

AGENDA
JAMES CITY COUNTY BOARD OF SUPERVISORS
REGULAR MEETING
COUNTY GOVERNMENT CENTER BOARD ROOM
101 MOUNTS BAY ROAD, WILLIAMSBURG, VA 23185
December 12, 2023
5:00 PM

A. CALL TO ORDER

B. ROLL CALL

C. MOMENT OF SILENCE

D. PLEDGE OF ALLEGIANCE

1. Connor and Evan Schultz, students at Providence Classical School

E. PRESENTATIONS

1. Chairman's Awards
2. Proclamations for State Legislators
3. Service Award Presentation - Supervisor Sue Sadler

F. PUBLIC COMMENT

G. CONSENT CALENDAR

1. Amended and Restated Cooperative Service Agreement with the Williamsburg Area Transit Authority
2. Minutes Adoption

H. PUBLIC HEARING(S)

1. SUP-22-0027. 3426 North Riverside Drive Family Subdivision Withdrawal Request
2. An Ordinance to Amend and Reordain Chapter 20, Taxation, of the Code of the County of James City, Virginia, by Amending Article I, exemption of certain persons from real estate taxes, Section 20-10, qualifications for exemption.
3. An Ordinance to Amend and Reordain Chapter 22, Wetlands, of the Code of the County of James City, Virginia, by amending Article II, use permits, Sections 22-3, Permitted uses, 22-5, Applications, maps, documents to be open to public inspection, 22-6, Public hearing, 22-7, Wetlands board action, and 22-11, Permit to be in writing.
4. Readoption of a concurrent resolution with the City of Williamsburg and York County to create the Historic Triangle Recreational Facilities Authority, with the initial purpose of leasing property from the Colonial Williamsburg Foundation and the subsequent construction of an indoor sports facility on said property. The Authority will be

governed by a board comprised of six (6) members with each participating jurisdiction appointing two (2) members as provided in the proposed resolution.

5. An Ordinance to Amend and Reordain Chapter 17, Sewers and sewage, of the Code of the County of James City, Virginia, by amending and renaming Article I, reserved, Section 17-1 – 17-7, Reserved, to Article I, Alternative discharging sewer system, Section 17-1, definitions, Section 17-2, Limitations on the use of alternative discharging sewer systems, Section 17-3, James City County alternative discharging sewage system permit, Section 17-4, alternative discharging sewage system maintenance and testing, Section 17-5, availability of sanitary or other sewer; discontinuance of alternative discharging sewage system, and Sections 17-6-17-7, reserved.

I. BOARD CONSIDERATION(S)

J. BOARD REQUESTS AND DIRECTIVES

K. REPORTS OF THE COUNTY ADMINISTRATOR

L. CLOSED SESSION

1. Consideration of a personnel matter, the appointment of individuals to County Boards and/or Commissions pursuant to Section 2.2-3711(A)(1) of the Code of Virginia
 - a. Appointments - VPPSA Board of Directors
 - b. Appointments - Historic Triangle Bicycle Advisory Committee
 - c. Appointments - Board of Equalization
2. Certification of Closed Session

M. ADJOURNMENT

1. Adjourn until 4 pm on January 9, 2024 for the Organizational Meeting

MEMORANDUM

DATE: December 12, 2023

TO: The Board of Supervisors

FROM: Denise Kirschbaum, Chief of Social Services
(James City County Representative to the Williamsburg Area Transit Authority Board of Directors)
Paul D. Holt, III, Director of Community Development
(James City County Representative to the Williamsburg Area Transit Authority Board of Directors)

SUBJECT: Amended and Restated Cooperative Service Agreement with the Williamsburg Area Transit Authority

In 2008, James City County (JCC), York County, the City of Williamsburg, the Colonial Williamsburg Foundation (CWF), and the Williamsburg Area Transit Authority (WATA) entered into a Cooperative Service Agreement to provide transit service throughout the Historic Triangle.

Since then, WATA has provided transit service throughout the three jurisdictions and CWF has directly provided and managed bus services within the historic district. As such, both CWF and the three jurisdictions have constituted the voting membership of the WATA Board of Directors (BOD).

Earlier this year, CWF ceased operating any public transit service and resigned as a voting member of the WATA BOD with WATA now providing transit service throughout the historic district, effective September 10, 2023.

As a result of this operational change, a corresponding update to WATA's organizational documents (e.g., Bylaws) is required, including the Cooperative Service Agreement.

