

A G E N D A

JAMES CITY COUNTY BOARD OF SUPERVISORS

County Government Center Board Room

June 24, 2003

7:00 P.M.

	<u>Page</u>
A. ROLL CALL	
B. MOMENT OF SILENCE	
C. PLEDGE OF ALLEGIANCE - Skyler Helms, a 5-year-old, who will be attending kindergarten at Rawls Byrd Elementary School.	
D. PRESENTATIONS	
1. Chesapeake Bay Partner Community Award	
2. July is Parks and Recreation Month	
E. HIGHWAY MATTERS	
F. PUBLIC COMMENT	
G. CONSENT CALENDAR	
1. Minutes	
a. June 10, 2003, Work Session	
b. June 10, 2003, Regular Meeting	
2. Building D Lease	
3. Dedication of Streets in Fernbrook, Phases 1, 2, and 3	
4. U.S. Department of Justice COPS Universal Hiring Program Grant	
5. Grant Application – Clerk of the Circuit Court	
6. Appropriation of Funds – Bus Shelter, Williamsburg Area Transport	
7. Lease and Purchase Option Agreement with the Colonial Williamsburg Foundation - Buses	
8. Title V Grant - “Beyond The Bell”	
9. Olde Towne Medical Center Reduction in Force	
10. Budget Adjustment – Norge Depot	
11. July is Recreation and Parks Month	
12. County Fair Committee Appointments	
H. PUBLIC HEARINGS	
1. Conveyance of Easements to the Virginia Department of Transportation at 3493 John Tyler Highway	
2. Resolution to Endorse a TEA-21 Application Filed by the Jamestown-Yorktown Foundation	

3. Short-Term Rental Tax
4. Ordinance Amendment for Cable Communications Committee's Powers and Responsibilities
5. Ordinance for Driving While Intoxicated (D.W.I.) and Traffic Enforcement

I. BOARD CONSIDERATIONS

1. Sound Wall – Route 199
2. Proposed Procedures – Implementation of the Public-Private Education Facilities and Infrastructure Act of 2002

J. PUBLIC COMMENT

K. REPORTS OF THE COUNTY ADMINISTRATOR

L. BOARD REQUESTS AND DIRECTIVES

M. CLOSED SESSION

1. Consideration of the Appointment of Individuals to County Boards and/or Commissions, Pursuant to Section 2.2-3711(A)(1) of the Code of Virginia
 - a. Industrial Development Authority
 - b. Social Services Advisory Board
 - c. Thomas Nelson Community College Board

N. ADJOURNMENT

062403bs.age

MEMORANDUM

DATE: June 24, 2003
TO: The Board of Supervisors
FROM: Michael D. Woolson, Watershed Planner
SUBJECT: Chesapeake Bay Partner Community Award

The Environmental Protection Agency (EPA) Region III Chesapeake Bay Program Office has designated James City County as a Gold level Bay Partner through the Chesapeake Bay Partner Community Awards Program. The County was one of seven to receive this level of award in the entire Chesapeake Bay watershed. This award recognizes the efforts that the County has undertaken in the areas of improving water quality, promoting sound land use, protecting and restoring living resources and habitats, and engaging the community. Staff appreciates the support of the Board of Supervisors for continuing environmental protection programs.

Ms. Maureen Tooke will present the County with this award.

Michael D. Woolson

CONCUR:

John T. P. Horne

MDW/tlc
chesbayawd.mem

AT A WORK SESSION OF THE BOARD OF SUPERVISORS OF THE COUNTY OF JAMES CITY, VIRGINIA, HELD ON THE 10TH DAY OF JUNE, 2003, AT 4:00 P.M. IN THE COUNTY GOVERNMENT CENTER BOARD ROOM, 101 MOUNTS BAY ROAD, JAMES CITY COUNTY, VIRGINIA.

A. ROLL CALL

Jay T. Harrison, Sr., Chairman, Berkeley District
Bruce C. Goodson, Vice Chairman, Roberts District
John J. McGlennon, Jamestown District
Michael J. Brown, Powhatan District
James G. Kennedy, Stonehouse District

Sanford B. Wanner, County Administrator
Frank M. Morton, III, County Attorney

B. BOARD DISCUSSION

1. Draft 2003 Comprehensive Plan Discussion with the Planning Commission and Members of the Comprehensive Plan Steering Committee

a. Introductions

Mr. Joe Poole, Chair of the Planning Commission, introduced members of the Comprehensive Plan Steering Committee and Planning Commission.

b. Presentation of the Draft 2003 Comprehensive Plan as unanimously adopted by the Steering Committee

Mr. Joe McCleary, Vice Chair of the Planning Commission, provided the Board with an overview of the Methodology for the Comprehensive Plan, Community Participation Team input, the Community Conversations, and the Steering Committee's work that were all part of the development of the Draft 2003 Comprehensive Plan.

Mr. McCleary continued reviewing the Draft 2003 Comprehensive Plan (Draft) with discussions on the following.

i. Population

The Board and Mr. McCleary discussed the demographic changes within the County.

ii. Youth

The new element of the Comprehensive Plan includes a stand-alone section on youth to address transportation, recreation facilities, economic development, child care and health care from the perspective of youth.

iii. Economic Development

The Economic Development trends in the County indicate that the County prospered in the 1990s, and that efforts are being made to develop the County's workforce and promote efficient use of water resources

The Board and Mr. McCleary discussed the citizen input concerning redevelopment issues in areas such as the Lightfoot and the Mooretown Road area; the retention of agricultural and forestal industries and options for farmers and their children; home-occupations by-right and their impact on neighbors; what role the County would play in providing fiber-optic cable service to residents; modification suggestions for language usage within the Draft that are action specific rather than suggestive of action; encouragement of the County to support and utilize locally minority-owned, and small businesses and services; the role of the Williamsburg/Jamestown Airport; workforce training; and the County's Enterprise Zone.

iv. Public Facilities

The public facilities list has been updated to include facilities completed since 1997 and language has been added to promote the effort for new facilities to accommodate joint utilization by County and other agencies.

The Board and Mr. McCleary discussed the County's view of "fair share" in consideration of funding the development of public facilities, meeting or exceeding State standards for public facilities, modification of specific language in the Draft, and pre-school classrooms in the elementary schools.

v. Parks and Recreation

The County continues to seek partnerships to develop facilities to meet community needs.

vi. Environmental

The Draft has been updated to be consistent with Chesapeake Bay Local Assistance Department (CBLAD) requirements by addressing issues such as shoreline erosion and water quality, and the Draft encourages and promotes water efficiency and mitigation of adverse environmental impacts.

The Board and Mr. McCleary recommended the inclusion of language for the encouragement of conservation of water, enforcement of the RPA, and use of gray water.

vii. Transportation

The transportation in the County and Greater Williamsburg Area has improved over the past few years through the Williamsburg Area Transport, the County has pursued both a Light Rail and High Speed Rail system, and the development of greenways includes alternative transportation such as bikeways.

The Board and Mr. McCleary discussed service of the Williamsburg Area Transport for the older residents, and sidewalk planning to connect the pathways and ensure maintenance.

c. Public Comment

1. Mr. Dick Jones complimented the work that has gone into the Draft and stated concern regarding the leaking underground storage tanks noted in the Draft, the lack of action items with the Department of Environmental Quality to correct the environmental damage and notify citizens of the

contamination, and requested additional maps in the Land Use section of the Draft to aid in identifying the parcels in question.

Mr. Jones also commented on the lack of information in the Draft regarding Homeland Security.

C. RECESS

At 6:14 p.m., Mr. Harrison and the Board broke for supper until 7 p.m.

Sanford B. Wanner
Clerk to the Board

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AT A REGULAR MEETING OF THE BOARD OF SUPERVISORS OF THE COUNTY OF JAMES CITY, VIRGINIA, HELD ON THE 10th DAY OF JUNE 2003, AT 7:00 P.M. IN THE COUNTY GOVERNMENT CENTER BOARD ROOM, 101 MOUNTS BAY ROAD, JAMES CITY COUNTY, VIRGINIA.

A. ROLL CALL

Jay T. Harrison, Sr., Chairman, Berkeley District
Bruce C. Goodson, Vice Chairman, Roberts District
John J. McGlennon, Jamestown District
Michael J. Brown, Powhatan District
James G. Kennedy, Stonehouse District

Sanford B. Wanner, County Administrator
Frank M. Morton, III, County Attorney

B. MOMENT OF SILENCE

Mr. Harrison requested the Board and citizens observe a moment of silence.

C. PLEDGE OF ALLEGIANCE

Matthew John Butler, a ninth-grade student at Williamsburg Christian Academy, led the Board and citizens in the Pledge of Allegiance.

D. PUBLIC COMMENT

1. Mr. Thomas Ellis, 237 Brightwood Avenue, Hampton, representative of the Sierra Club, stated concern regarding the County's ability to provide adequate water with increasing demands for the service and requested the Board consider smart growth, protection of open space, and water reuse.

2. Mr. Ed Oyer, 139 Indian Circle, stated that the fees imposed by the government are a drain on retired citizens with fixed incomes.

E. CONSENT CALENDAR

Mr. Harrison pulled Item No. 7, Naming of the District Park, from the Consent Calendar.

Mr. McGlennon made a motion to adopt the remaining items on the Consent Calendar.

On a roll call vote, the vote was: AYE: McGlennon, Brown, Goodson, Kennedy, Harrison (5). NAY: (0).

1. Minutes
 - a. May 13, 2003, Regular Meeting
 - b. May 13, 2003, Work Session
 - c. May 27, 2003, Regular Meeting
2. Department of Criminal Justice Services Grant – Records System Improvement

RESOLUTION

CRIMINAL JUSTICE RECORDS SYSTEM IMPROVEMENT GRANT

- WHEREAS, the Department of Criminal Justice Services (DCJS) has approved a grant in the amount of \$169,616, with a Federal share of \$127,212, for the purchase and installation of a Computer Aided Dispatching System; and
- WHEREAS, the grant requires a cash local match of \$42,404, which is available in the Operating account; and
- WHEREAS, the grant will be administered by DCJS, with a grant period of January 1, 2003, through December 31, 2003, thus allowing any unexpended funds as of June 30, 2003, to be carried forward to James City County's next fiscal year.
- NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby authorizes the following appropriation to the Capital budget:

Revenues:

Department of Criminal Justice Services \$127,212

Expenditures:

Computer Aided Dispatching \$127,212

3. Dedication of Streets in Stonehouse, Phase I, Sections 1, 2, and 3

RESOLUTION

DEDICATION OF STREETS IN STONEHOUSE, PHASE 1 - SECTIONS 1, 2, AND 3

- WHEREAS, the streets described on the attached Additions Form SR-5(A), fully incorporated herein by reference, are shown on plats recorded in the Clerk's Office of the Circuit Court of James City County; and
- WHEREAS, the Resident Engineer for the Virginia Department of Transportation advised the Board that the streets meet the requirements established by the Subdivision Street Requirements of the Virginia Department of Transportation; and
- WHEREAS, the County and the Virginia Department of Transportation entered into an agreement on November 1, 1993, for comprehensive stormwater detention which applies to this request for addition; and

WHEREAS, the County and the Virginia Department of Transportation have entered into an agreement on May 30, 2003, for the crossing of three extrinsic structures which applies to this request for addition.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby requests the Virginia Department of Transportation to add the streets described on the attached Additions Form SR-5(A) to the secondary system of State highways, pursuant to §33.1-229, of the Code of Virginia, and the Department's Subdivision Street Requirements.

BE IT FURTHER RESOLVED, the Board guarantees a clear and unrestricted right-of-way, as described, and any necessary easements for cuts, fills and drainage.

BE IT FURTHER RESOLVED that a certified copy of this resolution be forwarded to the Resident Engineer for the Virginia Department of Transportation.

4. Award of Contract – James City/Williamsburg Community Center Pool Light Replacement and Ceiling Painting

RESOLUTION

AWARD OF CONTRACT - JAMES CITY/WILLIAMSBURG COMMUNITY CENTER

POOL LIGHT REPLACEMENT AND CEILING PAINTING

WHEREAS, the plans and specifications have been advertised and competitively bid for replacement of lights and painting of the ceiling at the James City/Williamsburg Community Center; and

WHEREAS, three firms submitted bids, with Sun Bay Contracting, Inc., submitting the lowest bid of \$125,545.50; and

WHEREAS, the bid is within budget, funds are available, and Sun Bay Contracting, Inc., has been determined capable of performing the work associated with the project.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby awards the contract to Sun Bay Contracting, Inc., in the amount of \$125,545.50.

5. Virginia Department of Emergency Management Awards

RESOLUTION

VIRGINIA DEPARTMENT OF EMERGENCY MANAGEMENT AWARDS

WHEREAS, the Virginia Department of Emergency Management (VDEM) has approved monetary assistance to the James City County Division of Emergency Management, providing:

\$22,000 improvement in radiological emergency response capability.

1. \$13,967 for improvement of emergency plans.
2. \$3,000 to assist with the establishment of Community Emergency Response Teams

- (CERT).
- 3. \$2,500 to assist with the establishment of Citizen Corps.

WHEREAS, no local matching funds are required.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby authorizes the following appropriation amendment to the Special Projects/Grants Fund:

Revenue:

Transfer from the Virginia Department of Emergency Management	<u>\$41,467</u>
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Expenditures:

James City County, Division of Emergency Management	<u>\$41,467</u>
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- 6. Award of Contract – Computer Aided Dispatch Software System

RESOLUTION

AWARD OF CONTRACT - COMPUTER AIDED DISPATCH SOFTWARE SYSTEM

WHEREAS, a request for proposals for the Computer Aided Dispatch Software System was advertised and nine interested firms submitted proposals; and

WHEREAS, staff reviewed all proposals and selected Open Software Solutions, Inc., as the most qualified firm to provide the services associated with the project; and

WHEREAS, a fee of \$439,645 was negotiated with Open Software Solutions, Inc., for providing the services with funds available in the Fiscal Year 2003 Budget.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, awards the contract to provide the Computer Aided Dispatch Software System to Open Software Solutions, Inc., for \$439,645.

- 8. Resolution of Support for the American Passenger Rail Agreement

RESOLUTION OF SUPPORT

REGARDING THE AMERICAN PASSENGER RAIL AGREEMENT

WHEREAS, in order to ensure the safety, quality, reliability, and efficiency of our country's vital transportation network and to preserve our national defense, America needs a balanced, integrated transportation system and the American people need diverse transportation choices; and

WHEREAS, passenger rail is a critical component of a modern, multi-modal transportation system, and needs to have financial support, unified policy development, and oversight similar to that afforded to our air, highway, and mass transit modes; and

WHEREAS, Federal funding is being sought to complete the upgrade of the rail infrastructure, service, and equipment for rail service between Washington, D.C., and Newport News, VA by 2007.

NOW, THEREFORE, BE IT RESOLVED by the Board of Supervisors of James City County, Virginia, that we urge Congress and the President of the United States to fully institute the following passenger rail components, which are critical to the future of passenger rail in the United States, within the upcoming reauthorization of the Transportation Equity Act for the 21st Century (TEA21) and/or Amtrak Reauthorization legislation:

1. Establish a dedicated, multi-year Federal capital-funding program for intercity passenger rail, patterned after the existing Federal highway, airport, and mass transit programs.
2. Establish, as Federal policy, a preserved and improved national passenger rail system - a nationwide, interconnected passenger rail system that stimulates higher levels of efficiency, innovation, and responsiveness. Direct the Federal Railroad Administration, or another agency within the U.S. Department of Transportation, to - with state input and local input - develop, fund, and oversee this Federal policy.
3. Provide full Federal funding of Amtrak during the period that the new Federal plans and policies are being developed. Then, fully fund implementation of the national passenger rail system - with its new efficiencies, innovation, and responsiveness - in subsequent years.

9. Resolution of Approval from Williamsburg Landing, Inc., Revenue and Refunding Bond Issue

RESOLUTION

APPROVAL FOR WILLIAMSBURG LANDING, INC.,

REVENUE AND REFUNDING BOND ISSUE

WHEREAS, Chapter 49, Title 15.2, Code of Virginia of 1950, as amended, authorizes the creation of the Industrial Development Authority of the County of James City, Virginia (the Authority), and empowers the Authority to assist the Williamsburg Landing, Inc., a Virginia nonstock corporation (the Company), by the issuance of up to \$50 million of tax-exempt revenue bonds of the Authority (the Bonds) to: 1) finance the cost of constructing and equipping ten (10) new independent living units, including site preparation (the Project) at the Company's facility for the residence and care of the elderly known as Williamsburg Landing, located at 5700 Williamsburg Landing Drive, in James City County (the Facility); 2) refund up to \$36,870,000 in outstanding principal amount of the Authority's Residential Care Facility First Mortgage Revenue Bonds (Williamsburg Landing, Inc.), Series 1996A (the 1996A Bonds); 3) prepay a \$2 million interim loan (the Interim Loan) with respect to the Project; and, 4) pay costs associated with the issuance of the Bonds; and

WHEREAS, Williamsburg Landing, Inc., is, and the Project will be, owned by the Company; and

WHEREAS, the Company has its principal place of business at 5700 Williamsburg Landing Drive, Williamsburg, Virginia 23185; and

WHEREAS, Section 147(f) of the Internal Revenue Code of 1986, as amended (the Code), requires approval by this Board of the issuance of any private activity bonds by the Authority after the Authority has held a public hearing to consider the issuance of such bonds as one of the acts required in order for the interest on such bonds to qualify for exemption from the imposition of Federal income tax; and

WHEREAS, the Authority held a public hearing on May 15, 2003, in compliance with the Code and Section 15.2-4906 of the Code of Virginia of 1950, as amended (the Virginia Code), and after such public hearing adopted a resolution to issue the Bonds, subject to the adoption of this resolution; and

WHEREAS, the Company has represented that it is a corporation described in Section 501(c)(3) of the Code, which is not organized and operated exclusively for religious purposes and which is exempt from Federal income taxation pursuant to Section 501(a) of the Code; and

WHEREAS, a copy of the Authority's resolution approving the issuance of the Bonds, a record of the public hearing with respect to the Bonds, and a Fiscal Impact Statement in the form prescribed by Section 15.2-4907 of the Virginia Code has been filed with this Board.

NOW, THEREFORE, BE IT RESOLVED by the Board of Supervisors of James City County, Virginia:

Section 1: That the recitals in the first three preambles hereto are adopted as a part of this resolution as if fully written herein.

Section 2: That this Board approves the issuance of the Bonds by the Authority to the extent required by the Code and the Virginia Code.

Section 3: That the approval of the issuance of the Bonds, as requested by the Company and as required by Section 147(f) of the Code and the Virginia Code, is solely for Federal tax purposes, does not constitute an endorsement to a prospective purchaser of the Bonds of the proposed use of the proceeds of the Bonds or the creditworthiness of the Company, and, as required by Virginia law, the Bonds shall provide that neither the Commonwealth of Virginia, the County of James City, nor the Authority shall be obligated to pay the principal, or premium, if any, of the Bonds or the interest thereon or other costs incident thereto except from the revenues and monies pledged therefor and neither the faith and credit nor the taxing power of the Commonwealth of Virginia, the County of James City or the Authority shall be pledged thereto.

Section 4: That this resolution shall be in effect from and after its adoption.

10. The Issuance and Sale of General Obligation Public Improvement Refunding Bonds

RESOLUTION AUTHORIZING THE ISSUANCE AND SALE OF
GENERAL OBLIGATION PUBLIC IMPROVEMENT REFUNDING BONDS,
SERIES 2003, OF THE COUNTY OF JAMES CITY, VIRGINIA, AND PROVIDING
FOR THE FORM, DETAILS, AND PAYMENT THEREOF

WHEREAS, the issuance of general obligation bonds by the County of James City, Virginia (the "County"), in the maximum principal amount of \$52,100,000 was approved by the qualified voters of the County in three referenda at a special election held on March 1, 1994, to finance a school construction program, library improvements, and park and recreation improvements (together, the "Improvements"). On August 3, 1994, the County issued its \$9,500,000 General Obligation Public Improvement Bonds, Series of 1994 (the "1994 Bonds") to finance a portion of the costs of the Improvements. On December 5, 1995, the County issued its \$35,000,000 General Obligation Public Improvement Bonds, Series 1995 (the "1995 Bonds") to finance a portion of the costs of the Improvements; and

WHEREAS, to take advantage of lower interest rates, the County issued its \$4,280,000 General Obligation Public Improvement Refunding Bond, Series 2002, on November 20, 2002, to refund the 1994 Bonds maturing on and after December 15, 2007, and then issued its \$3,180,200 General Obligation Public Improvement Refunding Bond, Series 2002B, on December 17, 2002, to refund the 1995 Bonds maturing on December 15, 2015; and

WHEREAS, the County's Board of Supervisors (the "Board") determines that it may now be in the best interests of the County to take advantage of lower interest rates now prevalent in the capital markets and to issue and sell general obligation public improvement refunding bonds to refinance some or all of the 1994 Bonds maturing on December 15, 2005, and 2006, and some or all of the 1995 Bonds maturing on December 15, 2006, through 2014. The Board determines that it would be advantageous to the County to sell such refunding bonds in a negotiated sale to a group of underwriters with Morgan Keegan & Company, Inc., serving as senior manager and SunTrust Capital Markets, Inc., serving as co-manager (the "Underwriters").

NOW, THEREFORE, BE IT RESOLVED by the Board of Supervisors of James City County, Virginia:

Section 1. Authorization, Issuance and Sale. There is hereby authorized to be issued and sold, pursuant to the Constitution and statutes of the Commonwealth of Virginia, including the Public Finance Act of 1991, Chapter 26, Title 15.2, Code of Virginia of 1950, as amended (the "Act"), general obligation public improvement refunding bonds of the County in the principal amount not to exceed \$23,500,000 to refund some or all of the 1994 Bonds maturing on December 15, 2005, and 2006 (the "1994 Refunded Bonds"), to refund some or all of the 1995 Bonds maturing on December 15, 2006, through 2014 (the "1995 Refunded Bonds") and to pay the costs incurred in connection with issuing such refunding bonds. The Board hereby elects to issue such refunding bonds under the provisions of the Act.

Section 2. Bond Details. Such refunding bonds shall be designated "General Obligation Public Improvement Refunding Bonds, Series 2003" (the "Bonds"), shall be

dated June 15, 2003, shall be issued no later than December 31, 2003, shall be in registered form, in denominations of \$5,000 and multiples thereof, and shall be numbered R-1 upward. Subject to Section 4, the Bonds shall mature in installments, or have mandatory sinking fund installments, on each December 15 ending no later than the year 2014. Interest on the Bonds shall be payable on December 15, 2003, and semiannually thereafter on each June 15 and December 15 (each, an "Interest Payment Date"), and shall be calculated on the basis of a year of 360 days with twelve 30-day months. The Board authorizes the issuance and sale of the Bonds to the Underwriters on terms as shall be satisfactory to the County Administrator or the Chairman of the Board; **provided**, that the Bonds: (a) shall have a true or "Canadian" interest cost not to exceed 4.50% per year, taking into account any original issue discount or premium; (b) shall be sold to the Underwriters at a price not less than 99% of the original aggregate principal amount thereof; and (c) shall have a weighted average maturity of no more than nine (9) years.

Principal and premium, if any, on the Bonds shall be payable to the registered owners upon surrender of the Bonds as they become due at the designated corporate trust office of the Registrar, as defined in Section 8 below. Interest shall be payable by check or draft mailed to the registered owners at their addresses as they appear on the registration books kept by the Registrar as of the close of business on the first day of the month of each Interest Payment Date. In case the date of maturity or redemption of the principal of any Bond or an Interest Payment Date shall be a date on which banking institutions are authorized or obligated by law to close at the place where the designated corporate trust office of the Registrar is located, then payment of principal and interest need not be made on such date, but may be made on the next succeeding date, which is not such a date at the place where the designated corporate trust office of the Registrar is located, and if made on such next succeeding date, no additional interest shall accrue for the period after such date of maturity or redemption or Interest Payment Date. Principal, premium, if any, and interest on the Bonds shall be payable in lawful money of the United States of America.

Each Bond shall bear interest from the Interest Payment Date next preceding the date on which it is authenticated, unless such Bond is: (a) authenticated before December 15, 2003, in which case it will bear interest from June 15, 2003, or (b) authenticated upon an Interest Payment Date or after the record date with respect thereto, in which case it will bear interest from such Interest Payment Date (unless payment of interest thereon is in default, in which case interest on such Bond shall be payable from the date to which interest has been paid).

Section 3. Book-Entry System. Initially, one Bond certificate for each maturity of the Bonds shall be issued to and registered in the name of The Depository Trust Company, New York, New York ("DTC"), or its nominee. The County has entered into or will enter into a Blanket Issuer Letter of Representations relating to a book-entry system to be maintained by DTC with respect to certain securities issued by the County, including the Bonds. As used herein, the term "Securities Depository" shall mean DTC or any other securities depository for the Bonds appointed pursuant to this Section 3.

In the event that: (a) the Securities Depository determines not to continue to act as the securities depository for the Bonds by giving notice to the Registrar or the County; or (b) the County in its sole discretion determines: (i) to select a new

Securities Depository, or (ii) that beneficial owners of Bonds shall be able to obtain certificated Bonds, then the County Administrator shall, at the direction of the County, attempt to locate another qualified securities depository to serve as Securities Depository or arrange for the authentication and delivery of certificated Bonds to the beneficial owners or to the Securities Depository's participants on behalf of beneficial owners, substantially in the form provided for in Exhibit A. In delivering certificated Bonds, the County Administrator shall be entitled to rely on the records of the Securities Depository as to the beneficial owners or the records of the Securities Depository's participants acting on behalf of beneficial owners. Such certificated Bonds will then be registrable, transferable, and exchangeable as set forth in Section 8.

So long as there is a Securities Depository for the Bonds: (1) it or its nominee shall be the registered owner of the Bonds; (2) notwithstanding anything to the contrary in this Resolution, determinations of persons entitled to payment of principal, premium, if any, and interest, transfers of ownership and exchanges, and receipt of notices shall be the responsibility of the Securities Depository and shall be effected pursuant to rules and procedures established by such Securities Depository; (3) the Registrar and the County shall not be responsible or liable for maintaining, supervising, or reviewing the records maintained by the Securities Depository, its participants or persons acting through such participants; (4) references in this Resolution to registered owners of the Bonds shall mean such Securities Depository or its nominee and shall not mean the beneficial owners of the Bonds; and (5) in the event of any inconsistency between the provisions of this Resolution and the provisions of the above-referenced Letter of Representations, such provisions of the Letter of Representations, except to the extent set forth in this paragraph and the next preceding paragraph, shall control.

