

MEMORANDUM OF AGREEMENT

May 18, 2007

THIS MEMORANDUM OF AGREEMENT ("MOA"), made this 24th day of May, 2007, by and among the COMMONWEALTH OF VIRGINIA (the "Commonwealth"), the FORT MONROE FEDERAL AREA DEVELOPMENT AUTHORITY, a political subdivision of the Commonwealth of Virginia ("FMFADA"); and the CITY OF HAMPTON, VIRGINIA, a municipal corporation (the "City"). All of the parties to this Memorandum may be referred to collectively as the "Parties."

WITNESSETH:

WHEREAS, Fort Monroe is an assemblage of seven parcels of land, including some accreted land, currently owned by the United States. Four of the parcels were acquired from the Commonwealth of Virginia, the others from private landowners. Three of the parcels conveyed by the Commonwealth are subject to a reservation of future rights. The fourth parcel contains restrictions on the use of the parcels which may operate as an implied reservation of future rights. These four parcels and the accreted land constitute approximately two-thirds (2/3) of the land at Fort Monroe and are referred to herein as the "Reversionary Property;"

WHEREAS, it is the specific intent of the Parties that the provisions of this MOA apply to all of the land that comprises Fort Monroe, including the Reversionary Property and land owned by the United States;

WHEREAS, the 2005 Base Closure Commission recommended, and the President and the Congress agreed, that the military facilities on Fort Monroe should be closed and that federal ownership of Fort Monroe should cease no later than 2011;

WHEREAS, pursuant to the terms of this MOA, the Commonwealth will decide under what terms and conditions any Reversionary Property may be utilized in the reuse process;

WHEREAS, Fort Monroe lies within the jurisdiction of the City of Hampton and the activities on Fort Monroe and the businesses that support Fort Monroe are significant contributors to the economy and vitality of the City and the surrounding Hampton Roads region;

WHEREAS, the federal Defense Base Closure and Realignment Act of 1990 ("BRAC Statute") anticipates the creation of a Local Redevelopment Authority ("LRA") to function as the reuse agent for closed military bases;

WHEREAS, by Coded Ordinance No. 1399 adopted May 11, 2005 the Council of the City of Hampton, Virginia (the "Council") created the City of Hampton Federal Area Development Authority ("Hampton FADA") pursuant to the enabling authority set forth in Authorities for Development of Former Federal Areas Act, Chapter 63, Title 15 of the Code of Virginia of 1950, as amended, and more particularly as set forth in §15.2-6302 of said Act;

WHEREAS, the Council created the Hampton FADA in order to enable more efficient cooperation with the federal government in the event of a closure or realignment of any of the City's federal installations pursuant to the federal Defense Base Closure and Realignment Act of

1990, and to increase the value of federal installations in the City of Hampton by promoting the development of federal employee housing, including military housing, office buildings and other infrastructure through increased coordination between the military, private industry, and academic and research institutions located in the City and the Hampton Roads area;

WHEREAS, with the cooperation and support of the Commonwealth, the City and the Hampton FADA, Senate Bill 1392 and House Bill 3180 were approved by the General Assembly, which, among other things, authorized the Council to create the FMFADA and authorized the Governor, at his discretion, to convey the interest of the Commonwealth in Fort Monroe to the FMFADA;

WHEREAS, by Coded Ordinance No. 1473, adopted March 28, 2007, the Council created the FMFADA pursuant to Senate Bill 1392 and House Bill 3180, and by Coded Ordinance No. 1472, adopted March 28, 2007 amended the existing Ordinance pertaining to the Hampton FADA to limit its jurisdiction to those federal areas other than Fort Monroe;

WHEREAS, the Parties desire to foster a partnership among themselves through the efficient operation of the FMFADA to promote the best possible planning and reuse for Fort Monroe, for the benefit of the people of the City, region, state and nation;

WHEREAS, the Department of Defense (“DoD”) has officially recognized the Hampton FADA as the LRA for the development and implementation of a Reuse Plan for Fort Monroe (“Reuse Plan”), and the Parties anticipate DOD will officially recognize the FMFADA as the successor to the Hampton FADA in this regard;

