

# A G E N D A

## JAMES CITY COUNTY BOARD OF SUPERVISORS

County Government Center Board Room

March 22, 2011

7:00 P.M.

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**A. CALL TO ORDER**

**B. ROLL CALL**

**C. MOMENT OF SILENCE**

**D. PLEDGE OF ALLEGIANCE** – Kye Andress, a fourth-grade student at Clara Byrd Baker Elementary School

**E. PRESENTATIONS**

1. Certificate of State Accreditation - Police

**F. PUBLIC COMMENT**

**G. BOARD REQUESTS AND DIRECTIVES**

1. Warhill Access

**H. CONSENT CALENDAR**

1. Minutes – March 8, 2011, Regular Meeting
2. Grant Award – Crime Records Information Sharing Network Expansion and Enhancements – \$56,700  
*Supports County's Strategic Pathway 1.d – develop and promote revenue alternatives to property taxes*
3. Chesapeake Bay Preservation Ordinance – Civil Charge – Ronald Haney, 3 Joy's Circle, Hunter's Creek Subdivision  
*Supports County's Strategic Pathway 4.c – ensure private development and government operations are environmentally sensitive*
4. Donation to James City-Bruton Volunteer Fire Department Capital Fund – \$25,000
5. Payment of Automobile Liability Insurance Deductible  
*Supports County's Strategic Pathway 1.a - evaluate service delivery costs*
6. Jo Ann Falletta, Music Director of the Virginia Symphony

**-CONTINUED-**

**I. PUBLIC HEARINGS**

1. Case Nos. Z-0002-2010/SUP-0029-2010/MP-0001-2010. The Williamsburg Pottery
2. Expansion of James City County's Enterprise Zone  
*Supports County's Strategic Pathway 1.c – diversify tax revenue, tax base and employment options*
3. Ordinance to Amend James City County Code, Chapter 15, Offenses – Miscellaneous, by Amending Section 15-20, Noise Prohibited in Residential-Zoned Areas
4. Ordinance to Amend Chapter 5, Cable Communications, by Amending Section 5-1 through Section 5-30
5. Ordinance to Renew the Franchise Certificate for Cox Communications of Hampton Roads, LLC to June 30, 2021
6. Ordinance to Amend Chapter 23, Chesapeake Bay Preservation, by Amending Section 23-17, Appeals
7. Marclay Road Airport Access Grant Application Endorsement

**J. BOARD CONSIDERATIONS**

1. Metropolitan Area Network (Dark Fiber) Agreement
2. Master Services Agreement for Telecommunications Services – Cox Communications, Hampton Roads, LLC  
*Supports County's Strategic Pathway 2.e - improve access to information by decreasing the "digital divide" and 3.d - invest in the capital project needs of the community*
3. Revenue Sharing Program Fiscal Year 2012 – Tewning Road Improvements – \$200,000  
*Supports County's Strategic Pathway 3.d – invest in the capital project needs of the community*
4. Revenue Sharing Program Fiscal Year 2012 – Turn Lane Improvements – Richmond Road from Lightfoot Road to Centerville Road – \$1,000,000  
*Supports County's Strategic Pathway 3.d – invest in the capital project needs of the community*
5. 2011 Redistricting Standards and Criteria and Procedural Guidelines - Revised

**K. PUBLIC COMMENT**

**L. REPORTS OF THE COUNTY ADMINISTRATOR**

1. Highway Matters

**M. BOARD REQUESTS AND DIRECTIVES**

1. Board Expense Policy

**N. CLOSED SESSION**

1. Consideration of a personnel matter, the appointment of individuals to County boards and/or commissions pursuant to Section 2.2-3711(A)(1) of the Code of Virginia
  - a. Stormwater Program Advisory Committee

**O. ADJOURNMENT to 7 p.m. on April 12, 2011**

## M E M O R A N D U M

DATE: March 22, 2011

TO: The Board of Supervisors

FROM: John H. Carnifax Jr., Director of Parks and Recreation

SUBJECT: Warhill Sports Complex Road

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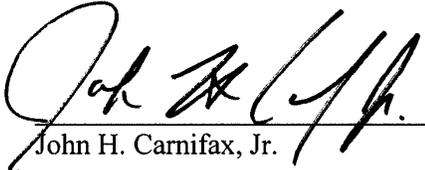
At the March 8, 2011, Board of Supervisors meeting, Mr. Kennedy requested information on temporarily opening the service road at the Warhill Sports Complex for through traffic. As a result, this memorandum contains some of the history surrounding the roadway and one map for a visual reference. The existing service road is highlighted in red for your reference.

The decision to build a road through the park that would connect Longhill Road and Centerville Road was discussed during the design phase of the Warhill Sports Complex. It was ultimately decided that the safest option for park users would be to not connect the two roads, but to instead allow for two entrances to the park. However, due to the dam on the entrance road off Longhill Road, staff and VDOT felt that the County should provide a road that could be used in emergency situations in case of a dam breach. As a result, the road was built as a service road and is currently only opened during large special events when police and park staff believe that it is necessary. To date, it has been opened at the end of several high school football games, Opening Day for Williamsburg Youth League Baseball, Black Friday shopping event, and several large soccer tournaments.

If the County would like to review and make possible changes to the use of this service road, there are several issues that staff will need to address. Currently, the park averages 3,700 car trips a day. However, the service road was only designed and constructed to accommodate 400 cars per day. As a result, at the minimum, staff will need to address signage required to increase safety. Also, residents of the Mallard Hill subdivision adjacent to the Longhill Road Park entry have previously expressed concerns with any changes that they viewed as affecting road traffic. While it is true that the open roadway could elevate the wait to exit the park at its entrance, it could also generate more traffic if the public uses it as a shortcut or pass through. Finally, new ways to insure park user safety would need to be developed if the roadway is opened. Speeding has been an issue on the current entrance road, and it may increase if the road is also used as a cut through.

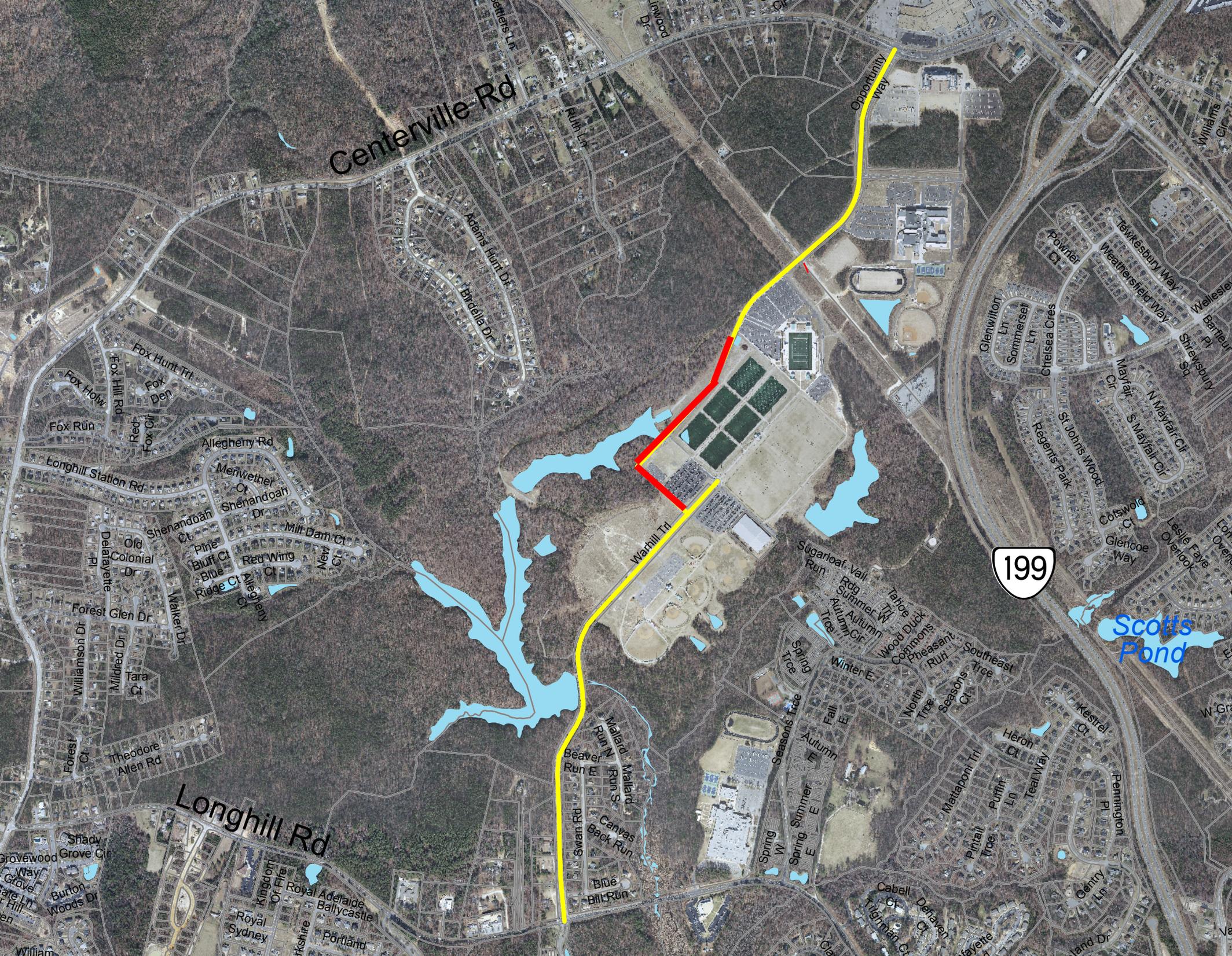
In the future, athletic fields and park amenities are planned for both sides of the road and increasing vehicular traffic could adversely affect pedestrians without some road modifications.

At the direction of the Board, staff can research the above issues and share the information so an informed decision can be made. Additionally, staff would request direction from the Board on the potential frequency of use for the road so that any planning and outreach can meet the intended outcome.

  
John H. Carnifax, Jr.

JHC/gb  
WSC-Rd\_mem

Attachment



Centerville Rd

Opportunity way

199

Scotts Pond

Longhill Rd

Warmill Trl

Fox Hunt Trl  
Fox Hill Rd  
Fox Run  
Fox Den  
Red Fox Cir

Allegheny Rd  
Merwether Ct  
Shenandoah Dr

Shenandoah Ct  
Pine Bluff Ct  
Blue Ridge Ct  
Red Wing Ct  
Allegheny Ct  
New Ct

Forest Glen Dr  
Williamson Dr  
Mildred Dr  
Tara Ct

Shady Grove Cir  
Way Grove  
Burton Woods Dr

Royal Adelaide  
Ballycastle  
Royal Sydney  
Portland

Beaver Run E  
Mallard Run S  
Swan Rd  
Canes Back Run  
Blue Bill Run

Sugarloaf Vail Rdg  
Summer Trl  
Autumn Cir

Spring Tree  
Winter E  
Fall E  
Autumn E

Spring W  
Spring E  
Summer E

Tahoe Commons  
Wood Duck  
Pheasant Run  
Southeast Tree

North Tree  
Seasons Ct  
Heron Ct

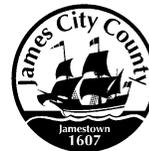
Cabell Ct  
Denaven Ct  
Highman Ct

Powder Mill Ct  
Glenwilton Ln  
Somerset Ln  
Chelsea Cres

St John's Wood  
Regents Park  
Cotswold Ct  
Glencoe Way

Mayfair Cir  
N Mayfair Cir  
S Mayfair Cir

Kestrel Ct  
Pennington Pl  
Gentry Ln



**MEMORANDUM COVER**

**Subject:** Board of Supervisors Expense Reimbursement Policy

**Strategic Management Plan Pathway:** 1.a - Evaluate service delivery costs

**Action Requested:** Shall the Board approve the Legislative Spending Policy?

**Summary:** The Board requested that staff develop an expense policy for the Board of Supervisors. Please find attached a proposed legislative spending policy for the Board's consideration. This policy establishes the types and the amount of expenses that the County will fund or reimburse to Board members in the execution of your duties as elected officials.

Staff recommends approval of the attached resolution.

**Fiscal Impact:** N/A

**FMS Approval, if Applicable:** Yes  No

**Assistant County Administrator**  
  
Doug Powell \_\_\_\_\_

**County Administrator**  
  
Robert C. Middaugh \_\_\_\_\_

**Attachments:**  
1. Memorandum  
2. Resolution

**Agenda Item No.:** E-2  
  
**Date:** March 22, 2011

MEMORANDUM

DATE: March 22, 2011  
TO: The Board of Supervisors  
FROM: Robert C. Middaugh, County Administrator  
SUBJECT: Board of Supervisors Expense Reimbursement Policy

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The Board requested that staff develop an expense policy for the Board of Supervisors. Please find attached a proposed legislative spending policy for the Board's consideration. This policy establishes the types and the amount of expenses that the County will fund or reimburse to Board members in the execution of your duties as elected officials.

The policy addresses the following areas:

- Home office – The County will purchase equipment that allows Board members to print document and communicate via email. The County will also reimburse up to \$20 per month for internet access.
- Cell Phone and Internet – The County will provide a cell phone and reimburse for the monthly service.
- Health Insurance – Board members are eligible for health, dental, or vision insurance program, or any wellness program offered by the County to employees.
- Local Travel – Board members may request reimbursement for local travel outside the County at the same reimbursement rate per mile offered to employees for the use of a privately owned vehicle.
- Overnight Travel – Each Board member is authorized up to four nights in overnight travel per year. Additional travel may be authorized by the Board of Supervisors.
- Lodging – Lodging expenses are reimbursable per the existing employee policy. Typically the lowest on-site room cost is reimbursed.
- Business Meals – Each Board member may be reimbursed for business meals subject to the conditions listed in the policy. Other meal expenses are reimbursable consistent with the existing employee policy.
- Dues/Subscriptions – The County does not reimburse for dues to community organizations or subscriptions to newspapers or magazines. Exceptions are dues or subscriptions assessed to a Board member from an organization where the member acts as a representative of the Board or from organizations where the County is a member locality.

The draft Board policy is similar in most respects to the employee reimbursement policy. The employee policy is attached for reference.

Staff recommends approval of the attached resolution.

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Robert C. Middaugh

RCM/nb  
LegSpendPol\_mem

Attachments

**RESOLUTION**

**LEGISLATIVE SPENDING POLICY**

WHEREAS, the Board of Supervisors desires to establish a legislative spending policy.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby adopts the Legislative Spending Policy.

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Mary K. Jones  
Chairman, Board of Supervisors

ATTEST:

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Robert C. Middaugh  
Clerk to the Board

Adopted by the Board of Supervisors of James City County, Virginia, this 22nd day of March, 2011.

LegSpendPol\_res

BOARD OF SUPERVISORS  
LEGISLATIVE SPENDING POLICY

Each Board member is eligible for the following:

HOME OFFICE – County funds may be used to create and maintain an office environment in each Supervisor’s home. This office environment should be equipped to allow Supervisors to send, retrieve, and print multi-page documents and communicate via Email. One-time spending for a network-capable computer, internet access, wireless devices, modems, printers, or other needed office equipment should be coordinated with and procured by County Information Resource Management and Purchasing offices to meet current specifications at the most effective cost. Any equipment purchased with County funds is property of the County.

PHONE and INTERNET – The County may also provide a cell phone and internet access, and will reimburse for recurring costs with accompanying receipts at the following rates:

- Cell Phone – County provided phone and plan (estimated value of \$50 per month)
- Internet Access – \$20 per month (approximately 50 percent of cost)

HEALTH INSURANCE – Each member of the Board is eligible for any health, dental, or vision insurance program, or any wellness program, offered by the County under the same terms and conditions as are offered to full-time employees.

LOCAL TRAVEL – Each Supervisor can request reimbursement for local travel, outside of the County, at the same reimbursement rate per mile offered to County employees for the use of a privately-owned vehicle as a representative of the Board. Requests for reimbursement can be submitted as long as they indicate each trip’s date, origin, destination, purpose, and mileage driven. Receipts are requested if the reimbursement request includes tolls or fees for parking.

OVERNIGHT TRAVEL – Each Supervisor is authorized up to four nights in overnight travel a year for conferences or meetings attended as a representative of the Board. Additional travel involving overnight stays may be approved by the Board of Supervisors if circumstances warrant. Board members are subject to the same policies as employees.

LODGING – For local and regional travel, employees are expected to commute. Regional travel includes southside Virginia (Norfolk, Virginia Beach, Portsmouth, etc.) and surrounding areas of Richmond. If an overnight stay is deemed necessary, the travel needs to be pre-approved by the Department Manager.

In-state guideline is \$90.00 per night or the least expensive on-site room. Out-of-State guidelines for lodging apply to Northern Virginia (i.e., Loudoun, Arlington, Fairfax Counties, etc.).

Out-of-State guideline is \$110.00 per night or the least expensive on-site room. If an on-site room is not available, the lowest conference rate should be selected.

Lodging rates shall be reimbursed at the single occupancy rate plus applicable taxes. Rates may vary depending on the on-site location and time of the year (tourist season). Costs incurred for a spouse’s stay, for additional nights stay for personal use, in-room movies/beverage service or other reimbursable hotel expenses shall be paid directly to the hotel by the employee.

**BUSINESS MEALS** – Each Supervisor may be reimbursed for meals, with the submission of a receipt, that are incurred by the Supervisor as a representative of the Board as long as the attendees and a topic of discussion are identified. Board members are subject to the same policies as employees.

**OTHER MEALS** – The daily meal allowance shall be determined by departure and return times and adjusted for meals included as part of the registration fee.

For travel that does not include an overnight stay, meals not included in the registration fees shall not be reimbursed.

For travel that involves an overnight stay, the per diem rate of \$43.00 shall include gratuities. Employees must select one option of meal allowance: per diem or reimbursement of actual receipts. Per diem allows for an employee to purchase food and drink without keeping receipts. Per diem is recommended. *If reimbursement of actual receipts is selected, a detailed receipt indicating items purchased must accompany the request.*

Expenditures that exceed the per diem rate may be reimbursed with an appropriate detailed receipt. An explanation of why the allowance was exceeded must accompany the request. When receipts accompany all meal expenses, a 15 percent gratuity may be included and may be reimbursed. Expenses for alcoholic beverages are not reimbursable.

The following United States cities have been identified as “high cost areas.” The daily allowance for meals (including gratuities) for high cost areas shall not exceed \$75.00.

Phoenix, AZ	Atlanta, GA	New York, NY
San Diego, CA	Chicago, IL	Philadelphia, PA
San Francisco, CA	New Orleans, LA	Dallas, TX
Los Angeles, CA	Boston, MA	Houston, TX
Denver, CO	Minneapolis, MN	San Antonio, TX
Washington, DC*	St. Louis, MO	Seattle, WA
Miami, FL	Las Vegas, NV	

*\*Includes Virginia cities of Alexandria, Falls Church, and Fairfax; Virginia counties of Arlington, Loudoun and Fairfax; and Maryland counties of Montgomery and Prince George.*

The following is the guideline for determining the daily meal allowance:

<u>Depart Before</u>	<u>Return After</u>
7:00 a.m.	9:00 a.m.
12:00 p.m.	2:00 p.m.
5:00 p.m.	7:00 p.m.

<b>Meal</b>	<b>Ordinary Allowance</b>	<b>High Cost Areas</b>
Breakfast	\$8.00	\$14.00
Lunch	\$10.00	\$18.00
Dinner	\$25.00	\$43.00
Total	\$43.00	\$75.00

DUES/SUBSCRIPTIONS – The County does not reimburse Board members for dues to community organizations or subscriptions to newspapers or magazines. Exceptions are dues or subscriptions assessed to a Board member from an organization where the member acts as a representative of the Board or from organizations where the County is a member locality.

OTHER – With the signed concurrence of the Chairman and the County Administrator, other expenses incurred by Board members and submitted for reimbursement may be approved with an explanation of the public purpose of the expenditure. Expenditure summaries incurred under this policy will be prepared and submitted by staff to the Board of Supervisors on a quarterly basis.

LegSpendPol\_att

**AT A REGULAR MEETING OF THE BOARD OF SUPERVISORS OF THE COUNTY OF JAMES CITY, VIRGINIA, HELD ON THE 8TH DAY OF MARCH 2011, AT 7:00 P.M. IN THE COUNTY GOVERNMENT CENTER BOARD ROOM, 101 MOUNTS BAY ROAD, JAMES CITY COUNTY, VIRGINIA.**

**A. CALL TO ORDER**

**B. ROLL CALL**

Mary K. Jones, Chairman, Berkeley District  
Bruce C. Goodson, Vice Chair, Roberts District  
James G. Kennedy, Stonehouse District  
James O. Icenhour, Jr., Powhatan District  
John J. McGlennon, Jamestown District

Robert C. Middaugh, County Administrator  
Leo P. Rogers, County Attorney

**C. PLEDGE OF ALLEGIANCE** – Danielle Langer, a sixth-grade student at Hornsby Middle School, led the Board and citizens in the Pledge of Allegiance.

**D. PRESENTATION** – Planning Commission Annual Report

Mr. Reese Peck, Planning Commissioner, presented the Planning Commission's Annual Report. He highlighted changes from 2010 in the Annual Report with an emphasis on transparency and accountability. He discussed growth and where it was occurring, the Comprehensive Plan Annual Scorecard, and the activities of the Policy Committee and Development Review Committee, including dialogue with the public.

Mr. McGlennon thanked Mr. Peck for his report and commented on the variance between the population estimates from the Planning Division and the U.S. Census report. He noted that it was important to reconcile those numbers to help determine the rate of population increase.

Mr. Peck indicated that at the last Planning Commission meeting, staff was directed to investigate this variance.

Mr. McGlennon noted that the numbers were deceptive and stated that the County grew more rapidly in the last ten years than in the previous decade.

Mr. Peck commented that all high growth counties have a similar variance, and slowing growth was likely due to the economic downturn.

Mr. Goodson stated that the economic conditions could not account for all decreases in growth.

Mr. McGlennon stated that it was important to account for the people who were not counted in the Planning Division estimates.

Mr. Icenhour commented that the lowest growth rate in 2010 was above average in comparison to the rest of the country. He also commented on the process for the Capital Improvements Program (CIP) rankings and asked that the Planning Commission improve the timing of the report. He also asked that the maintenance issues be integrated in the CIP list and that tiered projects such as stormwater should be ranked.

Mr. Peck commented that a member of the Policy Committee recommended three years ago that the County should set a maintenance schedule and replacement cycle with the budget. He agreed that the CIP process could be modified.

Mr. Kennedy noted that in his experience, the CIP was seen primarily as a guidance tool. He recognized that the County was above the national average in growth, but also has retained property values in spite of the recent economic downturn because of the quality of the community. He noted that the County had an excellent bond rating, environmental excellence, and job and economic growth.

## **E. PUBLIC COMMENT**

1. Mr. Clive Fenton, 120 Riviera, discussed parental responsibility to children and the necessity for students to have access to programming that would enhance success in school.
2. Mr. Jack Fowler, 109 Wilderness Lane, discussed construction of the Mooretown Road extension. He commented that no more roads were needed and this would encourage additional development. He commented that businesses were closing and there was no need for additional economic development.
3. Mr. Ed Oyer, 139 Indian Circle, commented on the cost of school construction and construction of the School Board Central Office.

## **F. BOARD REQUESTS AND DIRECTIVES**

Mr. Kennedy asked Mr. Rogers about gun discharge ordinances in relation to hunting in the County. He stated that a possibility has been raised that is allowing hunting from stands in trees. He also asked if the road at Warhill could be opened from Centerville Road to Longhill Road on game days to avoid traffic and save energy costs.

Mr. Middaugh stated that this item along with the Master Plan could be brought before the Board for further discussion.

Mr. Goodson stated that on March 17, 2011, the Hampton Roads Planning District Commission (HRPDC) would meet to discuss the transportation plan for 2035. He noted that if a project was not on this plan, it would not be eligible for Federal funds. He reviewed the projects on the list that had funding and were still without funding, including Patriot's Crossing, which was part of the third crossing project connecting I-564 and I-664. He stated the project had to be fiscally constrained and funding has been identified. He stated that the funding for the project would come from tolls on I-64 Hampton Roads Bridge-Tunnel (HRBT) and I-664 Monitor-Merrimac Memorial Bridge-Tunnel (MMMBT). He stated this project would help alleviate transportation issues as a whole across Hampton Roads, but would marginally decrease commuter traffic at the HRBT by about 12 percent. He stated that Peninsula residents would be paying tolls for a project that benefits only those on the Southside. He stated that he did not think the tolls would be allowed by the Federal Highway

Transportation Administration. He stated that he did not believe that the funding has actually been identified. He also noted that the Midtown Tunnel/Martin Luther King Freeway/Downtown Tunnel project was a Public-Private Transportation Act (PPTA) project, which has funding identified. He commented that the HRBT has a PPTA project with funding identified, but it was not included in this list. He stated that he intended to vote against the list unless it was amended to address these concerns. He asked for comments from the Board.

Mr. McGlennon asked if 12 percent was a small reduction in congestion. He stated that it seemed significant.

Mr. Goodson commented on the funding and noted that the volume of traffic would grow by more than 12 percent over the next 30 years. He stated that he has a fundamental concern with putting a toll on the HRBT without adding capacity.

Mr. McGlennon stated that professional staff has evaluated these projects, but understood Mr. Goodson's concern. He stated that he was unclear about the status of the HRBT PPTAs. He stated that he understood there were submissions, but was unsure if they had been analyzed.

Mr. Goodson stated that one submission had been received, but it was not yet analyzed. He explained that this was an open process where multiple submissions could be brought forward and more were anticipated.

Mr. McGlennon asked if these would be funded by tolls.

Mr. Goodson stated that was correct. He stated that the funding from tolls would go toward increased capacity. He noted that the public could view the information on the HRPDC website and contact him by email with comments.

Mr. McGlennon commented on Mr. Fowler's comments about Rochambeau Drive and asked that staff request information about the unsafe shoulders in particular.

Ms. Jones stated that there was a joint meeting of the School Board, City Council of the City of Williamsburg, and the Board of Supervisors on February 23, 2011. She asked when the video would be available online.

Mr. Middaugh stated that it has been taped and would be available online shortly.

Mr. McGlennon asked if a report would be available about a consensus coming from the discussion at the joint meeting.

Ms. Jones stated that staff has been asked to prepare a report with bullet points on specific guidance resulting from the discussion.

Mr. McGlennon stated that the minutes did not fully communicate the guidance of the meeting.

Mr. Middaugh stated that the video from the joint meeting would be available on Thursday, March 10, 2011, for broadcast on JCCTV.

## **G. CONSENT CALENDAR**

Mr. Goodson made a motion to adopt the items on the Consent Calendar, including the amendments to the February 22, 2011, Work Session minutes.

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

1. Minutes –
  - a. February 22, 2011, Work Session
  - b. February 22, 2011, Regular Meeting
  - c. February 23, 2011, Joint Work Session
2. Contract Award – Jamestown Beach Park Shoreline Stabilization and Beach Restoration – \$192,547

### **RESOLUTION**

#### **CONTRACT AWARD – JAMESTOWN BEACH PARK SHORELINE STABILIZATION AND BEACH RESTORATION – \$192,547**

WHEREAS, funds are available in the Special Projects/Grants fund and the Maintenance Equipment Jamestown Beach Account; and

WHEREAS, six bids were considered for award and Henry S. Branscome, LLC was the lowest responsive and responsible bidder.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby awards the contract for Jamestown Beach Park Shoreline Stabilization and Beach Restoration to Henry S. Branscome, LLC in the amount of \$192,547.

3. Contract Award – Access Control and Video Surveillance Security Systems at the New Police Building

### **RESOLUTION**

#### **CONTRACT AWARD – ACCESS CONTROL AND VIDEO SURVEILLANCE SECURITY SYSTEMS AT THE NEW POLICE BUILDING – \$166,699**

WHEREAS, a Request for Proposals (RFP) for Access Control and Video Surveillance Security Systems at the new Police building was publicly advertised and staff reviewed proposals from 13 firms interested in performing the work; and

WHEREAS, upon evaluating the proposals, staff determined that Stanley Convergent Security Solutions was the most fully qualified and submitted the proposal that best suited the County's needs as presented in the RFP.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby awards the \$166,699 contract for Access Control and Video Surveillance Security Systems at the new Police building to Stanley Convergent Security Solutions.

4. Grant Award – Port Security Grant Program (PSGP) – \$71,329

**RESOLUTION**

GRANT AWARD – PORT SECURITY GRANT PROGRAM (PSGP) – \$71,329

WHEREAS, the James City County Police Department has been awarded Port Security Grant Program (PSGP) funding for \$71,329; and

WHEREAS, the funds are to be used to institute a dive team within the Police Department and includes funding for equipment and training; and

WHEREAS, there is no match required of this grant.

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

Revenue:

PSGP -FY11 (FY10 Grant Program) \$71,329

Expenditure:

PSGP -FY11 (FY10 Grant Program) \$71,329

**H. PUBLIC HEARINGS**

1. Case No. AFD-11-86-2-2010. Jolly Pond Road Yarmouth Island AFD Addition (continued from February 8, 2011)

Mr. Luke Vinciguerra, Planner, stated that Mr. James H. Richardson has applied to enroll a 10-acre property located at 1975 Jolly Pond Road into the Yarmouth Island Agricultural and Forestal District (AFD). The parcel is entirely wooded and contains no structures or any form of development. The parcel can be further identified as James City County Real Estate Tax Map Parcel No. 293010003 and is zoned A-1, General Agricultural. The parcel is designated as Rural Lands on the Comprehensive Plan and is surrounded by land within the Yarmouth Island AFD.

At its meeting on December 15, 2010, the AFD Advisory Committee recommended approval of the application by a vote of 6-0 with two abstentions.

At its meeting on January 5, 2011, the Planning Commission recommended approval of the application by a vote of 7-0 with the condition that any ownership issues related to the property be resolved.

At the February 8, 2011, Board of Supervisors meeting, the application requested deferral of the application to satisfy ownership issues. This has been completed to the satisfaction of the County Attorney's office.

Staff recommended adoption of the ordinance for the addition to the Yarmouth Island AFD.

Ms. Jones opened the Public Hearing.

As no one wished to speak to this matter, Ms. Jones closed the Public Hearing.

Mr. Icenhour made a motion to adopt the ordinance.

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

Ms. Jones recognized Planning Commissioner Timothy O'Connor in attendance.

2. Case No. AFD-09-86-4-2010. Centerville Road Gordon Creek AFD Addition (continued from February 8, 2011)

Mr. Luke Vinciguerra, Planner, stated that Mr. James H. Richardson has applied to enroll 60 acres of property located at 4130 and 4176 Centerville Road into the Gordon Creek AFD. The parcels can be further identified as James City County Real Estate Tax Map Parcel Nos. 3640100009 and 3640100008 respectively and are zoned A-1, General Agricultural. The parcel is designated as Low Density Residential/Moderate Density Residential on the Comprehensive Plan.

At its meeting on December 15, 2010, the AFD Advisory Committee recommended approval of the application by a vote of 6-0 with two abstentions.

At its meeting on January 5, 2011, the Planning Commission recommended approval of the application by a vote of 7-0 with the condition that any ownership issues related to the property be resolved.

At the February 8, 2011, Board of Supervisors meeting, the application requested deferral of the application to satisfy ownership issues. This has been completed to the satisfaction of the County Attorney's office.

Staff recommended adoption of the ordinance for the addition to the Gordon Creek AFD.

Ms. Jones opened the Public Hearing.

As no one wished to speak to this matter, Ms. Jones closed the Public Hearing.

Mr. McGlennon made a motion to adopt the ordinance.

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

3. Case No. SUP-0031-2010. 3125 Chickahominy Road Manufactured Home

Mr. Jason Purse, Senior Planner, stated that Ms. Stephanie Deal has applied for a Special Use Permit (SUP) to allow for the placement of a manufactured home at 3125 Chickahominy Road. Manufactured homes not located within the Primary Service Area (PSA) in the R-8, Rural Residential, District require an SUP. The existing parcel has a cleared area near the middle of the property where the manufactured home will be placed. The proposed manufactured home would be roughly 28 feet by 76 feet and similar to the 2002 Henderson model manufactured home. There are two other existing manufactured homes within 400 feet of the property on both sides of Chickahominy Road and six homes within 1,000 feet.

At its meeting on February 2, 2011, the Planning Commission recommended approval of the application by a vote of 7-0.

Staff found that the proposal met the administrative criteria for placement of a manufactured home and was consistent with the Rural Lands Use designation.

Staff recommends approval of this SUP with the conditions listed in the resolution.

Ms. Jones opened the Public Hearing.

As no one wished to speak to this matter, Ms. Jones closed the Public Hearing.

Mr. Kennedy made a motion to adopt the resolution.

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

### **RESOLUTION**

#### **CASE NO. SUP-0031-2010. 3125 CHICKAHOMINY ROAD MANUFACTURED HOME**

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 (SUP) process; and

WHEREAS, Ms. Stephanie Deal has applied for an SUP to allow a manufactured home outside the Primary Service Area (PSA); and

WHEREAS, the proposed home shall be similar to the 2002 Henderson model manufactured home; and

WHEREAS, the property is located at 3125 Chickahominy Road on land zoned R-8, Rural Residential, and can be further identified as James City County Real Estate Tax Map/Parcel No. 2210100056; and

WHEREAS, the Planning Commission of James City County, following its public hearing on February 2, 2011, recommended approval of this application by a vote of 7-0; and

WHEREAS, the Board of Supervisors of James City County, Virginia, finds this use to be consistent with the 2009 Comprehensive Plan Land Use Map designation for this site.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, after a public hearing does hereby approve the issuance of SUP-0031-2010 as described herein with the following conditions:

1. This permit shall be valid for the 2002 Henderson Model Mobile Home ("Manufactured Home") or a newer or similar unit as determined by the Director of Planning.
2. A certificate of occupancy must be obtained for the Manufactured Home within 24 months from the date of approval of this SUP or the permit shall become void.

3. The Manufactured Home shall meet the requirements of the Department of Housing and Urban Development Manufactured Home Construction and Safety Standards.
4. The Manufactured Home shall be placed so as to comply with all current setback and yard requirements in the R-8, Rural Residential Zoning District.
5. To ensure adequate screening, no existing trees shall be removed within 20 feet of the property lines, except those needed to be removed to place the Manufactured Home on the Property or as otherwise permitted by the Director of Planning.
6. A single (1) connection is permitted to the adjacent water main on Chickahominy Road with no larger than a ¾-inch water meter. Any lots created by a subdivision of the parent parcel will not be permitted to connect unless the PSA is extended to incorporate the parent parcel.
7. This SUP is not severable. Invalidation of any word, phrase, clause, sentence, or paragraph shall invalidate the remainder.

4. Case No. SUP-0032-2010. D.J. Montague Elementary School Parking Lot Expansion

Mr. Jose Ribeiro, Senior Planner, stated that Mr. Bruce Abbott of AES Consulting Engineers has applied for an SUP to allow for improvements to the school site including drainage improvements around the playground area, construction of internal sidewalks, and the reconfiguration and expansion of the parking lot area capacity from the existing 87 parking spaces to 140, an increase of 53 spaces (including three Americans with Disabilities Act (ADA) accessible spaces). According to the applicant, the proposed expansion of the parking lot is not triggered by an increase in internal traffic; rather, the expansion would better accommodate current parking needs, allowing vehicles currently parking in gravel and grassy areas, not assigned for parking, to park in areas marked and designed specifically for this purpose. Mr. Ribeiro stated that the school did not require an SUP when it was originally constructed in 1992; however, the school site was rezoned to the Public Land in 2007, where schools are a specially permitted use. Though the school is a legally nonconforming use, an SUP is required for any expansion. This SUP application would bring the entire school site into conformance with the Zoning Ordinance and permit the above-referenced improvements to the site. In 2009, an SUP application (SUP-0002-2009) to extend the permit of three classroom trailers on the school site until July 1, 2010, was approved by the Board of Supervisors. Staff notes that the three trailers were removed from the school site prior to the expiration date. In 2010, a site plan (SP-0017-2010) showing the placement of geothermal wells under the existing soccer field was submitted and approved by the County. The school site is zoned PL, Public Lands, and designated by the 2009 Comprehensive Plan as Federal, State, and County Land. Properties to the west of the site are zoned R-2, General Residential (Mulberry Subdivision), to the east and south properties are zoned R-4, Residential Planned Community (Ford's Colony), and to the north and across Centerville Road, properties are zoned A-1, General Agricultural (Liberty Ridge). The site fronts on Centerville Road which is designated by the 2009 Comprehensive Plan as a Community Character Corridor (CCC).

At its meeting on February 2, 2011, the Planning Commission recommended approval of this application by a vote of 7-0.

Staff found the proposal consistent with the surrounding zoning and development and consistent with the 2009 Comprehensive Plan.

Mr. Icenhour thanked staff for incorporating a condition to allow lighting at the request of citizens.

Staff recommended approval of the application with the conditions listed in the resolution.

Mr. Kennedy asked what type of pavers would be used for the parking lot.

Mr. Ribeiro stated that pervious pavers would be used.

Mr. Icenhour commented that currently, people were parking on grass or gravel.

Mr. Ribeiro stated that was correct. He showed a photo of the area and noted where the additional parking would be located.

Mr. Kennedy asked why parking was an increasing problem at elementary schools.

Mr. Robertson stated that there were several issues that contribute to this, including parent involvement and parents driving students to schools. He stated that for some schools, 125 to 135 parking spaces are adequate, but are not sufficient for others.

Mr. Kennedy commented that auxiliary parking areas should be designated when schools are planned and constructed.

Mr. Robertson stated that the two newest schools have large parking lots as well as pervious pavers for overflow parking for events.

Ms. Jones commented on the reasoning behind why school transportation was not being utilized.

Ms. Jones opened the Public Hearing.

As no one wished to speak to this matter, Ms. Jones closed the Public Hearing.

Mr. Icenhour made a motion to adopt the resolution.

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

## **RESOLUTION**

### **CASE NO. SUP-0032-2010. D.J. MONTAGUE ELEMENTARY SCHOOL**

#### **PARKING LOT EXPANSION**

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 (SUP) process; and

WHEREAS, Mr. Bruce Abbott of AES Consulting Engineers has applied on behalf of Williamsburg-James City County Public Schools for an SUP to allow for the expansion of the parking lot area and other additional minor improvements at D.J. Montague Elementary School, located at 5380 Centerville Road, and further identified as James City County Real Estate Tax Map No. 3130100049; and

WHEREAS, the Board of Supervisors, following a public hearing, is of the opinion that an SUP to allow for the expansion of the parking lot area and to bring the existing school into conformance with the Zoning Ordinance should be approved.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, does hereby approve the issuance of SUP No. 0032-2010, as described herein, with the following conditions:

1. Master Plan: This SUP shall be valid for the existing public school, associated fields, trails, accessory uses, the expansion of the parking area and other minor improvements to the site located at 5380 Centerville Road and further identified as James City County Real Estate Tax Map No. 3130100049 (the "Property"). The expansion of the parking area, and other minor improvements to the site, shall be developed generally as shown on the exhibit drawn by AES Consulting Engineers, entitled "Master Plan D.J. Montague Elementary School Additional Parking and Playground Drainage Improvements W/JCC Public Schools," dated December 19, 2010, and revised on January 24, 2011, with only changes thereto that the Planning Director determines, do not change the basic concept or character of the development.
2. Water Conservation: The Williamsburg-James City County School Board shall be responsible for developing and enforcing water conservation standards to be submitted to and approved by the James City Service Authority (the "JCSA") prior to final site plan approval. The standards shall 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 resistant native and other adopted low water use landscaping materials and warm season turf where appropriate, and the use of water conserving fixtures and appliances to promote water conservation and minimize the use of public water resources.
3. Lighting: All new exterior light fixtures, including building lighting, on the Property shall have recessed fixtures with no lens, bulb, or globe extending below the casing. In addition, a lighting plan shall be submitted to and approved by the Planning Director or his designee, which indicates no glare outside the property lines. All light poles shall not exceed 20 feet in height unless otherwise approved by the Planning Director prior to final site plan approval. "Glare" shall be defined as more than 0.1 foot-candle at the boundary of the Property or any direct view of the lighting source from the adjoining properties. Additional lighting shall be installed in the entrance from the property onto Centerville Road. The specific location and design of the entrance lighting shall be shown on a site plan and approved by the Planning Director. However, if upon presenting an Iso-footcandle diagram of the school's entrance lighting, or other evidence, additional lighting may not be required if it is demonstrated to the satisfaction of the Planning Director that the existing lighting at the school's entrance is adequate.
4. Commencement of Construction: If construction has not commenced on this project within 36 months from the issuance of an SUP, the SUP shall become void.
5. Severance Clause: This SUP is not severable. Invalidation of any word, phrase, clause, sentence, or paragraph shall invalidate the remainder.

5. Ordinance to Amend the County Code, Chapter 12, Licenses, by Amending Article II, Specific Businesses and Activities, Section 12-28, Alcoholic Beverages - Winery License Fee

Mr. Leo Rogers, County Attorney, stated that the Board was being asked to consider an ordinance to amend Chapter 12, Section 12-28(a)(2) to bring the County Code into compliance with State Code by reducing the amount charged for winery licenses from \$1,000 per year to \$50 per year. No loss of revenue will result from the change as the Commissioner of Revenue has been assessing the designated amount allowed under the Code, but the County Code needed to be updated. Mr. Rogers recommended approval of the ordinance amendment.

Ms. Jones opened the Public Hearing.

As no one wished to speak to this matter, Ms. Jones closed the Public Hearing.

Mr. Kennedy made a motion to approve the ordinance.

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

**I. BOARD CONSIDERATION**

1. Budget Transfer – Maintenance and Repair of Volunteer Apparatus Equipment – \$40,000

Mr. Middaugh stated that the Board was being asked to consider a resolution authorizing the addition of the full-time regular Automotive Technician II position and transferring \$40,000 from the two volunteer agencies and Contingency to fund the position for three months in Fiscal Year 2011 and associated parts and specialized contracted repairs and fuel costs. The request was being made because the County's fleet has grown substantially over the last few years and there is one fewer staff person available to maintain the equipment. He stated that about 32 percent of the equipment is designated as Public Safety. He stated that currently there was only one emergency vehicle technician required to service Fire and Police vehicles. He stated that extending the life cycle of vehicles for budget savings was increasing outside maintenance costs to repair vehicles. He stated that this would reduce contractor costs and allow for the service of emergency vehicles.

Mr. Kennedy recognized the contributions of the late Mr. Richard Garrett to the County, including repair and maintenance of emergency vehicles.

Mr. McGlennon stated his support for this agenda item and noted the serious challenge of maintaining vehicles for a longer time frame and with fewer staff.

Mr. Icenhour thanked Mr. Middaugh for his explanation and stated his support.

Mr. McGlennon made a motion to adopt the resolution.

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

**RESOLUTION**

**BUDGET TRANSFER-MAINTENANCE AND REPAIR OF VOLUNTEER**

**APPARATUS AND EQUIPMENT - \$40,000**

WHEREAS, James City County absorbed the fuel costs and maintenance and repair responsibilities of the Fire apparatus and EMS equipment from the volunteer agencies at Fire Station 1 in Toano; and

WHEREAS, an Automotive Technician II is needed to work on the more complicated Fire and EMS apparatus; and

WHEREAS, funds are required for the cost of the new position of three months and costs associated with parts, specialized contracted repairs, and fuel.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby establishes one new full-time regular Automotive Technician II position in the Fleet and Equipment Division.

BE IT FURTHER RESOLVED that the Board of Supervisors of James City County, Virginia, hereby authorizes the following transfer of funds:

Expenditures:

Contingency	\$ (40,000)
Fleet and Equipment Division	32,000
Fire Department	8,000

**J. PUBLIC COMMENT**

1. Mr. Ed Oyer, 139 Indian Circle, commented on educational improvement due to increased programs and opposition to ending technical classes in high school. He commented on decreasing academic standards and unprepared students. He commented on the upcoming redistricting process and reapportionment of representation in the voting districts.

2. Mr. Clive Fenton, 120 Riviera, commented on the importance of raising children to be responsible. He commented on the success of the Academy for Life and Learning (ALL) program in helping students with complex behavioral issues. He asked the Board to help maintain the ALL program.

**K. REPORTS OF THE COUNTY ADMINISTRATOR**

Mr. Middaugh stated that the Board was sent background information on redistricting. He indicated that the Board could appoint a citizen committee to help support the redistricting process, which could be added to the Board's next agenda. He stated that this would help facilitate the pre-clearance process.

Mr. Middaugh also noted that information had been sent out regarding road projects including the Monticello Avenue Project and the Skiffe's Creek connector.

Mr. Middaugh stated the Board had an opportunity to make an appointment to the Board of Zoning Appeals prior to closed session if the Board wished to do so. He stated that a closed session was scheduled for discussion concerning a prospective business or industry or the expansion of an existing business or industry where no previous announcement has been made of the business's or industry's interest in locating or expanding its facilities in the community, pursuant to Section 2.2-3711(A)(5) of the Code of Virginia. He stated that when the Board completed its business, it should adjourn to 4 p.m. on March 22, 2011, for a work session, followed by a regular meeting at 7 p.m.

**L. BOARD REQUESTS AND DIRECTIVES**

Mr. McGlennon asked that the redistricting information be available on the front page of the County's website to allow citizens to stay up-to-date on the information.

Mr. McGlennon made a motion to appoint Mr. Stephen Rodgers to a term on the Board of Zoning Appeals.

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

**M. CLOSED SESSION**

Mr. Goodson made a motion to go into Closed Session for discussion concerning a prospective business or industry or the expansion of an existing business or industry where no previous announcement has been made of the business's or industry's interest in locating or expanding its facilities in the community, pursuant to Section 2.2-3711(A)(5) of the Code of Virginia.

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

At 8:15 p.m., Ms. Jones recessed the Board into Closed Session.

At 8:37 p.m., Ms. Jones reconvened the Board.

Mr. Goodson made a motion to adopt the Closed Session resolution.

**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)(5) of the Code of Virginia, to discuss matters concerning a prospective business or industry or the expansion of an existing business or industry where no previous announcement has been made of the business's or industry's interest in locating or expanding its facilities in the community.

N. **ADJOURNMENT** to 4 p.m. on March 22, 2011.

Mr. Icenhour made a motion to adjourn.

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

At 8:38 p.m. Ms. Jones adjourned the Board until 4 p.m. on March 22, 2011.

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Robert C. Middaugh  
Clerk to the Board

030811bos\_min

MEMORANDUM

DATE: March 22, 2011  
TO: The Board of Supervisors  
FROM: Emmett H. Harmon, Chief of Police  
SUBJECT: Grant Award – Crime Records Information Sharing Network Expansion and Enhancement – \$56,700

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The James City County Police Department has been awarded a 2010 State Homeland Security Program (SHSP) Crime Records Information Sharing Network Expansion and Enhancement Grant through the Virginia Department of Criminal Justice Services (DCJS) for \$56,700. SHSP funds are to assist local law enforcement agencies in the prevention of terrorist acts. DCJS, the administering agency, is providing for the enhancement of the statewide crime information sharing network and the maintenance and replacement of previously purchased equipment. While SHSP funds are recurring, DCJS has not previously offered SHSP funding for this specific purpose. Therefore, Police Department staff has identified the need to use the funds for the purchase of tactical vests and in-car cameras. These purchases will not take the place of budgeted expenses.

The grant requires no match.

Staff recommends adoption of the attached resolution.

  
Emmett H. Harmon

CONCUR:

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Robert C. Middaugh

EHH/nb  
GA\_SHSP2010\_mem

Attachment

**RESOLUTION**

**GRANT AWARD – CRIME RECORDS INFORMATION SHARING NETWORK**

**EXPANSION AND ENHANCEMENT – \$56,700**

WHEREAS, the James City County Police Department has been awarded a 2010 State Homeland Security Program (SHSP) Crime Records Information Sharing Network Expansion and Enhancement Grant through the Virginia Department of Criminal Justice Services (DCJS) for \$56,700; and

WHEREAS, the funds will be used for the purchase of tactical vests and in-car cameras; and

WHEREAS, there is no match required of this grant.

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

Revenue:

SHSP – FY 11 (FY 10 Grant Program)	<u>\$56,700</u>
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Expenditure:

SHSP – FY 11 (FY 10 Grant Program)	<u>\$56,700</u>
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Mary K. Jones  
Chairman, Board of Supervisors

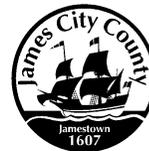
ATTEST:

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Robert C. Middaugh  
Clerk to the Board

Adopted by the Board of Supervisors of James City County, Virginia, this 22nd day of March, 2011.

GA\_SHSP2010\_res



MEMORANDUM COVER

**Subject:** Chesapeake Bay Preservation Ordinance Violation – Civil Charge – Ronald Haney, 3 Joy’s Circle, Hunter’s Creek Subdivision

**Strategic Management Plan Pathway:** 4.c - ensure private development and government operations are environmentally sensitive

**Action Requested:** Shall the Board accept a civil charge to settle a Chesapeake Bay Ordinance violation at 3 Joy’s Circle in the Hunter’s Creek Subdivision?

**Summary:** A report of an unauthorized activity was investigated by the County for an encroachment and impervious fill material placement on defined Chesapeake Bay Preservation Area (CBPA). Upon further investigation and determination, a Notice of Violation (NOV) was issued to the owner at 3 Joy’s Circle in the Hunter’s Creek Subdivision, designated as James City County Real Estate Tax Parcel No. 2220500010. The NOV was appealed to the County Chesapeake Bay Board, which subsequently denied the appeal. As a result, the violation is being settled, with consent of the owner, through the County’s civil charge violation process consistent with Section 23-18(a) of the County’s Chesapeake Bay Preservation ordinance and previously established Chesapeake Bay Preservation ordinance civil penalty procedures (1999 and 2006).

Staff recommends adoption of the attached resolution.

**Fiscal Impact:** None.

**FMS Approval, if Applicable:** Yes  No

**Assistant County Administrator**  
  
Doug Powell \_\_\_\_\_

**County Administrator**  
  
Robert C. Middaugh \_\_\_\_\_

- Attachments:**
- 1. Memorandum
  - 2. Resolution
  - 3. Map
  - 4. Chesapeake Bay Board Resolution

**Agenda Item No.:** G-3  
  
**Date:** March 22, 2011

**MEMORANDUM**

DATE: March 22, 2011

TO: The Board of Supervisors

FROM: Scott J. Thomas, Environmental Director  
Leo P. Rogers, County Attorney

SUBJECT: Chesapeake Bay Preservation Ordinance Violation – Civil Charge – Ronald Haney,  
3 Joy’s Circle, Hunter’s Creek Subdivision

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Attached is a resolution for consideration by the Board of Supervisors involving a violation of the County’s Chesapeake Bay Preservation Ordinance. The case involved encroachment and installation of a dog kennel into a Chesapeake Bay Preservation Area (CBPA) located on the above-referenced property. Placement of impervious cover fill for the dog kennel was 200 square feet in size and within approximately 20 feet of a perennial stream feature, which is within defined Resource Protection Area (RPA).