Section 4. Redemption Provisions.

- (a) Optional Redemption. Subject to the provisions of subsection (e) below, the Bonds maturing on or before December 15, 2012, are not subject to optional redemption prior to their respective stated dates of maturity. The Bonds maturing on or after December 15, 2013, shall be subject to redemption prior to their stated dates of maturity at the option of the County, on and after December 15, 2012, in whole or in part (in any integral multiple of \$5,000) at any time, upon payment of the following redemption prices (expressed as a percentage of the principal amount of the Bonds to be redeemed) plus interest accrued and unpaid to the redemption date as set forth below:

<u>Redemption Period (Inclusive)</u>	<u>Redemption Price</u>
December 15, 2012, through December 14, 2013	101%
December 15, 2013, and thereafter	100%

- (b) Mandatory Sinking Fund Redemption. Any term bonds specified in the Bond Purchase Agreement, as defined in Section 5 below, may be subject to mandatory sinking fund redemption as determined by the County Administrator or the Chairman of the Board. If there are any term bonds, on or before the 70th day next preceding any mandatory sinking fund redemption date, the County may apply as a credit against the County's

mandatory sinking fund redemption obligation for any Bonds maturing on such date, Bonds that previously have been optionally redeemed or purchased and canceled or surrendered for cancellation by the County and not previously applied as a credit against any mandatory sinking fund redemption obligation for such Bonds. Each such Bond so purchased, delivered or previously redeemed shall be credited at 100% of the principal amount thereof against the principal amount of the Bonds required to be redeemed on such mandatory sinking fund redemption date. Any principal amount of Bonds so purchased, delivered or previously redeemed in excess of the principal amount required to be redeemed on such mandatory sinking fund redemption date shall similarly reduce the principal amount of the Bonds to be redeemed on future mandatory sinking fund redemption dates, as selected by the County Administrator.

- (c) Bonds Selected for Redemption. If less than all of the Bonds are called for optional redemption, the maturities of the Bonds to be redeemed shall be selected by the County Administrator in such manner as he may determine to be in the best interest of the County. If less than all the Bonds of any maturity are called for redemption, the Bonds to be redeemed shall be selected by DTC or any successor Securities Depository pursuant to its rules and procedures or, if the book-entry system is discontinued, shall be selected by the Registrar by lot in such manner as the Registrar in its discretion may determine. In either case, (a) the portion of any Bond to be redeemed shall be in the principal amount of \$5,000 or some integral multiple thereof and (b) in selecting Bonds for redemption, each Bond shall be considered as representing that number of Bonds that is obtained by dividing the principal amount of such Bond by \$5,000. If a portion of a Bond is called for redemption, a new Bond in principal amount equal to the unredeemed portion thereof will be issued to the registered owner upon the surrender thereof.
- (d) Notice of Redemption. The County shall cause notice of the call for redemption identifying the Bonds or portions thereof to be redeemed to be sent by facsimile transmission, registered or certified mail, or overnight express delivery, not less than thirty (30) nor more than sixty (60) days prior to the redemption date to the Securities Depository as the registered owner of the Bonds or, if the book-entry system is discontinued, by registered or certified mail to the registered owners of the Bonds to be redeemed.
- (e) Determination of Final Redemption Provisions. The Board authorizes the County Administrator or the Chairman of the Board, in collaboration with Davenport & Company LLC, as the County's financial advisor (the "Financial Advisor") and the Underwriters; 1) to determine whether any of the Bonds will be subject to optional redemption and, if they will be subject to optional redemption, on which dates and at which redemption prices such Bonds may be optionally redeemed; and 2) to determine whether the issuance of any term bonds would be beneficial to the County. Such final terms shall be set forth in the Bond Purchase Agreement.

Section 5. Sale of the Bonds; Execution and Authentication. The Bonds shall be sold by the County to the Underwriters pursuant to the terms and conditions to be set forth in the Bond Purchase Agreement to be dated the date of the sale of the Bonds (the “Bond Purchase Agreement”) between the County and the Underwriters. The substantially final form of the Bond Purchase Agreement has been made available to the Board prior to the adoption of this Resolution. The Bond Purchase Agreement is hereby approved in substantially the form made available to the Board. There may, however, be changes, insertions, completions or omissions to the form of the Bond Purchase Agreement to reflect the final terms of the Bonds or other commercially reasonable provisions. All of such changes, insertions, completions, or omissions will be in accordance with the parameters set forth in this Resolution and shall be approved by the County Administrator or the Chairman of the Board, whose approval shall be evidenced conclusively by the execution and delivery of the Bond Purchase Agreement. The Board hereby authorizes the County Administrator or the Chairman of the Board to execute and deliver the Bond Purchase Agreement on behalf of the County.

The Bonds shall be signed by the manual or facsimile signature of the Chairman or Vice Chairman of the Board and the Board’s seal shall be affixed thereto or a facsimile thereof printed thereon and attested to by the manual or facsimile signature of the Clerk or Deputy Clerk of the Board, *provided*, that no Bond shall be valid until it has been authenticated by the manual signature of an authorized representative of the Registrar and the date of authentication noted thereon. Upon execution and authentication, the Bonds shall be delivered to or on behalf of the Underwriters in accordance with the terms of the Bond Purchase Agreement.

Section 6. Bond Form. The Bonds shall be in substantially the form set forth in Exhibit A attached hereto, with such changes, insertions, completions, or omissions to reflect the final terms of the Bonds.

Section 7. Pledge of Full Faith and Credit. The full faith and credit of the County are irrevocably pledged for the payment of principal of, premium, if any, and interest on the Bonds. Unless other funds are lawfully available and appropriated for timely payment of the Bonds, the County shall levy and collect an annual *ad valorem* tax, over and above all other taxes authorized or limited by law and without limitation as to rate or amount, on all locally taxable property in the County sufficient to pay the principal of, premium, if any, and interest on the Bonds, as the same become due.

Section 8. Registration, Transfer and Owners of Bonds. SunTrust Bank, Richmond, Virginia, is appointed paying agent and registrar for the Bonds (the “Registrar”). The Registrar shall maintain registration books for the registration of the Bonds. Upon surrender of any Bonds at the designated corporate trust office of the Registrar, together with an assignment duly executed by the registered owner or his duly authorized attorney or legal representative in such form as shall be satisfactory to the Registrar, the County shall execute, and the Registrar shall authenticate and deliver in exchange, a new Bond or Bonds having an equal aggregate principal amount, in authorized denominations, of the same form and maturity, bearing interest at the same rate, and registered in names as requested by the then registered owner or his duly authorized attorney or legal representative. Any such exchange shall be at the expense of the County,

except that the Registrar may charge the person requesting such exchange the amount of any tax or other governmental charge required to be paid with respect thereto.

The Registrar shall treat the registered owner as the person exclusively entitled to payment of principal, premium, if any, and interest and the exercise of all other rights and powers of the owner, except that interest payments shall be made to the person shown as owner on the registration books on the first day of the month of each Interest Payment Date.

Section 9. Refunding; Escrow Agreement. The Board hereby authorizes the optional redemption of some or all of the 1994 Refunded Bonds on December 15, 2004 (the "1994 Redemption Date"), at a redemption price equal to 102% of the principal amount of the 1994 Refunded Bonds to be refunded plus accrued interest to the Redemption Date. The Board hereby authorizes the optional redemption of some or all of the 1995 Refunded Bonds on December 15, 2005 (the "1995 Redemption Date") at a redemption price equal to 102% of the principal amount of the 1995 Refunded Bonds to be refunded plus accrued interest to the Redemption Date. The County Administrator is authorized to work with the Financial Advisor and the Underwriters to determine which 1994 Refunded Bonds and 1995 Refunded Bonds will be redeemed. They may base such decisions on such factors as they shall determine to be in the best interest of the County, but the Bonds shall not be issued unless the combined net present value savings to the County from the issuance of the Bonds and the refunding of the 1994 Refunded Bonds and the 1995 Refunded Bonds will be at least 2.50%.

To facilitate the defeasance of the 1994 Refunded Bonds and the 1995 Refunded Bonds and the payment of the principal of, premium and interest on the 1994 Refunded Bonds and the 1995 Refunded Bonds from the date of issuance of the Bonds through the 1994 Redemption Date and the 1995 Redemption Date, respectively, the Board hereby authorizes the use of the Escrow Agreement dated the date of the issuance of the Bonds (the "Escrow Agreement") between the County and SunTrust Bank, as escrow agent (the "Escrow Agent"). The substantially final form of the Escrow Agreement has been made available to the Board prior to the adoption of this Resolution. The Escrow Agreement is hereby approved in substantially the form made available to the Board. There may, however, be changes, insertions, completions, or omissions to the form of the Escrow Agreement to reflect the final terms of the Bonds or other commercially reasonable provisions. All of such changes, insertions, completions, or omissions will be approved by the County Administrator or the Chairman of the Board, whose approval shall be evidenced conclusively by the execution and delivery of the Escrow Agreement. The Board hereby authorizes the County Administrator or the Chairman of the Board to execute and deliver the Escrow Agreement on behalf of the County.

Section 10. Official Statement. The form of the Preliminary Official Statement of the County, tentatively to be dated June 11, 2003 (the "Preliminary Official Statement"), has been made available to the Board prior to the adoption of this Resolution. The use and distribution by the Underwriters of the Preliminary Official Statement, in substantially the form made available to the Board, including the use and distribution of an Appendix to the Preliminary Official Statement describing the County, are hereby authorized and approved. The Preliminary Official Statement, including such Appendix, may be completed and "deemed final" by the County Administrator or the Chairman of the Board

as of its date, within the meaning of Rule 15c2-12 of the Securities and Exchange Commission (the “Rule”), except for the omission from the Preliminary Official Statement of such pricing and other information permitted to be omitted pursuant to the Rule. The delivery of the Preliminary Official Statement to the Underwriters shall be conclusive evidence that it has been deemed final as of its date by the County Administrator or the Chairman of the Board, except for the omission of such pricing and other information.

The County Administrator or the Chairman of the Board shall make such completions, omissions, insertions, and changes in the Preliminary Official Statement not inconsistent with this Resolution as are necessary or desirable to complete it as a final Official Statement (the “Official Statement”). The use and distribution by the Underwriters of the Official Statement are hereby authorized and approved. The County Administrator or the Chairman of the Board shall arrange for the delivery to the Underwriters of a reasonable number of copies of the Official Statement, within seven (7) business days after the Bonds have been sold, for delivery to each potential investor requesting a copy of the Official Statement and to each person to whom the Underwriters initially sell Bonds.

The County Administrator or the Chairman of the Board is authorized, on behalf of the County, to deem the Official Statement to be final as of its date within the meaning of the Rule. The County Administrator or the Chairman of the Board is authorized and directed to execute the Official Statement, which execution shall be conclusive evidence that the Official Statement has been deemed final.

Section 11. Continuing Disclosure. A substantially final form of the Continuing Disclosure Agreement to be given by the County (the “Continuing Disclosure Agreement”), evidencing conformity with certain provisions of the Rule, has been made available to the Board prior to the adoption of this Resolution. The Continuing Disclosure Agreement is hereby approved in substantially the form made available to the Board. There may, however, be changes, insertions, completions, or omissions to the form of the Continuing Disclosure Agreement to reflect the final terms of the Bonds, the completion of the Official Statement or other commercially reasonable provisions. All of such changes, insertions, completions or omissions will be approved by the County Administrator or the Chairman of the Board, whose approval shall be evidenced conclusively by the execution and delivery of the Continuing Disclosure Agreement. The Board hereby authorizes the County Administrator or the Chairman of the Board to execute and deliver the Continuing Disclosure Agreement on behalf of the County.

The County hereby covenants and agrees that it will comply with and carry out all of the provisions of the Continuing Disclosure Agreement. Notwithstanding any other provision of this Resolution, failure of the County to comply with the Continuing Disclosure Agreement shall not be considered a default under this Resolution or the Bonds; *provided*, that any holder of the Bonds, including owners of beneficial interests in the Bonds, may take such actions as may be necessary and appropriate, including seeking a mandamus or specific performance by court order, to cause the County to comply with its obligations under this Section 11 and the Continuing Disclosure Agreement.

Section 12. Arbitrage Covenants.

- (a) No Composite Issue. The County represents that there have not been issued, and covenants that there will not be issued, any obligations that will be treated as part of the same issue of obligations as the Bonds within the meaning of the Internal Revenue Code of 1986, as amended, including regulations issued pursuant thereto (the “Code”).
- (b) No Arbitrage Bonds. The County covenants that it shall not take or omit to take any action the taking or omission of which will cause the Bonds to be “arbitrage bonds” within the meaning of Section 148 of the Code, or otherwise cause interest on the Bonds to be includable in the gross income for Federal income tax purposes of the registered owner thereof under existing law. Without limiting the generality of the foregoing, the County shall comply with any provision of law which may require the County at any time to rebate to the United States any part of the earnings derived from the investment of the gross proceeds of the Bonds, unless the County receives an opinion of nationally recognized bond counsel that such compliance is not required to prevent interest on the Bonds from being includable in the gross income for Federal income tax purposes of the registered owners thereof under existing law. The County shall pay any such required rebate from its legally available funds.

Section 13. Non-Arbitrage Certificate and Elections. Such officers of the County as may be requested, are authorized and directed to execute an appropriate certificate setting forth the expected use and investment of the proceeds of the Bonds in order to show that such expected use and investment will not violate the provisions of Section 148 of the Code, and any elections such officers deem desirable regarding rebate of earnings to the United States, for purposes of complying with Section 148 of the Code. Such certificate and elections shall be in such form as may be requested by bond counsel for the County. The County shall comply with any covenants set forth in such certificate regarding the use and investment of the proceeds of the Bonds.

Section 14. Limitation on Private Use; No Federal Guaranty. The County covenants that it shall not permit the proceeds of the Bonds to be used in any manner that would result in: (a) ten percent (10%) or more of such proceeds being used in a trade or business carried on by any person other than a state or local governmental unit, as provided in Section 141; b) of the Code; (b) five percent (5%) or more of such proceeds being used with respect to any output facility (other than a facility for the furnishing of water), within the meaning of Section 141(b)(4) of the Code; or (c) five percent (5%) or more of such proceeds being used directly or indirectly to make or finance loans to any persons other than a state or local governmental unit, as provided in Section 141(c) of the Code; *provided*, that if the County receives an opinion of nationally recognized bond counsel that any such covenants need not be complied with to prevent the interest on the Bonds from being includable in the gross income for Federal income tax purposes of the registered owners thereof under existing law, the County need not comply with such covenants.

The County represents and agrees that the Bonds are not and will not be “federally guaranteed,” as such term is used in Section 149(b) of the Code. No portion of the payment of principal of, or interest on the Bonds is, or will be

guaranteed, directly or indirectly, in whole or in part by the United States or an agency or instrumentality thereof.

Section 15. Discharge upon Payment of Bonds. The Bonds may be defeased, as permitted by the Act. Any defeasance of the Bonds, as permitted by the Act, shall not release the County or the Registrar from its obligations hereunder to register and transfer the Bonds or release the County from its obligations to pay the principal of, premium, if any, and interest on the Bonds as contemplated herein until the date the Bonds are paid in full, unless otherwise provided in the Act. In addition, such defeasance shall not terminate the obligations of the County under Sections 12 and 14 until the date the Bonds are paid in full.

Section 16. Other Actions. All other actions of the members of the Board, officers, staff, and agents of the County in conformity with the purposes and intent of this Resolution and in furtherance of the issuance and sale of the Bonds and the refunding of the 1994 Refunded Bonds and the 1995 Refunded Bonds are approved and confirmed. The officers and staff of the County are authorized and directed to execute and deliver all certificates and instruments, including Internal Revenue Service Form 8038-G and a Blanket Issuer Letter of Representations to the Securities Depository, and to take all such further action as may be considered necessary or desirable in connection with the issuance, sale and delivery of the Bonds.

Section 17. Limitation of Liability of Officials of the County. No covenant, condition, agreement, or obligation contained herein shall be deemed to be a covenant, condition, agreement, or obligation of a member of the Board, officer, employee, or agent of the County in his or her individual capacity, and no officer of the County executing any Bond shall be liable personally on such Bond or be subject to any personal liability or accountability by reason of the issuance thereof. No member of the Board, officer, employee, or agent of the County shall incur any personal liability with respect to any other action taken by him or her pursuant to this Resolution, provided he or she acts in good faith.

Section 18. Contract with Registered Owner. The provisions of this Resolution shall constitute a contract between the County and the registered owner of the Bonds for so long as the Bonds are outstanding. Notwithstanding the foregoing, this Resolution may be amended by the County in any manner that does not, in the opinion of the County, materially adversely affect the registered owner of the Bonds.

Section 19. Repeal of Conflicting Resolutions. All resolutions or parts of resolutions in conflict herewith are repealed.

Section 20. Effective Date. This Resolution shall take effect immediately upon its adoption. The Clerk and any Deputy Clerk of the Board are hereby authorized and directed to see to the immediate filing of a certified copy of this Resolution with the Circuit Court of the County of James City, Virginia.

7. Naming of District Park

Mr. Needham S. Cheely, III, Director of Parks and Recreation, stated that 26 different names were submitted for the renaming of the District Park located at the intersection of Longhill and Centerville Roads.

The Parks and Recreation Advisory Commission unanimously selected "Freedom Park" as the qualifying name. That name has great significance with the land the park sits on as an area that is rich with history and has played a major role in the shaping of our nation.

Staff recommended approval of the resolution adopting the name "Freedom Park" for the park currently known as the District Park.

Members of the Board recognized Theodore Allen and Lafayette Jones for their efforts in identifying the history of the park.

Mr. Brown made a motion to adopt the resolution.

On a roll call vote, the vote was: AYE: McGlennon, Brown, Goodson, Kennedy, Harrison (5). NAY: (0).

RESOLUTION

NAMING OF DISTRICT PARK

WHEREAS, the Parks and Recreation Advisory Commission asked citizens to suggest names for the District Park located at the intersection of Longhill and Centerville Roads; and

WHEREAS, after reviewing 26 potential names, the Parks and Recreation Advisory Commission unanimously selected "Freedom Park" as the qualifying name with no adverse comments received during the 60-day public notice period; and

WHEREAS, the Parks and Recreation Advisory Commission unanimously approved recommending the name "Freedom Park" for the District Park.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, does hereby adopt the name "Freedom Park" for the District Park.

F. PUBLIC HEARINGS

1. Case No. SUP-10-03. Leighton-Herrmann Family Subdivision (continued from May 13, 2003)

Mr. O. Marvin Sowers, Director of Planning, stated that Michael Leighton-Herrmann has withdrawn his application for a special use permit for a family subdivision of approximately 10.8 acres zoned A-1, General Agricultural, at 217 Skillman Drive, further identified as Parcel No. (4-11) on James City County Real Estate Tax Map No. (4-3).

Mr. Harrison recognized the applicant's withdrawal of the application and removed the item from the agenda.

2. Case No. SUP-2-03. Hankins Industrial Park Ready Mixed Concrete Plant (continued from May 13, 2003)

Ms. Karen Drake, Senior Planner, stated that Mr. Vernon M. Geddy, III, applied on behalf of Southern Equipment Company, Inc., for a Special Use Permit (SUP) to allow the construction and operation of a Ready Mixed Concrete Plant at 190 Industrial Boulevard in the Hankins Industrial Park, Toano, VA, on approximately 16.22 acres zoned M-2, General Industrial, and further identified as Parcel No. (1-13) on James City County Real Estate Tax Map No. (12-4).

Staff continues to find the proposed Ready Mixed Concrete plant consistent with the surrounding zoning, development, and the 1997 Comprehensive Plan.

At its meeting on April 7, 2003, the Planning Commission voted 6-1 to recommend approval of this special use permit application.

Staff continues to recommend approval of the application.

Mr. Harrison opened the Public Hearing.

1. Mr. Vernon Geddy, III, on behalf of the applicant, provided the Board with an overview of the application proposal, supported staff and the Planning Commissions' recommendations, and requested the Board's approval of the application.

Mr. Kennedy inquired about the noise the business will generate, the hours of operations for the business, and if there is a noise ordinance for industrial sites.

Mr. Morton stated that there are no noise limitations for industrial parks and that a proposal has not been presented for noise limitations in industrial areas.

Mr. Kennedy stated that he would like staff to propose a noise limitation ordinance.

Mr. Goodson stated that a similar business is operating in the Roberts District and does not have concerns about the operation of this use in the western end of the County.

Mr. McGlennon inquired about the consideration of the fence in addition to the enhanced landscaping condition with the application.

Mr. Geddy stated that the applicant would be willing to construct the fence if required, but did not see the effective measure the fence would provide.

Mr. Sowers stated that it is staff's opinion that the added fence would reduce noise pollution to the Mirror Lakes subdivision.

2. Ms. Virginia Hartmann, Vice Chair of the Industrial Development Authority, stated support for the proposal within the Hankins Industrial Park.

3. Ms. Terri Hudgins, President of the Stonehouse Citizens Association, stated opposition to the proposal because of the anticipated increased noise pollution, decreased air quality, and additional water demand strain.

4. Mr. Tony Dion, 102 Fairmont Drive, stated opposition to the proposal regarding the anticipated increase in noise pollution and dust, and encouraged the Board to approve businesses that are similar in industrial nature to those already operating at the Industrial Park.

5. Mr. James Stam, 104 Woodmont Place, requested the Board consider the vision of the future when deciding on cases such as this one, protect the Community Character Corridor and neighbors, and deny the application.

As no one else wished to speak to this matter, Mr. Harrison closed the Public Hearing.

The Board held a brief discussion regarding the application.

Mr. Goodson made a motion to approve the application.

Mr. Brown requested an amendment to the motion to exclude the proposed SUP resolution Condition No. 15 requesting a solid 8-foot-tall fence.

The Board held a discussion regarding the fence.

Mr. Goodson amended his motion to accept the motion to exclude language requiring a fence in addition to the enhanced landscaping.

Mr. Harrison requested a roll call vote on the motion to adopt the resolution as amended.

On a roll call vote, the vote was: AYE: McGlennon, Brown, Goodson, Harrison (4). NAY: Kennedy (1).

RESOLUTION

CASE NO. SUP-2-03. HANKINS INDUSTRIAL PARK READY MIXED CONCRETE PLANT

WHEREAS, the Board of Supervisors of James City County has adopted by ordinance specific land uses that shall be subjected to a special use permit process; and

WHEREAS, the production of ready-mix concrete is a specially permitted use in the M-2, General Industrial, zoning district; and

WHEREAS, the Planning Commission of James City County, following its public hearing on April 7, 2003, recommended approval of Case No. SUP-2-03 by a 6-1 vote to permit the construction and operation of a Ready Mixed Concrete facility on 16.2± acres at 190 Industrial Boulevard in the Hankins Industrial Park and further identified as Parcel No. (12-4) on James City County Real Estate Tax Map No. (1-13).

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, does hereby approve the issuance of Special Use Permit No. SUP-2-03 as described herein with the following conditions:

1. If construction has not commenced on the project within thirty-six months from the issuance of the special use permit, the permit shall become void. Construction shall be defined as securing permits for land disturbance, building construction, clearing and grating, and the pouring of footings.
2. Prior to the issuance of preliminary approval for the site plan, the applicant shall record an approved subdivision plat showing the subdivision of the 16.22± acre parcel from the currently existing Parcel No. (1-13) on James City County Real Estate Tax Map (12-4), generally in accordance with Parcel No. 2 as shown on the conceptual site plan titled "Ready Mixed Concrete Hankins Industrial Park", dated January 15, 2003.
3. The Ready Mixed Concrete facility shall be constructed generally as shown on the conceptual site plan titled "Ready Mixed Concrete Hankins Industrial Park" as drawn by AES Consulting Engineers on January 15, 2003. The proposed Ready Mixed Concrete facility to be constructed can be further identified as the Rustler II model or shall be an equivalent model as approved by the Planning Director, which can yield a batch size up to 12 yd³, up to four aggregate storage compartments with a capacity

of up to 170 yd³ or 220 tons, and has up to two cement storage compartments with a capacity up to 2,484 ft³ or 621 barrels.

4. A Spill Prevention and Control Measure Plan shall be approved by the Director of the Environmental Division prior to final site plan approval for the Ready Mixed Concrete plant. The Spill Prevention and Control Measure plan shall be constructed and implemented prior to issuance of the certificate of occupancy.
5. A dust collection system, such as, but not limited to the Reverse Air Duct Collector RA140, shall be utilized on the Ready Mixed Concrete plant. The manufacturer's specifications for the system shall be submitted with the site plan and shall be approved by the Director of Planning prior to final site plan approval.
6. Rock, gravel, sand, cement, and/or similar materials shall be stored in bins to control runoff and scattering of such materials onto adjacent property. An erosion and sediment control and runoff management plan shall be approved by the Environmental Director prior to final site plan approval
7. No flags or signage on any silo, hopper, or any other piece of permanent external equipment shall be permitted.
8. All exterior light fixtures on the property shall be recessed fixture with no bulb, lens, or globe extending below the casing. The casing shall be opaque and shall completely surround the entire light fixture and light source in such a manner that all light will be directed downward and the light source is not visible from the side. No glare, defined as 0.1 footcandle or higher shall occur outside the property lines.
9. The "reverse warning beepers" on all equipment, which serves the Ready Mixed Concrete plant, shall be turned down to their lowest volumes as permitted by Federal or State law or regulations.
10. The Development Review Committee shall review and approve the site plan for this project.
11. A landscaping plan shall be approved by the Planning Director or his designee prior to final site plan approval. Enhanced landscaping, defined as at least 133 percent of the County's Landscaping Ordinance requirements, shall be planted and maintained along the eastern property line landscape buffer from the public right-of-way to the stormwater management plan to help screen and filter any noise and dust from the concrete plant.
12. A Phase I Archaeological Study for the entire site shall be submitted to the Director of Planning for review and approval prior to land disturbance. A treatment plan shall be submitted and approved by the Director of Planning for all sites in the Phase I study that are recommended for a Phase II evaluation and/or identified as eligible for inclusion on the National Register of Historic Places. If a Phase II study is undertaken, such a study shall be approved by the Director of Planning and a treatment plan for said sites shall be submitted to, and approved by, the Director of Planning for sites that are determined to be eligible for inclusion on the National Register of Historic Places and/or those sites that require a Phase III study. If in the Phase III study, a site is determined eligible for nomination to the National Register of Historic Places and said site is to be preserved in place, the treatment plan shall include nomination of the site to the National Register of Historic Places. If a Phase III study is undertaken for said sites, such studies shall be approved by the Director of Planning

prior to land disturbance within the study areas. All Phase I, Phase II, and Phase III studies shall meet the Virginia Department of Historic Resources' *Guidelines for Preparing Archaeological Resource Management Reports* and the Secretary of the Interior's *Standards and Guidelines for Archaeological Documentation*, as applicable, and shall be conducted under the supervision of a qualified archaeologist who meets the qualifications set forth in the Secretary of the Interior's *Professional Qualification Standards*. All approved treatment plans shall be incorporated into the plan of development for the site and the clearing, grading or construction activities thereon.

