



May 21, 2025

SENT VIA CERTIFIED MAIL, RETURN RECEIPT REQUESTED; AND VIA EMAIL

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Copies via email to: Delaney Crosley, EPA Project Officer, crosley.delaney@epa.gov
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Re: Notice of Disagreement re: U.S. Environmental Protection Agency (the "Agency") Assistance Amendment for the Aberdeen Gardens Community Resilience Implementation Strategy, Grant Number (FAIN): 953A0079; Modification Number: 1; Program Code 5F; Date of Award 05/01/2025; MAILING DATE 05/01/2025 (the "Assistance Amendment")

Dear Mr. Rose:

The City of Hampton, Virginia (the "City") received the above-referenced Assistance Amendment and a Memorandum re: Termination of EPA Assistance Agreement 5F-953A0079 under 2 CFR 200.340 (the "Termination Memo") on May 1, 2025 via an email sent by Kenneth Rose, Manager, Grants Management Section, US EPA Mid-Atlantic Region (3MD22), to Mary Bunting, City Manager, and Scott Smith, Coastal Resilience Engineer, with various Agency contacts copied. This letter serves as the City's Notice of Disagreement for the Assistance Amendment. The Assistance Amendment seeks to amend the Grant Agreement, dated December 5, 2024, between the City and the Agency for the Aberdeen Gardens Community Resilience Implementation Strategy (the "Grant Agreement"). The Assistance Amendment is explained as an amendment to stop work; terminate the agreement; reduce performance period duration; curtail scope of work; waive certain reporting requirements; and add administrative terms and conditions. The Assistance Amendment further states that the Agency is terminating the award based on 2 CFR 200.340 and the Termination General Term and Condition of the Grant Agreement, which serve as the basis for the Agency to unilaterally terminate the Grant Agreement. The Termination Memo states that the termination is based on the grounds that the Federal award will not accomplish Agency funding priorities for achieving program goals and the objectives of the Federal award are no longer consistent with Agency funding priorities. The Termination Memo then makes general references to Agency obligations to constitutional and statutory law of the United States to ensure that grants do not conflict with the Agency's policy of prioritizing merit, fairness, and excellence in performing statutory functions; assessing whether grant payments are free from fraud, abuse,

waste, and duplication; and assessing whether current grants are in the best interests of the United States. No further explanation and no specific allegations of non-compliance are provided.

For the reasons detailed below, the City respectfully disagrees with the Assistance Amendment, which effectively terminates the Grant Agreement, and the City requests that the Agency rescind the Assistance Amendment and reinstate the Grant Agreement, pursuant to its original terms and conditions. The submission of this Notice of Disagreement in no way implies an admission that the Agency's attempt to amend and terminate the Grant Agreement is legitimate or that any part of the Notice of Disagreement process is valid.

PROJECT SUMMARY

The purpose of the Aberdeen Gardens Community Resilience Implementation Strategy (the "Project") is to protect lives, homes, and critical infrastructure in one of the City's most flood-vulnerable neighborhoods. With the \$20 million Agency award, the Project focuses on enhancing public safety and community well-being by addressing long-standing stormwater and infrastructure deficiencies that have exposed residents to repeated flood losses, health hazards, and emergency access challenges. The Project includes restoration of 2,000 feet of degraded creek corridor, installation of 50 rain gardens and 300 rain barrels to control runoff, replacement of lead water service lines in up to 150 homes, and improved drainage infrastructure across multiple streets. These upgrades are vital to protecting homes and transportation of goods from flood destruction and maintaining clean drinking water for families. Additional measures, such as the conversion of 249 streetlights to LED, sidewalk upgrades, and pedestrian safety enhancements, aim to improve neighborhood walkability and emergency access during high-water events. To strengthen disaster readiness, a 200kW backup generator and emergency supplies would be installed at Aberdeen Elementary School, transforming it into a reliable neighborhood resilience hub that can support residents during power outages, heat emergencies, or storm events. This also enhances continuity for school operations, which are critical for supporting working parents and military families employed by Joint Base Langley-Eustis or other nearby military bases. Automated weather and air quality monitoring systems will further enhance early warning capabilities and public health safeguards.

Investments in this historic community—originally established in 1934 as housing for shipyard workers—represent not only an urgent public safety intervention, but also a strategic investment in the long-term stability of Hampton's workforce housing stock. The Project enhances livability for working families and retirees, reduces absenteeism by minimizing flood-related disruptions, and improves mobility and access for residents, employers, and service providers. Strengthening this community's resilience and stability is important because workforce housing in the neighborhood serves the Newport News Shipyard and Joint Base Langley-Eustis – both key employers in Hampton that safeguard national security. The Project prioritizes on-the-ground solutions that directly reduce risk and improve quality of life—making the neighborhood safer, more connected, and better prepared to withstand current and future hazards, while demonstrating a fiscally responsible and replicable model of community-centered resilience.