In short, the attached substantive update removes CWF as a voting member. The three localities will remain the voting members of the WATA BOD and CWF will become a nonvoting member of the WATA BOD. Other nonvoting members of the WATA BOD will remain and include William & Mary and the Virginia Department of Rail and Public Transportation. Other, nonsubstantive updates have been included as well, and include more clear references to WATA's enabling legislation, more clear definitions for BOD members and nonlocality members, removal of other corollary operating provisions with CWF that are no longer applicable, and other nonsubstantive changes to reflect conditions that have otherwise changed since 2008 (e.g., JCC no longer provides legal services to WATA).

At its October 18, 2023, meeting, the WATA BOD voted unanimously to recommend approval of the Amended and Restated Cooperative Service Agreement. Staff recommends approval of the attached resolution authorizing the County Administrator to execute the Agreement on behalf of James City County.

DK/PH/md
WATA-CSAUpd-mem

Attachments:

1. Resolution
2. Amended and Restated Cooperative Service Agreement (redline version)
3. Amended and Restated Cooperative Service Agreement (clean version)

RESOLUTION

AMENDED AND RESTATED COOPERATIVE SERVICE AGREEMENT WITH THE

WILLIAMSBURG AREA TRANSIT AUTHORITY

WHEREAS, in 2008, James City County, York County, the City of Williamsburg, the Colonial Williamsburg Foundation (CWF), and the Williamsburg Area Transit Authority (WATA), entered into a Cooperative Service Agreement to provide transit service throughout the Historic Triangle; and

WHEREAS, since 2008, WATA has provided transit service throughout the three jurisdictions and CWF has directly provided and managed bus services within the historic district. As such, both CWF and the three jurisdictions have constituted the voting membership of the WATA Board of Directors (BOD); and

WHEREAS, in 2023, CWF ceased operating any public transit service and resigned as a voting member of the WATA BOD with WATA now solely providing transit service throughout the historic district, effective September 10, 2023; and

WHEREAS, as a result of this operational change, a corresponding update to WATA’s organizational documents is required, including the Cooperative Service Agreement to remove CWF as a voting member.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby authorizes and directs the County Administrator to execute those documents necessary to amend the Williamsburg Area Transit Authority Cooperative Service Agreement.

Michael J. Hipple
Chairman, Board of Supervisors

ATTEST:

Teresa J. Saeed
Deputy Clerk to the Board

	VOTES			
	<u>AYE</u>	<u>NAY</u>	<u>ABSTAIN</u>	<u>ABSENT</u>
SADLER	_____	_____	_____	_____
ICENHOUR	_____	_____	_____	_____
MCGLENNON	_____	_____	_____	_____
LARSON	_____	_____	_____	_____
HIPPLE	_____	_____	_____	_____

Adopted by the Board of Supervisors of James City County, Virginia, this 12th day of December, 2023.

AMENDED AND RESTATED COOPERATIVE SERVICE AGREEMENT

This AMENDED AND RESTATED COOPERATIVE SERVICE AGREEMENT (“Agreement”) is made as of ~~August 28, 2008~~ September , 2023, by and among the WILLIAMSBURG AREA TRANSIT AUTHORITY, a political subdivision of the Commonwealth of Virginia (“Authority”), the CITY OF WILLIAMSBURG, a municipal corporation, the COUNTY OF JAMES CITY, a political subdivision of the Commonwealth of Virginia, the COUNTY OF YORK, ~~each of which is~~ a political subdivision of the Commonwealth of Virginia, and THE COLONIAL WILLIAMSBURG FOUNDATION, a Virginia non-stock, not-for-profit corporation (“Colonial Williamsburg”) and amends, restates, and supersedes in its entirety the Cooperative Service Agreement dated August 28, 2008 by and among the City of Williamsburg, the County of James City, the County of York and the Colonial Williamsburg Foundation (the “Original Agreement”).

RECITALS

On March 23, 2006, the General Assembly of Virginia adopted Chapter 179 of the Acts of Assembly of 2006, which amended Title 15.2 of the Code of Virginia by adding a Chapter 68 (§§ 15.2-6800 through 15.2-6809) and created the Authority to prepare a regional transit plan for the areas located within the jurisdictional boundaries of each member locality ~~Member Jurisdiction (as defined hereinafter)~~. Pursuant to Title 15.2, Chapter 68 of the Code of Virginia, as amended, the County of James City, the County of York, and the City of Williamsburg (each a “Member Jurisdiction” and collectively “Member Jurisdictions”) each adopted an approving ordinance to join the Authority. On March 17, 2015 the General Assembly of Virginia repealed Chapter 68 (§§ 15.2-6800 through 15.2-6809) of Title 15.2 and reenacted the authorizing legislation for the Authority as Chapter 33 (§§ 33.2-3300 through 33.2-3308) of Title 33.2 of the Code of Virginia.