WHEREAS, Fort Monroe has been utilized as a military defense installation since 1609 and there is known, but yet to be quantified or fully identified, environmental contamination at the installation, of which munitions is a significant factor;

WHEREAS, there are significant munitions in the waters surrounding Fort Monroe (approximately 55,000 acres) which need to be addressed in order to reclaim the use and enjoyment of this portion of the Chesapeake Bay, an invaluable resource to the Citizens of the Commonwealth of Virginia;

WHEREAS, it is the mission of the Commonwealth of Virginia, specifically through the Department of Environmental Quality (DEQ), to protect human health and the environment by the application of the appropriate cleanup standards, including, but not limited to, maximum contaminant levels (MCLs) in ground water, appropriate risk based levels of constituents in soil and other media and clearance of munitions as appropriate;

WHEREAS, under the terms of the Comprehensive Environmental Response, Compensation and Liability Act (“CERCLA”), the DoD must provide for Commonwealth approval prior to transfer, a Finding of Suitability for Transfer (“FOST”) for property that is initially determined to be clean or for contaminated property that has been remediated;

WHEREAS, under CERCLA, for a transfer of DoD property prior to remediation occurring or being completed, DoD must provide for the Governor’s approval a Finding of Suitability for Early Transfer (“FOSET”);

WHEREAS, §1-405 of the Code prohibits the reversion of property with environmental contamination from the United States to the Commonwealth unless and until all corrective action necessary to protect human health and the environment has been completed to the satisfaction of the Commonwealth and approved by the Governor;

WHEREAS, the Parties acknowledge that Fort Monroe is a nationally significant historic property which the National Park Service designated a National Historic Landmark (NHL), its highest recognition, in 1960;

WHEREAS, it is the mission of the Commonwealth, through its Department of Historic Resources (DHR), to promote the stewardship and use of the historic landmarks and assets and to protect the historic assets of the Commonwealth, including historically significant buildings, structures, objects, sites, landscapes and districts. In addition, the Director of DHR serves as the State Historic Preservation Officer (SHPO) under the National Historic Preservation Act, as amended;

WHEREAS, the Parties understand that the closing of Fort Monroe by DoD and its removal from federal control and management is a federal undertaking subject to various federal laws such as Section 106 of the National Historic Preservation Act, as amended, and the National Environmental Policy Act (NEPA), as well as internal Army and DoD regulations prior to any transfer of land;

WHEREAS, the Parties agree that they have a shared responsibility to ensure that any reuse plan for Fort Monroe is consistent with accepted historic preservation practices, promotes heritage tourism and public education, and is consistent with applicable laws and regulations;

WHEREAS, the Parties recognize the importance of working together to maintain the integrity of the historic and environmental resources at Fort Monroe through the use of protective easements and covenants, state and federal preservation tax credits, rehabilitation of historic buildings according to The Secretary of the Interior's Standards for the Treatment of Historic Properties, compatible design for and appropriate siting of new construction, avoidance of/data recovery from significant archaeological sites, and other applicable preservation tools and strategies;

WHEREAS, the Parties agree that the reuse planning process should, as completely as possible and as required by law, consider and address the economic impact of closing Fort Monroe on the Commonwealth, the region and the City and be consistent with all environmental and historic resources laws, regulations and requirements;

WHEREAS, the Parties acknowledge that the public has expressed a desire to keep Fort Monroe open and accessible to the public, and that such issues will need to be fully explored with the public during the reuse planning process;

WHEREAS, the Parties acknowledge that, upon the completion of applicable federal historic preservation and environmental requirements, it may be in the best interests of the public to transition Fort Monroe to reuse as soon as possible in order to maximize the dollars available to restore, rehabilitate and maintain its historic assets, to maximize the federal dollars available for environmental remediation and restoration and to minimize the economic impact of the closure by restoring the property to useful function in an expeditious and orderly manner; and

WHEREAS, the Parties agree that the reuse planning for Fort Monroe should be accomplished in a manner that involves the public, that public input will be considered in a valuable and meaningful way, and that all points of view will be given adequate opportunity to be heard and considered.