13. The owner shall be responsible for developing and enforcing water conservation standards to be submitted to and approved by the James City Service Authority (JCSA). The standards may include, but shall not be limited to such water conservation measures as limitations on the installation and use of irrigation systems and irrigation wells, the use of approved landscaping materials including the use of drought-tolerant plants where appropriate, and the use of water-conserving fixtures and appliances to promote water conservation and minimize the use of public water resources.
14. A minimum 200-foot wide undisturbed wooded buffer shall be maintained along the northern property line adjacent to property outside of the Hankins Industrial. This buffer shall remain in its natural state with any activity in the buffer to be reviewed and approved prior to occurrence by the Director of Environmental and the Director of Planning.
15. A solid fence at least eight feet in height if constructed with wood or at least six feet in height if constructed of concrete or of an equivalent height and construction material for sound attenuation as approved by the Planning Director, shall be constructed and maintained along the eastern property line from the public right-of-way to the stormwater management pond to help filter noise and dust of the concrete plant from adjacent property. The Planning Director shall review and approve the location of the fence and the proposed fence construction prior to final site plan approval.
16. This special use permit is not severable. Invalidation of any word, phrase, clause, sentence, or paragraph shall invalidate the remainder

G. PUBLIC COMMENT

1. Mr. Ed Oyer, 139 Indian Circle, commented on the Board's discussion regarding the Hankins Industrial Park Ready Mixed Concrete Plant and stated that similar discussions were held when the last ready mixed concrete plant proposal was before the Board.

H. REPORTS OF THE COUNTY ADMINISTRATOR

Mr. Wanner recommended the Board go into Closed Session pursuant to Section 2.2-3711(A)(1) of the Code of Virginia to consider the appointment of individuals to County Boards and/or Commissions, and Section 2.2-3711(A)(3) of the Code of Virginia to consider the acquisition of a parcel of property for public use.

Mr. Wanner recommended that at the conclusion of the Board's business, the Board adjourn until 4 p.m. on June 24 for a Joint Work Session with the Planning Commission to be followed by a Regular Meeting at 7 p.m.

I. BOARD REQUESTS AND DIRECTIVES

Mr. McGlennon noted that the Williamsburg Area Transport (WAT) won the 2003 Virginia Transit Association Innovative Program Award for Small Systems.

Mr. McGlennon recognized the artwork from Rawls Byrd Elementary School on display in the Board Room.

Mr. Brown requested a Joint Work Session with the Parks and Recreation Advisory Commission for an update on the master plans for parks and other facility developments.

Mr. Wanner stated that a Work Session with the Parks and Recreation Advisory Commission is scheduled in the fall.

J. CLOSED SESSION

Mr. Goodson made a motion to go into Closed Session pursuant to Section 2.2-3711(A)(1) of the Code of Virginia to consider the appointment of individuals to County Boards and/or Commissions, and Section 2.2-3711(A)(3) of the Code of Virginia to consider the acquisition of a parcel of property for public use.

On a roll call vote, the vote was: AYE: McGlennon, Brown, Goodson, Kennedy, Harrison (5). NAY: (0).

At 8:08 p.m. Mr. Harrison convened the Board into Closed Session.

At 8:25 p.m., Mr. Harrison reconvened the Board into Open Session.

Mr. Goodson made a motion to adopt the resolution.

On a roll call vote, the vote was: AYE: McGlennon, Brown, Goodson, Kennedy, Harrison (5). NAY: (0).

RESOLUTION

CERTIFICATION OF CLOSED MEETING

WHEREAS, the Board of Supervisors of James City County, Virginia, (Board) has convened a closed meeting on this date pursuant to an affirmative recorded vote and in accordance with the provisions of the Virginia Freedom of Information Act; and

WHEREAS, Section 2.2-3711 of the Code of Virginia requires a certification by the Board that such closed meeting was conducted in conformity with Virginia law.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby certifies that, to the best of each member's knowledge: i) only public business matters lawfully exempted from open meeting requirements by Virginia law were discussed in the closed meeting to which this certification resolution applies; and, (ii) only such public business matters were heard, discussed, or considered by the Board as were identified in the motion, Section 2.2-3711(A)(3) to consider the acquisition of a parcel of property for public

use; and Section 2.2-3711(A)(1) to consider personnel matters, the appointment of individuals to County Boards and/or Commissions.

Mr. McGlennon made a motion to appoint Robert Watson to an unexpired term on the Williamsburg Regional Library Board of Trustees, term to expire on June 30, 2006.

On a roll call vote, the vote was: AYE: McGlennon, Brown, Goodson, Kennedy, Harrison (5). NAY: (0).

K. RECESS

At 8:28 p.m. Mr. Harrison recessed the Board until 4 p.m. on June 24, 2003.

Sanford B. Wanner
Clerk to the Board

061003bos.min

MEMORANDUM

DATE: June 24, 2003

TO: The Board of Supervisors

FROM: Frank M. Morton, III, County Attorney
John E. McDonald, Manager of Financial and Management Services

SUBJECT: Building D Lease

Attached is a lease between the County and the Williamsburg-James City County Public Schools ("Schools"). Under the terms of the Lease, the County will lease Building D at the Government Complex to the Schools for school administrative uses for one year commencing July 1, 2003, with extensions for up to nine additional years, terminating on June 30, 2012. Please note that, as has been the case for the previous ten years, no rent is due under the terms of the lease.

Also attached is a resolution authorizing the County Administrator to execute the lease agreement. We recommend adoption of the resolution.

Frank M. Morton, III

John E. McDonald

FMM/JEM/gs
bldgDlease.mem

Attachments

RESOLUTION

BUILDING D LEASE

WHEREAS, the Williamsburg-James City County Public Schools and James City County desire to enter into a lease agreement for Building D with an effective date of July 1, 2003.

NOW, THEREFORE, BE IT RESOLVED by the Board of Supervisors of James City County, Virginia, that the County Administrator is authorized and directed to execute the lease between the Williamsburg-James City County Public Schools and James City County for occupancy of Building D at the James City County Government Complex.

Jay T. Harrison, Sr.
Chairman, Board of Supervisors

ATTEST:

Sanford B. Wanner
Clerk to the Board

Adopted by the Board of Supervisors of James City County, Virginia, this 24th day of June, 2003.

bldgDlease.res

THIS LEASE, made this 1st day of July, 2003, by and between the County of James City, Virginia ("Landlord"), a political subdivision of the Commonwealth of Virginia, and the Williamsburg-James City County Public Schools ("Tenant").

WITNESSETH:

NOW THEREFORE, for good and valuable consideration, the receipt of which is hereby acknowledged, and the mutual covenants and promises contained herein the parties agree as follows:

1. Lease Term. That the Landlord shall lease the building commonly known as 101-D Mounts Bay Road, James City County, Virginia, to the Tenant for school administrative uses for one year commencing July 1, 2003. This Lease shall be extended automatically each year for up to nine additional years, terminating June 30, 2012, unless either party provides written notice of termination at least sixty days prior to the end of any lease term.

2. Rent. There shall be no rent payment.

3. Payment of Charges. Tenant shall pay all utility charges, shall be responsible for custodial services and all maintenance except those services identified in paragraph number 4. The Tenant may alter, renovate or change all interior spaces, but will be responsible for resulting changes needed in the heating/ventilation/air conditioning ("HVAC") systems.

4. Maintenance and Repairs. Landlord shall be responsible for maintenance and repair of structural (i.e., load bearing) and other primary building components including exterior walls, foundations, roof, doors, windows, HVAC systems and electrical systems. Landlord shall also maintain all exterior parking lots, walkways, grounds and landscaping.

5. Assignment and Subletting. Tenant shall not sell, assign or transfer this Lease, nor shall Tenant sublet the premises or any part thereof, without the prior written consent of Landlord.

6. Indemnification. The Landlord shall not be liable for any damage or injury to any person or property, whether it be the persons or property of the Tenant, the Tenant's employees, agents, guests, invitees or otherwise by reason of Tenant's occupancy of the leased premises or because of fire, flood, windstorm, Acts of God or for any other reason. The Tenant agrees to indemnify and save harmless the Landlord from and against any and all loss, damage, claim, demand, liability or expense by reason of damage to person or property which may arise or be claimed to have arisen as a result of the occupancy or use of said leased premises by the Tenant or by the reason thereof or in connection therewith, or in any way arising on account of any injury or damage caused to any person or property on or in the leased premises providing, however, that Tenant shall not indemnify as to the loss or damage due to fault of Landlord. It is expressly understood by Landlord that Tenant cannot indemnify except to the extent of its insurance coverage and receipts thereunder. Tenant is required to provide evidence of insurance adequate to cover all Tenant liabilities as stipulated in this paragraph.

7. Notices. All notices or other communications shall be deemed to have been given if the same shall be in writing and delivered personally or by certified mail, postage prepaid, to the individuals at the address shown below or his designee or successor:

To Landlord: Manager of Financial and Management Services
 101-A Mounts Bay Road
 James City County, Virginia 23185

To Tenant: Director of Finance
 101-D Mounts Bay Road
 James City County, Virginia 23185

8. Amendments. This Lease may be amended only by a writing signed by the parties.

IN WITNESS WHEREOF, the undersigned, being first duly authorized, executed this Lease effective the date first above-written.

Landlord:

County of James City, Virginia

BY:

Sanford B. Wanner, County Administrator

Tenant:

Williamsburg-James City County Public Schools

BY:

Carol Beers, Superintendent

ca/bldgDlease.wpd

Prepared: June 6, 2003

M E M O R A N D U M

DATE: June 24, 2003
TO: The Board of Supervisors
FROM: Darryl E. Cook, Environmental Director
SUBJECT: Dedication of Streets in Fernbrook, Phases 1, 2, and 3

Attached is a resolution requesting acceptance of certain streets in Fernbrook, Phases 1, 2, and 3 into the State Secondary Highway System. These streets have been inspected and approved by representatives of the Virginia Department of Transportation as meeting the minimum requirements for secondary roadways.

Staff recommends adoption of the attached resolution.

Darryl E. Cook

DEC/adw
fernbrook.mem

Attachments

RESOLUTION

DEDICATION OF STREETS IN FERNBROOK, PHASES 1, 2, AND 3

WHEREAS, the streets described on the attached Additions Form SR-5(A), fully incorporated herein by reference, are shown on plats recorded in the Clerk's Office of the Circuit Court of James City County; and

WHEREAS, the Resident Engineer for the Virginia Department of Transportation advised the Board that the streets meet the requirements established by the Subdivision Street Requirements of the Virginia Department of Transportation; and

WHEREAS, the County and the Virginia Department of Transportation entered into an agreement on November 1, 1993, for comprehensive stormwater detention which applies to this request for addition.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby requests the Virginia Department of Transportation to add the streets described on the attached Additions Form SR-5(A) to the secondary system of State highways, pursuant to §33.1-229, of the Code of Virginia, and the Department's Subdivision Street Requirements.

BE IT FURTHER RESOLVED, the Board guarantees a clear and unrestricted right-of-way, as described, and any necessary easements for cuts, fills and drainage.

BE IT FURTHER RESOLVED that a certified copy of this resolution be forwarded to the Resident Engineer for the Virginia Department of Transportation.

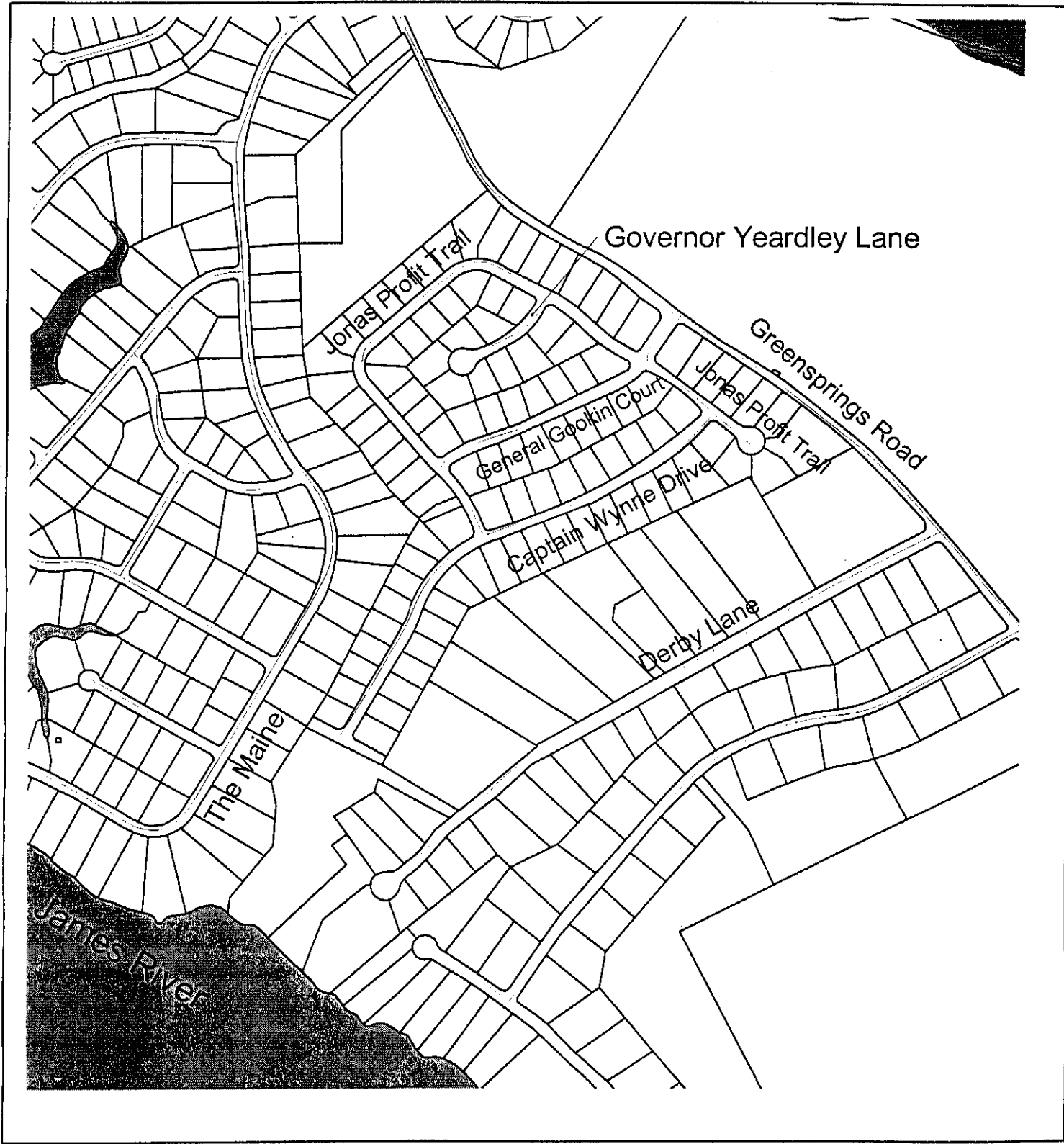
Jay T. Harrison, Sr.
Chairman, Board of Supervisors

ATTEST:

Sanford B. Wanner
Clerk to the Board

Adopted by the Board of Supervisors of James City County, Virginia, this 24th day of June, 2003.

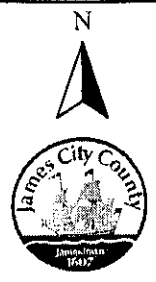
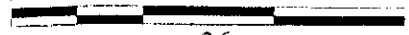
fernbrook.res



DEDICATION OF STREETS IN FERNBROOK SUBDIVISION

 Streets Being Dedicated

400 0 400 800 Feet



In the County of James City

By resolution of the governing body adopted June 24, 2003

The following Form SR-5A is hereby attached and incorporated as part of the governing body's resolution for changes in the secondary system of state highways.

A Copy Testee Signed (County Official): _____

Report of Changes in the Secondary System of State Highways

Form SR-5A
Secondary Roads Division 5/1/99

Project/Subdivision

Fernbrook, Phases 1, 2, 3

Type of Change: **Addition**

The following additions to the Secondary System of State Highways, pursuant to the statutory provision or provisions cited, are hereby requested, the right of way for which, including additional easements for drainage as required, is guaranteed:

Reason for Change: Addition, New subdivision street

Pursuant to Code of Virginia Statute: §33.1-229

Route Number and/or Street Name

Captain Wynne Drive, State Route Number 1233

Description: From: Rt 1231, Jonas Profit Trail (East end)

To: Rt 1231, Jonas Profit Trail (West end)

A distance of: 0.21 miles.

Right of Way Record: Filed with the Land Records Office on 4/8/1998, Plat Book 69, Page 11, with a width of 50'

Description: From: Rt 1231, Jonas Profit Trail (West end)

To: T Turnaround

A distance of: 0.18 miles.

Right of Way Record: Filed with the Land Records Office on 9/25/1995, Plat Book 62, Pages 83-84, with a width of 50'

General Gookin Court, State Route Number 1230

Description: From: Rt 614, Greensprings Road

To: Rt 1231, Jonas Profit Trail

A distance of: 0.05 miles.

Right of Way Record: Filed with the Land Records Office on 9/25/1995, Plat Book 62, Pages 83-84, with a width of 70'

Description: From: Rt 1231, Jonas Profit Trail (east)

To: Rt 1231, Jonas Profit Trail (west)

A distance of: 0.19 miles.

Right of Way Record: Filed with the Land Records Office on 9/25/1995, Plat Book 62, Pages 83-84, with a width of 50'

Gov. Yearly Lane, State Route Number 1232

Description: From: Rt 1231, Jonas Profit Trail

To: End of cul-de-sac

A distance of: 0.09 miles.

Right of Way Record: Filed with the Land Records Office on 7/21/1998, Plat Book 70, Page 13, with a width of 50'

Report of Changes in the Secondary System of State Highways

Form SR-5A
Secondary Roads Division 5/1/99

Jonas Profit Trail, State Route Number 1231

Description: From: Rt 1230, General Gookin Court

To: Rt 1232, Gov. Yearly Lane

A distance of: 0.09 miles.

Right of Way Record: Filed with the Land Records Office on 9/25/1995, Plat Book 62, Pages 83-84, with a width of 50'

Description: From: Rt 1232, Gov. Yearly Lane

To: Rt 1230, General Gookin Court (West end)

A distance of: 0.27 miles.

Right of Way Record: Filed with the Land Records Office on 7/21/1998, Plat Book 70, Page 13, with a width of 50'

Description: From: Rt 1230, General Gookin Court (West end)

To: Rt 1233, Captain Wynne Drive (West end)

A distance of: 0.07 miles.

Right of Way Record: Filed with the Land Records Office on 9/25/1995, Plat Book 62, Pages 83-84, with a width of 50'

Description: From: Rt 1230, General Gookin Court (East end)

To: Rt 1233, Captain Wynne Drive (East end)

A distance of: 0.07 miles.

Right of Way Record: Filed with the Land Records Office on 4/8/1998, Plat Book 69, Page 11, with a width of 50'

Description: From: Rt 1233, Captain Wynne Drive (East end)

To: End of cul-de Sac

A distance of: 0.04 miles.

Right of Way Record: Filed with the Land Records Office on 4/8/1998, Plat Book 69, Page 11, with a width of 50'

MEMORANDUM

DATE: June 24, 2003
TO: The Board of Supervisors
FROM: Kenneth W. Middlebrook, Deputy Chief of Police
SUBJECT: U.S. Department of Justice COPS Universal Hiring Program Grant

The United States Department of Justice Office of Community Oriented Policing Services (COPS) has approved the Universal Hiring Program Grant (UHP) in the amount of \$225,000 to provide three new police officers to enhance general law enforcement, community policing, and homeland security efforts. The grant period runs for three years and requires a local match of approximately \$188,181 over that time period. The first year will require approximately \$131,073 in salaries and benefits for the three officers. The UHP grant will fund \$90,000 and the County's matching share will be approximately \$41,073. The County's share should be processed through the Special Grants Fund.

The grant calls for the retention of the officers at least one year after the end of the grant period. Therefore, the County should expect to fully-fund the three positions beginning in Fiscal Year 2007.

Staff recommends adoption of the attached resolution.

Kenneth W. Middlebrook

CONCUR:

Sanford B. Wanner

KWM/tlc
hiregrant.mem

Attachment

RESOLUTION

U.S. DEPARTMENT OF JUSTICE COPS UNIVERSAL HIRING PROGRAM GRANT

WHEREAS, the United States Department of Justice Office of Community Oriented Policing Services (COPS) has approved a grant to provide three new police officers to enhance general law enforcement, community policing, and homeland security efforts; and

WHEREAS, the grant provides \$225,000 in salary and benefits over a three-year period with the County providing matching funds of \$188,181.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby authorizes the following budget appropriation amendments for FY 04 to the Special Projects/Grants Fund:

Revenues:

JCC General Fund (Grant Match Account)	\$ 41,073
Federal Revenue (COPS Grant)	<u>90,000</u>
	<u>\$131,073</u>

Expenditures:

COPS Universal Hiring Program Grant	<u>\$131,073</u>
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BE IT FURTHER RESOLVED that the Board of Supervisors of James City County, Virginia, does hereby create three limited-term full-time police officer recruit positions and plans to fully-fund the three positions at the end of the grant period to comply with the grant's Retention Plan.

Jay T. Harrison, Sr.
Chairman, Board of Supervisors

ATTEST:

Sanford B. Wanner
Clerk to the Board

Adopted by the Board of Supervisors of James City County, Virginia, this 24th day of June, 2003.

hiregrant.res

MEMORANDUM

DATE: June 24, 2003
TO: The Board of Supervisors
FROM: Suzanne R. Mellen, Director of Budget and Accounting
SUBJECT: Grant Appropriation - Clerk of the Circuit Court

The State Compensation Board has awarded the Clerk of the Circuit Court a grant from the Technology Trust Fund for \$68,800. The grant will allow the Clerk to continue to modernize the office and its records system.

Staff recommends that the James City County Board of Supervisors approve the attached resolution authorizing a budget appropriation of \$68,800 to the Special Projects/Grants Fund.

Suzanne R. Mellen

SRM/gs
clerkgrant.mem

Attachment

RESOLUTION

GRANT APPROPRIATION - CLERK OF THE CIRCUIT COURT

WHEREAS, the State Compensation Board has awarded the Clerk of the Circuit Court a technology grant for \$68,800; and

WHEREAS, there is no local match required.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby authorizes the following appropriation amendment to the Special Projects/Grants Fund:

Revenue:

State Compensation Board Technology Grant	<u>\$68,800</u>
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Expenditure:

Clerk Technology Upgrades	<u>\$68,800</u>
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Jay T. Harrison, Sr.
Chairman, Board of Supervisors

ATTEST:

Sanford B. Wanner
Clerk to the Board

Adopted by the Board of Supervisors of James City County, Virginia, this 24th day of June, 2003.

clerkgrant.res

MEMORANDUM

DATE: June 24, 2003
TO: The Board of Supervisors
FROM: Richard Drumwright, Public Transit Director
SUBJECT: Appropriation of Funds - Bus Shelter, Williamsburg Area Transport

The Hampton Roads Metropolitan Planning Organization approved Williamsburg Area Transport's amendment of \$16,000 to its Fiscal Year 2003 Transportation Improvement Program to purchase and install one bus stop shelter using reserve Regional Service Transportation Program Grant revenue. These grant revenues, 80 percent Federal and 20 percent State, require no local match.

The grant revenues allow for the installation of a bus stop shelter at the Williamsburg Shopping Center, one of our busiest stops that serves two routes, the Purple and Blue Lines.

Installation helps us continue our objective to upgrade support facilities in helping maintain an efficient, safe, and an attractive transportation system to the citizens served.

Staff recommends that the James City County Board of Supervisors approve the attached resolution authorizing a FY 04 budget appropriation of \$16,000 to Williamsburg Area Transport.

Richard Drumwright

CONCUR:

Anthony Conyers, Jr.

RD/AC/gs
sheltergrant.mem

Attachment

RESOLUTION

APPROPRIATION OF FUNDS - BUS SHELTER, WILLIAMSBURG AREA TRANSPORT

WHEREAS, the Hampton Roads Planning District Commission approved an amendment of \$16,000 in State and Federal revenues to Williamsburg Area Transport; and

WHEREAS, State and Federal revenues will not require any local match.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby authorizes the following appropriation amendment to the FY 04 Williamsburg Area Transport Budget:

Revenue:

Regional Service Transportation Program Grant	<u>\$16,000</u>
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Expenditure:

Installation and purchase of one bus stop shelter	<u>\$16,000</u>
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Jay T. Harrison, Sr.
Chairman, Board of Supervisors

ATTEST:

Sanford B. Wanner
Clerk to the Board

Adopted by the Board of Supervisors of James City County, Virginia, this 24th day of June, 2003.

sheltergrant.res

M E M O R A N D U M

DATE: June 24, 2003

TO: The Board of Supervisors

FROM: Doug Powell, Assistant Community Services Manager
Leo P. Rogers, Deputy County Attorney

SUBJECT: Lease and Purchase Option Agreement with the Colonial Williamsburg Foundation - Buses

Attached for consideration, is a resolution authorizing the County Administrator to execute a Lease Purchase Option Agreement with the Colonial Williamsburg Foundation (CWF). The three parties to the Agreement are CWF, the James City County Transit Company (JCCT), and the County. The Agreement identifies the relationship between the parties for purchasing natural gas buses to be used for public transportation. The CWF received a Congressional earmark grant of \$2,457,096 to cover eighty percent of the cost of acquiring nine energy efficient natural gas buses. The grant from the Federal Transit Administration (FTA) must be directed to an existing recipient of Federal funds. Under the proposed Agreement, JCCT would serve as the pass through entity to receive the Federal grant, purchase the buses, and lease the buses to CWF. The additional twenty percent of the purchase price and all costs involved in the transaction would be the responsibility of CWF. JCCT would need to enter into a master agreement with the FTA and include these buses in JCCT system. The County is entering into the Agreement with CWF and JCCT as the administrative, fiscal, and purchasing agent for the project.

