

A G E N D A

JAMES CITY COUNTY BOARD OF SUPERVISORS

County Government Center Board Room

September 27, 2011

7:00 P.M.

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A. CALL TO ORDER	
B. ROLL CALL	
C. MOMENT OF SILENCE	
D. PLEDGE OF ALLEGIANCE – Holden Lipscomb, a ninth-grade student at Warhill High School	
E. PRESENTATION – CERT Graduation	
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F. PUBLIC COMMENT	
G. BOARD REQUESTS AND DIRECTIVES	
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a. September 13, 2011, Regular Minutes	
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MEMORANDUM

DATE: September 27, 2011
 TO: The Board of Supervisors
 FROM: Kathleen C. Hale, Director of Emergency Services
 SUBJECT: Recognition of New James City County Community Emergency Response Team (JCC CERT) Volunteers


The James City County Community Emergency Response Team (JCC CERT) Program educates citizens on disaster preparedness, response, and recovery for hazards that may impact our area. JCC CERT volunteers are qualified to provide assistance in the aftermath of an emergency including immediate assistance to victims and by collecting emergency information to support first responder efforts. They receive training in basic disaster response skills such as fire safety, light search and rescue, team organization, and disaster medical operations. Using their training, JCC CERT volunteers can assist others following an event until professional emergency responders and critical resources arrive.

The following James City County citizens will complete their essential 32-hour JCC CERT training on September 24, 2011, and join a growing cadre of more than 300 JCC CERT Volunteers who have completed training since the program began in 2003. Their names and neighborhoods are:

Kenneth Barnhart, III	Riverview Plantation
Mark Callazzo	Pointe at Jamestown
Gina Clayton	Ford's Colony
Linda Cole	Villages at Westminster
Jeffrey S. Lovejoy	Kingsmill
Paul S. Pao	Kingsmill
Jeff Saly	Colonial Heritage
Spencer Tuftee	Stonehouse Glen

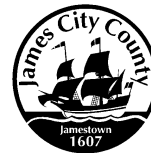
 Kathleen C. Hale

CONCUR:


 William T. Luton

KCH/nb
 CERTVolRecog_mem

Attachment



MEMORANDUM COVER

Subject: Grant Award - Department of Motor Vehicles - \$41,212

Action Requested: Shall the Board approve the resolution that accepts the Department of Motor Vehicles (DMV) grant award?

Summary: The James City County Police Department has been awarded a highway safety grant award from the Virginia Department of Motor Vehicles (DMV) for \$41,212. The funds are to be used towards traffic enforcement overtime and related training and equipment. Funds in the amount of \$420 will be used for training and conferences, \$9,572 will be used for the purchase of two radar units and an in-car camera, and the balance of the funds will be used for overtime pay for traffic enforcement geared toward speeding, driving under the influence, and occupant protection. The grant requires an in-kind match.

The DMV grant is typically an annually recurring grant passed through the National Highway Transportation Safety Administration (NHTSA) for the purpose of supporting Statewide goals in enforcing highway safety laws. These funds will not take the place of budgeted expenses.

Staff recommends adoption 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.: H-2

Date: September 27, 2011

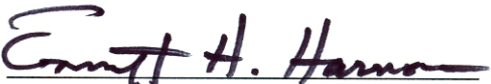
MEMORANDUM

DATE: September 27, 2011
TO: The Board of Supervisors
FROM: Emmett H. Harmon, Chief of Police
SUBJECT: Grant Award – Department of Motor Vehicles – \$41,212

The James City County Police Department has been awarded a highway safety grant award from the Virginia Department of Motor Vehicles (DMV) for \$41,212. The funds are to be used towards traffic enforcement overtime and related training and equipment. Funds in the amount of \$420 will be used for training and conferences, \$9,572 will be used for the purchase of two radar units and an in-car camera, and the balance of the funds will be used for overtime pay for traffic enforcement geared toward speeding, driving under the influence, and occupant protection. The grant requires an in-kind match which will be achieved through maintenance and fuel costs that are already budgeted.

The DMV is typically an annually recurring grant passed through the National Highway Transportation Safety Administration (NHTSA) for the purpose of supporting Statewide goals in enforcing highway safety laws. These funds will not take the place of budgeted expenses.

Staff recommends adoption of the attached resolution.


Emmett H. Harmon

CONCUR:

Robert C. Middaugh

EHH/nb
GA_DMVeh_mem

Attachment

RESOLUTION

GRANT AWARD – DEPARTMENT OF MOTOR VEHICLES – \$41,212

WHEREAS, the James City County Police Department has been awarded a highway safety grant award from the Virginia Department of Motor Vehicles (DMV) for \$41,212; and

WHEREAS, funds are to be used towards traffic enforcement overtime and related training and equipment; and

WHEREAS, the grant requires an in-kind match.

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:

DMV – FY 12 Grant	<u>\$41,212</u>
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Expenditure:

DMV – FY 12 Grant	<u>\$41,212</u>
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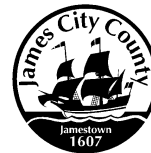
Mary K. Jones
Chairman, Board of Supervisors

ATTEST:

Robert C. Middaugh
Clerk to the Board

Adopted by the Board of Supervisors of James City County, Virginia, this 27th day of
September, 2011.

GA_DMVeh_res



MEMORANDUM COVER

Subject: Purchasing Policy Update and Public-Private Educational and Infrastructure Act (PPEA) Procedures Update

Action Requested: Shall the Board approve the proposed updates to the Purchasing Policy and the Public-Private Educational and Infrastructure Act (PPEA) Procedures?

Summary: The Board of Supervisors adopted the current Purchasing Policy on January 9, 2001 and the current PPEA Procedures on June 24, 2003. The Purchasing Policy defines the authority and responsibilities of the County Purchasing Office. The PPEA Procedures define the process whereby the County may receive and evaluate any proposal submitted under the provisions of the PPEA, an alternative to traditional procurement and financing methods that extends the potential benefits of public-private partnerships to local governments. The County has successfully used the PPEA as a procurement method on a number of projects including the Warhill Site Improvements, Warhill Synthetic Turf Fields, Legacy Hall, and the new Police Building.

The proposed updates to the Purchasing Policy and the PPEA Procedures reflect recent changes to the Code of Virginia, County policies, and widely recognized purchasing best practices.

Staff recommends approval 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. Exhibit 1
 - 4. Exhibit 2

Agenda Item No.: H-3

Date: September 27, 2011

MEMORANDUM

DATE: September 27, 2011

TO: The Board of Supervisors

FROM: John E. McDonald, Manager, Financial and Management Services

SUBJECT: Purchasing Policy and Public-Private Educational and Infrastructure Act (PPEA) Procedures Updates

The Board of Supervisors adopted the current Purchasing Policy on January 9, 2001 and the current PPEA Procedures on June 24, 2003. The Purchasing Policy defines the authority and responsibilities of the County Purchasing Office. The PPEA Procedures define the process whereby the County may receive and evaluate any proposal submitted under the provisions of the PPEA, an alternative to traditional procurement and financing methods that extends the potential benefits of public-private partnerships to local governments. The County has successfully used the PPEA as a procurement method on a number of projects including the Warhill Site Improvements, Warhill Synthetic Turf Fields, Legacy Hall, and the new Police Building.

The proposed updates to the Purchasing Policy and the PPEA Procedures reflect recent changes to the Code of Virginia, County policies, and widely recognized purchasing best practices. Highlights of the proposed changes to the Purchasing Policy include increasing the three-quote requirement to \$2,500 from \$1,000; increasing the sealed Invitation for Bid/Request for Proposal requirement to \$50,000 from \$30,000; adopting guidelines that will continue to allow the County to use a Request for Proposal for construction procurements; and removal of value engineering as a requirement for projects over \$1 million since the County's Sustainable Building Policy now requires projects of this size to achieve Leadership in Energy and Environmental Design (LEED) Silver Certification that often requires review of building design and material choices in a manner similar to value engineering. The proposed changes to the PPEA Procedures reflect changes to the PPEA portion of the Code of Virginia. The proposed updates to the Purchasing Policy and PPEA Procedures are attached as Exhibits 1 and 2. Each Exhibit contains a clean copy of the proposed update along with a copy showing the changes from the current version of the document.

Staff recommends approval of the attached resolution.

John E. McDonald

JEM/gb
PolProcUpdates_mem

Attachments

RESOLUTION

PURCHASING POLICY AND PUBLIC-PRIVATE EDUCATIONAL AND

INFRASTRUCTURE ACT (PPEA) PROCEDURES UPDATES

WHEREAS, the Board of Supervisors adopted the current Purchasing Policy on January 9, 2001, and the current PPEA Procedures on June 24, 2003; and

WHEREAS, recent changes to the Code of Virginia, County policies, and widely recognized purchasing best practices require updates to the Purchasing Policy and the PPEA Procedures.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, adopts the attached updated versions of the Purchasing Policy and PPEA Procedures.

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 27th day of September, 2011.

PolProcUpdates_res

PURCHASING POLICY

CHAPTER 1 - GENERAL PROVISIONS

Section 1 - Title

This document shall be known as the James City County Purchasing Policy.

Section 2 - Organization

The James City County Purchasing Office is part of the Department of Financial and Management Services. It operates under the supervision of the Assistant Manager of the Department of Financial and Management Services. The Purchasing Director supervises all Purchasing Office operations.

Section 3 - Responsibility

The Purchasing Office, through the Purchasing Director, is responsible for managing all County procurement activity and implementing this Purchasing Policy. The Office shall utilize modern purchasing and supply management techniques and ensure all procurement activity complies with applicable laws and generally accepted professional standards. The Purchasing Director provides methods to handle delegated purchasing authority.

Section 4 - Duties

The Purchasing Director shall prepare and maintain a Purchasing Manual containing detailed rules and regulations consistent with this Policy and the laws of the Commonwealth of Virginia governing the operations of County purchasing. The Purchasing Director shall propose amendments to the James City County Purchasing Manual for approval by the Assistant Manager of the Department of Financial and Management Services.

The Purchasing Director shall coordinate purchasing procedures among departments by becoming acquainted with the needs of each, assisting in the preparation of specifications, locating the sources of needed products or services and providing follow-up after delivery. Purchasing shall review the quality, quantity, and kind of goods and services requested and recommend alternatives, if appropriate.

The Purchasing Director shall act as the County's representative on matters pertaining to purchasing as defined within this Policy and the James City County Purchasing Manual.

The Purchasing Director shall ensure procurement actions are properly documented and maintain all related records.

The Purchasing Director shall pursue the implementation of a fully automated and integrated purchasing system, including use of electronic media for vendor communications, solicitation, distribution, and e-commerce activities.

Section 5 - Cooperative Procurement

The County may participate in, sponsor, conduct, or administer a cooperative procurement agreement with one or more public bodies or agencies of the United States for the purpose of combining requirements to increase efficiency or reduce administrative expenses. Nothing herein shall prohibit the assessment or payment by direct or indirect means of any administrative fee that shall allow for participation in any such arrangement.

Section 6 - Definitions

Best Value means the overall combination of quality, price, and various elements of required goods and services that in total are optimal relative to the County's needs. Purchasing shall use best value bid evaluation when procuring certain goods and nonprofessional services when it is in the best interests of the County to allow factors other than price to be considered in making an award. The factors to be used in making the award and the numerical weighting for each factor are predetermined in a solicitation. Best value bid evaluation factors may include any of the following **or other factors determined to be relevant by the Purchasing Director**:

- Quality of the good or service;
- Operational costs incurred by the County if the bid is accepted;
- Life-cycle costing;
- Reliability of delivery and implementation schedules;
- Maximum facilitation of data exchange and systems integration; Warranties, guarantees, and return policy;
- Vendor financial stability;
- Consistency of proposed solution with County's planning documents and strategic direction;
- Quality and effectiveness of the business solution and approach;
- Industry and program experience;
- Prior record of vendor performance;
- Vendor expertise with projects of similar scope and complexity;
- Consideration of potential product acceptance by all user groups;
- Proven development methodologies and tools; and
- Innovative use of current technologies and quality results.

Competitive Sealed Bidding is a formal method of selecting the lowest responsive and responsible bidder. It includes the issuance of a written Invitation for Bid (IFB), public notice, a public bid opening, and evaluation based on the requirements set forth in the IFB. The Purchasing Director may elect for prequalification of bidders or include a statement of any requisite qualifications of potential contractors in the IFB. Multiple awards may be made when so specified in the IFB. An IFB may be issued to vendors electronically. Bids may be submitted electronically if specifically authorized in the IFB.

Competitive Negotiation is a formal method of selecting the top rated offeror. It includes the issuance of a Request for Proposals (RFP), public notice, evaluation based on the criteria set forth in the RFP and allows negotiation with the top rated offeror. Any unique capabilities or qualifications required of the contractor shall be set forth in the RFP. An RFP may be issued to vendors electronically. Offers may be submitted electronically if specifically authorized in the RFP.

Construction shall mean building, altering, repairing, improving, or demolishing any structure, building, road, drainage or sanitary facility, and any draining, dredging, excavation, grading, or similar work upon real property.

Construction Management contract shall mean a contract in which a party is retained by the owner to coordinate and administer contracts for construction services for the benefit of the owner, and may also include, if provided in the contract, the furnishing of construction services to the owner.

Design-build contract shall mean a contract between a public body and another party in which the party contracting with the public body agrees to both design and build the structure, roadway or other item specified in the contract.

Emergency shall be deemed to exist when a breakdown in machinery and/or a threatened termination of essential services or a dangerous condition develops, or when any unforeseen circumstances arise causing curtailment or diminution of essential services.

Firm shall mean any individual, partnership, corporation, association, or other legal entity permitted by law to practice in the Commonwealth of Virginia; or any other individual, firm partnership, corporation, association, or other legal entity qualified to perform professional services.

Goods shall mean all material, equipment, supplies, printing, and automated data processing hardware and software.

Informality shall mean a minor defect or variation of a bid or proposal from the exact requirements of the IFB or RFP which does not affect the price, quality, quantity, or delivery schedule for the goods, services, or construction being procured.

Nonprofessional services shall mean any service not specifically identified below as a professional or consultant service.

Procurement transaction shall mean all functions that pertain to the obtaining of any goods, services, or construction, including description of requirements, selection and solicitation of sources, preparation and award of contracts, and all phases of contract administration.

Professional or consultant services shall mean work performed by an independent contractor within the practice of accounting, actuarial services, architecture, land surveying,

landscape architecture, law, dentistry, medicine, optometry, pharmacy, or professional engineering. Professional services shall be procured by competitive negotiation.