A Notice of Violation (NOV) was issued by County staff on November 16, 2010. Following issuance of the NOV, the Owner appealed staff’s administrative decision to the County’s Chesapeake Bay Board in accordance with procedures outlined in Section 23-17 of the County’s Chesapeake Bay Preservation Ordinance. Following a public hearing on January 12, 2011, the County’s Chesapeake Bay Board denied the appeal. A copy of the Chesapeake Bay Board resolution denying the appeal is attached for reference.

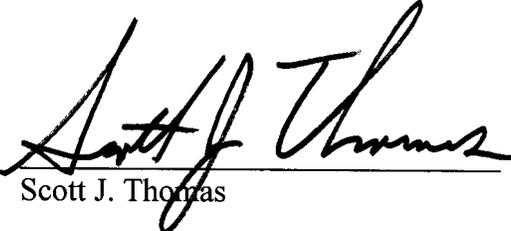
In accordance with provisions of the Ordinance, the Owner/County mutually came to terms to resolve the violation through the County’s civil charge process. The Agreement gave the Owner the option to remove the impervious cover fill or restore the impacted area by utilizing a blended mixture of the stone and suitable topsoil, organics, mulch and mitigation plantings. The Owner chose the restoration option. The Owner has voluntarily entered into a Chesapeake Bay Restoration Agreement with the County, submitted a restoration plan, and provisions are in place to guarantee implementation of the approved restoration plan to restore impacted RPA area on the property.

The resolution and attachments present specific details of the violation. Under the provisions of the Ordinance, the Board may accept civil charges for each violation of up to \$10,000. The Owner has agreed to the recommended civil charge of \$250 for violation of Sections 23-10 and 23-11 of the County’s Chesapeake Bay Preservation Ordinance.

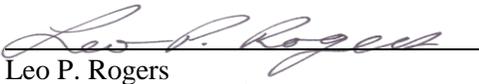
The Chesapeake Bay Ordinance Civil Penalty Procedures Policy endorsed by the Board in August 1999 and subsequent provisions for reduced charges by the Chesapeake Bay Workshop Credit method (June 2006) were used by staff as guidance in determining the civil charge amount. The Policy considers the degree of water quality impact and the degree of noncompliance involved in the case. Discounts are applied if the Owner consents to attend a future Bay Act workshop conducted by the County. For this particular case, both water quality impact and degree of non-compliance for the violation have been assessed as minor.

Staff recommends adoption of the attached resolution establishing the civil charges for the Chesapeake Bay Ordinance violation presented.

Chesapeake Bay Preservation Ordinance Violation – Civil Charge – Ronald Haney, 3 Joy's Circle,  
Hunter's Creek Subdivision  
March 22, 2011  
Page 2



Scott J. Thomas



Leo P. Rogers

SJT/LPR/nb  
CBViolatn\_mem

Attachments

**RESOLUTION**

**CHESAPEAKE BAY PRESERVATION ORDINANCE VIOLATION – CIVIL CHARGE –**

**RONALD HANEY, 3 JOY’S CIRCLE, HUNTER’S CREEK SUBDIVISION**

WHEREAS, Ronald Haney of 3 Joy’s Circle, Lot 10 of Section 2 Hunter’s Creek Subdivision, is the owner of a certain parcel of land commonly known as 3 Joy’s Circle, Toano, VA, designated as Parcel No. 2220500010 within James City County’s Real Estate system, herein referred to as the (“Property”); and

WHEREAS, on or about November 8, 2010, Ronald Haney caused the installation of a structure or other encroachments within a Chesapeake Bay Preservation Area (CBPA) on the Property without prior approval; and

WHEREAS, Ronald Haney has executed a Chesapeake Bay Restoration Agreement with the County agreeing to implement, in a timely manner, the provisions of an approved restoration plan which includes the installation of native canopy trees, native understory trees, and native shrubs within Resource Protection Area (RPA) on the Property and has successfully performed the work or posted sufficient surety guaranteeing the installation of the aforementioned improvements in order to remedy a violation of the County’s Chesapeake Bay Preservation Ordinance and restore RPA on the Property; and

WHEREAS, Ronald Haney has agreed to pay a total of \$250 to the County as a civil charge under the County’s Chesapeake Bay Preservation Ordinance; and

WHEREAS, the James City County Board of Supervisors is willing to accept the restoration of the impacted area and the civil charge in full settlement of the Chesapeake Bay Preservation Ordinance violation, in accordance with Section 23-18 of the Code of the County of James City.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby authorizes and directs the County Administrator to accept the \$250 civil charge from Ronald Haney, as full settlement of the Chesapeake Bay Preservation Ordinance Violations at the Property.

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Mary K. Jones  
Chairman, Board of Supervisors

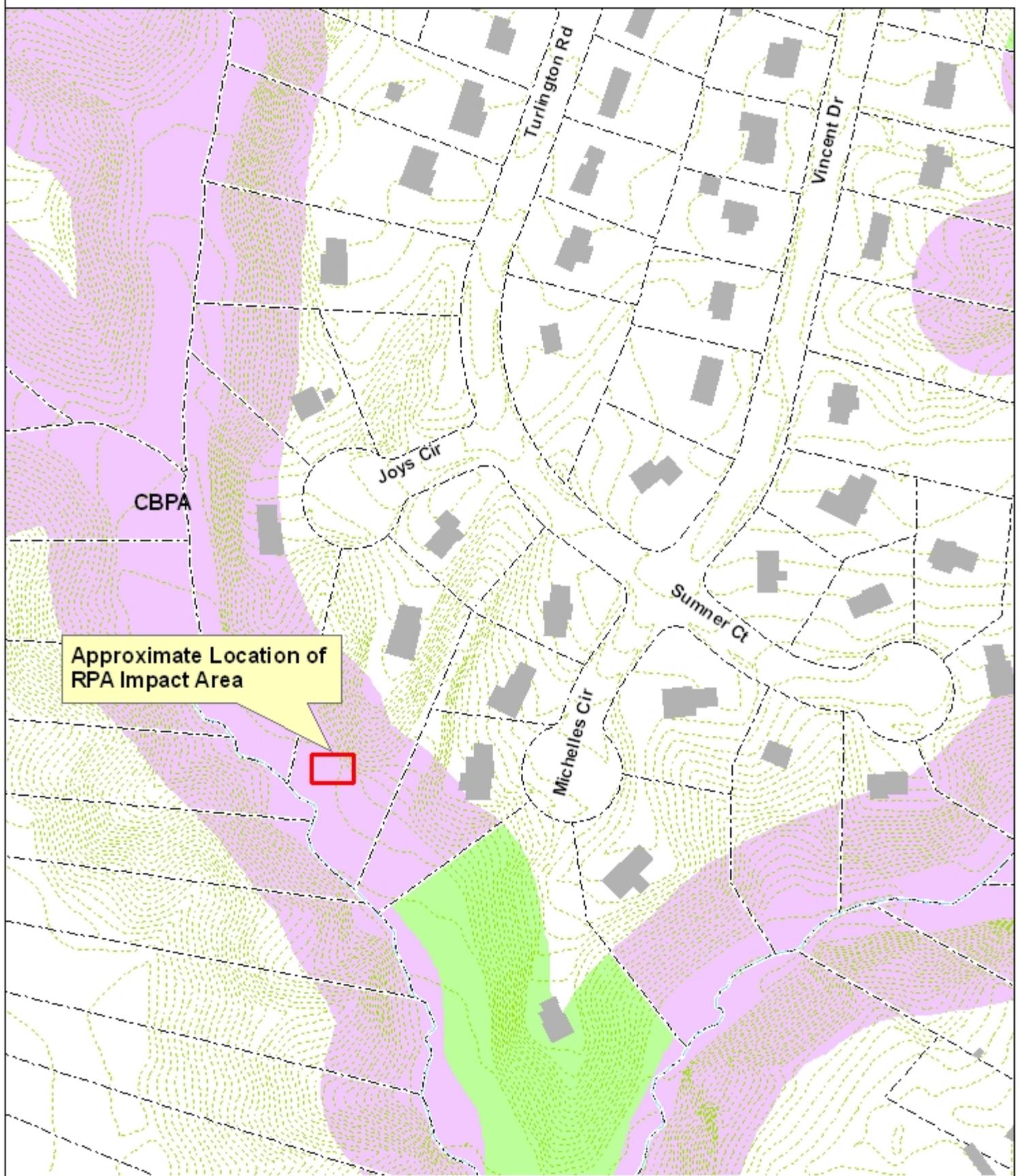
ATTEST:

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Robert C. Middaugh  
Clerk to the Board

Adopted by the Board of Supervisors of James City County, Virginia, this 22nd day of March, 2011.

CBViolatn\_res



**CHESAPEAKE BAY PRESERVATION ORDINANCE VIOLATION  
 - CIVIL CHARGE – RONALD HANEY, 3 JOY'S CIRCLE,  
 HUNTER'S CREEK SUBDIVISION**



This drawing is neither a legally recorded map nor a survey and is not intended to be used as such. The information displayed is a compilation of records, information, and data obtained from various sources, and James City County is not responsible for its accuracy or how current it may be. If discrepancies are found, please contact the Real Estate Assessment Division of James City County, Mapping/GIS Section. Aerial Imagery Copyright 2005 James City County.

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RESOLUTION

DENYING AN APPEAL ON JCC RE TAX PARCEL NO. 2220500010

WHEREAS, Mr. Ronald Haney, (the "Applicant") has appeared before the Chesapeake Bay Board of James City County (the "Board") on January 12, 2011 appealing a Notice of Violation (CBV-11-007) dated November 16, 2010, ordering removal of the dog kennel in the Resource Protection Area (RPA), and restoration of the RPA consistent with the Chesapeake Bay Preservation Ordinance, on property identified as JCC RE Tax Parcel No. 2220500010 and further identified as 3 Joy's Circle in the Hunter's Creek Subdivision (the "Property") and;

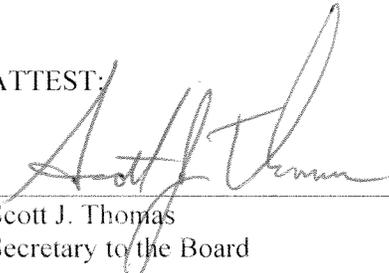
WHEREAS, the Board has listened to the arguments presented and has carefully considered all evidence entered into the record.

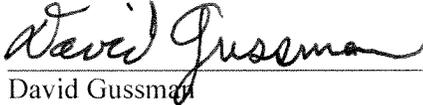
NOW, THEREFORE, following a public hearing, the Chesapeake Bay Board of James City County by a majority vote of its members FINDS that all of the following conditions have **NOT** been met:

1. The hardship is not generally shared by other properties in the vicinity;
2. The Chesapeake Bay, its tributaries and other properties in the vicinity will not be adversely affected: and
3. The appellant acquired the property in good faith and the hardship is not self-inflicted.

THEREFORE, the Chesapeake Bay Board of James City County is denying the appeal filed by Ronald Haney on December 6, 2010 and upholds the November 16, 2010 Notice of Violation issued by James City County Environmental Division.

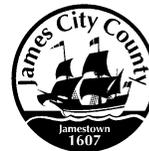
ATTEST:

  
\_\_\_\_\_  
Scott J. Thomas  
Secretary to the Board

  
\_\_\_\_\_  
David Gussman  
Chair, Chesapeake Bay Board

Adopted by the Chesapeake Bay Board of James City County, Virginia, this 12th day of January 2011.

DenyAppealTemp.res



**MEMORANDUM COVER**

**Subject:** Donation to James City-Bruton Volunteer Fire Department Capital Fund - \$25,000

**Strategic Management Plan Pathway:** 2.i - increase volunteerism and 5.b - maintain a well-trained and high performing workforce for normal and emergency operations

**Action Requested:** Shall the Board approve the resolution to donate \$25,000 to the James City-Bruton Volunteer Fire Department Capital Fund?

**Summary:** The Volunteer Fire Department owns and maintains its building in Toano, known as Fire Station 1. The building was constructed almost 50 years ago by the volunteers using donated funds. Over the years, wear and tear has taken its toll on the structure, to the point that the Volunteer Chief has identified \$400,000 in needed repairs. The Volunteer Fire Department has started a Capital Fund Campaign or fund drive to meet those needs.

James City-Bruton Volunteer Fire Department has requested that James City County make a donation to this fund drive. Because the volunteers provide a needed emergency service to the citizens and their service provides substantial cost avoidance to the citizens, a donation is recommended.

The Volunteer Rescue Squad was awarded \$50,000 in operating funds for FY 11. During the last six months the squad has voluntarily taken a reduced role in Emergency Medical Services moving from a patient transport agency to a non transport supporting role. James City County has taken over the entire transport role for that organization. This has reduced the need for operating funds to the squad and they have accepted a reduced contribution of \$25,000 for FY 11.

It is recommended that the James City County Board of Supervisors transfer the remaining \$25,000 donation to the James City Volunteer Rescue Squad to the James City-Bruton Volunteer Fire Department Capital Funds Campaign.

**Fiscal Impact:** Complete a budget transfer from the James City County Volunteer Rescue Squad to the James City-Bruton Volunteer Fire Department Capital Fund Campaign.

**FMS Approval, if Applicable:** Yes  No

**Assistant County Administrator**  
  
Doug Powell \_\_\_\_\_

**County Administrator**  
  
Robert C. Middaugh \_\_\_\_\_

**Attachments:**  
1. Memorandum  
2. Resolution

**Agenda Item No.:** G-4  
  
**Date:** March 22, 2011

MEMORANDUM

DATE: March 22, 2011  
TO: The Board of Supervisors  
FROM: William T. Luton, Fire Chief  
SUBJECT: Donation to James City-Bruton Volunteer Fire Department Capital Fund - \$25,000

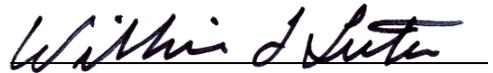
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The Volunteer Fire Department owns and maintains its building in Toano, known as Fire Station 1. The building was constructed almost 50 years ago by volunteers using donated funds. Over the years wear and tear has taken its toll on the structure, to the point that the Volunteer Chief has identified \$400,000 in needed repairs. The Volunteer Fire Department has started a Capital Fund Campaign or fund drive to meet those needs.

James City-Bruton Volunteer Fire Department has requested that James City County make a donation to this fund drive. Because the volunteers provide a needed emergency service to the citizens and their service provides substantial cost avoidance to the citizens, a donation is recommended.

The Volunteer Rescue Squad was awarded \$50,000 in operating funds for FY 11. During the last six months the squad has voluntarily taken a reduced role in Emergency Medical Services moving from a patient transport agency to a non-transport supporting role. James City County has taken over the entire transport role for that organization. This has reduced the need for operating funds to the squad and they have accepted a reduced contribution of \$25,000 for FY 11.

It is recommended that the James City County Board of Supervisors transfer the remaining \$25,000 donation to the James City Volunteer Rescue Squad to the James City-Bruton Volunteer Fire Department Capital Funds Campaign.

  
William T. Luton

CONCUR:

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Robert C. Middaugh

WTL/nb  
VFireDontn\_mem

Attachment

**RESOLUTION**

**DONATION TO JAMES CITY-BRUTON VOLUNTEER FIRE DEPARTMENT**

**CAPITAL FUND - \$25,000**

WHEREAS, the James City-Bruton Volunteer Fire Department has begun a Capital Fund Campaign to pay for identified extensive repair needs for its building; and

WHEREAS, the Volunteer Fire Department provides a vital emergency response service to the citizens and visitors to James City County; and

WHEREAS, the James City-Bruton Volunteer Fire Department has submitted a request for a donation to the Capital Fund Campaign.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby authorizes a donation to the James City-Bruton Volunteer Fire Department and authorizes the following budget transfer:

James City County Volunteer Rescue Squad	<u>(\$25,000)</u>
James City-Bruton Volunteer Fire Department – Capital Campaign	<u>\$25,000</u>

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Mary K. Jones  
Chairman, Board of Supervisors

ATTEST:

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Robert C. Middaugh  
Clerk to the Board

Adopted by the Board of Supervisors of James City County, Virginia, this 22nd day of March, 2011.

VFireDontn\_res

# *James City-Bruton Volunteer Fire Department*

INCORPORATED

P.O. Box 382 - 566-1905

3135 FORGE ROAD

TOANO, VIRGINIA 23168

March 7, 2011

Mr. Robert Middaugh, County Administrator  
James City County  
Post Office Box 8784  
Williamsburg, VA 23187

Dear Mr. Middaugh,

The Volunteer Fire Department is in the process of embarking on a capital campaign to raise money specifically for much needed building repairs. We are currently able to raise enough funds throughout the year for miscellaneous repairs, but this campaign would be for significant items as listed on the attached page.

I am writing to request any donations that James City County may be able to make to our campaign. All support the County is able to give us would be greatly appreciated.

I would personally be happy to answer any questions you may have regarding this request. Thank you for your consideration in this matter.

Sincerely,

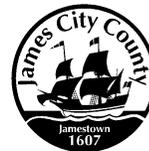


David A. Nice  
Fire Chief

cc: Tal Luton

## Capital Campaign Building Repair Needs

1. Replace front & rear concrete aprons	65,000
2. Install energy efficient roll up doors	50,000
3. Install energy efficient windows in building	20,000
4. Replace/upgrade small generator	65,000
5. Refinish apparatus floor	45,000
6. Structural repairs to cracked masonry	25,000
7. Add office space	40,000
8. Add vestibule for energy efficient	15,000
9. Miscellaneous upgrades throughout building	25,000
10. Add additional storage space	50,000
Total	400,000



**MEMORANDUM COVER**

**Subject:** Payment of Automobile Liability Insurance Deductible

**Strategic Management Plan Pathway:** 1.a – evaluate service delivery costs

**Action Requested:** Shall the Board approve the resolution that appropriates the use of contingency funds to allow payment of an invoice for an automobile liability deductible of \$100,000 to the Virginia Association of Counties Group Self Insurance Risk Pool?

**Summary:** A Police unit was involved in an automobile accident on December 25, 2009. James City County is responsible for the injuries and property damage that was incurred by other parties in the accident. The total claim cost was \$211,423. James City County carries a \$100,000 deductible on automobile liability. The Virginia Association of Counties Group Self Insurance Risk Pool made liability payments in excess of the deductible and James City County is responsible for reimbursing the Pool for all payments made under the deductible. Use of Contingency funds to pay the insurance deductible requires a Board resolution. The amount of \$100,000 is being requested.

Staff recommends approval of the resolution.

**Fiscal Impact:** N/A

**FMS Approval, if Applicable:** Yes  No

**Assistant County Administrator**  
  
Doug Powell \_\_\_\_\_

**County Administrator**  
  
Robert C. Middaugh \_\_\_\_\_

**Attachments:**  
1. Memorandum  
2. Resolution

**Agenda Item No.:** G-5  
  
**Date:** March 22, 2011

MEMORANDUM

DATE: March 22, 2011  
TO: The Board of Supervisors  
FROM: Bart J. Johnson, Risk Management Director  
SUBJECT: Payment of Automobile Liability Insurance Deductible

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On December 25, 2009, a James City County police vehicle was involved in an automobile accident resulting in liability damages of \$211,423. James City County is a member of and has automobile liability insurance through the Virginia Association of Counties Group Self Insurance Risk Pool (Pool). Liability payments on behalf of James City County made through the Pool in excess of the County's deductible of \$100,000. The Pool has invoiced James City County for the deductible payment amount.

High deductibles have been used for several years to control spending on insurance premiums by having the County assume the risk for general and automobile liability claims up to \$100,000. Staff believes this is the first time the County has actually had to pay the full deductible on a liability claim.

Staff recommends approval of the attached resolution that transfers funds from Contingency to pay the Pool invoice of \$100,000.

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Bart J. Johnson

CONCUR:

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John E. McDonald

BJJ/nb  
AutoInsPay\_mem

Attachment

**RESOLUTION**

**PAYMENT OF AUTOMOBILE LIABILITY INSURANCE DEDUCTIBLE**

WHEREAS, James City County is a member of and has automobile liability insurance through the Virginia Association of Counties Group Self Insurance Risk Pool; and

WHEREAS, a James City County Police vehicle was involved in an automobile accident on December 25, 2009, that caused liability damages of \$211,423; and

WHEREAS, James City County carries a \$100,000 deductible on its automobile liability coverage; and

WHEREAS, the Virginia Association of Counties Group Self Insurance Risk Pool has invoiced James City County \$100,000 for the deductible payment.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby authorizes the transfer from Contingency for the payment of \$100,000 to the Virginia Association of Counties Group Self Insurance Risk Pool.

Expenditures:

Non-Departmental

Insurance Deductible Payment	<u>\$100,000</u>
Contingency	<u>(\$100,000)</u>

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Mary K. Jones  
Chairman, Board of Supervisors

ATTEST:

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Robert C. Middaugh  
Clerk to the Board

Adopted by the Board of Supervisors of James City County, Virginia, this 22nd day of March, 2011.

AutoInsPay\_res

## RESOLUTION

### RECOGNITION OF ACHIEVEMENT

#### JOANN FALLETTA, MUSIC DIRECTOR, VIRGINIA SYMPHONY ORCHESTRA

WHEREAS, JoAnn Falletta, “one of the finest conductors of her generation,” and a recognized international artist in the orchestra world, has chosen to share her unique talents with community and the Virginia Symphony Orchestra; and

WHEREAS, this season we celebrate her 20th Anniversary as Music Director of the Virginia Symphony; and

WHEREAS, under her leadership the Virginia Symphony has earned a reputation as one of the nation’s top orchestras; and

WHEREAS, she has led the Virginia Symphony to a cascade of artistic achievements including performances at Carnegie Hall, the Kennedy Center, National Public Radio and an ASCAP Award bringing national recognition to the region and to the orchestra; and

WHEREAS, she has enriched the lives of Hampton Roads audiences with her talent and uncompromising dedication to the highest artistic standards; and

WHEREAS, her artistic vision for the orchestra has led to the creation of a national discography recognized with wide critical acclaim; and

WHEREAS, she is one of Hampton Roads’ leading Ambassadors to the world every time she takes the podium to lead an international orchestra; and

WHEREAS, she is beloved by the musicians, the greater Symphony Family and the entire community; and

WHEREAS, she has created an enduring and enriched quality of life for the municipalities and the citizens of Hampton Roads; and

WHEREAS, she was prominently featured as part of America’s Anniversary of the founding of Jamestown in James City County in May 2007.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, on this 22nd day of March, 2011 hereby expresses its sincere appreciation to Ms. Falletta for her contribution to the James City County’s quality of life.

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Mary K. Jones  
Chairman, Board of Supervisors

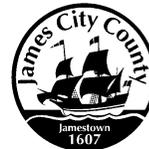
ATTEST:

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Robert C. Middaugh  
Clerk to the Board

Adopted by the Board of Supervisors of James City County, Virginia, this 22nd day of  
March, 2011.

JFalletta\_res



**MEMORANDUM COVER**

**Subject:** Case Nos. Z-0002-2010, SUP-0029-2010, and MP-0001-2010. The Williamsburg Pottery

**Strategic Management Plan Pathway:** N/A

**Action Requested:** Shall the Board approve the attached resolutions permitting the redevelopment of the Williamsburg Pottery to amend the master plan and proffers which relocate one of the two signalized entrances, reconfigure associated traffic improvements, increase the permitted retail, and corporate office square footage from 161,000 to 200,000 square feet?

**Summary:** Mr. Vernon Geddy has applied to rezone an 18.78-acre parcel located at 6692 Richmond Road from M-1, Limited Business/Industrial, with proffers, to M-1, Limited Business/Industrial, with amended proffers, and amend the existing special use permit and master plan applicable to this property. The purpose of the proposed amendments is to redevelop the property to incorporate new retail uses and dedicate the majority of the proposed retail and office square footage to the relocation and consolidation of the existing Williamsburg Pottery operations located on the eastern side of the CSX railroad tracks.

The project proposes to increase the total amount of permitted retail and office square footage from 161,000 to 200,000, relocate one of the two signalized intersections, and reconfigure associated traffic improvements on Route 60. Other changes to the project include the relocation of one of the five pocket parks and elimination of the service drive between Buildings A and B at the north end of the site to allow the development of a larger, central pedestrian plaza.

Staff finds that the proposed amendments to be consistent with the Comprehensive Plan Land Use Map and surrounding zoning and development and recommends that the Board of Supervisors approve the rezoning, master plan, and special use permit applications with the conditions listed in the attached resolution and acceptance of the voluntary proffers.

The Planning Commission, following its public hearing on March 2, 2011, recommended approval of the applications by a vote of 6 to 0.

**Fiscal Impact:**  
N/A

**FMS Approval, if Applicable:** Yes  No

**Assistant County Administrator**  
  
Doug Powell \_\_\_\_\_

**County Administrator**  
  
Robert C. Middaugh \_\_\_\_\_

**Attachments:**  
1. Staff Report  
2. Resolution  
3. 11 Attachments

**Agenda Item No.:** H-1  
**Date:** March 22, 2011

**REZONING-0002-2010, SPECIAL USE PERMIT-0029-2010, and MASTER PLAN-0001-2010.**

**The Williamsburg Pottery**

**Staff Report for the March 22, 2011, Board of Supervisors Public Hearing**

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*This staff report is prepared by the James City County Planning Division to provide information to the Planning Commission and Board of Supervisors to assist them in making a recommendation on this application. It may be useful to members of the general public interested in this application.*

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**PUBLIC HEARINGS**

Planning Commission:

**Building F Board Room; County Government Complex**

January 5, 2011, 7:00 p.m. (staff deferral)

March 2, 2011, 7:00 p.m.

Board of Supervisors:

March 22, 2011, 7:00 p.m.

**SUMMARY FACTS**

Applicant:

Vernon M. Geddy, III

Land Owner:

Williamsburg Pottery Properties, LLC

Proposal:

Amend the master plan and proffers to relocate one of the two main signalized entrances into the project, reconfigure associated traffic improvements and increase the permitted retail and office square footage from 161,000 to 200,000 square feet.

Location:

6692 Richmond Road

Tax Map/Parcel No.:

2430100024

Parcel Size:

18.78 acres

Existing Zoning:

M-1, Limited Business Industrial, with proffers

Proposed Zoning:

M-1, Limited Business Industrial, with amended proffers

Comprehensive Plan:

Mixed-Use, Lightfoot

Primary Service Area:

Inside

**STAFF RECOMMENDATION**

Staff finds that the proposed amendments to be consistent with the Comprehensive Plan Land Use Map designation and surrounding zoning and development and recommends the Board of Supervisors approve the Rezoning, Master Plan, and Special Use Permit (SUP) applications with the SUP conditions listed in the attached resolution and acceptance of the voluntary proffers.

Staff Contact:

Christopher Johnson

Phone: 253-6685

**PLANNING COMMISSION RECOMMENDATION**

The Planning Commission recommended approval of these applications at its March 2, 2011, meeting by a vote of 6-0 (Krapf: absent).

**Proposed Changes Made Since Planning Commission Meeting**

There have not been any changes made since the Planning Commission meeting.

## **PROJECT DESCRIPTION**

Mr. Vernon Geddy has applied to rezone an 18.78-acre parcel located at 6692 Richmond Road from M-1, Limited Business/Industrial, with proffers, to M-1, Limited Business/Industrial, with amended proffers, and amend the existing SUP and Master Plan applicable to this property. The purpose for the proposed amendments is to redevelop the aging property to incorporate new retail uses and dedicate the majority of the proposed retail and office square footage to the relocation of the existing Williamsburg Pottery operations located on the east side of the CSX railroad tracks. The proposed redevelopment will include up to 200,000 square feet of retail and office space including outdoor sales and associated parking. The property can be identified as Parcel No. (1-24) on the James City County Real Estate Tax Map No. (24-3). The site is designated as Mixed-Use, Lightfoot Area on the 2009 Comprehensive Plan Land Use Map.

The project has evolved from what was first envisioned and planned during the rezoning process in 2006-2007. At that time, the project was called The Promenade at the Williamsburg Pottery Factory and was anticipated to be a mixture of retail uses including:

- A traditional shopping center, anchored by a grocery store
- Outlet type stores as were located on this property in 2006, some previously abandoned
- Some traditional Williamsburg Pottery shops

Today, this project is being called The Williamsburg Pottery and the retail space in the three main buildings (Buildings A, B, and C on the Master Plan) will be occupied entirely by the traditional Williamsburg Pottery goods and products currently located in numerous buildings on the east side of the CSX railroad tracks. The applicant has referred to this transition as both a consolidation and redevelopment of the Pottery. Recent press announcements have referred to the project as an “Evolution/Revolution.” The current plan envisions that all retail operations for the Pottery will be located in these three new buildings including their corporate offices and the entire project will be constructed in a single phase rather than multiple phases as planned in 2007. Under this new plan, there will be less need for the public to cross the CSX railroad tracks by vehicle and zero need to use the existing pedestrian tunnel connecting the west side to the east side.

The applicant has highlighted a number of key items that they feel worthy of mentioning as you consider their proposed amendments:

- Parking – this was planned as a traditional shopping center previously and will now be solely Pottery goods and products. The applicant has increased the number of bus parking spaces at the western end of the property as a result and has provided eight bus parking spaces.
- Offices – while offices were always envisioned as part of The Promenade, they were originally planned to be real estate or other professional type offices typically found in a strip shopping center. The applicant is proposing to have up to 15,000 square feet of Pottery corporate offices on the second floor of Building A. These types of offices are counted as retail space as well as the outdoor garden center display area on the Master Plan.
- VDOT Traffic Improvements – the submittal requirements refer to Chapter - 527 Traffic Impact Analysis Regulations and Access Management Regulations. Virginia Department of Transportation (VDOT) has indicated that the Promenade project is grandfathered from these regulations as long as the applicants follow the traffic improvements and perform the required studies noted in the 2007 proffers. The currently proposed Master Plan amends the entrance location for the relocated signalized traffic signal 300 feet further to the west from the 2007 signal location, changing the spacing from the signalized entrance proposed at the Colonial Heritage east crossover intersection from 1,000 feet to approximately 700 feet.

Other key changes have been made to the 2007 proffers: The amount of retail and office space has been increased from 161,000 to 200,000 square feet, the relocation of one pocket park, and the elimination of the service drive between two buildings at the north end of the site for the development of a larger, central pedestrian plaza.

## Proffers

- Amended Master Plan for the property
- Water Conservation standards to be approved by the James City Service Authority (JCSA)
- Transportation improvements include removing the existing signalized entrance and median crossover; installing a new traffic signal and constructing a new median crossover; an amended entrance from Route 60 at the Colonial Heritage east crossover as well as pedestrian signals when the traffic signal is completed; four-foot shoulder bike lanes; and all required turn lanes
- Lighting plan reviewed and approved by the Director of Planning
- A variable width Community Character Corridor (CCC) buffer along the front of the property, including an average width of 37 feet and a minimum width of 20 feet. The buffer will also include an enhanced landscaped section (125 percent of Ordinance requirements) along the frontage to include a 42-inch fence; landscaping of the Route 60 median along the frontage of the property (that is not already landscaped by Colonial Heritage)
- Redirection of stormwater away from the Yarmouth Creek Watershed, with the exception of the features associated with entrances and sidewalks that drain into VDOT right-of-way
- Upgrade of the existing pond, including necessary channel improvements
- Inclusion of six filter boxes to treat 1.5 acres of redirected stormwater into the Skimino Creek Watershed
- Architectural Review, including details about site design, building elevations, and landscaping
- Retention of the Williamsburg Area Transit (WAT) bus stop and CSX railroad crossing

**Staff Comment:** The proffers are discussed in the relevant sections of this report.

## PUBLIC IMPACTS

### Environmental

**Watershed:** Skimino Creek Watershed currently receives the majority of site drainage. Of the approximately 4.5 acres draining toward Yarmouth Creek, 3.6 acres, including the majority of the impervious cover, is proposed to be redirected toward Skimino Creek.

**Proffers:**

- Drainage from approximately four acres of existing developed land will be removed from the Yarmouth Creek Watershed and redirected toward the Skimino Creek Watershed
- Upgrade of the existing farm pond to County standards as a Best Management Plan (BMP) pond, including any necessary channel improvements leading into the pond
- Six standard size tree box filters capable of treating stormwater from approximately 1.5 acres or ten percent of impervious cover in the parking lot on the property

**Staff Comments:** The Chesapeake Bay Preservation Ordinance criteria for a redevelopment site are met by the 0.8-acre reduction in impervious cover and the proposed upgrades to the farm pond. The applicant has agreed to include Low Impact Design (LID) measures to help treat some new impervious cover being added to the Skimino Creek watershed. The Environmental Division has determined that this would result in the treatment of 1.5 acres of the 14 acres of impervious cover on the project site, which constitutes approximately ten percent of the impervious area. Environmental staff finds the proffer for six filter boxes acceptable as LID measures.

### Public Utilities

The project site is located inside the Primary Service Area (PSA) and will be served by public water and sewer.

**Proffers:**

- Water Conservation standards have been reviewed and approved by the JCSA as part of the site plan submitted concurrently for this project. The standards address such water conservation measures as limitations on the installation and use of irrigation systems and irrigation wells, the use of approved landscaping materials, and the use of water conserving fixtures and appliances to promote water conservation and minimize the use of public water resources.

**Staff Comments:** JCSA staff has reviewed this proposal and concurs with the amended master plan and proffers as proposed.

### **Transportation**

The applicant's traffic study determined there would be 633 AM weekday peak hour and 820 PM weekday peak hour trips generated by a shopping center; altogether there would be 8,996 total weekday daily trips in and out of the project. According to the applicant's traffic study, the existing Williamsburg Pottery Factory generates 284 PM weekday peak hour trips. For the AM peak hour, all intersections have overall level of service (LOS) "C" or better with LOS "D" or better for turning movements. For the PM peak hour, there is overall LOS "D" at Lightfoot Road, LOS "C" at Centerville Road, and LOS "B" at the two Route 199 ramp intersections. There are LOS "E" and "F" turning movements at Lightfoot Road and LOS "E" turning movements at Centerville Road and at the Route 199 northbound ramps. All other movements are LOS "D" or better. 2020 AM and PM peak hour LOS for the three western intersections (Colonial Heritage BLVD., Pottery West Main Driveway/Colonial Heritage East, and the Pottery East Main Driveway) are much further from capacity limits than the four western intersections. In the 2020 AM peak hour, overall LOS is "B" or better for all three intersections. In the 2020 PM peak hour, overall LOS is "C" or better for all three intersections.

**2007 Traffic Counts (for Richmond Road):** Croaker Road (Route 607) to Lightfoot Road (Route 646): 21,892 average daily vehicle trips (a 16.63 percent increase from 2005 to 2007); Lightfoot Road to Centerville Road (Route 614): 26,018 average daily trips (a 4.56 percent increase from 2005 to 2007)

**2035 Daily Traffic Volume Projected:** Norge Elementary School to Centerville Road: 39,110 average daily trips; this section of road is listed as recommended for improvement to six lanes

**Road Improvements:** The applicant has proffered to close the existing median crossover at the main entrance and construct a new crossover and traffic signal 300 feet further to the west from the 2007 location, changing spacing to the western signal from 1,000 feet to approximately 700 feet. The new signalized intersection will include an eastbound left-turn lane, westbound left-turn lane, and westbound right-turn lane. A new signalized entrance at the Colonial Heritage east crossover (previously proffered by Colonial Heritage) with a westbound right-turn lane and an eastbound left-turn lane will also be constructed. The total number of entrances and exits will be reduced from four to three unless VDOT allows a right-in/right-out entrance in the middle of Parcel 3.

#### **Proffers:**

- Relocation of the existing signalized entrance from Route 60 with an eastbound left-turn lane with 200 feet of storage and a 200 foot taper, a westbound left-turn lane with 200 feet of storage and a 200-foot taper, and a westbound right-turn lane with 200 feet of storage and a 200-foot taper with four-foot bike lane accommodations. A standard commercial entrance will be installed with dual left-turn lanes and a dedicated right-turn lane with at least 150 feet of storage for egress and one ingress lane.
- A new entrance from Route 60 at the Colonial Heritage east crossover with a westbound right-turn lane with 200 feet of storage and a 200-foot taper and an eastbound left-turn lane with four-foot bike lane accommodations as well as crosswalks, median refuge islands, signage, and pedestrian signals when the traffic signal is installed. A standard commercial entrance with dual left-turn lanes and a dedicated right-turn lane for egress, and one ingress lane.
- A shared right-in, right-out only entrance at the west end or the property adjacent to Go-Karts Plus. When this entrance is constructed, a westbound right-turn lane with 200 feet of storage and a 200-foot taper will also be constructed with four-foot bike lane accommodations. The standard commercial entrance with one egress lane and one ingress lane with a raised channelization island to provide positive traffic control.
- With prior approval from VDOT, a right-in/right-out entrance in the middle of Parcel 3 at the southern end of the property may be installed. If VDOT determines that it is necessary, a westbound right-turn lane with 200 feet of storage and a 200-foot taper will also be constructed with four-foot bike lane accommodations.

**Conditions:**

- **Traffic Signal:** The traffic signal at the Colonial Heritage east crossover shall be installed or bonded prior to the issuance of a certificate of occupancy for 182,000 square feet of buildings on the property as shown on the binding Master Plan. (*Existing Condition with amended building square footage trigger and elimination of need for a traffic warrant analysis. VDOT approved the installation of both of the proposed traffic signals at the time of opening for the project.*)
- **Commencement of Construction:** If construction has not commenced on this project within 36 months from the issuance of an SUP, the SUP shall become void. Construction shall be defined as obtaining permits for building construction and footings and/or foundation has passed required inspections. (*New Condition*)
- **Severance Clause:** This SUP is not severable. Invalidation of any word, phrase, clause, sentence, or paragraph shall invalidate the remainder. (*New Condition*)

**VDOT Comments:** VDOT concurs with the projected trip generation and distributions as presented in the traffic study as well as the conclusion that both full access driveways will meet warrants for signalization upon buildout of the site. While acknowledging that the access plan does not comply with the Access Management Regulations with respect to the spacing of entrances, VDOT granted the applicant's exception request to allow reduced crossover spacing of 700 feet, noting that the reduction would not materially alter the operational characteristics of the corridor. VDOT analyzed three corridor improvement alternatives for the PM peak hour in the study area as a strategy to mitigate increases in corridor traffic volumes that are forecasted to exceed available capacity and associated degradation in functional operation on the corridor in the future. Alternative No. 1 calls for widening Route 60 to six lanes at Lightfoot Road and Centerville Road and various turn lane improvements. This alternative would improve signal operations generally to overall levels "B" and "C" with the Centerville Road intersection operating at a level of service "E," improved from LOS "F." Alternative No. 2 involves reconstructing approaches of Lightfoot Road and Centerville Road at Route 60 to eliminate cross street through traffic and provide various turn lane improvement. Prohibited through movements would be reassigned to U-turns at adjacent crossovers. This strategy would maximize existing capacity as it eliminates a phase from the signal cycle and improves signal operations generally from overall LOS "B" and "C" and the Centerville Road intersection operating at an LOS "D", improved from LOS "F". Alternative No. 3 is a combination of Alternative Nos. 1 and 2 that adds a third through lane, turn lane improvements, and a prohibition of through traffic at Lightfoot Road and Centerville Road. This improves signal operations generally to overall LOS "B" and "C". The overall progression speed of the corridor increases from LOS "E" and "F" to LOS "C" and "D." VDOT notes that the three improvement alternatives are unfunded and additional study would be required to determine the cost and feasibility of full implementation of the improvements.

**Staff Comments:** The applicant's proposed access plan to eliminate the existing signalized entrance and relocate the east main driveway approximately 600 feet to the west, aligning it with the existing access road which crosses the CSX railroad tracks does not have any significant effect on the Route 60 corridor traffic operations. There are some slight increases and decreases in overall delay at some intersections, but the overall corridor has increased operating speed in the PM peak hour with this entrance and traffic signal relocation. Queuing for Route 60 through traffic is accommodated between the west main driveway at the Colonial Heritage east crossover and the east main driveway intersection with the proposed access plan. Staff also reviewed a Traffic Signal Warrant Study, Saturday Corridor Study, and Crash Data Study, which evaluated the existing intersection safety and the implications for the proposed traffic signal relocation. Based on the provided studies, the County supported the applicant's exception request for the spacing standards for entrances, intersections, and crossovers.

**COMPREHENSIVE PLAN**

**Land Use Map**

Designation	<p><i>Mixed Use, Lightfoot (Page 147):</i> Recommended uses for Mixed-Use, Lightfoot Area include transit oriented, mixed-use development with a mixture of limited industry, commercial and moderate density housing.</p> <p><b>Staff Comment:</b> Staff finds that the use as proposed meets the land use designation for this area as the proposed uses are commercial in nature. Staff notes that the balance of the Pottery property located on the east side of the CSX railroad tracks is designated EO, Economic Opportunity. The Land Use designation for the west side of Richmond Road (opposite from this project) suggests that commercial uses should not be developed in a “strip” commercial fashion and should emphasize shared access and parking as well as consistent treatment for landscaping and architecture. This was recognized in the master plan and proffers for the Colonial Heritage commercial land bay and will be achieved during the development review process once development is proposed within this land bay.</p>
General	<p><i>Strip Commercial Development (Page 136):</i> The Comprehensive Plan encourages commercial developments to develop in an attractive and convenient manner while avoiding “strip” commercial characteristics. Incremental development that allows inherent traffic congestion, non-centralized commercial activity, and reliance on automobile dependency are all discouraged. The Comprehensive Plan also recognizes the need to minimize new entrances from a traffic perspective, a design feature that is often not present in strip commercial development.</p> <p><b>Staff Comment:</b> The applicant has incorporated several design elements which have the cumulative effect of minimizing the “strip” commercial characteristics of the proposed development. This project provides design elements that avoid typical “strip” commercial development in that it provides landscaped parking areas, wide sidewalks in front of storefronts, and large pedestrian friendly plazas. While the buildings are arranged in a linear, one-store deep, non-clustered orientation and the parking is entirely in front of the buildings along the street frontage, the applicant has provided elevations which break up the linear appearance of the buildings and give the appearance of a non-linear shopping center. The applicant applied design guidelines which ensured a superior architectural design including a 1.5-story building expression, as well as providing “pocket parks” at the entrances to the development, consistent median landscaping in Route 60, enhanced front buffer landscaping and fencing, and a row of trees in the parking lot. Staff finds that the design elements of these features will help draw attention away from the parking fields in front of the buildings, break up what would otherwise be a long parking field along Route 60, and mitigate much of the sites visual strip commercial character.</p>
Development Standards	<p><i>Mixed Use Standard b) (Page 145):</i> Create vibrant urban environments that bring compatible land uses, public amenities, and utilities together at various scales. Create pedestrian friendly, higher density development, and a variety of uses that enable people to live, work, play, and shop in one place, which can become a destination.</p> <p><i>Mixed Use Standard c) (Page 145):</i> The timing and intensity of commercial development at a particular site should be controlled by the maintenance of an acceptable level of service for roads and other public services.</p> <p><i>Mixed Use Standard d) (Page 145):</i> Developments should focus on place-making and designed to create a sense of place and should be seen as community destinations. Focal open spaces, gathering spaces, unified architectural design, and a mix of uses which encourage pedestrian activity.</p> <p><b>Staff Comment:</b> This project provides both sidewalks and shoulder bike lanes along the front of the property, including connections for crosswalks across Richmond Road when this intersection becomes signalized. Staff previously expressed concerns over the buffering along the frontage of the property, as the full 50-foot Community Character Corridor (CCC) buffer</p>

	<p>was not proffered, but found the landscaping and design features to be a positive aspect of the development's site plan. The applicant provided a unified design theme that incorporated various architectural techniques to prevent monotonous building design. Staff finds that these features help break up the large retail component of this project and help ensure this project's unique character and visually aesthetic design.</p>
Goals, Strategies, and Actions	<p><i>LU 1.1 (Page 154):</i> Ensure that development is compatible in size, scale, and location to surrounding existing and planned development  <i>LU 2.1 (Page 154):</i> Plan for and encourage the provision of greenways, sidewalks and bikeways to provide connections to other facilities  <i>LU 4.5 (Page 154):</i> Promote infill, redevelopment, revitalization, and rehabilitation within the PSA  <i>LU 4.7.2 (Page 154):</i> Accomplishing rezoning for commercial and light industrial uses with sites of five acres or more under a binding master plan  <i>LU 5.1 (Page 154):</i> Coordinate allowable intensities for proposed developments with the capacities and availability of public roads and other facilities and services</p> <p><b>Staff Comment:</b> Staff finds that the proposed development will enhance the appearance of the Route 60 corridor. Staff notes that as a redevelopment project, this development will provide the County the ability to revitalize an aging retail center, substantially improve the CCC's visual quality, and attract new merchants. For any redevelopment project it is important to balance the redevelopment costs versus the goals presented by the Comprehensive Plan with respect to community character (buffers, strip-commercial development, and the like). Design limitations of the project site prevent this property from developing with the same characteristics of the Colonial Heritage property across the street. Staff finds that the enhanced landscaping, open space provided by the pocket parks and central plazas between buildings, and the architectural design substantially improves the character of the area and substantially improved the compatibility of this development with the Colonial Heritage site and the Comprehensive Plan's goals.</p>

## Environment

General	<p><i>Yarmouth Creek Watershed Management Plan (Page 53):</i> A final watershed management plan with recommendations on preserving this watershed was completed in 2003.</p> <p><b>Staff Comment:</b> A majority of the four acres that currently drain into the Yarmouth Creek Watershed will be redirected in the Skimino Creek Watershed. The remaining area will constitute only about .75 acres near the VDOT right-of-way along the frontage of the property.</p>
Goals, Strategies, and Actions	<p><i>ENV 1.2(Page 61):</i> Promote the use of Better Site Design, Low Impact Development, and effective Best Management Practices</p> <p><b>Staff Comment:</b> the Chesapeake Bay Preservation Ordinance criterion for redevelopment sites is achieved by a 10 percent reduction of nonpoint source pollutant load compared to predevelopment conditions. This will be achieved for this project by a four percent (0.8 acre) reduction in impervious cover and proposed upgrades of the existing farm pond on-site to a wet pond type BMP. Wet pond upgrades will address nutrient, phosphorus, and nitrogen removal as a nonpoint source. In addition, the applicant proffered manufactured BMPs systems within the parking lot areas to address other nonpoint source components that the BMP upgrade could not address such as heavy metals, hydrocarbons, and bacteria. Six manufactured BMP units (tree box filters) are being provided to treat 1.5 acres of stormwater from finished parking lot impervious areas. The Environmental Division finds that the additional tree box filters meet the Comprehensive Plan goal to promote the use of Better Site Design and Low Impact Development. The 1.5 acres of treatment provided by the tree box filters is equivalent to approximately 10 percent of the sites impervious area.</p>

## Transportation

General	<p><i>Sidewalks and Bikeways (Page 110):</i> Strongly recommends development of sidewalks and related pedestrian facilities to connect residential to nonresidential areas, as well as construction of bike facilities and ensuring all new facilities and future plans meet the public’s desires and needs.</p> <p><i>Richmond Road (Page 116):</i> Ensure efficient signal placement and coordination.</p> <p><b>Staff Comment:</b> The applicant has provided both pedestrian and bicycle improvements along Richmond Road which tie into existing sidewalks and bike lanes on either side of the proposed development. The applicant has also provided traffic signal relocation for the main entrance of this development, as well as aligning another entrance across from Colonial Heritage to be coordinated with future development. The applicant is also providing fencing and pedestrian scale lighting along the entrance roads to the property, along with pedestrian open space areas at the frontage of the development.</p>
Goals, Strategies, and Actions	<p><i>T 1.1 (Page 121):</i> Ensure that new development follows recommended intensities and development patterns that will serve to preserve the road capacities and support the Community Character Corridor designations of existing and proposed roads.</p> <p><i>T 1.2.6 (Page 121):</i> Facilitate the efficient flow of vehicles and minimize delay through means such as the use of advanced traffic management technology.</p> <p><i>T 3.3.1 (Page 152):</i> Continue providing public transit to areas of greatest demand and for populations with special needs</p> <p><i>T 3.9 (Page 152):</i> Include bikeways, pedestrian facilities and multi-use trails within major developments</p> <p><i>T 3.11 (Page 152):</i> Implement the adopted James City County Sidewalk Master Plan and Regional Bicycle Facilities Plan by planning for bikeways and pedestrian facilities and requiring developments to participate in the development of the facilities</p>
	<p><b>Staff Comment:</b> The buffer along the front of the property will be larger than its current width, as the existing average will increase from approximately 10 to approximately 37 feet. The applicant has provided features to help mitigate that visual impact of the parking areas, including pedestrian open spaces, a row of shade trees in the parking lot, and enhanced landscaping and fence in the buffer.</p>

## Economic Development

General	<p><i>Business Retention/Expansion (Page 19):</i> The mission of the James City County’s Office of Economic Development (OED) is “to foster the development and expansion of a diversified and healthy base of primary business and industry that will better balance the tax base, increase job opportunities, and enhance both the quality and standard of living in James City County.” The OED works to create wealth by generating tax revenue to support County agencies and programs, attracting improved job opportunities that broaden and increase the payroll of County citizens, and enhancing the quality of life. To accomplish these tasks, OED’s core efforts are focused on business retention, expansion, attraction and creation.</p> <p><b>Staff Comment:</b> This area is directly addressed in the Comprehensive Plan as an area to be redeveloped and staff is in favor of seeing this part of the County revitalized. This rezoning will hopefully be the first in what will trigger many improvements along this section of Richmond Road, as well as a step in the direction of having a Master Planned Pottery property that will more closely mirror the vision of the Comprehensive Plan.</p>
Goals, Strategies and Actions	<p><i>ED 1.1 (Page 24):</i> Maintain an active and effective economic development strategy, which includes existing business retention and expansion of existing businesses.</p> <p><i>ED 5 (Page 25):</i> Encourage infill development, redevelopment of existing parcels, and the adaptive reuse of existing buildings to efficiently use infrastructure and natural resources.</p> <p><b>Staff Comment:</b> Staff finds the proposed redevelopment of the Pottery to be a positive step toward the evolution of an important County business. Staff recognizes the limitations of this parcel’s ability to comprehensively provide Mixed-Use characteristics.</p>

## Community Character

General	<p><i>Richmond Road Community Character Corridor (Page 67-68):</i> A 50 foot landscape buffer is standard for commercial uses along this road. This also includes parking and other auto-related areas clearly as a secondary component of the streetscape. Providing enhanced landscaping, and other desirable design elements which complement and enhance the visual quality of the urban corridor.</p> <p><b>Staff Comment:</b> The applicant has provided a buffer with an average depth of 37 feet, which is an increase over the existing buffer of 9.40 feet. During the legislative review of the 2007 rezoning application, the Planning Commission granted the applicants landscape modification request to reduce the buffer from 50 feet to an average depth of 37 feet recognizing the increase over existing site conditions as well as the unique shape of the parcel and its limited depth. The applicant explained that providing a full 50-foot landscape buffer would not allow the development to meet its parking requirements and would have a negative impact on the rear loading area behind buildings A and B. In addition to the 37-foot average depth landscape buffer, the applicant has proffered to landscape the Route 60 median in a similar style to what Colonial Heritage provided in the median in front of its Route 60 entrance to establish continuity within the median. The applicant has also agreed to provide a 42-inch fence along the entire property frontage to enhance the appearance of the buffer strip.</p>
Goals, Strategies and Actions	<p><i>CC 3.7 (Page 80):</i> Expect development s to employ site and building design techniques that reduce their visual presence and scale.</p> <p><b>Staff Comment:</b> Staff finds that the design guidelines and the open space parks at the front of the development help offset the negative impacts of the strip commercial nature of this project. Enhanced landscaping, as well as a row of shade trees in the parking area will also help alleviate some of dominant visual impact of the parking area.</p>

### Comprehensive Plan Staff Comments

Overall, staff finds that this application provides a positive redevelopment project for this area of the County and with the revised Master Plan, design guidelines, and proffers is in conformance with many goals of the Comprehensive Plan. Staff notes that while this project still presents some strip-commercial characteristics, as well as a reduced CCC buffer, the applicant has provided many positive features to the development that help mitigate these characteristics, which include enhanced buffer landscaping and decorative fencing, Route 60 median landscaping, pocket parks at the entrances to draw attention away from parking areas and break up what would otherwise be a long parking field along Route 60, a row of shade trees in the parking lot, and architectural design guidelines. Considering this is a redevelopment project and the design limitations of the parcel shape and size, staff feels that the applicant is providing the best overall design given the type of uses and intensity. The project also is a significant visual improvement over existing site conditions.