Staff for CWF, JCCT and the County have negotiated the proposed lease and purchase agreement. The most important provisions of this agreement include:

- JCCT will purchase the buses and then lease them to CWF. CWF will provide all funds, in excess of the Federal grant, needed for the purchase of the buses before payment is made to the vendor.
- The term of the lease is the useful life of the buses as defined by the FTA. After the lease term expires, CWF has the option to assume ownership of the buses. The JCCT has the right to terminate the lease upon default by CWF.
- CWF is responsible for maintaining the buses during the entire term of the lease.
- Under the terms of the master agreement between JCCT and the FTA, JCCT is responsible for ensuring that CWF operates the buses in accordance with Federal law. In the Lease and Purchase Option Agreement, CWF represents that they will comply with all Federal laws. CWF is required to make a report on all information that the FTA will request from JCCT. While leased to the CWF, the buses will be part of JCCT transportation system.

Staff recommends approval of the attached resolution authorizing the Chairman of the Board of Supervisors to execute the Lease and Purchase Option Agreement on behalf of the County.

Lease and Purchase Option Agreement with the Colonial Williamsburg Foundation

June 24, 2003

Page 2

Doug Powell

Leo P. Rogers

DP/LPR/gs
CWFbusagr.mem

Attachment

RESOLUTION

LEASE AND PURCHASE OPTION AGREEMENT WITH

THE COLONIAL WILLIAMSBURG FOUNDATION - BUSES

WHEREAS, the Colonial Williamsburg Foundation (CWF) has received a Congressional earmark of \$2,457,096 to purchase nine natural gas buses; and

WHEREAS, these Federal funds must be directed to an existing recipient of Federal funds; and

WHEREAS, James City County Transit will serve as the pass through entity to receive the grant, purchase these buses, and lease them to the CWF; and

WHEREAS, James City County will act as the administrative, fiscal, and purchasing agent for the project; and

WHEREAS, CWF will fund the entire cost to purchase the buses and be responsible for maintaining them; and

WHEREAS, CWF has committed to operating these buses in accordance with Federal law.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby authorizes its Chairman to execute the Lease and Purchase Option Agreement with the Colonial Williamsburg Foundation for nine natural gas buses.

Jay T. Harrison, Sr.
Chairman, Board of Supervisors

ATTEST:

Sanford B. Wanner
Clerk to the Board

Adopted by the Board of Supervisors of James City County, Virginia, this 24th day of June, 2003.

CWFbusagr.res

MEMORANDUM

DATE: June 24, 2003
TO: The Board of Supervisors
FROM: Needham S. Cheely, III, Director of Parks and Recreation
SUBJECT: Title V Grant - "Beyond The Bell"

The Virginia Department of Criminal Justice Services has awarded James City County's Division of Parks and Recreation a \$56,465 Title V Delinquency Prevention Incentive Matching Grant.

The purpose of the grant is to pay for the second year of the new after-school program at the County's two community centers for referred middle school students. The program, "Beyond the Bell" provides at-risk youth with a safe, supervised program that addresses the risk factors of academic failure, substance abuse, lack of social ties, and lack of parental involvement. The grant funds will be used to pay the salary and benefits of two full-time Senior Recreation Leaders to conduct the program. The County will match the grant with two part-time Recreation Leaders, one at each site, that are currently in the budget, and with \$16,050 from the General Operating Fund for supplies, snacks, and quarterly dinners. Funds awarded combined with existing budgeted funds and positions will be sufficient to run the program with an annual estimated cost of \$85,465.

The development of free youth activities directly supports the County's Youth Strategic Plan, in addition to supporting the County's goal of balancing service demands with available resources.

Staff recommends approval of the attached resolution to accept the \$56,465 grant for the "Beyond the Bell" program and to appropriate the funds as described above.

Needham S. Cheely, III

CONCUR:

Anthony Conyers, Jr.

NSC/gs
titleV.mem

Attachment

RESOLUTION

TITLE V GRANT - "BEYOND THE BELL"

WHEREAS, the Virginia Department of Criminal Justice Services has made matching funds available for the development of youth-at-risk programs; and

WHEREAS, funds are needed for two staff positions to continue to operate the new middle school after-school program at the County's two community centers for referred at-risk youth.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby accepts the \$56,465 grant awarded by the Virginia Department of Criminal Justice Services.

BE IT FURTHER RESOLVED that the Board of Supervisors of James City County, Virginia, hereby authorizes the following appropriation to the Special Projects/Grants fund:

Revenues:

From the Commonwealth	<u>\$56,465</u>
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Expenditures:

Full-time salaries	\$42,848
Fringe benefits	<u>\$13,617</u>
	<u>\$56,465</u>

Jay T. Harrison, Sr.
Chairman, Board of Supervisors

ATTEST:

Sanford B. Wanner
Clerk to the Board

Adopted by the Board of Supervisors of James City County, Virginia, this 24th day of June, 2003.

titlev.res

MEMORANDUM

DATE: June 24, 2003
TO: The Board of Supervisors
FROM: Judith N. Knudson, Executive Director, Olde Towne Medical Center
SUBJECT: Olde Towne Medical Center Reduction In Force

At a special meeting held on April 28, 2003, the Board of Directors of the Williamsburg Area Medical Assistance Corporation determined that there was a need to reduce staff at Olde Towne Medical Center due to a projected budget shortfall.

It was determined that the following actions could be taken to reduce payroll while still providing those services which are necessary to maintain Olde Towne Medical Center's mission.

- Eliminate the full-time Director of Development position (2,080 hours);
- Eliminate one part-time Nurse Practitioner (1,248 hours); and
- Reduce one full-time Clinical Professional to part-time (2,080 to 1,040 hours).

These reductions in staff are requested to become effective on July 1, 2003. In accordance with the County's Reduction in Force policy, the affected staff members were notified prior to May 1, 2003, of the decision to eliminate positions or reduce hours.

Based on the actions of the Board of Directors of the Williamsburg Area Medical Assistance Corporation, attached is a resolution to eliminate/reduce these positions.

Judith N. Knudson

JNK/gs
reduct.mem

Attachment

RESOLUTION

OLDE TOWNE MEDICAL CENTER REDUCTION IN FORCE

WHEREAS, the Board of Directors of the Williamsburg Area Medical Assistance Corporation determined at a special meeting on April 28, 2003, that a projected budget shortfall would make it necessary to have a reduction in force at the Olde Towne Medical Center; and

WHEREAS, the decision was made to eliminate one full-time Director of Development position, one part-time Nurse Practitioner position (1,248 hours), and reduce one full-time Clinical Professional position from full-time to part-time (2,080 to 1,040 hours).

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, does hereby reduce the work force at Olde Towne Medical Center as requested above effective July 1, 2003.

Jay T. Harrison, Sr.
Chairman, Board of Supervisors

ATTEST:

Sanford B. Wanner
Clerk to the Board

Adopted by the Board of Supervisors of James City County, Virginia, this 24th day of June, 2003.

reduct.res

M E M O R A N D U M

DATE: June 24, 2003

TO: The Board of Supervisors

FROM: William C. Porter, Jr., Assistant County Administrator

SUBJECT: Budget Adjustment - Norge Depot

The Norge Depot has been identified as one of James City County's historic buildings. The CSX Corporation has determined that the Norge Depot is no longer needed and should be demolished. The James City County Historic Commission, along with the assistance of the James City County Ruritan, requested that CSX donate the Norge Depot to the Historic Commission. CSX offered to donate the building to the Historic Commission if the Historic Commission moved the Building at least 50 feet from the CSX tracks. The Historic Commission identified two locations for the Depot. The first is on property adjacent to the Depot owned by CSX. The second is the James City County Library site.

The site adjacent to the Norge Depot is not available. The Historic Commission has determined that the best location is the James City County Library site. The Library Board of Trustees has been notified of the Historic Commission's intention and has no objections.

Staff estimates it will cost approximately \$155,000 to prepare the Depot to be moved, to move the Depot to the Library site, to do the site work, and to set the foundation for the Depot. The Historic Commission is ready to move the Depot. The Commission has been awarded a TEA-21 Grant in the amount of \$75,000 for the Depot. The Capital Improvement Budget already includes \$40,000 to match the TEA-21 Grant. Forty-eight thousand dollars is available in the FY 2003 Operating Budget that was to be the County's contribution to the Aviation Worlds Fair. The Board could move this money prior to June 30 to the FY 2003/2004 Capital Improvement Budget and use it for the moving of the Norge Depot.

Attached for Board consideration is a resolution transferring \$40,000 from the FY 2003 General Fund Budget to the FY 2003 CIP Budget.

William C. Porter, Jr.

WCP/gs
norgedepot.mem

Attachment

RESOLUTION

BUDGET ADJUSTMENT – NORGE DEPOT

WHEREAS, the James City County Historic Commission wishes to move the historic Norge Depot to the James City County Library Site; and

WHEREAS, the estimated cost for moving the Norge Depot to the James City County Library site is estimated to be \$155,000; and

WHEREAS, the Historic Commission has obtained a TEA-21 Grant in the amount of \$75,000 and has \$40,000 in the FY 2003 Capital Improvement Budget.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby authorizes the following budget transfer:

Transfer From:

Operating Budget Item No. 001 162 7150	<u>\$40,000</u>
(Through transfer to County General Fund)	

Transfer To:

Capital Improvement Budget Item No. 013 075 0400	<u>\$40,000</u>
--	-----------------

and that said money be and hereby is appropriated for expenditures associated with the moving and restoration of the Norge Depot.

Jay T. Harrison, Sr.
Chairman, Board of Supervisors

ATTEST:

Sanford B. Wanner
Clerk to the Board

Adopted by the Board of Supervisors of James City County, Virginia, this 24th day of June, 2003.

norgedepot.res

MEMORANDUM

DATE: June 24, 2003
TO: The Board of Supervisors
FROM: Needham S. Cheely, III, Director of Parks and Recreation
SUBJECT: July - Recreation and Parks Month

The National Recreation and Parks Association has designated July as Recreation and Parks Month. Events highlighting the benefits of parks and recreation will be scheduled through the month.

Staff recommends the Board of Supervisors adopt the attached resolution. The Parks and Recreation Advisory Commission endorsed the resolution at their meeting on June 18, 2003.

Needham S. Cheely, III

CONCUR:

Anthony Conyers, Jr.

NSC/gs
parkreco.res

Attachment

RESOLUTION

JULY – RECREATION AND PARKS MONTH

WHEREAS, parks and recreation activities generate opportunities for people to come together and experience a sense of community through fun recreational pursuits; and

WHEREAS, parks, playgrounds, ball fields, nature trails, open spaces, community and cultural centers, and historic sites make a community attractive and desirable places to live, work, play, and visit to contribute to our ongoing economic vitality; and

WHEREAS, parks and recreation agencies touch the lives of individuals, families, groups, and the entire community, which positively impacts upon the social, economic, health, and environmental quality of our community.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby proclaims July as Recreation and Parks Month and encourages all citizens of James City County to utilize recreation and park services and recognize that they are essential to the quality of life.

Jay T. Harrison, Sr.
Chairman, Board of Supervisors

ATTEST:

Sanford B. Wanner
Clerk to the Board

Adopted by the Board of Supervisors of James City County, Virginia, this 24th day of June, 2003.

parkrecmo.res

M E M O R A N D U M

DATE: June 24, 2003
TO: The Board of Supervisors
FROM: William C. Porter, Jr., Assistant County Administrator
SUBJECT: County Fair Committee Appointments

For insurance purposes, the Board of Supervisors annually appoints the James City County Fair Committee. The term of the appointments is the length of the County Fair. This year's Fair will be held on Friday, August 8 and Saturday, August 9. Attached is the list of volunteers that make up the 2003 James City County Fair Committee.

Staff recommends the appointment of the volunteers on the attached list to the James City County Fair Committee.

William C. Porter, Jr.

WCP/gs
ctyfair2003.mem

Attachment

2003 James City County Fair Committee Members

Baber, Tammy	Mondul, Margaret
Bates, Mary	Overton, Ed
Beamon, Dwight	Perkins, Diana
Bradshaw, Andy	Porter, Bill
Bradshaw, Nancy	Powell, Ellen
Bradshaw, Richard	Ramirez, Tara
Bradsher, Jim	Rinehimer, Brad
Daigneault, David	Rupe, Charlie
Danuser, Norman & Lois	Sims, Angie
Davis, Ann	Wanner, Sandy
Dubois, Leanne	Webster, Shirley
Garrett, Loretta	Wolven, Allen E.
Hazelwood, Sylvia	
Heath, Doris	
Jacovelli, Ken	
Jones, Katie	

Miller, Lynn
Miller, Richard

M E M O R A N D U M

DATE: June 24, 2003

TO: The Board of Supervisors

FROM: O. Marvin Sowers, Jr., Planning Director
Leo P. Rogers, Deputy County Attorney

SUBJECT: Conveyance of Easements to the Virginia Department of Transportation at 3493 John Tyler Highway

Attached is a resolution authorizing the County Administrator to convey easements to the Virginia Department of Transportation (VDOT) on an 8.067-acre parcel located at 3493 John Tyler Highway. The parcel is designated as Parcel No. (01-12) on James City County Real Estate Tax Map No. (45-2) and is located on the southeast corner of the John Tyler Highway/Greensprings Road intersection. The purposes of the easements are to preserve the entire parcel as natural open space and to permit VDOT to use a portion of the parcel as a pedestrian and bicycle trail. In exchange for the easements, VDOT has agreed to reimburse the County 90 percent of the appraised value of the parcel, allowing the County to recoup most of its acquisition costs. The appraised value of the parcel is \$645,500.

The Board of Supervisors authorized the acquisition of the parcel on November 23, 1999 (resolution attached). The purpose of the acquisition was to preserve open space and protect the scenic qualities of John Tyler Highway and Greensprings Road, both of which are Virginia Byways and Community Character Corridors. Acquisition also protects the Green Spring National Historical Site located directly across John Tyler Highway. At that time the parcel was owned by the Exxon Corporation and was zoned LB, Limited Business. The County purchased the property in December 1999 for \$611,000.

Prior to the purchase, County and VDOT staffs were engaged in discussions about VDOT's potential use of the John Tyler Highway corridor for the Capital-to-Capital Trail and this and other properties as possible locations for the trail. Both parties shared an interest in preserving the character of John Tyler Highway by protecting the parcel from incompatible development. Because it was under considerable development pressure, the County acquired the parcel. VDOT subsequently received a National Scenic Byways grant from the Federal Highways Administration to preserve the parcel and partially reimburse the County. VDOT and the County entered into a Memorandum of Understanding (MOU) in May 2002 regarding easement conveyance and reimbursement (attached).

Memorandum of Understanding

The Memorandum of Understanding identifies the manner in which easement acquisition and reimbursement will occur. Under the agreement, the County retains fee simple ownership of the parcel while granting VDOT easements, but use of the parcel requires written approval from both parties. These matters are also addressed in the attached draft deed of easement.

Under the MOU, VDOT will reimburse the County an amount from the Federal grant proceeds up to 80 percent of the appraised value of the parcel. In addition, VDOT will also pay to the County up to ten percent of the appraised value as its share of the 20 percent Federal match requirement. The County is responsible for the remaining ten percent of the appraised value. Based on this formula, VDOT will reimburse the County up to \$580,950. The net effect is that the County will recover all but \$30,050 of its original purchase price. VDOT staff has verbally stated that the Federal grant is sufficient to fully fund the acquisition and that VDOT will reimburse the County the full amount of \$580,950.

Deed of Easement

A draft Deed of Easement (DOE) is attached, which would convey to VDOT both a trail easement and a natural open space easement. Both easements are perpetual. Following is a summary of some of the DOE's provisions:

1. Trail Easement. The trail easement is parallel and adjacent to John Tyler Highway and Greensprings Road. It would be 225 feet in width along John Tyler Highway and 120 feet in width along Greensprings Road measured from the respective center lines of each road. Any construction or land-disturbing activities would require County approval.
2. Natural Open Space Easement. This easement covers the whole parcel and places limits on most land-disturbing activities (see below).
3. Prohibited Activities. These are identified in Section 4.6 of the draft DOE. In general, prohibited activities include most all land-disturbing activities except pedestrian and bicycle trails. Both VDOT and the County must approve any construction or land-disturbing activities so as to preserve the parcel as natural open space.

Staff recommends approval of the attached resolution authorizing the County Administrator to convey easements to the Virginia Department of Transportation on the 8.067-acre parcel located at 3493 John Tyler Highway.

O. Marvin Sowers, Jr.

Leo P. Rogers

OMS/LPR/gs
exxonDOE.mem

Attachments:

1. Property Map
2. November 23, 1999, Resolution to Purchase Exxon Corporation Parcel
3. May 2002 Memorandum of Understanding with VDOT
4. Draft Deed of Easement
5. Resolution

RESOLUTION

CONVEYANCE OF EASEMENT TO THE VIRGINIA DEPARTMENT OF TRANSPORTATION

WHEREAS, in December 1999, James City County acquired 8.067 acres of land commonly known as 3493 John Tyler Highway, designated as Parcel No. (01-12) on the James City County Real Estate Tax Map No. (45-2) (the "Property") for the purchase price of \$611,000; and

WHEREAS, the property is appraised at \$645,500; and

WHEREAS, the Commonwealth of Virginia received a Federal matching grant which will pay eighty percent of appraised value of the Property provided certain restrictions and easements are in place; and

WHEREAS, the Virginia Department of Transportation (VDOT) is willing to pay \$580,950, which is ninety percent of the appraised value of the Property for a Deed of Easement agreement for public use; and

WHEREAS, following a public hearing, the Board of Supervisors of James City County, Virginia, believes it is in the best interest of the County to convey an easement over the Property to VDOT.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, authorizes and directs the County Administrator to execute a Deed of Easement and such other documents as may be necessary to convey an easement over the Property to VDOT in exchange for \$580,950.

Jay T. Harrison, Sr.
Chairman, Board of Supervisors

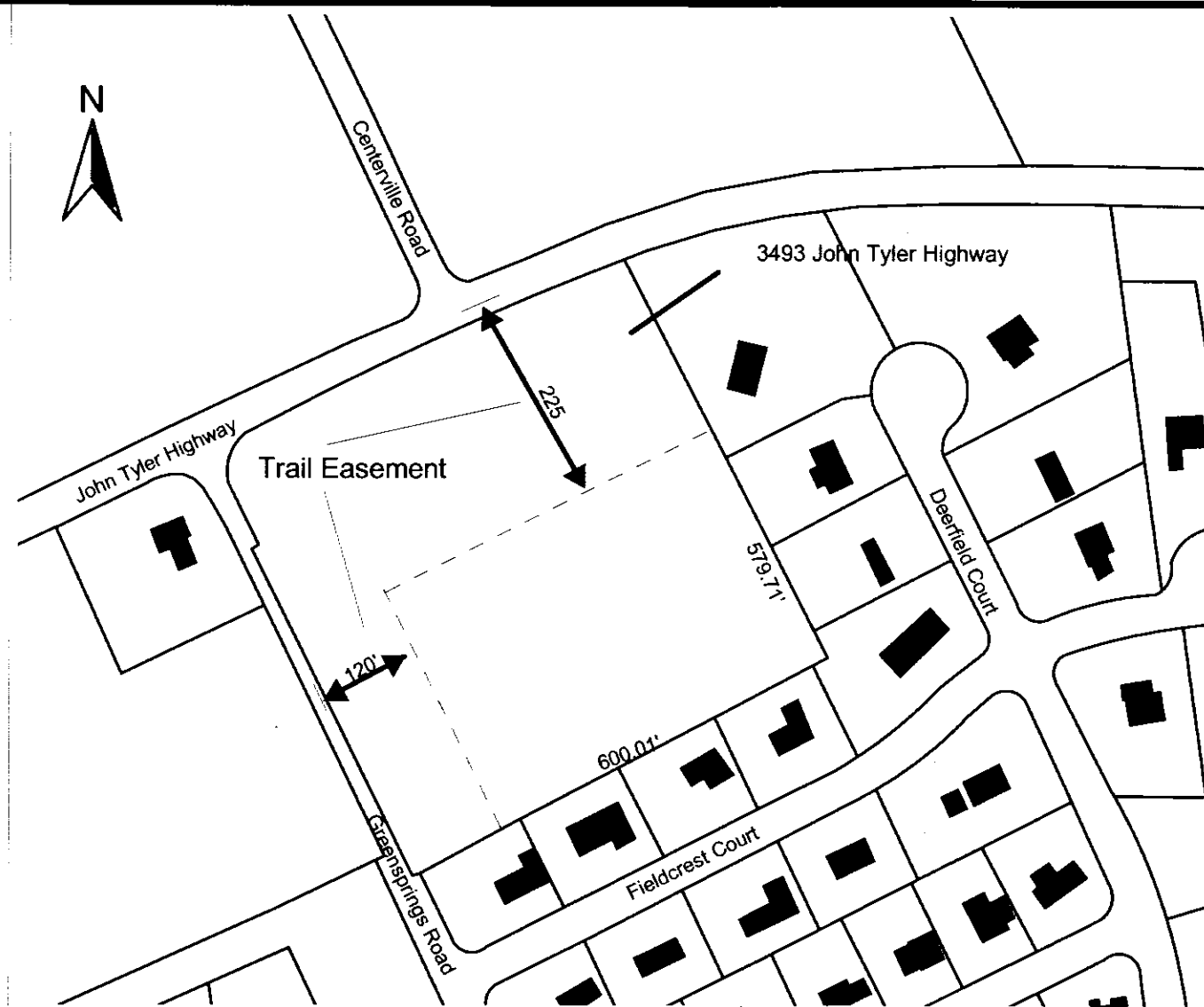
ATTEST:

Sanford B. Wanner
Clerk to the Board

Adopted by the Board of Supervisors of James City County, Virginia, this 24th day of June, 2003.

exxonDOE.res

Conveyance of Easements to VDOT of the Property on 3493 John Tyler Highway



63



THIS DEED IS EXEMPT FROM TAXATION PURSUANT TO THE CODE OF VIRGINIA SECTIONS 58.1-811(A)(3) AND 58.1-811(A)(3)(C)(3).

CONSIDERATION: \$ _____
TAX MAP ID NO. 4520100012

DEED OF EASEMENT AGREEMENT FOR PUBLIC USE

THIS DEED OF EASEMENT AGREEMENT (this "Agreement") made this ___ day of _____, 2003 by and between the **COUNTY OF JAMES CITY, VIRGINIA**, a political subdivision of the Commonwealth of Virginia ("Grantor"), and the **VIRGINIA DEPARTMENT OF TRANSPORTATION** ("Grantee").

WHEREAS, Grantor is the owner of certain property in James City County, Virginia fronting on the south side of Route 5 commonly known as 3493 John Tyler Highway, Williamsburg, Virginia, containing 8.067 acres, more or less, (the "Property"), which property is more particularly described as:

All that certain lot, piece or parcel of land containing 8.067 acres more or less, with the improvements thereon, situate, lying and being in the Berkeley District of the County of James City, Virginia and being more particularly described as follows:

Beginning at a point on the southerly right-of-way of State Route #5, John Tyler Highway, said point being 250' more or less northeasterly of the intersection of State Route #614, Centerville Road, said point being the corner of this property and "Fieldcrest" Subdivision, Section 2; thence S26° 50'55"E, 579.37' to an iron pipe found, the corner of this property, "Fieldcrest, Section 2 and "Fieldcrest", Section 1; thence with the line of "Fieldcrest" Section 1, S63°09'47"W, 600.00' to an iron rod set, the corner of this property and the easterly right-of-way line of State Route #614, Greensprings Road; thence with the right-of-way line of said State Route #614, Greensprings Road, N26°15'49"W, 495.74' to an iron rod set; thence N64°11'50"E, 10.00' to an iron rod set; thence, N25°48'10"W, 52.00' to a concrete highway monument found; thence along a curve to the right, having a radius 50.56' and an arc length of 79.71' to an iron rod set on the southerly right-of-way of state Route #5; John Tyler Highway; thence with the right-of-way line of State Route #5, John Tyler Highway, N64°31'50"E, 425.90'

to an iron rod set; thence along a curve to the right, having a radius of 1121.00' an arc length of 106.76' to the aforesaid point of beginning.

The foregoing property is shown on a certain plat entitled "ALTA/ACSM LAND TITLE SURVEY AND TOPOGRAPHIC MAP OF A PARCEL CONTAINING 8.067+/- ACRES OWNED BY PHILLIP RICHARDSON COMPANY, INC., BERKELEY DISTRICT, JAMES CITY COUNTY, VIRGINIA" dated March 11, 1997 made by AES Consulting Engineers of Williamsburg, Virginia, which is recorded in the Clerk's Office of the Circuit Court of the City of Williamsburg and County of James City, Virginia in Plat Book 67, Page 16.

BEING the same property conveyed to the Grantor by deed from Exxon Mobil Corporation dated December 8, 1999 and recorded in the Clerk's Office of the Circuit Court of the City of Williamsburg and County of James City, Virginia as Instrument No. 990025927.

