

## COOPERATION AGREEMENT

THIS COOPERATION AGREEMENT (the "Agreement") is effective as of the 10<sup>th</sup> day of June, 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 was created for the purpose of promoting industry and developing trade by inducing manufacturing, industrial, and commercial enterprises to locate in the City, as well as to promote and encourage the creation and development of new businesses in the City through, *inter alia*, the acquisition and leasing of real property and the provision of loans and grants;

WHEREAS, the City's Downtown Master Plan endorses the creation of waterfront connections between the core downtown and the waterfront, and envisions a multidisciplinary education, scientific, research, training, and education center with ancillary economic development that all revolve around the City's seafood heritage and working downtown waterfront;

WHEREAS, the Authority owns that certain parcel of land comprised of 0.186± acres on the Downtown waterfront commonly referred to as 15 Rudd Lane (LRSN: 2003235; the "EDA Property"), on which all improvements, other than a foundational slab, have been wholly demolished and removed;

WHEREAS, Virginia Polytechnic Institute and State University ("Virginia Tech") has operated its Seafood Agricultural Research and Extension Center ("Old Seafood AREC") on the Downtown waterfront since 1975, most recently located on that certain parcel owned by the Foundation and adjacent to the EDA Property comprised of 0.626± acres, commonly referred to as 108 South King Street (LRSN 2002985; the "Foundation Property"; the EDA Property and the Foundation Property each a "Property," collectively the "Properties");

WHEREAS, part of the Seafood AREC's vision is to provide education, scientific, and technical guidance, support and leadership to the commercial seafood and aquaculture industries throughout Virginia and the United States.

WHEREAS, the Seafood AREC's current building is prone to recurrent flooding that endangers the existing laboratory facilities and on-going research projects. The Authority and the City, in conjunction with Virginia Tech and the Foundation seek to cooperatively redevelop the Old Seafood AREC in a resilient building (the "New AREC Facility"), pursuant to that certain Omnibus Agreement for the Relocation of Redevelopment of the Virginia Tech Virginia Seafood Agricultural Research and Extension Center Downtown Hampton Water Front between

the Authority and the Foundation (the “Omnibus Agreement”), attached hereto and incorporated herein as Exhibit A.

WHEREAS, the City is willing to fund or other support the Authority’s obligations pursuant to the Omnibus Agreement and the ongoing financial obligations of the Authority related to the ownership of the property acquired thereunder, 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 entering into the Omnibus Agreement 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. Obligations of the City. 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 Omnibus Agreement and to maintain any property acquired thereunder. In addition, the City’s Director of Finance shall serve as the escrow agent for those funds to be set aside for the future demolition of the Old Seafood AREC in accordance with Section 2.4(b) of the Omnibus Agreement.

3. Obligations of the Authority. The Authority shall faithfully perform or cause to be performed its obligations under the Omnibus Agreement, and shall fully enforce its rights thereunder. In addition, the Authority agrees to pay to the City any funds received by the Authority from the Foundation pursuant to Section 6.5 of the Omnibus Agreement.

4. 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 pursuant to the Omnibus Agreement and as the owner of any property acquired thereunder. 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.

5. 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 Omnibus Agreement, and as otherwise incurred by the Authority as the owner of any property acquired thereunder. 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 Omnibus Agreement or any property acquired thereunder.

(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 Omnibus Agreement, or as otherwise incurred by the Authority as the owner of any property acquired thereunder 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.

6. 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 as stated in the Omnibus 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 Omnibus Agreement.

7. 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.

8. 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.

9. 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.

10. 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:

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Senior Deputy City Attorney

Approved as to Content:

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City Director of Finance

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Representative of the  
Economic Development Authority

**EXHIBIT A**  
**OMNIBUS AGREEMENT**

**EXHIBIT B**

## **LEASE AGREEMENT**