APPLICATION, AWARD, AND GRANT AGREEMENT TIMELINE

On July 31, 2024, the City submitted its Aberdeen Gardens Community Resilience Implementation Strategy application in response to the Agency's Notice of Funding Opportunity for Environmental and Climate Justice Community Change Grants Program, EPA-R-OEJECR-OCS-23-04, 66.616. The application was the result of a lengthy and complex process which included close collaboration with Wetlands Watch, the City's statutory partner required under the

grant program. The application included a detailed workplan narrative, budget documents, and various attachments to ensure that the City and Wetlands Watch would effectively and efficiently carry out the project in accordance with the grant program's stated goals and requirements. For example, Attachment B: Statutory Partnership Agreement, detailed the relationship between the City and Wetlands Watch and the agreement of both entities to abide by the grant program's rules, regulations, and requirements; Attachment G: Readiness Approach, detailed the commitment of the City and Wetlands Watch to complete the proposed work within three years; and Attachment H: Compliance Plan, detailed multi-layer internal control processes to ensure that the grant funds would be properly managed, as well as expended in a timely and effective manner.

On November 11, 2024, an Agency Project Officer notified the City of its selection for potential funding in the Community Change Program and the workplan negotiation phase began. Over the course of the next few weeks, City and Agency staff coordinated with one another to identify revisions to application materials that the City resubmitted to the Agency. During the course of the workplan negotiation phase, the City also coordinated with Agency counsel regarding Form 4700-4, Preaward Compliance Review Report. On November 15, 2024, the City and the Agency entered into a six-month extension agreement to enable the City to update certain policies as requested by the Agency at that time and to resubmit Form 4700-4.

On December 11, 2024 the Agency issued to the City a Notice of Award, with an award date of December 5, 2024. The Notice of Award served as the Grant Agreement and incorporated the Agency's General Terms and Conditions, effective as of October 1, 2024, and Programmatic Terms and Conditions. These terms and conditions include detailed requirements associated with performance reporting, financial reporting, audit requirements, and additional safeguards against conflicts, waste, fraud, and abuse. The Grant Agreement identified the period of performance as beginning on March 1, 2025 and ending on February 29, 2028. On December 27, 2024, the City emailed the Agency written notice to confirm its acceptance of the Grant Agreement.

In the days and weeks that followed, the City continued to collaborate with its statutory partner, Wetlands Watch, to prepare for a March 1, 2025 start date. This included finalizing language for the subaward agreement to be executed between the two entities and preparing template reporting documents. On February 3, 2025, after a temporary pause and discussion about the effect of Executive Order 14154, *Unleashing American Energy*, the Agency's Project Officer provided a copy of an email from the Office of Grants and Debarments, indicating that all grant actions could resume.

In preparation to start the Project on time, the City contacted the Agency Project Officer on February 24, 2025, because the funds had not appeared in ASAP and were not available for drawdown. After months of back-and-forth, the City received this termination. In all correspondence, the City promptly responded to requests for additional information and expressed a desire to collaborate on a path forward and noted the importance of the Project's critical flood mitigation efforts. The Agency did not respond to the City's request to meet with the team conducting the internal review of the Grant Agreement.

On May 1, 2025, the City received the Assistance Amendment and Termination Memo from the Agency via email. The two documents received from the Agency detail differing methods to disagree with or dispute the Agency's action. As a result, City ceased all activity associated with the Grant Agreement, including submission of a revised Form 4700-4 pursuant to the six-month extension agreement, and is pursuing the stated methods to disagree with and dispute the Agency's action. The City cannot proceed on this vital project without reimbursement per the terms of the Grant Agreement.

BASIS OF CITY'S NOTICE OF DISAGREEMENT

In addition to termination, the Assistance Amendment identified other changes to the Grant Agreement, including stopping work; reducing the duration of the period of performance; curtailing the scope of work; waiving certain reporting requirements; and, adding administrative terms and conditions. The underlying purpose and intent of such changes is to effectively terminate the Grant Agreement. The City disagrees with the terms and conditions of the Assistance Amendment because such action is beyond the Agency's authority and is contrary to various contractual, regulatory, statutory, and constitutional requirements, as further explained below. For similar reasons, the City disputes the termination decision as stated in the Termination Memo and will provide its formal dispute response pursuant to the method identified in the Termination Memo.

A. City's Grant Agreement and Agency Regulations

The Agency's attempts to amend and terminate the Grant Agreement as stated in the Assistance Amendment and Termination Memo are contrary to the Grant Agreement, Agency regulations, and are beyond the Agency's regulatory authority.