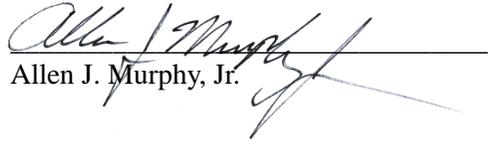
### RECOMMENDATION

Staff finds that the proposed amendments to be consistent with the Comprehensive Plan Land Use Map designation and surrounding zoning and development and recommends the Board of Supervisors approve the Rezoning, Master Plan and SUP applications with the SUP conditions listed in the attached resolution and acceptance of the voluntary proffers.

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Christopher Johnson

CONCUR:

  
Allen J. Murphy, Jr.

CJ/gb  
Z2-10sup29-10mp1-10.doc

ATTACHMENTS:

1. Rezoning and Master Plan Resolution
2. Special Use Permit Resolution
3. Location Map
4. Minutes from the March 2, 2011, Planning Commission meeting (unapproved)
5. Master Plan dated November 24, 2010, and revised January 27, 2011 (under separate cover)
6. Adopted Master Plan dated November 29, 2006, and revised January 25, 2007 (under separate cover)
7. Community Impact Statement dated January 2011 (under separate cover)
8. VDOT Comment Letter dated February 22, 2011
9. Proffers signed and dated January 28, 2011
10. Adopted Proffers dated and signed March 19, 2007
11. Letter from Adjacent Property Owner Sharon Maloney dated January 27, 2011

## RESOLUTION

### CASE NO. SUP-0029-2010. THE WILLIAMSBURG POTTERY

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 (SUP) process; and

WHEREAS, Mr. Vernon Geddy has applied to amend the adopted condition for Case No. SUP-36-06 to allow for the development of a shopping center with commercial square footage over 10,000 square feet, as well as a traffic generation rate which is over 100 peak hour trips; and

WHEREAS, the proposed project is shown on a Master Plan prepared by AES, entitled "Master Plan and Rezoning Amendment for The Williamsburg Pottery," dated November 24, 2010, and revised January 27, 2011; and

WHEREAS, the property is located on land zoned M-1, Limited Business/Industrial, with proffers, and can be further identified as James City County Real Estate Tax Map No. 2430100024; and

WHEREAS, the Planning Commission, following its public hearing on March 2, 2011, voted 6 to 0 to recommend approval of this application.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, does hereby approve the issuance of SUP No. 0029-2010 as described herein with the following conditions:

1. Traffic Signal: The traffic signal at the Colonial Heritage east crossover shall be installed or bonded prior to the issuance of a certificate of occupancy for 182,000 square feet of buildings on the property as shown on the binding Master Plan, entitled "Master Plan and Rezoning Amendment for The Williamsburg Pottery," prepared by AES Consulting Engineers, Inc., dated November 24, 2010, and revised January 27, 2011.
2. Commencement of Construction: If construction has not commenced on this project within 36 months from the issuance of an SUP, the SUP shall become void. Construction shall be defined as obtaining permits for building construction and footings and/or foundations that have passed required inspections.
3. Severance Clause: This SUP is not severable. Invalidation of any word, phrase, clause, sentence, or paragraph shall invalidate the remainder.

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Mary K. Jones  
Chairman, Board of Supervisors

ATTEST:

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Robert C. Middaugh  
Clerk to the Board

Adopted by the Board of Supervisors of James City County, Virginia, this 22nd day of  
March, 2011.

Sup29-10Pottery\_res

**RESOLUTION**

**CASE NOS. Z-0002-2010/MP-0001-2010. THE WILLIAMSBURG POTTERY**

WHEREAS, in accordance with § 15.2-2204 of the Code of Virginia and Section 24-15 of the James City County Zoning Ordinance, a public hearing was advertised, adjoining property owners notified, and a hearing scheduled on Zoning Case Nos. Z-0002-2010/MP-0001-2010, for rezoning 18.78 acres from M-1, Limited Business/Industrial, with proffers, to M-1, Limited Business/Industrial, with amended proffers; and

WHEREAS, the proposed project is shown on a Master Plan prepared by AES, entitled "Master Plan and Rezoning Amendment for the Williamsburg Pottery," dated November 24, 2010, and revised January 27, 2011; and

WHEREAS, the Planning Commission of James City County, following its public hearing on March 2, 2011, recommended approval, by a vote of 6 to 0; and

WHEREAS, the property is located at 6692 Richmond Road and can be further identified as James City County Real Estate Tax Map No. 2430100024.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, does hereby approve Case Nos. Z-0002-2010/MP-0001-2010 and accept the voluntary proffers.

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Mary K. Jones  
Chairman, Board of Supervisors

ATTEST:

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Robert C. Middaugh  
Clerk to the Board

Adopted by the Board of Supervisors of James City County, Virginia, this 22nd day of March, 2011.

Sup2-10-mp1-10\_res

# JCC-Z-0002-2010/MP-0001-2010/SUP-0029-2010

## The Williamsburg Pottery



Z-0002-2010 / MP-0001-2010 / SUP-0029-2010 The Williamsburg Pottery

Mr. Chris Johnson stated that Mr. Vernon Geddy has applied to rezone a 18.78 acre parcel located at 6692 Richmond Road from M-1, Limited Business/Industrial, with proffers, to M-1, Limited Business/Industrial with amended proffers, amend the adopted SUP and master plan to relocate the existing signalized entrance, revise associated traffic improvements, and increase the gross square footage of the retail and office area of the project from 161,000 square feet to 200,000 square feet. The proposed amendments will redevelop the property and dedicate the majority of the proposed retail and office space square footage to the relocation of the existing Williamsburg Pottery operation currently located on the east side of the CSX railroad tracks.

This project has evolved from what was first envisioned and planned during the 2007 rezoning process when the project was known as The Promenade at the Williamsburg Pottery Factory. That project was anticipated to contain a mixture of retail uses including a traditional shopping center, anchored by a grocery store; outlet style stores similar to those which were previously located on the property and some traditional Pottery goods and products.

Today, the project is being called The Williamsburg Pottery and the retail space in the three main buildings will be occupied entirely by the traditional Williamsburg Pottery goods and products. Unlike the previously approved project in 2007, the entire project will be constructed in a single phase rather than multiple phases. Given that all Pottery sales and operations will be housed within the three new buildings on the west side of the CSX tracks, there is less need for the public to cross the tracks by vehicle and the need to use the existing pedestrian tunnel connecting the west side to the east side of the property is eliminated.

Besides the change in square footage from a maximum of 161,000 to 200,000 square feet to house Pottery retail sales and corporate offices, the largest change proposed by these amendments is the relocation of the existing signalized entrance 300 feet further to the west from where it was proposed in the 2007 master plan. This amendment will change the spacing from the signalized entrance proposed at the Colonial Heritage eastern crossover intersection from 1,000 linear feet to 700 linear feet. The total number of entrances and exits will be reduced from four to three.

VDOT concurs with the projected trip generation and distributions as presented in the traffic study as well as the conclusion that both full access driveways will meet warrants for signalization upon build-out of the project. While acknowledging that the access plan does not comply with the Access Management Regulations with regard to the spacing of entrances, VDOT has granted the applicant's exception request to allow for a reduced crossover spacing of 700 feet noting that the reduction would not materially alter the operational characteristics of the Route 60 corridor.

There are some slight increases and decreases in the level of delay at some intersections, but the overall corridor has increased operation speed in the PM peak hours with this entrance and traffic signal relocation. Staff reviewed a Traffic Signal Warrant Analysis, a Saturday Corridor Study and Crash Data Study which evaluated the existing intersection safety and the

implications for the proposed traffic signal relocation. Based on these studies, the County supported the exception request for the spacing standards for entrances, intersections and crossovers.

Other changes of note include the relocation of one of the five pocket parks and the elimination of the service drive between Buildings A and B for the development of a larger, central pedestrian plaza.

The site is designated Mixed Use, Lightfoot on the 2009 Comprehensive Plan Land Use Map. Recommended uses for this area include transit oriented mixed-use development with a mixture of limited industry, commercial and moderate density housing. Staff finds that the use as proposed meets the land use designation for this area as the principle proposed use is commercial in nature.

Staff finds that this application provides a positive redevelopment project for this area of the County, and with the revised master plan and proffers, is in conformance with many goals of the Comprehensive Plan. The applicant has provided many positive features to the development that help mitigate design characteristics. Considering this is a redevelopment project, and the design limitation of the parcel shape and size, staff finds that the applicant is providing the best overall design given the type of uses and intensity.

Staff recommends the Planning Commission recommend approval of the rezoning, master plan and SUP applications with the three conditions listed in the staff report and acceptance of the voluntary proffers.

Mr. Poole questioned whether the architectural review proffer, including Design Guidelines that were discussed at a previous DRC meeting last year would be impacted by the proposed design changes. Mr. Poole stated he recalled that the DRC had one notable objection with Flemish revival as opposed to elevations with a little less repetition.

Mr. Johnson stated the site plan for this project was submitted for enhanced conceptual review to the DRC. The revised architectural elevations were reviewed by the DRC at that time for consistency. With the design guidelines which were adopted as a part of the 2007 Rezoning. The Planning Commission approved the recommendations of the DRC with regard to the consistency of the elevations. The approved elevations were included in the back of the Community Impact Study included as an attachment to the staff report.

Mr. Poole asked about entry features on Richmond Road. Mr. Poole asked if there are monument signs or large structures proposed for Route 60.

Mr. Johnson stated there would be two monument-style signs at the two signalized intersection locations. Mr. Johnson pointed out the locations on an aerial map of the site.

Mr. Poole asked if the increase of square footage by one-fifth from 161,000 to 200,000 square feet would be used as retail space for traditional pottery goods.

Mr. Johnson stated that the three main buildings on the site will be used as retail space for traditional pottery goods and products. There are three outparcel buildings located along Route 60. One will be a bank, a restaurant, and another retail store. The 200,000 square foot figure also includes up to 15,000 square feet of corporate office space for the Pottery on the second floor of building "A". It increases the office space allotment. The site plan submitted exceeded the 161,000 square feet limit of the previous master plan by a few thousand feet. The applicant is seeking a certain degree of flexibility in raising the maximum square footage in not cutting it too close. Ultimately the applicant is likely to develop closer to 170,000 square feet, but wants the higher limit shown on the binding master plan.

Mr. O'Connor asked if the existing crossover on Route 60 would be removed.

Mr. Johnson stated that the existing crossover will be removed when the signal is relocated.

Mr. Fraley asked the commissioners if there were any third-party meeting disclosures that need to be made.

Mr. O'Connor stated that he met with Mr. Geddy on February 25, 2011 to review the site plan.

Mr. Maddocks stated he met with Mr. Geddy as well.

Mr. Fraley stated that he and Mr. Rich Krapf met on January 16, 2011 with the Pottery team and staff to discuss traffic implications and the traffic study. This meeting had been previously disclosed. Mr. Fraley stated he met with Mr. Geddy last week for another meeting.

Mr. Fraley opened the public hearing.

Mr. Geddy, representing the applicant, highlighted the history of the Pottery beginning in 1938 on half an acre along Route 60. The Pottery at one time was Virginia's largest retail operation. The Pottery rezoned this site in 2007 for a traditional grocery store and shopping center. Mr. Geddy provided an image of the 2007 (approved) Master Plan.

The new proposal is very different in nature. It is a reinvention of the Pottery. It would move all of its operations to this portion of the property including the offices discussed. They will be built all at one time. The major change from the 2007 plan is moving the signalized intersections. There are attractive plazas and large sidewalk areas. A new and very extensive traffic study was conducted by Dexter Williams and DRW Consultants. VDOT has concurred with trip generations, distribution, and traffic studies. Mr. Geddy stated he agrees with staff's recommendations and reports. The proposal will generate greater tax revenue for JCC. It is a redevelopment of an aging site. It will improve the aesthetics of the area. It has pedestrian and vehicular connectivity. It increases the buffers along Route 60. It provides significant environmental improvements. The proffered traffic improvements will further benefit the corridor.

Mr. Poole stated he is excited and pleased to support the redevelopment efforts. Mr. Poole asked for more information on the enhanced landscaping, particularly in the median.

Mr. Geddy stated that there is some landscape planting done by Colonial Heritage that will be copied and extended south in the median along the properties frontage.

Mr. Poole asked if this would be at the southern most portions.

Mr. Geddy confirmed that would be the case.

Mr. Fraley opened the public hearing, seeing no one wishing to speak the public hearing was closed.

Mr. Maddocks complimented the applicant on the many attractive features seen. Mr. Maddocks stated he supports the project.

Mr. Maddocks made a motion to approve in accordance to the staff report. The motion was approved in a unanimous roll call vote (6-0; Mr. Krapf, absent).



## COMMONWEALTH of VIRGINIA

DEPARTMENT OF TRANSPORTATION  
1700 North Main Street  
SUFFOLK, VIRGINIA 23434

Gregory A. Whirley  
Commissioner



February 22, 2011

Mr. Christopher Johnson, Principal Planner  
James City County Planning  
101-A Mounts Bay Road  
Williamsburg, Virginia 23187

RE: The Williamsburg Pottery - Rezoning  
County Plan Z-2-10/MP-1-10/SUP-29-10  
Richmond Road (Route 60), James City County

Dear Mr. Johnson:

The District has completed its review of the subject use request and associated traffic impact analysis titled Traffic Analysis for the Promenade dated February 2, 2011. We offer the following comments:

- 1) The submitted traffic impact study and revised Master Plan requests the relocation of the East Main Driveway to the previous Driveway A location that aligns with the railroad crossing. This location is approximately 700' from the existing crossover to the west that is aligned with the future Colonial Heritage Commercial entrance. The Revised Master Plan also shows an optional right-in only entrance approximately at the location of the previously approved East Main Driveway (2007 rezoning).
- 2) We concur with the projected trip generation and distributions as presented in the study. The revised uses and sizes, which include 167,000 square feet of the Main Buildings, 7,500 square foot brad/donut/bagel shop, 6,000 square feet of the high turnover restaurant, and drive in bank with four drive through aisles, have the potential to generate 633 AM peak hour and 820 PM peak hour trips.
- 3) The proposed access plan does not comply with the Access Management Regulations: Principal Arterials (24VAC30-72) and the standards contained in Appendix F of the VDOT *Road Design Manual*. These standards were adopted in an effort to preserve highway capacity and safety through the minimization of conflict points and maximization of through traffic progression.

- a) The applicant has submitted an exception request to reduce the crossover spacing to 700'.
  - b) VDOT has granted the exception request to the established statewide access management regulations and standards for the spacing of the entrances, intersections, and crossovers. VDOT's action is taken in deference to James City County's request even though we have concerns regarding the long term impacts to the Route 60 corridor.
  - c) The applicant submitted a crash analysis that evaluated the crash history of the corridor and the existing signalized intersections. There are no existing safety issues that will be exacerbated by the proposed signal spacing. The crash rates at existing signalized intersections are below crash rate thresholds adopted by other states.
  - d) We note that the requested reduction in signal spacing does not materially alter the operational characteristics of the corridor. However, further reductions in spacing can have a significant cumulative impact on the corridor, as demonstrated at the eastern end of the corridor. All stakeholders should use caution when consideration is given to deviating from established standards.
- 4) The following roadway improvements are required with this development as outlined in the submitted traffic impact study and master plan:
- a) At the eastern relocated crossover;
    - i) An eastbound left-turn lane on Route 60 with 200' of storage and 200' of taper.
    - ii) A westbound left-turn lane on Route 60 with 200' of storage and 200' of taper.
    - iii) A westbound right-turn lane on Route 60 with 200' of storage and 200' of taper with bike lane accommodations.
    - iv) A standard commercial entrance with dual left lefts and a dedicated right lane for egress, and one ingress lane. One of the dual left egress lanes may need to be striped out if the approach is operating under stop control prior to signal installation.
  - b) At the western crossover that aligns with Colonial Heritage Commercial;
    - i) A westbound right-turn lane on Route 60 with 200' of storage and 200' of taper with bike lane accommodations.
    - ii) A standard commercial entrance with dual left lefts and a dedicated right lane for egress, and one ingress lane. One of the dual left egress lanes may need to be striped out if the approach is operating under stop control prior to signal installation.
  - c) At the western shared right-in/right-out only entrance;
    - i) A westbound right-turn lane on Route 60 with 200' of storage and 200' of taper with bike lane accommodations.

- ii) A standard commercial entrance with one egress lane and one ingress lane. This entrance shall include a raised channelization island to provide positive traffic control.
  - d) At the eastern right-in only entrance;
    - i) The master plan and traffic impact study did not provide adequate information to fully evaluate this access point. Projected volumes and turn lane warrants should be provided for evaluation.
  - e) Provide a standard bike lane across the frontage of the site as identified in the Regional Bikeway Map.
  - f) Right of way dedications may be required to accommodate the proposed turn lanes and easements may be required to accommodate future signal equipment.
  - g) All crossover improvements shall be designed to accommodate the turning movements of WB-50 design vehicles. Concurrent turning movements must be accommodated in a manner consistent with the proposed signal operations contained within the traffic impact study.
- 5) We concur with the conclusions of the study that both full access driveways will meet warrants for signalization upon full buildout of the site. We recommend that proffers be established for the installation of the traffic signals, and with the approval of VDOT. This was the approach taken in the review of the 2007 rezoning case.
- a) The decision to install a traffic signal should not be made lightly. There are advantages and disadvantages to the construction of a traffic signal. Any consequential safety implications by the traveling public as well as the resultant intersection operations must be kept in mind.
  - b) In an effort to give due diligence, VDOT adheres to the standards outlined within the Manual on Uniform Traffic Control Devices (MUTCD) in the determination as to whether the applicable thresholds for signal installation justification have been reached.
  - c) The study submitted utilized forecasted trip volumes and distributions in the evaluation of volume thresholds for the purpose of meeting signal warrants. This practice can result in the construction of unwarranted traffic signals. Per the MUTCD, the installation of an unwarranted traffic signal can result in one of more of the following disadvantages:
    - i) Excessive delay;
    - ii) Excessive disobedience of the signal indications;
    - iii) Increased use of less adequate routes as road users attempt to avoid the traffic control signal; and
    - iv) Significant increases in the frequency of collisions (especially rear-end collisions)
  - d) Notwithstanding the warrants of the MUTCD, VDOT approves the County request, at the expense of the developer, to install both traffic signals at the time of opening. The developer shall submit signal plans for review and approval. The design of the signals shall include accommodations for signal coordination.

- 6) The submitted traffic impact study identifies locations in which a degradation of intersection and corridor levels of service below desirable levels are anticipated as a result of approved development and background growth along the Route 60 corridor, especially between Lightfoot Road and the Route 199 ramps.
  - a) Under 2020 conditions in the PM peak hour, the Lightfoot Road, Centerville Road, and Route 199 intersections will experience overall levels of service of D or worse. We note that there is little difference in the signal operations at this end of the corridor between the approved 2007 access plan and the proposed access plan.
  - b) Under 2020 conditions in the PM peak hour, the eastern end of the corridor will have progression speeds below 10 MPH eastbound and below 20 MPH westbound. This is symptomatic of heavy turning volumes and closely spaced signals. We note that there is little difference in corridor progression at this end of the corridor between the approved 2007 access plan and the proposed access plan.
- 7) Three corridor improvement alternatives were analyzed for the PM peak hour in the study as a strategy to mitigate increases in corridor traffic volumes that are forecasted to exceed available capacity, and associated degradation in operations.
  - a) Alternative 1: Widen Route 60 to six lanes at Lightfoot Road and Centerville Road and various turn lane improvements as noted in the study. This alternative improves signal operations generally to overall LOS B and C, with the Centerville Road intersection operating at a LOS E (improved from LOS F). The overall progression speed of the corridor increases from 9.3 MPH EB (LOS F) and 14.5 MPH WB (LOS E) under the proposed access plan to 18.2 MPH EB (LOS D) and 24.0 MPH WB (LOS C), with greater localized improvements at overcapacity intersections.
  - b) Alternative 2: Reconstruct approaches of Lightfoot Road and Centerville Road at Route 60 to eliminate cross street through traffic and provide various turn lane improvements as noted in the study. Prohibited through movements are reassigned to U-turns at adjacent crossovers. This is an effective strategy to maximize existing capacity as it eliminates a phase from the signal cycle. This alternative improves signal operations generally to overall LOS B and C, with the Centerville Road intersection operating at LOS D (improved from F). The overall progression speed of the corridor increases from 9.3 MPH EB (LOS F) and 14.5 MPH WB (LOS E) under the proposed access plan to 19.1 MPH EB (LOS D) and 25.0 MPH WB (LOS C), with greater localized improvements at overcapacity intersections.
  - c) Alternative 3: Combination of Alternative 1 and Alternative 2 that adds a third through lane, turn lane improvements, and a prohibition of through traffic at Lightfoot Road and Centerville Road. This alternative improves signal operations generally to overall LOS B and C. The overall progression speed of the corridor

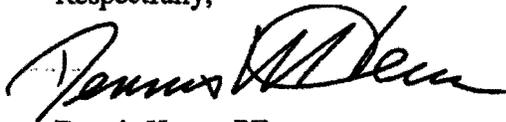
The Williamsburg Pottery - Rezoning  
February 22, 2011  
Page 5

increases from 9.3 MPH EB (LOS F) and 14.5 MPH WB (LOS E) under the proposed access plan to 22.9 MPH EB (LOS D) and 24.6 MPH WB (LOS C), with greater localized improvements at overcapacity intersections.

- d) We note that these improvement alternatives are unfunded, and additional study would be required to determine the cost and feasibility of full implementation of these improvements.

If you would like to discuss further or have any questions, please contact Jason Fowler, PE at (757) 925-2628.

Respectfully,

A handwritten signature in black ink, appearing to read "Dennis Heuer". The signature is fluid and cursive, written over a light blue horizontal line.

Dennis Heuer, PE  
Hampton Roads District Administrator

## AMENDED AND RESTATED PROFFERS

THESE AMENDED AND RESTATED PROFFERS are made this ~~28~~ day of January, 2011 by WILLIAMSBURG POTTERY PROPERTIES, LLC., a Virginia limited liability company (together with its successors and assigns, the "Owner").

### RECITALS

A. Owner is the owner of a tract or parcel of land located in James City County, Virginia, with an address of 6692 Richmond Road, Williamsburg, Virginia, being Tax Parcel 2430100024, and containing 18.78± acres, being more particularly described on Exhibit A attached hereto (the "Property"). The Property is now zoned M-1 and is subject to (i) Proffers dated March 19, 2007 and recorded in the Clerk's Office of the Circuit Court of the City of Williamsburg and County of James City as Instrument No. 070016264 (the "Existing Proffers") and (ii) a master plan entitled "Rezoning and Special Use Permit for the Promenade at the Williamsburg Pottery for the Williamsburg Pottery Factory Inc", prepared by AES Consulting Engineers dated November 29, 2006, and last revised March 19, 2007, (the "Existing Master Plan").

B. Owner has applied to amend and restate the Existing Proffers and to amend the Existing Master Plan in certain respects.

C. Owner has submitted to the County an amended master plan entitled "Master Plan and Rezoning Amendment for the Williamsburg Pottery for the Williamsburg Pottery Factory, Inc.", prepared by AES Consulting Engineers with a revision date of January 27, 2011 (the "Amended Master Plan") for the Property in accordance with the County Zoning Ordinance.

E. Owner desires to amend and restate the Existing Proffers in order to offer to the County certain amended conditions on the development of the Property not generally applicable to land zoned M-1.

NOW, THEREFORE, for and in consideration of the approval of the requested rezoning, and pursuant to Section 15.2-2298 of the Code of Virginia, 1950, as amended, and the County Zoning Ordinance, Owner agrees that it shall meet and comply with all of the following conditions in developing the Property. If the requested rezoning is not granted by the County, these Amended and Restated Proffers shall be null and void and the Existing Proffers shall remain in full force and effect.

#### CONDITIONS

1. **Amended Master Plan.** The Property shall be redeveloped generally as shown on the Amended Master Plan, with only minor changes thereto that the Development Review Committee determines do not change the basic concept or character of the development.

2. **Water Conservation.** The Owner shall be responsible for developing water conservation standards to be submitted to and approved by the James City Service Authority and subsequently for enforcing these standards. The standards shall address such water conservation measures as limitations on the installation and use of irrigation systems and irrigation wells, the use of approved landscaping materials and the use of water conserving fixtures and appliances to promote water conservation and minimize the use of public water resources. Irrigation wells shall only draw water from the Upper Potomac or Aquia Aquifers and shall be subject to the approval of the General Manager of James City Service Authority. The standards shall be approved by the James City

Service Authority prior to final site plan approval.

**3. Road Improvements/Entrances.** (a) With the prior approval of the Virginia Department of Transportation (“VDOT”), Owner may install a right in only entrance into the Property from Route 60 approximately in the middle of Parcel 3 of the Property.

When and if this entrance is constructed, a westbound right turn lane with 200 feet of storage and a 200 foot taper shall be constructed if necessary as determined by VDOT.

(b) The entrance into Parcel 2 of the Property shall be located at the approximate location shown on the Amended Master Plan as “Proposed Signalized Crossover” and the location shall be shown on the site plan for the Property and subject to the approval of the Director of Planning and VDOT. When the entrance is relocated, the existing entrance shall be closed and the existing crossover labeled on the Amended Master Plan as “Signal and Crossover to be Removed and Relocated” shall be closed within 30 days of the completion of the new entrance. At the entrance (i) an eastbound left turn lane with 200 feet of storage and a 200 foot taper; (ii) a westbound left turn lane with 200 feet of storage and a 200 foot taper and (iii) a westbound right turn lane with 200 feet of storage and a 200 foot taper shall be constructed and a new traffic signal shall be installed. Four egress lanes with at least 150 feet of storage consisting of two dedicated left turn lanes, one dedicated right turn lane and one ingress lane shall be constructed at this entrance. Construction of these improvements shall be completed or bonded in form satisfactory to the County Attorney prior to the County being obligated to issue building permits for any building in the phase of the development served by this entrance.

(c) Owner shall install a new entrance from Route 60 into Parcel 1 of the Property at the Colonial Heritage east crossover in the approximate location shown on the

Amended Master Plan as “Proposed Traffic Signal at Crossover per Colonial Heritage Rezoning Proffers”. When this entrance is constructed, a westbound right turn lane with 200 feet of storage and a 200 foot taper and an eastbound left turn lane shall be constructed. Three egress lanes with 200 feet of storage consisting of two dedicated left turn lanes and one dedicated right turn lane and one ingress lane shall be constructed at this entrance. Owner shall be responsible for and shall pay the costs of any necessary modifications to the traffic signal proffered for this intersection by Colonial Heritage so the signal will serve this entrance to and from the Property. At such time as a traffic signal is installed at this intersection and subject to VDOT approval, Owner shall install or pay the costs of installation of crosswalks, median refuge islands, signage and pedestrian signal heads at the intersection. Construction shall be completed or bonded in form satisfactory to the County Attorney prior to the County being obligated to issue building permits for any building in the phase of the development served by this entrance.

(d) Owner shall construct a right in, right out only entrance from Parcel 1 of the Property onto westbound Route 60 at the western end of the Property in the approximate location shown on the Amended Master Plan. When this entrance is constructed, a westbound right turn lane with 200 feet of storage and a 200 foot taper shall be constructed. Construction shall be completed or bonded in form satisfactory to the County Attorney prior to the County being obligated to issue building permits for any building in the phase of the development served by this entrance.

(e) The turn lanes and entrances, crosswalks, median refuge islands, signage and pedestrian signal heads proffered hereby shall be constructed in accordance with VDOT standards and shall be approved by VDOT.

(f) The right turn lanes and entrances proffered hereby shall include four foot bike lanes.

(g) After approval of the first final site plan for the redevelopment of the Property and within 30 days of a request from VDOT, Owner shall pay to VDOT a pro rata share (based on 1.5 signals divided by the total number of signals included in the project) of any VDOT Route 60 signal coordination project that includes the signalized intersections at entrances into the Property. The costs of the signal coordination project may include traffic signal equipment and utility relocation within the existing right of way and easements to accommodate traffic signal equipment, but will not include any right of way acquisition expenses or road construction changes.

4. **Lighting.** All light poles on the Property shall not exceed 30 feet in height. All external lights on the Property shall be recessed fixtures with no globe, bulb or lens extending below the casing or otherwise unshielded by the case so that the light source is visible from the side of the fixture. No glare defined as 0.1 footcandle or higher shall extend outside the property lines of the Property unless otherwise approved by the Director of Planning. Owner shall submit a lighting plan to the Director of Planning for review and approval for consistency with this Proffer prior to final site plan approval.

5. **Route 60 Buffer.** There shall be a variable width community character corridor buffer with a minimum average width of 37 feet and a minimum width of 20 feet along the Route 60 frontage of the Property generally as shown on the Amended Master Plan. The buffer shall contain enhanced (defined as 125% of Ordinance size requirements) landscaping as shown on the Conceptual Landscape Plan for Route 60 Buffer made by AES Consulting Engineers dated March 19, 2007 submitted herewith and

on file with the County Planning Department and a fence at least 42 inches in height in the approximate locations shown on the Amended Master Plan and approved by the Director of Planning. A detailed landscape plan for the entire buffer shall be submitted to the Director of Planning with the initial site plan for development on the Property for his review and approval for consistency with this proffer. The buffer shall be planted or the planting bonded in a form satisfactory to the County Attorney prior to the County being obligated to issue building permits for buildings located on the Property.

**6. Environmental.** (a) Stormwater from the Property will be directed away from the Yarmouth Creek watershed to reduce existing negative impacts to that watershed; provided, however, drainage from the community character corridor buffer area adjacent to the VDOT right-of-way and up to 15,000 square feet of impervious cover associated with entrances, sidewalks or similar features may drain to the VDOT right-of-way and thus will continue to drain to the Yarmouth Creek watershed.

(b) Owner shall upgrade the existing farm pond shown on the Amended Master Plan as “Proposed Regional SWM Facility for the Williamsburg Pottery Factory Complex” to County standards to function as a Group A wet pond generally consistent with the provisions contained in the James City County Guidelines for the Design and Construction of Stormwater Management BMP’s, including any necessary channel improvements leading into the pond or bond the upgrade in form satisfactory to the County Attorney prior to the County being obligated to issue any building permits for building on the Property . The pond shall receive the redirected stormwater flows from the Property in addition to the existing flows from the Williamsburg Pottery Factory complex.

(c) Owner shall install six standard size tree box filters capable of treating stormwater from approximately one and one-half acres of impervious cover in the parking lots on the Property.

7. **Architectural Review.** (a) Owner has submitted to the County conceptual architectural renderings and Design Standards for the entire Property (the “Guidelines”) prepared by Dayton & Thompson, PC and dated January 26, 2007, revised February 23, 2007, March 16, 2007 and March 23, 2007. All buildings, landscaping and site design on the Property shall be consistent with the Guidelines. No building on the property shall exceed thirty-five (35) feet in height as defined in the Zoning Ordinance.

(b) Prior to the County being obligated to grant final site plan approval for development of the Property, Owner shall submit to the Director of Planning conceptual architectural plans, including architectural elevations, for the buildings and any associated structures for the Director of Planning to review and approve for consistency with the Guidelines and this Proffer. Decisions of the Director of Planning may be appealed to the Development Review Committee, whose decision shall be final. Completed buildings shall be consistent with the approved plans.

8. **WAT Stop.** Owner shall retain the Williamsburg Area Transit (“WAT”) bus stop on the Property with a pull-off per VDOT standards in a location approved by Owner, WAT, the Director of Planning and VDOT. The location shall be shown on the site plan for the Property and approved prior to final site plan approval.

9. **Existing Railroad Crossing and Pedestrian Tunnel.** The existing surface railroad crossing and pedestrian tunnel under the railroad tracks shall be retained subject to the provisions of this Proffer. Since the purpose of the tunnel is to provide a way for

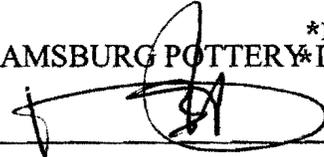
pedestrians to safely cross the railroad tracks, if there is no need for pedestrians to cross the tracks given the use of the property on the north side of the tracks, with prior written notice to the Director of Planning, the tunnel may be temporarily blocked and taken out of service. If the tunnel remains continuously out of service for a period of six years, with prior written notice to the Director of Planning, the tunnel may be permanently closed.

**10. Route 60 Median Planting.** Subject to VDOT approval, Owner shall install landscaping in the portion of the Route 60 median along the frontage of the Property not already landscaped by the Colonial Heritage project consistent with the landscaping provided by Colonial Heritage. A landscape plan for the median shall be submitted to the Director of Planning with the initial site plan for development on the Property for his review and approval for consistency with this proffer. The median shall be planted or the planting bonded in a form satisfactory to the County Attorney prior to the County being obligated to issue building permits for buildings located on the Property.

**11. Landscape Maintenance.** The Owner, or its agents or assigns, shall be responsible for the maintenance, repair and replacement of all landscaping materials, fences and barriers proffered hereby in accordance with standards set forth in Section 24-87(e) of the Zoning Ordinance.

Witness the following signatures.

WILLIAMSBURG POTTERY\*LLC <sup>\*PROPERTIES</sup>

By: 

Title: Ex. V.P.

STATE OF VIRGINIA  
CITY/COUNTY OF James City

The foregoing instrument was acknowledged before me this 28<sup>th</sup> day of January 2011, by Peter Kao as Executive Vice President of Williamsburg Pottery\*LLC on behalf of the company.  
\*Properties

Anne E.W. Monaghan  
Notary Public

My commission expires:  
Registration No.: 7350525



Exhibit A  
Property Description

All those two (2) certain pieces or parcels of land situate in James City County, Virginia, as shown and set forth on plat of survey entitled "Lot Line Extinguishment Between Various Parcels of Land Standing In The Name of Maloney Family Trust" dated January 25, 1986, made by Paul C. Small. C.L.S., of record in the James City County Circuit Court Clerk's Office in Deed Book 298, page 664, which plat is herein incorporated by reference; BEING a portion of the same property conveyed to the Grantor herein named by deed dated December 1, 1986, from Frederick C. Maloney, Trustee, Maloney Family Trust which deed is of record in the Clerk's Office of the Circuit Court of James City County, Virginia in Deed Book 324, page 810.

This tract is identified on the current tax records of James City County, Virginia as Parcel No. 2430100024 and is said to contain 18.860 acres.

070016264

PROFFERS

THESE PROFFERS are made this 11 day of March, 2007 by WILLIAMSBURG POTTERY FACTORY, INC., a Virginia corporation (together with its successors and assigns, the "Owner").

RECITALS

A. Owner is the owner of a tract or parcel of land located in James City County, Virginia, with an address of 6692 Richmond Road, Williamsburg, Virginia, being Tax Parcel 2430100024, and containing 18.9± acres, being more particularly described on Exhibit A attached hereto (the "Property"). The Property is now zoned A-1 and M-1.

B. Owner has applied to rezone the Property from A-1 and M-1 to M-1, with proffers, and for a special use permit to construct a shopping center on the Property.

C. Owner has submitted to the County a master plan entitled "Rezoning and Special Use Permit for the Promenade at the Williamsburg Pottery for the Williamsburg Pottery Factory Inc", prepared by AES Consulting Engineers dated November 29, 2006, and revised January 25, 2007, (the "Master Plan") for the Property in accordance with the County Zoning Ordinance.

E. Owner desires to offer to the County certain conditions on the development of the Property not generally applicable to land zoned M-1.

NOW, THEREFORE, for and in consideration of the approval of the requested rezoning, and pursuant to Section 15.2-2298 of the Code of Virginia, 1950, as amended, and the County Zoning Ordinance, Owner agrees that it shall meet and comply with all of the following conditions in developing the Property. If the requested rezoning is not granted by the County, these Proffers shall be null and void.

## CONDITIONS

1. **Master Plan.** The Property shall be redeveloped generally as shown on the Master Plan, with only minor changes thereto that the Development Review Committee determines do not change the basic concept or character of the development.

2. **Water Conservation.** The Owner shall be responsible for developing water conservation standards to be submitted to and approved by the James City Service Authority and subsequently for enforcing these standards. The standards shall address such water conservation measures as limitations on the installation and use of irrigation systems and irrigation wells, the use of approved landscaping materials and the use of water conserving fixtures and appliances to promote water conservation and minimize the use of public water resources. Irrigation wells shall only draw water from the Upper Potomac or Aquia Aquifers and shall be subject to the approval of the General Manager of James City Service Authority. The standards shall be approved by the James City Service Authority prior to final site plan approval.

4. **Road Improvements/Entrances.** (a) The entrance into Parcel 3 of the Property shall be located at the approximate location shown on the Master Plan as "Relocated Signalized Crossover" and the location shall be shown on the site plan for the Property and subject to the approval of the Director of Planning and the Virginia Department of Transportation ("VDOT"). When the entrance is relocated, the existing entrance shall be closed and the existing crossover labeled on the Master Plan as "Signalized Crossover to be Relocated" shall be closed within 30 days of the completion of the new entrance. At the entrance (i) an eastbound left turn lane with 200 feet of

storage and a 200 foot taper; (ii) a westbound left turn lane with 200 feet of storage and a 200 foot taper and (iii) a westbound right turn lane with 150 feet of storage and a 200 foot taper shall be constructed and a new traffic signal shall be installed. Three egress lanes with at least 100 feet of storage consisting of two dedicated left turn lanes and one dedicated right turn lane shall be constructed at this entrance. Construction of these improvements shall be completed or bonded in form satisfactory to the County Attorney prior to the County being obligated to issue building permits for any building in the phase of the development served by this entrance.

(b) Owner shall install a right in, right out entrance to the Property from Route 60 on Parcel 2 of the Property in the approximate location shown on the Master Plan connecting to the existing Pottery access road. When this entrance is installed, a westbound right turn lane from Route 60 into this entrance with 150 feet of storage and a 200 foot taper shall be constructed. One egress lane and one ingress lane with a raised channelizing island shall be constructed at this entrance. Construction shall be completed or bonded in form satisfactory to the County Attorney prior to the County being obligated to issue building permits for any building in the phase of the development served by this entrance.

(c) Owner shall install a new entrance from Route 60 into Parcel 1 of the Property at the Colonial Heritage east crossover in the approximate location shown on the Master Plan as "Proposed Traffic Signal at Crossover per Colonial Heritage Rezoning Conditions". When this entrance is constructed, a westbound right turn lane with 150 feet of storage and a 200 foot taper and an eastbound left turn lane shall be constructed. Three egress lanes with 200 feet of storage consisting of two dedicated left turn lanes and

one dedicated right turn lane and one ingress lane shall be constructed at this entrance. Owner shall be responsible for and shall pay the costs of any necessary modifications to the traffic signal proffered for this intersection by Colonial Heritage so the signal will serve this entrance to and from the Property. At such time as a traffic signal is installed at this intersection and subject to VDOT approval. Owner shall install or pay the costs of installation of crosswalks, median refuge islands, signage and pedestrian signal heads at the intersection. Construction shall be completed or bonded in form satisfactory to the County Attorney prior to the County being obligated to issue building permits for any building in the phase of the development served by this entrance.

(e) Owner shall construct a right in, right out only entrance from Parcel 1 of the Property onto westbound Route 60 at the western end of the Property in the approximate location shown on the Master Plan. When this entrance is constructed, a westbound right turn lane with 150 feet of storage and a 200 foot taper shall be constructed. Construction shall be completed or bonded in form satisfactory to the County Attorney prior to the County being obligated to issue building permits for any building in the phase of the development served by this entrance.

(f) The turn lanes and entrances, crosswalks, median refuge islands, signage and pedestrian signal heads proffered hereby shall be constructed in accordance with VDOT standards and shall be approved by VDOT.

(g) The right turn lanes and entrances proffered hereby shall include four foot shoulder bike lanes.

(f) Prior to the County being obligated to issue building permits for more than 115,000 square feet of buildings on the Property, Owner shall conduct a traffic signal

warrant study at the entrance from Route 60 into Parcel 2 of the Property at the Colonial Heritage east crossover in the approximate location shown on the Master Plan as “Proposed Traffic Signal at Crossover per Colonial Heritage Rezoning Conditions” and submit the study to the County and VDOT for their review and approval.

(g) At the time of site plan submittal, Owner shall submit to the County a traffic study of the Saturday peak hour traffic at the Property for the review and approval of the Director of Planning and shall incorporate any modifications to the improvements proffered in this Section that the study indicates are required.

(h) After approval of the first final site plan for the redevelopment of the Property and within 30 days of a request from VDOT, Owner shall pay to VDOT a pro rata share (based on 1.5 signals divided by the total number of signals included in the project) of any VDOT Route 60 signal coordination project that includes the signalized intersections at entrances into the Property. The costs of the signal coordination project may include traffic signal equipment and utility relocation within the existing right of way and easements to accommodate traffic signal equipment, but will not include any right of way acquisition expenses or road construction changes.

**5. Lighting.** All light poles on the Property shall not exceed 30 feet in height. All external lights on the Property shall be recessed fixtures with no globe, bulb or lens extending below the casing or otherwise unshielded by the case so that the light source is visible from the side of the fixture. No glare defined as 0.1 footcandle or higher shall extend outside the property lines of the Property unless otherwise approved by the Director of Planning. Owner shall submit a lighting plan to the Director of Planning for review and approval for consistency with this Proffer prior to final site plan approval.

**6. Route 60 Buffer.** There shall be a variable width community character corridor buffer with a minimum average width of 37 feet and a minimum width of 20 feet along the Route 60 frontage of the Property generally as shown on the Master Plan. The buffer shall contain enhanced (defined as 125% of Ordinance size requirements) landscaping as shown on the Conceptual Landscape Plan for Route 60 Buffer made by AES Consulting Engineers dated March 19, 2007 submitted herewith and on file with the County Planning Department and a fence at least 42 inches in height approved by the Director of Planning. The fence shall also be installed along both sides of the entrance located on Parcel 1. A detailed landscape plan for the entire buffer shall be submitted to the Director of Planning with the initial site plan for development on the Property for his review and approval for consistency with this proffer. The buffer shall be planted or the planting bonded in a form satisfactory to the County Attorney prior to the County being obligated to issue building permits for buildings located on the Property.

**7. Environmental.** (a) Stormwater from the Property will be directed away from the Yarmouth Creek watershed to reduce existing negative impacts to that watershed; provided, however, drainage from the community character corridor buffer area adjacent to the VDOT right-of-way and up to 15,000 square feet of impervious cover associated with entrances, sidewalks or similar features may drain to the VDOT right-of-way and thus will continue to drain to the Yarmouth Creek watershed.

(b) Owner shall upgrade the existing farm pond shown on the Master Plan as "Proposed Regional SWM Facility for the Williamsburg Pottery Factory Complex" to County standards to function as a Group A wet pond generally consistent with the provisions contained in the James City County Guidelines for the Design and

Construction of Stormwater Management BMP's, including any necessary channel improvements leading into the pond or bond the upgrade in form satisfactory to the County Attorney prior to the County being obligated to issue any building permits for building on the Property . The pond shall receive the redirected stormwater flows from the Property in addition to the existing flows from the Williamsburg Pottery Factory complex.

(c) Owner shall install six standard size tree box filters capable of treating stormwater from approximately one and one-half acres of impervious cover in the parking lots on the Property.

**8. Architectural Review.** (a) Owner has submitted to the County conceptual architectural renderings and Design Standards for the entire Property (the "Guidelines") prepared by Dayton & Thompson, PC and dated January 26, 2007, revised February 23, 2007, March 16, 2007 and March 23, 2007. All buildings, landscaping and site design on the Property shall be consistent with the Guidelines. No building on the property shall exceed thirty-five (35) feet in height as defined in the Zoning Ordinance.

(b) Prior to the County being obligated to grant final site plan approval for development of the Property, Owner shall submit to the Director of Planning conceptual architectural plans, including architectural elevations, for the buildings and any associated structures for the Director of Planning to review and approve for consistency with the Guidelines and this Proffer. Decisions of the Director of Planning may be appealed to the Development Review Committee, whose decision shall be final. Completed buildings shall be consistent with the approved plans.

9. **WAT Stop.** Owner shall retain the Williamsburg Area Transit ("WAT") bus stop on the Property with a pull-off per VDOT standards in a location approved by Owner, WAT, the Director of Planning and VDOT. The location shall be shown on the site plan for the Property and approved prior to final site plan approval.

10. **Existing Railroad Crossing and Pedestrian Tunnel.** The existing railroad crossing and pedestrian tunnel under the railroad tracks shall be retained.

11. **Route 60 Median Planting.** Subject to VDOT approval, Owner shall install landscaping in the portion of the Route 60 median along the frontage of the Property not already landscaped by the Colonial Heritage project consistent with the landscaping provided by Colonial Heritage. A landscape plan for the median shall be submitted to the Director of Planning with the initial site plan for development on the Property for his review and approval for consistency with this proffer. The median shall be planted or the planting bonded in a form satisfactory to the County Attorney prior to the County being obligated to issue building permits for buildings located on the Property.

12. **Landscape Maintenance.** The Owner, or its agents or assigns, shall be responsible for the maintenance, repair and replacement of all landscaping materials, fences and barriers proffered hereby in accordance with standards set forth in Section 24-87(e) of the Zoning Ordinance.

Witness the following signatures.

WILLIAMSBURG POTTERY FACTORY INC.

By: Kim A. Maloney  
Title:

STATE OF VIRGINIA  
CITY/COUNTY OF WILLIAMSBURG

The foregoing instrument was acknowledged before me this 19<sup>th</sup> day of <sup>March</sup> ~~January~~,  
2007, by Kim A. Maloney as President of Williamsburg  
Pottery Factory, Inc. on behalf of the corporation.

Vernon M. Geddy III  
Notary Public

My commission expires: 12/31/09

Prepared by:  
Vernon M. Geddy, III, Esquire  
Geddy, Harris, Franck & Hickman, LLP  
1177 Jamestown Road  
Williamsburg, VA 23185  
(757) 220-6500

**Exhibit A**  
**Property Description**  
**Tax Map Parcel #(24-3)(1-24)**  
**Williamsburg Pottery Factory, Inc.**

All that certain piece, parcel or tract of land, situate, lying and being in the Stonehouse District of James City County, Virginia, containing total of 18.776 acres more or less and being more particularly described as follows:

Beginning at a point along the westerly right-of-way line of U.S. Route #60, Richmond Road, said point being approximately 2,885' in a northerly direction from the intersection of State Route #646, Lightfoot Road, a corner to the parcel described hereon and the property now or formerly standing in the name of Thomas C. and Carl A. Chestnut; thence leaving said corner and lying along the westerly right-of-way line of U.S. Route #60, Richmond Road, N38°34'10"W, a distance of 1,063.42' to a point, said point being along a curve to the right, having a radius of 957.22' and an arc length of 230.40' to a point; thence N24°46'43"W, a distance of 565.99' to a point; thence N65°21'48"E, a distance of 15.00' to a point; thence N24°46'43"W, a distance of 182.21' to a point, said point being along a curve to the right, having a radius of 1,105.92' and an arc length of 151.15' to a point, a corner to the property described hereon and the property now or formerly standing in the name of Action Park of Williamsburg, Va., Inc.; thence leaving said corner and right-of-way line of U.S. Route #60, Richmond Road and lying along the line of the property now or formerly standing in the name of Action Park of Williamsburg, Va., Inc., N65°14'53"E, a distance of 494.33' to a point, a corner to the property described hereon, the property now or formerly standing in the name of Action Park of Williamsburg, Va., Inc. and being a point along the westerly right-of-way line of CSX Transportation (formerly the C & O railroad); thence leaving said corner and lying along the westerly right-of-way line of CSX Transportation (formerly the C & O railroad), S20°19'32"E, a distance of 977.53' to a point, said point being along a non-tangent curve to the left, having a radius of 5,792.65' and an arc length of 1,146.89' to a point, a corner to the property described hereon, the property now or formerly standing in the name of Thomas C. and Carl A. Chestnut and being a point along the westerly right-of-way line of CSX Transportation (formerly the C & O railroad); thence leaving said corner and right-of-way line of CSX Transportation (formerly the C & O railroad) and lying along the line of the property now or formerly standing in the name of Thomas C. and Carl A. Chestnut, S53°05'15"W, a distance of 191.35' to the aforesaid point of beginning.

This being the same property as shown on that certain plat prepared by AES Consulting Engineers, dated January 8, 2007 and entitled "Plat of Survey, A Parcel of Land Containing 18.776 Acres+/- Standing in the Name of Williamsburg Pottery Factory, Inc., a copy of which is recorded herewith."