Public body shall mean any legislative, executive, or judicial body, agency, office, department, authority, post, commission, committee, institution, board, or political subdivision created by law to exercise some sovereign power or to perform some governmental duty and empowered by law to undertake the activities described in this policy. **Public body shall include any metropolitan planning organization or planning district commission which operates exclusively within the Commonwealth of Virginia.**

Public contract shall mean an agreement between a public body and a nongovernmental source that is enforceable in a court of law.

Public or County employee shall mean any person employed by the County, including elected officials or appointed members of governing bodies.

Responsible bidder or Responsible offeror shall mean an individual, company, firm, corporation, partnership, or other organization who has the capability in all respects to perform fully the contract requirements and the moral and business integrity and reliability which will assure good faith performance and who has been prequalified if required.

Responsive bidder shall mean shall mean an individual, company, firm, corporation, partnership, or other organization who has submitted a bid which conforms in all material respects to the Invitation for Bids.

Services shall mean any work performed by an independent contractor wherein the services rendered do not consist primarily of acquisition of equipment or materials or the rental of equipment, materials, and supplies.

Surplus property shall mean any property that exceeds the requirements of the entire County.

Targeted business shall mean businesses that are small, locally-owned, locally-operated, or owned by a woman or minority.

~~**Value Engineering** shall mean review of a project's architectural and engineering drawings and specifications by an independent team of engineers and/or architects. The independent team makes recommendations that focus on achieving like performance at reduced costs. Value engineering must be applied as early in the design cycle as feasible to achieve maximum benefits. For large construction projects, value engineering studies are performed during the schematic stage and then at approximately the 30-40 percent design stage.~~

Virginia Public Procurement Act shall mean those portions of the Code of Virginia, 1950, as amended designated as the Virginia Public Procurement Act.

CHAPTER 2 - PURCHASING POLICIES

Section 1 - Compliance

All James City County procurement transactions shall comply with the Code of Virginia, the James City County Purchasing Policy, and the James City County Purchasing Manual. Fiscal partners of the County, organizations that utilize the County as their fiscal **or purchasing** agent, and County Departments/Constitutional Officers exempt from regular purchasing requirements through special provisions of the Virginia Public Procurement Act and/or other sections of the Code of Virginia will be subject to this compliance policy if the procurement is handled through the James City County Purchasing Office. The James City County Purchasing Office encourages the adoption of this Policy by the governing bodies/individuals of the aforementioned entities.

Section 2 - Purchasing Methods

1-Use of Competitive Sealed Bidding or Competitive Negotiation

Unless otherwise authorized by law or provided for in this Policy or the James City County Purchasing Manual, all County contracts with nongovernmental contractors for the purchase or lease of goods, or for the purchases of services, insurance or construction shall be awarded after competitive sealed bidding or competitive negotiation.

2-Competitive Sealed Bidding and Competitive Negotiation

Whenever the County seeks to procure a good or service estimated to cost more than ~~\$30,000~~ **\$50,000**, an Invitation to Bid or a Request for Proposals shall be issued. Best value concepts may not be considered when procuring construction or professional services. Purchases shall not be split to avoid the ~~\$30,000~~ **\$50,000** limit. An Invitation to Bid shall either be advertised in a newspaper of general circulation or posted in a designated public area at least ten days prior to the date bids are due. A Request for Proposals shall be advertised once in a newspaper of general circulation in James City County at least ten days prior to the date proposals are due. Responses to Formal Sealed Bids and Proposals are secured unopened until the date and time specified in the advertisement.

The Purchasing Director shall have the authority to waive informalities in bids/proposals, reject all bids/proposals, parts of all bids/proposals, or all bids/proposals for any one or more good or service included in a solicitation when in the Director's judgment the public interest may thereby be served. The Purchasing Director shall determine the responsibility **of a bid or proposal** and responsiveness of a bid.

3- Construction Management / Design Build Services Procurement Method

A. In addition to competitive bidding and competitive negotiations, the County may enter into a contract for construction on a fixed price or not-to-exceed price design-build or construction management basis consistent with this Policy and law.

B. Competitive Negotiation – Construction Management / Design Build Services

1. Determination

a. The County may enter into a contract for construction on a fixed price or not-to-exceed price design-build or construction management basis in accordance with the Virginia Public Procurement Act (VPPA) §2.2-4308. Prior to issuing a Request for Proposal for any design-build or construction management project, the Purchasing Director will document that a) the design-build or construction management contract is more advantageous than a competitive sealed bid construction contract, b) there is a benefit to the County by using a design-build or construction management contract, and c) competitive sealed bidding is not practical or fiscally advantageous.

2. Evaluation Committee

a. The Purchasing Director shall appoint an Evaluation Committee which will include a licensed professional engineer or architect with professional competence appropriate to the proposed project. The licensed professional engineer or architect shall advise the County regarding the use of design-build or construction management project and will assist with the preparation of the Request for Proposal consistent with this Policy for competitive negotiation of non-professional services, and will assist in the evaluation of proposals. The licensed professional engineer or architect services may be provided under a professional services contract by a qualified person or firm.

3. Selection, Evaluation and Award of Construction Management or Design- Build Contracts.

a) Design Requirements. The Request for Proposal shall include and define the criteria of the construction project in the areas such as site plans; floor plans; exterior elevations; basic building envelope materials; fire protection information plans; structural, mechanical (HVAC), and electrical systems; special telecommunications; and may define such other requirements as the County determines appropriate for the particular construction project.

b) Selection, Evaluation and Award Factors. Proposal evaluation factors and other source selection criteria shall be included in the Request for Proposal for the specific design-build or construction management project.

c) Selection shall be made of two or more offerors deemed to be fully qualified and best suited among those submitting proposals, on the basis of the factors involved in the Request for Proposal, including price if so stated in the Request for Proposal. Negotiations shall then be conducted with each of the offerors so selected. After negotiations have been conducted with each offeror so selected, the County shall select the fully qualified offeror which, in its opinion, has made the best value proposal in response to the Request for Proposals, and shall award the contract to that offeror. When the terms and conditions of multiple awards are so stated in the RFP, awards may be made to more than one offeror. Should the County determine in writing and in its sole discretion that only one offeror is fully qualified, or that one offeror is clearly more highly qualified than the others under consideration, a contract may be negotiated and awarded to that offeror.

Trade secrets or proprietary information provided by an offeror in response to a request for qualifications or a request for proposals shall not be disclosed to the public or to competitors, provided the offeror has invoked protection pursuant to the Code of Virginia § 2.2-4342(F).

d) The Purchasing Director may promulgate such additional procedures, not inconsistent with the provisions of this section and consistent with the procedures for the procurement of nonprofessional

services through competitive negotiations, as deemed necessary and appropriate to effect the selection and evaluation of offerors and the award of design-build and construction management contracts.

4-Sole Source

Sole source procurement is authorized when there is only one source practicably available for the required goods or services. Competition is not available in a sole source situation; thus distinguishing it from a situation where the product required is restricted to the manufacturer(s) stipulated, but is sold through distributors and competition between them can be obtained. Sole source justification based solely on a single vendor's capability to deliver in the least amount of time is not appropriate since availability alone is not a valid basis for determining a sole source procurement. All sole source procurements require Purchasing Director approval.

5-Emergency

In case of an emergency, as defined herein, a contract may be awarded without competitive sealed bidding or competitive negotiation; however, such procurement shall be made with such competition as is practical under the circumstances. Except as provided below, approval by the Purchasing Director shall be required for all emergency purchases. If an emergency occurs at a time other than regular County business hours, the Department Manager may purchase the required goods or services in an amount not to exceed \$50,000. Emergency procurements over \$50,000 shall be approved by the County Administrator or designee. The Department Manager shall, not later than the next business day, submit a requisition, tabulation of bids received (if any), delivery record, and a brief explanation of the emergency.

6-Small Purchases

Any procurement not expected to exceed ~~\$30,000~~ \$50,000 in expenditure of public funds, from any source, may be made in accordance with the following small purchase limits as approved by the James City County Board of Supervisors on August 8, 2000. Procurements up to \$1,000 \$2,500 may be made upon receipt of one written or verbal quote or proposal. Solicitation of Three three phone quotes or proposals are required for purchases of \$1,001-\$5,000 \$2,500 - \$10,000. Solicitation of Three three written quotes or proposals are required for purchases of \$5,001-\$30,000. \$10,001 - \$50,000.

Award shall be made to the lowest responsive and responsible vendor that supplies a quote or to the offeror which made the best proposal. If quotes are not obtained, a statement of the reasons why the quotations were not possible shall be recorded by the Purchasing Director. Procurement requirements shall not be artificially divided so as to constitute a small purchase under this policy. Similar items or services may be combined for formal competition at the Purchasing Director's discretion.

7-Purchasing Card

Selected County personnel may be issued Purchasing Cards to use for small purchases and emergency procurements. The competition requirements for small and emergency purchases

shall apply. All Purchasing Card transactions shall conform to the James City County Purchasing Card Policy and Procedures. The Purchasing Card Policy and Procedures are part of the James City County Purchasing Manual.

Section 3 - Prequalification

Prospective contractors may be prequalified for particular types of goods, services, insurance or construction and consideration of bids or proposals limited to prequalified contractors. Any prequalification procedures shall be established in writing and sufficiently in advance of their implementation to allow potential contractors a fair opportunity to complete the process.

The Purchasing Director may deny prequalification to any contractor only upon finding one of the following:

- a) The contractor does not have sufficient financial ability to perform the contract that would result from such procurement. If a bond is required to ensure performance of a contract, evidence that the contractor can acquire a surety bond from a corporation included on the United States Treasury list of acceptable surety corporations in the amount and type required by the County shall be sufficient to establish the financial ability of such contractor to perform the contract resulting from such procurement.
- b) The contractor does not have appropriate experience to perform the construction project in question.
- c) The contractor or any officer, director or owner thereof has had judgments entered against him within the past ten years for the breach of contracts for governmental or nongovernmental construction, including, but not limited to, design-build or construction management.
- d) The contractor has been in substantial noncompliance with the terms and conditions of prior construction contracts with the County without good cause. If the County has not contracted with a contractor in any prior construction contracts, the County may deny prequalification if the contractor has been in substantial noncompliance with the terms and conditions of comparable construction contracts with another public body without good cause. The County may not utilize this provision to deny prequalification unless the facts underlying such substantial noncompliance were documented in writing in the prior construction project file and such information relating thereto given to the contractor at that time, with the opportunity to respond.
- e) The contractor or any officer, director, owner, project manager, procurement manager or chief financial officer thereof has been convicted within the past ten years of a crime related to governmental or nongovernmental construction or contracting, including, but not limited to, a violation of (i) ~~Title 11, Chapter 7, Article 4 of the Virginia Code (§ 11-72 et seq.)~~ **Article 6 (§ 2.2-4367 et seq.) of the Virginia Public Procurement Act**, (ii) the Virginia Governmental Frauds Act (Virginia Code § 18.2-498.1 et seq.), (iii) Chapter 4.2 (§ 59.1-68.6 et seq.) of Title 59.1 of the Virginia Code, or (iv) any substantially similar law of the United States or another state.

f) The contractor or any officer, director or owner thereof is currently debarred pursuant to an established debarment procedure from bidding or contracting by any public body, agency of another state or agency of the federal government.

g) The contractor failed to provide to the County in a timely manner any information requested by the County relevant to items a) through f) above.

Section 4 - Value Engineering

All projects with an estimated cost exceeding \$1,000,000 shall have an independent Value Engineering review unless it is waived, in writing, by the County Administrator. This requirement also includes projects overseen by another governing body but using County funds.

Section 5 - Contract Approval Authority

Authorization by the Purchasing Director shall be required for contracts if the amount is \$50,000 or less. Authorization by the County Administrator shall be required for awards over \$50,000 up to \$100,000. Authorization by the Board of Supervisors shall be required for the award of all contracts over \$100,000.

Section 6 - Authority to Amend or Terminate a Contract

Any James City County contract that includes provisions for modification of the contract during performance may be amended by the Purchasing Director. Any single or cumulative increase to a fixed price contract that would result in a new contract amount over \$50,000 requires written approval of the County Administrator. Any single or cumulative increase to a fixed-price contract greater than twenty-five percent of the original contract or \$50,000, whichever is greater, requires written approval of the Board of Supervisors.

The Purchasing Director may terminate any contract for convenience, cause, or non-appropriation of funds in accordance with the contract terms and conditions after consultation with the Office of the County Attorney.

Section 7 - Preferences and Tie Bids

In accordance with the Code of Virginia, James City County does not grant preferences or set-asides except in the case of tie bids. If all bids are for the same total amount or unit price (including authorized discounts and delivery times) and if the public interest will not permit the delay of re-advertisement for bids, the Purchasing Director shall be authorized to award the contract to the resident James City County tie bidder whose firm has its principal place of business in the County, or if there be none, to the resident Virginia tie bidder, or if there be none, to one of the tie bidders by drawing lots.

Section 8 - Vendor Outreach

The Purchasing Office is the County's main contact point with vendors. As such, the Office will pursue outreach activities that may include developing specialized publications, attending/hosting trade fairs, and encouraging vendor visits with Office staff.

Section 9 8- Anti-discrimination

James City County conforms, as applicable, to the provisions of the Federal Civil Rights Act of 1964, as amended; the Virginia Fair Employment Contracting Act of 1975, as amended; the Virginians With Disabilities Act; the Americans With Disabilities Act, and Sections 11-44 and 11-51 2.2-4310 and 2.2-4311 of the Virginia Public Procurement Act. All bidders/offerors who submit bids/proposals to the County are required to certify they conform to these same anti-discrimination requirements.

Section 10 9- Assistance To Targeted Businesses

The County shall undertake every reasonable effort to increase the opportunity for participation in the procurement process by targeted businesses. To this end, the Purchasing Office shall:

1. Make targeted businesses aware of the County's procurement policies. Any targeted business seeking assistance in understanding or completing any bids or proposals should seek the assistance of the Purchasing Department.
2. Participate in training seminars for the purpose of informing targeted business bidders of the procurement opportunities and procedures.
3. Participate in local and regional targeted business purchasing fairs.
4. Cooperate with the Department of Minority Business Enterprise, the United States Small Business Administration, and other public or private agencies.

Section 11 10- Debarment Or Suspension

Debarment is the County's exclusion of certain individuals or firms from contracting with the County for a specified period of time. The Purchasing Director may debar a person or company from consideration for awards or contracts for a period up to three (3) years upon a finding of cause that the vendor has engaged in any of the following activities.