NOW, THEREFORE, in consideration of the public benefits to accrue to the Commonwealth, the Hampton Roads region and the City of Hampton and its citizens from the undertaking and implementation of the Parties' efforts with respect to the reuse of Fort Monroe and the mutual covenants hereinafter set forth, the Commonwealth, the City and FMFADA agree as follows:

1. The recitations above are incorporated by reference into the substance of this MOA.
2. This MOA pertains to the land and properties normally called Fort Monroe, as indicated above, and does not address any issues related to the Big Bethel Reservoir or Fort Wool.
3. The provisions of this MOA are intended to provide a structure that will allow a cooperative and unified operating process for the FMFADA until such time as the Board of Commissioners of the FMFADA adopts by-laws for its operation, as provided in the Act.
4. During the closure of Fort Monroe, the Parties will, at a minimum, have the following respective responsibilities:

Commonwealth

- A. Be a consulting party through the Department of Historic Resources (DHR) in the Section 106 process pursuant to 36 CFR Part 800.2(c)(1)
- B. Serve as the lead regulator of environmental cleanup of the property through the Department of Environmental Quality (DEQ), including establishing acceptable cleanup levels and types of uses allowed on certain portions of the property, as well as recommending to the Governor whether Reversionary Property should be accepted for early transfer. DEQ is also a necessary signatory to any transfers of clean property (Community Environmental Response Facilitation Act (CERFA) Category 1).
- C. Contribute appropriate staff and resources to the FMFADA as set forth in Section 9 below.
- D. The Governor must review, comment on, and approve the Reuse Plan pursuant to Va. Code §15.2-6308.1.
- E. The Governor must grant his concurrence before any property not subject to a reversionary interest in favor of the Commonwealth ("BRAC Property") may be transferred under CERCLA early transfer authority.

City

- F. Be a consulting party in the Section 106 process pursuant to 36 CFR Part 800.2(c)(3).
- G. Contribute appropriate staff and resources to the FMFADA as set forth in Section 9 below.
- H. Review and comment on the Reuse Plan

FMFADA

- I. Be a consulting party in the Section 106 process pursuant to 36 CFR Part 800.2(c)(5);
- J. Complete the homeless provider and state and local screening process (“Screening Process”);
- K. Consider and explore the feasibility of alternative reuse opportunities, and develop a draft reuse plan, and in furtherance of these efforts and as required by the Act, request the U.S. Congressional Representative in whose district Fort Monroe is located to seek a reconnaissance survey from the U.S. Department of the Interior to help the FMFADA evaluate whether Fort Monroe should become affiliated with the National Park System to help manage and preserve the historic and natural resources at Old Point Comfort.
- L. Submit drafts of the Reuse Plan to the Commonwealth and City for review and comment;
- M. Complete the Reuse Plan and ensure that it is consistent with the provisions of the Act, any agreement resulting from the Section 106 process and incorporates all requirements for environmental screening, remediation and restoration.
- N. Because the BRAC Statute supports and provides for a locally controlled reuse planning process, the FMFADA must ensure that the local community has an opportunity to be involved in the planning process and the development of the Reuse Plan. Therefore, the FMFADA shall:
 - a. Provide an overview of the citizen participation process.
 - b. Make the draft Reuse Plan and homeless assistance application (“Homeless Application”) submission available for public review and comment throughout the application preparation process.
 - c. Conduct at least one public hearing on the Homeless Application prior to its submittal to the Department of Housing and Urban Development (“HUD”) and include a summary of citizens’ comments as part of the Homeless Application.