PLAT ATTACHED

VIRGINIA: CITY OF WILLIAMSBURG & COUNTY OF JAMES CITY  
This document was admitted to record on 7/10/07  
at 12:27 AM/PM. The taxes imposed by Virginia Code  
Section 58.1-801, 58.1-802 & 58.1-814 have been paid.  
STATE TAX LOCAL TAX ADDITIONAL TAX

\$ \_\_\_\_\_ \$ \_\_\_\_\_ \$ \_\_\_\_\_  
TESTE: BETSY B. WOOLRIDGE, CLERK

BY: Betsy B. Woolridge Clerk



Mr. Christopher Johnson, Principal Planner  
Development Management  
James City County  
101-A Mounts Bay Road  
Williamsburg, VA 23185



January 27, 2011

**RE: Case No. Z-0002-2010/MP-0001-2010/SUP-0029-2010 The Williamsburg Pottery**

Dear Mr. Johnson:

As an adjacent landowner, I am writing to state my objection to the above referenced proposal before the Planning Commission, in particular, the relocation of the signalized entrance for two reasons.

The first objection is based on what I consider a reasonable person would perceive as a diminishment of the future economic development value of my property due to the loss of direct access to north and southbound Route 60 via the present or approved signalized entrance and crossover. Route 60 in the Lightfoot area is clearly an economic business corridor and I urge the Department of Management and the Commission to include the future development of the west side as well, in considering the Pottery proposal in order to maximize future sales and business revenue to the County from the perspective of property owners on both sides of Route 60 and the equal treatment of its citizens.

Secondly, the proposed relocation of the Pottery entrance on the south, nearest Williamsburg, creates a public safety hazard with respect to rail service bisecting the property at speeds of up to seventy-nine miles per hour.

I was born in Williamsburg and have lived in James City County my entire life. I was employed by the Williamsburg Pottery for twenty years, including the period of it's peak sales years in the late 80's and early 90's and am very familiar with the CSX crossing.

At one time the main entrance to the Pottery was exactly at the above proposed relocation. Another entrance was built subsequently at the presently located traffic light and crossover. But as the property on the east side of the CSX tracks was purchased and developed, it became increasing clear that a dangerous bottleneck had been created on the west side of the railway, and it was necessary to manage the vehicles by barriers to ensure that critical internal roads were one-way only. This proposal would basically recreate that same bottleneck and hazard.

Also, according to a Daily Press article entitled "Can New Stations Match the Trend?", on January 16, 2011, which discusses rail ridership between Newport News and Washington, the Virginia Department of Rail and Public Transportation predicts such

ridership will more than double by 2025 and that it could triple if there are three trains each day. The article reported that Mr. Alex Metcalf, a consultant based in Washington, D.C., believes that, quoting from the article, "a third Amtrak train will arrive in Newport News soon, and he envisions the Amtrak putting five to seven trains here, if not more," thus exacerbating the hazard.

By reviewing the economic return, optimal use of adjacent property, and traffic safety issues, the Pottery proposal will have a detrimental impact on two of the three. The economic return to the County will not be changed by rejecting the relocation of the signalized entrance. And the rejection does not preclude the Pottery's proposed use of their land. However, the potential use of the property west of Route 60 is affected negatively and therefore, devalued. Finally, the proposed traffic flow creates, in essence, a thoroughfare across the CSX railway and restores a hazard to the public.

Please contact me if you have any questions concerning my objections or require further explanation.

Again, I urge the County staff and the Commissioners to reject the Pottery proposed relocation of the signalized entrance in the above referenced case.

Thank you for your consideration.

Sincerely,

A handwritten signature in cursive script that reads "Sharon M. Maloney".

Sharon M. Maloney  
2960 River Reach  
Williamsburg, VA 23185

757-229-6284



**MEMORANDUM COVER**

**Subject:** Ordinance to Amend and Reordain Chapter 15, Offenses - Miscellaneous, Section 15-20, Noises prohibited in residential areas

**Strategic Management Plan Pathway:** N/A

**Action Requested:** Shall the Board adopt the Ordinance amending Chapter 15, Offenses - Miscellaneous, Section 15-20, Noises prohibited in residential areas?

**Summary:** Section 15-20 is the County’s Noise Ordinance. These amendments stem from the Virginia Supreme Court decision, *Tanner v. City of Virginia Beach*, 277 Va. 432 (2009). In *Tanner*, the Virginia Supreme Court found the Virginia Beach Noise Ordinance unconstitutionally vague due to the use of subjective enforcement standards associated with criminal penalties.

Numerous amendments have been made to Section 15-20. These amendments include findings and definition provisions; the inclusion of temporary permit provisions; the use of objective standards for specifically enumerated prohibitions and general prohibitions for residential, mixed use, and residential adjacent areas; a detailed enforcement procedure for warnings and violations; and a civil penalty schedule for violations.

The amendment is consistent with state law, and staff recommends adoption of the attached ordinance.

**Fiscal Impact:** Little or no fiscal impact is anticipated from the amendments.

**FMS Approval, if Applicable:** Yes  No

**Assistant County Administrator**  
  
Doug Powell \_\_\_\_\_

**County Administrator**  
  
Robert C. Middaugh \_\_\_\_\_

**Attachments:**  
1. Memorandum  
2. Ordinance

**Agenda Item No.:** H-2  
  
**Date:** March 22, 2011

## M E M O R A N D U M

DATE: March 22, 2011

TO: The Board of Supervisors

FROM: Angela M. King, Assistant County Attorney  
Leo P. Rogers, County Attorney

SUBJECT: Ordinance to Amend and Reordain Chapter 15, Offenses - Miscellaneous, Section 15-20, Noises prohibited in residential areas

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Attached for Board consideration is an ordinance which amends Section 15-20 of the County Code.

Section 15-20 is the County's Noise Ordinance. These amendments stem from the Virginia Supreme Court decision, *Tanner v. City of Virginia Beach*, 277 Va. 432 (2009). In *Tanner*, the Virginia Supreme Court found the Virginia Beach Noise Ordinance unconstitutionally vague due to the use of subjective enforcement standards associated with criminal penalties.

Numerous amendments have been made to Section 15-20. These amendments include findings and definition provisions; the inclusion of temporary permit provisions; the use of objective standards for specifically enumerated prohibitions and general prohibitions for residential, mixed use, and residential adjacent areas; a detailed enforcement procedure for warnings and violations; and a civil penalty schedule for violations.

- The inclusion of findings and definition provisions clarifies the purpose behind the Noise Ordinance, as well as the terms and phrases used within the Noise Ordinance.
- The inclusion of temporary permit provisions enables flexibility in the administration and enforcement of the proposed Noise Ordinance.
- The use of objective standards to definite prohibitions is meant to address the *Tanner* decision. By substituting subjective terms such as "unnecessary," "loud," and "disturbing" with objective time and distance measurements, the proposed Noise Ordinance should withstand a vagueness challenge. The inclusion of both specifically enumerated prohibitions and general prohibitions in residential, mixed use, and residential adjacent uses changes the overall applicability of the proposed Noise Ordinance. The County's current Noise Ordinance is applicable only in residential zoned areas. While the main focus of the proposed Noise Ordinance continues to be on residential areas, some specific and general prohibitions are noted for mixed use and residential adjacent areas.
- The proposed Noise Ordinance would be administered and enforced by the County Administrator, with the assistance of designated officers. The proposed enforcement procedure details steps to follow for the issuance of both warnings and violations, which provides officers with more flexibility when responding to noise complaints.
- The use of civil penalties, rather than criminal penalties, is another possible response to the *Tanner* decision. Virginia Code Section 15.2-980 permits localities to adopt a uniform schedule of civil penalties for violations of noise ordinances.

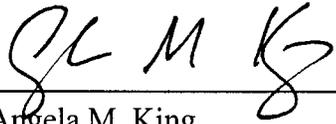
Little or no fiscal impact is anticipated from the amendments.

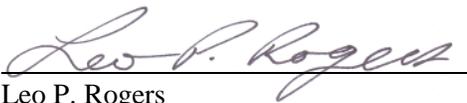
Ordinance to Amend and Reordain Chapter 15, Miscellaneous - Offenses, Section 15-20, Noises  
prohibited in residential areas

March 22, 2011

Page 2

The amendment is consistent with State law, and staff recommends adoption of the attached ordinance.

  
\_\_\_\_\_  
Angela M. King

  
\_\_\_\_\_  
Leo P. Rogers

AMK/gb  
Chp15NoiseReg\_mem

Attachment

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE TO AMEND AND REORDAIN CHAPTER 15, OFFENSES - MISCELLANEOUS, OF THE CODE OF THE COUNTY OF JAMES CITY, VIRGINIA, BY AMENDING SECTION 15-20, NOISES PROHIBITED IN RESIDENTIAL AREAS.

BE IT ORDAINED by the Board of Supervisors of the County of James City, Virginia, that Chapter 15, Offenses - Miscellaneous, is hereby amended and reordained by amending Section 15-20, Noise regulations.

Chapter 15. Offenses - Miscellaneous

**Section 15-20. Noises ~~prohibited in residential areas~~ regulations.**

~~It shall be unlawful for any person to, within the limits of the county, make, continue or cause to be made or continued any excessive, unnecessary or unusually loud noise or any noise on any premises of such a character as to either disturb, injure or endanger the quiet, comfort, repose, health, peace or safety of others; provided, that this section shall apply only to residential-zoned areas and all uses provided for in such a zoning classification.~~

~~The following acts, among others, are declared to be loud, disturbing and unnecessary noise in violation of this section, but such enumeration shall not be deemed to be exclusive:~~

- ~~(a) *Horns, signaling devices, etc.* The sounding of any horn or signaling device on any automobile, motorcycle, bicycle or other vehicle on any street or public place of the county, except as a danger warning; the creation by means of any signaling device of any unreasonable loud or harsh sound; and the sounding of any signaling device for an unnecessary and unreasonable period of time.~~
- ~~(b) *Radios, phonographs, etc.* The using, operating or permitting to be played, used or operated, any radio receiving set, tape recorder, musical instrument, phonograph or other machine or device for the producing or reproducing of sound in such a manner as to disturb the peace, quiet and comfort of the neighboring inhabitants or at any time with louder volume than is necessary for convenient hearing for the persons who are in the room, vehicle or chamber in which such machine or device is operated and who are voluntary listeners thereto. The operation of any such set, instrument, phonograph, machine or device between the hours of 11:00 p.m. and 7:00 a.m. in such a manner as~~

~~to be plainly audible at a distance of 50 feet from the building, structure or vehicle in which it is located shall be prima facie evidence of a violation of this section.~~

- ~~(c) *Loudspeakers, amplifiers for advertising.* The using, operating or permitting the playing, using or operating of any radio receiving set, musical instrument, phonograph, loudspeaker, sound amplifier or other machine or device for the producing or reproducing of sound upon the public streets for the purpose of commercial advertising or attracting the attention of the public to any building, structure or vehicle.~~
- ~~(d) *Animals.* The keeping of any animal which, by causing frequent or continued noise, shall disturb the comfort or repose of any person in the vicinity.~~
- ~~(e) *Exhausts.* The discharge into open air of the exhaust of any steam engine, stationary internal combustion engine, motor boat, or motor vehicle, except through a muffler or other device which will effectively prevent loud or explosive noises therefrom.~~
- ~~(f) *Defects in vehicle.* The use of any automobile, motorcycle or vehicle so out of repair, so loaded or in such a manner as to create loud and unnecessary grating, grinding, rattling or other noise.~~
- ~~(g) *Hawkers.* The shouting and crying of peddlers, hawkers and vendors, which disturbs the peace and quiet of the neighborhood.~~
- ~~(h) *Musical instruments.* The use of any drums or other musical instrument or device for the purpose of attracting attention by creation of noise to any performance, show or sale.~~

~~Any person violating any of the provisions of this section shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in an amount not exceeding \$100.00, or be imprisoned in jail for a period not exceeding ten days, or by both such fine and imprisonment. Each day such violation is committed or permitted to continue shall constitute a separate offense and shall be punishable as such hereunder.~~

**(A) Title.** *This section shall be known and may be cited as the “James City County, Virginia, Noise Ordinance” or simply the “Noise Ordinance.”*

**(B) Findings.** *The board of supervisors hereby finds and declares that excessive noise is a serious hazard to the public health, welfare, peace and safety and the quality of life. It is, therefore, the policy of the county and the purpose of this section to prevent such excessive noise.*

**(C) Definitions.** *The following words, terms and phrases, when used in this section, shall have the meanings ascribed to them in this subsection, except where context clearly indicates a different meaning:*

*Consecutive means following one after another without interruption.*

*Dwelling unit means one or more rooms in a dwelling designed for living or sleeping purposes, and having at least one kitchen.*

*Emergency means any occurrence or set of circumstances involving actual or imminent physical trauma or property damage which demands immediate action.*

*Emergency work means any work performed for the purpose of preventing or alleviating the physical trauma or property damage threatened or caused by an emergency.*

*Instrument, machine or device means and refers to any musical instrument, radio, phonograph, compact disc player, cassette tape player, amplifier, loudspeaker, bullhorn, or any other machine or device, including a motor vehicle, for producing, reproducing or amplification of sound.*

*Motor vehicle means every vehicle defined as a motor vehicle by section 46.2-100 of the Code of Virginia (1950), as amended.*

*Noise means any sound which may cause or tend to cause an adverse psychological or physiological effect on humans.*

*Officer means any employee or agent designated by the county administrator to enforce the provisions of this section.*

*Plainly audible means any sound that can be detected by a person using his or her unaided hearing faculties. Specific words or phrases need not be discernable. The detection of bass reverberations is sufficient to constitute a plainly audible sound.*

*Sound means an oscillation in pressure, particle displacement, particle velocity or other physical parameter, in a medium with internal forces that cause compression and rarefaction of that medium. The description of sound may include any characteristics of such sound, including duration, intensity and frequency*

**(D) Temporary permits.**

**(1) Requirements and procedures.** *The county administrator is authorized to issue a temporary permit to allow noise when produced by a temporary use or activity. The county administrator may prescribe any reasonable conditions necessary to minimize any adverse effect upon the community. A permit granted under this subsection shall contain all conditions upon which the permit has been granted, including the period of time for which the permit has been granted.*

**(2) Violation of temporary permit.** *Failure to comply with any condition of a temporary permit issued pursuant to this subsection shall constitute a violation and shall result in enforcement procedures and penalties as set forth in this section.*

**(3) Revocation of temporary permit.** *Any temporary permit may be immediately revoked if the county administrator finds that an emergency condition exists involving serious danger to the public health, safety, or welfare; if the permit holder failed to disclose or misrepresented material information in the permit application or in the permit application process; or that there was a failure to comply with any condition of a particular temporary permit.*

**(E) Specific prohibitions.**

**(1) Residential zoned districts and areas, and/or structures designated as residential on master plans and in mixed use zoned districts.** *The following acts, among others, are declared to be plainly audible noise in violation of this section, but such enumeration shall not be deemed to be exclusive:*

**(a) Horns, signaling devices, etc.** *The sounding of any horn or signaling device on any motor vehicle, motorcycle, bicycle, or other vehicle on any street or public place of the county, continuously or intermittently for more than ten consecutive seconds, except as a danger warning or as permitted by state code.*

**(b) Instruments, machines, or devices.** *The using, operating or permitting to be played, used or operated, any instrument, machine, or device for the producing or reproducing of sound in such a manner where the sound is plainly audible to any person other than the player(s) or operator(s) of the instrument, machine, or device and those who are voluntarily listening to the sound and is plainly audible and discernable at a distance of 50 feet or more from the source of the sound or through partitions common to two dwelling units; provided, however that the provisions of this subsection shall not apply to any event sponsored by the county, state or federal government, or for which the county has been granted a permit. The operation of any such instrument, machine, or device between the hours of 11:00 p.m. and 7:00 a.m., in such a manner as to be plainly audible at a distance of 50 feet from the source of the sound or through partitions common to two dwelling units shall be prima facie evidence of a violation of this section.*

*(c) Loudspeakers, amplifiers for advertising. The using operating or permitting the playing, using or operating of any instrument, machine, or device for the producing or reproducing of sound upon the public streets for the purpose of advertising or attracting the attention of the public to any building, structure or vehicle.*

*(d) Animals. The keeping of any animal, which shall be the source of any noise or sound which is plainly audible across a residential property line or through the partitions common to two dwelling units between the hours of 11:00 p.m. and 7:00 a.m.*

*(e) Exhausts. The discharge into open air of the exhaust of any steam engine, stationary internal combustion engine, motor boat, or motor vehicle, except through a muffler or other device which will effectively prevent loud or explosive excessive noises therefrom.*

*(f) Defects in motor vehicles. The use of any automobile, motorcycle or vehicle so out of repair, so loaded or in such a manner as to create excessive grating, grinding, rattling or other noise which is plainly audible at a distance of 50 feet from its source.*

*(g) Peddlers. The shouting and crying of peddlers and vendors, shall be prohibited if the sound is reproduced continuously or intermittently for more than ten consecutive seconds and is plainly audible at a distance of 50 feet from its source.*

*(h) Construction and landscaping activities. The operation of any bulldozer, crane, backhoe, front loader, pile driver, jackhammer, pneumatic drill, or other construction equipment between the hours of 9:00 p.m. and 6:30 a.m. except when operated in the course of emergency work or as authorized by the county administrator.*

**(2) Mixed use zoned districts.** *The following act, among others, is declared to be plainly audible noise in violation of this section, but such enumeration shall not be deemed to be exclusive:*

*(a) Amplified sound at restaurants, bars, coffee shops, cafes, etc. The using operating or permitting the playing, using or operating of any instrument, machine, or device for the producing or reproducing of sound which is plainly audible at a distance of 50 feet from its source between the hours of 12:00a.m. and 7:00 a.m.*

**(F) General prohibitions.** *In addition to, and not in limitation of the Specific Prohibitions above, the following is declared to be plainly audible noise in violation of this section:*

**(1) Residential zoned districts and areas, and/or structures designated as residential on master plans and in mixed use zoned districts.** *No person shall cause or permit to be caused any noise which is*

*plainly audible across a residential property line or through the partitions common to two dwelling units between the hours of 11:00 p.m. and 7:00 a.m.*

**(2) Uses adjacent to residential zoned districts and areas, and/or structures designated as residential on master plans and in mixed use zoned districts.** *No person shall cause or permit to be caused any noise which is plainly audible at a distance of 100 feet from its source between the hours of 9:00 p.m. and 7:00 a.m.*

**(G) Exceptions.** *No provisions of this article shall apply to (1) the emission of sound for the purpose of alerting persons to the existence of an emergency; (2) the emission of sound in the performance of emergency work; (3) activities sponsored by the county, state or federal government; (4) activities authorized by a permit issued by the county; or (5) activities for which the regulation of noise has been preempted by county, state or federal law.*

**(H) Administration and enforcement.** *This section shall be administered and enforced by the county administrator.*

**(I) Procedures.**

**(1) Warnings.**

*(a) Oral warnings. If an officer observes a violation of this section without a complaint having been made, the officer may first issue one oral courtesy warning per day and inform the violator that the violator will be subject to penalties if the violation continues.*

*(b) Written warnings. An officer shall first issue a written warning to immediately cease the violation prior to issuing a notice of violation unless one written warning has been issued within 180 days preceding the date of violation. The written warning shall be substantially in the same form as the notice of violation. Failure to correct the violation within 15 minutes of the issuance of a written or oral warning shall result in the issuance of a notice of violation pursuant to this section.*

**(2) Notice of violation.**

*(a) If an officer determines that a violation of this chapter has occurred, the officer may cause a notice of the violation to be served on any or all persons committing, permitting, assisting in or attempting such violation.*

*(b) The notice shall provide that the person charged with a violation may elect to make an appearance in person, or in writing by mail, to the treasurer of the county, and admit liability for or*

*plead no contest to the violation, abate the violation, and pay the civil penalty established for the violation, all within the time period fixed in the notice.*

*(c) If a person charged with a violation does not elect to admit liability or plead no contest, and abate the violation, within the time period fixed in the notice, the violation shall be tried in general district court upon a warrant in debt or motion for judgment, with the same right of appeal as provided for civil actions at law. In the event the violation exceeds the jurisdictional limits of the general district court, the violation shall be tried in circuit court.*

*(d) A finding of admission of liability or a plea of no contest to a civil violation shall not be deemed a criminal violation for any purpose.*

**(J) Civil Penalties.** *Any person who commits, permits, assists in or attempts any violation of this section, whether by act or omission, shall be liable for a civil penalty. All payments of these civil penalties are to be paid to the treasurer of the county. The penalties are as follows:*

*First violation. The first violation of this section shall be punished by a civil penalty in the amount of \$50.00.*

*Second violation. The second violation of this section by the same person, property, or set of operative facts within 180 days of the first violation of this section shall be punished by a civil penalty in the amount of \$100.00.*

*Third violation. The third violation of this section by the same person, property, or set of operative facts within 180 days of the second violation of this section shall be punished by a civil penalty in the amount of \$500.00.*

*Additional violations. The fourth, or subsequent, violation of this section by the same person, property, or set of operative facts within 180 days of the third, or previous, violation of this section shall be guilty of a Class 4 misdemeanor. Additionally, the county may apply to the circuit court to enjoin continuing violations of this section.*

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Mary K. Jones, Chairman  
Board of Supervisors

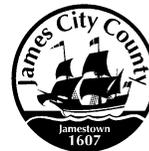
ATTEST:

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Robert C. Middaugh  
Clerk to the Board

Adopted by the Board of Supervisors of James City County, Virginia, this 22nd day of March,  
2011.

Chp15NoiseReg\_ord



**MEMORANDUM COVER**

**Subject:** Ordinance to Amend Chapter 5, Cable Communications, by Amending Section 5-1 through Section 5-30

**Strategic Management Plan Pathway:** 2.e – improve access to information by decreasing the “digital divide”

**Action Requested:** Shall the Board approve an ordinance to amend Chapter 5, Cable Communications?

**Summary:** Attached is an ordinance updating and revising Chapter 5, Cable Communications, of the County Code. This Chapter has not been updated since July 1990.

Staff recommends adoption of the attached ordinance.

**Fiscal Impact:** N/A

**FMS Approval, if Applicable:** Yes  No

**Assistant County Administrator**  
  
Doug Powell \_\_\_\_\_

**County Administrator**  
  
Robert C. Middaugh \_\_\_\_\_

**Attachments:**  
1. Memorandum  
2. Ordinance

**Agenda Item No.:** H-3  
  
**Date:** March 22, 2011

MEMORANDUM

DATE: March 22, 2011

TO: The Board of Supervisors

FROM: Jody Puckett, Director of Communications  
Leo P. Rogers, County Attorney

SUBJECT: Ordinance to Amend Chapter 5, Cable Communications, by Amending Section 5-1 through Section 5-30

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Attached for your consideration is an ordinance updating and revising Chapter 5, Cable Communications, of the County Code. This Chapter has not been updated since July 1990. Most of the changes have been made to update the County Code to changes made to State and Federal law. In addition, the changes reflect advances in technology and how a cable franchise operates. Also, the proposed ordinance deletes Section 5-8, the requirement for a Cable Communications Committee. However, a Broadband Technology Advisory citizen committee, as recommended by the 2010 Comprehensive Plan, is projected to oversee some parts of the Cox Franchise Agreement. Section 5-13, Franchise Fee, is also deleted since the Fee is collected by the Commonwealth of Virginia and no longer by the County. Section 5-29, Liquidated Damages, was deleted since such remedy will now be contained in the Franchise Agreement with each cable company.

We recommend adoption of the attached ordinance.

---

Jody Puckett

  
Leo P. Rogers

JP/LPR/nb  
Chp5Amend\_mem

Attachment

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE TO AMEND AND REORDAIN CHAPTER 5, CABLE COMMUNICATIONS, OF THE CODE OF JAMES CITY COUNTY, VIRGINIA, BY AMENDING ARTICLE II, DEFINITIONS, SECTION 5-3, DEFINITIONS; ARTICLE III, GRANT OF AUTHORITY, SECTION 5-5, INTERPRETATION OF FRANCHISE TERMS; SECTION 5-6, FRANCHISE APPLICATIONS; ARTICLE IV, CABLE COMMUNICATIONS ADMINISTRATOR AND CITIZENS COMMITTEE, SECTION 5-7, CABLE COMMUNICATIONS ADMINISTRATOR'S POWER AND RESPONSIBILITIES; BY DELETING SECTION 5-8, CABLE COMMUNICATIONS COMMITTEE'S POWERS AND RESPONSIBILITIES; BY AMENDING ARTICLE V, FRANCHISE CONDITIONS, SECTION 5-9, FRANCHISE TERMS; SECTION 5-12, FRANCHISE RENEWAL; SECTION 5-12.1, FORFEITURE AND TERMINATION; BY DELETING SECTION 5-13, FRANCHISE FEE; BY AMENDING SECTION 5-14, INSURANCE; BONDS; INDEMNITY; BY AMENDING ARTICLE VI, SUBSCRIBER FEES AND RECORDS, SECTION 5-16, SUBSCRIBER FEES; SECTION 5-17, BOOKS AND RECORDS; SECTION 5-18, PRIVACY PROTECTION; BY AMENDING ARTICLE VII, SYSTEM OPERATIONS, SECTION 5-19, FRANCHISE TERRITORY; SECTION 5-20, SYSTEM DESCRIPTION AND SERVICE; SECTION 5-23, COMPLAINT PROCEDURE; BY AMENDING ARTICLE VIII, GENERAL PROVISIONS, SECTION 5-27, DISCRIMINATORY PRACTICES PROHIBITED; BY DELETING SECTION 5-29, LIQUIDATED DAMAGES; AND BY AMENDING SECTION 5-30, OBTAINING OR ATTEMPTING TO OBTAIN CABLE COMMUNICATIONS SERVICE WITHOUT PAYMENT; PENALTY.

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 Article II, Definitions, Section 5-3, Definitions; Article III, Grant of Authority, Section 5-5, Interpretation of franchise terms; Section 5-6, Franchise applications; Article IV, Cable Communications Administrator, Section 5-7, Cable communications administrator's power and responsibilities; by deleting Section 5-8, Cable communications committee's powers and responsibilities; by amending Article V, Franchise Conditions, Section 5-9, Franchise terms; Section 5-12, Franchise renewal; Section 5-12.1, Forfeiture and termination; by deleting Section 5-13, Franchise fee; by amending Section 5-14, Insurance; bonds; indemnity; by amending Article VI, Subscriber Fees and Records, Section 5-16, Subscriber fees; Section 5-17, Books and records; Section 5-18, Privacy protection; by amending Article VII, System Operations, Section 5-19, Franchise territory; Section 5-20, System description and service; Section 5-23, Complaint procedure; by amending Article VIII, General Provisions, Section 5-27, Discriminatory practices prohibited; by deleting Section 5-29, Liquidated damages; and by amending Section 5-30, Obtaining or attempting to obtain cable communications service without payment; penalty.

Chapter 5. Cable Communications  
Article I. Title, Intent and Purposes

**Sec. 5-1. Title.**

This chapter shall be known and may be cited as the "James City County Cable Communications Ordinance."

**Sec. 5-2. Intent and purposes.**

It is the intent of the county to:

- (1) Promote the public health, safety and general welfare by providing for the grant of one or more franchises for the construction and operation of a cable system;
- (2) Provide for the regulation of each cable system by the county;
- (3) Provide for the payment of fees and other valuable consideration by a franchisee to the county for the privilege of using the public right-of-ways for constructing and operating a cable system;
- (4) Promote the widespread availability of cable service to county residents wherever economically feasible;
- (5) Encourage the development of cable as a means of communication between and among the members of the public institutions; and,
- (6) Encourage the provisions of diverse information to the community over cable.

## Article II. Definitions

### Sec. 5-3. Definitions.

For the purpose of this chapter, the following words and their derivations have the meanings defined below. Words not defined are given their meaning in *the Cable Act* Section 602 of the Cable Act, 47 USC Section 552, and if none, their common and ordinary meaning. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number; and words in the singular number include the plural number. The word "shall" is mandatory and the word "may" is permissive.

*Access channel* shall mean any channel reserved for the transmission of non-commercial Public, Educational, or Governmental access programming as directed by James City County. ~~set aside for non-commercial Public, Educational, Government programming as directed by James City County. without a charge by the grantee for channel usage.~~

*Administrator* shall mean the cable communication administrator for James City County.

*Application* shall mean a proposal to construct and operate a cable system within the county, transfer a franchise, renew a franchise or modify a franchise. An application includes the initial proposal plus all subsequent amendments or supplements to the proposal, relevant correspondence and any testimony taken in connection with the application.

*Board* shall mean the James City County Board of Supervisors.

*Cable Act* shall mean *the Cable Communications Policy Act of 1984, the Cable Television Consumer Protection and Competition Act of 1992, and the Telecommunications Act of 1996 (47 U.S.C. 521, et seq.), as amended.* ~~the Cable Communications Policy Act of 1984, 47 USC Section 521 et seq.~~

*Cable casting* shall mean programming carried on a cable system, exclusive of broadcast signals, whether originated by the cable operator or any other party.

*Cable Service shall be defined herein as it is defined under Title 15.2 of the Code of Virginia, Chapter 21, Article 1.2, Section 15.2-2108.19, meaning the one-way transmission to Subscribers of (i) Video Programming or (ii) other programming service, and Subscriber interaction, if any, which is required for the selection or use of such Video Programming or other programming service. Cable Service does not include any Video Programming provided by a commercial mobile service provider defined in 47 U.S.C. § 332(d).* ~~shall mean the one-way transmission of video or other programming service to subscribers, together with any subscriber interaction provided in connection with such service.~~

~~Committee shall mean the James City County Cable Communications Committee.~~

*Control of a grantee or applicant shall mean the legal or practical ability to direct the affairs of the grantee or applicant either directly or indirectly, whether by contractual agreement or majority ownership of an economic interest.*

*Construction shall mean the physical building or installation of a cable communications system, including attaching or laying cable, the building of head-end building or studio, or necessary towers to receive and distribute audio, video or other electrical signals.*

*County shall mean the County of James City, Virginia.*

*FCC shall mean the Federal Communications Commission and any legally appointed, designated or elected agent or successor.*

*Franchise shall mean and include any authorization granted by the county in terms of franchise, right, privilege or authority to construct, operate and maintain a system.*

*Franchise certificate shall mean the contract entered into in accordance with the provisions of this chapter between the county and a grantee that sets forth the terms and conditions under which the franchise shall be exercised. A copy of any franchise certificate that has been issued may be found in the office of the county attorney administrator.*

*Grantee* shall mean the person, firm or corporation to whom or to which a franchise, as herein defined, is granted by the board under this chapter, or any one who succeeds the person, firm or corporation in accordance with the provisions of a franchise.

~~*Gross annual revenues* shall mean all revenue derived directly or indirectly by the grantee, its affiliates, subsidiaries, parent, and any person in which the grantee has a financial interest, from or in connection with the operation of a system in the county; provided, however, that all revenues shall include, but not be limited to, basic subscriber service monthly fees; pay cable fees; installation, disconnection and reconnection fees; leased channel fees; rentals of converters, remotes and other equipment; studio rental; production equipment and personnel fees; fees received from programmers; fees from shopping channels; and advertising revenues, and this shall not include any taxes on services furnished by the grantee herein imposed directly upon any subscriber or user by the state, county or other governmental unit and collected by the grantee on behalf of said governmental unit nor shall this include subscriber deposits.~~

~~*Primary service area* shall mean the area of the county that will receive cable communications service at a fixed rate not including any line extension charges.~~

*Public way* shall mean the surface, the air space above the surface, and the area below the surface of any public street, highway, lane, path, alley, sidewalk, boulevard, drive or other public rights-of-way, including public utility easements or rights-of-way, and any temporary or permanent fixtures or improvements located thereon now or hereafter.

*Subscriber* shall mean any person, firm, corporation, association, joint venture or other entity legally receiving for any purpose cable service.

~~*System shall be defined herein as it is defined under Title 15.2 of the Code of Virginia, Chapter 21, Article 1.2, Section 15.2-2108.19, meaning franchisee's facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide Cable Service that includes Video Programming and that is provided to multiple Subscribers within the Service Area, except that such term shall not include (i) a system that serves fewer than 20 Subscribers; (ii) a facility that serves only to retransmit the television signals of one or more television broadcast stations; (iii) a facility that serves only*~~

*Subscribers without using any Public Rights-of-Way; (iv) a facility of a common carrier that is subject, in whole or in part, to the provisions of Title II of the Communications Act of 1934, as amended, 47 U.S.C. § 201 et seq., except that such facility shall be considered a Cable System to the extent such facility is used in the transmission of Video Programming directly to Subscribers, unless the extent of such use is solely to provide interactive on-demand services; (v) any facilities of any electric utility used solely for operating its electric system; (vi) any portion of a system that serves fewer than 50 Subscribers in any locality, where such portion is a part of a larger system franchised in an adjacent locality; or (vii) an open video system that complies with § 653 of Title VI of the Communications Act of 1934, as amended, 47 U.S.C. § 573.* ~~shall mean a cable communications system consisting of antennas, cables, wires, lines, fiber, towers, wave guides, laser beams or any other conductors, converters, electronics, equipment or facilities, designed and constructed for the purpose of producing, receiving, amplifying and distributing by audio, video and other forms of electronic or electrical signals to and from subscribers and locations within the county.~~

*Transfer of a franchise* shall mean any transaction in which control of more than 50 percent of the right of control of an ownership or a grantee is acquired by a person or group of persons acting in concert, none of whom already own or control 50 percent or more of the right of control of the grantee, or the rights held by the grantee under a franchise certificate are transferred or assigned to another person or group of persons.

*Two-way capability* shall mean the two-way circuits shall be capable of transmitting effectively commercial broadcast audio video TV-quality programming in either of two directions (both outgoing from and incoming to all points of program origination throughout the system); and further means that the subscriber or any other location shall have the capability to choose whether to respond immediately, or by sequential delay by utilizing any type of terminal equipment whatever, by push-button code, dial code, meter, voice, video signal, or by any other means, to any type of electronic, including, but not limited to, audio and video, electrical or mechanical produced signal, display and/or interrogation.

*User* shall mean a person or organization utilizing a system channel for purposes of production and/or transmission of material, as contrasted with receipt thereof, in a subscriber capacity.

*VDOT* shall mean the Virginia Department of Transportation.

Article III. Grant of Authority

**Sec. 5-4. Requirements of a franchise.**

(a) No person, firm, company, corporation or association shall construct, install, maintain or operate a system within the county unless a franchise has been obtained pursuant to the provisions of this chapter, and unless such franchise is in full force and effect.

(b) A franchise authorizes use of the public right-of-ways for installing cables, wires, lines and other facilities to operate a cable system within a specified district.

(c) A franchise is nonexclusive and will not expressly or implicitly preclude the issuance of other franchises to operate cable systems within the county or affect the county's right to authorize the use of public right-of-ways to other persons as it determines appropriate.

(d) The nonexclusive franchise shall be in effect upon acceptance by signature and notarization of the franchise certificate by the grantee. A franchise certificate constitutes a contract between the grantee and the county once it is accepted by the grantee. A grantee contractually commits itself to comply with the terms, conditions and provisions of the franchise certificate and with all applicable laws, ordinances, codes, rules, regulations and orders.

(e) A franchise conveys no property right to the grantee or right to renewal other than as may be required by law.

(f) A grantee is subject to and shall comply with all applicable county, state and federal laws, ordinances, codes, rules, regulations and orders. A grantee is also subject to the county's police power.

(g) A grantee or other person shall not be excused from complying with any of the terms and conditions of this chapter or a franchise certificate by any failure of the county upon one or more occasions to require compliance or performance.

**Sec. 5-5. Interpretation of franchise terms.**

(a) The provisions of this chapter shall apply to a franchise certificate as if fully set forth in the franchise certificate. *Unless otherwise provided in a franchise certificate, the* ~~The~~ express terms of this chapter shall prevail over conflicting or inconsistent provisions in a franchise certificate.

(b) The provisions of a franchise certificate shall be liberally construed in order to effectuate its purposes and objectives consistent with the chapter and the public interest.

(c) A franchise certificate shall be governed by and construed in accordance with the laws of the ~~State~~ *Commonwealth* of Virginia.

**Sec. 5-6. Franchise applications.**

(a) After receiving applications for a franchise *or franchise renewal*, the board, after considering the legal, financial, technical and character qualifications of the applicants, may, by franchise certificate, grant a nonexclusive franchise creating a right to construct and operate a system within the county. A franchise may be granted to the applicant which in the board's judgment may best serve the public interest, and whose construction and financial plans and arrangements are both feasible and adequate to fulfill the conditions set forth in this chapter and incorporated into a franchise certificate awarded to the grantee. However, no provision of this chapter shall be deemed or construed as to require the board to grant a franchise. The board may award additional licenses, franchises or certificates of public convenience as it deems appropriate if the board finds that the public welfare will be enhanced by such awards after a public hearing at which testimony is heard concerning the economic consideration, the impact on private property rights, the impact on public convenience, the public need and potential benefit and such other factors as are relevant.

(b) An application for a cable communications franchise *or renewal of a franchise* shall be submitted to the board, or its designee, or a written application form furnished by the county, and in accordance with procedures and schedules to be established and published by the county. The application of the grantee shall be incorporated into the franchise certificate by reference. An application form may request facts and information the county deems appropriate. Applications shall be accompanied by a nonrefundable application fee of

\$1,000.00 payable to the order of the "County of James City," which amount shall be used by the county to offset direct expenses incurred in the franchising and evaluation procedures, including, but not limited to, staff time and consulting assistance.

(c) A grantee receiving a franchise shall, in addition to the nonrefundable application fee, pay to the county at the time the grantee files the franchise certificate an amount, not to exceed \$15,000.00, which shall be prescribed by the board. Said payment shall be nonrefundable, shall be made to the order of the "County of James City," and shall be used to offset any direct costs incurred by the county in granting the franchise not defrayed by fees forthcoming from the provisions of paragraph (b) of this section and fund the cable administration functions listed in Article IV.

Article IV. Cable Communications Administrator ~~And Citizens Committee~~

**Sec. 5-7. Cable communications administrator's power and responsibilities.**

(a) Day-to-day administration of cable television operations within the county may be assigned to a cable communications administrator. The administrator shall be designated by the county administrator ~~and shall report directly to the county administrator.~~ The administrator's powers and responsibilities shall include, but not be limited to, the following functions:

- (1) ~~Preparation~~ *Assisting in the preparation, criteria, and reviewing applications* ~~of the application form to be submitted by an applicant~~ for a cable communications franchise; *if required, making recommendations to the board.*
- (2) ~~Assisting in the preparation of invitations to bid for a franchise; establishing criteria for review and ranking of franchise applications; reviewing and screening applications for franchises and selection recommendations to the board.~~
- (3)~~(2)~~ Monitoring the timely performance of a grantee in making application for and obtaining all certificates, permits and agreements as provided in this chapter.

- (4) (3) Monitoring the performance of a grantee in meeting the construction timetable as provided in this chapter.
- (5) (4) Advising and making recommendations to the board on technical, *and* engineering ~~and police power~~ regulations for cable operations within the county.
- (6) (5) Cooperating with other systems, cable communications system operators and governmental units in the development of and in the supervision of the interconnection of systems *and access channels*.
- (7) (6) Reviewing all franchise records and reports as required by this chapter, ~~as well as all franchise reports filed with the FCC, and, at the county administrator's discretion, requiring the preparation and filing of information in addition to that required therein, as may reasonably be required to accomplish the purposes of this chapter.~~
- (8) (7) Monitoring performance of a grantee under any other terms of the franchise certificate and this chapter and making recommendations to the board to ensure such compliance.
- (9) ~~Making an annual report to the board which shall include: an account of franchise fees received, the total number of hours of utilization of public channels with hourly subtotals for various programming categories, and a review of any plans submitted during the year by a grantee for development of new services.~~
- (10) ~~Conducting evaluations of the system at least every three years, and pursuant thereto making recommendations to the board for amendments to this chapter or to franchise certificates.~~
- (11) (8) Receiving and investigating complaints against a grantee by any person or upon direction of the board.
- (12) (9) Seeking recovery, if necessary, of liquidated damages in accordance with this chapter.
- (13) (10) Advising a grantee of the receipt of subscriber complaints affecting the grantee's system.

**~~Sec. 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. 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) The committee shall adopt regulations governing the operation and use of the public access and educational access channels of cable television and any institutional networks that may be developed.~~

~~(2) Enforce its public access guidelines and procedures, if and from the time the franchise certificate vests management of a grantee's public access channel(s) in the committee.~~

~~(3) Develop policies and procedures regulating use, services, and programming of the public access channel.~~

~~(4) Review with the 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) Work with staff to 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.~~
- ~~(9) Cooperate with the county and grantee(s) in fulfilling its responsibilities herein.~~

#### Article V. Franchise Conditions

##### **Sec. 5-9. Franchise terms.**

The term of an original franchise or any renewal shall be ~~15 years from the date the franchise is accepted by the grantee.~~ The term of a renewed franchise shall be no more than 15 years.

##### **Sec. 5-10. Notice to grantee.**

The board shall not take final action at any meeting involving the review, renewal or revocation of the grantee's franchise unless the county has given the grantee at least 21 days' written notice of such meeting. The notice shall advise the grantee of the meeting's time, place and proposed action affecting the grantee.

##### **Sec. 5-11. Franchise review.**

It shall be the policy of the county to amend a franchise upon application of the grantee, the recommendation of the administrator, or upon the board's own motion when necessary or advisable to enable the grantee to take advantage of advancements in the state-of-the-art which will afford it an opportunity to more effectively, efficiently or economically serve its subscribers or the county; provided, that this Section shall not be construed to require the county to make any amendment for such purpose.

**Sec. 5-12. Franchise renewal.**

(a) *Review by public hearing.* The board may set the time and place of a public hearing, the purpose of which shall be to review a grantee's performance during the term of its franchise; to consider the adequacy of the franchise from the standpoint of the county, the grantee, and the ~~Federal Communications Commission~~ **FCC** Rules for cable communications; and to determine the advisability of renewing the grantee's franchise.

(b) *Determination of compliance.* The board shall hear interested persons at the public hearing and shall determine whether the grantee reasonably complied with the terms and conditions imposed by this chapter and the franchise certificate.

(c) *Renewal.* If the board determines that the grantee has been in reasonable compliance with the terms and conditions imposed by this chapter and the franchise certificate, the board may, by ordinance, renew the grantee's franchise certificate, with any modifications it deems desirable, for a period of time not inconsistent with the provisions of this chapter. The board may require a grantee to pay the county, as a condition of renewal of the franchise, an amount which the board determines will compensate the county for those direct expenses above normal administrative costs incurred in connection with the renewal of the franchise.

(d) *Right not to renew; acquisition.* Notwithstanding the fact that the board may determine that the grantee has been in reasonable compliance with the terms and conditions imposed by this chapter and the franchise certificate, it shall have the right not to renew the franchise. If the board does not renew the franchise, the board shall have an option to the extent then permitted by existing law, to acquire the assets of the grantee's cable television system or the option to permit a succeeding grantee to acquire such assets. ~~The amount paid for such assets shall be the fair market value of the system as of the expiration date of the franchise and shall be determined by using a hypothetical assumption that the cable system is a going concern with an existing franchise which will expire ten years from the aforesaid expiration date.~~ The board's option to acquire the assets of the grantee or to permit a succeeding grantee to acquire such assets must be exercised within one year from the date of expiration.

(e) *Service continuity.*

(1) If, pursuant to the terms and conditions of Section 5-12 and Section 5-12.1 of this chapter, the county exercises its right not to renew the grantee's franchise, the grantee shall, at the county's request, continue to operate the system pursuant to the terms and conditions of its franchise for a period not to exceed one year from the expiration date of the franchise. If the county chooses to have the grantee operate the system beyond the expiration date, the county shall notify the grantee no less than 90 days prior to said expiration date. Furthermore, if the county chooses to have the grantee terminate its operation prior to the first anniversary following the expiration date of the franchise, the county shall notify the grantee at least 90 days prior to the date on which service is to terminate.

(2) During such period beyond the franchise expiration date as the grantee may be required to continue service, the grantee may charge for its service such rates as had been in effect during the month immediately preceding the expiration date.

~~(3) If the grantee fails to comply with the requirements set forth above, the grantee shall be subject to such remedies provide elsewhere in this chapter, including, but not limited to, liquidated damages as established in Section 5-29(5) herein.~~

(f) *System removal.* Upon expiration of its franchise, or upon its termination or cancellation, or at such later date as may be set by the county pursuant to paragraph (a) above, a grantee shall, if requested, at its own expense, remove its system from all streets, roads and any public and private property upon which the system had been placed. If the grantee fails to completely remove its system within 120 days following the franchise expiration date, the county may, at its option, have grantee's system removed at grantee's cost and without liability to the county for damage caused to grantee's system during such removal.

Paragraphs (a) through (d) above shall apply to the extent not preempted by federal law.

**Sec. 5-12.1. Forfeiture and termination.**

(a) In addition to all other rights and powers retained by the county under this chapter or otherwise, the county reserves the right to forfeit and terminate a franchise and all rights and privileges of the grantee in the

event of a *an uncured* breach of ~~the~~ *a material term* or ~~terms and~~ conditions, including, but not limited to, the following.

- (1) Violation by grantee of ~~any~~ *a material* provision of the franchise or any rule, order, regulation or determination of the county made pursuant to the franchise *and failure to cure said violation after notice and an opportunity to cure as provided in this chapter or the franchise certificate*;
  - (2) *A finding by a court that a grantee has attempted* ~~Attempt by grantee~~ to evade any material provision of the franchise or practice any fraud or deceit upon the county or its subscribers or customers;
  - (3) Failure by grantee to begin or complete system construction or system extension as provided under the franchise;
  - (4) Failure by grantee to restore service after 96 consecutive hours of interrupted service, except when approval of such interruption is obtained from the county; such approval shall not be unreasonably withheld; or
  - (5) Any misrepresentation by grantee of *a material* fact in the application for ~~or negotiation of~~ the franchise.
- (b) A grantee shall not be responsible for any failure to meet all or any part of the terms and conditions under this chapter or its franchise certificate due to regulation, act of God, riot or other civil disturbance, and, without limiting the foregoing, by any other cause, contingency or circumstance not subject to its control which prevents or hinders the grantee from operating and maintaining a system as described herein. Grantee shall not be excused by mere economic hardship ~~nor~~ *or* by misfeasance or malfeasance of its directors, officers or employees.
- (c) If, in the opinion of the county administrator, a breach has occurred, then the administrator shall make a written demand that the grantee comply with any such provision, rule, order, or determination under or pursuant to this chapter or the franchise certificate within a period of seven calendar days. If the violation by the grantee continues for a period of ten days following the period set forth for correcting the violation, the

county administrator shall submit the matter to the board. The county administrator shall notify in writing by certified or registered letter to the grantee at least ten days prior to the date of such a board meeting, a written notice of intent to request such termination and the time and place of the meeting. Public notice shall be given of the meeting and issue which the board is to consider.

(d) The board shall hear and consider the issue and shall hear any person interested therein and shall determine in its direction whether any violation by the grantee has occurred.

(e) All or any portion of a franchise granted under this chapter may be terminated or suspended by the board for failure to comply with any provisions of this chapter or the franchise certificate; provided, the county shall first notify in writing, by certified mail, the grantee of any failure to comply with the provisions of this chapter or the franchise certificate. The grantee shall have ten days after the receipt of such notice to correct the violation or to appeal the proposed termination or suspension to the board in writing. The board shall afford the grantee a hearing within 30 days of the receipt of such appeal. The effective dates of the suspension or termination shall begin ten days after the notice of suspension, if not appealed, or upon written notice from the board that the appeal has been denied.

**Sec. 5-13. Franchise fee.**

~~(a) In consideration of the grants contained herein, a grantee shall pay quarterly to the county a franchise fee in an amount equal to five percent of the gross quarterly revenues. Such payment shall be made to the treasurer (payable to James City County) on or before the 30th day of each of the months of April, July, October, and January for the quarters ending March 31, June 30, September 30, and December 31. The quarterly franchise fee shall be in addition to any other payment, charge, permit fee or bond owed to the county by the grantee and shall not be construed as payment in lieu of personal or real property taxes levied by the state, county or local authorities. Grantee agrees to provide for review by the Commissioner of the Revenue a statement of the gross monthly revenues by the 30th day of the calendar month following each quarter, which should be certified under oath by an officer of the grantee.~~

~~(b) In the event that any payment is not made on or before the required date, the county shall assess a penalty of ten percent of the amount due plus interest on such payments from the due date at the annual rate of~~

~~18 percent. Should legal action be required to correct such fee(s), penalties and interest, the county also shall be entitled to attorney's fees equal to 25 percent of the total amount due.~~

~~State law reference— Authority of county to license cable television systems. Code of Va., § 15.2-967.~~

**Sec. 5-14. Insurance; bonds; indemnity.**

(a) *Unless otherwise provided in a franchise certificate,* ~~At~~ *at* the time of filling an application for a franchise, the applicant shall obtain, pay all premiums for, and deliver to the county written evidence of payment of premiums and originals of bid bond or bonds running to the county with good and sufficient sureties in the amount of \$50,000.00, and in a form acceptable to the county to protect the county from all damages or losses arising from the failure of the applicant, if selected as a grantee, to accept the franchise in conformity with this chapter and the substance of the proposal as submitted by the applicant.

(b) *Unless otherwise provided in a franchise certificate,* ~~Upon~~ *upon* the granting of a franchise and within 30 days following the filing of the franchise certificate, and at all times during the term of the franchise, including the time for removal of facilities or management as a trustee as provided for herein, a grantee shall obtain, pay all premiums for, and deliver to the county written evidence of payment of premiums and originals of the following:

- (1) A general comprehensive public liability policy or policies indemnifying, defending and saving harmless the county, its officers, boards, commissions, agents or employees from any and all claims by any person whatsoever (including the costs, defenses, attorney fees and interest arising therefrom) on account of injury to or death of a person or persons occasioned by the operations of the grantee under the franchise herein granted pursuant to this chapter or alleged to have been so caused or occurred, with a minimum liability of \$1,000,000.00 per personal injury or death of any one person and \$2,000,000.00 per personal injury or death of any two or more persons in any one occurrence.
- (2) A property damage insurance policy or policies indemnifying, defending and saving harmless the county, its officials, boards, commissions, officers, agents, and employees from and against all claims by any person whatsoever (including the costs, defenses, attorney fees and interest arising therefrom)

for property damage occasioned by the operation of the grantee under the franchise herein granted pursuant to this chapter, or alleged to have been so caused or occurred, with a minimum liability of \$500,000.00 for property damage to the property of any one person and \$1,000,000.00 for property damage to the property of two or more persons in any one occurrence.

- (3) A performance bond or bonds running to the county with good and sufficient surety approved by the county *attorney* conditioned upon the faithful performance and discharge of the obligations imposed by this chapter and the franchise certificate from the date of the franchise certificate, including, but not limited to, faithful compliance with the construction timetable proposed by the grantee in its application as incorporated into the franchise certificate. The bond shall be in the amount determined necessary by the county, based upon review of the grantee and its application, and shall be set forth in the franchise certificate. The amount of the bond may be reduced by 50 percent when regular subscriber service is available to more than 50 percent of the occupied dwelling units with the primary service areas specified in the franchise certificate as certified by the cable communications administrator to the board; and may be further reduced by an additional 80 percent when regular subscriber service is available to more than 90 percent of the occupied dwelling units within the primary service areas specified in the franchise certificate as certified by the administrator to the board. The county's right to recover under the bond shall be in addition to any other rights retained by the county under this chapter and other applicable law.