The Agency's regulations regarding post Federal award requirements include specific parameters regarding the ability to terminate the Federal award. 2 CFR 200.340(a) provides for four termination options – (1) recipient or subrecipient noncompliance; (2) mutual consent to termination; (3) recipient or subrecipient sending the Agency written notice; or (4) pursuant to the terms and conditions of the Federal award, including, to the extent authorized by law, if the award no longer effectuates program goals or agency priorities. 2 CFR 200.340(b) further states that all termination provisions must be clearly and unambiguously specified in the Federal award.

The Termination General Term and Condition in the Grant Agreement does not authorize the Agency to unilaterally terminate the Grant Agreement in this manner based on 2 CFR 200.340. Although the Agency has since modified its General Terms and Conditions to include a termination option related to program goals and agency priorities, that option only applies to new awards and funding amendment made on or after April 3, 2025. The Agency's award to the City was dated December 5, 2024, and officially accepted by the City on December 27, 2024. The Agency acted in bad faith by pursuing termination of the Grant Agreement knowing that the terms and conditions of the Grant Agreement did not include this unilateral termination provision. See U.S. Environmental Protection Agency, Office of the Administrator, List of Grants Targeted for Termination (Mar. 11, 2025); U.S. Environmental Protection Agency, Office of General Counsel, Email from Attorney to Staff (Mar. 3, 2025).

The Agency has not identified any further justification for such termination. The Agency has not alleged that the City is not in compliance with the Grant Agreement; has not cited to another term and condition in the Grant Agreement for the termination; has not explained why the Federal award conflicts with the Agency's policy of prioritizing merit, fairness, and excellence in performing statutory functions; has not provided any explanation or evidence of wrongdoing, fraud, waste, abuse, or duplication; and has not explained how the Federal award is not in the best interests of the United States.

In fact, the award is in the best interests of the United States. The Project protects lives, homes, and critical infrastructure by keeping the community safe and prepared. In turn, this reduces reliance on government assistance in times of need.

B. Constitution and Federal Law

The Agency's attempts to amend and terminate the Grant Agreement as stated in the Assistance Amendment and the Termination Memo are contrary to the Separation of Powers established in the United States Constitution; various Federal laws including the Inflation Reduction Act, the Impoundment Control Act, and the Administrative Procedure Act; and is beyond the Agency's constitutional and statutory authority. Specifically:


- The U.S. Constitution establishes three separate but equal branches of government and divides the Federal government's powers between those three branches. Congress retains the exclusive control of the nation's purse and the President has a duty to spend those funds in accordance with their established terms. U.S. Const. Art. I.
- The Inflation Reduction Act (IRA) created the Environmental and Climate Justice Program (ECJP). The ECJP is contained in Section 138 of the Clean Air Act (CAA), 42 U.S.C. § 7438. Under ECJP, the Agency was provided with \$2.8 billion to award grants to help disadvantaged communities address a wide range of environmental and climate justice issues, and \$200 million for technical assistance related to these grants. The Community Change Grants are the final and most comprehensive piece of the Agency's implementation of the ECJP IRA funding. See Notice of Funding Opportunity for Environmental and Climate Justice Community Change Grants Program, EPA-R-OEJECR-OCS-23-04, 66.616, Section I(A), pg. 4.
- The Impoundment Control Act of 1974 (ICA), 2 U.S.C. §§ 681-688, limits the President's authority to unilaterally divert or cancel funds that Congress has approved by identifying limited circumstances in which the President may defer or rescind congressionally appropriated funds.
- The Administrative Procedure Act (APA), 5 U.S.C. §§ 551-559, governs the procedures by which federal agencies act and how such agency actions may be challenged. For example, agency actions may be challenged on the grounds the action is unconstitutional, is outside of the agency's statutory authority, is arbitrary and capricious, or violates procedural requirements. 5 U.S.C. § 706.

The Agency's actions via the Assistance Amendment and Termination Memo are contrary to the IRA, the ICA, and the APA. With respect to the IRA, the Agency's actions violate the plain language of the statute, which clearly and unambiguously directs the Agency to distribute and obligate the funds for the purposes provided for in the statute. With respect to the ICA, neither the President nor the Agency has adhered to the procedures required by the IRA. No "special message" notifying Congress of the rescission has been sent and Congress has not acted to approve such rescission. With respect to the APA, the Agency's action is arbitrary and capricious, and exceeds the Agency's constitutional and statutory authority. The Assistance Amendment is vague and unsubstantiated, and does not provide a reasoned explanation for the Agency's actions. No constitutional or statutory provision enables the Agency to ignore or undermine the statutes identified above.

REQUESTED RELIEF

Based on the foregoing, the City respectfully requests that the Agency rescind the Assistance Amendment and Termination Memo; and reinstate the Grant Agreement, pursuant to its original terms and conditions, including but not limited to the Project's duration and scope.

Sincerely,



Mary B. Bunting
City Manager

Date: 5-21-25

Enclosures