- d. Work with HUD so that the process allows it to discharge its statutory responsibility to see that there is a balance between economic development and provision for the homeless.
 - e. Appropriately consider notices of interest (“NOI’s”) received during the Screening Process.
 - f. Consult with the SHPO and consider preservation covenants, if appropriate, prior to completing negotiation of any legally binding agreements with homeless providers and NOI’s for public benefit conveyances.
 - g. Following the completion of the Screening Process, and final preparation of the Homeless Application, all in consultation with the Commonwealth and the City, submit the Homeless Application to HUD for review and approval.
 - h. Complete the Reuse Plan in accordance with the applicable provisions of the Act and in consultation with the Commonwealth and the City, and submit the Reuse Plan to the Governor for review and approval, prior to the final approval thereof by the FMFADA.
- O.** Adopt bylaws that shall include “governance” provisions describing the process by which the FMFADA will be operated and the powers and duties of the Board in determining FMFADA’s future direction. The bylaws shall specify that certain “significant” decisions (including the final approval of the Reuse Plan) would have to be made by a super majority of 75% of the members of the FMFADA. Examples of such significant decisions the Board of the FMFADA may consider shall include, but not be limited to, appointment of an Executive Director, endorsement of a reuse plan for presentation to the Governor, approval of the FMFADA’s operating budget, adoption or modification of the FMFADA bylaws and adoption/endorsement of an Environmental Services Cooperative Agreement with the federal government.
- a. Until such time as the Board of Commissioners of the FMFADA adopts by-laws for its operation, as provided in the Act, the FMFADA shall have the following officers: Chair, Vice Chair, Secretary and Treasurer. The offices of Secretary and Treasurer may be held by the same person. The Board shall elect the foregoing officers by majority decision and may in its discretion elect such other officers as it deems necessary or desirable.
 - b. The Board may from time to time by majority decision, designate one or more committees, each committee to consist of two or more Board members. No such committee shall have any power or authority to take any action which has not been expressly authorized by the full Board or for which the Act requires a vote of 75% of the Board members. Each committee shall keep regular minutes of its meetings and report the same to the Board whenever required or requested.

The Board shall have a standing Executive Committee which shall have full authority to act for the Board to accomplish the goals and directives adopted by the full Board; to authorize the Executive Director within his/her normal duties; and to advise the Executive Director on day to day operational and administrative matters. The results of each meeting of the Executive Committee are reported to the full Board at the next regularly scheduled meeting following the meeting of the Executive Committee. The Executive Committee shall be comprised of 5 members of the Board, of which the Chair, Vice Chair, Secretary and Treasurer shall be members. The Chair shall appoint the fifth member. If the offices of Secretary and Treasurer are held by the same person then the Chair shall appoint the fourth and fifth member.

- c. Meetings of the Board, and any committee thereof, may be held by means of a conference telephone or equivalent communications equipment in accordance with Virginia Code §2.2-3708.1.
- d. Monthly meetings of the Board shall be held on the date and time as designated by the Board from time to time and stated in the notice of the meeting. Special meetings of the board for any purpose or purposes, may be called by a majority of the Board.
- e. The members of the Board shall serve without compensation, provided however the Board may authorize reimbursement of members reasonable expenses incurred in traveling to and from Board meetings.
- f. The number of Board members necessary to constitute a quorum shall be the number as set forth in the Act.

5. Disposition Plan

The parties hereto acknowledge and agree that pursuant to the Act, as amended, the Governor has the authority to convey to FMFADA title to the Reversionary Property. The parties agree that, if deemed appropriate and consistent with the best interests of the Commonwealth, including compliance with the Act, the Governor may convey or lease any or all of the Reversionary Property at Fort Monroe consistent with the Reuse Plan as finally approved by all necessary parties. The parties further acknowledge and agree as follows: upon (i) completion and approval of the Reuse Plan as provided above, (ii) completion of all requirements under NEPA and Section 106 of the NHPA, (iii) completion of the characterization and/or environmental cleanup of the Reversionary Property as required by Section 1-405 of the Code, and (iv) in coordination with the disposition of the BRAC Property as negotiated between the FMFADA, in consultation with the Commonwealth and the City, and the Army, FMFADA shall propose to the Governor a plan for the disposition (“Disposition Plan”) of the Reversionary Property, which Disposition Plan may include conveyance of all or portions of the Reversionary Property to the FMFADA, or disposition directly to third parties, or a combination thereof. The Disposition Plan shall also include a proposed timetable for disposition and specific conditions upon which a disposition or dispositions may be made, which conditions may include, without limitation, the form of development agreement, if any,