WHEREAS, Grantor and Grantee wish to preserve the Property as natural open space while permitting certain very limited activities as described herein; and

WHEREAS, John Tyler Highway (Route 5) and Greensprings Road (Route 614) are designated Virginia Byways due to their scenic and historic character, and Grantor and Grantee have mutual interests in preserving this character by ensuring the compatible and appropriate use of said Property; and

WHEREAS, Grantor and Grantee support further development of the proposed Capital to Capital Bikeway and Trail and other bikeway and pedestrian facilities; and

WHEREAS, Grantee desires that Grantor grant to Grantee easements, in, over and through the Property to preserve the property as natural open space and to allow Grantee to use a portion of the property for the construction, installation, maintenance, repair, replacement and use of the Capital to Capital Bikeway and Trail, and other non-motorized vehicular uses including bikeway and pedestrian facilities; and

WHEREAS, The Grantor is willing to grant such easements subject to the terms and conditions set forth herein;

NOW, THEREFORE, in consideration of the mutual promises, covenants, and agreements set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Grantor and Grantee agree as follows:

Section 1 - Grant of Easements.

- 1.1 Trail Easement. Grantor hereby grants and conveys to the Grantee a non-exclusive easement in perpetuity in gross for the construction, installation, maintenance, repair, replacement and use of the proposed Capital to Capital Bikeway and Trail and other compatible bikeway and/or pedestrian access, and for other non-motorized vehicular uses, including the development of public interpretive markers and kiosks in support of the Capital to Capital Bikeway and Trail in, over and through the following described portion of the Property: (1) that portion of the property that is within a distance of 225' from the centerline of the right of way of State Route No. 5, John Tyler Memorial Highway, and (2) that portion of the property that is within a distance of 120' from the existing centerline of the right of way of State Route 614, Greensprings Road (both areas hereinafter referred to as the "Trail Envelope"). The design and final alignment within the Trail Envelope of a trail or any other permissible facility proposed by Grantee shall be subject to the approval of Grantor, and shall be shown on a fully engineered, scaled site plan that shall be submitted for approval to Grantor before any construction or land disturbing activities are performed on the Property by Grantee. Once Grantor has approved such site plan and construction has begun pursuant thereto, the alignment and design of any trail and other facilities shown on such site plan shall not be relocated without the written consent of both parties.
- 1.2 Natural Open Space Easement. Grantor hereby grants and conveys to the Grantee a non-exclusive perpetual easement in gross, over and through the Property, to restrict the use of the Property in the manner set forth in this deed of easement.
- 1.3 The easements described in Section 1.1 and 1.2 are referred to collectively herein as the "Easements".

Section 2 - Burden. The burden of the Easements shall run with the land.

Section 3 - Benefit; Use.

- 3.1 Benefit, Use. The benefit of the Easements shall run to the Grantee and its successors and assigns as permitted in Section 5.7 below.
- 3.2 Non-Exclusive Nature. The Grantee's rights under Section 1 shall in all respects be non-exclusive, and shall be exercised in common with the use of the Easements by the Grantor, its successors and assigns, and their respective invitees, licensees, tenants and customers.

Section 4 - Exercise of Easements.

- 4.1 Manner of Exercise. Any land disturbing activities, construction, installation, maintenance, repair, replacement or use of the Property shall be done by the Grantee only in accordance with (a) all applicable laws, ordinances, rules and regulations of each governmental entity having jurisdiction over such activities, including but not limited to those of the Grantor, and (b) plans therefore which are (i) prepared by Grantee at its sole cost and expense and (ii) submitted to and approved in writing by the Grantor, which approval shall not be unreasonably withheld. Areas not shown to be disturbed on said approved plans shall remain in their natural condition.
- 4.2 Planning and Engineering Procedures. The Grantee is hereby authorized to enter upon the property to gather information used for the planning and design of proposed improvements described in Section 1.1, above, following written notification to the Grantor.
- 4.3 Construction and Maintenance Procedures. Whenever the Grantee is constructing, installing, maintaining, repairing, replacing or using the Easements, Grantee shall (a) cause the Easements to be kept reasonably clean and free of trash and building debris; (b) immediately on the completion of such activity, cause all such trash and debris to be removed from the Easements; (c) cause reasonable erosion measures to be observed during the course of such action; (d) cause its agents, employees, contractors, subcontractors and other invitees to use reasonable care not to damage or disturb the Easements or deposit material within the Easements other than those items approved by the Grantor and shown on an approved plan of development; and (f) repair, cure or remove any such damage.
- 4.4 Cost of Installation. The cost of any improvements constructed or installed by the Grantee shall be born solely by the Grantee.
- 4.5 Duty and Cost of Maintenance. After the construction or installation of any improvements by the Grantee, the Grantee shall at its sole cost and expense:
- 4.5.1 From time to time perform all necessary maintenance and repair of, and make any replacements to said improvements, and any other land or improvements damaged by the Grantee's exercise of the Easements or the use of the Easements in any manner, to the end that the improvements are maintained at all times in good order,

condition and repair; and

4.5.2 Promptly restore the Easements and the improvements thereon and any other land or improvements which are damaged by any such exercise or use to the condition immediately prior to such installation or exercise or use; and

4.5.3 Keep the Trail Envelope free and clear of any junk, trash, rubbish or other unsightly or offensive material at all times. The Grantee shall also have the right to remove dead, dying, diseased, poisonous or invasive vegetation and to plant indigenous vegetation to enhance the scenic and historic character of the Easement after receiving written approval from the Grantor.

4.6 Prohibited Activities. The restrictions hereby imposed on the use of the Property, the acts which the Grantor covenants not to do and the restrictions which the Grantee is hereby entitled to enforce, shall be as follows:

4.6.1 Destruction or alteration of wetlands on the property other than those alterations authorized by the Norfolk District, U.S. Army Corps of Engineers (USAC);

4.6.2 Construction or maintenance of buildings or manufactured homes, unless otherwise approved by Grantee. Bicycle and pedestrian bridges and trails, boardwalks, wildlife management structures, and observation decks may be placed in the Easements by the Grantor provided that any such structures or improvements permit the natural movement of water and preserve the natural contour of the ground;

4.6.3 Construction of drainage outfalls or other drainage structures on the property unless otherwise approved by the Grantee. Adjoining properties may, however, allow water to drain onto and through the property as provided by natural drainage and contour of the ground;

4.6.4 Ditching, draining, diking, damming, filling, excavating, plowing, mining or drilling, removal of top soil, sand, or other materials, and any building of roads or alteration in the topography of the land in any manner except for construction and maintenance of items identified in Section 4.6.2, above;

4.6.5 Removal, destruction, and cutting of trees or plants, removal of

natural leaf litter or other ground cover or understory vegetation, or spraying with biocides except as necessary to construct or maintain items identified in Section 4.6.2, above, or to remove dead, dying, diseased, poisonous or invasive vegetation unless prior approval of Grantee is given for such activity;

- 4.6.6 Dumping of ashes, trash, garbage, or other unsightly or offensive materials, and changing of the topography through the placing of soil or other substance or material such as land fill or dredge material except as necessary to construct or maintain items identified in Section 4.6.2 above;
- 4.6.7 Cultivating, harvesting, and logging unless prior approval of Grantee is given for such activity; or
- 4.6.8 Use of the Property for advertising purposes, including, without limitation, signs, billboards, or outdoor advertising without the express written consent of the Grantee, which consent may be withheld for any reason.

Section 5 - General

- 5.1 Communications. All notices, requests, consents and other communications hereunder between the Grantor and Grantee shall be in writing and shall be (i) personally delivered, (ii) sent by overnight delivery, or (iii) mailed by registered or certified mail, return receipt requested, postage prepaid to the following addresses:

Grantor: County Administrator
James City County
101-Mounts Bay Road
Williamsburg, Virginia 23187

Grantee: Virginia Department of Transportation
1401 East Broad Street
Richmond, Virginia 23219

- 5.2 Violations. In the event of a violation of the Easements, the Grantor and Grantee shall have the right to seek all appropriate legal and equitable relief to the extent allowed under State law.
- 5.3 Effect. This Agreement (a) shall become effective on and only on its execution and delivery by each party hereto; and (b) represents the

complete understanding between the parties hereto as to the subject matter hereof, and supersedes all prior written or oral negotiations, representations, guarantees, warranties, promises, statements or agreements between or among the parties hereto as to the same. No determination by any court, governmental body, or otherwise that any provision hereof is invalid or unenforceable in any instance shall affect the validity or enforceability of (a) any other provision hereof, or (b) such provision in any circumstance not controlled by such determination. Each such provision shall be valid and enforceable to the fullest extent allowed by, and construed whenever possible as being consistent with, applicable law. No party hereto shall be deemed to have waived the exercise of any right which it holds hereunder unless such waiver is made either expressly and in writing (and, without limiting the generality of the foregoing, no delay or omission by any party hereto in exercising any such right shall be deemed a waiver of its future exercise). No such waiver made in any instance involving the exercise of any such right shall be deemed a waiver as to any other such instance or right.

- 5.4 Amendment. This Agreement may be amended only by a written, recordable instrument executed by the parties hereto.
- 5.5 Construction. The headings of any sections, subsections, paragraphs, and subparagraph are provided herein only for convenience of reference, and shall not be considered in construing their contents. Any writing or plat referred to herein as being attached hereto as an exhibit or otherwise designated herein as an exhibit is hereby made part of this Agreement. This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which, when taken together, shall constitute one and the same instrument.
- 5.6 Disclaimer of partnership status. Nothing in this Agreement shall be deemed in any way to create between the parties hereto any relationship of partnership, joint venture or association, and the parties hereto hereby disclaim the existence of any such relationship.
- 5.7 Assignability by Grantee. Grantee shall not be permitted to assign the rights granted hereunder without the prior written consent of Grantor, which consent shall be granted in Grantor's reasonable discretion.
- 5.8 Hazardous Substances Liability. The Grantor is responsible for carrying out any regulatory requirements or for resolving any legal actions arising due to the presence of any pre-existing hazardous substances on the Property as defined under the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"; 42 U.S.C. 9601 et seq. (1980)) and/or petroleum products. The Grantor indemnifies and holds

harmless the Grantee from any and all liability for investigating and/or remediating pre-existing hazardous substances on the Property. For purposes of this Agreement, pre-existing shall be defined as existing on the parcel prior to May, 2002.

- 6.0 The interpretation and performance of this deed of easement shall be governed by the laws of the Commonwealth of Virginia.

IN WITNESS WHEREOF, each party hereto has executed this Agreement or caused it to be executed on its behalf by its duly authorized representatives, the day and year first above written.

THE COUNTY OF JAMES CITY, VIRGINIA

By: _____ (SEAL)

Name: Sanford B. Wanner

Title: County Administrator

THE VIRGINIA DEPARTMENT OF TRANSPORTATION

By: _____ (SEAL)

Name: Philip A. Shucet

Title: Commissioner of Transportation

COMMONWEALTH OF VIRGINIA

City/County of _____, to wit:

The foregoing Deed of Easement Agreement for Public Use was acknowledged before me this _____ day of _____, 2003, by Sanford B. Wanner, County Administrator of James City County, Virginia.

Notary Public

My commission expires:

COMMONWEALTH OF VIRGINIA

City/County of _____, to wit:

The foregoing Deed of Easement Agreement for Public Use was acknowledged before me this _____ day of _____, 2003, by Philip A. Shucet, Commissioner of Transportation, on behalf of the Virginia Department of Transportation.

Notary Public

My commission expires: _____

Approved as to form:

County Attorney

This Deed of Easement prepared by:
Leo P. Rogers, Deputy County Attorney
James City County
101-C Mounts Bay Road
Williamsburg, VA 23185
(757) 253-6612

RESOLUTION

ACQUISITION OF LAND FROM EXXON CORPORATION



WHEREAS, the Board of Supervisors of the James City County ("the County") is desirous of acquiring the 8.067 acres more or less ("the Property") located on the southerly right-of-way of Route 5 and its intersection with Greensprings Road, for the purpose of preserving open space and the scenic protection of Route 5 and Greensprings Road; and

WHEREAS, the Property is currently owned by the Exxon Corporation and said corporation is willing to sell the property to the County under the terms and conditions set forth in the Purchase and Sale Agreement by and between Exxon Corporation and the County; and

WHEREAS, the Board of Supervisors appreciates the cooperation of Exxon Corporation in making the property located at the intersection of Route 5 and Route 614 available to the County, thus ensuring the protection of Route 5 and Greensprings Road, both of which are historic state designated scenic byways.

NOW, THEREFORE, BE IT RESOLVED, by the Board of Supervisors of James City County, Virginia, that it hereby authorizes and directs the Chairman of the Board of Supervisors to execute that certain agreement entitled Purchase and Sale Agreement by and between Exxon Corporation and James City County, which document sets forth the terms and agreement for the sale of 8.067 acres located on the southerly right-of-way of Route 5 and its intersection with Greensprings Road.

Jack D. Edwards
Chairman, Board of Supervisors

ATTEST:

Sanford B. Wanner
Clerk to the Board

<u>SUPERVISOR</u>	<u>VOTE</u>
NERVITT	AYE
SISK	AYE
MCGLENNON	AYE
BRADSHAW	AYE
EDWARDS	AYE

Adopted by the Board of Supervisors of James City County, Virginia, this 23rd day of November, 1999.

exxon.res

MEMORANDUM OF UNDERSTANDING

THIS Memorandum of Understanding (MOU), is made this 160 day of May 2002, between the Virginia Department of Transportation (VDOT) and James City County (County) for the administration of a National Scenic Byways grant from the Federal Highway Administration (FHWA) to assist the County in the acquisition of property for byways conservation and for the development of compatible byways projects; and

WHEREAS, the property identified as the Greensprings Road Parcel (Tax Map No. 45-2, Parcel 1-12) at the intersection of Routes 5 and 614 (VDOT Project No. 0005-047-113, R201), has been identified as meeting the necessary requirements and made a part of this agreement (Attachment 1); and

WHEREAS, VDOT has designated Routes 5 and 614 as Virginia Byways due to their scenic and historic characteristics; and

WHEREAS, VDOT and the County have a mutual interest in preserving the scenic and historic character of both byways and are cognizant of local neighborhood interests in achieving that goal; and

WHEREAS, VDOT and the County have mutual interests in maintaining safe and adequate primary and secondary routes for all modes of transportation; and

WHEREAS, VDOT and the County support further development of the proposed Capital to Capital Bikeway and Trail and the development of public interpretive sites along the Route 5 byway corridor;

NOW, THEREFORE, the Grant for the acquisition of the Parcel will be administered in the following manner:

1. VDOT and the County will equally share the 20 percent match required by the grant for acquisition of the Parcel.
2. VDOT will have the property appraised and submit the appraisal to the County Administrator. Upon receipt of the appraisal, the County Administrator will have 30 days to either approve the VDOT- appraised value of the property or send VDOT written notice that is has decided to terminate this Memorandum of Understanding. If the County Administrator approves the VDOT-appraised value of the property, VDOT will reimburse the County an amount from the federal grant proceeds not to exceed 80 (eighty) percent of the VDOT-appraised value of the property. In addition, VDOT will provide an amount not to exceed 10 (ten) percent of the VDOT-appraised value of the property constituting the Commonwealth's share of the non-federal match (Stipulation 1, above). The County will be responsible for 10 (ten) percent of the VDOT-appraised value of the property constituting the County's share of the non-federal match (Stipulation 1, above) and any additional funds necessary to secure purchase of the Parcel.
3. VDOT will be responsible for completion of all environmental coordination required by federal and state law for the grant and prospective future uses of the Parcel by VDOT as permitted herein.
4. The County will retain fee simple ownership of the Parcel and will grant VDOT an easement on the Parcel for use by the proposed Capital to Capital Bikeway and Trail, compatible bikeway and/or pedestrian access, and for other non-motorized vehicular uses including the development of a public interpretive site approved by the County in support of the Capital to Capital Bikeway and Trail. Potential uses of the property by

VDOT will be generally consistent with or complementary to the proposed Green Springs Interpretive Site as depicted on the attached Preliminary Plan - 1 dated November 2001 (VDOT Project No. 0005-047-111, PE101, M501, Attachment 2) and the Route 5 Capital to Capital Bikeway Feasibility Study (May 1999, Attachment 3). The County will convey the easement to VDOT simultaneously with transfer of funds to the County.

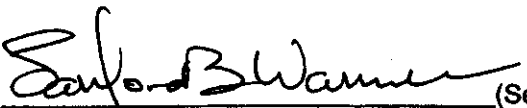
- 5. It is understood and agreed that VDOT and the County will coordinate proposed uses of the Parcel so as not to jeopardize the conservation purposes of the federal grant and will obtain written approval from VDOT or the County Administrator, as appropriate, for any proposed uses.
- 6. Except as noted in Stipulation 7, the County will be responsible for carrying out any regulatory requirements or for resolving any legal actions arising due to the presence of any pre-existing hazardous substances as defined under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA; 42 U.S.C. 9601 et seq. (1980)) and/or petroleum products. For the purposes of this MOU, pre-existing shall be defined as existing on the parcel prior to the execution of this MOU.
- 7. VDOT will be responsible for properly abandoning the well that currently exists on the property or for converting it to other appropriate uses consistent with this MOU.

Execution of this MOU evidences that VDOT and the County agree with the terms described above for administration of the grant.

4-30-2002
Date

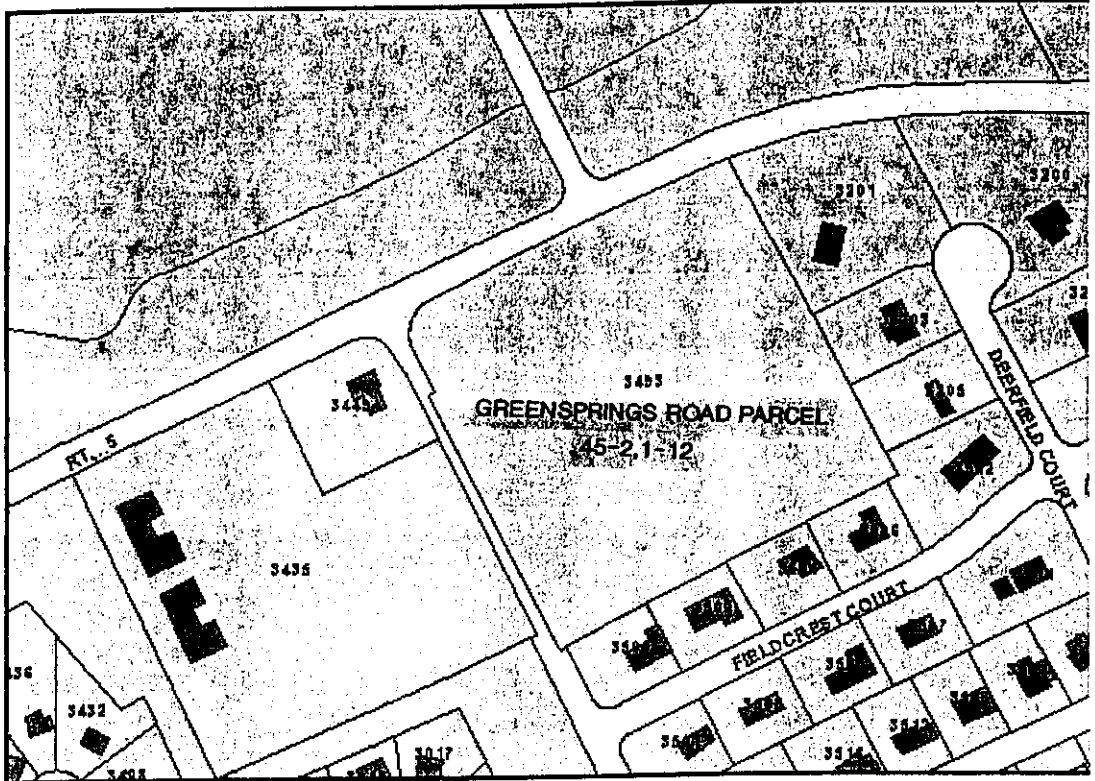
 (Seal)
Philip A. Shucet
Commissioner of Transportation

5/16/02
Date

 (Seal)
Sanford B. Wanner
James City County Administrator

James City County, VA

3,619,425



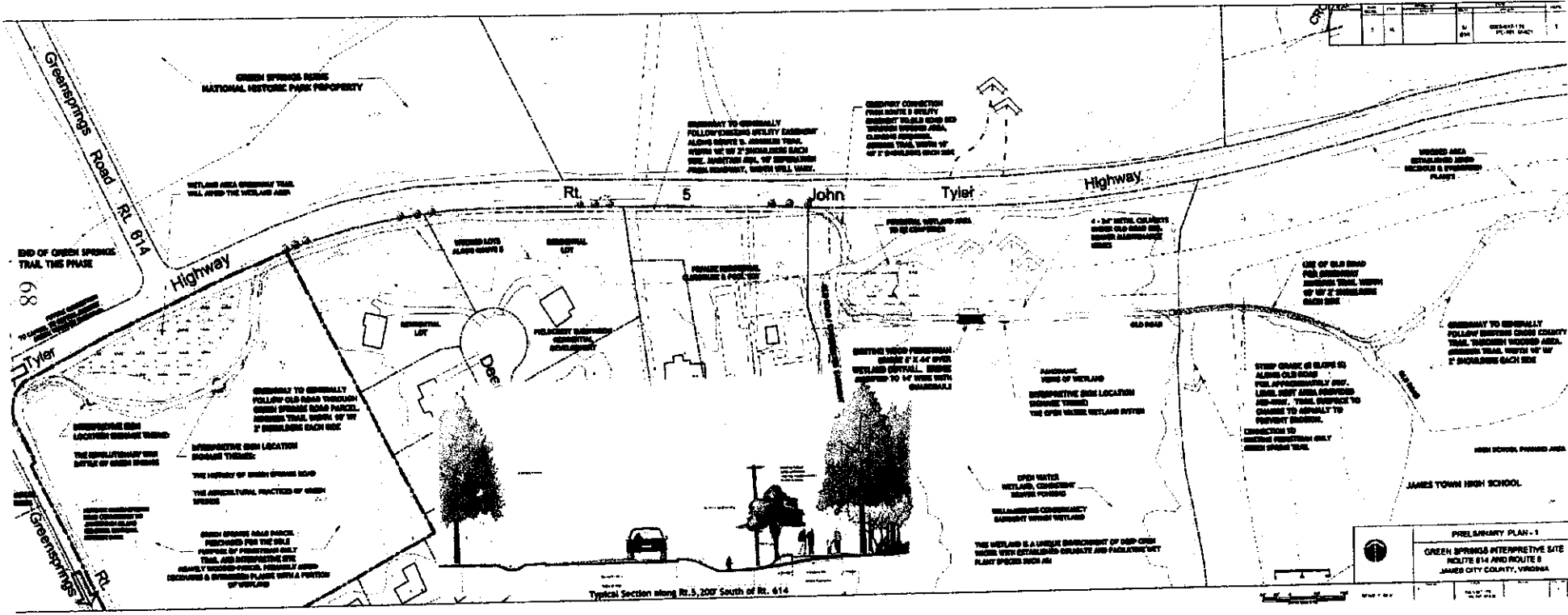
3,619,425

11,977,405

Map Width = 2019'



MEMORANDUM OF UNDERSTANDING
ATTACHMENT 1



MEMORANDUM OF UNDERSTANDING
ATTACHMENT 2

Route 5



Capital *to* Capital

Bikeway Feasibility Study

Richmond

Prepared for
Virginia Department of Transportation

May 1999



Williamsburg

(Full Report
in Planning
Division file)

MEMORANDUM

DATE: June 24, 2003
TO: The Board of Supervisors
FROM: O. Marvin Sowers, Jr., Planning Director
SUBJECT: Resolution to Endorse a TEA-21 Application Filed by the Jamestown-Yorktown Foundation

The Jamestown-Yorktown Foundation is applying to the Virginia Department of Transportation (VDOT) for funds from the Transportation Equity Program for the 21st Century (TEA-21).

The application is for a \$750,000 Enhancement Grant to construct two new replica ships, *Godspeed and Discovery*, to be home-ported at Jamestown Settlement. These ships will replace current replicas that, by 2007, will no longer be serviceable.

Due to VDOT Commonwealth Transportation Board grant procedures, the Foundation must first receive a request for the project from the Board of Supervisors, by resolution. If the Foundation's application is approved, there will be no contribution required from the County.

Staff recommends approval of the attached resolution to endorse the Jamestown-Yorktown Foundation's application.

O. Marvin Sowers, Jr.

OMS/gs
TEA21.mem

Attachments

1. Letter from Mr. Louis M. Markwith, Chief Development Officer, Jamestown-Yorktown Foundation
2. Memorandum from Phillip Emerson, James City County Resolution for VDOT TEA-21 Application
3. Project description for Construction New Replica Ships *Godspeed and Discovery*
4. Resolution

RESOLUTION

ENDORSE A TEA-21 APPLICATION FILED BY THE

JAMESTOWN-YORKTOWN FOUNDATION

WHEREAS, the Jamestown-Yorktown Foundation intends to file an application with the Virginia Department of Transportation (VDOT) for an Enhancement Grant to construct two new replica ships, *Godspeed* and *Discovery*, to be home ported at the Jamestown Settlement; and

WHEREAS, in accordance with the Commonwealth Transportation Board grant allocation procedures, it is necessary that a request by resolution be received from the local government in order for VDOT to program a transportation enhancement project in the County of James City; and

WHEREAS, the Jamestown-Yorktown Foundation hereby agrees to pay 20 percent of the total cost for planning, design, right-of-way, and construction of this project, which is contingent upon entering into an acceptable reimbursement agreement with the VDOT; and

WHEREAS, if the Jamestown-Yorktown Foundation subsequently elects to cancel this project, the Jamestown-Yorktown Foundation hereby agrees to reimburse VDOT for the total amount of the costs expended by the department through the date the department is notified of such cancellation.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, requests the Commonwealth Transportation Board establish a project for the construction of two new replica ships to be home ported at the Jamestown Settlement, as described in the "Replica Ships Construction" application submitted by the Jamestown-Yorktown Foundation.

Jay T. Harrison, Sr.
Chairman, Board of Supervisors

ATTEST:

Sanford B. Wanner
Clerk to the Board

Adopted by the Board of Supervisors of James City County, Virginia, this 24th day of June, 2003.



Jamestown-Yorktown Foundation, Inc.