Pursuant to the Original Agreement, the Member Jurisdictions agreed to appoint a representative from Colonial Williamsburg as a voting member of the Authority’s Board of Directors and The Member Jurisdictions have elected entered into to contract a Bus Service Agreement with Colonial Williamsburg dated October 16, 2008, as subsequently amended on February 28, 2018 and December 31, 2019, and Amended and Restated as of March 31, 2023 (the “Amended & Restated Bus Service Agreement”).

~~Pursuant to the Amended & Restated Bus Service Agreement, Colonial Williamsburg ceased operating any public transit service and resigned as a voting member of the Board of Directors for the Authority, effective as of September 10, 2023, for bus services and to invite Colonial Williamsburg to serve as a voting member of the board of the Authority. Colonial Williamsburg shall be referred to herein as Colonial Williamsburg. The Member Jurisdictions and Colonial Williamsburg are collectively referred to herein as “Members”.~~

~~The Authority shall act through its Board, unless otherwise provided in the governing documents or as delegated by the Board.~~ In consideration of the foregoing and the mutual covenants set forth herein, the Authority and the Member Jurisdictions hereby agree as follows:

DEFINITIONS

The capitalized terms in this Agreement have the meanings set forth below unless the context otherwise requires.

“Annual Budget” shall mean an itemized forecast of the Authority's projected income and expenses in accordance with Section 3.3 (c).

“Applicable Laws” shall mean all applicable laws, ordinances, judgments, decrees, injunctions, writs and orders of any court, arbitrator or governmental agency or authority and all rules, regulations, orders, interpretations, licenses and permits of any federal, state, county, municipal, regional, foreign or other governmental body, instrumentality, agency or authority. “Authority” means the Williamsburg Area Transit Authority.

“Authority Default” shall mean those events of default described in Section 7.1.

“Board” shall mean the Board of Directors of the Authority, ~~consisting of representatives of each Member as described in Article I of this Agreement.~~

“Debt” shall mean all indebtedness for money borrowed and other obligations of the Authority for the payment or repayment of money, whether contingent or otherwise, including obligations of other persons, the payment of which the Authority is responsible or liable as obligor, guarantor or otherwise, but excluding trade accounts payable in the ordinary course of business.

“Fiscal Agent” shall mean the bank, trust company or other entity appointed by the Authority to administer the fiscal duties of the Authority in accordance with Section 3.4.

“Fiscal Year” shall mean the annual accounting period from July 1 of one year to June 30 of the following year.

“FTA” shall mean the Federal Transit Administration of the U.S. Department of Transportation.

~~“Colonial Williamsburg” shall mean The Colonial Williamsburg Foundation.~~

“Long Term Debt” shall mean any Debt repayable over a period of thirty-six (36) months, or longer.

“Member Jurisdiction” shall mean each of the County of James City, the County of York, and the City of Williamsburg, each a political subdivision of the Commonwealth of Virginia, but excluding any political subdivision that may have withdrawn from the Authority as provided in Section 4.4.

“Member Jurisdiction Default” shall mean those events of default described in Section 7.2.

~~“Member(s)” shall refer to Member Jurisdictions and Non-Locality Members collectively.~~

~~“Non-Locality Members” shall mean any member of the Authority that is not a Member Jurisdiction.~~

“Public Transportation” shall mean all transportation service provided by or on behalf of the Authority to the general public whereby the boarding patrons are not denied access upon payment of the proper fare and all of such services are provided over regular routes.

“Quarterly Contribution” shall mean the monetary contribution to be made by each Member Jurisdiction in accordance with Sections 2.2 and 3.3 (c).

“Special Event Transportation” shall mean specific point to point destination transportation in which no FTA buses are used for transportation, except as permitted by applicable guidelines.

“System” shall mean the regional transportation system which shall be operated by or on behalf of the Authority and provide Public Transportation to the County of James City, ~~the Bruton District of York County and~~ such ~~other~~ portions of York County as mutually agreed upon between York County and the Authority, the City of Williamsburg, and ~~the such~~ areas owned and/or operated by Colonial Williamsburg ~~or William & Mary (the~~

“University”) as may be mutually agreed to by the Authority and Colonial Williamsburg and/or the University, as the case may be.

“Transit Funding” shall mean funds that serve as partial reimbursement for expenses associated with the operation of the System made available to the Authority from the FTA and Commonwealth of Virginia by virtue of the Authority's operation of the System ~~and Colonial Williamsburg's operation of its bus system and membership in the Authority.~~

“Transit Plan” shall mean the plan adopted by the Authority in accordance with Title ~~1533.2~~, Chapter ~~3368~~ of the Code of Virginia for the development and provision of the System.