1. Unsatisfactory performance on a contract with a public body, including but not limited to, failure to comply with contract terms and conditions or to meet specification/scope of services requirements.
2. Offering any gift, gratuity, favor, or advantage to any County employee who exercises official responsibility for procurement transactions.
3. Failing to disclose a condition constituting a conflict of interest by any officer, director, owner, or partner of the vendor in a contract or purchase order awarded by the County.

4. Conviction of any officer, director, owner, partner, or agent of the vendor of any criminal offense involving public contracting.
5. Court judgment finding a violation of Federal or State antitrust laws.
6. Conviction of any criminal offense, or a judgment in civil litigation, which indicates a lack of moral or business integrity.
7. Abandonment of performance or termination for default on any other James City County project.
8. Default on any surety bond or written guaranty on which James City County is an obligee.
9. The filing of a bankruptcy petition, by, against, or regarding the contractor.
10. Any other cause that the Purchasing Director determines to be so serious and compelling as to affect responsibility as a contractor, such as debarment by another governmental entity for any cause listed herein, or prior reprimands.

The Purchasing Director may suspend a person or company from consideration for award or contracts for a period up to three months upon a finding of probable cause that might lead to debarment.

In debarring or suspending any individual or firm from contracting with the County, the Purchasing Director shall follow all applicable procedures outlined herein and in the James City County Purchasing Manual.

Section ~~12~~ 11- Excess and Surplus Property

The Purchasing Director shall be responsible for:

1. Redistribution of serviceable excess personal property.
2. Disposal of surplus County personal property through sealed bid, auction, trade-in, or fixed price sales. Some personal property may also be disposed of by junking, sale as scrap metal, or cannibalization. ~~Sale of surplus personal property shall be based, wherever feasible, on competitive bids. If the amount of the sale is estimated to exceed \$5,000 for a single item, sealed bids shall, unless the Board of Supervisors shall provide otherwise, be solicited by public notice inserted at least once in a newspaper of countywide circulation and at least five calendar days before the final date of submitting bids.~~
3. Disposal of unclaimed property in the custody of the Police Department in accordance with the Code of Virginia Sections ~~15.1-133 and 15.1-133.01~~ 15.2-1719, 15.2-1720 and 15.2-1721.

Surplus County property may be donated to charitable and other non-County activities where appropriate. The Purchasing Director shall evaluate the request for donation and first determine

whether the requested item is needed by any County agency. Other factors to be considered in the evaluation are availability of the requested item, serviceability, compatibility to the intended use and potential benefits to the County, including public relations and goodwill.

Section 13.12- Public Purchasing Ethics

All James City County procurement is subject to and will be conducted in accordance with the Virginia Public Procurement Act, the State and Local Conflict of Interests Act, and the Governmental Frauds Act.

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

June 24, 2003

September 27, 2011

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I. INTRODUCTION

The Public-Private Education Facilities and Infrastructure Act of 2002, Va. Code Ann. §§ 56-575.1 to -575.16 16 18 (the “PPEA”), grants a public entity the authority to create public-private partnerships for the development of a wide range of projects for public use (“qualifying projects”) if the public entity determines that there is a need for a project and that private involvement may provide the project to the public in a timely or cost-effective fashion. The definition of “public entity” in § 56-575.1 of the PPEA includes, *inter alia*, any political subdivision of the Commonwealth. The PPEA defines “responsible public entity” (RPE) to include any public entity that “has the power to acquire, design, construct, improve, renovate, expand, equip, maintain, or operate the applicable qualifying project.” Individually negotiated interim or comprehensive agreements between a private entity and an RPE will define the respective rights and obligations of the RPE and the private operator.

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

II. GENERAL PROVISIONS

A. Proposals

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

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

3. All Unsolicited Proposals shall be submitted to the County by delivering six complete copies, together with the required initial review fee as provided below in § II C., to the Purchasing Director, James City County Purchasing Office. Other

requirements for an Unsolicited Proposal are as set forth below in § IV. A working group may be designated by the County Administrator to review and evaluate Unsolicited Proposals.

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

5. Proposals should be prepared simply and economically, providing a concise description of the proposer’s capabilities to complete the qualifying project and the benefits to be derived from the project by the RPE. Project benefits to be considered are those occurring during the construction, renovation, expansion or improvement phase and during the life cycle of the project. Proposals also should include a scope of work and a financial plan for the project, containing enough detail to allow an analysis by the RPE of the financial feasibility of the project. The cost analysis of a proposal should not be linked solely to the financing plan, as the RPE may determine to finance the project through other available means.

B. Affected Local Jurisdictions

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

2. Any private entity submitting a Solicited Bid/Proposal or an Unsolicited Proposal to the County as the responsible public entity for a qualifying project must provide any other affected local jurisdiction with a copy of the proposal by certified mail, express delivery, or hand delivery within five (5) business days of submission of the proposal to the County. The private entity is responsible for documenting delivery of the request for proposals. Any such other affected local jurisdiction shall have 60 days from the date it receives its copy of the proposal to submit written comments to the County and to indicate whether the proposed qualifying project is compatible with the affected local jurisdiction’s local comprehensive plan, local infrastructure development plans, capital improvements budget, or other government spending plan. The County will consider comments received within the 60-day period prior to entering into a comprehensive agreement pursuant to the PPEA regarding the proposal. However, the County may begin or continue its evaluation of any such proposal during the 60-day period for the receipt of comments from affected local jurisdictions.

C. Proposal Review Fee

1. A review fee will be charged to a private entity submitting an Unsolicited Proposal to the County to cover the County’s costs of processing, reviewing, and evaluating the proposal, including the cost to compare it to any competing proposals. Such costs include but are not limited to County staff time, the cost of any materials or supplies expended, and the cost of any outside advisors or consultants, including but not

limited to attorneys, consultants and/or financial advisors, used by the County in its sole discretion to assist in processing, reviewing, or evaluating the proposal. Such fees generally shall be in the amount necessary to completely cover all of the County's costs.

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

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

b. Additional fees. Additional fees shall be imposed on and paid by the private entity throughout the processing, review, and evaluation of the Unsolicited Proposal if and as the County reasonably anticipates incurring costs in excess of the initial fee paid by the private entity. The County will notify the private entity of the amount of such additional fees when it anticipates incurring such costs. Prompt payment of such additional fees is required before the County will continue to process, review, and evaluate the proposal.

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

D. Virginia Freedom of Information Act

1. General applicability of disclosure provisions

Proposal documents submitted by private entities are generally subject to the Virginia Freedom of Information Act ("FOIA") except that subdivision 11 of §2.2-3705.6 exempts certain documents from public disclosure. FOIA exemptions, however, are discretionary, and the RPE may elect to release some or all of documents except to the extent the documents are:

a. Trade secrets of the private entity as defined in the Uniform Trade Secrets Act (§59.1-336 et seq.);

b. Financial records of the private entity that are not generally available to the public through regulatory disclosure or otherwise, including but not limited to, balance sheets and financial statements; or

c. Other information submitted by a private entity, where if the record or document were made public prior to the execution of an interim or comprehensive agreement the financial interest or bargaining position of the public or private entity would be adversely affected.

Additionally, to the extent access to proposal documents submitted by private entities are compelled or protected from disclosure by a court order, the RPE must comply with the provisions of such order.

2. Protection from mandatory disclosure for certain documents submitted by a private entity.

a. Any confidential and proprietary information provided to a responsible public entity by a private entity pursuant to the PPEA shall be subject to disclosure under the Virginia Freedom of Information Act (“FOIA”) except as provided by § 56-575.4(G) of the PPEA.

b. Before a document of a private entity may be withheld from disclosure, the private entity must make a written request to the RPE at the time the documents are submitted designating with specificity the documents for which the protection is being sought and a clear statement of the reasons for invoking the protection with reference to one or more of the three class of records listed in Section D. 1.a. A private entity may request and receive a determination from the County as to the anticipated scope of protection prior to submitting the proposal. The County is authorized and obligated to protect only confidential proprietary information, and thus will not protect any portion of a proposal from disclosure if the entire proposal has been designated confidential by the private entity without reasonably differentiating between the proprietary and non-proprietary information contained therein.

c. Upon receipt of a written request from a private entity that designated portions of a proposal be protected from disclosure, the County will determine whether the documents contain (i) trade secrets, (ii) financial records, or (iii) other information that would adversely affect the financial interest or bargaining position of the RPE or private entity in accordance with Section D.1.a. The RPE shall make a written determination of the nature and scope of the protection to be afforded by the RPE under this subdivision. If the determination regarding protection or the scope thereof differs from the private entity’s request, then the County will accord the private entity a reasonable opportunity to clarify and justify its request. Upon a final determination by the County to accord less protection than requested by the private entity, the private entity will be given an opportunity to withdraw its proposal. Nothing shall prohibit further negotiations of the documents to be afforded protection from release although what may be protected must be limited to the categories of records identified in Section D. 1.a. Once a written determination has been made by the RPE, the protected documents shall continue to be protected from disclosure when in the possession of the RPE or any affected local jurisdiction.

Cost estimates relating to a proposed procurement transaction prepared by or for a responsible public entity shall not be open to public inspection.

3. Protection from mandatory disclosure for certain documents produced by the responsible public entity.

Memoranda, staff evaluations, or other records prepared by or for the County, its staff, outside advisors or consultants, exclusively for the evaluation and negotiation of proposals may be withheld from disclosure if the disclosure of such records required by the PPEA would adversely affect the financial interest or bargaining position of the responsible public

entity or private entity, and the basis for the determination of adverse affect is documented in writing by the responsible public entity.

4. If a private entity fails to designate confidential or proprietary information, records or documents from disclosure, such information, records or documents shall be subject to disclosure under FOIA.

5. The County may not withhold from public access:

a. Procurement records other than those subject to the written determination of the public entity;

b. Information concerning the terms and conditions of any interim or comprehensive agreement, service contract, lease, partnership, or any agreement of an kind executed by the County and the private entity;

c. Information concerning the terms and conditions of any financing arrangement that involves the use of any public funds; or

d. Information concerning the performance of any private entity developing or operating a qualifying project.

However, to the extent that access to any procurement record or other document or information is compelled or protected by a court order, then the County must comply with such order.

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

2. — Subsection 56-575.4 G of the PPEA imposes an obligation on the County and any affected jurisdiction to protect confidential proprietary information submitted by a private entity or operator. When the private entity requests that the County not disclose information, the private entity must (i) invoke the exclusion when the data or materials are submitted to the County or before such submission, (ii) identify the data and materials for which protection from disclosure is sought, and (iii) state why the exclusion from disclosure is necessary. A private entity may request and receive a determination from the County entity as to the anticipated scope of protection prior to submitting the proposal. The County is authorized and obligated to protect only confidential proprietary information, and thus will not protect any portion of a proposal from disclosure if the entire proposal has been designated confidential by the private

entity without reasonably differentiating between the proprietary and non-proprietary information contained therein.

~~3. Upon receipt of a request from a private entity that designated portions of a proposal be protected from disclosure as confidential and proprietary, the County will determine whether such protection is appropriate under applicable law and, if appropriate, the scope of such appropriate protection, and shall communicate its determination to the private entity. If the determination regarding protection or the scope thereof differs from the private entity's request, then the County will accord the private entity a reasonable opportunity to clarify and justify its request. Upon a final determination by the County to accord less protection than requested by the private entity, the private entity will be given an opportunity to withdraw its proposal. A proposal so withdrawn will be treated in the same manner as a proposal not accepted for publication and conceptual phase consideration as provided below in § IV(A)(1).~~

E. Use of Public Funds

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

F. Applicability of Other Laws

Nothing in the PPEA shall affect the duty of the County to comply with all other applicable law not in conflict with the PPEA. The applicability of the Virginia Public Procurement Act (the "VPPA") is as set forth in the PPEA. Likewise, in submitting proposals and in developing, executing or operating facilities under the PPEA, private entities shall comply with all applicable federal, state and local laws.

III. SOLICITED BIDS/PROPOSALS

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

2. Any proposal submitted pursuant to the PPEA that is not received in response to an IFB or RFP shall be an Unsolicited Proposal under these procedures, including but not limited to (a) proposals received in response to a notice of the prior receipt of another Unsolicited Proposal as required by the PPEA and provided for below

in § IV(A)(2) (3) and (b) proposals received in response to publicity by the County concerning particular needs when the County has not issued a corresponding IFB or RFP, even if the County otherwise has encouraged the submission of proposals pursuant to the PPEA that address those needs.

IV. UNSOLICITED PROPOSALS

The process for evaluating Unsolicited Proposals, described in detail below, consists of four steps: 1) upon receipt of an Unsolicited Proposal, the County will determine whether to accept it for consideration at the conceptual phase; 2) if so, the County will give public notice of the Unsolicited Proposal; 3) the County will proceed with a review at the conceptual stage of the original Unsolicited Proposal and/or any proposal received in response to the public notice and accepted for consideration at the conceptual stage; and 4) the County will conduct an in-depth review at the detailed stage of the original Unsolicited Proposal and/or any proposal received in response to the public notice and accepted for consideration at the detailed stage. The County may discontinue its evaluation of any proposal at any time. Furthermore, if the County determines that it is in the County's interest to do so with respect to any Unsolicited Proposal, the County may eliminate review at the conceptual stage and proceed directly to a review at the detailed stage.

The County shall engage the services of qualified professionals, which may include an architect, professional engineer, or certified public accountant, not otherwise employed by the RPE, to provide independent analysis regarding the specifics, advantages, disadvantages, and the long- and short-term costs of any request by a private entity for approval of a qualifying project unless the County determines that such analysis of a request by a RPE for approval of a qualifying project shall be performed by an employee of the County.

A. Decision to Accept and Consider Unsolicited Proposal; Notice

1. The County reserves the right to reject any and all proposals at any time. If the RPE rejects a proposal initiated by a private entity that purports to develop specific cost savings, the RPE shall specify the basis for rejection.

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

23. If the County chooses to accept an unsolicited proposal for conceptual-phase consideration, it shall within 10 working days after acceptance post a notice in a public area regularly used by the County for posting of public notices give public notice of the proposal in accordance with the PPEA and shall specify a period of

time for a period of not less than 45 days during which it will receive competing Unsolicited Proposals pursuant to Section 56-575.4 (A) of the PPEA. The County shall also publish the same notice in one or more newspapers or periodicals of general circulation in the County to notify any parties that may be interested in submitting competing unsolicited proposals. Interested parties shall have 45 days from the date the notice is published to submit competing unsolicited proposals.