governing the terms of required property reuse and consideration to be received by the Commonwealth, recommended land use controls, the form of conveyance instruments and/or escrow arrangements, and such other terms and conditions FMFADA and the Commonwealth deem appropriate. Upon approval by the Governor of the Disposition Plan, FMFADA shall proceed with the implementation of the Disposition Plan in accordance with the terms thereof and in furtherance of the implementation of the approved Reuse Plan. It is anticipated that FMFADA will provide to the Commonwealth and the City a draft Disposition Plan within 12 months of the full execution of this MOA, to insure adequate time for the Parties hereto to consider and resolve all relevant issues related to property disposition.

6. Early Transfer.

- A.** It is the understanding of the Commonwealth that FMFADA intends to pursue with the Army the “early” transfer of the BRAC Property pursuant to Section 120(h)(3)(C) of CERCLA and the privatization of the characterization and the cleanup of the entire facility (“Cleanup Privatization”), subject to the approval of the Governor of “early” transfer as required under CERCLA and applicable Virginia law and subject to any required reviews or approvals under Section 106 of NHPA. All cleanup activities, including but not limited to investigation, remediation, public participation, long term management, must be conducted in accordance with CERCLA and any other applicable federal or state laws and regulations. It is further the understanding of the parties that, under the agreements with DoD, the FMFADA will seek designation as the DoD’s agent for investigation and remediation of the Reversionary Property, since Va. Code §1-405 prevents conveyance of the property to the Commonwealth until after necessary actions to protect human health and the environment have been taken.
- B.** In the event Cleanup Privatization is undertaken by FMFADA, the Commonwealth may enter into an agreement (“Consent Agreement”) with both FMFADA and the Army specifying the requirements and duties to be undertaken by FMFADA to complete the cleanup in accordance with CERCLA and applicable state law, as well as specifying Army’s continuing responsibilities with respect to the cleanup of the property; and FMFADA and the Army will enter into an agreement (“Environmental Services Cooperative Agreement or “ESCA”) that will provide funding to complete the cleanup, in accordance with the Consent Agreement, including funding to purchase both liability and cost overrun insurance acceptable to the Commonwealth and funding for expenses incurred by the Commonwealth for oversight of remediation activities and review of environmental agreements between the Army and FMFADA as required to complete the cleanup.
- C.** FMFADA understands that, under Va. Code § 1-405, those portions of the facility that revert to the Commonwealth from the DoD, may not revert unless and until all environmental cleanup has been completed to the satisfaction of the Commonwealth and approved by the Governor. The Commonwealth, at the discretion of the Governor, however, may authorize the FMFADA to undertake certain activities on lands subject to a reversionary interest that are consistent with

the FMFADA's desire to facilitate the early transfer of properties, including Cleanup Privatization, if deemed to be in the best interests of the Commonwealth.

- D. If the FMFADA agrees to Cleanup Privatization on behalf of DoD, DoD will retain responsibility to ensure that cleanup is accomplished properly and in a timely manner through oversight provisions in the ESCA.
- E. It is noted that DoD's FOST guidance provides a framework for documenting the conclusion that real property made available through the BRAC process is environmentally suitable for transfer by deed under Section 120(h) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). Nothing in DoD's policy or in this guide negates the requirement to comply with the National Environmental Policy Act (NEPA), the National Historic Preservation Act (NHPA) or Section 1-405 of the Code of Virginia.