ARTICLE I

The Authority shall be governed by a Board of Directors (“Board”), consisting of the following representatives for each Member Jurisdiction:

<u>Member</u>	<u># of Representatives</u>
James City	2
Williamsburg	1
York	1

~~Colonial Williamsburg is removed as a party to this Agreement with immediate effect. The Authority may admit Non-Locality Members and additional directors may be elected and serve on the Board pursuant to the bylaws for the Authority or Applicable Law. In addition, so long as the Authority has a contract with Colonial Williamsburg to provide transportation services as defined in paragraph 2.4 (the “CW Services Contract”) the four Board representatives from the Member Jurisdictions shall appoint one representative of Colonial Williamsburg to serve on the Board, who shall be a voting member except as hereinafter provided. Colonial Williamsburg's representative may not vote on any matter pertaining to the CW Services Contract with the Authority or on any matter arising from said contract. Such Colonial Williamsburg representative's term shall terminate should the CW Services contract terminate.~~

Article II

Member Jurisdiction Contributions and Authority Financing

Section 2.1 Member Jurisdictions' Initial Contribution. As an initial start-up contribution to the Authority, each Member Jurisdiction agrees to contribute certain personal property and/or monetary funds as set forth in the attached Exhibit A. In addition to the contribution funds and personal property set forth in Exhibit A, the City of Williamsburg agrees to enter into a use agreement with the Authority regarding the transportation center located at 468 N. Boundary Street, Williamsburg, Virginia, on terms to be negotiated between the Authority and the City of Williamsburg.

Section 2.2 Quarterly Contribution. On the first day of the beginning of each quarter following the Member Jurisdictions' initial contribution, each Member Jurisdiction shall make a Quarterly Contribution to the Authority. The Quarterly Contribution per Member Jurisdiction shall be a percentage of the Authority's operating expenses. The percentage shall be calculated for each Member Jurisdiction as set forth in Chapters 4 and 5 of the Williamsburg Area Public Transportation Study, Technical Report, dated June 2005, prepared by KFH Group Inc. (the "Report") and which Chapters are incorporated herein by reference. The Authority shall perform once every five (5) years, a comprehensive operation analysis, (the "Operation Analysis") which will be used to determine the percentage of operations that is attributable to each Member Jurisdiction. The Operation Analysis shall take into account, but not be limited to the following factors: number of resident riders in each Member Jurisdiction, number of visitor riders in each Member Jurisdiction, entry and exit points of riders, lane miles in each Member Jurisdiction, hours of service in each Member Jurisdiction, and any other factors the Board deems to be reasonable in determining the composition of ridership and actual service provided to each Member Jurisdiction. The Authority shall adjust the allocation of costs among the Member Jurisdictions for any Fiscal Year based on the results of the Operation Analysis. In the event the Member Jurisdictions are unable to agree to a new cost allocation, then the cost allocation determined in the Operation Analysis will be adopted with the limitation that no Member Jurisdiction's required Quarterly Contribution will increase or decrease by more than 10% each year from its previous level.

Section 2.3 Authority Financing. The Authority's capital constitutes the Member Jurisdictions' initial and Quarterly Contributions, and federal and state grants and other revenue or assets obtained by the Authority.

~~**Section 2.4 Contracting.** The Authority may contract with Colonial Williamsburg for the operation and provision of transportation around and throughout the historic Williamsburg area, as well as transportation to and from historic Jamestown, Jamestown Settlement, and historic Yorktown, on terms to be negotiated between the Authority and Colonial Williamsburg. Only the Board representatives of Member Jurisdictions may vote to approve a contract with Colonial Williamsburg.~~

~~**Section 2.5 Transit Funding.** For Each Fiscal Year that there is a contract pursuant to paragraph 2.4 in effect the Authority shall apply for the Transit Funding and shall pay to Colonial Williamsburg that portion of the Transit Funding as agreed between the Authority and Colonial Williamsburg. The Authority shall apply the remaining Transit Funding in accordance with the Authority's annual budget.~~

Section 2.64 Repayment of Long Term Debt. The Authority shall enter into or incur Long Term Debt only upon the unanimous approval of the Member Jurisdictions representative on the Board. To the extent not defrayed out of the Authority's regular earnings, each Member Jurisdiction agrees to pay to the Authority with respect to any Long Term Debt incurred by the Authority such Member Jurisdiction's proportionate share of funds necessary to pay interest and principal on such Long Term Debt and any capital reserve funding requirements under the terms of such Long Term Debt. The allocation of each Member Jurisdiction's obligation to make payments toward each issue of Long Term Debt shall be determined by the Authority at the time the Long Term Debt is contracted. As with operating costs, each Member Jurisdiction shall make quarterly payments toward Long Term Debt. The payment required from each Member Jurisdiction shall be expressly conditioned upon funds being appropriated or authorized for such purpose by its governing body. Absent an appropriation/authorization for such purpose by its governing body, no Member Jurisdiction shall be under a legal obligation to make any payment requested under this Section 2.64, and in no event shall Colonial Williamsburg be under any obligation to make any payment required under this Agreement.