(c) *Unless otherwise provided in a franchise certificate, the* ~~The~~ bonds and all insurance policies called for herein shall be in a form satisfactory to the county attorney. Cancellation provisions, where permitted, shall require 30 days written notice of any cancellation to both the county and the grantee. The grantee shall, in the event of any such cancellation notice, obtain, pay all premiums for, and file with the county original replacement bonds or policies within 15 days following receipt by the county or the grantee of any notice of cancellation.

(d) The county may require in a franchise certificate coverage and amounts in excess of the above minimums where reasonably necessary in view of the grantee's greater exposure to liability. The county may, from time-to-time, require that insurance coverage be broadened or increased if it is reasonably determined by

the county that such adjustments to coverage are necessary to reflect inflation or changing circumstances relative to liabilities.

(e) A grantee shall, at its sole cost and expense, indemnify and hold harmless the county, its officials, boards, commissions, officers, agents and employees against any and all claims, suits, causes of action, proceedings, and judgments for damage arising out of the operation of the cable communications system under the franchise. These damages shall include, but not be limited to, penalties arising out of copyright infringements and damages arising out of any failure by a grantee to secure consents from the owners, authorized distributors or licensees of programs to be delivered by the grantee's cable communications system whether any act or omission complained of is authorized, allowed or prohibited by the franchise. Indemnified expenses shall include, but not be limited to, all out-of-pocket expenses, such as costs and attorney's fees, and shall also include the reasonable value of any service rendered by the county attorney or his assistants or any employees of the county.

(f) No grantee shall permit any policy or bond to expire or approach less than 30 days prior to expiration without securing and delivering to the county a substitute, renewal or replacement policy or bond in conforming with the provisions of this chapter.

(g) The county may require bonds and insurance policies described in this section to run to the benefit of both the county and other governmental units located and/or operating within the county

**Sec. 5-15. Transfer of franchise.**

(a) No transfer of ownership or control of a franchise shall take place, whether by force or voluntary sale, lease, mortgage, assignment, encumbrance, or any other form of disposition, without prior notice to and approval by the board.

(b) No such consent shall be required for a transfer in trust, mortgage or other instrument of hypothecation, in whole or in part, to secure an indebtedness except when such hypothecation shall exceed 75 percent of the fair market value of the property used by the grantee in the operation of its system. Prior consent of the board,

expressed by resolution, shall be required for such transfer and said consent shall not be withheld unreasonably.

(c) Prior approval of the board of the transfer of a franchise shall be required. By its acceptance of a franchise certificate, a grantee specifically grants and agrees that any such transfer occurring without prior approval of the board shall constitute a violation of its franchise by the grantee.

#### Article VI. Subscriber Fees and Records

##### **Sec. 5-16. Subscriber fees.**

- (a) If a grantee is subject to rate regulation pursuant to federal law:
- (1) Subscriber rates during the first four years of the franchise shall be specified in the franchise certificate. The rates so specified shall not, except as otherwise provided herein, be increased without the consent of the board.
  - (2) After the first four years of the franchise, subscriber rates shall, subject to the provisions of this chapter, become unregulated.
  - (3) The board, at any time, may adopt an ordinance, to be effective at any time following the aforementioned four-year period, regulating subscriber rate.
  - (4) Except as may be otherwise provided in the franchise certificate, a subscriber shall have the right to have its service disconnected without charge; such disconnection shall be made as soon as practicable and in no case later than 30 days following notice to the grantee of same. No grantee shall enter into any agreement with a subscriber which imposes any charge following disconnection of service, except for reimbursement for converters not returned and reconnection and subsequently monthly or periodic charges which shall be no greater than charges for new customers.

(b) All charges to subscribers shall be consistent with a schedule of fees for all services offered by a grantee. Changes in the fee schedule shall not take effect until at least ~~60~~ 30 days after notification of same is delivered to the administrator.

~~(c) The grantee shall notify in writing each subscriber of all applicable fees and charges for providing cable communications service prior to executing a contract of service with such subscriber or installing any equipment to serve such subscriber. The grantee may require a deposit for materials and services according to its rate schedule.~~

~~(d) If the grantee fails to remedy a loss of service attributable to the system within 48 hours after a written notice of such a failure, the grantee shall be required to rebate one thirtieth of the regular monthly charge to each subscriber for each 24 hours or fraction thereof following the first 48 hours after a loss of service except to the extent that restoration of service is prevented by strike, injunction, act of God, or other cause beyond the grantee's control. Loss of service shall be defined as the loss of audio or video service on four or more channels of the cable system.~~

~~(e)~~ (c) This section shall not prevent a grantee from refusing service to any person because the grantee's prior account with that person remains due and owing.

#### **Sec. 5-17. Books and records.**

(a) *Unless otherwise provided in a franchise certificate, a* A grantee shall, within 30 days following the acceptance of a franchise, and within 30 days of the change of ownership of three percent or more of the outstanding stock or equivalent ownership interest of a grantee, furnish the county a list showing the names and addresses of persons owning three percent or more of the outstanding stock or equivalent ownership interest of grantee. Such a list shall include a roster of the grantee's officers and directors (or equivalent managerial personnel) and their addresses.

(b) *Unless otherwise provided in a franchise certificate, a* A grantee shall file annually with the commissioner of the revenue, no later than 90 days after the end of the grantee's fiscal year, a copy of a complete financial report applicable to the James City County Cable operation, including an income statement

applicable to its operations during the preceding twelve-month period, a balance sheet, and a statement of its properties devoted to cable system operations, by categories, giving its investment in such properties on the basis of original cost, less applicable depreciation. This report shall be certified as correct by an authorized officer of the grantee and there shall be submitted along with it such other reasonable information as the county shall request with respect to the grantee's properties and expenses related to the system within the county. The county shall have access to records of financial transactions for the purpose of verifying burden rates or other indirect costs prorated to the system. The grantee's accounting records shall include sufficient detail as may be necessary to provide the county with the information needed to make accurate determinations as to the financial condition of the system.

(c) A grantee shall retain such books and records, in any reasonable form, for a period ~~up to~~ ~~of not less than~~ five years. The county shall have the right to extend the retention period through the term of any renewed franchise.

(d) An annual independently audited financial statement may be requested by the administrator to be received by the county no later than 120 days after requested. The expense of the audit shall be borne by the grantee. Such audited financial statements must be requested at least 60 days prior to the end of the grantee's fiscal year.

(e) Copies of all petitions, applications, communications and reports submitted by a grantee to the FCC, Securities and Exchange Commission or any other federal or state regulatory commission or agency having jurisdiction in respect to any matters affecting cable communications operations authorized pursuant to the franchise shall be provided ~~simultaneously~~ to the county *upon request*.

(f) *Unless otherwise provided in a franchise certificate, a* A grantee shall have available for public inspection maps, plats and permanent records of the location and character of all facilities constructed, including underground facilities. Such maps, plats and permanent records shall be updated within 90 days of any construction by the grantee. All record maps shall be at a scale of one inch equals two hundred feet (1" = 200'). A grantee shall join the Miss Utility of Virginia Association. The construction, extension and modernization of plan shall be available for public inspection during normal business hours at the local business office of the grantee.

**Sec. 5-18. Privacy protection.**

*A grantee shall comply with all applicable federal and state privacy laws, rules, and regulations.*

~~(a) No data shall be collected over a system from an individual subscriber unless the subscriber has given prior written authorization. Such authorization shall be limited to a one-year period, shall be revokable *revocable* at any time without penalty or cost, and shall not be a condition for deceiving *receiving* cable services. Landlords may not give authorization for their tenants. The subscriber shall have the right to access information about him kept by a grantee or disseminated to others.~~

~~(b) A grantee shall observe the rights of a subscriber to privacy of their persons. A grantee may release information concerning the number of subscribers viewing particular television channels, the number of subscribers expressing preferences by poll, or the number of subscribers purchasing any of the services contained herein, and may keep records of services by individual subscribers as are necessary for billing for such services. All other data collected, maintained or tabulated by a grantee shall not reveal individual subscriber preferences or opinions.~~

~~(c) Interception by a third party of data and/or cable casting *programming* transmitted through a system, exclusive of *broadcast signals*, shall be prohibited.~~

Article VII. System Operations

**Sec. 5-19. Franchise territory.**

(a) A franchise is for the territorial limits of the county. A grantee shall furnish to the county as part of its formal application for a franchise a map of suitable scale showing all highways and public buildings. The map shall indicate the primary service areas to be served and, upon approval by the county, shall be incorporated into the franchise certificate. The map shall clearly delineate areas where the system is available and areas where expansion of the system is planned. ~~the following:~~

- ~~(1) The primary service areas within the franchise territory where the system will be available and the construction schedule for making such service available. Any differential rate within the primary service areas shall be specified as required by Section 5-15(a).~~
- ~~(2) Areas within the franchise territory but outside the primary service area where extension of the system cannot reasonably be expected to be made available due to lack of present or planned development, or other similar reasons, but which would receive service according to the grantee's line extension policy incorporated into the franchise certificate.~~
- ~~(b) Extension of the system into any areas outside the primary service area shall be required if any of the following conditions are met:~~
- ~~(1) When potential subscribers can be served by extension of the system past occupied dwellings units equivalent to a density of 40 homes per mile or greater of cable contiguous to the activated system. Provided, where it is necessary to extend the grantee's trunk and feeder lines more than 300 feet solely to provide service to subscriber(s) not required to be served by the grantee, the direct cost for such extension in excess of 300 feet shall be paid in advance by the potential subscriber(s).~~
- ~~(2) In areas not meeting the conditions in subSection(b)(1) above, the grantee shall provide, upon the request of ten or more potential subscribers desiring service, an estimate of the costs required to extend service to said subscribers. If the potential subscribers then wish service, the grantee shall extend service upon request of said potential according to the estimate. The grantee may require advance payment. The amount paid for special extension shall be nonrefundable, and in the event the area subsequently reaches the density required for mandatory extension, such payments shall be treated as consideration for special extension.~~
- (e) (b) Within 30 days of the effective date of its franchise, grantee shall diligently pursue all efforts to obtain all necessary certificates, permits and agreements which are required to construct and operate a system in the county. Within 90 days of receipt of such certificates, permits and agreements, a grantee shall commence construction of the system. Thereafter, construction shall proceed at such rate so as to make service available to all members of the public desiring such service at the earliest possible time. The construction program shall follow the schedule set forth in the franchise certificate. If construction does not begin within 12 months of the effective date of the franchise, the franchise certificate shall be canceled.

~~(d)~~ (c) A grantee shall notify the county in writing 15 days prior to the date on which *initial* construction of its system will commence. Thereafter, a grantee shall file quarterly written reports with the county within 30 days after the end of each calendar quarter, informing the county of the grantee's construction progress. Such reports shall indicate the number of miles of system and include maps setting forth areas made operational during the current quarter and any potential delays which the grantee is aware of which could prevent the completion of the system within the required period.

~~(e)~~ (d) Nothing in this section shall prevent a grantee from constructing the system earlier than planned. However, any delay in the system construction beyond the times specified in the plan timetable shall require, if so requested in writing by the administrator, application to and consent by the board. The county may not unreasonably withhold consent when a grantee has shown good cause for the delay, but the county may attach reasonable conditions to ensure performance. The schedule and maps shall be updated whenever substantial changes become necessary.

~~(f)~~ (e) A grantee shall not be responsible for any failure to meet all or any part of the construction schedule deadlines due to act of God, riot or other civil disturbance, and, without limiting the foregoing, by any other cause, contingency or circumstance not subject to its control which prevents or hinders the construction of the system described herein. If construction is delayed or prevented by any of the circumstances set forth hereinabove, a grantee shall notify the county in writing within ten days after the occurrence of any act or ten days after the termination of any continuous act and request that the time of completion of the project be extended for a stated period. If the board agrees, an extension shall be granted in whole or in part. Refusal of the board to agree to an extension shall be final.

~~(g)~~ (f) A grantee shall interconnect origination and access channels of the cable system with any or all other cable systems in the adjacent areas upon the directive of the county. The grantee shall cooperate with any interconnection corporation, regional interconnection authority or city, county, state or federal regulatory agency which may be hereafter established for the purposes of regulating, financing or otherwise providing for the interconnection of cable systems beyond the boundaries of the county. A grantee may be excused from interconnecting if the operator of the cable facility to be interconnected or the franchising authorities in other

jurisdictions refuse to reach a reasonable agreement regarding such interconnection. *Grantee may charge a third party for the cost of such interconnection.*

(h) (g) Upon the direction of the county, a grantee shall upgrade its cable communications system if necessary to meet the future cable-related community needs and interests, taking into account the cost of meeting such needs and interests, the technical reliability of the existing system, the unamortized investment in the existing system, and whether the upgrade would present an unreasonable financial burden to either the grantee or its subscribers.

**Sec. 5-20. System description and service.**

(a) Application for a franchise may include proposals for the provision of public education, local government, and leased access channels limited not only to video but also including audio, FM and data channels. Such proposals by a grantee may be incorporated into the franchise certificate granted and, to the extent so incorporated, shall subject the grantee to the following minimum requirements. *Unless otherwise provided in any applicable franchise certificate or amendment thereto, a grantee shall have no control over the content of access cable cast programs.*

~~(1) Unless otherwise provided in any applicable franchise certificate or amendment thereto, a grantee shall have no control over the content of access cable cast programs; however, this limitation shall not prevent taking appropriate steps to ensure compliance with the operating rules described herein.~~

~~(2) The public access channel(s) shall be made available to provided programming of a local, regional or national nature to county residents as determined by the cable communications committee. The grantee shall adopt operating rules for the public access channel(s), to be filed with the cable communications administrator prior to the activation of the channel(s), designed to prohibit the presentation of any advertising material designed to provide the sale of commercial products or services (including advertising by or on behalf of candidates for public office); lottery information; and defamatory, obscene or indecent matter, and rules permitting public inspection of a complete record of the names and addresses of all persons or groups requesting access time. Such a record shall be retained for a period of two years. If the franchise certificate vests management of a grantee's public access~~

~~channel(s) in the committee, at the time the committee assumes such management, the grantee shall have no further responsibility for public access operating rules.~~

~~(3) The education access channel(s) shall be made available for the use of local public educational authorities and private nonprofit educational telecommunication entities free of charge. A grantee shall adopt operating rules for the education access channel(s), to be filed with the administrator prior to activation of the channel(s), designed to prohibit the presentation of any advertising material designed to promote the sale of commercial products or services (including advertising by or on behalf of candidates for public office); lottery information and defamatory, obscene or indecent matter as well as a rule permitting public inspection of a complete record of the names and addresses of all persons or groups requesting access time. Such a record shall be retained for a period of two years.~~

~~(4) The local government access channel(s) shall be made available for the use of local government authorities free of charge.~~

~~(5) The leased access channel(s) shall be made available to leased users. Priority shall be given part-time users on at least one channel. A grantee shall adopt operating rules, which are consistent with federal law, for the channel(s) to be filed with the administrator prior to activation of the channel(s), designed to prohibit the presentation of lottery information, obscene or indecent matter and shall establish rules to this effect, and other rules requiring nondiscriminatory access, sponsorship identification, specifying an appropriate rate schedule and permitting public inspection of a complete record of the names and addresses of all persons or groups requesting time. Such a record shall be retained for a period of two years.~~

~~(b) The committee shall promulgate rules under which channel capacity dedicated to public government and educational access may be used by the grantee when it is not being used for access purposes.~~

~~(e) (b) Unless otherwise provided in a franchise certificate, a~~ A grantee shall provide without charge one service outlet activated for regular subscriber service to each fire station, public school, police station, public library, and such buildings used for public purposes as may be designated by the county; provided, that if it is necessary to extend a grantee's trunk or feeder lines more than 300 feet solely to provide service to any such

school or public building, the county shall have the option either of paying grantee's direct costs for such extension in excess of 300 feet or of releasing the grantee from the obligation to provide service to such building. Furthermore, a grantee shall be permitted to recover from any public building owner entitled to free service the grantee's actual cost for any additional converters required and direct cost of installing, when requested to do so, more than one outlet, or concealed inside wiring, or a service outlet requiring more than 250 feet of drop cable; provided, however, that a grantee shall not charge for the provision of regular subscriber service to the additional service outlets so installed in public schools, police stations, fire stations, public libraries, and ~~county~~ **government** offices in addition to any such other facilities as are specified in the grantee's franchise certificate.

~~(d)~~ **(c)** A system shall be capable of two-way communications, as defined by Section 5-3(1), on at least four channels.

~~(e)~~ **(d)** A grantee shall *comply with the Federal Emergency Alert System regulations, 47 C.F.R. Sec. 76, Part 1, as amended. In the event of a state or local emergency, the Emergency Alert System shall be remotely activated as set forth in the Virginia Emergency Alert System plan.* ~~incorporate into its system the capability which will permit the county, in times of emergency, to override the audio portion of all channels simultaneously. A grantee shall designate a channel which will be used for emergency broadcasts of both audio and video. A grantee shall cooperate with the county in the use and operation of the emergency broadcasts of both audio and video. A grantee shall cooperate with the county in the use and operation of the emergency alert override system.~~

#### **Sec. 5-21. Construction standards.**

(a) In the maintenance and operation of a system in the county and in the course of construction or additions to its facilities, a grantee shall proceed so as to cause the least possible inconvenience to the general public. Any opening or obstruction in the streets or other public places made by a grantee in the course of its operations or in the operations of its successors or assigns shall be approved by permit by VDOT and shall be guarded and protected at all times by the placement of adequate barriers, fencings or boardings, the bounds of which during period of dusk and darkness shall be designated by warning lights of approved types.

(b) Whenever a grantee shall take up or disturb any pavement, sidewalk or other improvement of any street, avenue, alley, highway, or other public place, the same shall be replaced and the surface restored in as good condition as before entry within 48 hours after completion of the grantee's work. Upon failure of a grantee to make such restoration within such time, or to begin such restoration within such time, if the restoration cannot be made within such time, or upon the grantee's delay of more than 24 hours in the continuation of a restoration begun, the county or VDOT may serve upon the grantee notice of intent to cause restoration to be made, and unless the grantee, within 24 hours after receipt of such notice, begins or resumes the proper restoration, the county or VDOT may cause the proper restoration to be made, including the removal of excess debris, and the reasonable expense of same, as itemized, shall be paid by the grantee upon demand by the county or VDOT.

(c) A grantee's transmission and distribution system, poles, wires and appurtenances, and underground conduit installations, shall be located, constructed and maintained so as not to endanger or interfere with the lives of persons or interfere with any improvements or additions the county or VDOT may deem proper to make from time to time, or to unnecessarily hinder or obstruct the free use of the streets, alleys, bridges or other public property; removal or relocation of any part of a grantee's transmission and distribution to avoid such interference shall be at the grantee's expense.

(d) A grantee shall have the right, insofar as the county's title or rights allow it to grant said rights, to use the public ways in the county in order to construct, install and maintain any poles, conduits, cables or other facilities necessary to provide cable communications services. The rights of use granted are limited to use which does not unreasonably interfere with either the county's or the public's use of said right-of-way or with the use of public utility easements.

(e) In all locations of the county where any of the cables, wires, or other like facilities of public utilities are placed underground, a grantee shall place its cables, wires or other like facilities underground. In case of new construction or property development where utilities are to be placed underground, the developer or property owner shall give the grantee(s) reasonable notice of such construction or development and of the particular date on which open trenching will be available for grantee's installation of conduit, pedestals and/or vaults, and laterals to be provided at grantee's expense. Grantee(s) shall also provide specifications as needed for trenching. Costs of trenching and easements required to bring service to the development shall be borne by the

developer or property owner; except that if a grantee fails to install its conduit, pedestals and/or vaults and laterals within five working days of the date the trenches are available, as designated in the notice given by the developer or property owner, then should the trenches be closed after the five-day period, the cost of new trenching shall be borne by that grantee.

(f) A grantee shall have the authority to trim trees on public property at its own expense as may be necessary to protect its wires and facilities, subject to the regulation, supervision and/or direction of the county.

(g) A grantee shall, on the request of any person holding a building moving permit or a permit to move an oversized load issued by VDOT, temporary raise or lower its wires to permit the moving of buildings or oversized load. The expense of such temporary removal, raising or lowering of wires shall be paid by the person requesting the same, and a grantee shall have the authority to require such payment in advance. A grantee shall be given not less than 48 hours' advance notice to arrange for such temporary wire changes.

**Sec. 5-22. Operational requirements and records.**

(a) A grantee shall construct, operate and maintain the cable television system subject to full compliance with the rules and regulations, including applicable amendments, of the FCC and all other applicable federal, state or county laws and regulations. The system and all its parts shall be subject to inspection by the county and the county reserves the right to review a grantee's construction plans prior to construction.

(b) A grantee shall exercise its best effort to design, construct, operate and maintain the system at all times so that signals carried are delivered to subscribers without material degradation in quality (within the limitations imposed by the technical state-of-the-art).

**Sec. 5-23. Complaint procedure.**

(a) The administrator is designated by the county as having primary responsibility for the continuing administration of the franchise and implementation of complaint procedures.

(b) A grantee shall ~~have maintain an office in the county, which shall be open at least during all usual business hours (9:00 a.m. to 5:00 p.m.), having a publicly listed local telephone, and shall be so operated that~~ complaints and requests for repairs or adjustments may be received on a 24-hour basis each day of the year.

(c) A grantee shall maintain a repair and maintenance crew capable of responding to subscriber complaints or requests for service, excepting initial installation, within 24 hours after receipt of the complaint or request. No charge shall be made to the subscriber for this repair service.

(d) A grantee shall establish procedures for receiving, acting upon and resolving subscriber complaints to the satisfaction of the subscriber. A grantee shall furnish a notice of such procedures to each subscriber at the time of initial subscription to the system. In the event that a customer complaint is not resolved to the mutual satisfaction of the customer or the grantee, either the customer or the grantee may request that the matter be presented to the administrator for a hearing and resolution.

(e) A grantee shall keep a maintenance service log which shall indicate the nature of each service complaint, the date and time it was received, the disposition of said complaint, and the time and date thereof. This log shall be maintained for two years and shall be made available for periodic inspection by the county.

**Sec. 5-24. Tests and performance monitoring.**

When there have been complaints made or when there exists other evidence which, in the judgment of the administrator, casts doubt on the reliability or quality of cable service, the county shall have the right and authority to compel a grantee to test, analyze and report on the performance of the system. Such report shall be delivered to the administrator no later than 14 days after the administrator formally notifies the grantee and shall include the following information: the nature of the complaints which precipitated the special tests; what system component was tested, the equipment used, and procedures employed in said testing; the results of such tests; and the method in which said complaints were resolved.

Article VIII. General Provisions

**Sec. 5-25. Franchise validity.**

A grantee shall agree, by the acceptance of the franchise, to accept the validity of the terms and conditions of this chapter and the franchise certificate in their entirety and that it will not, at any time, proceed against the county in any claim or proceeding challenging any term or provision of this chapter or the franchise certificate as unreasonable, arbitrary or void, or that the county did not have the authority to impose such term or conditions.

**Sec. 5-26. Rights reserved to the county.**

The county hereby expressly reserves the following rights:

- (1) To exercise its governmental powers, now or hereafter, to the full extent that such powers may be vested in or granted to the county.
- (2) To adopt, in addition to the provisions contained herein and in the franchise certificate and in any existing applicable ordinance, such additional regulations as it shall find necessary in the exercise of its police power.

**Sec. 5-27. Discriminatory practices prohibited.**

A grantee shall not, as to rates, charges, services, service facilities, rules, regulations, employment, or in any other respect, make or grant any undue preference or advantage to any party, nor subject any party to any prejudice or disadvantage. ~~This Section shall not prohibit the negotiation of rates with commercial establishments and apartment complexes having more than ten units.~~

**Sec. 5-28. Landlord-tenant relationship.**

- (a) No landlord shall:

- (1) Interfere with the installation of cable communications facilities upon his property or premises, except that a landlord may require:
  - a. That the installation of cable communications facilities conform to such reasonable conditions as are necessary to protect the safety, function and appearance of the premises, and the convenience and well-being of other tenants;
  - b. That the cable communications company or the tenant or a combination thereof bear the entire cost of the installation, operation or removal of such facilities; and
  - c. That the cable communications company and the tenant agree to indemnify the landlord for any damage caused by the installation, operation or removal of such facilities.
- (2) Demand or accept payment from any tenant or any cable communications company in any form in exchange for permitting cable communications service on or within his property or premises.
- (3) Discriminate in rental charges, or otherwise, between tenants who receive cable communications service and those who do not.

(b) Rental agreements and leases executed prior to the effective date of this article may be enforced notwithstanding this section.

(c) No cable communications company may enter into any agreement with the owners, lessees or persons controlling or managing buildings served by a cable communications company, or do or permit any act that would have the effect, directly or indirectly, of diminishing or interfering with existing rights of any tenant or other occupant of such building to use or avail himself of master or individual antenna equipment.

**~~Sec. 5-29. Liquidated damages.~~**

~~Notwithstanding any other remedy provided for in this chapter, or otherwise available under law, the county shall have the power to recover monetary amounts from a grantee under certain conditions, such monetary amounts being in the nature of liquidated damages. The conditions for and amounts of such damages are listed~~

~~below. By accepting a franchise, a grantee automatically agrees that the following conditions will cause damages to the county, and that the monetary amounts are established because it is difficult to ascertain the exact amount of the damages. The damages resulting to the county include, but are not limited to, loss of franchise fees that would have otherwise been paid to or would have become due the county and administrative costs incurred by the county. Damages shall be invoked upon the occurrence of any or all of the following:~~

- ~~(1) For failure to submit plans indicating expected dates of installation of various parts of the system—  
\$100.00 per day.~~
- ~~(2) For failure to commence operations in accordance with this chapter and/or the franchise certificate—  
\$200.00 per day.~~
- ~~(3) For failure to complete construction and installation of the system within the required time limits—  
\$300.00 per day.~~
- ~~(4) For failure to supply data requested by the county in accordance with the requirements of this franchise certificate and this chapter, such data pertaining to installation, construction, customers, finances or financial reports or rate review—\$50.00 per day.~~
- ~~(5) For failure to otherwise provide service to a subscriber in accordance with the requirements of this chapter—\$10.00 per day per subscriber affected, but not to exceed \$50.00 per subscriber per month, and further not to exceed \$1,000.00 per day in the aggregate. This amount shall be reduced by any refunds of subscriber fees made to subscribers affected by the failure, etc., to provide service.~~

**Sec. 5-30. Obtaining or attempting to obtain cable communications service without payment; penalty.**

(a) It shall be unlawful and constitute a misdemeanor for any person to obtain or attempt to obtain, for himself or for another, cable communications service by the use of any false information or in any case where such service has been discontinued by the supplier and notice of disconnection has been given.

(b) It shall be unlawful for any person to obtain or attempt to obtain cable communication service by the use of any scheme, device, means or method, or by a false application for service with intent to avoid payment of lawful charges therefor.

(c) The word "notice," as used in paragraph, (a) hereof, shall be notice given in writing to the person to whom the service was assigned. The sending of a notice in writing by a receipted delivery system, and the actual signing of the receipt for said notice by the addressee, shall be prima facie evidence that such notice was duly received.

(d) Any person who violates any provisions of this section, ~~if the value be less than \$100.00~~ shall be guilty of a Class 1 misdemeanor.

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Mary K. Jones  
Chairman, Board of Supervisors

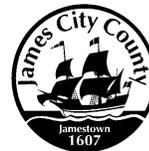
ATTEST:

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Robert C. Middaugh  
Clerk to the Board

Adopted by the Board of Supervisors of James City County, Virginia, this 22nd day of March, 2011.

Chp5Amend\_ord



MEMORANDUM COVER

**Subject:** Cox Communications of Hampton Roads, LLC's Franchise Certificate Renewal

**Strategic Management Plan Pathway:** N/A

**Action Requested:** Shall the Board adopt an ordinance to renew the Cox Communications of Hampton Roads, LLC's Franchise Certificate?

**Summary:** Staff and Cox Communications of Hampton Roads, LLC ("Cox") have negotiated a new Franchise Certificate that allows Cox to continue offering cable television services to County residents.

A non-exclusive Agreement extends the Franchise by ten years and three months as per Federal, State, and local law commencing April 1, 2011, and ending June 30, 2021.

Staff recommends adoption of the ordinance.

**Fiscal Impact:** A monthly 25-cent subscriber fee will be used for capital expenses to support County public, education, and government (PEG) access channels. The fee will generate approximately \$66,000 annually.

**FMS Approval, if Applicable:** Yes  No

**Assistant County Administrator**

Doug Powell \_\_\_\_\_

**County Administrator**

Robert C. Middaugh \_\_\_\_\_

**Attachments:**

1. Memorandum
2. Ordinance
3. Franchise Agreement
4. Cox letter dated March 22, 2011

**Agenda Item No.:** H-4

**Date:** March 22, 2011

**MEMORANDUM**

DATE: March 22, 2011

TO: The Board of Supervisors

FROM: Leo P. Rogers, County Attorney  
Jody Puckett, Director of Communications

SUBJECT: Cox Communications of Hampton Roads, LLC's Franchise Certificate Renewal

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James City County (the "County") was notified on July 17, 2007, by Cox Communications ("Cox") of their intent to renew their cable television Franchise with the County. Staff has negotiated a ten year, three month Franchise Agreement that allows Cox to continue offering cable television services to County residents. The non-exclusive ordinance granting the Franchise Certificate (the "Certificate") and the Franchise Agreement (the "Agreement") are attached.

The newly negotiated Agreement reflects some significant changes from the Franchise Agreement approved in 1990. It includes citizen input from the 2010 Community Needs Assessment survey plus feedback provided by the Cable Communications Committee. It is important to note that cable Franchise agreements are limited by Federal Communications Commission ("FCC") regulations and Virginia Code Sections 15.2-2109.9 et seq.

Knowing that the County cannot regulate cable rates, staff focused on customer service items identified by subscribers and regulated by the FCC. Of note, the Agreement includes a condition to bury all exposed cables within 45 days per the National Electrical Code. Cox will maintain a convenient customer service and payment location plus a 24 hour toll-free courtesy number to receive subscriber inquiries with answer times, including transfers, not to exceed 30 seconds.

Another important aspect of the Agreement is the operation, quality, and accessibility of public, educational, government ("PEG") access channels. If PEG channels move to different channel numbers on the digital tier, Cox will provide monies for County use to market channel changes to citizens. PEG channels will continue to be available to all County customers no matter what Cox service tier they subscribe to. And, as a pilot program, Cox has agreed to offer up to five hours of County PEG programming On Demand in their "Freezone" area. The County is the first Virginia locality to be offered this service.

A significant change to the Agreement, should the Board approve, is a PEG Capital fee of 25 cents per subscriber per month to support PEG capital expenses. The fee will generate approximately \$66,000 annually and will be used for equipment and upgrades needed to televise live meetings (Board of Supervisors, Planning Commission, W-JCC School Board, Chesapeake Bay Board, and Wetlands Board, plus other special meetings) from the Building F Board Room, and for future Capital Improvements to the Community Video Center (the "CVC"). As equipment ages and technology moves from analog to digital, the PEG fee will help to support the needed replacement and upgrade of equipment.

Current PEG operations include the video and broadcast operations in the Building F Board and Work Session rooms and CVC. Those facilities combined include 14 fixed studio cameras, studio lights, on-air graphics generators, two audio mixing boards that handle over 10-12 microphones at a time, digital editing, broadcast equipment needed for the City of Williamsburg, WJCC Schools and the County's PEG channels, three field cameras, field lights, six wireless microphones, digital channel playback and recording equipment. The capital investment is estimated at \$750,000.

FCC regulations now allow the cable operator to break out and display the PEG Capital fee on the customer's bill which in the past has not been the case. If the Board approves the 25 cents fee, it will be listed on the customer's bill as the *James City County PEG Capital Fee*. The fee may be considered annually by the Board as part of the budget process not to exceed 45 cents. Since 2006, recently negotiated PEG Capital fees in other Virginia localities range from 25 cents to \$1.45 per month. Examples include: Chesterfield County 93 cents; Newport News 63 cents; Arlington County \$1.38; City of Charlottesville 40 cents; and City of Hampton 45 cents. In comparison, James City County's PEG fee request is on the low end of other negotiated fees.

Cable franchise monitoring and customer complaints will continue to be resolved by Communications staff. A Broadband Technology Advisory citizen committee as recommended by the 2010 Comprehensive Plan is projected to oversee customer service standards and service complaints of the Cox Agreement.

As an added community benefit, the County will explore a new partnership with Cox called the Broadband Adoption Program which provides internet service and computers to low-income middle school students at a cost of \$15 to the student's family. Fairfax County is the only other Virginia locality to initiate this program.

We recommend adoption of the Ordinance granting the Franchise Certificate and approving the Franchise Agreement.

  
Leo P. Rogers

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Jody Puckett

LPR/JP/nb  
RenewCoxCb\_mem

Attachments

**ORDINANCE NO. \_\_\_\_\_**

AN ORDINANCE TO RENEW THE COX COMMUNICATIONS OF

HAMPTON ROADS, LLC'S FRANCHISE CERTIFICATE

WHEREAS, Cox Communications of Hampton Roads, LLC, ("Cox"), is the grantee of a nonexclusive franchise to construct and operate a cable communications system in the County under a Franchise Certificate effective until April 1, 2011; and

WHEREAS, the County and Cox agree to extend the Franchise Certificate by ten years and three months as per Federal, State, and local law and the terms and conditions of the Franchise Agreement by and between James City County, Virginia and Cox Communications of Hampton Roads, LLC, dated March 22, 2011; and

WHEREAS, the County desires to extend the term of the existing franchise for an additional ten years and three months.

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

1. The County's Franchise Certificate, as amended, with Cox Communications of Hampton Roads, LLC, is hereby renewed for ten years and three months, commencing April 1, 2011, and ending June 30, 2021.
2. The County Administrator is hereby authorized and directed to execute the Franchise Agreement by and between James City County, Virginia and Cox Communications of Hampton Roads, LLC, dated March 22, 2011.

This Ordinance shall be in full force and effect from the date of its adoption.

\_\_\_\_\_  
Mary K. Jones  
Chairman, Board of Supervisors

ATTEST:

\_\_\_\_\_  
Robert C. Middaugh  
Clerk to the Board

Adopted by the Board of Supervisors of James City County, Virginia, this 22nd day of March, 2011.

RenewCoxCb\_res

**Franchise Agreement**  
**by and between**  
**James City County, Virginia**  
**and**  
**Cox Communications Hampton Roads, LLC**

Approved by the Board of Supervisors of James City County on March 22, 2011

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**THIS FRANCHISE AGREEMENT (the “Franchise” or “Agreement”) is entered into by and between James City County, Virginia, a political subdivision of the Commonwealth of Virginia (the Local Franchising Authority or “James City County”) and Cox Communications Hampton Roads, LLC, a limited liability company duly organized under the applicable laws of the State of Delaware (the “Franchisee”).**

**WHEREAS**, James City County wishes to grant Franchisee a nonexclusive franchise to construct, install, maintain, extend and operate a cable communications system in the Franchise Area as designated in this Franchise;

**WHEREAS**, James City County is a “franchising authority” in accordance with Title VI of the Communications Act (*see* 47 U.S.C. §522(10)) and is authorized to grant one or more nonexclusive cable franchises pursuant to the Code of Virginia, Va. Code Ann. § 15.2-2108;

**WHEREAS**, James City County intends to exercise the full scope of its governmental powers to the extent not prohibited by Commonwealth of Virginia law, including both its police power and contracting authority, to promote the public interest and to protect the health, safety and welfare of the citizens of James City County, Virginia;

**WHEREAS**, the Cable System will occupy the Public Rights-of-Way within James City County, and Franchisee desires to use portions of the Cable System to provide Cable Services (as hereinafter defined) in the Franchise Area;

**WHEREAS**, James City County has identified the future cable-related needs and interests of James City County and its community, has considered the financial, technical and legal qualifications of Franchisee, and has determined that Franchisee’s Cable System is adequate, in a full public proceeding affording due process to all parties;

**WHEREAS**, James City County has found Franchisee to be financially, technically and legally qualified to operate the Cable System;

**WHEREAS**, James City County has determined that the grant of a nonexclusive franchise to Franchisee is consistent with the public interest; and

**WHEREAS**, James City County and Franchisee have reached agreement on the terms and conditions set forth herein and the parties have agreed to be bound by those terms and conditions.

**NOW, THEREFORE**, in consideration of James City County’s grant of a franchise to Franchisee, Franchisee’s promise to provide Cable Service to residents of the Service Area of James City County pursuant to and consistent with the Communications Act (as hereinafter defined), pursuant to the terms and conditions set forth herein, the promises and undertakings herein, and other good and valuable consideration, the receipt and the adequacy of which are hereby acknowledged,

## THE SIGNATORIES DO HEREBY AGREE AS FOLLOWS:

### 1. DEFINITIONS

Except as otherwise provided herein, the definitions and word usages set forth in the Communications Act (as hereinafter defined) are incorporated herein and shall apply in this Agreement. References in this section to any federal or state law shall include amendments thereto as may be enacted from time-to-time. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number and words in the singular number include the plural number. The words “shall” and “will” are mandatory and “may” is permissive. Words not defined shall be given their common and ordinary meaning. In addition, the following definitions shall apply:

1.1. *Access Channel*: A video Channel for the transmission of non-commercial Public, Educational, or Governmental access programming as directed by James City County.

1.2. *Affiliate*: Shall be defined herein as it is defined under Title 15.2 of the Code of Virginia, Chapter 21, Article 1.2, Section 15.2-2108.19, meaning in relation to any Person, another Person who owns or controls, is owned or controlled by, or is under common ownership or control with, such Person.

1.3. *Basic Service or Basic Service Tier*: Shall be defined herein as it is defined under Title 15.2 of the Code of Virginia, Chapter 21, Article 1.2, Section 15.2-2108.19, meaning the Cable Service tier that includes (i) the retransmission of local television broadcast Channels and (ii) PEG Channels required to be carried in the basic tier.

1.4. *Cable Service or Cable Services*: Shall be defined herein as it is defined under Title 15.2 of the Code of Virginia, Chapter 21, Article 1.2, Section 15.2-2108.19, meaning the one-way transmission to Subscribers of (i) Video Programming or (ii) other programming service, and Subscriber interaction, if any, which is required for the selection or use of such Video Programming or other programming service. Cable Service does not include any Video Programming provided by a commercial mobile service provider defined in 47 U.S.C. § 332(d).

1.5. *Cable System or System*: Shall be defined herein as it is defined under Section 602 of the Communications Act, 47 U.S.C. § 522(7), Title 15.2 of the Code of Virginia, Chapter 21, Article 1.2, Section 15.2-2108.19, meaning Franchisee’s facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide Cable Service that includes Video Programming and that is provided to multiple Subscribers within the Service Area, except that such term shall not include (i) a system that serves fewer than twenty (20) Subscribers; (ii) a facility that serves only to retransmit the television signals of one or more television broadcast stations; (iii) a facility that serves only Subscribers without using any Public Rights-of-Way; (iv) a facility of a common carrier that is subject, in whole or in part, to the provisions of Title II of the Communications Act of 1934, 47 U.S.C. § 201 *et seq.*, except that such facility shall be considered a Cable System to the extent such facility is used in the transmission of Video Programming directly to Subscribers, unless the extent of such use is solely to provide interactive on-demand services; (v) any facilities of any electric utility used solely for operating its electric system; (vi) any portion of a system that serves

fewer than fifty (50) Subscribers in any locality, where such portion is a part of a larger system franchised in an adjacent locality; or (vii) an open video system that complies with § 653 of Title VI of the Communications Act of 1934, as amended, 47 U.S.C. § 573.

1.6. *Channel*: Shall be defined herein as it is defined under Section 602 of the Communications Act, 47 U.S.C. § 522(4), meaning a portion of the electromagnetic frequency spectrum which is used in a cable system and which is capable of delivering a television channel, as defined by the Federal Communications Commission by regulation.

1.7. *Communications Act*: The Communications Act of 1934, as amended.

1.8. *Drop*: The cable that connects the ground block on the Subscriber's residence or institution to the nearest feeder cable of the System.

1.9. *FCC*: The United States Federal Communications Commission or successor governmental entity thereto.

1.10. *Equipment*. Means the cables, optical fiber, poles, wires, electrical conductors, conduits, manholes, fixtures, appliances, and appurtenances that are owned physically controlled, or physically maintained by the Franchisee in, on, over, or under the Public Rights of Way.

1.11. *Force Majeure*: Shall be defined herein as it is defined under Title 15.2 of the Code of Virginia, Chapter 21, Article 1.2, Section 15.2-2108.19, meaning an event or events reasonably beyond the ability of Franchisee to anticipate and control. "Force majeure" includes, but is not limited to, acts of God, incidences of terrorism, war or riots, labor strikes or civil disturbances, floods, earthquakes, fire, explosions, epidemics, hurricanes, tornadoes, governmental actions and restrictions, work delays caused by waiting for utility providers to service or monitor or provide access to utility poles to which Franchisee's facilities are attached or to be attached or conduits in which Franchisee's facilities are located or to be located, and unavailability of materials or qualified labor to perform the work necessary.

1.12. *Franchise Area*: The jurisdictional boundary of James City County and such additional areas as may be included in the jurisdictional boundary of James City County during the term of this Franchise.

1.13. *Franchisee*: Cox Communications Hampton Roads, LLC, and its lawful and permitted successors, assigns and transferees.

1.14. *Local Franchise Authority (James City County)*: James City County, Virginia or the lawful successor, transferee, or assignee thereof.

1.15. *Non-Cable Services*: Any service that does not constitute the provision of Cable Services.

1.16. *Normal Business Hours*: Shall be defined herein as it is defined under 47 C.F.R. § 76.309(c)(4)(i), meaning those hours during which most similar businesses in the

community are open to serve customers. In all cases, “normal business hours” must include some evening hours at least one night per week and/or some weekend hours.

1.17. *Normal Operating Conditions*: Shall be defined herein as it is defined under 47 C.F.R. § 76.309(c)(4)(ii), meaning those service conditions which are within the control of the Franchisee. Those conditions which are not within the control of the Franchisee include, but are not limited to, natural disasters, civil disturbances, power outages, telephone network outages, and severe or unusual weather conditions. Those conditions which are ordinarily within the control of the Franchisee include, but are not limited to, special promotions, pay-per-view events, rate increases, regular peak or seasonal demand periods, and maintenance or rebuild of the Cable System.

1.18. *Person*: An individual, partnership, association, joint stock company, trust, corporation, or limited liability entity.

1.19. *PEG or PEG Access Channels*: Means Channels available for non-commercial programming produced by members of the public, and educational, or governmental institutions pursuant to 47 U.S.C. § 531.

1.20. *Public Rights-of-Way*: Shall mean the surface of, and the space above and below, any public street, lane, alley, sidewalk, or other public right-of-way, including, but not limited to, public utility easements, dedicated utility strips, or rights-of-way dedicated for compatible uses now or hereafter held by James City County or the Virginia Department of Transportation in the Franchise Area.

1.21. *Service Area*: All portions of the Franchise Area where Cable service is being offered in James City County in accordance with paragraph 3.1

1.22. *Service Interruption*: The loss of picture or sound on one or more cable channels.

1.23. *Standard Installation*: Any residential or commercial installation which can be completed by using a Drop of two hundred fifty (250) feet or less.

1.24. *Subscriber*: A Person or governmental entity who lawfully receives Cable Service over the Cable System with Franchisee’s express permission.

1.25. *Telecommunication Services*: Shall be defined herein as it is defined under Section 3 of the Communications Act, 47 U.S.C. § 153(46), meaning the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used.

1.26. *Transfer of the Franchise*: Shall be defined herein as it is defined under Title 15.2 of the Code of Virginia, Chapter 21, Article 1.2, §15.2-2108.19, meaning any transaction in which (i) an ownership or other interest in the Franchisee is transferred, directly or indirectly, from one person or group of persons to another person or group of persons, so that majority control of the Franchisee is transferred; or (ii) the rights and obligations held by the Franchisee under the Franchise are transferred or assigned to another person or group of persons.

However, notwithstanding clauses (i) and (ii) of the preceding sentence, a transfer of the cable franchise shall not include (a) transfer of an ownership or other interest in the Franchisee to the parent of the Franchisee or to another affiliate of the Franchisee; (b) transfer of an interest in the cable franchise granted under this article or the rights held by the Franchisee under the Franchise to the parent of the Franchisee or to another affiliate of the Franchisee; (c) any action that is the result of a merger of the parent of the Franchisee; (d) any action that is the result of a merger of another affiliate of the Franchisee; or (e) a transfer in trust, by mortgage, or by assignment of any rights, title, or interest of the Franchisee in the Franchise or the Cable System used to provide Cable Services in order to secure indebtedness.

1.27. *Video Programming*: Shall be defined herein as it is defined under Title 15.2 of the Code of Virginia, Chapter 21, Article 1.2, §15.2-2108.19, meaning programming provided by, or generally considered comparable to, programming provided by a television broadcast station.

## 2. **GRANT OF AUTHORITY; LIMITS AND RESERVATIONS**

2.1. *Grant of Authority*: Subject to the terms and conditions of this Agreement, and applicable provisions of Chapter 5, Cable Communications, of the James City County Code, Title 15.2 of the Code of Virginia and the Communications Act, James City County hereby grants the Franchisee the right to own, construct, operate and maintain a Cable System along the Public Rights-of-Way within the Franchise Area, in order to provide Cable Service. This Agreement grants no additional authority for Franchisee to utilize James City County's Public Rights-of-Way for any other purpose unless otherwise expressly provided herein or provided by law. No privilege or power of eminent domain is bestowed by this grant; nor is such a privilege or power bestowed by this Agreement.

2.2. *Term*: This Franchise shall become effective on April 1, 2011 (the "Effective Date"). The term of this Franchise shall be until June 30, 2021. The Franchisee, at its option, shall notify James City County of its intent to extend the franchise term in writing not less than thirty (30) months from the expiration date of the initial term or the first extension term. Such extension periods shall not be available in the event the Franchise is earlier surrendered or revoked as provided herein.

2.3. *Grant Not Exclusive*: The Franchise and the rights granted herein to use and occupy the Public Rights-of-Way to provide Cable Services shall not be exclusive, and James City County reserves the right to grant other franchises for similar uses or for other uses of the Public Rights-of-Way, or any portions thereof, to any Person, or to make any such use themselves, at any time during the term of this Franchise. Any such rights which are granted shall not be inconsistent with the rights granted to the Franchisee under this Franchise or under applicable federal or state law. Consistent with Section 15.2-2108.21 of the Code of Virginia, Franchisee shall have the right to opt into the terms of an ordinance cable franchise pursuant to Section 15.2-2108.26 of the Code of Virginia. Further, to the extent permitted by applicable federal and state law, no franchise granted for the provision of Cable Services or Video Programming shall be less burdensome nor more favorable than the obligations imposed upon the Franchisee hereunder, in order that one operator not be granted an unfair competitive advantage over another. If a franchise or other authorization is granted that creates an unfair competitive advantage as

described herein, Franchisee and James City County shall discuss the discrepancy and James City County shall consider amendments to this Agreement in accordance with state law to provide a level playing field.

2.4. *Franchise Subject to Federal Law:* Notwithstanding any provision to the contrary herein, this Franchise is subject to and shall be governed by all applicable provisions of federal law as it may be amended, including but not limited to the Communications Act.

2.5. *No Waiver:*

2.5.1. The failure of James City County on one or more occasions to exercise a right or to require compliance or performance under this Franchise, the Communications Act or any other applicable local, State or Federal law shall not be deemed to constitute a waiver of such right or a waiver of compliance or performance by James City County, nor to excuse Franchisee from complying or performing, unless such right or such compliance or performance has been specifically waived in writing.

2.5.2. The failure of the Franchisee on one or more occasions to exercise a right under this Franchise or applicable law, or to require performance under this Franchise, shall not be deemed to constitute a waiver of such right or of performance of this Agreement, nor shall it excuse James City County from performance, unless such right or performance has been specifically waived in writing.

2.6. *Construction of Agreement:* The provisions of this Franchise shall be liberally construed to effectuate their objectives.

2.7. *Police Powers:* Except as otherwise provided in this Section 2.7, Franchisee's rights under this Franchise shall be subject to the lawful police powers of James City County to adopt and enforce ordinances of general applicability necessary to protect and preserve the health, safety and welfare of the public. Franchisee shall comply with all applicable general laws and ordinances lawfully enacted by James City County pursuant to such police powers. James City County agrees that ordinances which it adopts that impact this Agreement must be enacted upon reasonable conditions and of a character appropriate to the public purpose justifying enactment. Nothing herein prohibits the Franchisee from challenging any future ordinances enacted by James City County as may be permitted under applicable law.

### 3. **PROVISION OF CABLE SERVICE**

3.1. *Service Area:*

3.1.1. Franchisee shall make Cable Service available to all of the occupied residential dwelling units in the Service Area. Franchisee may make Cable Service available to businesses in the Service Area. Notwithstanding the foregoing, Franchisee shall not be required to make Cable Service available: (a) by reason of Force Majeure; (b) for periods of delay caused by James City County; (c) for periods of delay resulting from the Franchisee's inability to obtain authority to access Public Rights-of-Way in the Service Area; (d) in areas where developments or buildings are subject to claimed exclusive arrangements; (e) in developments or buildings that the Franchisee cannot access under industry standard terms and

conditions after good faith negotiation; (f) in developments or buildings that the Franchisee is unable to provide Cable Service for technical reasons or that require facilities that are not available or cannot be deployed on a commercially reasonable basis; (g) in areas where it is not technically feasible to provide Cable Service due to the technology used by the Franchisee to provide Cable Service; (h) in areas where the average occupied residential household density is less than twenty-five (25) occupied residential dwelling units per mile within one (1) linear mile from Franchisee's energized distributed network and, (i) when the Franchisee's prior service, payment, or theft of Service history with a Subscriber or potential Subscriber has been unfavorable. Should, through new construction, an area within the Franchisee's Service Area meet the density requirement as set forth in this subsection, Franchisee shall, subject to exclusions (a) through (i) set forth in this Subsection and Subsection 3.2, provide Cable Service to such area within six (6) months of receiving notice from James City County that the density requirements have been met.