The notice shall state that the County (i) has received and accepted an unsolicited proposal under the PPEA, (ii) intends to evaluate the proposal, (iii) may negotiate an interim or a comprehensive agreement with the proposer based on the proposal, and (iv) will accept for simultaneous consideration any competing proposals that comply with the procedures adopted by the County and the PPEA. The notice also shall summarize the proposed qualifying project or projects, and identify their proposed locations. Copies of unsolicited proposals shall be available upon request, subject to the provisions of FOIA and Section 56-575.4 (G) of the PPEA. During the 45-day period for receiving competing Unsolicited Proposals, the County may continue to evaluate the original Unsolicited Proposal.

B. Posting Requirements

1. Conceptual proposals, whether solicited or unsolicited, shall be posted by the RPE within 10 working days after acceptance of such proposals in the following manner:

a. Posting shall be on the RPEs website and by publication, in a newspaper of general circulation in the area in which the contract is to be performed, of a summary of the proposals and the location where copies of the proposals are available for public inspection. Posting may also be on the Commonwealth's electronic procurement website.

2. Nothing shall be construed to prohibit the posting of the conceptual proposals by additional means deemed appropriate by the RPE so as to provide maximum notice to the public of the opportunity to inspect the proposals.

3. In addition to the posting requirements, at least one copy of the proposals shall be made available for public inspection. Trade secrets, financial records, or other records of the private entity excluded from disclosure under the provisions of subdivision 11 of § 2.2-3705.6 shall not be required to be posted, except as otherwise agreed to by the RPE and the private entity. Any inspection of procurement transaction records shall be subject to reasonable restrictions to ensure the security and integrity of the records.

C. Contents of Initial Submission

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

process, consisting of an initial conceptual submission to be followed by a more detailed submission.

2. Unsolicited Proposals should provide a concise description of the private entity's capability to complete the proposed qualifying project and the benefits to be derived from the project by the County. Project benefits to be considered may occur during the construction, renovation, expansion or improvement phase and during the life cycle of the project. Proposals also should include a comprehensive scope of work and a financial plan for the project, containing enough detail to allow an analysis by the County of the financial feasibility of the proposed project, including but not limited to (a) the identity of any parties expected to provide financing for the project and (b) a statement indicating whether the private entity intends to request the County to provide resources for financing the project and the nature and extent of any such resources.

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

CD. Initial Review at the Conceptual Stage

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

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

3. After reviewing an Unsolicited Proposal and any competing Unsolicited Proposals submitted during the notice period, the County may determine (a) not to proceed further with any proposal, (b) to proceed to the detailed phase of review with the original proposal, (c) to proceed to the detailed phase with a competing proposal, ~~or~~ (d) to proceed to the detailed phase with multiple proposals **or (e) to request modifications or amendments to any proposals. Discussions between the RPE and private entities about the need for infrastructure improvements shall not limit the ability of a RPE to later determine to use standard procurement procedures to meet its infrastructure needs.** The County at all times retains the right to reject any proposal at any time for any reason whatsoever.

DE.—Format for Submissions at the Conceptual Stage

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

1. Qualification and Experience

a. Identify the legal structure of the firm or consortium of firms making the proposal. Identify the organizational structure for the project, the management approach and how each partner and major subcontractor in the structure fits into the overall team. **All members of the offeror's team, including subcontractors known to the proposer must be identified at the time a proposal is submitted for the conceptual stage. Identified team members including major subcontractors may not be substituted or replaced once a project is approved and an interim or comprehensive agreement executed without the written approval of the County.**

b. Describe the experience of the firm or consortium of firms making the proposal and the key principals involved in the proposed project including experience with projects of comparable size and complexity, including prior experience bringing similar projects to completion on budget and in compliance with design, land use, service and other standards. Describe the length of time in business, business experience, public sector experience and other engagements of the firm or consortium of firms. **Describe the past safety performance record and current safety capabilities of the firm. Describe the past technical performance history on recent projects of comparable size and complexity, including disclosure of any legal claims of the firm.** Include the identity of any firms that will provide design, construction and completion guarantees and warranties and a description of such guarantees and warranties. Provide resumes of the key individuals who will be involved in the project.

c. For each firm or major contractor that will be utilized in the project, provide a statement listing all of the firm's prior projects and clients for the past 3 years with contact information for such clients (names/addresses/ telephone numbers). If a firm has worked on more than ten projects during this period, it may limit its prior project list to ten, but shall first include all projects similar in scope and size to the proposed project, and second, it shall include as many of its most recent projects as possible. Each firm or major subcontractor shall be required to submit all performance evaluation reports or other documents in its possession evaluating the firm's performance during the preceding three years in terms of cost, quality, schedule, safety and other matters relevant to the successful project development, operation, and completion.

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

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

ef. Identify any persons known to the private entity who would be obligated to disqualify themselves from participation in any transaction arising from or

in connection to the project pursuant to The Virginia State and Local Government Conflict of Interest Act, Chapter 31 (§ 2.2-3100 et seq.) of Title 2.2.

g. For each firm or major subcontractor that will perform construction and/or design activities, provide a sworn certification by an authorized representative of the firm attesting to the fact that the firm is not currently debarred or suspended by any federal, state or local government entity.

h. Describe worker safety training programs, job-site safety programs, accident prevention programs, written safety and health plans, including incident investigation and reporting procedures.

i. Identify the proposed plan for complying with the intent of Va. Code §22.1-296.1C if the contractor or its employees or subcontractors, will have direct contact with students. This section of the Code requires that all contractor employees who will have direct contact with students, must certify that (i)they have not been convicted of a felony or any offense involving the sexual molestation or physical or sexual abuse or rape of a child; and (ii) whether they have been convicted of a crime of moral turpitude.

2. Project Characteristics

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

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

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

d. Identify any anticipated adverse social, economic and environmental impacts of the project measured against the County's comprehensive land use plan and applicable ordinances and design standards. Specify the strategies or actions to mitigate known impacts of the project. Indicate if environmental and archaeological assessments have been completed. Such social and economic impacts should include but are not limited to community benefits, including the economic impact the project will have on the local community in terms of the amount of additional tax revenue to be generated for the County, the number of jobs generated for County residents and level of pay and fringe benefits of such jobs, the training opportunities for apprenticeships and other training programs for County residents generated by the project, and the number and value of subcontracts generated for County subcontractors.

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

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

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

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

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

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

k. List any other assumptions relied on for the project to be successful.

l. List any contingencies that must occur for the project to be successful.

3. Project Financing

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

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

c. Include a list and discussion of assumptions underlying all major elements of the plan. Assumptions should include all fees associated with financing given the recommended financing approach. In addition, complete disclosure of interest rate assumptions should be included. Any ongoing operational fees, if applicable, should also be disclosed as well as any assumptions with regard to increases in such fees.

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

e. Identify any local, state or federal resources that the private entity contemplates requesting for the project along with an anticipated schedule of resource requirements. Describe the total commitment, if any, expected from governmental sources (identify each such source) and the timing of any anticipated commitment, both one-time and on-going. **Such disclosure should include any direct or indirect guarantees or pledges of the County's credit or revenue.**

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

g. Identify the amounts and the terms and conditions for any revenue sources.

h. Identify any aspect of the project that could disqualify the project from obtaining tax-exempt financing.

4. Project Benefit and Compatibility

a. Describe the anticipated benefits to the community, region or state, including anticipated benefits to the economic, social, environmental, transportation, etc., condition of the County. Identify who will benefit from the project and how they will benefit. **Such social and economic impacts should include but are not limited to community benefits, including the economic impact the project will have on the local community in terms of the amount of additional tax revenue to be generated for the County, the number of jobs generated for County residents and level of pay and fringe benefits of such jobs, the training opportunities for apprenticeships and other training programs for County residents generated by the project, and the number and value of subcontracts generated for County subcontractors.**

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

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

d. Explain whether and, if so, how the project is critical to attracting or maintaining competitive industries and businesses to the County or the surrounding region. **Describe the compatibility of the project with local, regional and state economic development efforts.**

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

E. Format for Submissions at the Detailed Stage

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

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

2. A conceptual site plan indicated proposed location and configuration of the project on the proposed site;

3. Conceptual (single line) plans and elevations depicting the general scope, appearance and configuration of the project.

4. A detailed description of the proposed participation, use and financial involvement of the County in the project. Include the proposed terms and conditions for the project.

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

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

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

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

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

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

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

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

Description of an ongoing performance evaluation system or database to track key performance criteria, including but not limited to schedule, cash management, quality, worker safety, change orders, and legal compliance.

1013. Identification of any known conflicts of interest or other limitations that may impact the County's consideration of the proposal, including the identification of any persons known to the private entity who would be obligated to disqualify themselves from participation in any transaction arising from or in connection to the project pursuant to The Virginia State and Local Government Conflict of Interest Act, Chapter 31 (§ 2.2-3100 et seq.) of Title 2.2.

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

12:15. Additional material and information as the County may request.

V. PROPOSAL EVALUATION AND SELECTION CRITERIA

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

A. Qualifications and Experience

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

1. Experience, **training and preparation** with similar projects;
2. Demonstration of ability to perform work;
3. **Demonstrated record of successful past performance, including timeliness of project delivery, compliance with plans and specifications, quality of workmanship, cost-control and project safety;**
4. **Demonstrated conformance with applicable laws, codes, standards, regulations, and agreements on past projects;**
5. Leadership structure;
6. Project manager's experience;
7. Management approach;
8. **Project staffing plans, the skill levels of the proposed workforce, apprenticeship and other training programs offered for the project, and the proposed safety plans for the project;**
9. Financial condition; and
10. Project ownership.

B. Project Characteristics

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

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

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

C. Project Financing

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

1. Cost and cost benefit to the County;
2. Financing and the impact on the debt or debt burden of the County;
3. Financial plan including default implications, overall feasibility and reliability of the plan; operator's past performance with similar plans and similar projects; degree to which the operator has conducted due diligence investigation of proposed financial plan and results of any such inquiries or studies;
4. Estimated cost including debt source, operating costs, etc.; and
5. Life-cycle cost analysis. and
6. The identity, credit history, and past performance of any third party that will provide financing for the project and the nature and timing of their commitment;
7. Such other items as the County deems appropriate.

D. Project Benefit and Compatibility

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

1. Community benefits; such social and economic impacts should include but are not limited to community benefits, including the economic impact the project will have on the local community in terms of the amount of additional tax revenue to be generated for the County, the number of jobs generated for County residents and level of pay and fringe benefits of such jobs, the training opportunities for apprenticeships and other training programs for County residents generated by the project, and the number and value of subcontracts generated for County subcontractors.
2. Community support or opposition, or both;

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

E. Other Factors

Other factors that may be considered in the evaluation and selection of PPEA proposals include:

1. The proposed cost of the qualifying project;
2. The general reputation, industry experience, and financial capacity of the private entity;
3. The proposed design of the qualifying project;
4. The eligibility of the project for accelerated documentation, review, and selection;
5. Local citizen and government comments;
6. Benefits to the public; including whether the project will lead to productivity or efficiency improvements in the County's processes or delivery of services to the public;
7. The private entity's minority business plan or good faith effort to comply with the goals of such plan;
8. The private entity's plan to employ local contractors and residents; and
9. Other criteria that the County deems appropriate.

F. Timelines

Guidelines for determining applicable timelines are as follows:

1. For solicited proposals, the timeline for selecting proposals and negotiating an agreement will be consistent with the terms and conditions set forth in the Request for Proposals.

2. For unsolicited proposals, an estimated timeline will be developed and distributed within 60 days of receipt of the proposal. The timeline will be subject to revision(s), as required.

3. Accelerated selection, review, and documentation timelines shall be permitted for proposals involving a qualifying facility that the County deems a priority.

VI. INTERIM AND COMPREHENSIVE AGREEMENT

The County shall not accept liability for any part or phase of a project prior to entering into a properly executed interim or comprehensive agreement. The Board of Supervisors shall approve any interim or comprehensive agreement executed pursuant to the PPEA. Any changes in the terms of an executed interim or comprehensive agreement shall be in the form of a written amendment.

A. Interim Agreement Terms

Interim agreements may be used when it is necessary or advisable to segment a project to produce distinct and clear deliverables necessary to keep the project moving towards development of a comprehensive agreement. An interim agreement may not be used to have the County assume risks that should be assumed by the proposer or to pay costs attributable to the private entity's efforts in making the proposal. Interim agreements require the same level of approval as Comprehensive Agreements.

Development of an interim agreement is in the sole discretion of the County and in no way limits the rights reserved by the County to terminate the evaluation of any or all proposals at any time.

Prior to or in connection with the negotiation of the comprehensive agreement, the responsible public entity may enter into an interim agreement with the private entity proposing the development or operation of the qualifying project. Such interim agreement may:

1. Permit the private entity to commence activities for which it may be compensated relating to the proposed qualifying project, including, but not limited to, project planning and development, design and engineering, environmental analysis and mitigation, survey, and ascertaining the availability of financing for the proposed facility or facilities;

2. Establish the process and timing of the negotiation of the comprehensive agreement; and

3. Contain any other provisions related to any aspect of the development or operation of a qualifying project that the parties may deem appropriate.

B. Comprehensive Agreement Terms

Prior to ~~acquiring, designing, constructing, improving, renovating, expanding, equipping, maintaining,~~ **developing** or operating any qualifying project, a selected private

entity shall enter into a comprehensive agreement with the County as provided by the PPEA. Each comprehensive agreement shall define the rights and obligations of the County and the selected proposer with regard to the project. Any such comprehensive agreement must be approved by the County's Board of Supervisors before it is entered into on behalf of the County.

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

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

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

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

12. The terms and conditions under which existing site conditions will be assessed and addressed, including identification of the responsible party for conducting the assessment and taking necessary remedial action;

13. The terms and conditions under which the RPE will be required to pay money to the private entity and the amount of any such payments for the project;

~~12~~14. Any other provisions required by applicable law or provisions that the County determines serve the public purpose of the PPEA.

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

Parties submitting proposals understand that representations, information and data supplied in support of or in connection with proposals play a critical role in the competitive evaluation process and in the ultimate selection of a proposal by the County. Accordingly, as part of the comprehensive agreement, the prospective operator and its team members shall certify that all material representations, information and data provided in support of, or in connection with, a proposal is true and correct. Such certifications shall be made by authorized individuals who have knowledge of the information provided in the proposal. In the event that material changes occur with respect to any representations, information or data provided for a proposal, the prospective operator shall immediately notify the County of same. Any violation of this section of the comprehensive agreement shall give the County the right to terminate the agreement, withhold payment or other consideration due, and seek any other remedy available under the law.

C. Notice and Posting Requirements

1. At some point during the proposal review process, but at least 30 days prior to entering into an interim or comprehensive agreement, the RPE shall hold a public hearing on the proposals that have been received.