Section 2.57 Limitation of Liability. The only obligation of the Member Jurisdictions to pay for the establishment, operation, or maintenance of the System arises out of this Agreement. No such payment responsibility shall constitute a debt of any Member Jurisdiction within the meaning of any constitutional or statutory limitation. Colonial Williamsburg has no responsibility under this Agreement to make any payment or contribute

~~any property to the Authority or the Member Jurisdictions; its responsibilities to the Authority shall be governed by separate agreement with the Authority.~~

ARTICLE III

Provisions of Services, Operation, and Maintenance

Section 3.1 Operation of Service.

(a) **Service and Transit Plan.** The Authority shall operate and maintain the System. The Authority shall begin providing Public Transportation on or about July 1, 2008. The Authority will work in tandem with the Member Jurisdictions ~~and Colonial Williamsburg~~ to implement the Transit Plan by providing and improving service routes, bus stops and all other necessary transportation services throughout the Member Jurisdictions ~~and areas owned and/or operated by Colonial Williamsburg.~~

Changes to the Transit Plan require approval of a majority of the Board, provided that any permanent change affecting the level of service to a Member Jurisdiction's service area ~~or Colonial Williamsburg's service area~~ must be approved by such Member Jurisdiction's representative(s) ~~or Colonial Williamsburg's representative~~ on the Board, unless an objecting Member Jurisdiction has provided a Withdrawal Notice as described in Section 4.4 of this Agreement.

(b) **Legal Compliance.** The System shall be operated in accordance with the rules and laws of the FTA, Commonwealth of Virginia, and all other Applicable Law. The Authority shall be an Equal Opportunity Employer.

(c) **Special Event Transportation.** The Authority shall provide Special Event Transportation to any Member Jurisdiction requesting such service; provided, however, that all costs of such special event transportation shall be borne by the Member Jurisdiction requesting such service and further provided that the Authority then has available equipment and personnel reasonably necessary to provide such transportation. The Authority shall not violate any FTA regulations in providing Special Event Transportation.

Section 3.2 Insurance. The Authority shall maintain hazard, liability or such other insurance as may be required by Applicable Law or which the Authority may deem advisable to protect the interest of the Authority, ~~and~~ the Members ~~Jurisdictions, and Colonial Williamsburg.~~

Section 3.3 Accounts. (a) The Authority will maintain proper books and records of account in which proper entries shall be made in accordance with generally accepted accounting principles for Virginia governmental bodies, consistently applied. The books and records of account of the Authority shall be audited annually by a firm of independent public accountant selected by the Authority. All books, records, accounts and documents in the Authority's or its Fiscal Agent's possession relating to the System shall at all reasonable times be open to inspection by such agents or employees of the Members ~~Jurisdictions or Colonial Williamsburg as they may designate.~~

(b) **Annual Report** On or before ~~November 1~~ December 31st of each year the Authority shall provide to each Member ~~Jurisdiction and to Colonial Williamsburg~~ a report showing the activities, revenues, expenditures and grants utilized, and employee compensation schedules and other similar data of the Authority for the preceding Fiscal Year, including its audited financial statements.

(c) **Annual Budget.** On or before November ~~1~~ 30 of each year the Authority shall provide the Members ~~with Jurisdictions and Colonial Williamsburg~~ its preliminary Annual Budget for the following Fiscal Year and on or before each ~~December 31st~~ June 30th its final Annual Budget for the ~~next following~~ Fiscal Year. For each Fiscal Year, the Annual Budget shall set the Quarterly Contributions for each Member Jurisdiction calculated pursuant to Section 2.2 of this Agreement and the Member Jurisdictions' ~~and Colonial Williamsburg's~~ share of the Transit Funding. The Annual Budget shall provide appropriate and sufficient funding for the Fiscal Year, so that no supplemental funds will be needed from the Member Jurisdictions during the Fiscal Year. The Authority will promptly provide copies of any amendments to its Annual Budget to each Member ~~Jurisdiction and Colonial Williamsburg.~~

Section 3.4 Other Contracted Services. James City County shall be the initial Fiscal Agent for the Authority. The Fiscal Agent shall provide services to the Authority to include payroll and purchasing. James City County will receive up to 1% of the Authority's total operating budget for these services. James City County shall continue to serve as the Authority's Fiscal Agent until such services are terminated by the Authority or the Fiscal Agent upon sixty (60) days written notice, prior to the Authority's new Fiscal Year. After such notice of termination, the Authority shall make such arrangements as it deems desirable regarding Fiscal Agent services.