3.1.2. Franchisee shall have the right but not the obligation to extend its Cable System and/or to provide Cable Services to any other areas within the Franchise Area during the term of this Franchise or any renewals thereof, not meeting the density requirements described in Section 3.1.1

3.1.3. Line Extensions to Residential Subscriber. If a potential Subscriber resides in an area of the Service Area that does not meet the density requirements of Section 3.1.1(h) above (*i.e.*, the subscriber's residence is located where there are fewer than twenty-five (25) occupied residential dwelling units per mile within one (1) linear mile from Franchisee's energized distribution network), the Franchisee shall only be required to extend the Cable System if the Subscribers in that area are willing to share the capital costs of extending the Cable System by making a capital contribution in aid of construction including cost of material, design, labor and easements. Subscribers who request service hereunder shall bear the construction costs on a pro rata basis [Example: Five (5) owners of residential dwelling units within one (1) mile linear mile of Franchisee's energized distribution network request service. Extending the Cable System to serve those residential units costs \$50,000. The cost divided by 25 homes per mile is \$2,000 per 25 residential dwelling units. Franchisee will pay \$10,000 (5 residential dwelling units times \$2,000) and each owner of the residential dwelling units will likewise pay \$8,000 of those costs.] The Franchisee may require that the payment of the capital contribution in aid of construction borne by potential subscribers be paid in advance. Subscribers shall also be responsible for any applicable installation charges to extend the Cable System from the tap to the residence.

3.1.4. Franchisee agrees that, upon request and with no less than thirty (30) days' written notice, but no more than once per year, a representative of the Franchisee will meet with representatives of James City County to confirm compliance with the requirements set forth in this Subsection 3.1. Nothing herein shall prevent James City County from contacting at any time the single point of contact identified in Section 13.5 with respect to other matters regarding this Agreement.

3.2. *Availability of Cable Service:* Franchisee shall make Cable Service available to all occupied residential dwelling units and may make Cable Service available to businesses within the Service Area in conformance with Section 3.1 and Franchisee shall not

discriminate between or among any individuals in the availability of Cable Service. In the areas in which Franchisee shall provide Cable Service, Franchisee shall be required to connect, at Franchisee's expense, other than a standard installation charge, all occupied residential dwelling units that are within two hundred-fifty (250) feet of trunk or feeder lines not otherwise already served by Franchisee's Cable System. Franchisee shall be allowed to recover, from a Subscriber that requests such connection, actual costs incurred for residential dwelling unit connections that exceed two hundred-fifty (250) feet and actual costs incurred to connect any non-residential dwelling unit Subscriber.

3.3. *Cable Service to Local Government Buildings:* Subject to 3.1 and so long as such requirement applies to all other cable operators in the Franchise Area, Franchisee shall provide, without charge within the Service Area, one service outlet activated to received the Basic Service Tier and any other tier of service at the Franchisee's discretion and one (1) set top box, if necessary to receive the services provided (the outlet, service, and set top box are collectively referred to as "Courtesy Service"), to each fire station, public school, police station, public library, County created public authority, regional entity in which the County is a member, and any other local government building as set forth in Exhibit A, and to no more than two (2) newly constructed or acquired local government buildings eligible for service pursuant to this Section 3.3 ("Additional Buildings") in any given calendar year, up to a maximum total number of Additional Buildings equivalent to one (1) per year over the Term of this Agreement (including any permitted extensions). If it is necessary to extend Franchisee's trunk or feeder lines more than two hundred-fifty (250) feet solely to provide service to any such school or public building, James City County shall have the option either of paying Franchisee's direct costs for such extension in excess of two hundred-fifty (250) feet, or of releasing Franchisee from the obligation to provide service to such building. Furthermore, Franchisee shall be permitted to recover, from any school or other public building owner entitled to receive Courtesy Service the direct cost of installing, when requested to do so, more than one outlet, or concealed inside wiring, or a service outlet requiring more than two hundred-fifty (250) feet of drop cable or an underground installation; provided, however, that the Franchisee shall not charge for a monthly fee for the service component of Courtesy Service to the additional service outlets once the outlets are installed, but may charge for any equipment required, including additional set top boxes, at then-commercial rates. If Franchisee chooses not to perform the inside wiring and/or additional outlet installation in public buildings, James City County or building owners may retain qualified third party contractors to perform such work. Cable Service may not be resold or otherwise used in contravention of Franchisee's rights or obligations with respect to third parties. Equipment provided by Franchisee, if any, shall be replaced at retail rates if lost, stolen or damaged. The requirements of this Section 3.3 shall not apply in cases where it is not technically feasible for the Franchisee to comply.

#### 4. **SYSTEM FACILITIES**

4.1. *System Characteristics:* The Franchisee's Cable System shall meet or exceed the following requirements:

4.1.1. The System shall be an active two-way plant for Subscriber interaction, if any, required for selection or use of Cable Service.

4.1.2. The System shall utilize an architecture that permits additional improvements necessary for high quality and reliable service throughout the term of this Agreement.

4.1.3. The System shall have protection against outages due to power failures with back-up power available for at least twenty-four (24) hours at each headend and, in conformance with industry standards, back-up power at each power supply site rated for at least four (4) hours.

4.1.4. The System shall use facilities and equipment of good and durable quality, generally used in high-quality, reliable, systems of similar design.

4.1.5. The Franchisee shall maintain facilities and equipment sufficient to cure violations of any applicable FCC technical standards and to ensure that the Cable System remains in compliance with the standards specified in Subsection 4.1.19 below.

4.1.6. The Franchisee shall maintain facilities and equipment as necessary to maintain, operate, and evaluate the Cable System to comply with any applicable FCC technical standards, as such, standards may be amended from time to time.

4.1.7. The System shall utilize facilities and equipment capable of continuous twenty-four (24) hour daily operation in accordance with applicable FCC standards except as caused by a Force Majeure event.

4.1.8. The System shall be designed, built and operated in such a manner as to comply with all applicable FCC requirements regarding (i) consumer electronic equipment and (ii) interference with the reception of off-the-air signals by a subscriber.

4.1.9. The System shall be designed, built and operated in such a manner as to protect the safety of the Cable System workers and the public.

4.1.10. The Franchisee shall maintain sufficient trucks, tools, testing equipment, monitoring devices and other equipment and facilities and trained and skilled personnel required to enable the Franchisee to substantially comply with applicable law, including applicable customer service standards and including requirements for responding to system outages.

4.1.11. The Franchisee shall maintain facilities and equipment required to properly test the Cable System and conduct an ongoing and active program of preventive maintenance and quality control and to be able to quickly respond to customer complaints and resolve system problems.

4.1.12. The System shall be capable of interconnecting with other cable systems in the Service Area as set forth in Section 4.2 below.

4.1.13. The Franchisee shall maintain facilities and equipment at the headend to transmit or cablecast signals in substantially the form received without substantial alteration or deterioration. For example, the headend should include equipment that will transmit

color video signals received at the headend in color, stereo audio signals received at the headend in stereo, and a signal received with a secondary audio track with both audio tracks. Similarly, all closed-captioned programming retransmitted over the Cable System shall include the closed captioned signal in a manner that renders that signal available to Subscriber equipment used to decode the captioning.

4.1.14 The System shall be capable of transmitting in standard and high definition format any channels that are received in standard or high definition format. Actual carriage of such high definition Channels will be at the Franchisee's sole discretion.

4.1.15. The System shall provide adequate security provisions in its Subscriber site equipment to permit parental control over the use of Cable Services on the System consistent with federal law. 4.1.17. The provision of additional Channels, increased Channel capacity, and/or upgrades of any kind to the Cable System is solely within the control and discretion of the Franchisee.

4.1.16. The System shall conform to or exceed all applicable FCC technical performance standards, as amended from time to time, and any other future applicable technical performance standards, which James City County is permitted by a change in law to enforce, and shall substantially conform in all material respects to applicable provisions of the following standards and regulations to the extent such standards and regulations remain in effect and are consistent with accepted industry procedures:

- 4.1.16.1. Occupational Safety and Health Administration (OSHA) Safety and Health Standards;
- 4.1.16.2. National Electrical Code;
- 4.1.16.3. National Electrical Safety Code (NESC);
- 4.1.16.4. Obstruction Marking and Lighting, AC 70/7460 i.e., Federal Aviation Administration;
- 4.1.16.5. Constructing, Marking and Lighting of Antenna Structures, Federal Communications Commission Rules, Part 17; and
- 4.1.16.6. Requirements set forth in the Virginia Uniform Statewide Building Code.

4.2. *Interconnection:* The Franchisee shall design its Cable System so that it may be interconnected with other cable systems in the Service Area. James City County may request, in writing, that the Franchisee interconnect with another cable operator authorized by James City County provide Cable Service in the Service Area. All decisions regarding whether to interconnect and the terms and conditions of any such interconnect shall be a matter agreement between the cable operators involved. Interconnection of systems may be made by direct cable connection, microwave link, satellite, or other appropriate methods, at the sole discretion of the Franchisee and the interconnecting cable operator. The interconnection capabilities created

pursuant to this Section 4.2 shall be solely for the exchange of PEG programming required to be provided on the Cable System pursuant to this Franchise. Franchisee shall not be required to build such interconnection if it is not economically feasible nor be required to connect with another cable operator or other video services provider. Franchisee may charge the connecting cable operator in advance for any construction costs and/or monthly charges associated with the interconnection.

4.3. *Emergency Alert System:*

Franchisee shall comply with the Emergency Alert System (“EAS”) Federal Emergency Alert System regulations, 47 C.F.R. Sec. 76 Part 1

In the event of a state or local civil emergency, the EAS shall be remotely activated as set forth in the Virginia EAS plan.

5. **PEG CHANNELS**

5.1. *PEG Channel Capacity:*

5.1.1. PEG Channels: Franchisee shall provide one (1) non-commercial Public Access Channel (1) non-commercial Educational Access Channel, and one (1) non-commercial Government Access Channel (collectively, “PEG Channels”) If a PEG Channel provided under Section 5.1.1 is not being utilized by James City County, Franchisee may utilize the channel for its own purposes after providing James City County thirty (30) days written notice. James City County may elect to reclaim the Channel for PEG purposes by providing Franchisee not less than one hundred eighty (180) days prior written notice.

5.1.2. Unutilized Channel: For purposes of this Section 5.1, a PEG Channel is “unutilized” when it is not programmed at least eight (8) hours per day. Bulletin board or similar scrolling information and static video pictures shall not be considered programming.

5.2. PEG Transmission

5.2.1. James City County shall provide and maintain upstream equipment and facilities necessary to transmit the current PEG signals from the following PEG signal origination points located at the Community Video Center, 1114 Ironbound Road, Williamsburg, Virginia 23188 and Board of Supervisors Video Control Room at 101 Mounts Bay Road, Williamsburg, Virginia 23185. However, should the County decide to relocate the current PEG signal origination points described herein or request additional PEG signal origination points, the County shall be solely responsible for all related costs and expenses. Franchisee shall maintain equipment capable of receiving and processing the PEG signals transmitted by James City County. Franchisee shall maintain the links to transmit the PEG Channel signals from the origination points to its headend without degradation.

5.2.2. Notwithstanding the obligations in 5.1.1, Franchisee shall not be obligated to provide James City County with either cablecast equipment and facilities or personnel responsible for maintaining and operating such cablecast equipment and facilities used to generate any such PEG signals.

5.2.3. The Franchisee may transmit such PEG programming within and without James City County's jurisdictional boundaries without further authorization from James City County. Franchisee specifically reserves its right to make or change channel assignments in its sole discretion. In the event any PEG Access Channel is relocated, Franchisee shall reimburse James City County up to Two Thousand Five Hundred and No/100 Dollars (\$2,500.00) for documented costs associated with such relocation incurred by James City County.

5.2.4. The Franchisee may, to the extent permissible under applicable law, require all users of any PEG facilities or Channels, other than James City County, a County created authority, regional entities in which the County is a party, and the School Board, to defend and hold harmless Franchisee from and against any and all liability or other injury, including the reasonable cost of defending claims or litigation, arising from or in connection with claims for failure to comply with applicable federal laws, rules, regulations or other requirements of local, state or federal authorities; for claims of libel, slander, invasion of privacy, or the infringement of common law or statutory copyright; for unauthorized use of any trademark, trade name or service mark; for breach of contractual or other obligations owing to third parties by the producer or user; and for any other injury or damage in law or equity, which result from the use of a PEG facility or Channel.

5.2.5 Franchisee shall provide James City County at least ninety (90) days prior written notice before changing the transmission format it uses to transmit PEG Channels to Subscribers from analog format to digital format. At such time that the transmission format is changed to digital, James City County may provide PEG programming in either standard-definition digital format or high- definition format (e.g. 1080i [1920 x 1080 interlaced] or some other mutually agreed-upon high-definition format) to the Franchisee's head end equipment at the Community Video Center. Franchisee shall transmit PEG Channels to its Subscribers in the same format without any degradation in signal strength or quality, that it uses to transmit the broadcast channels included in the Basic Service Tier. At such time that Franchisee's Basic Service Tier is transmitted to Subscribers in a high-definition format, all PEG Channels shall be likewise transmitted in high-definition format. Franchisee shall not require Subscribers to pay any additional fee solely to view the PEG Channels as a result of a change in the transmission format of the Channels.

### 5.3. PEG Capital Fee:

5.3.1. Franchisee shall provide a PEG Capital Fee to James City County (the "PEG Capital Fee") on a quarterly basis. The PEG Capital Fee shall be used by James City County to support the capital costs of PEG Access Channel facilities consistent with the Communications Act (47 U.S.C. § 542).

5.3.2. Initial Amount: The PEG Capital Fee shall be an initial sum of up to twenty-five cents (\$0.25) per month for each Subscriber in the Service Area to Franchisee's Basic Service Tier. Franchisee shall commence payment of the PEG Capital Fee at the end of the third calendar quarter of 2011.

5.3.3. PEG Capital Fee Increases: Beginning on the first anniversary of the Effective Date of this Agreement, and not more frequently thereafter than once a year, James City County may, through a vote of its Board of Supervisors, increase the PEG Capital Fee to an amount not to exceed forty-five cents (\$0.45) per month for each Subscriber in the Service Area to Franchisee's Basic Service Tier. James City County shall provide Franchisee with notice of any public hearing or meeting where an increase will be considered or voted on by the Board of Supervisors. James City County shall forward a copy of the adopted ordinance or resolution authorizing an increase in the PEG Capital Fee which shall indicate the effective date of the increase. Franchisee shall have a reasonable time, not to exceed sixty (60) days, to implement the PEG Capital Fee increase.

5.4. Franchisee may recover from Subscribers any costs related to providing the PEG Channels, including the PEG Capital Fee, if any, to the extent permitted by law.

5.5. James City County shall not sell time on the PEG Channels, nor allow any third party to do so, nor shall any channel be leased at any price to any third party. James City County may allow programmers on the PEG Channels to seek support for their programming consistent with the "Funding Standards and Practices" of the Public Broadcasting System (found at: <http://www.pbs.org/producers/guidelines/>) as they exist on the Effective Date of this Agreement.

## **6. COMMUNICATIONS SALES AND USE TAX**

The parties shall comply with all applicable requirements of the provisions of Section 58.1-645 of the Code of Virginia (the "Communications Sales and Use Tax") in its current form and as it may be amended. Should at any time during the term of this Agreement the Communication Sales and Use Tax be repealed or amended to reduce or eliminate the payment of taxes by the Franchisee on the provision of Cable Service over the Cable System, James City County may, to the extent authorized under applicable law, require, upon sixty (60) days written notice, direct the Franchisee to pay to James City County a franchise fee based on Franchisee's gross revenue in an amount authorized by applicable law or agreed to between the parties. Any such requirement to pay a franchise fee (1) shall apply equally to all franchised cable operators in James City County; (2) Franchisee shall not be compelled to pay any higher percentage of gross revenue as a franchise fee than any other franchised cable operator providing service in James City County; and (3) Franchisee shall not be obligated to pay franchise fees on revenue not included in gross revenues by other franchised cable operators in James City County. Any payment of franchise fees to James City county pursuant to this paragraph shall be made on a quarterly basis and shall be due forty-five (45) days after the close of each quarter. Franchisee shall keep its financial records in accordance with Generally Accepted Accounting Principles.

7. **CUSTOMER SERVICE**

Customer Service Requirements are set forth in Exhibit B, which shall be binding unless amended by written consent of the parties.

8. **REPORTS AND RECORDS**

8.1. *Open Books and Records:* Upon not less than thirty (30) business days written notice to the Franchisee, James City County shall have the right, at any time during Normal Business Hours as reasonably determined by the parties, to inspect the Franchisee's books and records pertaining to Franchisee's provision of Cable Service in the Franchise Area as reasonably necessary to ensure compliance with the terms of this Franchise; provided, however, that inspections of financial records including audits performed pursuant to Section 8.2 shall be performed no more frequently than once every twenty-four (24) months. Such notice shall specifically reference the section or subsection of the Franchise which is under review, so that Franchisee may organize the necessary books and records for appropriate access by James City County. Franchisee shall not be required to maintain any books and records for Franchise compliance purposes longer than two (2) years. Franchisee shall not be required to provide Subscriber information in violation of Section 631 of the Communications Act, 47 U.S.C. §551.

8.2. *Audit:* Inspections performed pursuant to Section 8.1 of this Agreement may include an audit of all records reasonably necessary to confirm the accurate payment of the PEG Capital Fee. Franchisee shall bear James City County's reasonable, documented out-of-pocket expenses of any such audit performed by a qualified, independent third-party auditor, up to a maximum of twenty thousand dollars (\$20,000), if such audit discloses an underpayment by Franchisee of more than three percent (3%) of any quarterly payment but not less than five thousand dollars (\$5,000) or more. James City County shall not audit Franchisee more frequently than once every twenty-four (24) months. James City County shall have no more than two (2) years from the time Franchisee delivers a payment to provide a written, detailed objection to or dispute of that payment, and if James City County fails to object to or dispute the payment within that time period, James City County shall be barred from objecting to or disputing it after that time period. Franchisee shall be provided a reasonable opportunity to review the results of any audit and to dispute any audit results which indicate an underpayment to James City County. In the event that Franchisee disputes any underpayment discovered as the result of an audit conducted by James City County, James City County shall work together with Franchisee in good faith to promptly resolve such dispute. James City County and Franchisee maintain all rights and remedies available at law regarding any disputed amounts. James City County may require Franchisee to pay any additional undisputed amounts due to James City County as a result of an audit performed by James City County pursuant to this Section 8.2, plus interest at the legal rate, within thirty (30) days following receipt by Franchisee of written notice by James City County. Notwithstanding the foregoing, Franchisee shall not be obligated to bear any audit expenses for any auditor utilized by James City County that is compensated on a success-based formula, e.g., payment based on a percentage of underpayment, if any.

8.3. *Proprietary and Confidential Information:* Notwithstanding anything to the contrary set forth herein, Franchisee shall not be required to disclose information that it reasonably deems to be proprietary or confidential in nature except in accordance with the

following procedures, or to disclose any of its or an Affiliate's books and records not relating to the provision of Cable Service in the Service Area. If Franchisee believes that any requested information is confidential and proprietary, Franchisee must provide the following documentation to James City County: (i) specific identification of the information; (ii) a statement attesting to the reason(s) Franchisee believes the information is confidential and/or proprietary; and (iii) a statement that the document(s) are available for inspection by James City County. Franchisee shall be responsible for clearly and conspicuously stamping the word "Confidential" on each page that contains any "confidential" or "proprietary" information. Unless otherwise ordered by a court or agency of competent jurisdiction, James City County agrees that, to the extent permitted by applicable law, it shall deny access to any of Franchisee's information marked "Confidential" as set forth in this Section 8.3 to any Person or governmental entity. If, in the course of enforcing this Franchise or for any other reason, James City County believes it must disclose any information marked "Confidential" as set forth in this Section 8.3, James City County shall provide reasonable advance notice of such disclosure so that Franchisee can take appropriate steps to protect its interests. If James City County receives a demand from any Person or governmental entity for disclosure of any information identified as "Confidential" pursuant to this Section 8.3, James City County shall, so far as consistent with applicable law, advise Franchisee and provide Franchisee with a copy of any written request prior to granting the Person or governmental entity access to such information.

8.4. *Inspection Location:* Books and Records produced pursuant to Sections 8.1 and 8.2, and documents produced pursuant to Section 8.3 shall be produced at a mutually agreed location.

8.5. *Records Required:* Franchisee shall at all times maintain:

8.5.1. Records of all written complaints for a period of two (2) years after receipt by Franchisee. The term "complaint" as used herein refers to complaints about any aspect of the Cable System or Franchisee's cable operations, including, without limitation, complaints about employee courtesy;

8.5.2. Records of outages for a period of two (2) years after occurrence, indicating date, duration, area, and the number of Subscribers affected, type of outage, and cause;

8.5.3. Records of service calls for repair and maintenance for a period of two (2) years after resolution by Franchisee, indicating the date and time service was required, the date of acknowledgment and date and time service was scheduled (if it was scheduled), and the date and time service was provided, and (if different) the date and time the problem was resolved;

8.5.4. Records of installation/reconnection and requests for service extension for a period of two (2) years after the request was fulfilled by Franchisee, indicating the date of request, date of acknowledgment, and the date and time service was extended.

## 9. **INSURANCE AND INDEMNIFICATION**

9.1. *Insurance:*

9.1.1. Franchisee shall maintain in full force and effect, at its own cost and expense, during the Franchise Term, the following insurance coverage:

9.1.1.1. Commercial General Liability Insurance in the amount of one million dollars (\$1,000,000.00) combined single limit and two million dollars (\$2,000,000.00) aggregate for property damage and bodily injury. Such insurance shall cover the construction, operation and maintenance of the Cable System, and the conduct of Franchisee's Cable Service business in James City County.

9.1.1.2. Automobile Liability Insurance in the amount of one million dollars (\$1,000,000.00) combined single limit for bodily injury and property damage.

9.1.1.3. Workers' Compensation Insurance meeting all legal requirements of the Commonwealth of Virginia.

9.1.1.4. Employers' Liability Insurance in the following amounts: (A) Bodily Injury by Accident: one hundred thousand dollars (\$100,000.00); (B) Bodily Injury by Disease: one hundred thousand dollars (\$100,000.00) employee limit; and (C) Bodily Injury by Disease: five hundred thousand dollars (\$500,000.00) policy limit.

9.1.1.5. Umbrella Liability Insurance shall be maintained above the primary Commercial General Liability, Automobile Liability, and Employers' Liability policies required herein. The limit of such Umbrella Liability Insurance shall not be less than two million dollars (\$2,000,000.00) each occurrence and in the annual aggregate.

9.1.2. The limits required above may be satisfied with a combination of primary and excess coverage.

9.1.3. James City County shall be included as an additional insured under each of the insurance policies required in this Article 10 except Workers' Compensation and Employers' Liability Insurance.

9.1.4. Franchisee shall not cancel any required insurance policy without obtaining alternative insurance in conformance with this Agreement.

9.1.5. Each of the required insurance policies shall be with insurers qualified to do business in the Commonwealth of Virginia, with an A.M. Best Financial Strength rating of A- or better.

9.1.6. Franchisee shall deliver to James City County Certificates of Insurance showing evidence of the required coverage as well as copies of endorsement to each insurance policy which indicates James City County is an additional insured.

9.2. *Indemnification:*

9.2.1. Franchisee agrees to indemnify, save and hold harmless, and defend James City County, its officers, agents, boards and employees, from and against any liability for damages or claims resulting from tangible property damage or bodily injury (including accidental death), to the extent proximately caused by Franchisee's construction, operation, or maintenance of its Cable System, provided that upon receipt of a claim or action pursuant to this subsection James City County shall give Franchisee written notice of its obligation to indemnify James City County in a timely fashion so as not to materially prejudice Franchisee. Notwithstanding the foregoing, Franchisee shall not indemnify James City County, for any damages, liability or claims resulting from the willful misconduct or negligence of James City County, its officers, agents, employees, attorneys, consultants, independent contractors or third parties or for any activity or function conducted by any Person or governmental entity other than Franchisee in connection with PEG Access or EAS, or the distribution of any Cable Service over the Cable System.

9.2.2. With respect to Franchisee's indemnity obligations set forth in Subsection 9.2.1, Franchisee shall provide the defense of any claims brought against James City County by selecting counsel of Franchisee's choice to defend the claim, subject to the consent of the James City County Attorney, which shall not unreasonably be withheld. Nothing herein shall be deemed to prevent James City County from cooperating with the Franchisee and participating in the defense of any litigation by its own counsel at its own cost and expense, provided however, that after consultation with the James City County Attorney, Franchisee shall have the right to defend, settle or compromise any claim or action arising hereunder, and Franchisee shall have the authority to decide the appropriateness and the amount of any such settlement. In the event that the terms of any such proposed settlement includes the release of James City County and James City County does not consent to the terms of any such settlement or compromise, Franchisee shall not settle the claim or action but its obligation to indemnify James City County shall in no event exceed the amount of such settlement.

9.2.3. James City County shall be responsible for its own acts of willful misconduct or negligence, or breach of obligation committed by James City County for which James City County is legally responsible, subject to any and all defenses and limitations of liability provided by law. The Franchisee shall not be required to indemnify James City County for acts of James City County, which constitute willful misconduct or negligence on the part of James City County, its officers, employees, agents, attorneys, consultants, independent contractors or third parties.

10. **TRANSFER OF FRANCHISE**

Subject to Section 617 of the Communications Act, 47 U.S.C. § 537, no Transfer of the Franchise shall occur without the prior consent of the James City County Board of Supervisors, provided that such consent shall not be unreasonably withheld, delayed or conditioned. No such consent shall be required, however, for transactions excluded under Section 1.27 above.

11. **RENEWAL OR EXTENSION OF FRANCHISE**

11.1. James City County and Franchisee agree that any proceedings undertaken by James City County that relate to the renewal of this Franchise shall be governed by and comply with the provisions of Section 626 of the Communications Act, 47 U.S.C. § 546, or Title 15.2 of the Code of Virginia, Chapter 21, Article 1.2, Section 15.2-2108.30, as applicable, and Chapter 5, Cable Communications, of the James City County Code.

11.2. Notwithstanding anything to the contrary set forth herein, Franchisee and James City County agree that at any time during the term of the then current Franchise, while affording the public appropriate notice and opportunity to comment, James City County and Franchisee may agree to undertake and finalize informal negotiations regarding renewal of the then current Franchise and James City County may grant a renewal thereof.

## 12. **ENFORCEMENT AND TERMINATION OF FRANCHISE**

12.1. *Notice of Violation:* If at any time James City County believes that Franchisee has not substantially complied with the terms of the Franchise, James City County shall informally discuss the matter with Franchisee. If these discussions do not lead to resolution of the issue, James City County shall then notify Franchisee in writing of the exact nature of the alleged noncompliance (for purposes of this Article, the “Noncompliance Notice”).

12.2. *Franchisee’s Right to Cure or Respond:* Franchisee shall have fifteen (15) business days from receipt of the Noncompliance Notice to: (i) respond to James City County, if Franchisee contests (in whole or in part) the assertion of noncompliance; (ii) cure such noncompliance; or (iii) in the event that, by its nature, such noncompliance cannot be cured within such fifteen (15) day period, initiate all reasonable steps to remedy such noncompliance as quickly as possible and notify James City County of the steps being taken and the projected date by which cure is projected to be completed. Upon cure of any noncompliance, the Franchisee shall notify James City County in writing and James City County shall provide written confirmation that such cure has been accepted by James City County.

12.3. *Public Hearing:* James City County shall schedule a public hearing if James City County seeks to continue its investigation into the alleged noncompliance in the event that: (1) Franchisee fails to respond to the Noncompliance Notice pursuant to the procedures required by this Article, or (2) in the event that Franchisee has not remedied the alleged noncompliance within fifteen (15) days or the date projected pursuant to Section 12.2(iii) above. James City County shall provide Franchisee at least fourteen (14) days prior written notice of such public hearing, which will specify the time, place and purpose of such public hearing, and provide Franchisee the opportunity to be heard.

12.4. *Enforcement:* Subject to applicable federal and state law, in the event James City County, after the public hearing set forth in Section 12.3, determines that Franchisee is in default of any provision of this Franchise, James City County may:

12.4.1. Seek specific performance of any provision that reasonably lends itself to such remedy, as an alternative to damages; or

12.4.2. Commence an action at law for monetary damages or seek other equitable relief; or

12.4.3. In the case of a substantial default of a material provision of the Franchise, seek to revoke the Franchise in accordance with Section 12.5 or enforce the following liquidated damages for the following violations of this Agreement, because such violations will result in injury to James City County, and because it is and will be impracticable to determine the actual amount of such damage in the event of delay or nonperformance:

12.4.3.1. For failure to comply with the records provisions as set forth in Section 8 of this Agreement: One hundred dollars (\$100.00) per day for each day the violation continues;

12.4.3.2. For failure to materially comply with the carriage of PEG Access Channel(s) requirements as set forth in Section 5 of this Agreement: Two hundred dollars (\$200.00) per day for each day the violation continues;

12.4.3.3. For failure to materially comply with Customer Service Standards set forth in Section 7 of this Agreement: Two hundred dollars (\$200.00) per day for each day the violation continues, except where compliance is measured quarterly, in which case liquidated damages shall be as follows: (a) Franchisee shall be liable for liquidated damages in the amount of five hundred dollars (\$500.00) for each quarter in which such standards were not met if the failure was by less than ten percent (10%); one thousand dollars (\$1,000.00) for each quarter in which such standards were not met if the failure was by ten percent (10%) or more but less than fifteen percent (15%); and two thousand dollars (\$2,000.00) for each quarter in which such standards were not met if the failure was by fifteen percent (15%) or more; and

12.4.3.4. For purposes of any liquidated damages assessments, all similar violations or failures arising out of the same factual events affecting multiple Subscribers shall be assessed as a single violation, and a violation or a failure may only be assessed under any single one of the above-referenced categories. Violations or failures shall not be deemed to have occurred or commenced until they are deemed not cured as provided in Section 12.2.

12.4.3.5. The amount of all liquidated damages per annum shall not exceed fifteen thousand dollars (\$15,000.00) in the aggregate and Franchisee shall not be required to pay liquidated damages for violations that occur more than one (1) year in the past.

12.5. *Revocation:*

12.5.1. Should James City County seek to revoke this Franchise after following the procedures set forth above in this Article, including the public hearing described in Section 12.3., James City County shall give written notice to Franchisee of such intent. The notice shall set forth the specific nature of the noncompliance. The Franchisee shall have ninety (90) days from receipt of such notice to object in writing and to state its reasons for such objection. In the event James City County has not received a satisfactory response from

Franchisee, it may then seek termination of the Franchise at a second public hearing. James City County shall cause to be served upon the Franchisee, at least fourteen (14) days prior to such public hearing, a written notice specifying the time and place of such hearing and stating its intent to revoke the Franchise.

12.5.2. At the designated hearing, consistent with applicable federal and state law, Franchisee shall be provided a fair opportunity for full participation, including the right to be represented by legal counsel, to introduce relevant evidence, to require the production of evidence consistent with applicable federal and state law, to compel the relevant testimony of persons as permitted by law, and to question and/or cross examine witnesses. A complete verbatim record and transcript shall be made of such hearing, the cost of which shall be shared by the Franchisee and James City County.

12.5.3. Following the public hearing, Franchisee shall be provided up to thirty (30) days to submit its proposed findings and conclusions in writing and thereafter James City County shall determine (i) whether an event of default has occurred; (ii) whether such event of default is excusable; and (iii) whether such event of default has been cured or will be cured by the Franchisee. James City County shall also determine whether to revoke the Franchise based on the information presented, or, where applicable, grant additional time to the Franchisee to affect any cure. If James City County determines that the Franchise shall be revoked, James City County shall promptly provide Franchisee with a written decision setting forth its reasoning. Franchisee may appeal such determination of James City County to an appropriate court. Franchisee shall be entitled to such relief as the court finds appropriate. Such appeal must be taken within sixty (60) days of Franchisee's receipt of the determination of the franchising authority.

12.5.4. James City County may, at its sole discretion, take any lawful action, which it deems appropriate to enforce James City County's rights under the Franchise in lieu of revocation of the Franchise.

### 13. **MISCELLANEOUS PROVISIONS**

13.1. *Actions of Parties:* In any action by James City County or Franchisee that is mandated or permitted under the terms hereof, such party shall act in a reasonable, expeditious, and timely manner. Furthermore, in any instance where approval or consent is required under the terms hereof, such approval or consent shall not be unreasonably withheld, delayed or conditioned.

13.2. *Binding Acceptance:* This Agreement shall bind and benefit the parties hereto and their respective heirs, beneficiaries, administrators, executors, receivers, trustees, successors and assigns, and the promises and obligations herein shall survive the expiration date hereof.

13.3. *Preemption:* In the event that federal or state law, rules, or regulations preempt a provision or limit the enforceability of a provision of this Agreement, the provision shall be read to be preempted to the extent, and for the time, but only to the extent and for the time, required by law. In the event such federal or state law, rule or regulation is subsequently

repealed, rescinded, amended or otherwise changed so that the provision hereof that had been preempted is no longer preempted, such provision shall thereupon return to full force and effect, and shall thereafter be binding on the parties hereto, without the requirement of further action on the part of James City County.

13.4. *Force Majeure:* Franchisee shall not be held in default under, or in noncompliance with, the provisions of the Franchise, nor suffer any enforcement or penalty relating to noncompliance or default, where such noncompliance or alleged defaults occurred or were caused by a Force Majeure.

13.5. *Notices:* Unless otherwise expressly stated herein, notices required under the Franchise shall be sent to the addressees below. Each party may change its designee by providing written notice to the other party.

Notices to Franchisee shall be sent to:

Cox Communications Hampton Roads, LLC  
1341 Crossways Blvd.  
Chesapeake, VA 23320  
Attn: General Manager

with a non-binding courtesy copy to:

Cox Communications  
1400 Lake Hearn Drive  
Atlanta, GA 30319  
Attn: Government Affairs/Legal

Notices to James City County shall be sent to:

James City County Cable Administrator  
101\_C Mounts Bay Road  
Williamsburg, Virginia 23185

With a courtesy copy to:

James City County Attorney  
P.O. Box 8784  
Williamsburg, Virginia 23187

13.6. *Entire Agreement:* This Franchise and the Exhibits hereto constitute the entire agreement between Franchisee and James City County, and it supersedes all prior or contemporaneous agreements, representations or understanding (whether written or oral) of the parties regarding the subject matter hereof. Any ordinances or parts of ordinances that conflict with the provisions of this Agreement are superseded by this Agreement.

13.7. *Amendments:* Amendments to this Franchise shall be mutually agreed to in writing by the parties.

13.8. *Captions:* The captions and headings of articles and sections throughout this Agreement are intended solely to facilitate reading and reference to the sections and provisions of this Agreement. Such captions shall not affect the meaning or interpretation of this Agreement.

13.9. *Severability:* If any section, subsection, sentence, paragraph, term, or provision hereof is determined to be illegal, invalid, or unconstitutional, by any court of competent jurisdiction or by any state or federal regulatory authority having jurisdiction thereof, such determination shall have no effect on the validity of any other section, subsection, sentence, paragraph, term or provision hereof, all of which will remain in full force and effect for the term of the Franchise.

13.10. *Recitals:* The recitals set forth in this Agreement are incorporated into the body of this Agreement as if they had been originally set forth herein.

13.11. *Single Point of Contact for James City County:* Franchisee shall provide James City County with contact information for an individual who shall be the single point of contact for Franchisee on Cable Services and issues. Contact information shall include the contact's name, address, business telephone and facsimile numbers, and e-mail address. If any contact information changes, Franchisee will inform James City County as soon as reasonably possible.

13.12. *Independent Review:* James City County and Franchisee each acknowledge that they have received independent legal advice in entering into this Agreement. In the event that a dispute arises over the meaning or application of any term(s) of this Agreement, such term(s) shall not be construed by the reference to any doctrine calling for ambiguities to be construed against the drafter of the Agreement.

13.13. *Duplicate Originals:* This Agreement may be executed in duplicate, and each such duplicate shall be deemed an original, and the parties may become a party hereto by executing any such duplicate, so long as such duplicate contains an original signature of both parties. This Agreement and any duplicate so executed shall be deemed to be one and the same instrument. It shall not be necessary in making proof of this Agreement or any duplicate hereof to produce or account for any other duplicate.

**SIGNATURE PAGE FOLLOWS**

AGREED TO THIS \_\_\_\_\_ DAY OF March , 2011.

JAMES CITY COUNTY, VIRGINIA

Approved as to form:

By: \_\_\_\_\_

\_\_\_\_\_  
County Attorney

COX COMMUNICATIONS HAMPTON ROADS, LLC

By: \_\_\_\_\_

**EXHIBITS**

Exhibit A: Local Government Buildings to be Provided Courtesy Cable Service

Exhibit B: Customer Service Standards

**EXHIBIT A**

**LOCAL GOVERNMENT BUILDINGS TO BE PROVIDED COURTESY CABLE  
SERVICE**

## **EXHIBIT B**

### **CUSTOMER SERVICE STANDARDS**

These standards shall, starting apply to the Franchisee to the extent it is providing Cable Services over the Cable System in the Franchise area.

#### **SECTION 1. DEFINITIONS**

- A. **Respond:** Franchisee's investigation of a Service Interruption by receiving a Subscriber call and opening a trouble ticket, if required.
- B. **Service Call:** The action taken by the Franchisee to correct a Service Interruption the effect of which is limited to an individual Subscriber.
- C. **Significant Outage:** A significant outage of the Cable Service shall mean any Service Interruption lasting at least four (4) continuous hours that affects at least ten percent (10%) of the Subscribers in the Service Area.
- D. **Standard Installation:** Installations where the subscriber is within two hundred-fifty (250) feet of trunk or feeder lines.

#### **SECTION 2. TELEPHONE AVAILABILITY**

- A. **Local Office.** Grantee shall maintain a convenient local customer service and bill payment location that may be located either in the County, within a town or city located within the County, or within five (5) miles of the County border, where Subscribers can receive face-to-face service. The facility shall be adequately staffed in order to address customer inquiries, receive bill payments and perform equipment exchanges. The facility shall be open during Normal Business Hours. In addition, Grantee shall maintain at least one drop box within the Service Area for receiving Subscriber payments.
- B. The Franchisee shall maintain a toll-free Courtesy number to receive all calls and inquiries from Subscribers in the Franchise Area and/or residents regarding Cable Service. Available to receive reports of Service Interruptions twenty-four (24) hours a day, seven (7) days a week, and other inquiries at least forty (40) hours per week. After normal business hours, the access line may be answered by a service or an automated response system, including an answering machine. Inquiries received after normal business hours must be responded to by a trained company representative on the next business day.

- C. The Franchisee's telephone numbers shall be listed, with appropriate description (e.g. administration, customer service, billing, repair, etc.), in the directory published by the local telephone company or companies serving the Service Area, beginning with the next publication cycle after acceptance of this Franchise by the Franchisee.
- D. Franchisee may use an Automated Response Unit ("ARU") or a Voice Response Unit ("VRU") to distribute calls. If a foreign language routing option is provided, and the Subscriber does not enter an option, the menu will default to the first tier menu of English options.
- E. Trained Grantee representatives will be available to respond to customer telephone inquires during Normal Business Hours.
- F. Under Normal Operating Conditions, callers to the Franchisee shall receive a busy signal no more than three (3%) percent of the time during any calendar quarter.
- G. Under Normal Operating Conditions, telephone answer time by a customer service representative, including wait time, shall not exceed thirty (30) seconds once the connection is made. If the call needs to be transferred, transfer time shall not exceed thirty (30) seconds. These standards shall be met no less than ninety percent (90%) of the time under Normal Operating Conditions, measured on a quarterly basis.

### **SECTION 3. INSTALLATIONS AND SERVICE APPOINTMENTS**

- A. All installations will be in accordance with federal, state and local rules, including but not limited to, appropriate grounding, connection of equipment to ensure reception of Cable Service, and the provision of required consumer information and literature to adequately inform the Subscriber in the utilization of the Franchisee-supplied equipment and Cable Service.
- B. The Standard Installation shall be performed within seven (7) business days after order has been placed. "Standard" Installations are those that are located up to two hundred fifty feet (250) from existing distribution system that does not require location of underground utilities and/or direct bore or trenching. If a Standard Installation requires above-ground temporary cables that do not jeopardize safety of life and property, cables shall be buried no later than forty-five (45) days after temporary installation in accordance with the National Electrical Code.
- C. The Franchisee will offer Subscribers "appointment window" alternatives for arrival to perform installations, Service Calls and other activities of a maximum four (4) hours scheduled time block during appropriate daylight available hours, usually beginning at 8:00 AM unless it is deemed appropriate to begin earlier by location exception. At the Franchisee's discretion, the Franchisee may offer Subscribers appointment arrival times other than these four (4) hour time blocks, if agreeable to the Subscriber. These hour restrictions do not apply to weekends.

- D. The Franchisee may not cancel an appointment with a Subscriber after Normal Business Hours on the business day preceding the appointment. If Franchisee's representative is running late for an appointment with a Subscriber and will not be able to keep the appointment as scheduled, under Normal Operating Conditions the Subscriber will be contacted and the appointment rescheduled as necessary.
- E. Franchisee service representatives will have the ability to issue service credits, at Franchisee's sole discretion, to address customer complaints related to missed appointments.
- F. The Franchisee shall use due care in the process of installation and shall substantially restore the Subscriber's property to its prior condition. Such restoration shall be undertaken and completed within seven (7) business days after the damage is incurred, subject to exception for periods of *force majeure*.

#### **SECTION 4. SERVICE INTERRUPTIONS AND OUTAGES**

- A. The Franchisee shall notify James City County of any Significant Outage of the Cable Service.
- B. The Franchisee shall exercise commercially reasonable efforts to limit any Significant Outage for the purpose of maintaining, repairing, or constructing the Cable System. Except in an emergency or other situation necessitating a more expedited or alternative notification procedure, the Franchisee may schedule a Significant Outage for a period of more than four (4) hours during any twenty-four (24) hour period only after James City County and each affected Subscriber in the Service Area have been given fifteen (15) business days prior notice of the proposed Significant Outage. Notwithstanding the forgoing, Franchisee may perform modifications, repairs and upgrades to the System between 12:01 a.m. and 6 a.m. which may interrupt service, and this Section's notice obligations respecting such possible interruptions will be satisfied by notice provided to Subscribers upon installation and in the annual subscriber notice.
- C. Franchisee representatives who are capable of responding to Service Interruptions must be available to respond twenty-four (24) hours a day, seven (7) days a week.
- D. Under Normal Operating Conditions, the Franchisee must Respond to a call from a Subscriber regarding a Service Interruption or other service problems within the following time frames:
  - (1) Within twenty-four (24) hours, including weekends, of receiving subscriber calls respecting Service Interruptions in the Service Area.
  - (2) The Franchisee must begin actions to correct all other Cable Service problems the next business day after notification by the Subscriber or James City County of a Cable Service Problem.

- E. Under Normal Operating Conditions, the Franchisee shall complete Service Calls within seventy-two (72) hours of the time Franchisee commences to Respond to the Service Interruption, not including weekends and situations where the Subscriber is not reasonably available for a Service Call to correct the Service Interruption within the seventy-two (72) hour period.
- F. The Franchisee shall meet the standard in Subsection E. of this Section for ninety percent (90%) of the Service Calls it completes, as measured on a quarterly basis.
- G. Under Normal Operating Conditions, the Franchisee shall provide a credit upon Subscriber request when all Channels received by that Subscriber are out of service for a period of four (4) consecutive hours or more. The credit shall equal, at a minimum, a proportionate amount of the affected Subscriber(s) current monthly bill. In order to qualify for the credit, the Subscriber must promptly report the problem and allow the Franchisee to verify the problem if requested by the Franchisee. If Subscriber availability is required for repair, a credit will not be provided for such time, if any, that the Subscriber is not reasonably available.
- H. Under Normal Operating Conditions, if a Significant Outage affects all Video Programming Cable Services for more than twenty-four (24) consecutive hours, the Franchisee shall issue an automatic credit to the affected Subscribers in the amount equal to their monthly recurring charges for the proportionate time the Cable Service was out, or a credit to the affected subscribers in the amount equal to the charge for the basic plus enhanced basic level of service for the proportionate time the Cable Service was out, whichever is technically feasible or, if both are technically feasible, as determined by Franchisee provided such determination is non-discriminatory. Such credit shall be reflected on Subscriber billing statements within the next available billing cycle following the outage.
- I. With respect to service issues concerning Cable Services provided to James City County facilities, Franchisee shall respond to all inquiries from James City County within six (6) hours and shall commence necessary repairs within twenty-four (24) hours under Normal Operating Conditions. If such repairs cannot be completed within twenty-four (24) hours, the Franchisee shall notify James City County in writing as to the reason(s) for the delay and provide an estimated time of repair.

## **SECTION 5. CUSTOMER COMPLAINTS**

Under Normal Operating Conditions, the Franchisee shall investigate Subscriber complaints referred by James City County within five (5) business days. The Franchisee shall notify James City County of those matters that necessitate an excess of five (5) business days to resolve, but those matters must be resolved within fifteen (15) business days of the initial complaint. James City County may require reasonable documentation to be provided by the Franchisee to substantiate the request for additional time to resolve the problem. For purposes of this Section, "resolve" means that the Franchisee shall perform those actions, which, in the

normal course of business, are necessary to investigate the Customer's complaint and advise the Customer of the results of that investigation.

## **SECTION 6. BILLING**

- A. Bills will be clear, concise and understandable. Subscriber bills must be itemized to describe Cable Services purchased by Subscribers and related equipment charges. Bills shall clearly delineate activity during the billing period, including optional charges, rebates, credits, and aggregate late charges. Franchisee shall, without limitation as to additional line items, be allowed to itemize as separate line items the Communications Sales and Use Tax, and/or other taxes or governmentally imposed fees. The Franchisee shall maintain records of the date and place of mailing of bills.
- B. Every Subscriber with a current account balance sending payment directly to Franchisee shall be given at least twenty (20) days from the date statements are mailed to the Subscriber until the payment due date. Late fees shall not be assessed until the next billing cycle after the current bill has not been paid (*i.e.*, 30 days).
- C. A specific due date shall be listed on the bill of every Subscriber whose account is current. Delinquent accounts may receive a bill which lists the due date as upon receipt; however, the current portion of that bill shall not be considered past due except in accordance with Subsection 6.B. above.
- D. Any Subscriber who, in good faith, disputes all or part of any bill shall have the option of withholding the disputed amount without disconnect or late fee being assessed until the dispute is resolved provided that:
  - (1) The Subscriber pays all undisputed charges;
  - (2) The Subscriber provides notification of the dispute to Franchisee within five (5) days prior to the due date; and
  - (3) The Subscriber cooperates in determining the accuracy and/or appropriateness of the charges in dispute.
  - (4) It shall be within the Franchisee's sole discretion to determine when the dispute has been resolved.
- E. Under Normal Operating Conditions, the Franchisee shall initiate investigation and resolution of all billing complaints received from Subscribers within five (5) business days of receipt of the complaint. Final resolution shall not be unreasonably delayed.
- F. The Franchisee shall provide a telephone number and address on the bill for Subscribers to contact the Franchisee.

- G. The Franchisee shall provide all Subscribers with the option of paying for Cable Service by check or an automatic payment option where the amount of the bill is automatically deducted from a checking account designated by the Subscriber. Franchisee may, at its discretion, permit payment by using a major credit card on a preauthorized basis. Based on a Subscriber's credit history, at the option of the Franchisee, the payment alternatives may be limited.

## **SECTION 7. DEPOSITS, REFUNDS AND CREDITS**

- A. The Franchisee may require refundable deposits from Subscribers 1) with a poor credit or poor payment history, 2) who refuse to provide credit history information to the Franchisee, or 3) who rent Subscriber equipment from the Franchisee, so long as such deposits are applied on a non-discriminatory basis. The deposit the Franchisee may charge Subscribers with poor credit or poor payment history or who refuse to provide credit information may not exceed an amount equal to an average Subscriber's monthly charge multiplied by six (6). The maximum deposit the Franchisee may charge for Subscriber equipment is the cost of the equipment which the Franchisee would need to purchase to replace the equipment rented to the Subscriber.
- B. The Franchisee shall refund or credit the Subscriber for the amount of the deposit collected for equipment, which is unrelated to poor credit or poor payment history, after one year and provided the Subscriber has demonstrated good payment history during this period. The Franchisee shall pay interest on other deposits if required by law.
- C. Under Normal Operating Conditions, refund checks will be issued within the next available billing cycle following the resolution of the event giving rise to the refund, (e.g. equipment return and final bill payment).
- D. Credits for Cable Service will be issued no later than the Subscriber's next available billing cycle, following the determination that a credit is warranted, and the credit is approved and processed. Such approval and processing shall not be unreasonably delayed.
- E. Bills shall be considered paid when appropriate payment is received by the Franchisee or its authorized agent. Appropriate time considerations shall be included in the Franchisee's collection procedures to assure that payments due have been received before late notices or termination notices are sent.

## **SECTION 8. RATES, FEES AND CHARGES**

- A. The Franchisee shall not, except to the extent permitted by law, impose any fee or charge for Service Calls to a Subscriber's premises to perform any repair or maintenance work related to Franchisee equipment necessary to receive Cable Service, except where such problem is caused by a negligent or wrongful act of the Subscriber (including, but not limited to a situation in which the Subscriber reconnects Franchisee equipment incorrectly) or by the failure of the Subscriber

to take reasonable precautions to protect the Franchisee's equipment (for example, a dog chew).

- B. The Franchisee shall provide reasonable notice to Subscribers of the possible assessment of a late fee on bills or by separate notice.

#### **SECTION 9. DISCONNECTION / DENIAL OF SERVICE**

- A. The Franchisee shall not terminate Cable Service for nonpayment of a delinquent account unless the Franchisee mails a notice of the delinquency and impending termination prior to the proposed final termination. The notice shall be mailed to the Subscriber to whom the Cable Service is billed. The notice of delinquency and impending termination may be part of a billing statement.
- B. Cable Service terminated in error must be restored without charge within twenty-four (24) hours of notice. If a Subscriber was billed for the period during which Cable Service was terminated in error, a credit shall be issued to the Subscriber if the Service Interruption was reported by the Subscriber.
- C. Nothing in these standards shall limit the right of the Franchisee to deny Cable Service for non-payment of previously provided Cable Services, refusal to pay any required deposit, theft of Cable Service, damage to the Franchisee's equipment, abusive and/or threatening behavior toward the Franchisee's employees or representatives, or refusal to provide credit history information or refusal to allow the Franchisee to validate the identity, credit history and credit worthiness via an external credit agency.
- D. Every notice of termination of Cable Service shall include the following information:
  - (1) The name and address of the Subscriber whose account is delinquent;
  - (2) The amount of the delinquency for all services billed;
  - (3) The date by which payment is required in order to avoid termination of Cable Service; and
  - (4) The telephone number for the Franchisee where the Subscriber can receive additional information about their account and discuss the pending termination.