7. Regulatory Review.

- A. The Parties acknowledge the regulatory responsibilities of the Commonwealth, FMFADA and any and all third parties with regard to the reuse, historic preservation and environmental review, permitting and cleanup processes at Fort Monroe.
- B. The Parties agree to work cooperatively and in a coordinated fashion in the undertaking of any and all requisite regulatory reviews. In the event environmental issues arise that are under the statutory control of the Environmental Protection Agency (EPA), necessary approvals will be required from both the EPA and the Commonwealth.
- C. FMFADA and the City further acknowledge that Commonwealth cooperation and the execution of this MOA are not intended to compromise Commonwealth regulatory authority in any way.
- D. The DEQ agrees to consult with the City and FMFADA, and their environmental planning consultants, as the City and FMFADA prepare an acceptable environmental remediation plan for Fort Monroe, in support of Cleanup Privatization, to the extent that regulatory responsibilities allow DEQ to do so.
- E. Further, the Commonwealth and FMFADA acknowledge that the terms of this MOA shall not supersede, contradict or interfere in any way in the Army's efforts to comply with its federal regulatory responsibilities, or future agreements it enters into pursuant to those federal regulatory responsibilities.

8. Reuse Plan Approval.

- A. The Parties acknowledge that Office of Economic Adjustment (OEA) has provided planning grant funds to the Hampton FADA and FMFADA in support of the completion of the Reuse Plan.

B. FMFADA agrees to actively seek public input as the Reuse Plan is being prepared, and actively consult with the Commonwealth as the preparation of the Reuse Plan proceeds.

C. Prior to approval of a final Reuse Plan,, FMFADA shall submit the Reuse Plan to the Governor for review and approval.

D. FMFADA further agrees that the Reuse Plan shall be consistent with the stipulations of any agreement entered into by the Army pursuant to Section 106 of the National Historic Preservation Act, as amended.

9. Funding.

The parties acknowledge that the City has requested reimbursement of the Reuse Planning Expenses, over and above the funding received from the Office of Economic Adjustment, incurred prior to the date of this MOA, as the term “Reuse Planning Expenses” is defined in Section 10A.a below. The City and Commonwealth shall negotiate in good faith the portion of any appropriations by the Commonwealth to be designated for reimbursement of the Reuse Planning Expenses to the City.

Upon adoption of a full year operating budget for the FMFADA, the Parties agree that both the City and the Commonwealth will negotiate in good faith, the ongoing financial assistance each will provide to the FMFADA until its revenues are sufficient to maintain its operations independently. The parties agree that in-kind contributions of necessary goods and services may discharge all or a portion of these obligations, depending upon the needs of the FMFADA. The FMFADA agrees to adopt an operating budget that will specify what elements may be supplied by in-kind contributions and what elements mandate monetary contribution. The City and the Commonwealth shall then allocate the budgetary responsibilities between them, resulting in an agreed upon division of responsibility.

10. Distribution of Proceeds.

A. If the Commonwealth approves the transfer of any Reversionary Property to a third party, as provided herein, then FMFADA, the City and the Commonwealth agree that all proceeds from the sale (“Sale Proceeds”) or lease (“Lease Proceeds”) of Reversionary Property, or any rights in and to such property, shall be applied as follows:

a. Expenses required for the preparation and implementation of the Reuse Plan (“Reuse Planning Expenses”) shall be calculated to include costs incurred by the City/Hampton FADA and FMFADA (excluding costs paid with state or federal grant funds), (i) directly associated with the preparation of the Reuse Plan, and (ii) for site preparation, environmental permitting and cleanup, preservation or rehabilitation of historic assets and other costs directly related to the implementation of the Reuse Plan. To the extent not directly reimbursed by the Commonwealth pursuant to the provisions of Section 9 hereof Reuse Planning Expenses shall be repaid from either Sale or Lease Proceeds as described herein, with reimbursement to the City/Hampton FADA receiving first priority, as if

distributed evenly across all of the acreage at Fort Monroe, on a prorated, per acre basis.

b. All Sale Proceeds, less pro rata Reuse Planning Expenses, shall be paid to the Commonwealth at or in the normal course of any closing on the property. Lease Proceeds shall be distributed quarterly, less the deduction of one-fourth of the pro rata annual Reuse Planning Expenses from each distribution, beginning no later than thirty (30) days after the first quarter in which any Lease Proceeds are received by the FMFADA.