P.O. Box 3605, Williamsburg, Virginia 23187-3605

(757) 253-4139

(757) 253-5299 Fax

(757) 253-7236 TDD

www.historyisfun.org

May 19, 2003



Mr. Arthur L. Collins
Executive Director/Secretary
Hampton Roads Planning District Commission
The Regional Building
723 Woodlake Drive
Chesapeake, Virginia 23320

Dear Mr. Collins:

The Jamestown-Yorktown Foundation is applying for funds from the Transportation Enhancement Program for the 21st Century (TEA-21) for FY 2003-2004. We are requesting \$750,000 over two fiscal years to assist in funding construction of two replica ships, *Godspeed* and *Discovery*. The project qualifies for funding in category 12 covering establishment and additions to maritime and transportation museums.

The total project cost is \$2.6 million; the Commonwealth has supplied approximately \$600,000 for research and design. The museum's private fund raising partner, the Jamestown-Yorktown Foundation, Inc., has received \$965,600 in gifts and commitments to the project. The Foundation will apply for TEA-21 funding of \$375,000 in fiscal years 2003-2004 and 2004-2005.

New replicas of *Godspeed* and *Discovery* will replace current replicas that by 2007 will no longer be serviceable. The new vessels will continue to support the interpretation of our maritime history at Jamestown Settlement and on outreach sailing programs. The General Assembly has designated the *Susan Constant*, *Godspeed* and *Discovery* as "the official fleet of the Commonwealth." With the approach of 2007, the ships must be ready for a central role in promoting awareness of Virginia's importance in our nation's history and stimulating tourism throughout Hampton Roads. Our application supports the effective use of requested funds to benefit communities and businesses in the Hampton Roads Metropolitan Planning District in years before and beyond 2007.

We respectfully request endorsement of this application by the Hampton Roads Metropolitan Planning Organization (MPO). Please contact me at (757) 253-4139 or markwith@jyf.state.va.us if you need additional information. Please convey our appreciation to members of the Hampton Roads MPO for their consideration of our request.

Sincerely,

Louis M. Markwith
Chief Development Officer

A 501(c)(3) organization
in support of the
Jamestown-Yorktown Foundation
and its accredited museums
Tax I.D. 31-1618642

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Philip G. Emerson
Executive Director

Current as of
January 1, 2003



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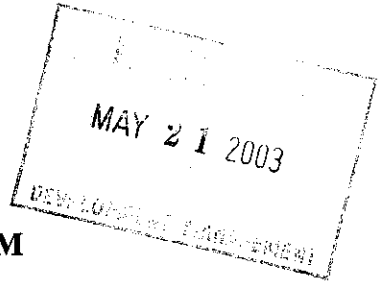


Jamestown-Yorktown Foundation

P.O. Box 1607, Williamsburg, Virginia 23187-1607
(757) 253-4838 (757) 253-5299 Fax (757) 253-7236 TDD www.historyisfun.org



cc: JB



MEMORANDUM

An Agency of the Commonwealth of Virginia

Accredited by the American Association of Museums

V. Earl Dickinson
Co-Chairman

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Vincent F. Callahan, Jr.
Vice Chairman

Malfourd W. Trumbo
Secretary

H. Benson Dendy III
Treasurer

Philip G. Emerson
Executive Director

TO: Sanford B. Wanner

FROM: Philip G. Emerson *[Signature]*

DATE: May 13, 2003

RE: James City County Resolution for VDOT TEA-21 Application

Last year we discussed the possibility of the Jamestown-Yorktown Foundation applying to VDOT for funding through the Transportation Enhancement Act for the 21st Century (TEA-21) for constructing new replicas of *Godspeed* and *Discovery*. Recent clarification of funding sources encourages us to apply now for these funds.

Endorsement of this project by the James City County Board of Supervisors is an important component of our application. We ask that the James City County Board of Supervisors place a resolution of support on their agenda and approve it as soon as possible. A public hearing about our plans must be advertised at the same time.

Attached is a draft of the resolution for consideration by the James City County Board of Supervisors. Your assistance with this request would be much appreciated. Lou Markwith, senior development officer, is putting together application materials and would be happy to supply additional information. He can be reached at 253-4139. Thank you again for your support.

Pat Hearn 4533

Attachment
cc: Lou Markwith



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JAMESTOWN-YORKTOWN FOUNDATION
Constructing New Replica Ships
Godspeed and Discovery

Project Description

Susan Constant, *Godspeed* and *Discovery* were Virginia's founding fleet and have been designated "the official fleet of the Commonwealth" by the Virginia General Assembly. Since 1957, more than 18 million visitors have traveled to Jamestown Settlement to tour the world's only life-sized historic replicas of these three ships. Over the past 46 years, each replica has been replaced as they have worn out from use and weathering.



The Foundation's special responsibility to coordinate the 400th anniversary of Jamestown in 2007 prompted the Board of Trustees and staff to evaluate the age, condition, and projected visitation on the ships. After consulting with a wood technologist from Virginia Polytechnic Institute and State University, the staff concluded that the *Godspeed* and *Discovery* replicas, placed in service in 1984, are nearing the end of their useful lives. Maintenance costs are escalating

and repairs cannot adequately reverse the weakening of the ships' planking, frames, and decking caused by a wood-decaying fungus. By 2007, the ships may no longer meet the U.S. Coast Guard standards for hull strength. Based on this information, the Foundation's Board of Trustees and the Museums and Programs Advisory Council—a group of leading Virginia historians, archaeologists, educators and historical anthropologists—endorsed replacement of *Godspeed* and *Discovery*. *Susan Constant*, placed in service in 1991, is not in need of replacement at this time.

Recent historical research indicates that the original *Godspeed* and *Discovery* were larger than believed when the current replicas were built. Reconstruction of the two ships will permit the museum to display the most historically accurate replicas possible. Replacement of the current replicas also offers two advantages for the 2007 commemoration. First, the new *Godspeed* will represent the Commonwealth on an unprecedented, six-month promotional sail in 2006 while the current replica remains at Jamestown Settlement. Secondly, the new, larger vessels will allow more visitors on board at one time, helping to accommodate the museum's projected visitation.

Historical Facts About the Ships

The three original ships set sail from London on December 20, 1606, bound for Virginia. Commanded by Christopher Newport, Bartholomew Gosnold and John Ratcliffe, they carried 105 passengers and 39 crew members on the four-month transatlantic voyage. The expedition was sponsored by the Virginia Company of London, which had been organized to form a colony in Virginia. They reached their final destination, Jamestown, on May 13, 1607. At the time of the original voyage, *Susan Constant* was leased from partners in London. The origins of *Godspeed* and *Discovery* are uncertain. The *Susan Constant* and *Godspeed* returned to London in June 1607, while the *Discovery* remained in Virginia and was used for Chesapeake Bay and coastal exploration. No plans or renderings of the original ships have been found.

Estimated Cost

Proposals for new replicas of the *Godspeed* and *Discovery* are part of the Jamestown-Yorktown Foundation's *Comprehensive Facilities Master Plan* for improvements at Jamestown Settlement and the Yorktown Victory Center to be completed before 2007, the 400th anniversary of the founding of Jamestown. The estimated cost of replacing the two ships is \$2.6 million. The Commonwealth of Virginia has provided approximately \$600,000 for research, design and outfitting. *Godspeed*, the larger of the two vessels, will cost approximately \$1.2 million, and it will cost nearly \$800,000 to build the new *Discovery*. The Foundation's private arm, the Jamestown-Yorktown Foundation, Inc., must raise approximately \$2 million by December 2003 in order for construction to begin in 2004 and be completed by 2006.

Current Project Status

The Jamestown-Yorktown Foundation, Inc., has received \$965,600 in gifts and commitments in support of building two new replica ships for Jamestown Settlement. This represents 48 percent of the private funding goal of \$1,994,052 and almost enough to fund construction of *Godspeed*. The fundraising effort was launched in November 2001 with a \$250,000 matching challenge grant from the Mary Morton Parsons Foundation, and a leadership gift of \$500,000 from the Robins Foundation was received in December 2002. A complete listing of donors to the project is available from the Jamestown-Yorktown Foundation's Development Office.

Mr. Peter Wrike was retained by the Foundation to do historical research on the ships in preparation of their replacement. His research has been provided to Tri-Coastal Marine Naval Architects who are currently developing designs of the new replicas. Jamestown Settlement does not have the land necessary for a project of this size and a builder and construction site have not yet been identified. Construction of the ships is scheduled to begin in spring 2004.

The Jamestown-Yorktown Foundation is applying for funding for construction of these replica ships from the Transportation Enhancement Program for the 21st Century (TEA-21) administered by the Virginia Department of Transportation. For FY 2003-2004, the funding request will be \$375,000, followed by a similar request in FY 2004-2005. The ships' role as national representatives of the Commonwealth and a magnet for 2007 tourism underscores the importance of this funding request.

MEMORANDUM

DATE: June 24, 2003
 TO: The Board of Supervisors
 FROM: John E. McDonald, Manager of Financial and Management Services
 SUBJECT: Short-Term Rental Tax

Attached are possible ordinance revisions to the County’s Short-Term Rental Tax Ordinance. The first provides for the repeal of the tax ordinance, the second provides for the implementation of a revised ordinance effective August 1, 2003.

This is a tax, paid by the consumer, on most rentals of less than 90 days. Customers of video stores, those who rent golf carts, strollers or chain saws, bowlers who rent shoes, and anyone who rents tuxedos, furniture, or carpet cleaners pay an additional one percent County Tax. There are some exemptions to this, such as medical devices: wheel chairs or hospital beds.

The County has had this tax on the books since 1989 but has not imposed it and the Commissioner of the Revenue will begin to assess the tax. The Public Hearing will allow comment on amendments to the current ordinance to bring it into conformance with existing State law.

Members of the Board of Supervisors may wish to repeal this Ordinance, after the Public Hearing, rather than amend it. If this occurs the tax would not be implemented.

If implemented, the fiscal impacts of the tax are estimated to be:

7 businesses	golf cart rentals	\$ 25,000
4 businesses	video rentals	18,250
3 businesses	equipment rentals	14,000
36 businesses	other	<u>7,750</u>
		<u>\$ 65,000</u>

The other businesses include grocery stores, hardware stores, hotels, motels, and convenience stores. This new revenue is offset by business personal property taxes the County would forego, primarily for golf carts and equipment rentals. There is no personal property tax currently imposed on videos. The lost property tax revenue is currently estimated at \$41,500. Combined with annual County costs of approximately \$1,500 to assess, audit, and process tax returns and receipts, the annual expected net revenue is approximately \$22,000.

The businesses in the first three categories – golf carts, videos, and equipment – and Busch Gardens with strollers, walkie-talkie radios, and other rental items, would account for the majority of the tax revenue.

In addition to the annual revenue and costs there are implementation costs for both the County and local businesses. The Commissioner estimates \$7,000 in computer system upgrades for the County. Business costs are anticipated to be around \$25,000 assuming 50 collectors and an average of \$500 per collector to reprogram or replace cash registers. Local businesses would also incur ongoing costs for collection and reporting.

For the golf cart and major equipment companies this tax will represent a tax reduction since business

Public Hearing - Short-Term Rental Tax

June 24, 2003

Page 2

personal property taxes would be eliminated for rented items. The rental tax would be paid by customers rather than by the businesses.

For other collectors – they have assumed the responsibility to collect the tax from their customers and pass on the proceeds to the County. An additional \$65,000 would be charged to users and renters of which the County would net \$22,000 in additional revenue each year.

If the Board of Supervisors chooses to amend and implement the tax, staff recommends that the implementation date be established as of August 1, 2003.

Given the modest new revenue, the shift in the tax burdens to the customers and the impact on local businesses, staff recommends that this tax Ordinance be repealed, rather than amended.

John E. McDonald

JM/adw
sttax.mem

Attachment

ORDINANCE NO.

AN ORDINANCE OF THE COUNTY OF JAMES CITY, VIRGINIA, PROVIDING FOR THE REPEAL OF CHAPTER 20, TAXATION, ARTICLE VIII, SHORT-TERM RENTAL TAX, OF THE CODE OF THE COUNTY OF JAMES CITY, VIRGINIA, AND DECLARING SAME TO BE NULL AND VOID AND OF NO EFFECT.

BE IT ORDAINED by the Board of Supervisors of the County of James City, Virginia, that Chapter 20, Taxation, Article VIII, Short-term rental tax, of the Code of the County of James City, Virginia, is hereby repealed and declared null and void and of no effect.

Jay T. Harrison, Sr.
Chairman, Board of Supervisors

ATTEST:

Sanford B. Wanner
Clerk to the Board

Adopted by the Board of Supervisors of James City County, Virginia, this 24th day of June, 2003.

chp20_repeal.ord

ORDINANCE NO. _____

AN ORDINANCE TO AMEND AND REORDAIN CHAPTER 20, TAXATION, OF THE CODE OF THE COUNTY OF JAMES CITY, VIRGINIA, BY REPEALING ARTICLE VIII, SHORT-TERM RENTAL TAX, AND REPLACING IT WITH AN AMENDED ARTICLE VIII, SHORT-TERM RENTAL TAX.

BE IT ORDAINED by the Board of Supervisors of the County of James City, Virginia, that Chapter 20, Taxation, is hereby amended and reordained by repealing Article VIII, Short-Term Rental Tax, and replacing it with an amended Article VIII, Short-Term Rental Tax, Section 20-49, Definitions; Section 20-50, Duty of the commissioner of the revenue; Section 20-51, Duty of treasurer; Section 20-52, Duty of the lessor; Section 20-53, Levy of tax; Section 20-54, Reports and remittance of tax collected; Section 20-55, Interest and penalties upon failure or refusal to remit tax; Section 20-56, Records to be kept by person liable for collection and payment of tax; Section 20-57, Tax immediately due and payable upon cessation of business; Section 20-58, Procedure upon failure to collect, report, etc.; Section 20-59, Exemptions; Section 20-60, Renter's certificate of registration; and Section 20-61, Violation of article.

Article VIII. Short-Term Rental Tax*

Section 20-49. Definitions.

The following words and phrases, when used in this article, shall have, for the purposes of this article, the following respective meanings except where the context indicates different meaning:

Commissioner of the revenue. The commissioner of the revenue of the county and any of his duly authorized deputies, assistants, employees or agents.

* *State law reference - Taxation, Code of Va., §58.1-3510.1 et seq.*

Daily rental property. All tangible personal property held for rental and owned by a person engaged in the short-term rental business, except trailers, as defined in section 46.2-100 of the Code of Virginia, and other tangible personal property required to be licensed or registered with the Department of Motor Vehicles, Department of Game and Inland Fisheries, or the Department of Aviation.

Gross proceeds. The total amount charged to each person for the rental of daily rental property, excluding any state and local sales tax paid pursuant to the Virginia Retail Sales and Use Tax Act.

Person. Any individual, corporation, company, association, firm, partnership or any group of individuals acting as a unit.

Short-term rental business. A person is engaged in the short-term rental business if not less than 80 percent of the gross rental receipts of such business in any year are from transactions involving rental periods of 92 consecutive days or less, including all extensions and renewals to the same person or a person affiliated with the lessor. "Affiliated" shall mean any common ownership interest in excess of five percent of any officers or partners in common with the lessor and lessee. For purposes of this test, any rental to a person affiliated with the lessor shall be treated as rental receipts but shall not qualify for purposes of the 80 percent requirement, and any rental of personal property which also involves the provision of personal services for the operation of the personal property rented shall not be treated as gross receipts from rental. The delivery and installation of tangible personal property shall not mean operation.

Treasurer. The treasurer of the county and any of his duly authorized deputies, assistants, employees or agents.

Section 20-50. Duty of the commissioner of the revenue.

The commissioner of the revenue shall promulgate rules and regulations for the interpretation, administration and enforcement of this article. It shall also be the duty of the commissioner of the revenue to ascertain the name of every lessor liable for the collection of the tax imposed by this article who fails, refuses or neglects to collect such tax or to make the reports and remittances required by this article. The commissioner of the revenue shall have all of the enforcement powers as authorized by Article 1, Chapter 31 of Title 58.1 of the Code of Virginia (1950), as amended, for purposes of this article.

Section 20-51. Duty of treasurer.

The treasurer shall have the power and the duty of collecting the taxes imposed and levied hereunder and shall cause the same to be paid into the general treasury for the county.

Section 20-52. Duty of the lessor

It shall be the duty of every lessor of the daily rental property in acting as the tax collection medium or agency for the county to collect from the lessee, for the use of the county, the tax hereby imposed and levied at the time of the rental.

The taxes required to be collected under this section shall be deemed to be held in trust by the person required to collect such taxes until remitted to the treasurer.

Section 20-53. Levy of tax

Pursuant to Section 58.1-3510 of the Code of Virginia, there is hereby assessed and imposed on every person engaged in the short-term rental business a tax of one percent on the gross proceeds of such business. Such tax shall be in addition to the tax levied pursuant to Section 58.1-605 of the Code of Virginia.

Section 20-54. Reports and remittance of tax collected.

The taxes collected during each quarter shall be reported to the commissioner of the revenue and remitted by each lessor to the treasurer on or before the 20th day of each of the months of April, July, October and January, representing, respectively, the gross proceeds and taxes collected during the preceding quarters ending March 31, June 30, September 30 and December 31. The return shall be upon such forms and setting forth such information as the commissioner of the revenue may require, showing the amount of gross receipts and the tax required to be collected.

Section 20-55. Interest and penalties upon failure or refusal to remit tax.

If any person shall fail or refuse to remit to the treasurer the tax required to be collected and paid under this article within the time and in the amount specified in this article, there shall be added to such tax by the treasurer a penalty in the amount of ten percent thereof or \$10.00, whichever is greater, and interest thereon at the rate of ten percent per annum, which shall be computed upon the taxes and penalty from the date such taxes are due and payable.

Section 20-56. Records to be kept by person liable for collection and payment of tax.

It shall be the duty of every person liable for the collection and payment to the county of any tax imposed by this article to keep and to preserve for a period of four years such suitable records as may be necessary to determine and show accurately the amount of such tax as he may have been responsible for

collecting and paying to the county. The commissioner of the revenue may inspect such records at all reasonable times.

Section 20-57. Tax immediately due and payable upon cessation of business.

Whenever any person required to collect and remit the tax imposed and levied by this article shall go out of business or otherwise cease to operate, all of such taxes collected shall thereupon be reported to the commissioner of the revenue and remitted to the treasurer.

Section 20-58. Procedure upon failure to collect, report, etc.

If any lessor whose duty it is to do so shall fail or refuse to collect the tax imposed under this article and to make, within the time provided in this article, the reports and remittances mentioned in this article, the commissioner of the revenue shall proceed in such manner as he may deem best to obtain facts and information on which to base his estimate of the tax due. As soon as the commissioner of the revenue shall procure such facts and information as he is able to obtain upon which to base the assessment of any tax payable by any lessor who has failed or refused to collect such tax and to make such report and remittance, he shall proceed to determine and assess against such lessor the tax and penalties provided for by this article and shall notify lessor, by registered mail sent to his last known place of address, of the total amount of such tax and penalties and the total amount thereof shall be payable within ten days from the date such notice is sent.

Section 20-59. Exemptions.

No tax shall be collected or assessed on rentals by the Commonwealth, any political subdivision of the Commonwealth or the United States or any rental of durable medical equipment as defined in Subdivision 22 of Section 58.1-608 of the Code of Virginia. Additionally, all exemptions applicable in Chapter 6 of Title 58.1 of the Code of Virginia (Section 58.1-600 et. seq.) shall apply, mutatis mutandis, to the daily rental property tax.

Section 20-60. Renter's certificate of registration.

Every person engaging in the business of short-term rental of tangible personal property shall file an application for a certificate of registration with the commissioner of the revenue. The application shall be on a form prescribed by the commissioner of the revenue and shall set forth the name under which the applicant intends to operate the rental business, the location and such other information as the commissioner of the revenue may require.

Each applicant shall sign the application as owner of the rental business. If the rental business is owned by an association, partnership or corporation, the application shall be signed by a member, partner, executive officer or other person specifically authorized by the association, partnership or corporation to sign.

Upon approval of the application by the commissioner of the revenue, a certificate of registration shall be issued. The certificate shall be conspicuously displayed at all times at the place of business for which it is issued.

The certificate is not assignable and shall be valid only for the person in whose name it is issued and the place of business designated.

Section 20-61. Violation of article.

Any person violating or failing to comply with any provision of this article shall be guilty of a Class 3 misdemeanor; provided, however, if the amount of tax due and unpaid for any quarterly installment exceeds \$1,000.00, any person failing to remit payment when due shall be guilty of a Class 1 misdemeanor. Each violation or failure shall constitute a separate offense. Such conviction shall not relieve any such person from the payment, collection, or remittance of the tax as provided in this article.

Sections 20-58 ~~62~~ - 20-64. Reserved.

This ordinance shall become effective on August 1, 2003.

Jay T. Harrison, Sr.
Chairman, Board of Supervisors

ATTEST:

Sanford B. Wanner
Clerk to the Board

Adopted by the Board of Supervisors of James City County, Virginia, on this 24th day of June, 2003.

repealc20art8.ord

MEMORANDUM

DATE: June 24, 2003

TO: The Board of Supervisors

FROM: Jody Puckett, Cable Administrator
Leo P. Rogers, Deputy County Attorney

SUBJECT: Ordinance Amendment for Cable Communications Committee's Powers and Responsibilities

Attached for consideration is an ordinance to amend James City County Code, Section 5-8. The amendments were proposed by the Cable Communications Committee. The amendments to paragraph (a) delete the provisions for the initial appointment of Committee members. The replacement language provides that terms of the members shall be staggered so that four members be appointed in April 2005, and three members be appointed in April 2007. Thereafter, a like number would be appointed every four years. The Committee and Staff recommend this change in order to provide some consistency on the Committee and to assist the Committee in its self governance. In order to keep appointment of members on the same schedule, appointment to fill vacancies shall only be for the unexpired portion of the term. The final change to paragraph (a) is to identify that Committee members continue to serve until a successor has been appointed.

The amendments to paragraph (c) are proposed to update the ordinance and properly reflect the duties of the Committee. The first clause of paragraph (c)(1) is deleted because the County has already built the studio. The amendments to paragraph (c)(4) are intended as a clarification. The addition to paragraph (c)(6) allows the Committee to make recommendations in the annual report to the Board prepared by the Cable Administrator. The addition of paragraphs (c)(7) and (8) are made to reflect the current and anticipated functions of the Committee.

We recommend adoption of the proposed Ordinance.

Jody Puckett

Leo P. Rogers

JP/adw
cablesec5-8.mem

Attachment

ORDINANCE NO.

AN ORDINANCE TO AMEND AND REORDAIN CHAPTER 5, CABLE COMMUNICATIONS, OF THE CODE OF THE COUNTY OF JAMES CITY, VIRGINIA, BY AMENDING ARTICLE IV, CABLE COMMUNICATIONS ADMINISTRATOR AND CITIZENS COMMITTEE, SECTION 5-8, CABLE COMMUNICATIONS COMMITTEE'S POWERS AND RESPONSIBILITIES.

BE IT ORDAINED by the Board of Supervisors of the County of James City, Virginia, that Chapter 5, Cable Communications, is hereby amended and reordained by amending Section 5-8, Cable communications committee's powers and responsibilities.

Chapter 5. Cable Communications

Article IV. Cable Communications Administrator and Citizens Committee

Section 5-8. Cable communications committee's powers and responsibilities.

(a) There shall be established a citizen's board entitled the "James City County Cable Communications Committee." The committee shall consist of seven members. Members shall be appointed and serve at the pleasure of the board for terms of four years. No member shall be appointed as a member of the committee for more than two consecutive terms. ~~The terms of the first appointees shall be as follows: three of the committee members shall be for terms of two years. Assignment of the individual terms of members shall be determined by lot by the board. Appointments thereafter shall be for terms of four years.~~ *Terms for committee members shall be staggered so that beginning in April 2005, four members shall be appointed and in April 2007, three members shall be appointed. A like number shall be appointed to serve every four years thereafter. Appointments to fill vacancies shall be only for the unexpired portion of a term, which shall not constitute a term for the two consecutive term limit. A member whose term expires shall continue to serve until his successor is appointed.* The administration shall provide staff support to the committee.

(b) The committee shall adopt bylaws governing its procedures and actions on matters coming before it which shall include provisions for selection and tenure of the committee chairman.

- (c) Responsibilities of the committee shall include, but not be limited to, the following:
- (1) ~~If the county constructs or causes to be constructed a studio, then t~~ The committee shall adopt regulations governing the operation of the public access and educational access channels of cable television and any institutional networks that may be developed.
 - (2) Enforce its public access regulation, if and from the time the franchise certificate vests management of a grantee's public access channel(s) in the committee.
 - (3) Appoint an advisory committee consisting of a cross-section of county citizens to assist in the development of policies and procedures relating to the public access channel.
 - (4) Review with the ~~cable communications~~ administrator required *system* performance evaluations every three years.
 - (5) Advise the board of objectives to be obtained in the county's system based upon its continued evaluation of a franchise and continued assessment of cable technology.
 - (6) Review the annual report to the board prepared by the administrator *and make recommendations to the administrator as may be appropriate.*
 - (7) *Perform research, conduct surveys, and make recommendations on all aspects of the county's system which shall be reported to the board through the administrator's report.*
 - (8) *Serve as a liaison between the county, the grantee(s) and the community.*
 - (7 9) Cooperate with the county and grantee(s) in fulfilling its responsibilities herein.

Jay T. Harrison, Sr.
Chairman, Board of Supervisors

ATTEST:

Sanford B. Wanner
Clerk to the Board

Adopted by the Board of Supervisors of James City County, Virginia, this 24th day of June, 2003.

MEMORANDUM

DATE: June 24, 2003
TO: The Board of Supervisors
FROM: Leo P. Rogers, Deputy County Attorney
SUBJECT: Ordinance Amendment for Driving While Intoxicated (D.W.I.) and Traffic Enforcement

The attached Ordinance incorporates by reference into the James City County Code, the 2003 amendments made by the General Assembly to the D.W.I. and traffic laws. County police are charging traffic offenders under the County Code which must be amended to reflect the State's changes to the applicable D.W.I. and traffic laws. To continue this procedure, it is necessary that the Ordinance be amended.

Staff recommends adoption of the attached Ordinance.

Leo P. Rogers

CONCUR:

Frank M. Morton, III

LPR/adw
DWIord3.mem

Attachment

ORDINANCE NO.