#### **SECTION 10. COMMUNICATIONS WITH SUBSCRIBERS**

- A. All Franchisee personnel, contractors and subcontractors contacting Subscribers or potential Subscribers outside the office of the Franchisee shall wear a clearly visible identification card bearing their name and photograph. The Franchisee

shall make reasonable effort to account for all identification cards at all times. In addition, all Franchisee representatives shall wear appropriate clothing while working at a Subscriber's premises. Every service vehicle of the Franchisee and its contractors or subcontractors shall be clearly identified as such to the public. Specifically, Franchisee vehicles shall have the Franchisee's logo plainly visible. The vehicles of those contractors and subcontractors working for the Franchisee shall have the contractor's / subcontractor's name plus markings (such as a magnetic door sign) indicating they are under contract to the Franchisee.

- B. All contact with a Subscriber or potential Subscriber by a Person representing the Franchisee shall be conducted in a courteous manner.
- C. The Franchisee shall send annual notices to all Subscribers informing them that any complaints or inquiries not satisfactorily handled by the Franchisee may be referred to James City County.
- D. All notices identified in this Section shall be by either:
  - (1) A separate document included with a billing statement or included on the portion of the monthly bill that is to be retained by the Subscriber; or
  - (2) A separate electronic notification.
- E. The Franchisee shall provide reasonable notice to Subscribers of any pricing changes or additional charges (excluding sales discounts, new products or offers) and, subject to the forgoing, any changes in Cable Services, including channel line-ups, disconnect fees or technical services charges. Such notice must be given to Subscribers a minimum of thirty (30) days in advance of such changes if within the control of the Franchisee, and the Franchisee shall provide a copy of the notice to James City County including how and where the notice was given to Subscribers.
- F. The Franchisee shall provide information to all Subscribers and James City County about each of the following items at the time of installation of Cable Services, annually to all Subscribers, at any time upon request, and, subject to Subsection 10.E., at least thirty (30) days prior to making significant changes in the information required by this Section if within the control of the Franchisee:
  - (1) Products and Cable Service offered;
  - (2) Prices and options for Cable Services and condition of subscription to Cable Services. Prices shall include those for Cable Service options, equipment rentals, program guides, installation, downgrades, late fees and other fees charged by the Franchisee related to Cable Service;
  - (3) Installation and maintenance policies including, when applicable, information regarding the Subscriber's in-home wiring rights during the period Cable Service is being provided;

- (4) Channel positions of Cable Services offered on the Cable System;
- (5) Billing and complaint procedures, including the name, address and telephone number of James City County, but with a notice advising the Subscriber to initially contact the Franchisee about all complaints and questions;
- (6) Procedures for requesting Cable Service credit;
- (7) The availability of a parental control device;
- (8) Franchisee practices and procedures for protecting against invasion of privacy; and
- (9) The address and telephone number of the Franchisee's office to which complaints may be reported.

**SECTION 11            CUSTOMER SERVICE-RATE AND SERVICE CHANGES**

- A. Notices of changes in rates shall indicate the new rates and old rates, if applicable. Thirty (30) days written notice shall be given to both subscribers and James City County before implementing any rate or service change. Such notice shall state the precise amount of any rate change and briefly explain in readily understandable fashion the cause of the rate change (e.g., inflation, change in external costs or the addition/deletion of channels). When the change involves the addition or deletion of channels, each channel added or deleted must be separately identified. For purposes of the carriage of digital broadcast signals, the operator need only identify for subscribers, the television signal added and not whether that signal may be multiplexed during certain dayparts
- B. Notices of changes of Cable Services and/or Channel locations shall include a description of the new Cable Service, the specific channel location, and the hours of operation of the Cable Service if the Cable Service is only offered on a part-time basis. In addition, should the channel location, hours of operation, or existence of other Cable Services be affected by the introduction of a new Cable Service, such information must be included in the notice.
- C. Franchisee shall provide written notice to James City County and Subscribers of any increase in the price to be charged for the Basic Service Tier or associated equipment at least thirty (30) days before any proposed increase is effective. The notice should include the name and address of James City County.
- D. To the extent the Franchisee is required to provide notice of service and rate changes to subscribers, the franchisee may provide such notice using any reasonable written means at its sole discretion.
- E. Franchisee shall not be required to provide prior notice of any rate change that is the result of a regulatory fee, franchise fee, or any other fee, tax, assessment, or

charge of any kind imposed by any Federal agency, the State, or James City County on the transaction between the operator and the subscriber



1341 Crossways Boulevard  
Chesapeake, VA 23320-2897  
757.222.8450 tel 877.873.6507 fax  
www.cox.com/hr

**Gary T. McCollum**  
SENIOR VICE PRESIDENT & GENERAL MANAGER

March 22, 2011

Members of the Board of Supervisors  
James City County  
James City Government Center  
101 Mounts Bay Road  
Williamsburg, VA 23185

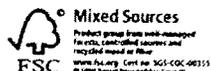
**Re: New Opportunities for James City County**

Honorable Supervisors:

On behalf of Cox Communications and our 2800 employees in Virginia who take pride in providing customers with video, telephone and Internet service every day, we would like to thank the James City County staff for the time and effort spent over the past several months negotiating the terms of the renewal of Cox Communications' franchise agreement with the County. We believe the renewal agreement we have worked out with the County will provide a solid framework to allow Cox to continue to provide advanced services to the residents of the County. Our discussions with staff allowed us to explore several other issues that, while not necessarily appropriate for a cable franchise agreement, will allow Cox and the County to forge a closer relationship and bring some exciting new benefits to James City County residents.

First, we are pleased to offer James City County the opportunity to partner with us on a Broadband Adoption Pilot Program, the first in Hampton Roads. Cox has spent years promoting sustainable broadband adoption programs both in practice and in the public policy arena. In fact, we even filed comments on the Federal Communications Commission's National Broadband Plan and asked them to take several steps including improving access to broadband by cutting the number of un-served American homes and expanding broadband access to all K-12 school classrooms.

Our proposed partnership with James City County would be aimed at a vulnerable population – middle school-aged children in underserved neighborhoods that do not receive broadband service. Our plan would be to devise a targeted pilot program that could expand over time. Through this exciting partnership, we plan to leverage our technology platform to meet the goal of ensuring that our youth have the tools to learn, grow and prosper. Our commitment is to provide children qualified in the program with



In harmony with the Cox Conserves eco-friendly program, we are proud to print on Forest Stewardship Council certified paper.

discounted broadband, a free modem and installation for the three years of their middle school experience. It will be critical to recruit strong community partners to launch and sustain the program and we will lend our assistance to creating this group. Programs like this have demonstrated priceless value to the children who would not otherwise have broadband and to parents, guardians, and other family members who learn to use the service.

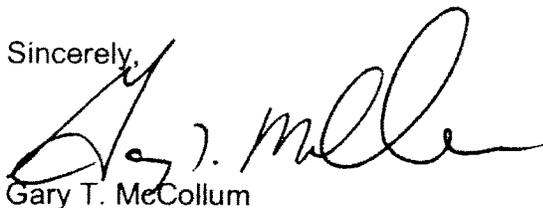
Second, we are pleased to offer two new options for James City County to reach Cox's subscribers. We invite James City County to utilize time on Cox Channel 11 which is broadcast throughout our Hampton Roads service area, for its government programming. We offer time on this channel on a space-available basis at no cost to local governments for non-commercial government programming as a supplement to the government access channel we also provide.

Third, Cox Communications is prepared to work with James City County on a video-on-demand pilot project- the first Cox has offered to a locality in Virginia. As part of this pilot, Cox will provide up to five hours on our video-on-demand servers each month to allow subscribers with the necessary subscription and equipment to watch James City County's government programming at their convenience. The programming would be placed in our Freezone area which is freely accessible to customers across Hampton Roads. The commercial value of this service is approximately \$84,000 annually or \$840,000 over the 10-year life of the Franchise.

Finally, we stand ready to work with James City County and all the other local governments in the Hampton Roads area to coordinate the use of the government access channel so that interactive program guide can be more useful to our subscribers.

All of these benefits are in addition to those found in the negotiated Franchise Agreement. We look forward to working with James City County in this exciting new partnership.

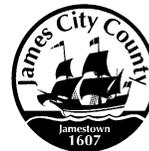
Sincerely,



Gary T. McCollum

cc: Kathryn Falk, VP, Government Affairs, Cox Communications - Virginia  
Leigh Woisard, VP, Public Affairs, Cox Communications - Virginia





**MEMORANDUM COVER**

**Subject:** Ordinance to Amend and Reordain Chapter 23, Chesapeake Bay Preservation, Section 23-17, Appeals.

**Strategic Management Plan Pathway:** N/A

**Action Requested:** Shall the Board approve the Ordinance amending Chapter 23, Chesapeake Bay Preservation, Section 23-17, Appeals?

**Summary:** The amendment to Section 23-17(c) clarifies the ability of the Chesapeake Bay Board (the “CB Board”) to impose conditions upon the granting of appeals from administrative decisions before the CB Board.

The amendment to Section 23-17(d) establishes a thirty (30) day time period for property owners to appeal decisions of the CB Board to the Circuit Court. Virginia Code section 10.1-2109(F) permits the adoption of such an appeal period.

The amendment is consistent with state law, and staff recommends adoption of the attached Ordinance.

**Fiscal Impact:** Little or no fiscal impact is anticipated from the amendments.

**FMS Approval, if Applicable:** Yes  No

**Assistant County Administrator**  
  
Doug Powell \_\_\_\_\_

**County Administrator**  
  
Robert C. Middaugh \_\_\_\_\_

**Attachments:**  
1. Memorandum  
2. Ordinance

**Agenda Item No.:** H-5  
  
**Date:** March 22, 2011

**MEMORANDUM**

DATE: March 22, 2011

TO: The Board of Supervisors

FROM: Scott J. Thomas, Director of Environmental Division  
Angela M. King, Assistant County Attorney

SUBJECT: Ordinance to Amend and Reordain Chapter 23, Chesapeake Bay Preservation, Section 23-17, Appeals

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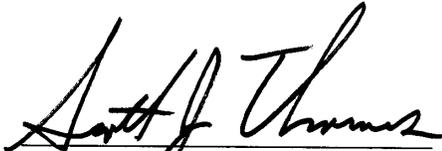
Attached for your consideration is an Ordinance which amends Section 23-17(c) and (d) of the County Code.

The amendment to Section 23-17(c) clarifies the ability of the Chesapeake Bay Board (the "CB Board") to impose conditions upon the granting of appeals from administrative decisions before the CB Board.

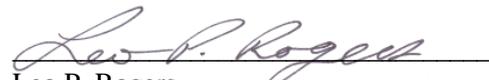
The amendment to Section 23-17(d) establishes a thirty (30) day time period for property owners to appeal decisions of the CB Board to the Circuit Court. Virginia Code § 10.1-2109(F) permits the adoption of such an appeal period.

Little or no fiscal impact is anticipated from the amendments to match the Code of Virginia.

The amendment is consistent with state law and staff recommends adoption of the attached Ordinance.

  
\_\_\_\_\_  
Scott J. Thomas

CONCUR:

  
\_\_\_\_\_  
Leo P. Rogers

SJT/AMK/tlc  
Sect23-17Amend\_mem

Attachment

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE TO AMEND AND REORDAIN CHAPTER 23, CHESAPEAKE BAY PRESERVATION, OF THE CODE OF THE COUNTY OF JAMES CITY, VIRGINIA, BY AMENDING SECTION 23-17, APPEALS.

BE IT ORDAINED by the Board of Supervisors of the County of James City, Virginia, that Chapter 23, Chesapeake Bay Preservation, is hereby amended and reordained by amending Section 23-17, Appeals.

Chapter 23. Chesapeake Bay Preservation

**Section 23-17. Appeals.**

- (a) An owner of property subject to an administrative decision, order or requirement under this chapter may appeal by submitting a written application for review to the board no later than 30 days from the rendering of such decision, order or requirement. The board shall hear the appeal as soon as practical after receipt of the application. The appellant, the board of supervisors, the manager, the planning director and any person or agency expressing an interest in the matter shall be notified by the board not less than ten days prior to the date of the hearing. Published notice of the board's public meetings shall state that appeals from decision under the Chesapeake Bay Preservation Ordinance may be heard.
- (b) In rendering its decision, the board shall balance the hardship to the property owner with the purpose, intent and objectives of this chapter. The board shall not decide in favor of the appellant unless it finds:
  - (1) The hardship is not generally shared by other properties in the vicinity;
  - (2) The Chesapeake Bay, its tributaries and other properties in the vicinity will not be adversely affected; and
  - (3) The appellant acquired the property in good faith and the hardship is not self-inflicted.

- (c) The board may impose conditions to the granting of any waiver, ~~or~~ exception *or appeal* as it may deem necessary in the public interest, and may, to ensure compliance with the imposed conditions, require a cash escrow, bond with surety, letter of credit or other security as is acceptable to the county attorney.
- (d) An owner of a property subject to a board decision, order or requirement may appeal to the Circuit Court of James City County *no later than 30 days from the rendering of such decision, order or requirement.*

*State law reference—Code of Va, § 10.1-2109 (F).*

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Mary K. Jones, Chairman  
Board of Supervisors

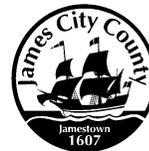
ATTEST:

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Robert C. Middaugh  
Clerk to the Board

Adopted by the Board of Supervisors of James City County, Virginia, on this 22nd day of March,  
2011.

Sect23-17Amend\_ord



**MEMORANDUM COVER**

**Subject:** Marclay Road Airport Access Grant Application Endorsement

**Strategic Management Plan Pathway:** N/A

**Action Requested:** Shall the Board endorse the resolution supporting the Marclay Road airport access grant application?

**Summary:** The Williamsburg-Jamestown Airport is applying for an Airport Access grant through the Virginia Department of Transportation (VDOT) to allow funds to be used to realign Marclay Road and bring the road up to VDOT design standards. These improvements will allow Marclay Road to be accepted into the public road system. Of the total \$600,000 project cost, \$150,000 is required to be matched by the applicant.

By endorsing this application the County would be responsible for paying the match money to VDOT. However, the Williamsburg-Jamestown Airport has funds available for this project and will provide a letter of credit to the County to ensure that no County funds will be required for the project.

The only expansion that is allowed under this grant is the realignment and improvement of Marclay Road. No other additional expansions to the airport facility are permitted with this grant money.

Staff recommends approval of this grant application with the attached resolution.

**Fiscal Impact:** N/A

**FMS Approval, if Applicable:** Yes  No

**Assistant County Administrator**  
  
Doug Powell \_\_\_\_\_

**County Administrator**  
  
Robert C. Middaugh \_\_\_\_\_

**Attachments:**  
1. Memorandum  
2. Resolution  
3. Location Map

**Agenda Item No.:** H-6  
  
**Date:** March 22, 2011

**MEMORANDUM**

DATE: March 22, 2011

TO: The Board of Supervisors

FROM: Jason Purse, Senior Planner

SUBJECT: Marclay Road Airport Access Grant Application Endorsement

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The Williamsburg-Jamestown Airport is applying for an Airport Access grant through the Virginia Department of Transportation (VDOT) to allow funds to be used to realign Marclay Road and bring the road up to VDOT design standards. These improvements will allow Marclay Road to be accepted into the public road system. The grant will not cover any expansions to the actual airport facility. Furthermore, the airport is operating under an existing master plan (SUP-0016-2004), so any improvements must be consistent with the approved plan of development. The realigned Marclay Road is allowed under the existing Special Use Permit (SUP).

The total road construction project has an anticipated cost of \$600,000. The VDOT grant will cover up to \$450,000 of the total project cost (\$300,000 will be provided unmatched and \$150,000 will be required to be matched). The \$150,000 match is to be covered by the applicant. In this case, the Department of Aviation has committed \$120,000 to the project, and the last \$30,000 would be provided by the Williamsburg-Jamestown Airport owners.

For legal purposes, VDOT requires that a local governmental authority apply for the grant on behalf of the group requesting the work. Because of this, VDOT requires that James City County be the body that is ultimately responsible for the \$150,000 match. However, the Williamsburg-Jamestown Airport understands that it is responsible for providing the match required by VDOT and is currently willing to provide a letter of credit to the County in order to cover the entire cost of the match.

Language has been included in the resolution that allows the Board of Supervisors to endorse this application request and gives the County Administrator the ability to determine the terms of the letter of credit with the applicant prior to VDOT approving the allocation of the money for this project.

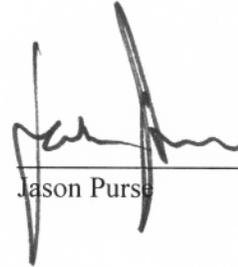
Since Williamsburg-Jamestown Airport already owns all of the property needed for the road realignment, and since the design process for the road is already underway, if the Board of Supervisors endorses this project, it is anticipated that the Commonwealth Transportation Board will review this application during its July meeting. Williamsburg-Jamestown Airport is hoping to start construction of this project later this fall.

Staff recommends approval of this grant application with the attached resolution.

Marclay Road Airport Access Grant Application Endorsement

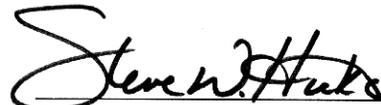
March 22, 2011

Page 2



Jason Pursi

CONCUR:



Steven W. Hicks

JP/gb

AirptAcesGrant\_mem

Attachments:

1. Resolution
2. Location Map

## RESOLUTION

### MARCLAY ROAD AIRPORT ACCESS GRANT APPLICATION ENDORSEMENT

WHEREAS, Williamsburg-Jamestown Airport, Inc. owns property located at 3 Marclay Road and identified as James City County Real Estate Tax Map Parcel No. 4820100004 (the "Property") in the County of James City, Virginia and will soon enter into a firm contract to improve the access road (the "Access Road") to the airport facilities on the Property; and

WHEREAS, this Access Road improvements will involve the expenditure of approximately \$600,000; and

WHEREAS, operations are expected to begin at this Access Road on or about August 2011; and

WHEREAS, the existing public road network does not provide for adequate access to the airport and it is deemed necessary that improvements be made to Marclay Road (the "Road Project") and

WHEREAS, the County of James City (the "County") hereby guarantees that the necessary environmental analysis, mitigation, fee simple right-of-way, and utility relocations or adjustments, if necessary, for the Road Project will be provided at no cost to the Virginia Department of Transportation ("VDOT"); and

WHEREAS, the County acknowledges that no land disturbing activities may occur within the limits of the Road Project prior to appropriate notification from VDOT; and

WHEREAS, the County hereby guarantees that all ineligible Road Project costs and all costs exceeding the allocation from the Airport Access Program will be provided from sources other than those administered by VDOT; and

WHEREAS, the Board of Supervisors of the County endorses the grant application conditioned upon the Williamsburg-Jamestown Airport, Inc. entering into an agreement (the "Agreement") with the County upon terms acceptable to the County Administrator which shall, at a minimum, guarantee that Williamsburg-Jamestown Airport, Inc. will pay to the County the entire required match amount, which Agreement shall be secured by surety in a form and amount acceptable to the County Attorney.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby requests that the Commonwealth Transportation Board provide Airport Access Program funding to provide an improved access road to this airport facility.

BE IT FURTHER RESOLVED that the Board of Supervisors of James City County hereby authorizes the County Administrator to execute any and all documents necessary to secure the funding sought through the Airport Access Program and further authorizes the County Administrator to execute the Agreement with Williamsburg-Jamestown Airport, Inc.

BE IT FURTHER RESOLVED that the Board of Supervisors of James City County hereby agrees that the new roadway so constructed will be added to and become a part of the road system of the secondary system of highways.

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Mary K. Jones  
Chairman, Board of Supervisors

ATTEST:

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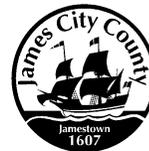
Robert C. Middaugh  
Clerk to the Board

Adopted by the Board of Supervisors of James City County, Virginia, this 22nd day of March, 2011.

AirptAcesGrant\_res

# Marclay Road re-alignment Airport Access





**MEMORANDUM COVER**

**Subject:** Expansion of James City County's Enterprise Zone

**Strategic Management Plan Pathway:** 1.c - Diversify tax revenue, tax base, and employment options

**Action Requested:** Shall the Board approve the Enterprise Zone Amendment Application to the Virginia Department of Housing and Community Development?

**Summary:** As part of the Enterprise Zone Program, the County is allotted 3,840 acres for inclusion. Currently, 3,456 acres are included in the existing Enterprise Zone, leaving 384 acres not being utilized. Additionally, approximately 1,061 acres of the current Enterprise Zone are public lands or contain wetlands or property designated by the Chesapeake Bay Preservation Act as a Resource Protection Area (RPA). The Virginia Enterprise Zone Program allows for a yearly amendment of up to 15 percent of the total acres included in the existing zone. When combined with the unallocated acreage, the County has approximately 902 acres available for this current year.

Staff recommends that the Board consider authorizing staff to submit the Enterprise Zone Amendment Application to the Virginia Department of Housing and Community Development.

**Fiscal Impact:** N/A

**FMS Approval, if Applicable:** Yes  No

**Assistant County Administrator**  
  
Doug Powell \_\_\_\_\_

**County Administrator**  
  
Robert C. Middaugh \_\_\_\_\_

**Attachments:**  
1. Memorandum  
2. Resolution  
3. Location Maps

**Agenda Item No.:** H-7  
  
**Date:** March 22, 2011

MEMORANDUM

DATE: March 22, 2011  
TO: The Board of Supervisors  
FROM: Russell C. Seymour, Director Office of Economic Development  
SUBJECT: Expansion of James City County's Enterprise Zone

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James City County's current Enterprise Zone, located in the southeastern portion of the County, was designated by the Commonwealth of Virginia in 1996 and includes approximately 3,456 acres. This designation will expire on December 31, 2015. As part of this designation, the County was allotted a total of 3,840 acres which could be included in up to three Enterprise Zone locations. Additionally, the Virginia Enterprise Zone Program allows for a yearly amendment of up to 15 percent of the total acres included in the existing zone. This acreage can be utilized to expand the current zone or create up to two additional areas within the County.

Currently, approximately 1,061 acres within the existing Enterprise Zone are public lands or contain wetlands or property designated by the Chesapeake Bay Preservation Act as a Resource Protection Area (RPA). Because property located within a wetland or RPA is generally undevelopable, staff's intention is to remove these areas from the existing Enterprise Zone so that additional developable property may be included.

By combining the Virginia Enterprise Zone Program's 15 percent reallocation limit with the unallocated acreage, the County has approximately 902 acres available for this current year. Staff is recommending that this acreage be utilized in the following manner:

- to expand the County's existing Enterprise Zone to include a portion of the SR-60 Corridor in the vicinity of the Busch Corporate Center in the southern portion of the County
- to create a sub-zone in upper James City County to include the Stonehouse Commerce Park, Jacobs and Hankins Industrial Parks, and a portion of the SR-60 and SR-30 Corridor

In addition to available land, these areas include a large number of existing businesses, which might be able to take advantage of this Program.

Because of the limited time remaining and the desire to get as much benefit from this Program as possible, staff is looking at additional areas which may be included on an annual basis through the year 2015. Currently, plans for Year 2 include adding the remaining acreage for Stonehouse Commerce Park and additional commercial areas along SR-60, adjacent to Jacobs and Hankins Industrial Parks. Any remaining acreage available for Years 3-5 could be rotated between specified targeted areas on a 12-month period, again, in an effort to maximize the benefit of this Program.

This proposal was presented to the EDA on January 20, 2011, receiving its support.

Staff recommends that the Board consider authorizing staff to submit the Enterprise Zone Amendment Application to the Virginia Department of Housing and Community Development.

Expansion of James City County's Enterprise Zone

March 22, 2011

Page 2



Russell C. Seymour

RCS/gb

EnPzZoneExp\_mem

Attachments:

1. Resolution
2. Location Maps

**RESOLUTION**

**EXPANSION OF JAMES CITY COUNTY'S ENTERPRISE ZONE**

WHEREAS, James City County has a total of 3,840 acres which can be included as part of designated Enterprise Zone that will expire on December 31, 2015; and

WHEREAS, the County's existing Enterprise Zone contains approximately 3,456 acres; and

WHEREAS, approximately 1,061 acres within the existing Enterprise Zone are public lands or contain wetlands or property designated by the Chesapeake Bay Preservation Act as a Resource Protection Area (RPA); and

WHEREAS, the Commonwealth of Virginia allows for an annual 15 percent reallocation of existing Enterprise Zone acres.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby requests staff to submit an Enterprise Zone Amendment Application to the Virginia Department of Housing and Community Development to remove areas from the existing Enterprise Zone identified as wetlands and RPA and add additional areas in the following manner:

- Expand the County's existing Enterprise Zone to include a portion of the SR-60 Corridor in the vicinity of the Busch Corporate Center in the southern portion of the County.
- Create a sub-zone in upper James City County to include the Stonehouse Commerce Park, Jacobs and Hankins Industrial Parks, and a portion of the SR-60 and SR-30 Corridor.

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Mary K. Jones  
Chairman, Board of Supervisors

ATTEST:

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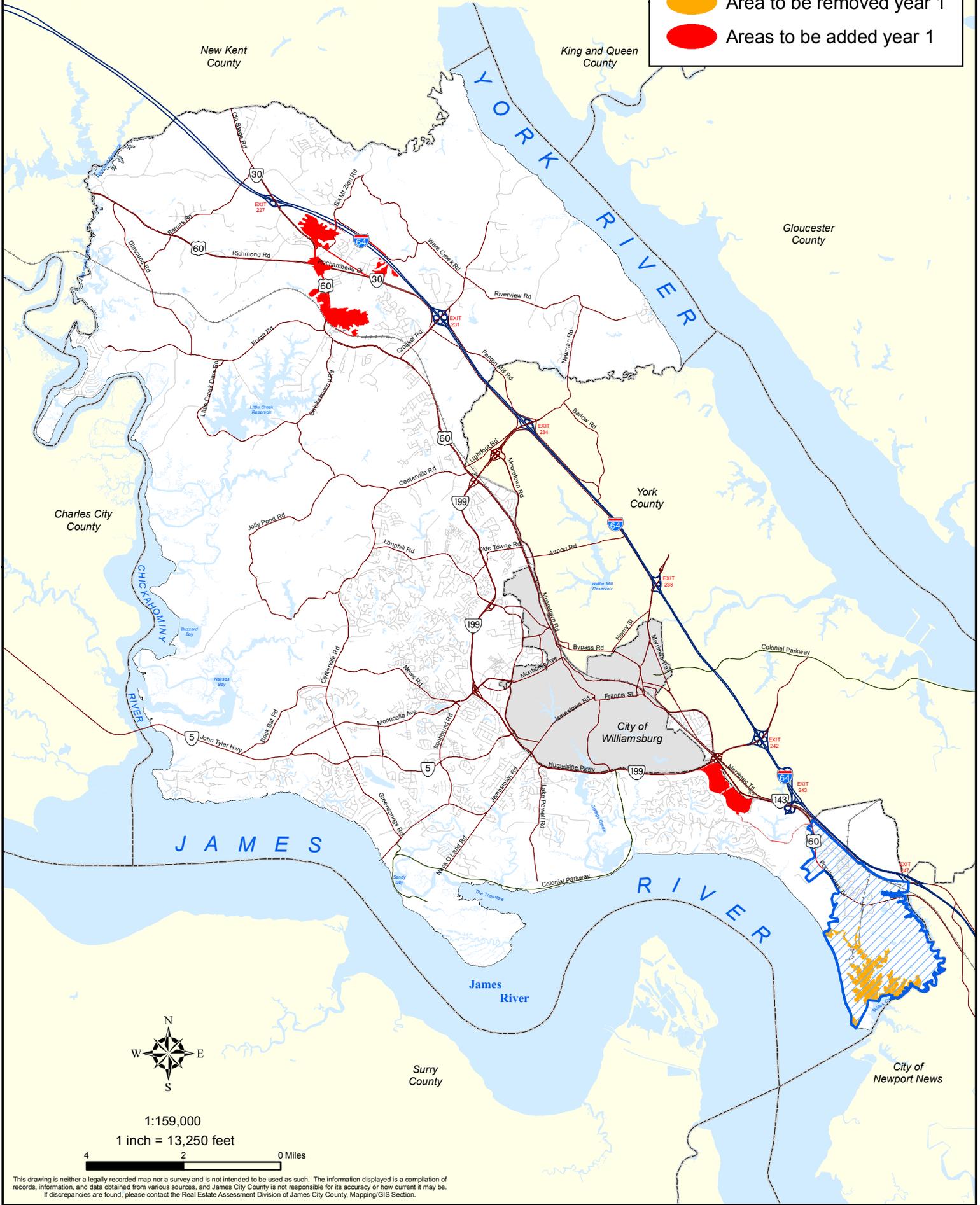
Robert C. Middaugh  
Clerk to the Board

Adopted by the Board of Supervisors of James City County, Virginia, this 22nd day of March, 2011.

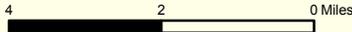
EntPzZoneExp\_res

# James City County Proposed Enterprise Zone Expansion – Year 1

-  Current Enterprise Zone
-  Area to be removed year 1
-  Areas to be added year 1



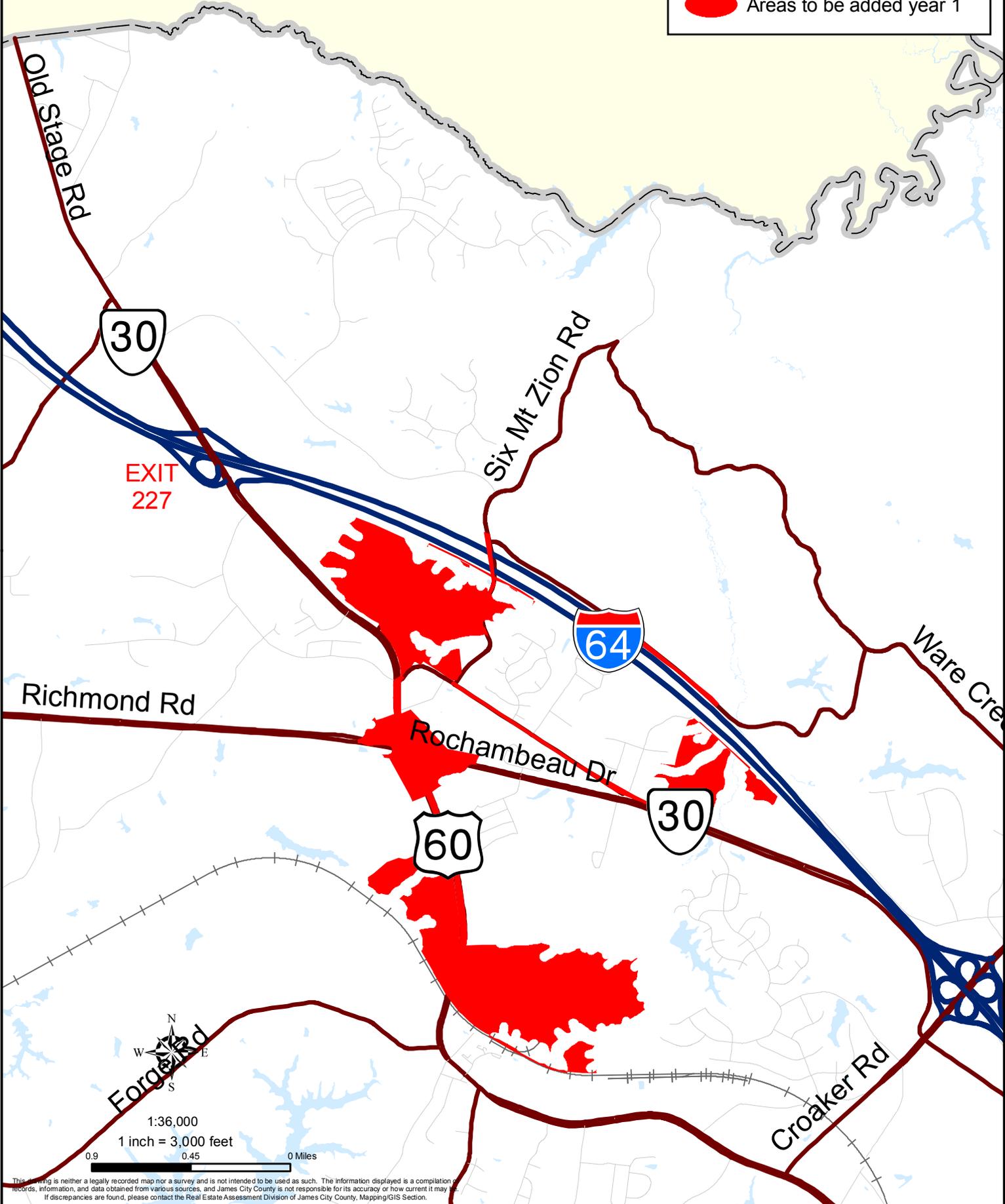
1:159,000  
1 inch = 13,250 feet



This drawing is neither a legally recorded map nor a survey and is not intended to be used as such. The information displayed is a compilation of records, information, and data obtained from various sources, and James City County is not responsible for its accuracy or how current it may be. If discrepancies are found, please contact the Real Estate Assessment Division of James City County, Mapping/GIS Section.

# Proposed Enterprise Zone Expansion – Year 1 Northern Portion of James City County

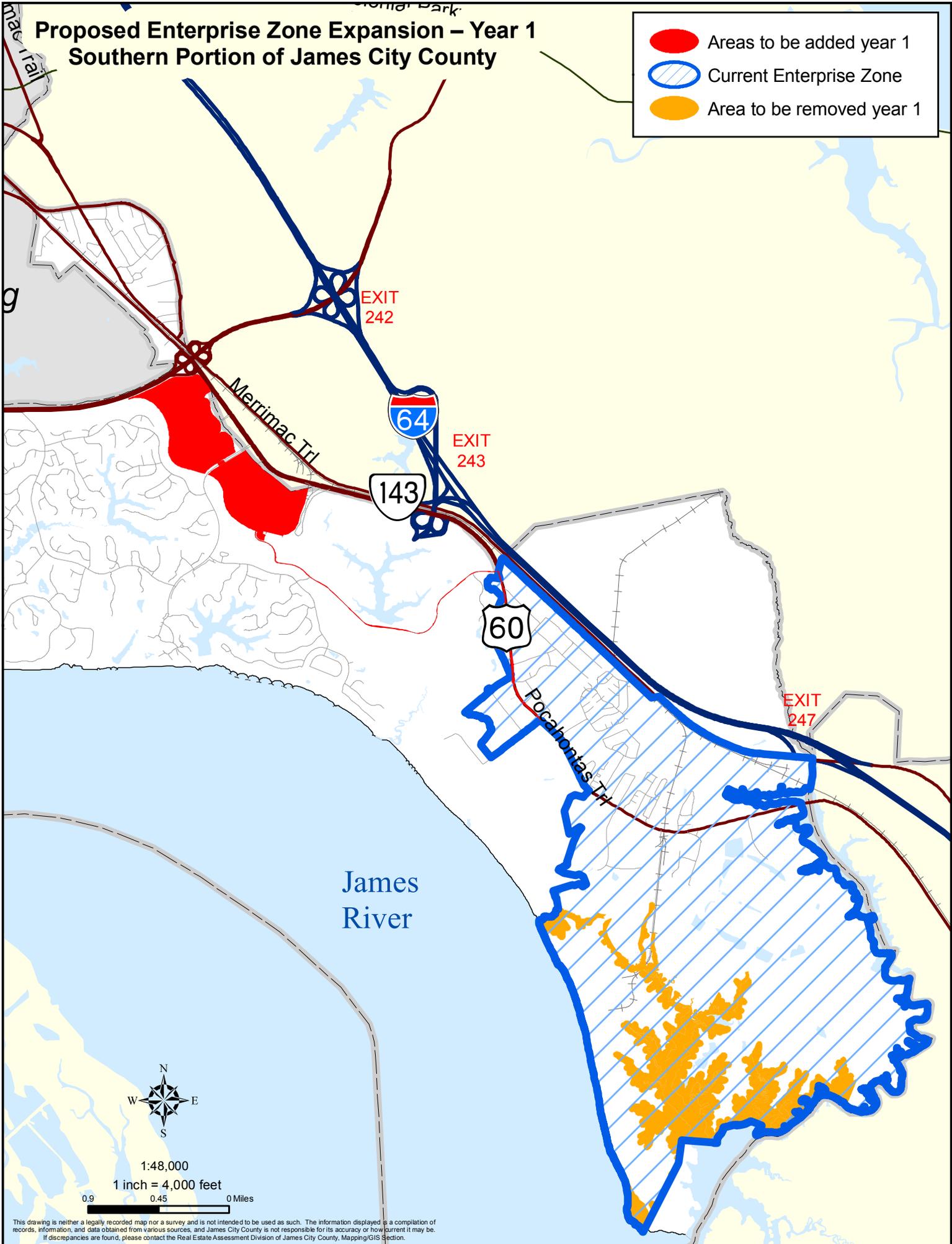
-  Current Enterprise Zone
-  Area to be removed year 1
-  Areas to be added year 1



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# Proposed Enterprise Zone Expansion – Year 1 Southern Portion of James City County

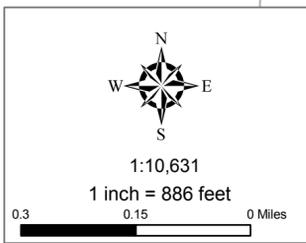
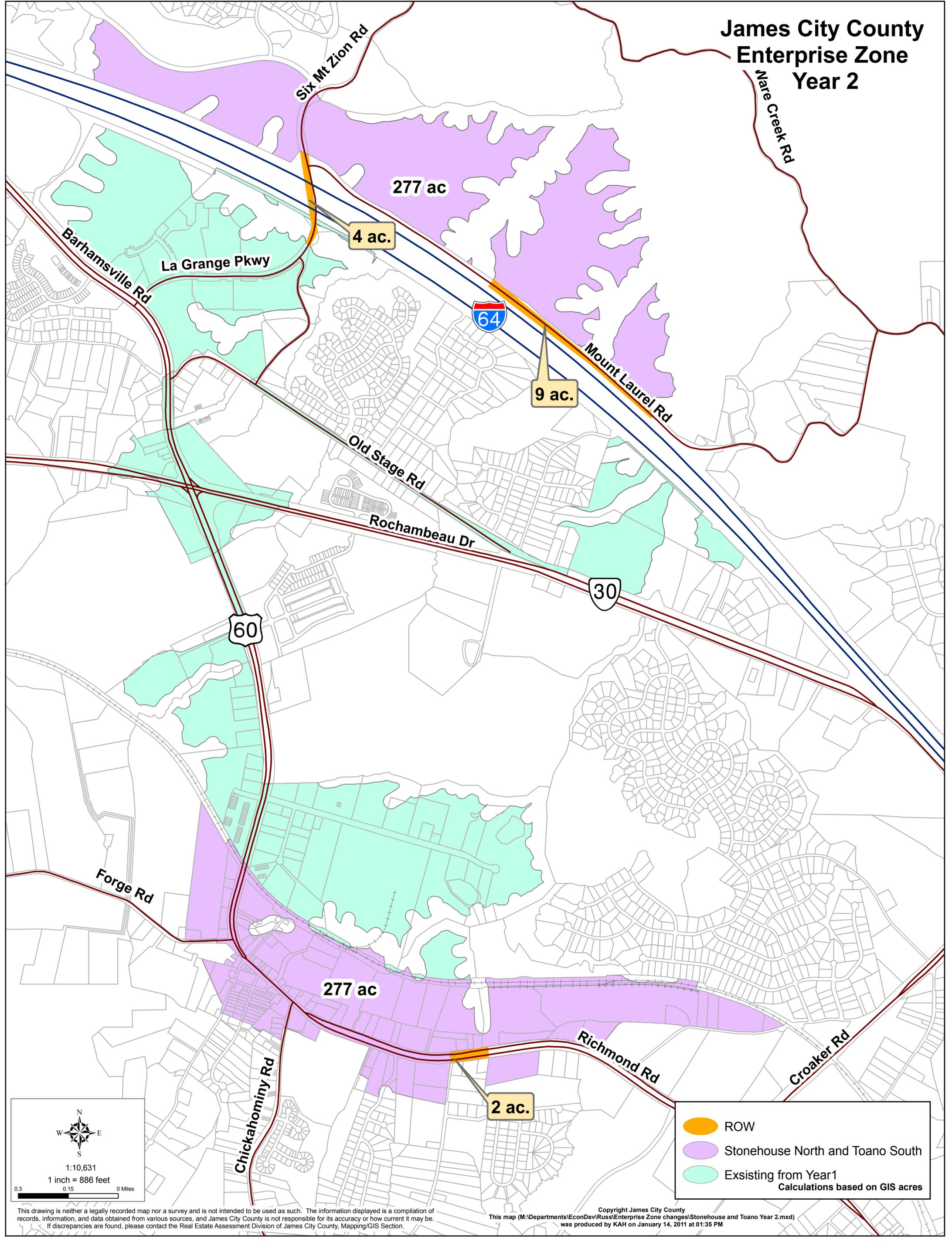
-  Areas to be added year 1
-  Current Enterprise Zone
-  Area to be removed year 1



1:48,000  
1 inch = 4,000 feet  
0.9 0.45 0 Miles

This drawing is neither a legally recorded map nor a survey and is not intended to be used as such. The information displayed is a compilation of records, information, and data obtained from various sources, and James City County is not responsible for its accuracy or how current it may be. If discrepancies are found, please contact the Real Estate Assessment Division of James City County, Mapping/GIS Section.

# James City County Enterprise Zone Year 2



-  ROW
-  Stonehouse North and Toano South
-  Existing from Year 1

Calculations based on GIS acres

This drawing is neither a legally recorded map nor a survey and is not intended to be used as such. The information displayed is a compilation of records, information, and data obtained from various sources, and James City County is not responsible for its accuracy or how current it may be. If discrepancies are found, please contact the Real Estate Assessment Division of James City County, Mapping/GIS Section.

Copyright James City County  
This map (M:\Departments\EconDev\Russ\Enterprise Zone changes\Stonehouse and Toano Year 2.mxd) was produced by KAH on January 14, 2011 at 01:35 PM

# Enterprise Zone

in James City County

## OVERVIEW

A southeast portion of James City County has been designated by the State of Virginia as an enterprise zone, effective January 1, 1996 until 2016, and is known as the James River Enterprise Zone. The program is a State and local partnership in which both parties seek to improve economic conditions within a targeted geographic area by offering incentives for commercial and industrial investment, development, and expansion. Both State and local incentives are available. A company locating in the zone may qualify for either or both.

The **James River Enterprise Zone** is roughly bounded by Rt. 143, the County line, Skiffe's Creek, the James River, and Rt. 60. The zone is a 5.6 square mile area that contains 2,400 acres of land zoned for industrial use. Good highway access and industrial capacity utilities are in place. I-64 access is within a five minute drive.

## LOCAL INCENTIVES

By locating in the **James River Enterprise Zone**, a business may qualify for any or all of the local incentives independent of whether it qualifies for State incentives.

## LOCAL CAPITAL INVESTMENT INCENTIVES

In order to qualify for local capital investment incentives, a business must make a capital investment of \$1 million or more in a commercial or industrial project in the zone. Capital investment is defined as money used for land improvement, building, infrastructure, machinery and tools, or business personal property.

**1. Economic Development Authority of James City County (EDA) Grants** - Five-year declining grants may be made to qualifying firms related to the County's assessed value of their capital investment in the zone.

Business Real Estate Improvement/ Rehabilitation Exemption Percent of Assessed Value	
Year 1	0.45%
Year 2	0.36%
Year 3	0.27%
Year 4	0.18%
Year 5	0.09%

Machinery and Tools/ Business Personal Property Grant Percent of Assessed Value	
Year 1	0.5%
Year 2	0.4%
Year 3	0.3%
Year 4	0.2%
Year 5	0.1%

**2. Improvement Fee Waivers** - Local permit fees waived for site plans, subdivisions, erosion, and sediment control, land disturbing, building, electrical, plumbing, and HVAC.

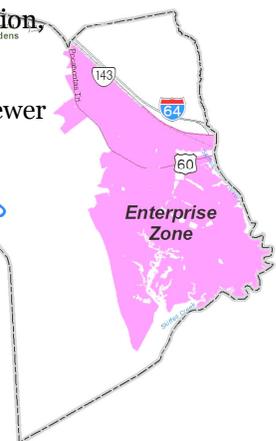
**3. Sewer Transmission Fee Reduction** - The James City Service Authority will reduce sewer transmission fees for businesses by 50 percent for first five years of operation.

**4. Use of Process Water** - Businesses will be allowed to use industrial process water from permitted wells within the zone.

**5. EDA Fee Waiver** - The Economic Development Authority will waive administrative application fees for bond financing (except for legal fees).

## FOR MORE INFORMATION ON LOCAL INCENTIVES

Please contact that James City County Office of Economic Development  
5308 Discovery Park Blvd., Suite 203, Williamsburg, VA 23188  
(757) 253-6607, Fax (757) 565-2208



## LOCAL JOB CREATION INCENTIVES

In order to qualify for job creation incentives:

- 50 percent of the new workforce must be documented as current residents having lived in James City County for one year.
- 75 percent of the total jobs are full-time permanent (35 hours per week or more)
- The average annual wage is at least 90 percent of the County's per capita income, using the most recent federal census data.

### Job Incentives

- \$400 per full-time permanent employee who is a zone resident.
- \$200 per full-time permanent employee who is a James City County resident.
- Incentive applies in first two years of business operation.
- Issued following company payment of annual property taxes.
- Must expand its employment 25 percent above its base at the end of the second year to be eligible for additional grant

### Training/Education Offered

James City County Community Services training/education for local citizens: Work Maturity, Job Skills, and Computer Literacy, as well as facilitating access to programs sponsored by local colleges and the public school system. There is no cost to the business or the citizen.

### Employee Search Assistance

Assistance in identifying current local residents who would meet the residency requirement.

### Child Care Grant

One time matching grant of up to \$25,000 to assist company in establishing or enhancing day care/preschool facilities in the zone.

### RESTRICTIONS

- No local incentives will be available for businesses moving into the enterprise zone from another location in James City County unless the move is in conjunction with a substantial expansion over previous local facility and/or workforce (50 percent increase in facility, of not less than 10,000 additional square feet; or 50 percent increase in workers, of not less than 10 new full-time permanent employees).
- Under no conditions will the amount of incentives due to a business exceed its total tax liability.
- If the State at any time stops funding its incentives, James City County will also cease funding its incentives.

## STATE INCENTIVES

The Virginia Department of Housing and Community Development (VDHCD) administers the State's aspect of the James River Enterprise Zone. Businesses locating in the zone may be eligible for:

### STATE JOB CREATION GRANTS

#### Number of Jobs

- Grants could be awarded for permanent full time jobs created above a four job threshold.
- Grants based on a calendar year, with positions filled for less than a year prorated.

#### Type of Jobs

- Jobs in retail, local service, or food and beverage service are not eligible for grants.

#### Grant Amounts

- Positions paying at least 200% of federal minimum wage with health benefits could receive a grant of \$800 per year for up to 5 consecutive years.
- Positions paying at least 175% of federal minimum wage with health benefits could receive a grant of \$500 per year for 5 consecutive years.
- Positions paying less than 175% of federal minimum wage or without health benefits are not eligible for grants.

### STATE REAL PROPERTY INVESTMENT GRANTS

#### Grant Awards

- Qualified zone investors (businesses and individuals) making qualified investment in real property located within an enterprise zone are eligible for a cash grant equal to 20 percent of the investment up to a maximum of \$100,000 for companies investing \$5,000,000 or less in real property investments.
- For real property investments over \$5,000,000 the maximum grant is \$200,000.
- Total grant awards may not exceed the maximums specified above within any five-year period for a specific building or facility.

#### Investment Thresholds

Commercial, industrial or mixed-use buildings or facilities are eligible for Real Property Investment Grants

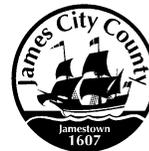
For new construction the real property investment must be at least \$500,000.

For rehabilitation or expansion projects, the amount of qualified investment must be at least \$100,000.

### FOR MORE INFORMATION ON STATE INCENTIVES

Please contact the Virginia Department of Housing and Community Development  
501 North Second St., Richmond, VA 23219  
(804) 371-7058 or [www.dhcd.virginia.gov](http://www.dhcd.virginia.gov)





**MEMORANDUM COVER**

**Subject:** Lease - Metropolitan Area Network Dark Fiber Lease Agreement - Cox Communications Hampton Roads, LLC

**Strategic Management Plan Pathway:** 2.e - improve access to information by decreasing the “digital divide” and 3.d - invest in the capital project needs of the community

**Action Requested:** Shall the Board approve the resolution that continues use of the County’s and the School’s fiber optic networks through a new lease with Cox Communications?

**Summary:** Since 1996 the County has developed a Metropolitan Area Network serving all major offices and all W-JCC Schools. The network consists of County-owned spurs that extend from a Cox-owned fiber backbone to a total of 35 discrete sites, not including the new Police Building and the Freedom Park Interpretive Center.

An agreement with Cox Communications (successor to Continental Cable) that was co-terminate with a CATV Franchise Agreement provided the backbone of four fiber-optic strands at essentially no cost. The agreement has been extended from an original expiration date of December 31, 2010, to March 31, 2011, at Cox’s request.

County and W-JCC have discussed terms with Cox Business and Engineering. The enclosed Dark Fiber Agreement would lease the backbone for \$5800/month, which would be split evenly between JCC and W-JCC Schools. The Schools would be billed separately so that they could take advantage of E-Rate discounts.

**Fiscal Impact:** Neither the County nor the W-JCC Schools has budget to replace the full capability of the existing network. A slower approximation of current levels may be available commercially in most service areas, but there would be at least a two-month lead time before service resumed in many areas, with some sites unable to achieve full service levels.

The slower service levels may be available for about \$975,000/yr., plus one-time installation charges of about \$75,000. Installation charges may be much higher in more rural areas where commercial fiber isn’t available. School capacity with those figures would be about 10% of current levels; County services would have a much smaller reduction (to about 75% of existing levels) due to lower current video usage.

**FMS Approval, if Applicable:** Yes  No

**Assistant County Administrator**

Doug Powell \_\_\_\_\_

**County Administrator**

Robert C. Middaugh \_\_\_\_\_

**Attachments:**

1. Memorandum
2. Resolution
3. Cox Dark Fiber Agreement

**Agenda Item No.:** I-1

**Date:** March 22, 2011

## M E M O R A N D U M

DATE: March 22, 2011

TO: The Board of Supervisors

FROM: Thomas R. Pennington, Director, Information Resources Management

SUBJECT: Lease - Metropolitan Area Network Dark Fiber Lease Agreement - Cox Communications Hampton Roads, LLC

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A contract for use of dark fiber optic cable from Cox Communications was extended from December 31, 2010, to March 31, 2011, at Cox Communications' request, to provide time to negotiate terms for the lease of the Cox-owned portions of the County's and Williamsburg-James City County Schools' existing fiber network.

