shall not obligate, encumber, spend or otherwise utilize funds for any activity or purpose not included or not in conformance with the budget as apportioned and as submitted unless the GRANTEE has received explicit approval by WRITTEN NOTICE from the Secretary of Veterans and Defense Affairs to undertake such actions, and if material, by AMENDMENT to the AGREEMENT.

11. TERMINATION, SUSPENSION, CONDITIONS -

- A. FOR CAUSE - If through any case, the GRANTEE or the Secretary of Veterans and Defense Affairs fails to comply with the terms, conditions or requirements of the CONTRACT DOCUMENTS the other party may terminate or suspend this AGREEMENT by giving WRITTEN NOTICE of the same and specifying the effective date of termination or suspension at least five (5) days prior to such action.

If, after the effective date of any suspension of this AGREEMENT, it is mutually agreeable to COVA and the GRANTEE upon remedy of any contract violation by the GRANTEE or COVA, the suspension may be lifted and the AGREEMENT shall be in full force and effect at a specified date after the parties have exchanged WRITTEN NOTICES stating a mutual understanding that the cause for suspension has been identified, agreed to and remedied.

In the case of contract violations by the GRANTEE, the Secretary of Veterans and Defense Affairs may impose conditions other than termination or suspension which are appropriate to ensure proper grant and project administration and adherence to the terms of the CONTRACT DOCUMENTS. Such conditions must be imposed through WRITTEN NOTICE.

- B. FOR CONVENIENCE - COVA may terminate this AGREEMENT, FOR CONVENIENCE, in the event that the Secretary of Veterans and Defense Affairs is no longer authorized as an agency to administer the grant or if the funds allocated are no longer available.

The GRANTEE may terminate this AGREEMENT for convenience at any time provided that all of the following conditions are met:

- i. The GRANTEE gives the Secretary of Veterans and Defense Affairs ten (10) business days WRITTEN NOTICE; and
- ii. The PRODUCTS which have been initiated either have been completed and may be utilized in their stage of completion in a manner consistent with the objectives in the GRANTEE'S PROJECT Proposal, or will be completed by the GRANTEE through its own or other resources; and
- iii. The GRANTEE had honored or will honor all contractual obligations to third parties affected by the grant under the Encroachment Grant Program; and

- iv. COVA agrees to the termination.

A GRANTEE'S valid termination for convenience in accordance with these CONTRACT DOCUMENTS shall not affect nor prejudice the GRANTEE'S future relationship with the Secretary of Veterans and Defense Affairs or COVA nor its future consideration as a grant recipient.

12. SUBSEQUENT CONTRACTS - The GRANTEE shall remain fully obligated under the provisions of the CONTRACT DOCUMENTS notwithstanding its designation of any subsequent or third parties for the undertaking of all or part of the ACTIVITIES for which the Grant assistance is being provided to the GRANTEE.

Any GRANTEE or CONTRACTOR or SUBCONTRACTOR which is not the APPLICANT shall comply with all the lawful requirements of the APPLICANT necessary to ensure that the PROGRAM for which this assistance is being provided under this AGREEMENT is carried out in accordance with the APPLICANT'S Assurances and Certifications.

**GRANTEES shall obtain a financial disclosure report from all contractors, subcontractors, developers, and consultants which certifies the financial interest of all officers, directors, principal stockholders, or other persons who will have a \$50,000 or 10 percent or greater interest in the contract whichever is lower.**

13. POLITICAL ACTIVITY PROHIBITED - None of the funds, materials, property or services contributed by COVA or the GRANTEE, under this AGREEMENT, shall be used in the performance of this AGREEMENT for any partisan political activity, or to further the election or defeat of any candidate for public office.
14. INTEREST OF MEMBER OF AGENCY AND OTHERS - No officer, member, or employee of the GRANTEE and no member of its governing body, who exercises any functions or responsibilities in the review or approval of the undertaking or carrying out of this PROGRAM shall participate in any decision relating to this AGREEMENT which affects his personal interest or have any personal or pecuniary interest, direct or indirect, in this AGREEMENT or the proceeds thereof.
15. CERTIFICATIONS - The GRANTEE certifies that it will comply with the following:
  - A. Freedom of Information Act;
  - B. Virginia Conflict of Interest Act; and
  - C. Virginia Fair Employment Contracting Act.

16. GRANTEE will comply with:

Title VI of the Civil Rights Act of 1964 (Pub. L 88-352), and the regulations issued pursuant thereto (24 CFR Part 1), which provides that no person in the United States shall on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the grantee receives Federal or State financial assistance and will immediately take any measure necessary to effectuate this assurance. If any real property or structure thereon is provided or improved with the aid of Federal or State financial assistance extended to the grantee, this assurance shall obligate the grantee, or in the case of any transfer of such property, any transferee, for the period during which the real property or structure is used for a purpose for which the Federal or State financial assistance is extended or for another purpose of involving the provision of similar services to benefits.

**EXHIBIT G**  
**ASSURANCES/CERTIFICATIONS**

The GRANTEE hereby assures and certifies that:

1. It possesses legal authority to execute the PROJECT.
2. Its governing body has duly adopted or passed as an official act a resolution, motion, or similar action authorizing the filing of the PROJECT proposal including all understandings and assurances contained therein, and directing and authorizing the person identified as the official representative of the GRANTEE to act in connection with the PROJECT proposal and to provide such additional information as may be required.
3. PRIVATE GAIN - It will establish safeguards to prohibit employees from using positions for a purpose that is or gives the appearance of being motivated by a desire for private gain for themselves or others, particularly those with whom they have family, business, or other ties.
4. It will give the Secretary of Veterans and Defense Affairs, the State Comptroller, the Auditor of Public Accounts and the Inspector General or similar executive or legislative agency through any authorized representatives access to and the right to examine all records, books, papers, or documents related to the GRANT.

  
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Mary B. Bunting, City Manager, City of Hampton,

  
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Date