The Authority may contract with one or more of its Member Jurisdictions to provide assistance with procurement, personnel, and human resources to the Authority. ~~The County Attorney for James City County will serve as legal counsel for the Authority by mutual agreement between the Authority and James City County. The Authority shall use its best efforts to retain independent legal counsel by June 30, 2009. The Authority shall retain and maintain independent legal counsel.~~

Section 3.5 Preliminary Responsibilities. The Authority shall provide for (i) the employment or procurement and equipping of the Transportation Center, bus shelters and any other equipment necessary for the operation of the System, (ii) the adoption of rules, regulations, policies and guidelines for the operation and maintenance of the System, not inconsistent with the standards of the FTA or the Commonwealth of Virginia, and (iii) the arrangements for financing of the System.

ARTICLE IV

Additional Agreements

Section 4.1 Sale or Other Conveyance. Upon the Authority commencing Public Transportation pursuant to Section 3.1 of this Agreement, the Authority will not sell, lease, sublease, assign, convey or otherwise voluntarily dispose of any real property, equipment of the System or any material interest in the System unless any debt on such property, equity or interest has been or will be paid or deemed defeased in accordance with its terms. Member Jurisdictions that contribute personal property to the Authority shall maintain a remainder interest in such personal property. In the event the Authority disposes of personal property contributed by a Member Jurisdiction, the Member Jurisdiction shall receive a credit for the disposal value of the personal property. Such value of the personal property shall be determined at the time of disposal and shall be applied to offset the Member Jurisdiction's future Quarterly Contributions.

Section 4.2 Further Documents and Data. Subject to the approval of their governing bodies, the parties to this Agreement will execute and deliver all documents and perform their obligations hereunder and consummate the transactions contemplated by this Agreement that are necessary for the formation and initial capitalization of the Authority.

Section 4.3 Notification. The Authority shall promptly furnish to each Member ~~Jurisdiction and Colonial Williamsburg~~ a copy of any notice or order of any governmental authority asserting that the Authority or the System is not in compliance with any Applicable Law.

Section 4.4 Withdrawal of Member Jurisdiction. After commencement of Public Transportation pursuant to Section 3.1 of this Agreement, a Member Jurisdiction may withdraw from the Authority only as follows: The withdrawing Member Jurisdiction shall provide the Authority written notice of its intent to withdraw (“Withdrawal Notice”) a minimum of two Fiscal Years prior to the intended date of withdrawal. Withdrawal Notice must be given to the Authority during the first quarter of a Fiscal Year. Notice sent any time after the first quarter of the Fiscal Year shall not become effective until the first day of the next Fiscal Year immediately following the Withdrawal Notice. The withdrawing Member Jurisdiction shall continue to be responsible for its total Quarterly Contributions, pursuant to this Agreement, during the Fiscal Year in which the Withdrawal Notice is received and effective, which shall be deemed to be the first Fiscal Year herein. During the first Fiscal Year, and upon the request and/or consent of the withdrawing Member Jurisdiction, the Authority may reduce and/or terminate Public Transportation to the withdrawing Member Jurisdiction. During the second Fiscal Year, the withdrawing Member Jurisdiction shall lose all voting privileges on the Authority Board and the withdrawing Member Jurisdiction's financial responsibility to the Authority shall only be the withdrawing Member Jurisdiction's proportional share of the Authority's overhead costs as set forth in the Annual Budget for the second Fiscal Year. During the second Fiscal Year following the effective date of the Withdrawal Notice, the withdrawing Member Jurisdiction shall be deemed for purposes of receiving service to be effectively withdrawn and the Authority shall terminate any remaining Public Transportation to the withdrawing Member Jurisdiction, notwithstanding the withdrawing Member Jurisdiction's continued obligation to pay a percentage of the overhead costs as hereinabove provided. In no event shall the withdrawing Member Jurisdiction's obligation continue beyond the second Fiscal Year after the effective date of the Withdrawal Notice.

Non-Locality Members may withdraw pursuant to the bylaws of the Authority.

If a Member Jurisdiction withdraws, any and all monetary contributions made by the withdrawing Member Jurisdiction to the Authority shall remain with the Authority. Any personal property contributed to the Authority shall also remain with the Authority, but the withdrawing Member Jurisdiction shall maintain a remainder interest in the personal property. The Authority

shall make no payments to the withdrawing Member Jurisdiction unless its personal property is disposed of by the Authority pursuant to Section 4.1 of this Agreement. In such instance, the disposal value of such personal property shall be first applied to any indebtedness of the withdrawing Member Jurisdiction to the Authority and the balance shall be paid to the withdrawing Member Jurisdiction.