The existing dark fiber optic network supports high-speed voice, data, and video services for all major County offices and all Williamsburg-James City County (WJCC) Schools and offices. The network has been serving the County since 1996. This lease agreement is the direct successor to that 15-year agreement, which provided a backbone of four fiber optic lines to which the County and the Schools attached connections and electronics for high-speed services.

The lease agreement is essential to economical continuity of administrative and instructional operations for the County and the Schools. Purchase of commercial services to replace the capacity of the dark fiber that Cox has offered in the lease is not feasible under current budgets. The carrying capacity which the County's and Schools' electronics add to the existing fiber network will likely not be available at reasonable commercial rates for several years.

The Board approved in August 2010 a contract to construct a complement to the Cox fiber network. When construction is completed in late 2012, the newly installed fiber optic lines will be connected to the fiber optic lines provided under the enclosed agreement. The connection between the two paths will form an industry-standard fiber optic "ring" that will ensure continuity of service in the event of disruption of either path.

County and School Board staffs have evaluated the benefits of continuing to use Cox Communications dark fiber optics and have concluded that the value of the agreement far exceeds the cost. The net return to the County is currently in excess of \$700,000 annually after deducting the monthly lease cost of \$5,800. Staff accordingly recommends approval of the attached resolution.

---

Thomas R. Pennington

CONCUR:

---

John E. McDonald

TRP/gb  
CoxFiberLease\_mem

Attachments

**RESOLUTION**

**LEASE AGREEMENT - METROPOLITAN AREA NETWORK DARK FIBER**

**LEASE AGREEMENT - COX COMMUNICATIONS HAMPTON ROADS, LLC**

WHEREAS, fiber optic cabling without electronics has been under contract with Cox Communications since 1996; and

WHEREAS, the cabling is not available from any other provider; and

WHEREAS, Cox Communications Hampton Roads, LLC has agreed to continue to lease to James City County the same four strands of “unlighted” or “dark” fiber optic strands.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby authorizes the County Administrator to execute a Dark Fiber Agreement for fiber optic cable from Cox Communications Hampton Roads, LLC in an amount of \$5,800 per month.

\_\_\_\_\_  
Mary K. Jones  
Chairman, Board of Supervisors

ATTEST:

\_\_\_\_\_  
Robert C. Middaugh  
Clerk to the Board

Adopted by the Board of Supervisors of James City County, Virginia, this 22nd day of March, 2011.

CoxFiberLease\_res

# DARK FIBER LEASE

**THIS DARK FIBER LEASE AGREEMENT** ("Agreement"), is made and entered into this 1st day of April, 2011 (the "Effective Date") by and between Cox Communications Hampton Roads, LLC, a Delaware limited liability company, d/b/a Cox Business, having an address of 1341 Crossways Blvd, Chesapeake, VA 23320 ("Cox"), and James City County, Virginia, a political subdivision of the Commonwealth of Virginia, having an address of 101-F Mounts Bay Road, Williamsburg, VA 23185-6505/P.O. Box 8784, Williamsburg, VA 23187-8784 ("Customer"); Customer and Cox being collectively referred to herein as the "Parties".

**WHEREAS**, Cox desires to lease to Customer the fiber optic communication fibers as described in Exhibit A ("Leased Fibers"); and

**WHEREAS**, Customer desires to lease the Leased Fibers from Cox for the transmission of communications services in accordance with the terms and conditions of this Agreement.

**NOW, THEREFORE**, in consideration of the mutual promises and covenants herein contained, the Parties mutually agree as follows:

## 1. SCOPE OF AGREEMENT

1.1 Cox has designed, engineered, constructed or caused to be constructed, facilities and acquired appropriate interests in real property or other rights, all as may be required to provide, and maintain the Leased Fibers between the demarcation points ("Route") set forth in Exhibit A. Cox shall have no obligation to relocate the Leased Fibers to any other route or location during the Term of this Agreement. The following Exhibits attached hereto, which by this reference are incorporated herein.

Exhibit A	James City County Fiber Optic Spur Inventory and Demarcs
Exhibit B	Leased Dark Fiber Optic Specifications
Exhibit C	Contact/Escalation List

1.2 Cox hereby leases to Customer, and Customer hereby leases from Cox, the Leased Fibers for Customer's communications use between the External Demarcation points set forth in Exhibit A for the Term of this Agreement for the compensation and payments to Cox as provided herein. Under this Agreement, Cox shall retain possession, ownership, and control of the Leased Fibers but Customer shall be allowed to use the Leased Fibers for the transmission of telecommunications subject to the restrictions in Section 1.3. Customer shall retain possession, ownership, and control of any fiber spurs constructed by Cox along the Route; however, Customer shall provide Cox with two (2) pairs of fibers on each fiber spur, if available, for Cox's sole and exclusive use during the Term of this Agreement. Customer shall provide, at its expense, its own electronic equipment ("Customer Equipment") required to use the Leased Fibers for transmission of communication services. If requested by Cox, Customer shall identify with reasonable particularity the Electronic Equipment Customer connects or may connect to the Leased Fibers.

1.3 Customer shall have exclusive use of the Leased Fibers during the Term of this Agreement and may use the Leased Fibers for any lawful purpose, provided that such purpose does not (i) interfere with or impair service over any of the facilities and associated equipment comprising the Cox networks, or (ii) impair the privacy of any communications over the facilities and associated equipment of Cox. Notwithstanding the preceding sentence, Customer shall use the Leased Fibers only for its internal communication needs and shall not use, or permit another to use, the Leased Fibers to provide or deliver to third parties any services competitive to services provided by Cox during the term of this Agreement, including, without limitation, telecommunications, data and/or cable television or video services. Customer may not resell or sublease transmission capacity on the Leased Fibers without the prior written consent of Cox which may be withheld in Cox's sole discretion. For the purposes of this paragraph, Customer's use

of the Leased Fibers shall include any use by the James City County, the City of Williamsburg and any public authority or other regional governmental entity created by or funded by Customer such as the public schools, the libraries, the courts, jails, social services, water and sewer providers, public transportation authority or similar local governmental agency.

## **2. TERM AND TERMINATION**

2.1 The initial term of this Agreement shall commence as of the Effective Date and shall continue for a period of ten (10) years and three (3) months ending on June 30, 2021 ("Initial Term"). Unless earlier terminated as provided in this Agreement, upon expiration of the Initial Term, this Agreement shall automatically renew for one (1) year terms ("Renewal Term") unless either party gives the other written notice of its intent to terminate at least ninety (90) days before the expiration of the Initial Term or Renewal Term, as applicable. Upon termination of this Agreement, both Parties will be provided reasonable access, upon prior written notice, to the other's sites for prompt removal of their equipment. The Initial Term and Renewal Term collectively shall be referred to as "Term."

2.2 In addition to other termination rights provided herein, either party may terminate this Agreement, if the other party Defaults as provided in Section 9.1.

2.3 Cox may terminate this Agreement if (i) Cox's franchise authority is cancelled or terminated for the Route set forth in Exhibit A, (ii) Cox is prohibited from furnishing the Leased Fibers by regulation, statute, court order, or ruling by the Federal Communications Commission, or any other federal, state or local governmental authority; (iii) if Customer's lease or use of the Leased Fibers would cause a forfeiture of the rights of Cox to occupy the property where such Leased Fibers, or other Cox facilities, are located; (iv) Customer or its customer's equipment, or anyone acting on their behalf, interferes with the operational integrity of the Cox system; (v) Customer makes an assignment for the benefit of creditors or files for bankruptcy protect under the United States bankruptcy code; or (vi) Cox's pole attachment/conduit use rights are terminated or become subject to such restrictions or conditions that continuation of this Agreement is impracticable or prohibited. Upon occurrence of any of the foregoing, Cox shall have the right to terminate this Agreement upon sixty (60) days notice without incurring liability to Customer; provided, however, that Customer shall be entitled to a prorated refund of prepaid rental charges.

2.4 Customer shall have the option to terminate this Agreement upon thirty (30) days written notice, if as a result of any future legislative or regulatory proceedings and attendant contractual agreements relating thereto, the resulting increased additional costs to Customer are deemed unreasonable; provided however, that termination under this subsection 2.4, Customer shall not be entitled to refund of any prepaid rental charges.

2.5 It is understood and agreed by the Parties that Customer's governing body makes annual appropriations of funds through its budgeting process and the annual funding of this Agreement is subject to the appropriation of available funds. If funds are not appropriated for any fiscal year during the term of this Agreement, Customer shall provide Cox at least ninety (90) days written notice prior to the commencement of such fiscal year. Customer may terminate this Agreement as of the day immediately preceding the following anniversary of the Effective Date of the Agreement, provided that Customer gives Cox no less than ninety (90) days prior written notice and reasonable evidence or documentation substantiating the reduction in funding to Customer. In such event, Customer shall not have any further liability to Cox under this Agreement, except for (i) payment for Services rendered by Cox to Customer prior to the termination date and/or (ii) any obligations or liabilities of Customer under this Agreement resulting from an event of default by Customer under this Agreement.

## **3. PAYMENTS**

3.1 During the Term of this Agreement, as consideration for the Leased Fibers, Customer shall pay Cox the amount of Five Thousand Eight Hundred and No/100 Dollars (\$5,800.00) per month, as rental, beginning upon the Effective Date and thereafter on the first day of each month during the Term of this Agreement. The rental for each year shall increase by a factor of two-and-a-half percent (2.5%) above

the annual rental for the immediately preceding year commencing on the anniversary of the Effective Date of this Agreement. Cox shall send invoices for the Leased Fibers to the address for Customer set forth above or to such other address as Customer may from time to time provide. Customer shall pay invoices within thirty (30) days of receipt. Any amounts not received by Cox within thirty (30) days after Customer's receipt of invoice from Cox shall be subject to a late payment charge of the lesser of 1% per month or the maximum rate allowed by law, calculated from the due date until the date paid. The rental shall not include any sales, use, gross receipts, excise, access, universal service fund assessments, franchise fees, bypass or other local, state and Federal taxes or charges, which Customer may be obligated to pay under any applicable laws and regulations in connection with the rental of the Leased Fibers.

3.2 Customer hereby agrees to reimburse Cox, within thirty (30) days after Customer's receipt of an invoice from Cox, for the actual costs and expenses related to (i) Cox's repairs to the fiber spurs (as described in Section 1.2 above) for any property damage caused by third parties in the event that Cox fails to recover the expenses for such repairs from said third parties within one hundred eighty (180) days after Cox's delivery of an invoice to said third party(ies) and (ii) any legal fees associated with any claims that Cox pursues against said third parties for such property damage.

#### **4. MAINTENANCE**

Customer hereby agrees and acknowledges that Cox shall provide the Leased Fibers to Customer on an "AS IS, WHERE IS" basis. Cox shall be responsible for any maintenance and repairs of the Leased Fibers and the fiber spurs that are specified in Exhibit A and shall perform such maintenance and repairs at its expense; provided, however, Cox shall not be responsible for the expense of maintenance or repairs to the Leased Fibers and/or any fiber spurs caused by acts or omissions of Customer, its agents, employees or contractors. Customer shall be responsible for all expenses related to the maintenance and repair of the Leased Fibers and/or the fiber spurs in the event such maintenance or repairs are required as a result of the acts or omissions of Customer, its agents, employees or contractors. In the event that any maintenance and/or repairs to the fiber spurs are required as a result of a force majeure event (as described below in Section 14.12) or the acts of a third (3<sup>rd</sup>) party unaffiliated with Customer or Cox, Cox shall perform the maintenance and repair work for the fiber spurs; however, Customer shall be responsible for all expenses related to the maintenance and repair of said fiber spurs which shall be paid to Cox within thirty (30) days after its receipt of written notice. At Customer's written request, Cox shall pursue any claim for damages against any third party that may be responsible for the maintenance and/or repair of the fiber spurs and if any award for damages is received by Cox, Customer shall be entitled to a refund of any repair and/or maintenance expenses paid to Cox in the same amount. Customer agrees that Cox will have access to the cabling and conduit facilities between the demarcation points containing the Leased Fibers in order to maintain the Leased Fibers, and if necessary to upgrade Cox's network. Customer shall provide prompt notice to Cox regarding any condition affecting the service of the Leased Fibers and/or the fiber spurs. Cox's maintenance obligations shall be performed in accordance with industry standards. Customer shall cooperate with Cox with respect to maintenance and repair of the Leased Fibers and/or the fiber spurs. Customer agrees to turn down Customer Equipment as requested for the purpose of expediting repairs. Customer shall be solely responsible for maintenance of Customer Equipment used in connection with the Leased Fibers and the fiber spurs. In the event that any federal, state, or local governmental entity or authority or local utility provider requires the relocation of the Leased Fibers and/or the fiber spurs at any time during the term of this Agreement, the parties agree that (i) Cox shall be solely responsible for all costs and expenses related to the relocation of the Leased Fibers and (ii) Customer shall be solely responsible for all costs and expenses related to the relocation of the fiber spurs. Customer may connect unconnected strands of the Leased Fibers to any of the fiber spurs that are identified in Exhibit A.

#### **5. CONFIDENTIALITY**

The parties agree to keep the details pertaining to this Agreement confidential except as required by law, franchising and regulatory authorities or lenders. The parties acknowledge that Customer is a political entity subject to the Virginia Freedom of Information Act and other public records laws. In the event disclosure of this Agreement is required by law or order of court or subpoena, the disclosing party

shall notify the other party in sufficient time to permit the other party to take appropriate legal action to prevent disclosure.

## **6. WARRANTIES & REMEDIES**

**6.1 The warranties and remedies set forth in this Agreement constitute the only warranties and remedies available to the Parties with respect to this Agreement and the Leased Fibers. Except as provided herein, Cox makes no warranties, written or oral, statutory, express or implied, including without limitation the warranty of merchantability and the warranty of fitness for a particular purpose or use regarding the Leased Fibers.**

6.2 Each Party represents that it has the right to perform as required hereunder, and that it is an entity, duly organized, validly existing and in good standing under the laws of its origin, with all requisite power to enter into and perform its obligations under this Agreement in accordance with its terms.

6.3 Cox represents to Customer that the Route has been installed in a workmanlike manner and in accordance with the Exhibits to this Agreement. Cox further warrants that the Route will operate substantially in accordance with Exhibit B, Leased Fibers Specifications, for the Term of this Agreement.

## **7. LIABILITY AND INSURANCE**

Customer agrees to be responsible for and shall maintain adequate worker's compensation insurance, comprehensive general liability insurance, and property insurance for any and all claims, injuries, damages, costs and expenses (including reasonable attorneys' fees) arising from or related to the acts or omissions of Customer, its employees, agents, contractors or representatives in connection with the use of the Leased Fibers. In addition to the foregoing, Customer shall be responsible for adequate insurance for all claims, suits, proceedings, liabilities, losses, costs, damages and expenses (including reasonable attorneys' fees) in connection with claims that Customer's use of the Leased Fibers violates copyright and trademark infringement, libel, slander, defamation, literary and dramatic rights claims, privacy or publicity claims, and/or claims that the content violates federal or state law ("Infringement Liability"). Customer agrees to list Cox as a co-insured on all of its insurance policies.

## **8. LIMITATION OF LIABILITIES**

**COX SHALL NOT BE LIABLE FOR DAMAGES FOR INTERRUPTION OF ANY TRANSMISSIONS THROUGH THE LEASED FIBERS, NOR SHALL COX BE RESPONSIBLE FOR FAILURE OR ERRORS IN SIGNAL TRANSMISSION, LOST DATA, FILES OR SOFTWARE DAMAGE UNLESS CAUSED BY COX'S WILLFUL MISCONDUCT. COX SHALL NOT BE LIABLE FOR DAMAGE TO PROPERTY OR FOR INJURY TO ANY PERSON ARISING FROM THE INSTALLATION, MAINTENANCE OR REMOVAL OF EQUIPMENT OR THE PROVISION OF SERVICES. NEITHER PARTY WILL BE LIABLE FOR ANY SPECIAL OR CONSEQUENTIAL DAMAGES INCLUDING LOST PROFITS ARISING FROM THIS AGREEMENT.**

## **9. DEFAULT / INTERRUPTION OF SERVICE**

9.1 If any material event of default continues for thirty (30) days after written notice thereof, the non-defaulting Party shall have the right, but not the duty, and solely at its discretion, to terminate this Agreement, such termination to be immediately effective upon receipt of written notice.

9.2 If any portion of the Leased Fibers experiences performance which materially fails to meet the requirements as set forth in the Exhibits, resulting in an interruption in Customer's ability to use or a material degradation of the Leased Fibers through no fault of Customer, or its agents, employees or contractors, then Customer's obligation for payment hereunder shall immediately cease for the duration of such interruption or degradation until the same is cured as demonstrated by Cox to the reasonable satisfaction of Customer. **The remedy provided in this Section 9.2 shall be Customer's sole and**

**exclusive remedy for interruptions or material degradations of service, subject to the termination provision in Sections 2 and 9.1.**

## **10. UTILITIES**

Cox hereby agrees to provide for and pay any and all charges for utility services including but not limited to electricity, gas, water, and location services for fiber, copper, and coaxial lines to be rendered to any of the Leased Fibers on the Route Customer hereby agrees to provide for and pay any and all charges for utility services including but not limited to electricity, gas, water, and location services for fiber, copper, and coaxial lines required for the operation of the fiber spurs.

## **11. TAXES/RIGHT OF WAY CHARGES**

Customer agrees to pay any and all franchise fees, gross receipts, sales, use, property, excise and other taxes and governmental fees directly applicable to the leasing of the Leased Fibers to Customer. To the extent that Cox incurs additional right-of-way ("ROW"), pole attachment/conduit charges above and beyond what it paid prior to this Agreement which are directly related to the presence of the Leased Fibers in the ROW, pole, or conduit, Customer agrees to pay any such charges upon invoice by Cox. Each party shall be responsible for property taxes imposed on each respective party's personal property.

## **12. REGULATORY COMPLIANCE**

Except as otherwise provided in this Agreement, Cox shall maintain governmental authorizations and regulatory approvals required, if any, to provide the Leased Fibers to Customer. Customer shall at its own expense obtain all regulatory approvals, permits, and authorizations for Customer's use of the Leased Fibers.

## **13. ARBITRATION**

13.1 Any dispute arising out of this Agreement which cannot be resolved by negotiation, may be brought in a court of competent jurisdiction or, by mutual agreement of the parties, be settled by binding arbitration in accordance with the American Arbitration Association Arbitration Rules and Procedures, as amended by this Agreement. The parties agree that the arbitrator's authority to grant relief shall be subject to the United States Arbitration Act, 9 U.S.C. Section 1-16, *et seq.* ("USAA") and the provisions of this Agreement. The parties agree that the arbitrator shall have no power or authority to make an award of punitive or exemplary damages.

13.2 Either party may file legal proceedings in any court of competent jurisdiction (i) to enforce the arbitration provision in Section 13.1; (ii) to enforce the arbitrator's award pursuant Section 13.1 of this Agreement; or (iii) to obtain injunctive or declaratory relief where a party does not have an adequate remedy at law.

## **14. MISCELLANEOUS**

14.1 All right, title and interest in all the Leased Fibers provided by Cox hereunder shall at all times remain exclusively with Cox.

14.2 Customer shall not create or permit to be created any liens or encumbrances on the Leased Fibers or on any of Cox's facilities. Customer will immediately, at its own expense, take such action as may be necessary to duly discharge any such liens or encumbrances.

14.3 Any work performed by either party on the premises of the other party shall be performed while taking all necessary precautions to prevent the occurrence of any injury to persons or property during the progress of such work.

14.4 Each party shall immediately notify the other party by telephone (followed by written confirmation within twenty-four hours) of any product used in providing services hereunder which fails to comply with any applicable safety rules or standards of concerned governmental agencies (including the Environmental Protection Agency), or which presents a substantial risk to the public health or of injury to the public or to the environment.

14.5 This Agreement does not make either Party the agent or legal representative of the other Party, and does not create a partnership or joint venture between the Parties. Except as otherwise provided herein, each Party may engage in and possess other business ventures that are competitive with the services under this Agreement. This Agreement is non-exclusive and either party may enter into similar agreements with third-parties. Cox is not providing any regulated communication services under this Agreement.

14.6 This Agreement, together with all Exhibits, shall constitute the entire agreement and no negotiations or discussions prior to execution shall be of any effect, and all such discussions are incorporated herein.

14.7 The invalidity in whole or in part of any provision shall not affect the validity of any other provision.

14.8 The right and remedies of the Parties shall be cumulative and in addition to any other rights and remedies provided by law or equity. A waiver of a breach of any provision hereof shall not constitute a waiver of any other breach. The laws of the state of where the Leased Fibers are located shall govern this Agreement.

14.9 No subsequent agreement concerning the Route or this Agreement shall be effective unless made in writing and executed by authorized representatives of the Parties.

14.10 Notices shall be in writing, mailed certified with return receipt requested or by nationally recognized overnight courier (FedEx, UPS, Airborne), to the address set forth above or to such other address as the respective party may designate in writing. Notice shall be effective upon receipt.

14.11 Customer may not assign this Agreement, in whole or in part, nor sublet the Leased Fibers, without the prior written consent of Cox, which Cox may withhold in its sole discretion. Cox may, without Customer's consent, but with notice to Customer, assign its rights and obligations hereunder to any entity, or to any affiliate of Cox or pursuant to a merger, stock sale or sale or exchange of substantially all the assets of Cox.

14.12 In no event shall Cox be liable for failure to perform its obligations hereunder where such nonperformance is caused, in whole or in part, by force majeure, including, but not limited to, acts of God, wars, riots, storms, floods, earthquakes and other causes not within Cox's reasonable control.

## **15. COUNTERPARTS**

To facilitate execution, this Agreement may be executed in as many counterparts as may be required, but all such counterparts shall collectively constitute a single agreement. It shall not be necessary in any proof of the Agreement to produce or account for more than a number of counterparts containing the respective signatures of or on behalf of all the parties.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year below written, but this Agreement shall be effective as of the Effective Date.

**COX:**

**CUSTOMER:**

**Cox Communications Hampton Roads, LLC**

**James City County, Virginia**

By: \_\_\_\_\_  
Name: Michael Braham  
Title: Vice President, Cox Business  
Date: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**EXHIBIT A**

**JAMES CITY COUNTY FIBER OPTIC SPUR INVENTORY AND DEMARCS**

**[SEE ATTACHED]**

**EXHIBIT B**

**LEASED DARK FIBER OPTIC SPECIFICATIONS**

Cox shall provide a four (4) count, single-mode Fiber Optic Cable between the External Demarcation points set forth in Exhibit A.

**EXHIBIT C**

**CONTACT/ESCALATION LIST**

**[SEE ATTACHED]**



MEMORANDUM COVER

**Subject:** Master Services Agreement for Telecommunications Services – Cox Communications Hampton Roads, LLC

**Strategic Management Plan Pathway:** 2.e – improve access to information by decreasing the “digital divide” and 3.d – invest in the capital project needs of the community

**Action Requested:** Shall the Board approve the resolution that provides telecommunications services through a new agreement with Cox Communications?

**Summary:** In order to obtain quality telecommunications services and reduce expenditures, the County will enter into an agreement for Cox to provide telecommunications services beginning July 1, 2011.

Staff recommends approval of the attached resolution.

**Fiscal Impact:** The agreement will reduce expenditures for most County wireline telephone services by 15 percent or more, depending on the service. In the Telecommunications section of the Information Resources Management Division alone, this represents a savings of approximately \$7,200 per year. Additional savings of \$14,400 per year will accrue to the Cox Dark Fiber Agreement if the County agrees to the Master Services Agreement. Staff will explore additional potential cost savings available under the agreement.

**FMS Approval, if Applicable:** Yes  No

**Assistant County Administrator**  
  
Doug Powell \_\_\_\_\_

**County Administrator**  
  
Robert C. Middaugh \_\_\_\_\_

**Attachments:**  
1. Memorandum  
2. Resolution

**Agenda Item No.:**   I-2    
**Date:**   March 22, 2011

MEMORANDUM

DATE: March 22, 2011  
TO: The Board of Supervisors  
FROM: Thomas R. Pennington, Director, Information Resources Management  
SUBJECT: Master Services Agreement for Telecommunications Services – Cox Communications Hampton Roads, LLC

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County staff has evaluated and recommends the proposed agreement with Cox Communications for telecommunications services. Under the Master Services Agreement, we intend to replace some of the telecommunications service currently obtained from other providers, on a phased-in basis, beginning July 1, 2011. The term of three years plus two one-year renewable extensions is ideal, as the volatility of the telecommunications business sector requires diligent re-evaluation of services. This offer provides five-year pricing with only a three-year commitment.

The Master Services Agreement covers a number of offered services, including telephone service. The telephone services offered meet our wireline business telephone requirements. Furthermore, the inclusion of a Service Level Agreement in the Master Services Agreement offers an assurance of timely repair services for telephone service.

We believe our operational requirements will be better served with a Service Level Agreement which we do not have now. Cox is expected to provide a high quality of service, including an equivalent E911 identification for outgoing calls.

Staff has determined that the cost savings of each individual service ranges from 15 to 40 percent, depending on the specific service. In the Telecommunications Section of the Information Resources Management Division alone, this represents a savings of \$7,200 per year. All County cost centers will realize savings.

Savings will extend also to the Williamsburg-James City County Courthouse, Williamsburg Regional Library, Virginia Peninsula Regional Jail, James City Service Authority, and the Williamsburg Area Transit Authority. Overall savings to the County and these organizations combined will be at least \$30,000 annually.

While the contractual agreements are separate, Cox Communications has also offered a reduction of \$14,400 per year in the lease of its dark fiber network if the County accepts this telecommunications services agreement. Both agreements provide discounted prices.

Staff recommends approval of the attached resolution.

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Thomas R. Pennington

CONCUR:

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John E. McDonald

TRP/nb  
CoxMSAgmt\_mem

Attachment

**RESOLUTION**

**MASTER SERVICES AGREEMENT FOR TELECOMMUNICATIONS SERVICES –**

**COX COMMUNICATIONS HAMPTON ROADS, LLC**

WHEREAS, County staff has evaluated and recommends the proposed agreement with Cox Communications for telecommunications services; and

WHEREAS, the telecommunications services offered meet our business requirements; and

WHEREAS, the Agreement provides a Service Level Agreement as well as \$30,000 annual cost savings to James City County, Williamsburg-James City County Courthouse, Williamsburg Regional Library, Virginia Peninsula Regional Jail, James City Service Authority, and the Williamsburg Area Transit Authority; and

WHEREAS, the Agreement will result in a reduction of \$14,400 per year in the lease of its dark fiber network.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby authorizes the County Administrator to execute the Agreement with Cox Communications Hampton Roads, LLC.

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Mary K. Jones  
Chairman, Board of Supervisors

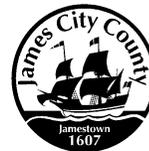
ATTEST:

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Robert C. Middaugh  
Clerk to the Board

Adopted by the Board of Supervisors of James City County, Virginia, this 22nd day of March, 2011.

CoxMSAgmt\_res



## MEMORANDUM COVER

**Subject:** Revenue Sharing Program Fiscal Year 2012 - Tewning Road Improvements - \$200,000

**Strategic Management Plan Pathway:** 3.d - invest in the capital project needs of the community

**Action Requested:** Shall the Board give authorization to apply for FY 2012 Revenue Sharing Funds?

**Summary:** Funds are available under the Virginia Department of Transportation's FY 2012 revenue sharing program to match local funds for the construction or improvement of roadways in the locality. The program requires a dollar for dollar match by the County. Staff proposes to apply for revenue sharing funds in the amount of \$100,000 for shoulder strengthening, curbing, drainage, and spot improvements along Tewning Road (Route 747). The County match would be \$100,000. The James City Service Authority has agreed to provide the required match funds. Total cost of the project is \$200,000.

Staff recommends approval of the attached resolution.

**Fiscal Impact:** The required County match is \$100,000. The James City Service Authority has agreed to provide the match funds.

**FMS Approval, if Applicable:** Yes  No

**Assistant County Administrator**

Doug Powell \_\_\_\_\_

**County Administrator**

Robert C. Middaugh \_\_\_\_\_

**Attachments:**

1. Memorandum
2. Resolution
3. Aerial Photo

**Agenda Item No.:** I-3

**Date:** March 22, 2011

MEMORANDUM

DATE: March 22, 2011  
TO: The Board of Supervisors  
FROM: Steven W. Hicks, Manager of Development Management  
SUBJECT: Revenue Sharing Program Fiscal Year 2012 – Tewning Road Improvements – \$200,000

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The County has been notified by the Virginia Department of Transportation (VDOT) that revenue sharing funds are available for FY 2012 to match local funds for the construction or improvement of roadways in the locality. The program requires a dollar for dollar match by the County.

Staff proposes to apply for revenue sharing funds for shoulder strengthening, curbing, drainage, and spot improvements along Tewning Road (Route 747). The total cost of this project will be \$200,000 with the County share being \$100,000. The James City Service Authority (JCSA) has agreed to provide the required match funds which will be included in the County's FY 2012 proposed budget under Special Projects.

Located along Tewning Road are the JCSA's current Operations division, the County's General Services Division, Fleet Maintenance, and a recycling drop-off center. Additionally there are several businesses and a VDOT facility which are accessed from Tewning Road. The planned improvements will shore up the existing roadway which handles a substantial flow of heavy vehicles, and improve drainage to ensure that there will be access to new JCSA Operations during severe weather events.

Staff recommends adoption of the attached resolution which authorizes the County's intent to participate in the FY 2012 Revenue Sharing Program.

  
Steven W. Hicks

SWH/nb  
RS\_TewningRd\_mem

Attachment

**RESOLUTION**

**REVENUE SHARING PROGRAM FISCAL YEAR 2012 –**

**TEWNING ROAD IMPROVEMENTS – \$200,000**

WHEREAS, the Board of Supervisors of James City County desires to submit an application requesting \$100,000 of Revenue Sharing Funds through the Virginia Department of Transportation (VDOT) Fiscal Year 2012 Revenue Sharing Program; and

WHEREAS, the County will allocate \$100,000 to match Revenue Sharing Program funds; and

WHEREAS, the James City Service Authority (JCSA) has agreed to give \$100,000 to the County for the required match; and

WHEREAS, the combined County and State funding totaling \$200,000 is requested to fund improvements to Tewning Road to shore up the existing roadway and improve drainage to ensure access to the facilities and businesses located along Tewning Road.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby supports this application for an allocation of \$100,000 through the VDOT Revenue Sharing Program and the County will contribute \$100,000.

BE IT FURTHER RESOLVED THAT the Board of Supervisors of James City County, Virginia, hereby grants authority for the County Administrator to execute project administration agreements for any approved revenue sharing projects.

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Mary K. Jones  
Chairman, Board of Supervisors

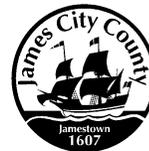
ATTEST:

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Robert C. Middaugh  
Clerk to the Board

Adopted by the Board of Supervisors of James City County, Virginia, this 22nd day of March, 2011.

RS\_TewningRd\_res



**MEMORANDUM COVER**

**Subject:** Revenue Sharing Program Fiscal Year 2012 – Turn Lane Improvements – Richmond Road from Lightfoot Road to Centerville Road – \$1,000,000

**Strategic Management Plan Pathway:** 3.d - invest in the capital project needs of the community

**Action Requested:** Authorization to apply for FY 2012 Revenue Sharing Funds

**Summary:** Funds are available under the Virginia Department of Transportation's FY 2012 revenue sharing program to match local funds for the construction or improvement of roadways in the locality. The program requires a dollar for dollar match by the County. Staff proposes to apply for revenue sharing funds in the amount of \$500,000 for turn lane improvements along Richmond Road between Lightfoot Road and Centerville Road. The County match would be \$500,000. The County's proposed FY 2012 budget includes \$500,000 under Special Projects for the revenue sharing match for the Route 60 project. Developer Funding is identified as the source of funds. Total cost of the project is \$1,000,000.

Staff recommends approval of the attached resolution.

**Fiscal Impact:** Required County match is \$500,000.

**FMS Approval, if Applicable:** Yes  No   
\_\_\_\_\_

**Assistant County Administrator**  
  
Doug Powell \_\_\_\_\_

**County Administrator**  
  
Robert C. Middaugh \_\_\_\_\_

**Attachments:**  
1. Memorandum  
2. Resolution  
3. Aerial Photo

**Agenda Item No.:** I-4  
  
**Date:** March 22, 2011

MEMORANDUM

DATE: March 22, 2011  
TO: The Board of Supervisors  
FROM: Steven W. Hicks, Manager of Development Management  
SUBJECT: Revenue Sharing Program Fiscal Year 2012 – Turn Lane Improvements – Richmond Road from Lightfoot Road to Centerville Road – \$1,000,000

---

The County has been notified by the Virginia Department of Transportation (VDOT) that revenue sharing funds are available for FY 2012 to match local funds for the construction or improvement of roadways in the locality. The program requires a dollar for dollar match by the County.

Staff proposes to apply for revenue sharing funds for turn lane improvements along Richmond Road between Lightfoot Road (Route 646) and Centerville Road (Route 614). The total cost of this project will be \$1,000,000 with the County share being \$500,000. The County's proposed FY 2012 budget includes \$500,000 under Special Projects for the revenue sharing match for the Route 60 project. Developer funding is identified as the source of funds.

The proposed turn lane improvements will improve traffic flow and accessibility to the Warhill Tract and provide for further economic development of the area.

Staff recommends adoption of the attached resolution which authorizes the County's intent to participate in the FY 2012 Revenue Sharing Program.

  
Steven W. Hicks

SWH/nb  
RS\_CtrvilleRd\_mem

Attachment

**RESOLUTION**

**REVENUE SHARING PROGRAM FISCAL YEAR 2012 – TURN LANE IMPROVEMENTS –**

**RICHMOND ROAD FROM LIGHTFOOT ROAD TO CENTERVILLE ROAD – \$1,000,000**

WHEREAS, the Board of Supervisors of James City County desires to submit an application requesting \$500,000 of Revenue Sharing Funds through the Virginia Department of Transportation (VDOT) Fiscal Year 2012 Revenue Sharing Program; and

WHEREAS, the County will allocate \$500,000 to match Revenue Sharing Program funds; and

WHEREAS, the combined County and State funding totaling \$1,000,000 is requested to fund turn lane improvements along Richmond Road (Route 60) between Lightfoot Road (Route 646) and Centerville Road (Route 614) to improve traffic flow and accessibility to the Warhill Tract and to provide for further economic development of the area.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby supports this application for an allocation of \$500,000 through the VDOT Revenue Sharing Program and the County will contribute \$500,000.

BE IT FURTHER RESOLVED THAT the Board of Supervisors of James City County, Virginia, hereby grants authority for the County Administrator to execute project administration agreements for any approved revenue sharing projects.

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Mary K. Jones  
Chairman, Board of Supervisors

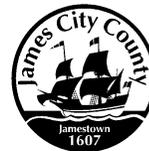
ATTEST:

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Robert C. Middaugh  
Clerk to the Board

Adopted by the Board of Supervisors of James City County, Virginia, this 22nd day of March, 2011.

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**MEMORANDUM COVER**

**Subject:** 2011 Redistricting Standards and Criteria and Procedural Guidelines - Revised

**Strategic Management Plan Pathway:** 5.e - Share information with citizen

**Action Requested:** Shall the Board approve the resolution adopting the redistricting standards, criteria, procedural guidelines, and the suggested redistricting calendar?

**Summary:** The County will need to be redistricted this year based on the 2010 Census. The attached cover memorandum, resolution, and redistricting calendar are to provide the Board with background, guidelines, and a schedule of events for the upcoming redistricting process.

Staff recommends adoption of the resolutions.

**Fiscal Impact:** N/A

**FMS Approval, if Applicable:** Yes  No

**Assistant County Administrator**  
  
Doug Powell \_\_\_\_\_

**County Administrator**  
  
Robert C. Middaugh \_\_\_\_\_

**Attachments:**  
1. Memorandum  
2. Resolution  
3. Redistricting Calendar

**Agenda Item No.:** I-5  
  
**Date:** March 22, 2011

**MEMORANDUM**

DATE: March 22, 2011

TO: The Board of Supervisors

FROM: Leo P. Rogers, County Attorney  
Robert C. Middaugh, County Administrator

SUBJECT: 2011 Redistricting Standards and Criteria and Procedural Guidelines - Revised

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There are four main purposes of this memorandum:

1. To provide the Board with background and a schedule of events for the upcoming redistricting.
2. To advise the Board of the most important of the legal parameters within which the redistricting must be accomplished.
3. To adopt standards and criteria, procedural guidelines, and a proposed calendar to guide the staff and the Board as the redistricting process unfolds.
4. To determine if a Redistricting Advisory Committee should be appointed. A Redistricting Advisory Committee was appointed in 1991 and 2001. Appointing a Committee would be helpful in the Preclearance Process with the U.S. Department of Justice and may help promote public input. However, the Board of Supervisors could take on that role, if it so desires.

1. BACKGROUND

The County will need to be redistricted this year. While the local census data has been promised for early March, the Federal law provides that the U.S. Department of Justice has 60 days in which to accomplish their review and, if additional information is requested, another 60 days from the submission of such information. Therefore, given the necessary review times, notification of voters whose voting district or polling places have been changed, it is absolutely necessary that the redistricting package be submitted no later than mid-May. Please note that the General Assembly has passed and the Governor has signed emergency legislation (HB1507) moving the June 14, 2011, primary to August 23, 2011.

Should the Board elect to appoint a Redistricting Advisory Committee, it would also need to meet and make its recommendation within the timeline. A suggested redistricting calendar has been attached to this memorandum. While it is aggressive, please note that it is premised on the General Assembly adopting a redistricting plan by April 8, 2011. Should that not occur, changes will be necessitated to either compress the schedule further or delay adoption of the County redistricting ordinance until May 24, 2011.

In addition, advances in computer technology have the potential for significant impact on the calendar. The County has GIS software designed specifically for the redistricting process. The County received the electronic database of information from the U. S. Census Bureau in February. The database contains more information and changes to data than in the 2001. For example, the County has substantially more census blocks for the 2011 Census than in 2000 and the census block group numbers have to all be renumbered for the 2011 Census.

The redistricting process also needs to consider the impact on the County's elected school board. The districts from which the School Board members are elected are the same as the Supervisors. The standards and criteria set forth later in this document will recognize the elected school board members by attempting, within reasonable efforts, to keep them located in their existing districts.

## 2. LEGAL PARAMETERS

In discussing the legal implications of redistricting, this memorandum quotes liberally from the Guide to Local Redistricting for 2011 distributed by the Division of Legislative Services. (copy attached)

### Districts

Section 24.2-304.1B repeats the constitutional requirements that local redistricting be done in 2011 and that the districts shall "give as nearly practicable representation in proportion to the population of the district" (the old "one person-one vote" principle)... and that the district must "be composed of contiguous and compact territory." In addition, the Board should be aware of the following requirements:

- Local election district boundaries must follow "clearly defined and clearly observable" lines. §24.2-305. This requirement also applies to precincts.

The following would constitute clearly observable boundaries:

- (a) Any named road or street;
  - (b) Any road or highway part of the Federal, State, or primary or secondary road system;
  - (c) Any river, stream, or drainage feature shown as a polygon boundary on the TIGER/line files of the United States Bureau of the Census; or
  - (d) Any other natural or constructed or erected permanent physical feature which is shown on an official map issued by VDOT, on a U.S. Geological Survey Topographical Map or shown as a polygon boundary on the TIGER/line files of the United States Bureau of the Census. A property line or a subdivision boundary may not be used unless it shown on one of the above-referenced maps.
- Localities are authorized to expend local funds to accomplish redistricting. §24.2-304.2.
  - Redistricting plans must be adopted by ordinance, include a description of the district boundaries and map, and be included in the minutes of the governing body. §24.2-304.3.
  - Copies of the ordinance, description, and map must be sent to the: 1) Local electoral board; 2) Secretary of the Commonwealth; 3) State Board of Elections; and 4) Division of Legislative Services. §24.2-304.3.
  - As provided in the Constitution, any citizen of a locality may bring suit to compel redistricting or to challenge a redistricting plan for violating equal population requirements. §24.2-304.4.
  - Localities must notify the Attorney General's office of any civil action filed to challenge election district boundaries or redistricting plans. §24.2-304.5. See, also, §2.1-121.1.
  - Changes in local election districts and precincts must be enacted 60 or more days before a general election. Notice must be published for two successive weeks prior to enactment of the change. Notice of any election district or polling place change must be mailed to voters at least 15 days before the next general, special, or primary election. §24.2-306.

### Precincts

It is necessary to review not only the election districts, but also the precincts to determine whether they may have grown too large. Section 24.2-307 provides that County precincts can be established with no more than 5,000 registered voters and no fewer than 100 registered voters. Each precinct must be wholly contained in one election district, and thus the redrawing of a district line will necessitate an adjustment of a precinct line.

### Polling Places

The requirements for polling places are spelled out in sections 24.2-310 and 24.2-310.1. There must be one polling place for each precinct. The polling place for a county precinct must (i) be located in the precinct or within one mile of the precinct boundary, (ii) meet accessibility requirements, and (iii) be located in a public building whenever practicable. It is important to consider the availability of appropriate polling place facilities in drawing local election district and precinct boundaries.

### Census Numbers

The Census Bureau has indicated its intent to only release one set of numbers for the 2011 Census.

### Compliance with Voting Rights Act (“VRA”)

#### Section 2 VRA

All states and localities are subject to Section 2 of the Voting Rights Act as amended in 1982. 42 U.S.C. §1973 (a) and (b) (1982). Section 2 prohibits any state or locality from imposing a voting qualification or procedure that results in the denial or abridgment of the right to vote on account of race, color or status as a member of a language minority group. The plaintiff in a Section 2 case may show a violation of Section 2:

“...if, based on the totality of circumstance, it is shown that the political processes leading to nomination or election in the State or political subdivision are not equally open to participation by members of a [protected] class of citizens...in that its members have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice.”

#### Section 5 VRA - Preclearance

As the Board is aware, the County cannot implement any redistricting plan until it is “precleared” by U.S. Department of Justice. The standard applied is “retrogression,” i.e., whether the plan or change will result in denying or abridging a person’s right to vote on account of race or color.

The U.S. Supreme Court stated that...the purpose of Section 5 has always been to insure that no voting-procedure changes would be made that would lead to a retrogression in the position of racial minorities with respect to their effective exercise of the electoral franchise. 425 U.S. 130, 141 (1976).

With respect to acceptable deviations, the courts have interpreted that a deviation under five percent, i.e., plus or minus five percent is acceptable.

### Traditional Redistricting Criteria

It is still important to consider the “traditional criteria” such as:

- \* Population equality;
- \* Compactness;
- \* Contiguity;
- \* Avoiding splits of political subdivisions and precincts;
- \* Preserving communities of interest;
- \* Preserving the basic location of existing districts;
- \* Protecting incumbents and avoiding the pairing of incumbents;
- \* Political fairness or competitiveness; and
- \* Voter convenience and effective administration of elections.

Additionally, the Board should consider using whole Census block rather than splitting blocks and estimating the population for each and although racial demographic may be considered, it cannot be a determining factor.

### 3. STANDARDS AND CRITERIA AND PROCEDURAL GUIDELINES

With the appointment of the Redistricting Advisory Committee, it is our judgment that the standards and criteria set forth herein will help to focus the Committee’s attention on those matters the Board feels are important. In addition, the submittal procedures will aid in documenting our submittal to Justice. Therefore to meet the challenge of the 2011 redistricting requirements, we recommend that the Board consider the following steps:

1. Adopt standards and criteria to be used to evaluate each redistricting plan considered; and
2. Adopt procedural guidelines to be followed for the submittal and review of redistricting plans.

#### Standards and Criteria

Basic standards and factors important to the Board should be clearly stated. These standards and factors should be used to evaluate each redistricting plan considered. The following are suggested:

All the criteria, with the exception of 7, are mandated by Federal, State, or the County’s Charter.

1. Five election districts shall be maintained. (James City County Charter)
2. Each election district shall be as nearly of equal population as practicable. The deviation from district to district shall be less than five percent (plus or minus five percent deviation). (VA Code Section 24.2- 304.1B)
3. Each election district and each precinct shall be composed as nearly as practicable of compact and contiguous territory. (VA Code Section 24.2-304.1B)
4. Each election district and precinct shall have clearly defined and clearly observable boundaries. Historic lines which appear as a block boundary in the United States Bureau of the Census map for the 2000 Census may be considered as an appropriate boundary. (VA Code Section 24.2-305)

5. The redistricting shall not dilute the voting opportunities of any racial or language minority group. Voting Rights Act Section 2
6. Known communities of interest shall not be divided into separate election districts if reasonably possible. (See Guide to Local Redistricting for 2011, Page 32)

Procedure for Submittal and Review of Plans

The Department of Justice has requested that the preclearance submittal include:

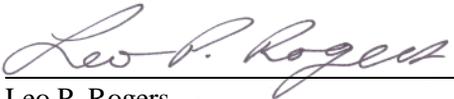
- (a) All plans submitted to the Board of Supervisors;
- (b) All plans considered by the Board of Supervisors;
- (c) The action taken by the Board of Supervisors on each plan specifying the reason for rejecting or approving the plans; and
- (d) Transcripts or minutes of all meetings considering the plans.

To meet this submittal objective, we recommend:

- 1) All plans shall be submitted to the County Administrator.
- 2) Each plan shall consider and include the entire County.
- 3) The County Administrator shall assign a number to each plan for purposes of record keeping.
- 4) Any plans initiated by Board members shall be prepared with staff assistance so that they can be drawn on appropriate maps.
- 5) A clear deadline for the submittal of plans should be established to allow the Board reasonable time to consider plans in advance of the deadline for adoption.
- 6) Each plan received by the County Administrator for Board consideration shall be available for public inspection.
- 7) The Board shall consider each plan submitted for consideration.
- 8) The Board, at a public meeting, may adjust, amend, or modify any plan before it or create a new plan. Such plan shall be assigned a number and shall be considered by the Board as a separate plan for purposes of review, approval, or denial.

RECOMMENDATION

Attached are two resolutions adopting the redistricting standards and criteria and procedural guidelines set forth herein and a suggested redistricting calendar. The resolution on the suggested redistricting calendar assumes that a Redistricting Advisory Committee will be appointed. If the Board would like to include additional criteria, please let us know prior to the March 22, 2011 meeting. Staff recommends that you consider these resolutions at your March 22, 2011 meeting.

  
Leo P. Rogers

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Robert C. Middaugh

LPR/RCM/nb  
2011RedistStd\_mem

Attachments

## RESOLUTION

### 2011 REDISTRICTING STANDARDS AND CRITERIA

#### AND PROCEDURAL GUIDELINES

WHEREAS, the Board of Supervisors feels it would be appropriate to express its position on the adoption of standards and criteria to evaluate redistricting plans and adopt procedural guidelines to be followed for submittals of redistricting plans.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby adopts the standards and criteria to evaluate redistricting plans and adopts the following guidelines for submittal of such plans:

#### Standards and Criteria

Basic standards and factors important to the Board should be clearly stated. These standards and factors should be used to evaluate each redistricting plan considered. The following are suggested:

All the criteria are stated by Federal, State, or the County's Charter.

1. Five election districts shall be maintained. (James City County Charter)
2. Each election district shall be as nearly of equal population as practicable. The deviation from district to district shall be less than five percent (plus or minus five percent deviation). (VA Code Section 24.2- 304.1B)
3. Each election district and each precinct shall be composed as nearly as practicable of compact and contiguous territory. (VA Code Section 24.2-304.1B)
4. Each election district and precinct shall have clearly defined and clearly observable boundaries. Historic lines which appear as a block boundary in the United States Bureau of the Census map for the 2000 Census may be considered as an appropriate boundary. (VA Code Section 24.2-305)
5. The redistricting shall not dilute the voting opportunities of any racial or language minority group. Voting Rights Act Section 2
6. Known communities of interest shall not be divided into separate election districts if reasonably possible. (See Guide to Local Redistricting for 2011, Page 32)

#### Procedure for Submittal and Review of Plans

The Department of Justice has requested that the preclearance submittal include:

- (a) All plans submitted to the Board of Supervisors;

- (b) All plans considered by the Board of Supervisors;
- (c) The action taken by the Board of Supervisors on each plan specifying the reason for rejecting or approving the plans; and
- (d) Transcripts or minutes of all meetings considering the plans.

To meet this submittal objective, we recommend:

- 1) All plans shall be submitted to the County Administrator.
- 2) Each plan shall consider and include the entire County.
- 3) The County Administrator shall assign a number to each plan for purposes of record keeping.
- 4) Any plans initiated by Board members shall be prepared with staff assistance so that they can be drawn on appropriate maps.
- 5) A clear deadline for the submittal of plans should be established to allow the Board reasonable time to consider plans in advance of the deadline for adoption.
- 6) Each plan received by the County Administrator for Board consideration shall be available for public inspection.
- 7) The Board shall consider each plan submitted for consideration.
- 8) The Board, at a public meeting, may adjust, amend, or modify any plan before it or create a new plan. Such plan shall be assigned a number and shall be considered by the Board as a separate plan for purposes of review, approval, or denial.

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Mary K. Jones  
Chairman, Board of Supervisors

ATTEST:

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Robert C. Middaugh  
Clerk to the Board

Adopted by the Board of Supervisors of James City County, Virginia, this 22nd day of March, 2011.

2011RedistStd\_res

**RESOLUTION**

**REDISTRICTING CALENDAR**

WHEREAS, the Board of Supervisors of James City County, Virginia, deems it appropriate to adopt a calendar setting forth a redistricting schedule; and

WHEREAS, in February 2011 the County received its census data from United States Bureau of the Census.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby adopts the following calendar setting forth a redistricting schedule.

March 22, 2011	Citizen Redistricting Committee appointed by Board
April 5, 2011	Deadline for Redistricting Advisory Committee to report its finding to Board and receive any additional assignments
April 12, 2011	Deadline for redistricting plans to be submitted to the County Administrator for consideration by the Board
April 12, 2011	Public hearing to receive comment prior to consideration of redistricting plan by the Board (7:00 p.m. regular Board meeting)
April 26, 2011	7:00 p.m. public hearing for Redistricting Ordinance
April 26, 2011	Adoption of Redistricting Ordinance (7:00 p.m. regular Board meeting)
April 29, 2011	Deadline for submitting preclearance to the Department of Justice

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Mary K. Jones  
Chairman, Board of Supervisors

ATTEST:

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Robert C. Middaugh  
Clerk to the Board

Adopted by the Board of Supervisors of James City County, Virginia, this 22nd day of March, 2011.

2011RedistCal\_res