c. FMFADA shall, at its own expense, provide to the Commonwealth an annual accounting of all monies collected by FMFADA with respect to any properties subject to the Commonwealth's reversionary interest and of all Reuse Planning Expenses incurred during the previous fiscal year, along with the calculations used to determine any pro rata shares of the Reuse Planning Expenses, which accounting shall be independently audited by a third party auditing firm that audits the FMFADA's accounts on an annual basis. The Commonwealth shall also receive copies of the City's and FMFADA's audited statements of revenues and expenditures for each fiscal year throughout the term of this MOA. These accountings shall be provided no later than the first quarter of the next fiscal year, unless otherwise agreed in writing between the parties.

d. The Commonwealth shall have access to all books and records of the City and FMFADA as may be necessary to verify that Reuse Planning Expenses were incurred in conformance with this MOA.

e. FMFADA and the Commonwealth agree that all sale or lease proceeds derived from real property at Fort Monroe not subject to the Commonwealth's reversionary interest less pro rata Development Expenses, shall be distributed by the FMFADA as otherwise agreed between FMFADA and the appropriate parties.

11. State and Federal Grants.

A. The Commonwealth agrees to cooperate with the City and FMFADA in securing any available state or federal funding, consistent with all rules or policies applicable to such funding, to the extent permitted by law. Nothing in this MOA is or shall be deemed to be a lending of the credit of the Commonwealth to the City, to FMFADA or to any other person, and nothing in this MOA is or shall be deemed to be a pledge of the faith and credit or the taxing power of the Commonwealth.

B. The FMFADA shall pursue the use of state and federal preservation tax credits, National Park Service Save America's Treasures (SAT) grants, state historic preservation grants, and other funding that will preserve and promote the historic properties at Fort Monroe.

C. The Parties recognize and agree that this MOA cannot pre-approve any anticipated state grant program and that the City of Hampton or the FMFADA will need to comply with the requirements of any such grant program or programs to receive funding.

12. Advisory Groups.

The Board may from time to time, in its discretion, create one or more Advisory Groups to provide the Board meaningful help in many different areas, including historic preservation and such other areas as the Board deems necessary or advisable. Membership of any advisory group shall be determined by the Board in its discretion.

A. Historic Preservation Advisory Group

The Board agrees to establish a Historic Preservation Advisory Group to help guide the development of a financially self-sustaining stewardship plan (“Historic Preservation Plan”) for the long term management and use of the historic assets at Fort Monroe, for the benefit of the citizens of the Commonwealth and the United States. It is anticipated that the stewardship plan would include, among other components, the development of treatment and maintenance standards for resources or categories of resources, design guidelines and standards for any new construction, visitor orientation and educational programs, related marketing plans, and a business plan for long term management of the publicly accessible historic assets. The Historic Preservation Advisory Group and the FMFADA shall provide an annual report to the Governor on the stewardship planning process for his review and consideration. The Historic Preservation Advisory Group will consist of nine members, one member to be a representative from the State Historic Preservation Office, one member to be a representative from the National Trust for Historic Preservation, four members to be appointed by the Governor, and three members to be appointed by FMFADA. The Historic Preservation Advisory Group shall continue to serve in an advisory role to the Board until such time as it is formally disbanded by action of the Board.

13. Termination.

A. This MOA shall continue in full force and effect until terminated in accordance herewith.

If there is a material breach of this agreement by any party, and the breach has not been corrected, or correction is not being diligently pursued with a reasonable date for completion, following thirty (30) days notice in writing of such breach, then the non-breaching party can terminate the agreement by giving the other party 60 days written notice of termination. Failure to exercise this option to terminate is not a waiver.

C. Any waiver must be granted explicitly and in writing. The option to terminate, however, expires upon cure of the breach.

D. The parties may mutually agree to terminate if all of the goals of the MOA have been reached and any remaining obligations among the parties are adequately addressed by other agreements, including but not limited to the governance documents of the FMFADA.

14. Notices.

A. Any notice, demand, or request, or change of address by either party hereto to the other shall be deemed to be given if and when deposited in the United States Mail and dispatched by certified mail, postage prepaid, return receipt requested, or by overnight/express mail (signature required) to the notice addresses provided below.