2. Once the negotiation phase for the development of an interim or a comprehensive agreement is complete and a decision to award has been made by the RPE, the RPE shall post the proposed agreement in the following manner:

a. Posting shall be on the RPEs' website or by publication, in a newspaper of general circulation in the area in which the contract work is to be performed, of a summary of the proposals and the location where copies of the proposals are available for

public inspection. Posting may also be on the Commonwealth's electronic procurement website.

b. At least one copy of the proposals shall be made available for public inspection. Trade secrets, financial records, or other records of the private entity excluded from disclosure under the provisions of subdivision 11 of § 2.2-3705.6 shall not be required to be posted, except as otherwise agreed to by the RPE and the private entity.

c. Any studies and analyses considered by the RPE in its review of a proposal shall be disclosed to the appropriating body at some point prior to the execution of an interim or comprehensive agreement.

3. Once an interim agreement or a comprehensive agreement has been entered into, the RPE shall make procurement records available for public inspection, upon request.

a. Such procurement records shall include documents protected from disclosure during the negotiation phase on the basis that the release of such documents would have adverse affect on the financial interest or bargaining position of the RPE or private entity.

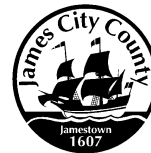
b. Such procurement records shall not include (i) trade secrets of the private entity as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.) or (ii) financial records, including balance sheets or financial statements of the private entity that are not generally available to the public through regulatory disclosure or otherwise.

To the extent access to procurement records are compelled or protected by a court order, then the RPE must comply with such order.

4. The RPE shall electronically file a copy of all interim and comprehensive agreement and any supporting documents with the Auditor of Public Accounts. Such agreements and supporting documents should be provided within 30 days of the execution of the interim or comprehensive agreement.

VII. GOVERNING PROVISIONS

In the event of any conflict between these guidelines and procedures and the PPEA, the terms of the PPEA shall control.



MEMORANDUM COVER

Subject: Qualified School Construction Bonds

Action Requested: Shall the Board approve the submittal of an application to the Virginia Public School Authority for the fall sale of \$1 million in Federally-subsidized Qualified School Construction Bonds (QSCB)?

Summary: Williamsburg/James City County Schools have been allocated \$1 million in borrowing authority under a Federal program entitled QSCB (Qualified School Construction Bonds) for the Jamestown High School Multi-use facility, which includes an auxilliary gymnasium. The Board has expressed a preference not to borrow for this project, and the project is currently under construction and funded without debt at the present time, but the cirmcumstances of the QSCB program are unusual enough that staff recommends the Board accept the funds.

Two unusual features characterize the QSCB program: 1) it is essentially no-interest financing; whatever interest costs are generated through the public sale will be reimbursed under a Federal public school improvement program; and 2) the County will end up paying back less than the \$1 million it will borrow since debt service is escrowed in an interest-earning account to pay the bonds off in 20 years.

The application for QSCB for this project was not approved by the Governor's office in 2010, so staff moved to find other ways to finance the project. We were then notified by the Governor's office that the project had qualified for an allocation in 2011. If the Board approves this financing, it will free up \$1 million in cash the County has previously designated for the project and a future budget item will ask that the \$1 million in local funds be placed in capital contingency until the Board considers the FY 2013 budget next spring.

Staff recommends approval of the attached resolution.

Fiscal Impact: Positive

FMS Approval, if Applicable: Yes No

Assistant County Administrator

Doug Powell _____

County Administrator

Robert C. Middaugh _____

Attachment:
1. Memorandum
2. Resolution

Agenda Item No.: I-1

Date: September 27, 2011

MEMORANDUM

DATE: September 27, 2011

TO: The Board of Supervisors

FROM: John E. McDonald, Manager, Financial and Management Services

SUBJECT: Qualified School Construction Bonds

Initially the Jamestown High School Multi-use Project, including an auxiliary gymnasium, was approved for financing in the County's FY 2010 Capital Budget at a cost of \$2,489,000. The County's share of that project (\$2,275,000) was in the adopted FY 2010 budget, to be funded with borrowed money either using lease revenue bond financing or the Virginia Public School Authority (VPSA).

Subsequent discussions by the Board of Supervisors indicated a desire to avoid borrowing for both this project and for the Warhill Community Gymnasium, also approved with debt financing in the FY 2010 Capital Budget. With this guidance both County and School staff began to search for alternatives for the Jamestown High School project and the schools submitted an application to the State under a Federal allocation of stimulus funds. After failing to receive an allocation in the initial round in 2010, a \$1 million allocation was approved by the Governor's office this past April for the Jamestown High School project.

The allocation came in the form of Qualified School Construction Bond (QSCB) funds. While it still would be a County indebtedness, all interest paid on the bonds would be fully reimbursed under a Federal education facilities improvement program. For County taxpayers it represents an opportunity for interest-free financing. The borrowing would be done through the VPSA in its fall 2011 bond sale. The interest on the bonds is taxable and the \$1 million in borrowing will not count against the County's annual limit of \$10 million for bank-qualified (BQ) borrowing. The BQ feature was critical in obtaining an interest rate of 2.18 percent for the public facility financing approved by the Board earlier this month.

Another advantage of the QSCB program is that the annual debt service payments would be escrowed in an interest-earning account with a one-time loan repayment in 20 years. As a result, the County would receive \$1 million and pay less than that over 20 years to pay it off. Depending on investment returns over the next 20 years, the County could end up contributing only \$700,000 to the escrow account to repay the full \$1 million.

The County and Schools have identified \$2,275,000 in additional revenue (including State sales tax receipts in excess of the budget that have previously been appropriated by the Board) in residual school capital project balances and in under spending in the School operating budget. These funds are sufficient to finance the project without the QSCB borrowing. Construction actually commenced with the last day of school in June to take advantage of a summer time-frame without students.

Budget adjustments in the County's School Capital Budget will be advertised for a public hearing later this fall to eliminate either: 1) all previously budgeted borrowing and the associated spending; OR 2) all previously budgeted borrowing and spending except the QSCB proceeds. If the Board approves this borrowing, there will be an additional \$1 million in reallocated County cash that will be added to the County's Capital Contingency fund - an additional resource as the Board considers the FY 2013 budget next spring.

Staff acknowledges previous Board guidance to avoid, if possible, incurring debt for this project. Consistent with the Fiscal prudence guidance of the Board, we recommend accepting the \$1 million allocation of interest-free QSCB financing that will be repaid by spending less than we actually borrow. Given the QSCB terms and conditions, we are obligated to present this to you for consideration.

Qualified School Construction Bonds

September 27, 2011

Page 2

The Williamsburg-James City County School Board will most likely adopt a concurring resolution at its meeting on September 20, 2011, as a necessary step in accepting the allocation and in applying to the VPSA.

Staff recommends approval of the attached resolution, which has been prepared by Mr. Stephen Johson, the County's bond counsel.

John E. McDonald

JEM/nb

QSchCnstnBds_mem

Attachment

RESOLUTION AUTHORIZING THE ISSUANCE OF A NOT TO EXCEED \$1,000,000

GENERAL OBLIGATION SCHOOL BOND, SERIES 2011A, OF THE COUNTY OF

JAMES CITY, VIRGINIA, TO BE SOLD TO THE VIRGINIA PUBLIC SCHOOL AUTHORITY

AND PROVIDING FOR THE FORM AND DETAILS THEREOF

- WHEREAS, the Board of Supervisors (the “Board”) of the County of James City, Virginia (the “County”), has determined that it is necessary and expedient to borrow an amount not to exceed \$1,000,000 and to issue its general obligation school bond (as more specifically defined below, the “Local School Bond”) for the purpose of financing an expansion to Jamestown High School, which constitutes a capital project for public school purposes (the “Project”); and
- WHEREAS, the County held a public hearing, duly noticed, on September 27, 2011, on the issuance of the Local School Bond in accordance with the requirements of Section 15.2-2606, Code of Virginia 1950, as amended (the “Virginia Code”); and
- WHEREAS, the School Board of the County has, by resolution, requested the Board to authorize the issuance of the Local School Bond and consented to the issuance of the Local School Bond; and
- WHEREAS, the Virginia Public School Authority (“VPSA”) has offered to purchase the Local School Bond along with the local school bonds of certain other localities with a portion of the proceeds of certain bonds to be issued by VPSA in the fall of 2011 (the “VPSA Bonds”); and
- WHEREAS, VPSA intends to issue the VPSA Bonds as “qualified school construction bonds” (referred to below as “QSCBs”) within the meaning of Section 54F of the Internal Revenue Code of 1986, as amended (the “Tax Code”), which section was added to the Tax Code by the American Recovery and Reinvestment Act of 2009 (Pub. L. No. 111-5, 123 Stat. 355), enacted on February 17, 2009; and
- WHEREAS, VPSA intends to elect to treat the VPSA Bonds as “specified tax credit bonds” under Section 6431 of the Tax Code, as amended by the Hiring Incentives to Restore Employment Act (Pub. L. No. 111-147, 123 Stat. 301), enacted on March 18, 2010, which status enables an issuer of a QSCB to receive a direct payment of a refundable credit in lieu of providing a tax credit to the purchaser or holder of the QSCB; and
- WHEREAS, the refundable credit payable with respect to each interest payment date will be equal to the lesser of (i) the amount of interest payable under the QSCB on such date or (ii) the amount of interest which would have been payable under the QSCB on such date if such interest were determined at the applicable credit rate determined under Section 54A(b)(3) of the Tax Code (that is, the rate used in computing the amount of tax credit that could be claimed by the QSCB holder absent the “specified tax credit bond” refundable credit election); and

WHEREAS, subject to the terms and conditions set forth or referred to below, VPSA will transfer to the County the allocable portion of the refundable credit actually received in cash by VPSA with respect to the VPSA Bonds; and

WHEREAS, the allocation of QSCB volume cap pursuant to which VPSA will issue the VPSA Bonds will be made by Executive Order to be issued by the Governor of the Commonwealth of Virginia (the "Executive Order"), to finance the Project along with a number of other projects selected through a competitive evaluation process administered by the Virginia Department of Education; and

WHEREAS, the Bond Sale Agreement (as defined below) shall indicate that \$1,000,000 is the amount of proceeds requested (the "Proceeds Requested") by the County from the VPSA in connection with the sale of the Local School Bond; and

WHEREAS, VPSA's objective is to pay the County a purchase price for the Local School Bond which, in VPSA's judgment, reflects the Local School Bond's market value (the "VPSA Purchase Price Objective"), taking consideration of such factors as the purchase price to be received by VPSA from the sale of the VPSA Bonds, the underwriters' discount and the other issuance costs of the VPSA Bonds and other market conditions relating to the sale of the VPSA Bonds; and

WHEREAS, such factors may result in the Local School Bond having a purchase price other than par and consequently (i) the County may have to issue the Local School Bond in a principal amount that is less than the Proceeds Requested in order to receive an amount of proceeds that is substantially equal to the Proceeds Requested, or (ii) because the maximum authorized principal amount of the Local School Bond set forth in paragraph 1 of this Resolution cannot exceed the Proceeds Requested, the purchase price to be paid to the County, given the VPSA Purchase Price Objective and market conditions, will be less than the Proceeds Requested.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby

1. Authorization of Local School Bond and Use of Proceeds

The Board hereby determines that it is advisable to contract a debt and issue and sell its general obligation school bond in a principal amount not to exceed \$1,000,000 (the "Local School Bond") for the purpose of financing the Project and the County's allocable share of (A) VPSA's costs of issuing the VPSA Bonds and (B) any upfront flat fees of VPSA as determined by VPSA to be necessary to compensate VPSA for the on-going costs related to administering the local school bonds purchased with the VPSA Bonds, including the County's Local School Bond (such upfront fees may be in lieu of the Annual Administrative Fee described in paragraph 4 in this Resolution).

The Board hereby authorizes the issuance and sale of the Local School Bond in the form and upon the terms established pursuant to this Resolution and the Bond Sale Agreement.

2. Sale of the Local School Bond

The sale of the Local School Bond, within the parameters set forth in paragraph 4 of this Resolution, to VPSA is authorized. Given the VPSA Purchase Price Objective and market conditions, the County acknowledges that the limitation on the maximum

principal amount on the Local School Bond set forth in paragraph 1 of this Resolution restricts VPSA's ability to generate the Proceeds Requested, however, the Local School Bond may be sold for a purchase price of not lower than 90% of the Proceeds Requested. The Chairman of the Board, the County Administrator, or either of them and such other officer or officers of the County as either may designate are hereby authorized and directed to enter into an agreement with VPSA providing for the sale of the Local School Bond to VPSA (the "Bond Sale Agreement"). The Bond Sale Agreement shall be in substantially the form submitted to the Board at this meeting, which form is hereby approved.

3. Details of the Local School Bond

The Local School Bond shall be dated the date of its issuance and delivery; shall be designated "General Obligation School Bond, Series 2011A;" shall bear interest from the date of delivery thereof payable semi-annually on dates specified by VPSA (each, an "Interest Payment Date" at the rates established in accordance with paragraph 4 of this Resolution; and shall mature annually in the years (each a "Principal Payment Date," and together with any Interest Payment Date, a "Payment Date") and in the amounts (the "Principal Installments") determined by the County Administrator, subject to the provisions of paragraph 4 of this Resolution.

4. Interest Rate and Principal Installments

The County Administrator is hereby authorized and directed to accept the interest rate on the Local School Bond established by VPSA, provided that each interest rate may be up to five one-hundredths of one percent (0.05%) over the interest rate to be paid by VPSA for the corresponding principal payment date of the VPSA Bonds, a portion of the proceeds of which will be used to purchase the Bonds, to the extent required by VPSA (the "Annual Administrative Fee"), and provided further that the true interest cost of the Local School Bond does not exceed seven and a half percent (7.50%) per annum. The Payment Dates and the Principal Installments shall be specified by VPSA. The County Administrator is hereby authorized and directed to accept the final Payment Dates and the Principal Installments at the request of VPSA based on the final term to maturity of the VPSA Bonds, requirements imposed on VPSA by the nationally-recognized rating agencies and the final principal amount of the Local School Bond; provided, however, that the principal amount of the Local School Bond shall not exceed the amount authorized by this Resolution and the final maturity of the Local School Bond shall be no later than the earlier of December 31, 2030, and the latest maturity date permitted under Section 54A of the Tax Code. The execution and delivery of the Local School Bond as described in paragraph 10 hereof shall conclusively evidence the approval and acceptance all of the details of the Local School Bond by the County Administrator as authorized by this Resolution.