~~**Section 4.5 Preferential Hiring.** Employees deemed qualified by the Authority of York County and the James City County's Williamsburg Area Transport (“Existing Employees”) shall be given preferred consideration for employment with the System by the Authority, subject to the employment policies and procedures adopted by the Authority. York County may choose to continue being the employer of qualified Existing Employees and may assign such qualified Existing Employees to the Authority. Any Existing Employee assigned to the Authority shall be subject to the employment policies and procedures adopted by the Authority. Any new employee shall be an Authority employee.~~

ARTICLE V

Representations, Warranties and Covenants of Authority

In addition to the covenants in other Articles of this Agreement, the Authority represents, warrants, and covenants as follows:

Section 5.1 Organization, Authorization, and Validity. The Authority is a political subdivision of the Commonwealth of Virginia duly organized and validly existing under the laws of the Commonwealth of Virginia and has duly authorized, executed and delivered this Agreement, which is enforceable against the Authority in accordance with its terms.

Section 5.2 Authority. The Authority has all requisite authority to execute and deliver and perform its obligations under this Agreement and is not a party to any indenture, contract or other agreement or arrangement, the performance of which by the Authority would prevent or materially and adversely affect the Authority's ability to perform the terms of this Agreement.

Section 5.3 Non-Contravention. The execution and delivery of this Agreement by the Authority and the consummation of the transactions contemplated in it will not conflict with or result in a breach of or constitute a default under or violate any of the terms, conditions or provisions of the statute or ordinances creating the Authority, the bylaws of the Authority or any material indenture, contract or other agreement or arrangement to which the Authority is

a party or by which any of its properties are bound, or any Applicable Law by which the Authority or the System is bound.

Section 5.4 Litigation. The Authority is not a party to any legal, administrative, arbitration or other proceeding or controversy pending, or, to the best of the Authority's knowledge, threatened, which would materially adversely affect the Authority's ability to perform under this Agreement.

Section 5.5 Approvals. The Authority exists as a separate political entity and does not require the consent or approval of any governmental body to carry out the terms of this Agreement, except as provided expressly herein and for approvals that may be required by the Commonwealth of Virginia.

ARTICLE VI

Representations, Warranties and Covenants of Member Jurisdictions and Colonial Williamsburg

Each Member Jurisdiction and Colonial Williamsburg represents, warrants and covenants for itself, separately and not jointly, as follows:

Section 6.1 Organization, Authorization, and Validity. Each Member Jurisdiction is a political subdivision of the Commonwealth of Virginia duly organized and validly existing under the laws of the Commonwealth of Virginia, and each has duly authorized, executed, and delivered this Agreement. Colonial Williamsburg is a not-for-profit corporation organized under the laws of the Commonwealth of Virginia. The Member Jurisdictions have contributed significant financial resources to the Authority, desire to be a member of the Authority, and are duly authorized to execute and deliver this Agreement. ~~Colonial Williamsburg desires to contract with the Authority to provide bus services and is duly authorized to execute and deliver this Agreement.~~

Upon execution by the Authority, each Member Jurisdiction, and Colonial Williamsburg, this Agreement will be a valid, legal, and binding agreement enforceable in accordance with its terms.

Section 6.2 Authority. Each Member Jurisdiction and Colonial Williamsburg has all requisite authority to execute and deliver and perform its obligations under this Agreement and is not a party to any indenture, contract or other agreement or arrangement. the performance of which by it would prevent or materially and adversely affect its individual performance under this Agreement.

Section 6.3 Non-Contravention. The execution and delivery of this Agreement by each Member Jurisdiction and Colonial Williamsburg and the consummation of the transactions contemplated in it will not conflict with or result in a breach of or constitute a default under or violate any of the terms, conditions or provisions of any charter, bylaws or other organizational document, any resolution or ordinance, any material indenture, contract or agreement or arrangement to which such Member Jurisdiction or Colonial Williamsburg is a party or by which any of their properties are bound, or any Applicable Law by which any is bound.

Section 6.4 Litigation. No Member Jurisdiction or Colonial Williamsburg is a party to any legal, administrative, arbitration, or other proceeding or controversy pending, or, to the best of each such Member Jurisdiction's or Colonial Williamsburg's knowledge threatened, that would materially and adversely affect its ability to perform under this Agreement.