B. In the case of notice or communication to the Commonwealth:

Office of the Governor
Attn: Secretary of Commerce and Trade
Patrick Henry Building, 3rd Floor
1111 East Broad Street
Richmond, Virginia 23219

Copy to:

Office of the Attorney General
Attn: Chief, Real Estate and Land Use Section
900 East Main Street
Richmond, Virginia 23219

C. In the case of a notice or communication to FMFADA:

Chair
Fort Monroe Federal Area Development Authority
Office of the Secretary of Natural Resources
Patrick Henry Building, 4th floor
1111 East Broad Street
Richmond, Virginia 23219

Copy to:

Office of the Attorney General
Attn: Chief, Real Estate and Land Use Section
900 East Main Street
Richmond, Virginia 23219

D. In the case of a notice or communication to the City:

City Manager
City of Hampton
City Hall
22 Lincoln Street
Hampton, Virginia 23669

15. No Responsibility for Debts/No Liability.

A. No party to this MOA shall be responsible for the debts of any other party to this MOA.

B. No party to this MOA shall be responsible or liable for the negligence or willful acts or omissions of any other party to this MOA.

16. Miscellaneous.

A. This MOA embodies the whole agreement of the parties. There are no premises, terms, conditions, or obligations other than those contained herein, and this MOA shall supersede all other previous communications, representations, or agreements, either verbal or written, between the parties hereto.

B. This MOA may be amended only by writing.

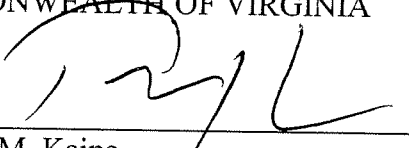
17. Governing Law/Venue.

A. This MOA shall be governed by the laws of the Commonwealth of Virginia.

B. Any and all suits for any claims or for any and every breach or dispute arising out of this MOA shall be maintained in the appropriate court of competent jurisdiction in Virginia.

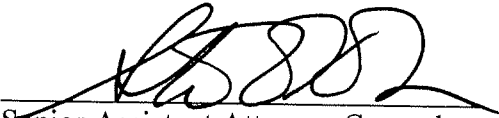
IN WITNESS WHEREOF, the Commonwealth, the City and the FMFADA have caused this Memorandum of Agreement to be duly executed.

COMMONWEALTH OF VIRGINIA



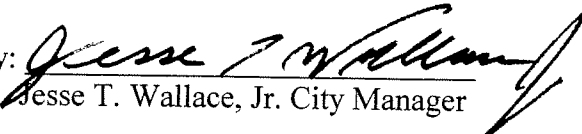
Timothy M. Kaine
Governor of Virginia

Approved as to Legal Sufficiency:



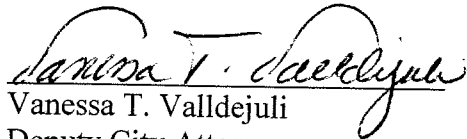
Senior Assistant Attorney General

CITY OF HAMPTON, VIRGINIA

By: 

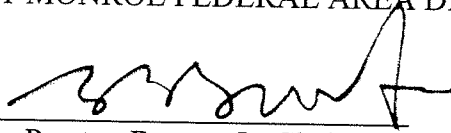
Jesse T. Wallace, Jr. City Manager

Approved as to Legal Sufficiency:



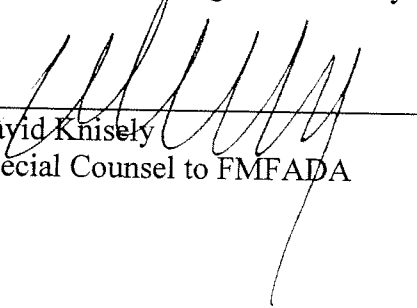
Vanessa T. Valldejuli
Deputy City Attorney

FORT MONROE FEDERAL AREA DEVELOPMENT AUTHORITY

By: 

L. Preston Bryant, Jr. Chair

Approved as to Legal Sufficiency:



David Knisely
Special Counsel to FMFADA