5. Certain Acknowledgements

The County acknowledges that the interest rate on the Local School Bond will be set at the level necessary to pay the interest on the allocable portion of the VPSA Bonds plus the Annual Administrative Fee, if any, and that the County will be obligated to pay interest on the Local School Bond at the stated taxable rate thereon regardless of the elimination or reduction of the refundable credit to be received by VPSA due to (i) any amendments by Congress to Sections 54A, 54F or 6431 or any other applicable sections of the Tax Code, (ii) any failure or determination by Congress not to appropriate funds necessary to pay the refundable credit, (iii) any guidance or changes to guidance provided by the U.S. Department of Treasury or the Internal

Revenue Service, or (iv) any action or omission by VPSA, the County or any other locality selling local school bonds to VPSA in connection with the VPSA Bonds that causes the VPSA Bonds to lose their status as QSCBs and/or specified tax credit bonds in whole or in part. It is also acknowledged that the County has the right to effect an extraordinary optional redemption of the Local School Bond in whole or in part upon the occurrence of any of these events as provided in the form of Local School Bond.

6. Certain Investment Earnings

The Board hereby acknowledges that VPSA will (i) issue the VPSA Bonds with multiple maturities or with a single “bullet” maturity, in either case, with a final maturity date on or shortly before the latest maturity date permitted for the VPSA Bonds under Section 54A of the Tax Code, (ii) invest the Principal Installments for the benefit of the County until they are applied to pay the principal of the VPSA Bonds and (iii) either remit the investment earnings periodically to the County or credit the investment earnings against the County’s obligation to make Principal Installments, at the option of VPSA. The Board further acknowledges that VPSA may cause a portion of such earnings to be deposited into a reserve fund or account to be applied by VPSA for use to pay the costs, fees and expenses described in paragraph 15 below. Any balance in such reserve fund or account attributable to investment earnings on the County’s Principal Installments as reasonably determined by VPSA will be remitted or credited to the County on the final maturity date of the VPSA Bonds.

7. Form of the Local School Bond

The Local School Bond shall be initially in the form of a single, temporary typewritten bond substantially in the form attached hereto as Exhibit A.

8. Payment; Paying Agent and Bond Registrar

The following provisions shall apply to the Local School Bond:

- (a) For as long as VPSA is the registered owner of the Local School Bond, all payments of principal of and interest and premium, if any, on the Local School Bond shall be made in immediately available funds to, or at the direction of, VPSA at, or before 11:00 a.m. on the applicable Payment Date or date fixed for prepayment or redemption, or if such date is not a business day for Virginia banks or for the Commonwealth of Virginia, then at or before 11:00 a.m. on the business day next succeeding such Payment Date or date fixed for payment, prepayment or redemption.
- (b) The Bond Registrar and Paying Agent for the Local School Bond shall be the banking institution selected by VPSA for such purposes.

9. Prepayment or Redemption

The Principal Installments of the Local School Bond may be subject to optional prepayment or redemption prior to their stated maturities as determined by VPSA. The Principal Installments of the Local School Bond will be subject to extraordinary mandatory redemption (i) if certain proceeds of the Local School Bond have not been spent within three years after the date of its issuance and delivery (which three year period may be extended by the U.S. Secretary of the Treasury or his delegate), (ii) due to a loss of “qualified tax credit bond” and “qualified school construction bond”

status of the VPSA Bonds corresponding to the Local School Bond under Sections 54A and 54F of the Tax Code, and (iii) if due to (a) any amendments by Congress to Sections 54A, 54F or 6431 or any other applicable sections of the Tax Code or (b) any guidance or changes to guidance provided by the U.S. Department of Treasury or the Internal Revenue Service, there is a reduction or elimination of the direct payment of the refundable credit to be received by VPSA with respect to the VPSA Bonds. The Principal Installments of the Local School Bond shall be redeemed at the redemption prices and upon the other terms set forth in the Local School Bond.

10. Execution of the Local School Bond

The Chairman and the Clerk of the Board are authorized and directed to execute and deliver the Local School Bond and to affix the seal of the County thereto.

11. Pledge of Full Faith and Credit

For the prompt payment of the principal of and interest and premium, if any, on the Local School Bond as the same shall become due, the full faith and credit of the County are hereby irrevocably pledged, and in each year while any of the Local School Bond shall be outstanding there shall be levied and collected in accordance with law an annual ad valorem tax upon all taxable property in the County subject to local taxation sufficient in amount to provide for the payment of the principal of and interest and premium, if any, on the Local School Bond as such principal and interest and premium, if any, shall become due, which tax shall be without limitation as to rate or amount and in addition to all other taxes authorized to be levied in the County to the extent other funds of the County are not lawfully available and appropriated for such purpose.

12. Use of Proceeds Certificate and Tax Compliance Agreement

The Chairman of the Board, the County Administrator and such other officer or officers of the County as either may designate are hereby authorized and directed to execute and deliver on behalf of the County a Use of Proceeds Certificate and Tax Compliance Agreement (the "Tax Compliance Agreement") setting forth the expected use and investment of the proceeds of the Local School Bond and containing such covenants as may be necessary for the VPSA Bonds to qualify as and to remain as "qualified tax credit bonds," "qualified school construction bonds" and "specified tax credit bonds" under Sections 54A, 54F and 6431 of the Tax Code and the applicable regulations. The Board covenants on behalf of the County that (i) the proceeds from the issuance and sale of the Local School Bond will be invested and expended as set forth in the Tax Compliance Agreement and that the County shall comply with the other covenants and representations contained therein and (ii) the County shall comply with the provisions of the Tax Code so that the VPSA Bonds will not lose their status as "qualified tax credit bonds," "qualified school construction bonds" and "specified tax credit bonds" under Sections 54A, 54F and 6431 of the Tax Code.

13. State Non-Arbitrage Program; Proceeds Agreement

The Board hereby determines that it is in the best interests of the County to authorize and direct the County Treasurer and the Manager of Financial and Management Services, either of whom may act, to participate in the State Non-Arbitrage Program in connection with the Local School Bond. The Chairman of the Board, the County Administrator and such officer or officers of the County as either may designate are hereby authorized and directed to execute and deliver a Proceeds Agreement with

respect to the deposit and investment of proceeds of the Local School Bond by and among the County, the other participants in the sale of the VPSA Bonds, VPSA, the investment manager and the depository. The Proceeds Agreement is hereby approved.

14. Continuing Disclosure Agreement

The Chairman of the Board, the County Administrator and such other officer or officers of the County as either may designate are hereby authorized and directed to execute a Continuing Disclosure Agreement, as set forth in Appendix E to the Bond Sale Agreement, setting forth the reports and notices to be filed by the County and containing such covenants as may be necessary in order to show compliance with the provisions of the Securities and Exchange Commission Rule 15c2-12, under the Securities Exchange Act of 1934, as amended, and directed to make all filings required by Section 3 of the Bond Sale Agreement should the County be determined by the VPSA to be a MOP (as defined in the Continuing Disclosure Agreement).

15. Fees, Costs and Expenses

The County agrees to pay the following fees, costs and expenses incurred by VPSA in connection with its purchase and carrying of the Local School Bond within thirty days after receipt by the County Administrator of a written bill therefor:

- (a) The County's allocable share of (i) the fees, costs and expenses of the trustee, paying agent and bond registrar under the indenture pursuant to which VPSA will issue the VPSA Bonds and (ii) any fees, costs and expenses payable to third parties in connection with such indenture or VPSA's School Tax Credit Bond Program, as determined by VPSA; and
- (b) To the extent permitted by law, the reasonable fees, costs and expenses, including reasonable attorneys' fees, if any, incurred by VPSA in connection with any false representation or certification or covenant default by the County or any County or School Board official, employee, agent or contractor under the Local School Bond, the Continuing Disclosure Agreement, the Tax Compliance Agreement, the Proceeds Agreement and/or any document, certificate or instrument associated therewith (collectively, the "County Documents"), or in connection with any extraordinary mandatory redemption of the Local School Bond as described in paragraph 9 above and the corresponding VPSA Bonds, any amendment to or discretionary action that VPSA makes or undertakes at the request of the County under any of the County Documents or any other document related to the VPSA Bonds.

16. Filing of Resolution

The appropriate officers or agents of the County are hereby authorized and directed to cause a certified copy of this Resolution to be filed with the Circuit Court of the City of Williamsburg and the County of James City.

17. Election to Proceed under Public Finance Act

In accordance with Section 15.2-2601 of the Virginia Code, the Board elects to issue the Local School Bond pursuant to the provisions of the Public Finance Act of 1991, Chapter 26 of Title 15.2 of the Virginia Code.

18. Further Actions

The members of the Board and all officers, employees and agents of the County are hereby authorized to take such action as they or any one of them may consider necessary or desirable in connection with the issuance and sale of the Local School Bond and any such action previously taken is hereby ratified and confirmed.

19. References to Chairman and Clerk

Any references herein to the Chairman of the Board shall be deemed to include the Vice Chairman of the Board, and any references to the Clerk of the Board shall be deemed to include any Deputy Clerk.

20. Effective Date

This Resolution shall take effect immediately.

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 27th day of September, 2011.

GenObSchBnd_res

EXHIBIT A

[FORM OF TEMPORARY BOND]

NO. TR-1

\$1,000,000

**UNITED STATES OF AMERICA
COMMONWEALTH OF VIRGINIA
COUNTY OF JAMES CITY
General Obligation School Bond
Series 2011A**

The **COUNTY OF JAMES CITY, VIRGINIA** (the “County”), for value received, hereby acknowledges itself indebted and promises to pay to the **VIRGINIA PUBLIC SCHOOL AUTHORITY** (“VPSA”) the principal amount of ONE MILLION DOLLARS (\$1,000,000), in annual installments in the amounts set forth on Schedule I attached hereto commencing on June 1, 20__ and continuing each June 1 thereafter to and including June 1, 20__ (each a “Principal Payment Date”), together with interest from the date of this Bond on the unpaid installments, payable semi-annually on June 1 and December 1 of each year, commencing [December 1, 2011] (each an “Interest Payment Date,” and together with any Principal Payment Date, a “Payment Date”), at the rate of ___% per annum, subject to redemption as hereinafter provided. The principal of and interest and premium, if any, on this Bond are payable in lawful money of the United States of America.

For as long as VPSA is the registered owner of this Bond, U.S. Bank National Association, as bond registrar and paying agent (the “Bond Registrar”), shall make all payments of the principal of and interest and premium, if any, on this Bond, without the presentation or surrender hereof, to or at the direction of VPSA, in immediately available funds at or before 11:00 a.m. on the applicable Payment Date or date fixed for redemption. If a Payment Date or date fixed for redemption is not a business day for banks in the Commonwealth of Virginia or for the Commonwealth of Virginia, then the payment of the principal of and interest and premium, if any, on this Bond shall be made in immediately available funds at or before 11:00 a.m. on the business day next succeeding the scheduled Payment Date or date fixed for payment or redemption. Upon receipt by the registered owner of this Bond of said payments, written acknowledgment of the receipt thereof shall be given promptly to the Bond Registrar, and the County shall be fully discharged of its obligation on this Bond to the extent of the payment so made. Upon final payment, this Bond shall be surrendered to the Bond Registrar for cancellation.

The full faith and credit of the County are irrevocably pledged for the payment of the principal of and interest and the premium, if any, on this Bond. The resolution adopted by the Board of Supervisors of the County on September 27, 2011 (the “Local Resolution”), authorizing the issuance of this Bond provides, and Section 15.2-2624, Code of Virginia 1950, as amended (the “Virginia Code”), requires, that there shall be levied and collected an annual tax upon all taxable property in the County subject to local taxation sufficient to provide for the payment of

the principal of and interest and premium, if any, on this Bond as the same shall become due which tax shall be without limitation as to rate or amount and shall be in addition to all other taxes authorized to be levied in the County to the extent other funds of the County are not lawfully available and appropriated for such purpose.

This Bond is duly authorized and issued in compliance with and pursuant to the Constitution and laws of the Commonwealth of Virginia, including the Public Finance Act of 1991, Chapter 26, Title 15.2, of the Virginia Code, and the Local Resolution and a resolution duly adopted by the School Board of the County to provide funds for capital projects for school purposes.

This Bond is registered in VPSA's name on the books of the County kept by the Bond Registrar, and the transfer of this Bond may be effected by the registered owner of this Bond only upon due execution of an assignment by such registered owner. Upon receipt of such assignment and the surrender of this Bond, the Bond Registrar shall exchange this Bond for a substitute Bond, and register such substitute Bond on such registration books in the name of the assignee or assignees named in such assignment.

The principal installments of this Bond are not subject to optional prepayment or redemption prior to their stated maturities without the prior written consent of VPSA, except as set forth below.

Upon not less than 45 days' written notice from VPSA to the Bond Registrar and the County, this Bond is subject to mandatory redemption in whole or in part in an amount to be specified by VPSA on a date to be fixed by VPSA in the event that VPSA determines that a redemption of all or a portion of the VPSA Bonds allocable to this Bond is necessary to maintain the status of the VPSA Bonds as "qualified tax credit bonds" and "qualified school construction bonds" under Sections 54A and 54F of the Internal Revenue Code of 1986, as amended (the "Code"). Circumstances under which VPSA may make such a determination may include, but are not limited to, the failure of the County to cause 100% of the Available Project Proceeds to be expended by the end of the Expenditure Period for Qualified Purposes, or there occurs a Determination of Loss of QSCB Status with respect to all or any portion of the VPSA Bonds due to a default by the County under the Use of Proceeds Certificate and Tax Compliance Agreement dated the dated date hereof (the "Tax Compliance Agreement").

The redemption price shall be equal to (i) the redemption price VPSA will be obligated to pay in connection with the optional redemption or extraordinary optional redemption of the allocable portion of the VPSA Bonds under Section 3.1 of the Third Supplemental Trust Indenture dated as of June 1, 2011 (the "Third Supplemental Indenture"), between VPSA and U.S. Bank National Association, as trustee, and (ii) any outstanding fees, costs and expenses for which the County is or will become obligated to pay under paragraph 15 of the Local Resolution, all as determined by VPSA.

Upon not less than 90 days' written notice from the County to VPSA, this Bond is also subject to extraordinary optional redemption in whole or in part, as determined by the County, on a date to be fixed by VPSA if, due to (i) any amendments by Congress to Section 54A, 54F or 6431 or any other applicable sections of the Tax Code, or (ii) any guidance or changes to

guidance provided by the U.S. Department of Treasury or the Internal Revenue Service, there is a reduction or elimination of the refundable credit to be received by VPSA with respect to the VPSA Bonds. The redemption price shall be equal to (i) the redemption price VPSA will be obligated to pay in connection with the optional redemption or extraordinary optional redemption of the allocable portion of the VPSA Bonds under Section 3.1 of the Third Supplemental Indenture and (ii) any outstanding fees, costs and expenses for which the County is or will become obligated to pay under paragraph 15 of the Local Resolution, all as determined by VPSA.