AN ORDINANCE TO AMEND AND REORDAIN CHAPTER 13, MOTOR VEHICLES AND TRAFFIC, OF THE CODE OF THE COUNTY OF JAMES CITY, VIRGINIA, BY AMENDING ARTICLE I, IN GENERAL, SECTION 13-7, ADOPTION OF STATE LAW; AND ARTICLE II, DRIVING AUTOMOBILES, ETC., WHILE INTOXICATED OR UNDER THE INFLUENCE OF ANY DRUG, SECTION 13-28, ADOPTION OF STATE LAW, GENERALLY.

BE IT ORDAINED by the Board of Supervisors of the County of James City, Virginia, that Chapter 13, Motor Vehicles and Traffic, is hereby amended and reordained by amending Article I, In General, Section 13-7, Adoption of state law; and Article II, Driving Automobiles, etc., While Intoxicated or Under the Influence of Any Drug, Section 13-28, Adoption of state law, generally.

Chapter 13. Motor Vehicles and Traffic

Article I. In General

Sec. 13-7. Adoption of state law.

Pursuant to the authority of section 46.2-1313 of the Code of Virginia, as amended, all of the provisions and requirements of the laws of the state contained in Title 46.2 of the Code of Virginia, as amended, and in force on July 1, ~~2002~~ 2003, except those provisions and requirements the violation of which constitutes a felony and those provisions and requirements which by their very nature can have no application to or within the county, are hereby adopted and incorporated in this chapter by reference and made applicable

within the county. Such provisions and requirements are hereby adopted, mutatis mutandis, and made a part of this chapter as fully as though set forth at length herein, and it shall be unlawful for any person, within the county, to violate or fail, neglect or refuse to comply with any provision of Title 46.2 of the Code of Virginia which is adopted by this section; provided, that in no event shall the penalty imposed for the violation of any provision or requirement hereby adopted exceed the penalty imposed for a similar offense under Title 46.2 of the Code of Virginia.

State law reference -Authority to adopt state law on the subject, Code of Va., § 46.2-1313.

Article II. Driving Automobiles, Etc., While Intoxicated
or Under the Influence of any Drug*

Sec. 13-28. Adoption of state law, generally.

Article 9 (section 16.1-278 et seq.) of Chapter 11 of Title 16.1 and Article 2 (section 18.2-266 et seq.) of Chapter 7 of Title 18.2, Code of Virginia, as amended and in force July 1, ~~2002~~ 2003, are hereby adopted and made a part of this chapter as fully as though set out at length herein. It shall be unlawful for any person within the county to violate or fail, neglect or refuse to comply with any section of the Code of Virginia as adopted by this section.

State law reference - Authority to adopt state law on the subject, Code of Va., § 46.2-1313.

This Ordinance shall become effective on July 1, 2003.

Jay T. Harrison, Sr.
Chairman, Board of Supervisors

ATTEST:

Sanford B. Wanner
Clerk to the Board

Adopted by the Board of Supervisors of James City County, Virginia, this 24th day of June, 2003.

03mtrveh.ord

M E M O R A N D U M

DATE: June 24, 2003

TO: The Board of Supervisors

FROM: John T. P. Horne, Development Manager

SUBJECT: Sound Barrier Wall - Route 199

The County has been informed by Jamestown 2007 Corridor Constructors that a sound barrier wall will be constructed with segment II of the Route 199 project along approximately 1,600 feet of the frontage of Williamsburg Landing. Williamsburg Landing will be funding the construction of the basic wall under an agreement with the contractor. Based on discussions with the contractor, there are two alternate design measures that are available to the County should the County wish to fund the alternates. Williamsburg Landing will not fund the alternates.

Alternate No. 1 involves the substitution of concrete columns for the standard metal columns that are in the basic design. Attached is a letter from Gary Massie that outlines the cost of Alternate No.1 and the time line for payment should the County choose this alternate. On the existing sections of Route 199 there are two sections of sound wall which illustrate the basic design and the concrete column design. The section of the sound wall adjacent to the Midlands is constructed with concrete columns (see Figure 1), and the section of wall adjacent to The Mews near the intersection of Longhill Road is constructed with the basic metal columns (see Figure 2). The Board will note that the contractor has requested a decision no later than June 25 on Alternate No. 1. The cost of Alternate No. 1 is \$83,632.

Alternate No. 2 involves a substitute material for the panels on the sound barrier wall. Attached are brochures provided by the contractor that illustrate the one available alternate finish that meets the sound absorption requirements of VDOT. That alternate involves a stamped concrete finish designed to appear like bricks. A decision is not required on Alternate No. 2 until August 31, 2003. The cost of Alternate No. 2 is \$81,592.

The staff has also evaluated the possibility of installing landscaping to soften the appearance of the sound walls. Attached is a map provided by the contractor that shows the sound wall location in relation to the roadway. The sound wall will be in a combination of situations with approximately 60 percent of the sound wall being immediately adjacent to the fill section of the roadway with only a concrete barrier in front of the wall. This will be very similar to the condition as it exists for a portion of the wall near The Mews. It is the staff's judgement that there will not be sufficient area in these locations to plant any landscape material in front of the wall. The remaining 40 percent of the wall will be placed in cut slopes, the majority of which will be able to accommodate some small amount of planting of shrub type materials or vines. Staff is currently concentrating on research of vine materials that could be encouraged to grow in these areas and soften the appearance of the wall. The Board can see portions of the wall near the Midlands where wild vines have begun to grow over the back of the wall that will have some softening effect as they extend down the front of the wall. Staff is also evaluating the possibility of planting larger trees behind the sound wall, which ultimately will grow up and provide some softening of the appearance as branches extend above the wall itself.

Staff has carefully viewed the two sections on the existing Route 199 and does not see a significant aesthetic benefit from the installation of the concrete columns. Staff's opinion is that the aesthetic benefits from the columns, if any, do not justify the cost at over \$83,000. Staff would, therefore, not recommend Alternate No 1.

Sound Wall Barrier - Route 199

June 24, 2003

Page 2

Based on staff conversations with Mr. Massie, and as stated in the letter of May 28, 2003, staff is very cautious about recommending Alternate No. 2. Staff recommends that we identify a location where this material is in place and arrange to view it in the field. That should be able to be arranged over the summer prior to the August 31 deadline. Staff will offer a recommendation at that time.

John T. P. Horne

JTPH/gs
199wall.mem

Attachments

John Horne, Development Manager
James City County
Development Management Department
101-Emounts Bay Road
Williamsburg, VA. 23188

May 28, 2003

**Reference: Sound Barrier Wall # 2
Jamestown Corridor Improvements
Segment II 0199-047-113,C502**

Dear Mr. Horne:

In regards to the above referenced wall we have entered into an agreement with Williamsburg Landing, Inc. to construct the sound barrier wall. Williamsburg Landing, Inc. has advised that it does not wish to exercise either the option for the concrete columns or the option for the stamped brick panels. We are proceeding with design/construction in accordance with these instructions.

Previously you had indicated that James City County might have an independent interest in requesting and funding either of these two alternates via a totally separate and legally unrelated contract. We need your decision on alternate number 1 the concrete column as soon as possible but **no later than June 25th, 2003**. The stamped brick panel requires a decision on or before August 31, 2003.

Under our current agreement with Williamsburg Landing, Inc. the sound barrier wall will be similar in construction and appearance to the wall adjacent to the Mews on route 199. Should you elect to fund alternate # 1 the wall would be similar in appearance to the wall at the Midlands along route 199. Should you be interested in funding alternate # 2 we would contact our panel supplier to locate a current installation and we would then make a field visit to inspect. As you will recall we are concerned that the appearance of a stamped brick panel will not give you the desired effect that you receive by using a laid up brick wall. The brick panels we quoted in alternate # 2 are a solid color that is applied after the wall is removed from the mold to the raised brick portion of the panel. The depressed area of the wall not receiving the paint that is applied to the raised brick portion leaving the mortar joint a cement color creates the mortar joint. All raised bricks are uniform in color and if color variegation is required that requires painting of individual bricks, which would be an additional charge. In the event you were to wish that we pursued alternate # 2 we urge caution and want to be sure that we can provide a product that meets your expectations.

CORRIDOR CONTRACTORS

The draw schedule for each of these alternates should they be selected by James City County is:

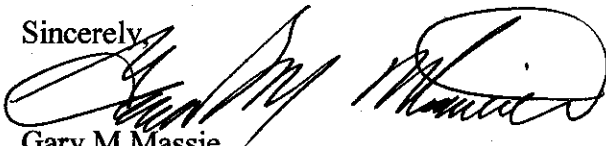
Alternate	\$ Amount	Draw request month
Alternate # 1 Concrete Columns	\$ 83,632.00	October 2004
Alternate # 2 Brick Panels	\$ 81,592.00	December 2004

Attached for your review is the following:

March 26, 2003 Williamsburg Landing Inc. acceptance letter
March 14, 2003 letter to Alvin Anderson outlining the proposed time line
January 6, 2003 Letter from VDOT permitting construction of the wall
Panel brochure

Should you require additional information please advise. Previously we have submitted to you the entire proposal of December 16, 2002. We appreciate the opportunity to bring these alternates to the community. Please review and advise if James City County desires to request and fund either of the two alternates.

Sincerely,



Gary M Massie
Project Manager

cc: Alvin Anderson
Barry Bryant w/o attachments
Andy Curtis w/o attachments

F:\Document Files\2007 CC\RFP\1\SoundWall Alt 1&2 letter to John Horne 5-28-03 Rev 1.doc



Jamestown 2007 Corridor Constructors

John Horne, Development Manager, James City County
Development Management Department
101-Emounts Bay Road
Williamsburg, VA. 23188

June 3, 2003

**Reference: Sound Barrier Wall # 2, Wall Location and Absorptive Panels
Jamestown Corridor Improvements
Segment II 0199-047-113,C502**

RECEIVED
JUN 06 2003
DEVELOPMENT MANAGEMENT

Dear Mr. Horne:

In regards to the above referenced barrier we offer seven copies of the following:

- 1) Concrete Precast Systems Security Walls and Barriers brochure. The only two panel types, which are sound absorptive are the VDOT standard and the brick pattern shown on page 3. The other finishes are reflective and could be considered as alternates, at additional cost, to the rear "fuzzy rake" finish currently included in our proposal.
- 2) Barrier 2 typical sections, which show the location of the wall in, fill sections and cut sections. This is similar to what you will find at the Mews location on route 199 as barrier in the fill slopes is located on the break of shoulder and has a standard MB-7D in front of the barrier. The distance that the wall is located off of the edge of pavement varies in the cut slopes and the height of the wall is variable to approximately 17 feet in height as the bottom of the wall rises as the original ground on the top of the cut slope rises. Currently at the Mews the barrier located at the break of shoulder is approximately 24 feet in height. The barrier on the Williamsburg Landing project will be approximately 23 feet in height when located along the break of shoulder.
- 3) Exhibit B, which locates the wall highlighted in yellow, in relationship to route 199 and Willow Springs Court, Spotswood Cay and Tanglewood Cove.

Should you require additional information please call.

Sincerely,


Gary M Massie
Project Manager

cc: Alvin Anderson
Barry Bryant w/o attachments
Andy Curtis w/o attachments

F:\Document Files\ 2007 CC\RFP\John Horne letter regarding Height of soundwall.doc

CORRIDOR CONTRACTORS

MAR 28 REC



March 26, 2003

**SENT VIA FACSIMILE AND BY
CERTIFIED MAIL RETURN RECEIPT REQUESTED**

Jamestown 2007 Corridor Constructors
Mr. Gary M. Massie, Project Manager
P.O. Box 730
Norge, VA 23127

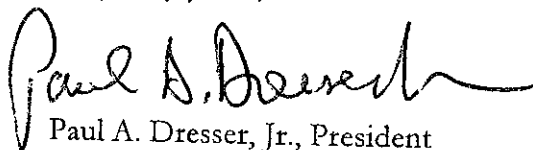
Dear Mr. Massie:

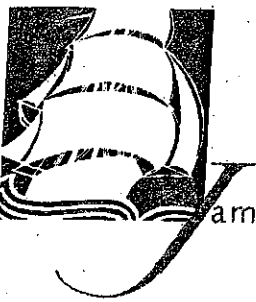
Receipt is acknowledged of your proposal for Williamsburg Landing, Inc. dated December 16, 2002 addressed to our attorney, Mr. Alvin Anderson, your letter of December 18, 2002 for Williamsburg Landing, Inc. addressed to Mr. Alvin Anderson, the copy of the letter dated January 6, 2003 from C.F. Gee, Chief of Operations, Department of Transportation, Commonwealth of Virginia to you and your letter of March 14, 2003 for Williamsburg Landing, Inc. addressed to Mr. Alvin Anderson (said documents are collectively called herein "Your Offer").

I, as President of Williamsburg Landing, Inc. do hereby accept Your Offer for the "Total Base Proposal RFP#1" in the amount of One Million Six Hundred Forty Three Thousand Five Hundred Sixty One and No/100 Dollars (\$1,643,561.00). It is my understanding that by your letter of March 14, 2003 to Mr. Anderson, Jamestown 2007 Corridor Constructors, LLC has further agreed that no final decision needs to be made on the acceptance/rejection of the Alternate Additions to the Base Proposal until May 31, 2003 for Alternate "1" (Concrete Column Upgrade) and August 31, 2003 for Alternate "2" (Stamped Brick Panel Finish).

This action is being taken by Williamsburg Landing based solely on the changed conditions caused by the expansion of Virginia State Route 199.

Very truly yours,


Paul A. Dresser, Jr., President



Jamestown 2007 Corridor Constructors

Mr. Alvin Anderson
Kaufman & Canoles PC
1200 Old Colony Lane
Williamsburg, Va. 23188

March 14, 2003

Reference: RFP # 1 Sound Barrier # 2

Dear Alvin:

In regards to your phone inquiry of 3-12-03 regarding the timing of a decision on the alternates for the sound barrier I have discussed the impact of a decision with our engineer and our contractor. Currently a decision is needed on the Base Proposal by 3-31-03, as we must design our soil-reinforcing grid around the pile penetrations.

Originally when this proposal was first contemplated we envisioned the pile punching through the soil-reinforcing grid. Since that time we have learned that we cannot punch through the soil reinforcement but must design the pile penetrations and layout the soil reinforcement to go around each penetration. Therefore should you elect to accept our proposal we will commence immediately with the design work for the wall barrier and will incur cost which we will invoice for reimbursement. Hence assuming your acceptance by March 31st we would desire to execute a contract and progress bill as work is completed. This revises our projected draw schedule of 12-18-03 and we outline a revised draw schedule for your consideration.

In response to your request for a deferred decision date regarding the alternates we can offer the following schedule that will allow you the maximum decision time yet not delay project completion:

Date	Decision
March 31, 2003	Receive written acceptance of our Base Proposal
April 15, 2003	Execute a change order for Base Proposal
May 31, 2003	Decide on Alternate A Concrete Column Upgrade
June 15, 2003	Receive a change order for Alternate A

August 31, 2003 Decide on Alternate B Stamped brick Panel Finish

September 15, 2003 Receive a change order for Alternate B

The revised draw schedule for the base proposal based on early starts for all preceding activities is as follows:

Date 10 th of month	Draw Schedule
June 2003	
July 2003	\$ 20,000.00
August 2003	\$ 50,000.00
	\$ 50,000.00
September 2004	\$ 290,000.00
October 2004	\$ 328,000.00
November 2004	\$ 328,000.00
December 2004	\$ 328,000.00
January 2005	\$ 249,561.00
Total	\$ 1,643,561.00

Once you make a decision we need to discuss how the contractual arrangements will be completed. I would suggest a preliminary meeting with Williamsburg Landing, VDOT and John Horne to determine what will be acceptable to all parties. We look forward to adding these enhancements to the corridor and hope this letter assist the Williamsburg Landing in making their decision.

Sincerely,

Jamestown 2007 Corridor Constructors, LLC



Gary M Massie
Project Manager

- CC: Raymond Partridge
- Dave Wesson
- Don Lockard
- John Horne
- Tim Mills
- Barry Bryant

J2007CC/RFP# 1/Time extensions on alternates



COMMONWEALTH of VIRGINIA

DEPARTMENT OF TRANSPORTATION
1401 EAST BROAD STREET
RICHMOND, VIRGINIA 23219-2000

PHILIP A. SHUCET
COMMISSIONER

C. F. GEE
CHIEF OF OPERATION

January 6, 2003

Mr. Gary M. Massie
Project Manager
Jamestown 2007 Corridor Constructors
P.O. Box 730
Norge, VA 23127

Dear Mr. Massie:

Per your request, the Virginia Department of Transportation (VDOT) has reviewed the Jamestown 2007 Corridor Constructors' (J2007CC) proposal for the provision of a sound barrier to mitigate the impacts that are predicted to occur for properties located at the Williamsburg Landing development.

The preliminary sound barrier wall design, as submitted by J2007CC differs only in total square footage in comparison to the criteria established in the noise study prepared by VDOT dated September 24, 1997 revised and updated May 7, 2002, August 20, 2002 and October 18, 2002 but in all other aspects, satisfies the requirements of the noise study.

This is not a Directed Change. However, VDOT is willing to grant approval of the design and subsequent construction of the sound barrier walls provided J2007CC secures adequate funding to complete all design and construction activities associated with the proposed barrier walls.

The final sound barrier wall design and installation must be performed in accordance with the requirements of applicable criteria contained in the Standards as listed in Appendix 6 of the Design Build Contract. VDOT would then assume maintenance responsibilities once the sound barrier wall is constructed in accordance with the approved design.

If you have any questions, please contact me at (804) 786-2707.

Sincerely,

A handwritten signature in black ink, appearing to read "C. F. Gee".

C. F. Gee, P.E.

Cc: The Honorable Whittington D. Clement
Mr. Philip A. Shucet
Mr. Claude D. Garver, Jr., P.E.
Mr. Malcom T. Kerley, P.E.
Ms. Barbara Reese
Mr. Raymond T. Partridge
Ms. Jane Wimbush
Mr. John Neal

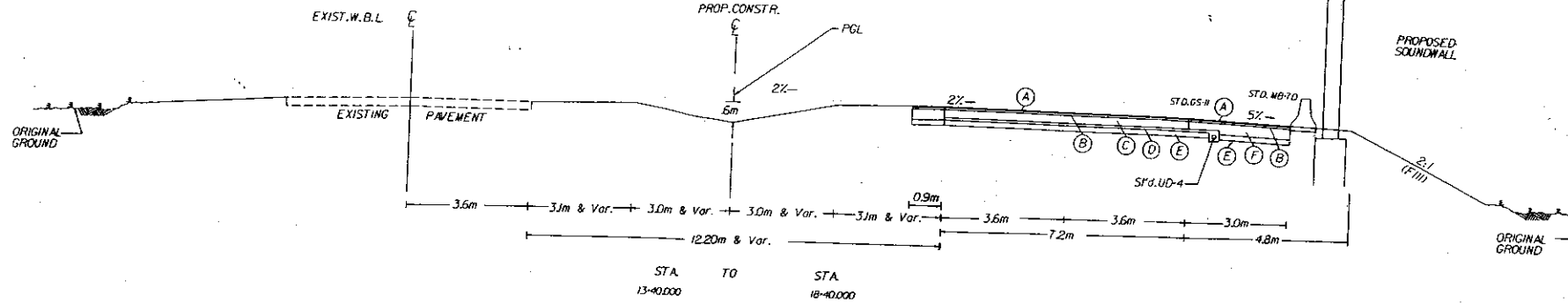
LEGEND FOR TYPICAL SECTIONS

- (A) Asphalt Concrete Type SM-9.5D @ 90 kg/m²
- (B) Asphalt Concrete Type 1M-19.0D @ 120 kg/m²
- (C) 228.6 mm Asphalt Concrete Type BM-25
- (D) 76.2 mm Stabilized Open Graded Material
- (E) 152.4 mm Cement Treated Aggregate (CTA)
- (F) 317.5 mm & Var. Depth Aggr. Base Mat. No. 21B

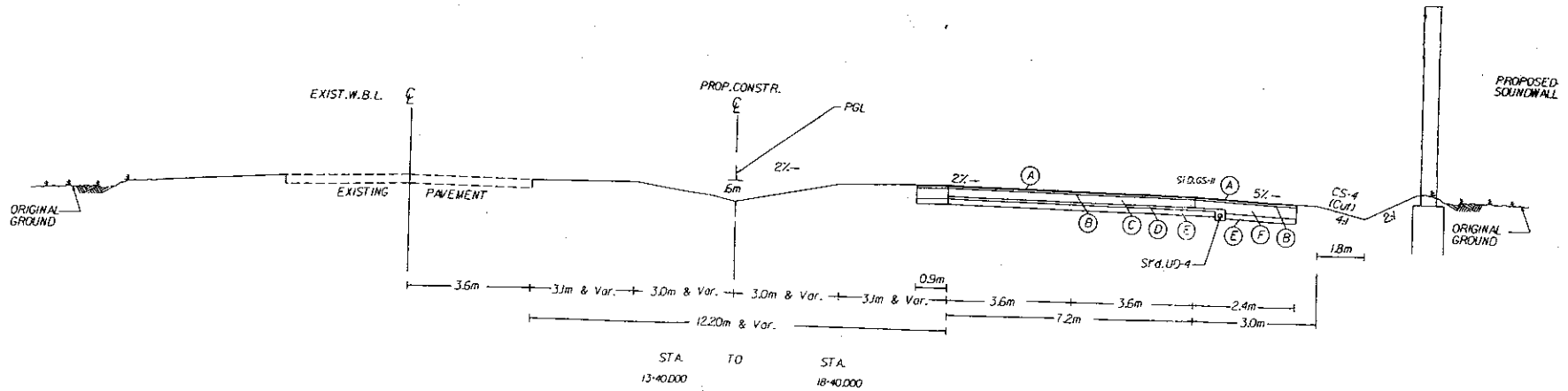
DESIGN FEATURES RELATING TO CONSTRUCTION OR TO REGULATION AND CONTROL OF TRAFFIC MAY BE SUBJECT TO CHANGE AS DEEMED NECESSARY BY THE DEPARTMENT

NO.	DATE	PROJECT	NO.	DATE	PROJECT
1	11		199	01/99-047-10	CS02

BARRIER 2 TYPICAL FILL SECTION



BARRIER 2 TYPICAL CUT SECTION



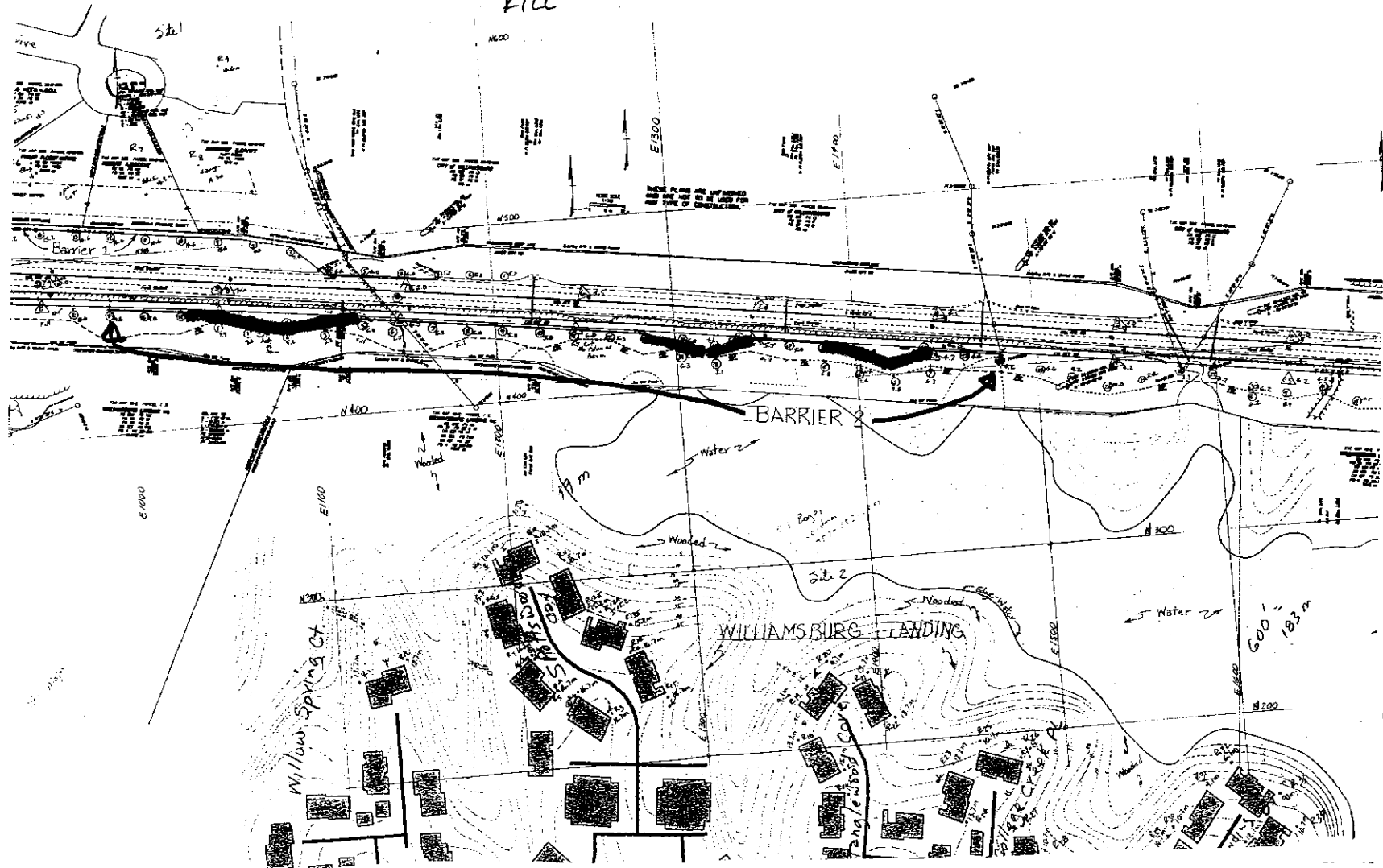
DRAWN BY: J. J. BROWN
 CHECKED BY: J. J. BROWN
 APPROVED BY: J. J. BROWN
 DATE: 01/99

1/11/99

0199-047-110, C 502
JAMES CITY COUNTY
PPMS-18973

HILLS -Phase 1

**COT
FILL**



SCALE
1" ≈ 182'

M E M O R A N D U M

DATE: June 24, 2003

TO: The Board of Supervisors

FROM: Stephanie Ahrendt, Purchasing Director

SUBJECT: Proposed Procedures - Implementation of the Public-Private Education Facilities and Infrastructure Act of 2002

The 2002 Virginia General Assembly passed the Public-Private Educational Facilities and Infrastructure Act of 2002 (PPEA), which was modeled after Virginia's Public-Private Transportation Act of 1995 (PPTA). As an alternative to traditional procurement and financing methods, the PPEA extends the potential benefits of public-private partnerships to local governments and public education. The PPEA would provide more choices for the Board in its capital improvements planning process as it examines all possibilities to identify the best method for delivering public facility improvements to the citizens. A wide variety of projects such as stadium construction, existing building renovations, park expansions, and capital equipment replacement can be considered under the PPEA.