Unless otherwise defined, each of the capitalized terms used in the foregoing three paragraphs has the meaning given it in the Tax Compliance Agreement.

No notation is required to be made on this Bond of the redemption of principal. In such circumstance, the outstanding principal balance of this Bond shall be equal to \$1,000,000, less the aggregate amount of any and all redemptions of principal which may have been made on this Bond. **HENCE, THE FACE AMOUNT OF THIS BOND MAY EXCEED THE PRINCIPAL SUM REMAINING OUTSTANDING AND DUE HEREUNDER.**

All acts, conditions and things required by the Constitution and laws of the Commonwealth of Virginia to happen, exist or be performed precedent to and in the issuance of this Bond have happened, exist and have been performed in due time, form and manner as so required, and this Bond, together with all other indebtedness of the County, is within every debt and other limit prescribed by the Constitution and laws of the Commonwealth of Virginia.

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IN WITNESS WHEREOF, the Board of Supervisors of the County of James City has caused this Bond to be issued in the name of the County of James City, Virginia, to be signed by its Chairman or Vice Chairman, its seal to be affixed hereto and attested by the signature of its Clerk or any of its Deputy Clerks, and this Bond to be dated November __, 2011.

COUNTY OF JAMES CITY, VIRGINIA

Chairman, Board of Supervisors of the
County of James City, Virginia

(SEAL)

ATTEST:

Clerk, Board of Supervisors of the
County of James City, Virginia

ASSIGNMENT

FOR VALUE RECEIVED, the undersigned sells, assigns and transfers unto

(PLEASE PRINT OR TYPEWRITE NAME AND ADDRESS, INCLUDING ZIP CODE, OF ASSIGNEE)

PLEASE INSERT SOCIAL SECURITY OR OTHER IDENTIFYING NUMBER OF ASSIGNEE: _____

the within Bond and irrevocably constitutes and appoints

_____ attorney to exchange said Bond for definitive bonds in lieu of which this Bond is issued and to register the transfer of such definitive bonds on the books kept for registration thereof, with full power of substitution in the premises.

Date: _____
_____ Registered Owner

Signature Guaranteed:

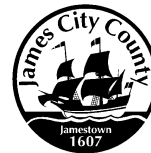
(NOTICE: Signature(s) must be guaranteed by an "eligible guarantor institution" meeting the requirements of the Bond Registrar which requirements will include Membership or participation in STAMP or such other "signature guarantee program" as may be determined by the Bond Registrar in addition to, or in substitution for, STAMP, all in accordance with the Securities Exchange Act of 1934, as amended.

(NOTICE: The signature above must correspond with the name of the Registered Owner as it appears on the front of this Bond in every particular, without alteration or change.)

SCHEDULE 1

AMORTIZATION SCHEDULE

215964.000025
#2078738v1



MEMORANDUM COVER

Subject: Ordinance to Amend and Reordain Chapter 15, Offenses – Miscellaneous, by Amending Section 15-36, Discharge of Firearms, Etc., in Certain Areas; Exceptions

Action Requested: Shall the Board adopt the ordinance amending Chapter 15, Offenses – Miscellaneous, by Amending Section 15-36, Discharge of Firearms, Etc., in Certain Areas; Exceptions?

Summary: Per the Board’s request, staff has evaluated Chapter 15, Offenses – Miscellaneous, pertaining to the discharge of firearms and exceptions to the regulation thereof. Based on the discussion at the Board’s work session on August 9, 2011, staff has proposed ordinance amendments that would clarify definition language in the current ordinance related to subdivisions, add an exception for discharge of firearms within a Department of Game and Inland Fisheries (DGIF) management plan area, and bring the County Code into compliance with State Code in relation to pneumatic weapons.

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.: I-2
Date: September 27, 2011

M E M O R A N D U M

DATE: September 27, 2011

TO: The Board of Supervisors

FROM: Emmett H. Harmon, Chief of Police
Lola Rodriguez Perkins, Assistant County Attorney

SUBJECT: Ordinance to Amend Chapter 15, Offenses-Miscellaneous, by Amending Section 15-36, Discharge of Firearms, Etc., in Certain Areas; Exceptions

The Board has directed staff to evaluate the effectiveness of County Code Section 15-36, Discharge of firearms, etc., in certain areas; exceptions and report back with an analysis of the ordinance. At its work session meeting on August 9, 2011, a group comprised of County Administration, Police, Planning, and the County Attorney's office presented information on current State and County laws governing the discharge of firearms, State hunting programs, and potential ordinance amendments for Section 15-36 that would clarify and expand County regulations. A representative of the Department of Game and Inland Fisheries (DGIF) also participated in the work session and shared information with the Board.

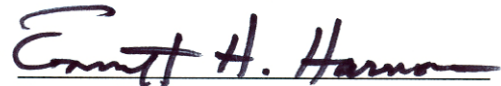
Based upon this discussion, staff has proposed various changes to the current ordinance. The first of these changes aims to clarify the definition of a recorded subdivision. The new language breaks down the elements of a recorded subdivision, for purposes of restrictions on the discharge of firearms, to include property that was divided into two or more lots: (i) which occurred after August 31, 1964; (ii) has a plat recorded in the County's Circuit Court Clerk's office; and (iii) the lots created are to be used for residential or commercial purposes. The proposed amendment also addresses the applicability of the discharge restriction to pre-August 1964 subdivisions and lists those subdivisions subject to the prohibition, as shown on a map titled *James City County Pre-August 1964 Subdivisions Prohibited from Discharging Firearms*. In addition, the suggested changes to the definition include an option where any subdivision not already under the prohibition, may petition the Board of Supervisors, with the support of two thirds of the lot owners, to be included as a subdivision where the discharge of firearms is prohibited. Lastly, the amended definition language excludes from the definition property divided pursuant to family subdivision, condemnation, or other Board approved subdivision of property. The addition of greater detail to this definition provides clearer guidance for the public regarding which lands in the County are subject to the ordinance restrictions.

The second proposed amendment expands the current exceptions to include authority for discharging firearms on properties subject to a DGIF management plan. Although the current exception found under (d)(4) addresses DGIF permits, the DGIF wildlife management plan is a different option available to citizens. As explained by the DGIF representative at the work session, a management plan is issued by the local office and, unlike a permit, does not require review by the central office in Richmond. This alternative is less cumbersome and can provide more citizens with more opportunities for the safe and controlled discharge of firearms.

The last of the proposed changes address pneumatic guns. These amendments bring the County Code into compliance with State laws, including recent changes enacted by the 2011 General Assembly, and clarify the penalties for violations involving pneumatic guns.

Staff recommends adoption of the attached ordinance.

Ordinance to Amend Chapter 15, Offenses-Miscellaneous, by Amending Section 15-36, Discharge of
Firearms, Etc., in Certain Areas; Exceptions
September 27, 2011
Page 2


Emmett H. Harmon

CONCUR:

Lola Rodriguez Perkins

EHH/LRP/nb
Chp15Offen_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 15-36, DISCHARGE OF FIREARMS, ETC., IN CERTAIN AREAS; EXCEPTIONS.

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 15-36, Discharge of firearms, etc., in certain areas; exceptions.

Chapter 15. Offenses - Miscellaneous

Section 15-36. Discharge of firearms, etc., in certain areas; exceptions.

(b) For purposes of this section, the following words and phrases shall have the meanings respectively ascribed to them below:

Recorded subdivision. ~~Any subdivision a plat of which has been recorded in the clerk's office for the circuit court of the county~~

(a) ~~Any subdivision of property into two or more lots (i) which occurred after August 31, 1964; (ii) has a plat recorded in the county's circuit court clerk's office; and (iii) where the new lots created are to be used for residential or commercial purposes.~~

(b) ~~The following subdivisions divided prior to August 31, 1964, as shown on the map titled James City County Pre-August 1964 Subdivisions Prohibited from Discharging Firearms, dated September 20, 2011:~~

Belen Heights, Benel Corp, Birchwood Park, Boughsprings, Bozarth & Mahone/Mahone & Bozarth, Canterbury Hills, Chickahominy Haven, Colonial Park, Colonial Terrace, Cypress Point, D. Warren Marston, Dandridge Davenport & Piggott, Druid Hill, Eustis Terrace, Farmville Estates, First Colony, Frank Anderson, Frank Armistead, Haley & Whitehall, Harwood, Holly Brook, Holly Hill, Indigo Park, Indigo Terrace, James Terrace, James Wesley Jones (Estate), Jamestown Farms, John Henry Lee, Kingswood, Levi & Lettie Wallace, Magruder Heights, Magruder View, Marl Hills (Lakewood), Neck-O-Land Hundred, Norge, Norvalia, Poplar Hall Plantation, Powhatan Springs, Rado Banks, Raleigh Square, Riverview Plantation, Sadie Taylor, Schuyler & Troy Smith, Signor Bradby, Shellbank, Solomon Orange, Steers (Hickory Signpost), Steers (Jamestown Road), Stephens, Sycamore Landing, Temple Hall Estates, The Colony, Thomas & Hattie Kearney, Toano Terrace, Washington Jones (Estate), Winston Terrace, and Yearda Lee Smith.

(c) *Any subdivision where two thirds of the lot owners have petitioned the board of supervisors to be included within the boundaries of the prohibition on the discharge of firearms, and such petition has been approved by resolution.*

(d) *Recorded subdivision shall not include property divided pursuant to family subdivision, condemnation, or other board of supervisors' approved subdivision of property.*

(d) The prohibition contained in this section shall not apply to the following:

- (1) The discharge of firearms in a private basement, cellar or target range, provided that such target range has sufficient background or backstop to ensure that ammunition will not travel more than 300 feet beyond the target range.

- (2) The discharge of weapons in defense of one's life or to kill any dangerous animal.
 - (3) The discharge of weapons by any duly authorized peace officer, law enforcement official or military personnel acting in the performance of his duties.
 - (4) The discharge of a weapon by any person participating in a hunt for which a permit *or management plan* for controlled wildlife reduction has been issued *or developed* by the Virginia Department of Game and Inland Fisheries; such hunt shall also be approved by the James City County Chief of Police, who shall review the action plan for such a hunt to provide for the health, safety and welfare of residents and participants. Such review shall include, but not be limited to, the area in which the weapons may be discharged; the caliber of the weapons to be used; measures to be implemented to keep nonparticipants in the hunt from entering the area; the number of participants; and the days and hours of such a hunt.
 - (5) *The use of pneumatic guns (i) at facilities approved for shooting ranges; (ii) on property where firearms may be discharged; and (iii) on or within private property with permission of the owner or legal possessor thereof when conducted with reasonable care to prevent a projectile from crossing the bounds of the property.*
- (e) It shall be unlawful for any minor under the age of 16 to use a pneumatic gun on private or public property unless such minor is under the supervision of a parent, guardian, or other adult supervisor approved by a parent or guardian of such minor. Minors above the age of 16 may, with the written consent of a parent or guardian, use a pneumatic gun on private property with the consent of the owner. Any minor, whether permitted by a parent or guardian to use a pneumatic gun or not, shall be responsible for obeying all laws, regulations, and restrictions governing such use. ~~Pneumatic gun offenses shall be punishable as a Class 3 misdemeanor.~~
- (f) *Pneumatic gun offenses shall be punishable as a Class 3 misdemeanor.*

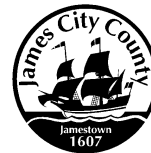
Mary K. Jones
Chairman, Board of Supervisors

ATTEST:

Robert C. Middaugh
Clerk to the Board

Adopted by the Board of Supervisors of James City County, Virginia, this 27th day of September, 2011.

Chp15Offen_ord



MEMORANDUM COVER

Subject: Hampton Roads Water Supply Plan

Action Requested: Shall the Board approve the Hampton Roads Water Supply Plan?

Summary: This meeting constitutes a public hearing on the Hampton Roads Water Supply Plan which includes water supply and demand projections for James City County. The General Assembly approved legislation in 2002 requiring all local governments in Virginia to complete a water supply plan and conduct a public hearing on the plan. This public hearing is in response to this requirement.

The Hampton Roads Regional Water Supply Plan covers all local governments served by the Hampton Roads Planning District Commission. The plan reflects that James City County has adequate water to meet projected needs through 2040. The legislation approved by the General Assembly also requires that the local plans be updated every five years.

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.: I-3

Date: September 27, 2011

M E M O R A N D U M

DATE: September 27, 2011

TO: The Board of Supervisors

FROM: Larry M. Foster, General Manager, James City Service Authority

SUBJECT: Hampton Roads Regional Water Supply Plan

In 2002 the Virginia General Assembly approved legislation requiring all local governments in Virginia to prepare a Water Supply Plan. Local governments were given the option to develop and submit an individual plan for their locality or to participate in a regional plan.

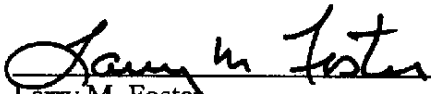
James City County chose to join with other local governments in the Hampton Roads area to prepare a regional plan. The Hampton Roads Planning District Commission prepared the Plan, on behalf of the participating local governments, in compliance with regulations approved by the Department of Environmental Quality.

This meeting has been advertised as a public hearing, as required by the Code of Virginia, to receive comment on the Plan. A community meeting was held on August 31, 2011, to offer an overview of the 300-plus page document to interested citizens. Eight people, including Mr. Goodson, were in attendance.

As a summary, the Plan indicates that based on projected population increases, there is adequate water to meet the County's and the Virginia Peninsula's needs through 2040. The County has 8.0 million gallons per day of safe yield from groundwater sources and 4.0-5.0 million gallons per day of water available from Newport News.

A more detailed overview of the plan (copy attached) will be made prior to the public hearing. After receiving public comment, staff recommends approval of the attached resolution approving the Hampton Roads Water Supply Plan. Several other local governing bodies in Hampton Roads have already approved the Plan.

Once a similar resolution is approved by all governing bodies in the Hampton Roads Region, the plan will be forwarded to the Department of Environmental Quality who is tasked with using plans from all local governments in Virginia to develop a Water Supply Plan for the Commonwealth.