The PPEA authorizes private entities to acquire, design, construct, improve, renovate, expand, equip, maintain, or operate qualifying projects after obtaining approval of a public entity.

A "qualifying project" is: (i) any education facility that is operated as part of the public school system or as an institution of higher education; (ii) any building or facility for principal use by any public entity; (iii) any equipment or improvements necessary to enhance public safety and security of buildings to be principally used by a public entity; (iv) utility and telecommunications and other communications infrastructure; or (v) a recreational facility.

A responsible public entity may approve such a project if it determines that: (i) there is a public need for or benefit derived from the qualifying project of the type proposed by the private entity; (ii) the estimated cost of the qualifying project is reasonable in relation to similar facilities; and (iii) the private entity's plans will result in the timely acquisition, design, construction, improvement, renovation, expansion, equipping, maintenance, or operation of the qualifying project.

In order for the County to be able to consider projects under PPEA, the Board must adopt procedures for receiving and evaluating any proposal submitted under the provisions of the PPEA. The proposed County Procedures are based upon the Model Procedures developed by a special committee of the State Division of Legislative Services. A copy of the proposed County Procedures is attached.

The Procedures enable the County to solicit proposals directly from private contractors and also receive unsolicited proposals from interested private entities. Entities submitting an unsolicited proposal must pay an initial fee of one percent of the reasonably anticipated total project cost in order for the County to proceed with its review. The initial fee shall be no less than \$1,000 nor more than \$20,000, regardless of the anticipated total project cost. PPEA fee levels in other localities were considered in developing the County's fees. The County may consider an unsolicited proposal or reject it without further explanation. If the County chooses to consider an unsolicited proposal, public notice shall be given. Interested parties have 45 days from the date of the notice to submit competing unsolicited proposals. During this 45 day period, the County may continue to evaluate the original unsolicited proposal. All projects would require Board approval and execution of a Board approved comprehensive agreement defining the rights and responsibilities of the

Proposed Procedures - Implementation of the Public-Private Education Facilities and Infrastructure Act of 2002

June 24, 2003

Page 2

County and the private entity in regard to the project.

Staff recommends approval of the attached resolution adopting the proposed James City County Procedures Regarding Requests Made Pursuant to the Public-Private Education Facilities and Infrastructure Act of 2002.

Stephanie Ahrendt

CONCUR:

John E. McDonald

SA/gb
procedures.mem

Attachments

Prepared 6/12, 3 p.m.

James City County
Procedures Regarding Requests Made Pursuant to
the Public-Private Education Facilities and
Infrastructure Act of 2002

June 24, 2003

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I. INTRODUCTION

The Public-Private Education Facilities and Infrastructure Act of 2002, Va. Code Ann. §§ 56-575.1 to -575.16 (the “PPEA”), grants a public entity the authority to create public-private partnerships for the development of a wide range of projects for public use (“qualifying projects”) if the public entity determines that there is a need for a project and that private involvement may provide the project to the public in a timely or cost-effective fashion. The definition of “public entity” in § 56-575.1 of the PPEA includes, *inter alia*, any political subdivision of the Commonwealth.

Section 56-575.16 of the PPEA provides that a public entity having the power to acquire, design, construct, improve, renovate, expand, equip, maintain, or operate a qualifying project (a “responsible public entity”) may not consider any proposal by a private entity for approval of the qualifying project pursuant to the PPEA until the responsible public entity has adopted and made publicly available procedures that are sufficient to enable the responsible public entity to comply with the PPEA. Accordingly, these procedures (the “Procedures”) are hereby adopted by the Board of Supervisors (the “Board”) as the governing body of James City County (the “County”). The Board must adopt any amendments to these Procedures. The County Purchasing Director shall serve as the point of contact to receive proposals submitted under the PPEA and to respond to inquiries regarding the PPEA or these Procedures.

II. GENERAL PROVISIONS

A. Proposals

1. Pursuant to Section 56-575.4 of the PPEA, a proposal may be either solicited by the County (a “Solicited Bid/Proposal”) or delivered by a private entity on an unsolicited basis (an “Unsolicited Proposal”). In either case, any such proposal shall be clearly identified as a “PPEA Proposal.” Proposers may be required to follow a two-part proposal submission process consisting of a conceptual phase and a detailed phase, as described herein.

2. The requirements for any particular Solicited Bid/Proposal shall be as specified in the solicitation by the County for that particular proposal and shall be consistent with all applicable provisions of the PPEA.

3. All Unsolicited Proposals shall be submitted to the County by delivering six complete copies, together with the required initial review fee as provided below in § II C., to the Purchasing Director, James City County Purchasing Office. Other requirements for an Unsolicited Proposal are as set forth below in § IV. A working group may be designated by the County Administrator to review and evaluate Unsolicited Proposals.

4. The County may require that any proposal be clarified. Such clarification may include, but is not limited to, submission of additional documentation, responses to specific questions, and interviews with potential project participants.

B. Affected Local Jurisdictions

1. The term “affected local jurisdiction” includes any county, city or town in which all or a portion of a qualifying project is located.

2. Any private entity submitting a Solicited Bid/Proposal or an Unsolicited Proposal to the County as the responsible public entity for a qualifying project must provide any other affected local jurisdiction with a copy of the proposal by certified mail, express delivery, or hand delivery within five business days of submission of the proposal to the County. Any such other affected local jurisdiction shall have 60 days from the date it receives its copy of the proposal to submit written comments to the County and to indicate whether the proposed qualifying project is compatible with the affected local jurisdiction’s local comprehensive plan, local infrastructure development plans, capital improvements budget, or other government spending plan. The County will consider comments received within the 60-day period prior to entering into a comprehensive agreement pursuant to the PPEA regarding the proposal. However, the County may begin or continue its evaluation of any such proposal during the 60-day period for the receipt of comments from affected local jurisdictions.

C. Proposal Review Fee

1. A review fee will be charged to a private entity submitting an Unsolicited Proposal to the County to cover the County’s costs of processing, reviewing, and evaluating the proposal, including the cost to compare it to any competing proposals. Such costs include but are not limited to County staff time, the cost of any materials or supplies expended, and the cost of any outside advisors or consultants, including but not limited to attorneys, consultants and/or financial advisors, used by the County in its sole discretion to assist in processing, reviewing, or evaluating the proposal. Such fees generally shall be in the amount necessary to completely cover all of the County’s costs.

2. Such fees shall be imposed based on the reasonably anticipated costs to the County in accordance with the following schedule:

a. Initial fee. Payment of an initial fee must accompany the submission of the Unsolicited Proposal to the County in order for the County to proceed with its review. The initial fee shall be one percent of the reasonably anticipated total cost of the proposed qualifying project, but shall be no less than \$1,000 nor more than \$20,000, regardless of the anticipated total cost.

b. Additional fees. Additional fees shall be imposed on and paid by the private entity throughout the processing, review, and evaluation of the Unsolicited Proposal if and as the County reasonably anticipates incurring costs in excess

of the initial fee paid by the private entity. The County will notify the private entity of the amount of such additional fees when it anticipates incurring such costs. Prompt payment of such additional fees is required before the County will continue to process, review, and evaluate the proposal.

c. Reimbursement of excess fees paid. In the event the total fees paid by the private entity exceed the County's total costs incurred in processing, reviewing, and evaluating the proposal, the County shall reimburse the difference. Otherwise, the County shall retain all fees paid.

D. Virginia Freedom of Information Act

1. Generally, proposal documents submitted by private entities are subject to the Virginia Freedom of Information Act ("FOIA"-- Virginia Code § 2.2-3700 et seq.). In accordance with § 2.2-3705 A 56 of FOIA, such documents are releasable if requested, except to the extent that they relate to (i) confidential proprietary information submitted to the County under a promise of confidentiality or (ii) memoranda, working papers or other records related to proposals if making public such records would adversely affect the financial interest of the County or the private entity or the bargaining position of either party.

2. Subsection 56-575.4 G of the PPEA imposes an obligation on the County and any affected jurisdiction to protect confidential proprietary information submitted by a private entity or operator. When the private entity requests that the County not disclose information, the private entity must (i) invoke the exclusion when the data or materials are submitted to the County or before such submission, (ii) identify the data and materials for which protection from disclosure is sought, and (iii) state why the exclusion from disclosure is necessary. A private entity may request and receive a determination from the County entity as to the anticipated scope of protection prior to submitting the proposal. The County is authorized and obligated to protect only confidential proprietary information, and thus will not protect any portion of a proposal from disclosure if the entire proposal has been designated confidential by the private entity without reasonably differentiating between the proprietary and non-proprietary information contained therein.

3. Upon receipt of a request from a private entity that designated portions of a proposal be protected from disclosure as confidential and proprietary, the County will determine whether such protection is appropriate under applicable law and, if appropriate, the scope of such appropriate protection, and shall communicate its determination to the private entity. If the determination regarding protection or the scope thereof differs from the private entity's request, then the County will accord the private entity a reasonable opportunity to clarify and justify its request. Upon a final determination by the County to accord less protection than requested by the private entity, the private entity will be given an opportunity to withdraw its proposal. A

proposal so withdrawn will be treated in the same manner as a proposal not accepted for publication and conceptual-phase consideration as provided below in § IV(A)(1).

E. Use of Public Funds

Virginia constitutional and statutory requirements as they apply to appropriation and expenditure of public funds apply to any comprehensive agreement entered into under the PPEA. Accordingly, the processes and procedural requirements associated with the expenditure or obligation of public funds shall be incorporated into planning for any PPEA project or projects and shall be in compliance with the County's fiscal policies.

F. Applicability of Other Laws

Nothing in the PPEA shall affect the duty of the County to comply with all other applicable law not in conflict with the PPEA. The applicability of the Virginia Public Procurement Act (the "VPPA") is as set forth in the PPEA.

III. SOLICITED BIDS/PROPOSALS

1. The procedures applicable to any particular Solicited Bid/Proposal shall be specified in the solicitation for that proposal and shall be consistent with the requirements of the PPEA and any other applicable law. All such solicitations shall be by issuance of a written Invitation to Bid ("IFB") or Request for Proposal ("RFP") within the meaning of "competitive sealed bidding" and "competitive negotiation" as used in the James City County Purchasing Policy.

2. Any proposal submitted pursuant to the PPEA that is not received in response to an IFB or RFP shall be an Unsolicited Proposal under these procedures, including but not limited to (a) proposals received in response to a notice of the prior receipt of another Unsolicited Proposal as required by the PPEA and provided for below in § IV(A)(2) and (b) proposals received in response to publicity by the County concerning particular needs when the County has not issued a corresponding IFB or RFP, even if the County otherwise has encouraged the submission of proposals pursuant to the PPEA that address those needs.

IV. UNSOLICITED PROPOSALS

The process for evaluating Unsolicited Proposals, described in detail below, consists of four steps: 1) upon receipt of an Unsolicited Proposal, the County will determine whether to accept it for consideration at the conceptual phase; 2) if so, the County will give public notice of the Unsolicited Proposal; 3) the County will proceed with a review at the conceptual stage of the original Unsolicited Proposal and/or any proposal received in response to the public notice and accepted for consideration at

the conceptual stage; and 4) the County will conduct an in-depth review at the detailed stage of the original Unsolicited Proposal and/or any proposal received in response to the public notice and accepted for consideration at the detailed stage. The County may discontinue its evaluation of any proposal at any time. Furthermore, if the County determines that it is in the County's interest to do so with respect to any Unsolicited Proposal, the County may eliminate review at the conceptual stage and proceed directly to a review at the detailed stage.

A. Decision to Accept and Consider Unsolicited Proposal; Notice

1. Upon receipt from a private entity of any Unsolicited Proposal accompanied by payment of any required fees, the County will determine whether to accept the Unsolicited Proposal for publication and conceptual-phase consideration, as described below. If the County determines not to accept the proposal at this stage it will return the proposal and the accompanying initial review fee to the private entity.

2. If the County chooses to accept an unsolicited proposal for conceptual-phase consideration, it shall post a notice in a public area regularly used by the County for posting of public notices for a period of not less than 45 days. The County shall also publish the same notice in one or more newspapers or periodicals of general circulation in the County to notify any parties that may be interested in submitting competing unsolicited proposals. Interested parties shall have 45 days from the date the notice is published to submit competing unsolicited proposals. The notice shall state that the County (i) has received and accepted an unsolicited proposal under the PPEA, (ii) intends to evaluate the proposal, (iii) may negotiate a comprehensive agreement with the proposer based on the proposal, and (iv) will accept for simultaneous consideration any competing proposals that comply with the procedures adopted by the County and the PPEA. The notice also shall summarize the proposed qualifying project or projects, and identify their proposed locations. During the 45-day period for receiving competing Unsolicited Proposals, the County may continue to evaluate the original Unsolicited Proposal.

B. Contents of Initial Submission

1. An Unsolicited Proposal must contain information on the private entity's qualifications and experience, project characteristics, project financing, anticipated public reaction, and project benefit and compatibility. The information should be adequate to enable the County to evaluate the practicality and sufficiency of the proposal. The private entity may request that the County consider a two-step proposal process, consisting of an initial conceptual submission to be followed by a more detailed submission.

2. Unsolicited Proposals should provide a concise description of the private entity's capability to complete the proposed qualifying project and the benefits to be derived from the project by the County. Project benefits to be considered may occur during the construction, renovation, expansion or improvement phase and during the life

cycle of the project. Proposals also should include a comprehensive scope of work and a financial plan for the project, containing enough detail to allow an analysis by the County of the financial feasibility of the proposed project, including but not limited to (a) the identity of any parties expected to provide financing for the project and (b) a statement indicating whether the private entity intends to request the County to provide resources for financing the project and the nature and extent of any such resources.

3. The County may require additional submissions to clarify information previously provided or to address other areas of concern to the County.

C. Initial Review at the Conceptual Stage

1. Only proposals complying with the requirements of the PPEA and these Procedures that contain sufficient information for a meaningful evaluation and that are provided in an appropriate format, as described below, will be considered by the County for further review at the conceptual stage.

2. The County will determine at this initial stage of review whether it will proceed using procurement through competitive sealed bidding as defined in the VPPA or procedures developed by the County that are consistent with procurement of other than professional services through competitive negotiation as defined in the VPPA.

3. After reviewing an Unsolicited Proposal and any competing Unsolicited Proposals submitted during the notice period, the County may determine (a) not to proceed further with any proposal, (b) to proceed to the detailed phase of review with the original proposal, (c) to proceed to the detailed phase with a competing proposal, or (d) to proceed to the detailed phase with multiple proposals. The County at all times retains the right to reject any proposal at any time for any reason whatsoever.

D. Format for Submissions at the Conceptual Stage

Unsolicited Proposals at the conceptual stage shall contain the following information in the following format, plus such additional information as the County may request:

1. Qualification and Experience

a. Identify the legal structure of the firm or consortium of firms making the proposal. Identify the organizational structure for the project, the management approach and how each partner and major subcontractor in the structure fits into the overall team.

b. Describe the experience of the firm or consortium of firms making the proposal and the key principals involved in the proposed project including experience with projects of comparable size and complexity, including prior experience

bringing similar projects to completion on budget and in compliance with design, land use, service and other standards. Describe the length of time in business, business experience, public sector experience and other engagements of the firm or consortium of firms. Include the identity of any firms that will provide design, construction and completion guarantees and warranties and a description of such guarantees and warranties. Provide resumes of the key individuals who will be involved in the project.

c. Provide the names, addresses, and telephone numbers of persons within the firm or consortium of firms who may be contacted for further information.

d. Provide a current or most recently audited financial statement of the firm or firms and each partner with an equity interest of twenty percent or greater.

e. Identify any persons known to the private entity who would be obligated to disqualify themselves from participation in any transaction arising from or in connection to the project pursuant to The Virginia State and Local Government Conflict of Interest Act, Chapter 31 (§ 2.2-3100 et seq.) of Title 2.2.

2. Project Characteristics

a. Provide a description of the project, including the conceptual design. Describe the proposed project in sufficient detail so that type and intent of the project, the location, and all the communities that may be affected are clearly identified.

b. Identify and fully describe any work to be performed by the County or any other public entity.

c. Include a list of all federal, state and local permits and approvals required for the project and a schedule for obtaining such permits and approvals.

d. Identify any anticipated adverse social, economic and environmental impacts of the project measured against the County's comprehensive land use plan and applicable ordinances and design standards. Specify the strategies or actions to mitigate known impacts of the project.

e. Identify the projected positive social, economic and environmental impacts of the project measured against the County's comprehensive land use plan and applicable ordinances and design standards.

f. Identify the proposed schedule for the work on the project, including sufficient time for the County's review and the estimated time for completion.

g. Propose allocation of risk and liability for work completed beyond the agreement's completion date, and assurances for timely completion of the project.

h. State assumptions related to ownership, legal liability, law enforcement and operation of the project and the existence of any restrictions on the County's use of the project.

i. Provide information relative to phased or partial openings of the proposed project prior to completion of the entire work.

j. Describe any architectural, building, engineering, or other applicable standards that the proposed project will meet.

3. Project Financing

a. Provide a preliminary estimate and estimating methodology of the cost of the work by phase, segment, or both.

b. Submit a plan for the development, financing and operation of the project showing the anticipated schedule on which funds will be required. Describe the anticipated costs of and proposed sources and uses for all such funds, including any anticipated debt service costs. The operational plan should include appropriate staffing levels and associated costs based upon the County's operational standards.

c. Include a list and discussion of assumptions underlying all major elements of the plan.

d. Identify all anticipated risk factors and methods for dealing with these factors. Describe methods and remedies associated with any financial default.

e. Identify any local, state or federal resources that the private entity contemplates requesting for the project along with an anticipated schedule of resource requirements. Describe the total commitment, if any, expected from governmental sources (identify each such source) and the timing of any anticipated commitment, both one-time and on-going.

f. Identify any third parties that the private entity contemplates will provide financing for the project and describe the nature and timing of each such commitment.

4. Project Benefit and Compatibility

a. Describe the anticipated benefits to the community, region or state, including anticipated benefits to the economic, social, environmental,

transportation, etc., condition of the County. Identify who will benefit from the project and how they will benefit.

b. Identify any anticipated public support or opposition, as well as any anticipated government support or opposition (including that in any affected jurisdiction), for the project.

c. Explain the strategy and plans, including the anticipated timeline, that will be carried out to involve and inform the general public, business community, and governmental agencies in areas affected by the project.

d. Explain whether and, if so, how the project is critical to attracting or maintaining competitive industries and businesses to the County or the surrounding region.

e. Explain whether and, if so, how the project is compatible with the County's comprehensive plan (including related environmental, land use and facility standards ordinances, where applicable), infrastructure development plans, capital improvements budget, or other government spending plan.

E. Format for Submissions at the Detailed Stage

If the County decides to proceed to the detailed phase of review with one or more Unsolicited Proposals, then the following information must be provided by the private entity unless waived by the County:

1. A topographical map (1:2,000 or other appropriate scale) depicting the location of the proposed project.

2. A list of public utility facilities, if any, that will be crossed by the qualifying project and a statement of the plans of the private entity to accommodate such crossings.

3. A statement and strategy setting out the plans for securing all necessary property and/or easements. The statement must include the names and addresses, if known, of the current owners of the subject property as well as a list of any property the private entity intends to request the County or affected jurisdiction to condemn.

4. A detailed listing of all firms, along with their relevant experience and abilities, that will provide specific design, construction and completion guarantees and warranties, and a brief description of such guarantees and warranties along with a record of any prior defaults for performance.

5. A total life-cycle cost, including maintenance, specifying methodology and assumptions of the project or projects including major building systems (i.e., electrical, mechanical, etc.) and the proposed project start date. Include anticipated commitment of all parties; equity, debt, and other financing mechanisms; and a schedule of project revenues and project costs. The life-cycle cost analysis should include, but not be limited to, a detailed analysis of the projected return, rate of return, or both, expected useful life of facility and estimated annual operating expenses using County service levels and standards.

6. A detailed discussion of assumptions about user fees or rates, lease payments and other service payments, and the methodology and circumstances for changes and usage of the project over its estimated useful life.

7. Identification of any known government support or opposition, or general public support or opposition for the project. Government or public support should be demonstrated through resolution of official bodies, minutes of meetings, letters, or other official communications.

8. Demonstration of consistency with appropriate County and/or affected jurisdiction comprehensive plans (including related environmental, land use and facility standards ordinances, where applicable), infrastructure development plans, transportation plans, capital improvement plan and capital budget, or indication of the steps required for acceptance into such plans.

9. Explanation of how the proposed project would impact local development plans of the County and each affected local jurisdiction.

10. Identification of any known conflicts of interest or other limitations that may impact the County's consideration of the proposal, including the identification of any persons known to the private entity who would be obligated to disqualify themselves from participation in any transaction arising from or in connection to the project pursuant to The Virginia State and Local Government Conflict of Interest Act, Chapter 31 (§ 2.2-3100 et seq.) of Title 2.2.

11. Detailed analysis of the financial feasibility of the proposed project, including its impact on similar facilities operated or planned by the County. Include a detailed description of any financing plan proposed for the project, a comparison of that plan with financing alternatives that may be available to the County, and all underlying data supporting any conclusions reached in the analysis or the selection by the private entity of the financing plan proposed for the project.

12. Additional material and information as the County may request.

V. PROPOSAL EVALUATION AND SELECTION CRITERIA

Some or all of the following matters, along with the information required under §§ IV. D and IV. E above, may be considered in the evaluation and selection of PPEA proposals. The County retains the right at all times to reject any proposal at any time for any reason whatsoever.

A. Qualifications and Experience

Factors to be considered in either phase of the County's review to determine whether the private entity possesses the requisite qualifications and experience may include but are not necessarily limited to:

1. Experience with similar projects;
2. Demonstration of ability to perform work;
3. Leadership structure;
4. Project manager's experience;
5. Management approach;
6. Financial condition; and
7. Project ownership.

B. Project Characteristics

Factors to be considered in determining the project characteristics may include but are not necessarily limited to:

1. Project definition;
2. Proposed project schedule;
3. Operation of the project;
4. Technology; technical feasibility;
5. Conformity to laws, regulations, and standards;
6. Environmental impacts;
7. Condemnation impacts;

8. State and local permits; and
9. Maintenance of the project.

C. Project Financing

Factors to be considered in determining whether the proposed project financing allows adequate access to the necessary capital to finance the project may include but are not necessarily limited to:

1. Cost and cost benefit to the County;
2. Financing and the impact on the debt or debt burden of the County;
3. Financial plan including default implications;
4. Estimated cost including debt source, operating costs, etc.; and
5. Life-cycle cost analysis.

D. Project Benefit and Compatibility

Factors to be considered in determining the proposed project's compatibility with the appropriate local or regional comprehensive or development plans may include but are not necessarily limited to:

1. Community benefits;
2. Community support or opposition, or both;
3. Public involvement strategy;
4. Compatibility with existing and planned facilities;
5. Compatibility with local, regional, and state economic development efforts; and
6. Compatibility with the County's and affected jurisdictions' land use and transportation plans.

VI. COMPREHENSIVE AGREEMENT

Prior to acquiring, designing, constructing, improving, renovating, expanding, equipping, maintaining, or operating any qualifying project, a selected private entity shall enter into a comprehensive agreement with the County as provided by the PPEA. Each comprehensive agreement shall define the rights and obligations of the County and the selected proposer with regard to the project. Any such comprehensive agreement must be approved by the County's Board of Supervisors before it is entered into on behalf of the County.

As provided by the PPEA, the terms of the comprehensive agreement shall include but not be limited to:

1. Delivery of maintenance, performance and payment bonds or letters of credit in connection with any acquisition, design, construction, improvement, renovation, expansion, equipping, maintenance, or operation of the qualifying project, in the forms and amounts satisfactory to the County;
2. Review and approval of plans and specifications for the qualifying project by the County;
3. The right of the County to inspect the qualifying project;
4. Maintenance of a policy or policies of liability insurance or self-insurance in form and amount satisfactory to the County and reasonably sufficient to insure coverage of tort liability to the public and employees and to enable the continued operation of the qualifying project;
5. Monitoring of the practices of the operator by the County to ensure proper maintenance;
6. Reimbursement to be paid to the County for services provided by the County;
7. Filing by the operator of appropriate financial statements on a periodic basis;
8. Policies and procedures governing the rights and responsibilities of the County and the operator in the event that the comprehensive agreement is terminated or there is a material default by the operator, including the conditions governing assumption of the duties and responsibilities of the operator by the County and the transfer or purchase of property or other interests of the operator by the County;
9. Providing for such user fees, lease payments, or service payments, if any, as may be established from time to time by agreement of the parties, which shall be the same for persons using the facilities under like conditions and shall not materially

discourage use of the qualifying project. Classifications according to reasonable categories for assessment of user fees may be made;

10. Requiring a copy of any service contract to be filed with the County and providing that a schedule of the current user fees or lease payments shall be made available by the operator to any member of the public upon request;

11. The terms and conditions under which the responsible public entity may contribute financial resources, if any, for the qualifying project; and

12. Any other provisions required by applicable law or provisions that the County determines serve the public purpose of the PPEA.

Any changes in the terms of the comprehensive agreement as may be agreed upon by the parties from time to time shall be added to the comprehensive agreement only by written amendment.