Larry M. Foster

LMF/nb
HRWtrSupPln_mem

Attachment

RESOLUTION

HAMPTON ROADS WATER SUPPLY PLAN

WHEREAS, pursuant to Virginia Code §62.1-44.38:1 local governments are required to undertake a comprehensive water supply planning process for the development and establishment of a water supply plan; and

WHEREAS, the Virginia State Water Control Board Regulation 9 VAC 25-780, Local, and Regional Water Supply Planning, requires all counties, cities, and towns in the Commonwealth of Virginia to prepare and submit a water supply planning program to the Department of Environmental Quality (DEQ); and

WHEREAS, James City County is part of the Hampton Roads Regional Water Supply Plan which includes the Counties of Gloucester, Isle of Wight, James City, Southampton, Surry, and York, the Cities of Chesapeake, Franklin, Hampton, Newport News, Norfolk, Poquoson, Portsmouth, Suffolk, Virginia Beach, and Williamsburg, and the Towns of Boykins, Branchville, Capron, Claremont, Courtland, Dendron, Ivor, Newsoms, Smithfield, Surry, and Windsor; and

WHEREAS, the Hampton Roads Regional Water Supply Plan was prepared by the Hampton Roads Planning District Commission in accordance with the State Water Control Board Regulation.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, after conducting the required public hearing at its regular meeting on September 27, 2011, hereby adopts the Hampton Roads Regional Water Supply Plan and approves the plan for submittal to the Virginia DEQ.

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 27th day of September, 2011.

HRWtrSupPln_res



Hampton Roads Regional Water Supply Plan

James City County
September 27, 2011
Public Hearing



Water Supply - James City County

James City Service Authority (JCSA)

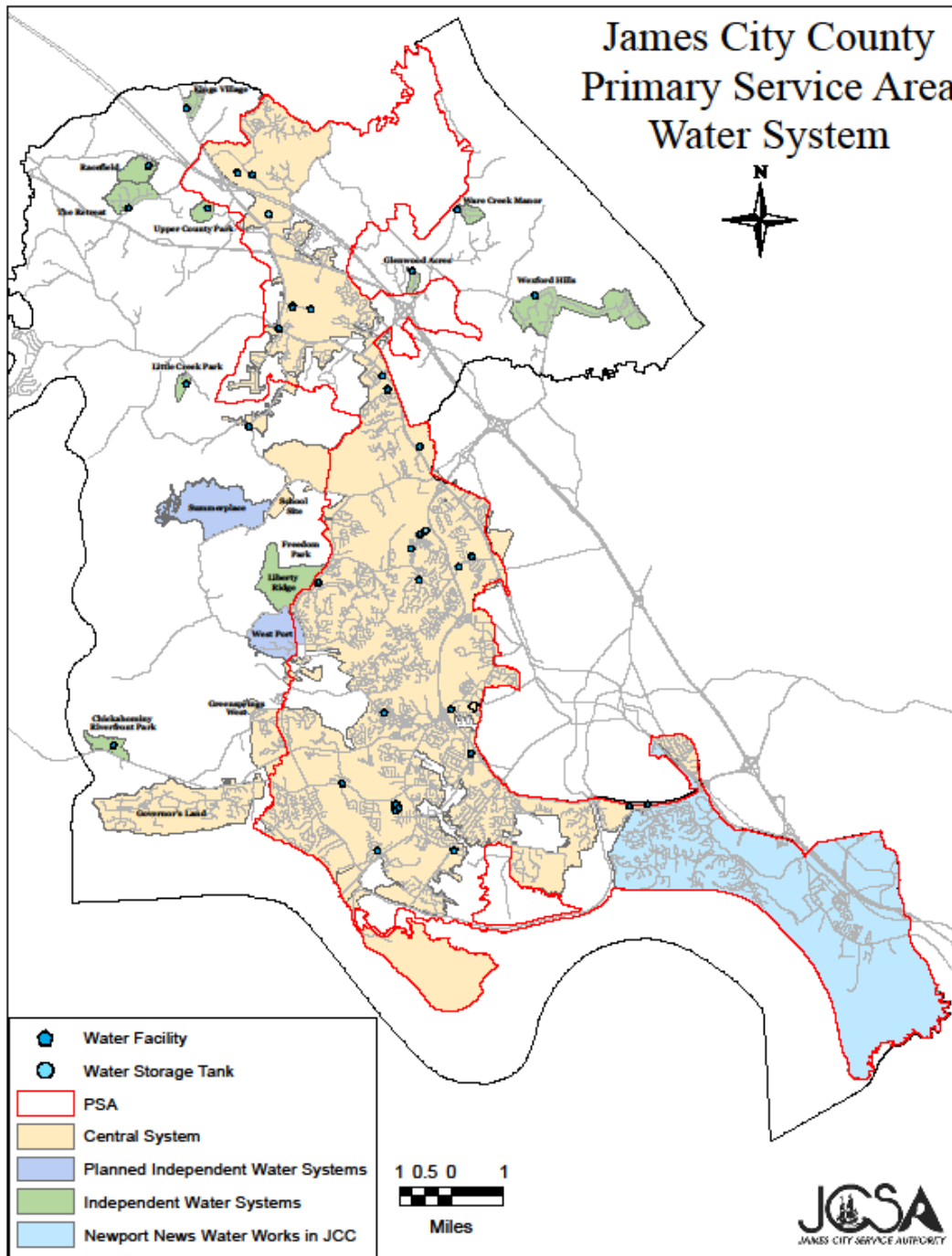
- Central Water System
- 10 Well Facilities
- 7 Independent Water Systems
- 393 Miles Water Lines
- 100% Groundwater
- 5 Million Gallons Per Day (MGD)
- 20,000 Water Customers

Water Supply

Groundwater	8 MGD
Newport News	<u>4-5 MGD</u>
Total	12-13 MGD

* Meet demands through 2045

James City County Primary Service Area Water System



Description of Newport News Water System

- Safe Yield – 60 MGD
- Average Daily Demand 2011 – 48 MGD
- Projected to meet demand through 2040
- Serves Newport News, Hampton, York County, Poquoson, James City County (portions)
- Water Source: Chickahominy River
Groundwater (6 MGD)
- Reservoirs: Diascund
Little Creek
Other Misc. Reservoirs
- Treatment: Lee Hall
Harwoods Mill

Water Supply Plan

Who:

- Required by: General Assembly
Department of Environmental Quality

Why:

- Drought of 2002
- Stress on Water Resources – Surface, Groundwater
- Limitation on ability to create new Water Resources
 - * Ware Creek
 - * King William Reservoir

Options:

- Individual
- Regional – All localities in HRPDC chose regional option

Schedule: November 2011 Complete

Water Supply Plan Subregions

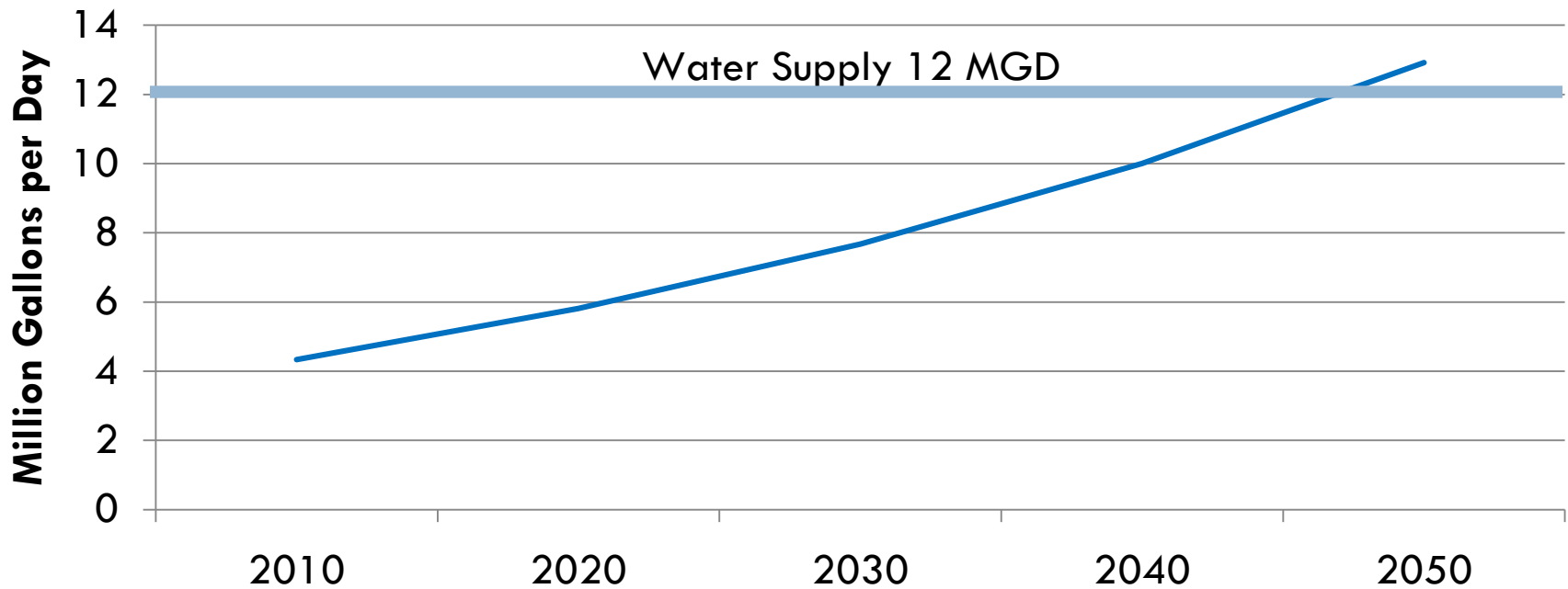
- VA Peninsula: N.N., Hampton, Poquoson, York Co., Gloucester, Williamsburg, JCC
- Southside: Norfolk, Portsmouth, VA Beach, Chesapeake, Suffolk
- Western Tidewater: Franklin, Isle of Wight, South Hampton, Surry, Towns of Boykins, Branchville, Capron, Courtland, Dendron, Ivor, Smithfield, Windsor

How Were Demands Projected?

- 106 gallons per day per capita – 2004-2008 average
- Projected population
- JCC % Population Served
 - 2010 - 76%
 - 2050 - 84%

Population HRPDC vs. JCC		
Year	HRPDC	JCC
2010	64,342	65,717
2020	80,127	84,772
2030	100,494	109,048
2040	125,181	-
2050	157,143	-

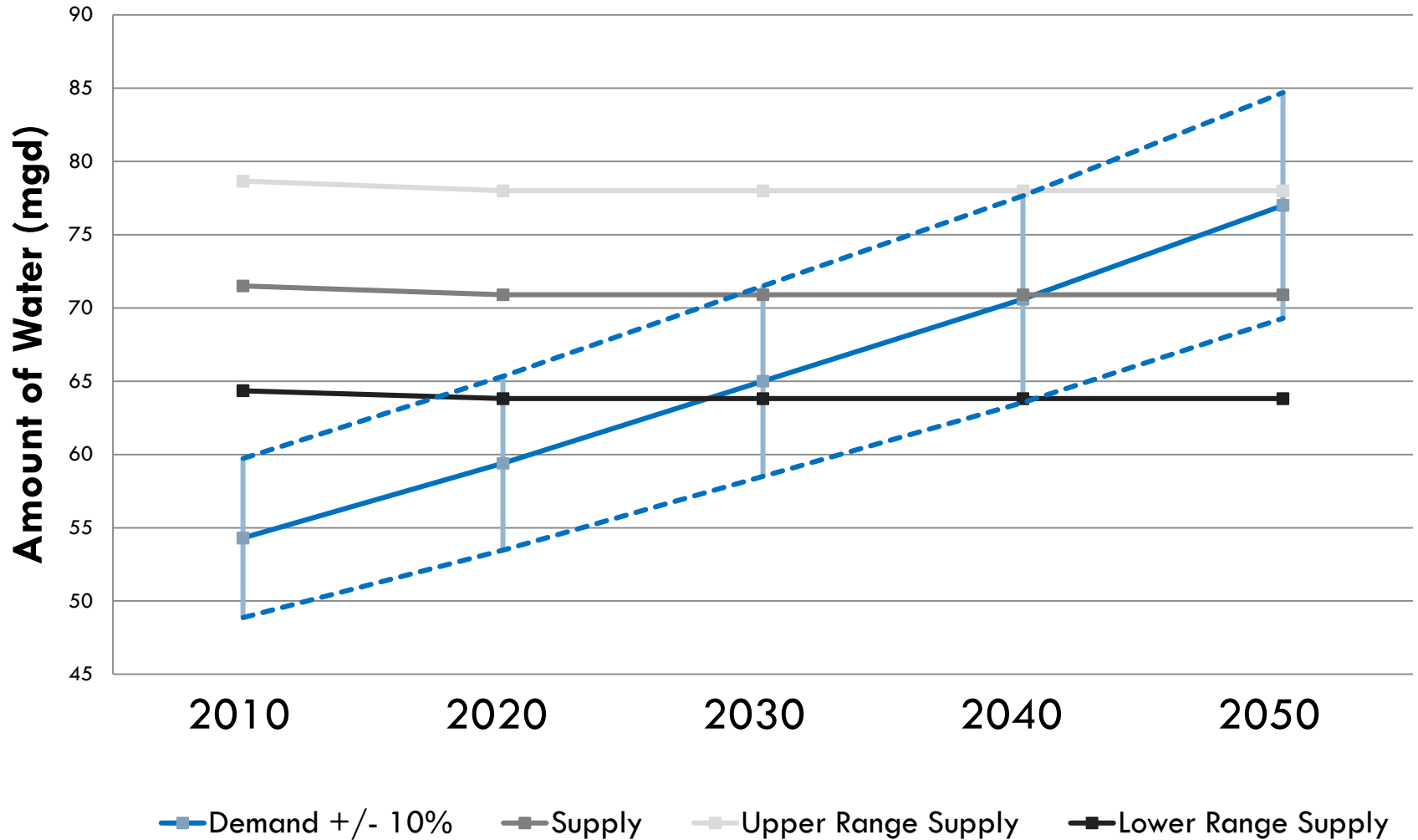
JCSA Projected Demands



People served by:					
Year	2010	2020	2030	2040	2050
JCSA	40,900	54,813	72,396	94,347	121,866
NNWW	8,000	8,487	9,004	9,552	10,134

Virginia Peninsula Graph

Water Supply Compared to Projected Demands for the York-James Peninsula



Alternatives for New Water Supply

- Surface Water Storage
- Groundwater Withdrawal
- Aquifer Storage & Recovery
- Desalination (Brackish Water)
- Conservation
- Southside to Peninsula Interconnect
- Water Re-use
- System Optimization

No Conclusions!

What Next?

- Public Hearing by Board of Supervisors Sept. 27, 2011
- Board of Supervisors Approval of Water Supply Plan
- Documents to HRPDC immediately afterwards
- Documents for all localities to DEQ by Nov. 2, 2011

State Water Control Board has Advisory Committee
on VA Water Supply Plan