ARTICLE VII

Defaults and Remedies

Section 7.1 Default by Authority. The occurrence of any one or more of the following events will constitute an “Event of Default” by the Authority (“Authority Default”):

- (i) Failure of the Authority to pay principal of or interest on any Debt when due beyond any applicable grace period;
- (ii) If the Authority is for any reason rendered incapable of performing any of its material obligations under this Agreement;
- (iii) The Authority makes an assignment of all or a portion of its obligations under this Agreement without the prior consent of the Member Jurisdictions;
- (iv) The Authority defaults on any of its material obligations under any agreement, indenture or other document evidencing Debt and such default is not cured within the applicable cure period;
- (v) Any proceeding is instituted, with the consent or acquiescence of the Authority, for the purpose of effecting a composition between the Authority and its creditors or for the purpose of adjusting the claims of such creditors pursuant to any federal or state statute now or hereafter enacted, if the claims of such creditors are under any circumstances payable from the funds of the Authority; or

- (vi) The Authority defaults in the due and punctual performance of any other of the covenants, conditions, agreements and provisions contained in this Agreement, and the default continues for thirty days after written notice specifying the default and requiring it to be remedied has been given to the Authority by any Member Jurisdiction or Colonial Williamsburg.

Section 7.2 Default by Member Jurisdiction. The occurrence of any one or more of the following events will constitute an “Event of Default” by any Member Jurisdiction (“Member Jurisdiction Default”):

- (a) failure of any Member Jurisdiction to make payments of its Quarterly Contribution when due if such failure is not cured within thirty (30) days of the Member Jurisdiction's receipt of written notice of default by the Authority (the “Authority Default Notice”);
- (b) any proceeding is instituted, with the consent or acquiescence of any Member Jurisdiction, for the purpose of effecting a composition between such Member Jurisdiction and its creditors or for the purpose of adjusting the claims of such creditors pursuant to any federal or state statute now or hereafter enacted, if the claims of such creditors are under any circumstances payable from the funds of such Member Jurisdiction; or
- (c) any Member Jurisdiction defaults in the due and punctual performance of any of the other material covenants, conditions, agreements and provisions contained in this Agreement, if such default is not cured within thirty (30) days of the Member Jurisdiction's receipt of the Authority Default Notice specifying the acts or omissions alleged to constitute a Member Jurisdiction Default.

Section 7.4 Remedies of Member Jurisdictions ~~and Colonial Williamsburg.~~ Upon the occurrence of any Authority Default, any Member Jurisdiction after giving notice of such Authority Default to all parties, may bring suit by mandamus or other appropriate proceeding to require the Authority to perform its duties under this Agreement or to enjoin any acts in violation of this Agreement.

Section 7.5 Remedies of Authority. Upon the occurrence of a Member Jurisdiction Default, the Authority, after giving notice to all parties of its intent to enforce this Agreement (the

“Authority Enforcement Notice”) may bring suit by appropriate proceeding to require the defaulting Member Jurisdiction to perform its duties under this Agreement or to enjoin any acts in violation of this Agreement; provided, however, that if the defaulting Member Jurisdiction contests the default in writing (the “Member Jurisdiction's Notice of Contest”) within fifteen (15) days of such Member Jurisdiction's receipt of the Authority Enforcement Notice, the Authority and such Member Jurisdiction shall enter into binding arbitration of the matter within thirty (30) days of the date of the Member Jurisdiction's Notice of Contest. Such arbitration shall be conducted in accordance with the American Arbitration Association's Rules for Resolving Commercial Financial Disputes solely to determine whether there has been a Member Jurisdiction Default. The parties agree that the arbitrator(s) shall give effect to the substantive common and statutory law of the Commonwealth of Virginia. Confirmation and judgment upon the award rendered by the arbitrator(s) may be entered by state or federal court having jurisdiction thereof. Upon such confirmation and judgment, the Authority may reduce and/or terminate Public Transportation to the defaulting Member Jurisdiction and such defaulting Member Jurisdiction shall lose voting privileges on the Authority Board. If the Member Jurisdiction Default involves the payment of money, the Member Jurisdiction alleged to be in default may post the funds alleged to be due in an interest-bearing account during the pendency of the proceedings to resolve the matter and upon confirmation of such posting by the Authority, such Member Jurisdiction shall continue receiving services from the Authority and shall maintain its voting privileges on the Authority Board.

Section 7.6 Remedies Not Exclusive. No remedy in this Agreement conferred upon or reserved to the parties is intended to be exclusive of any other remedy; and each remedy is cumulative and in addition to every other remedy given under this Agreement or now or hereafter existing at law, in equity or by statute.

ARTICLE VIII

Miscellaneous

Section 8.1 Severability of Invalid Provisions. If any clause, provision or section of this Agreement is held to be illegal or invalid by any court, the invalidity of the clause, provision or section will not affect any of the remaining clauses, provisions or sections, and this

Agreement will be construed and enforced as if the illegal or invalid clause, provision or section has not been contained in it.

Section 8.2 Notices. Any notice or other communication under or in connection with this Agreement shall be in writing and shall be effective when delivered in person or sent in the United States mail, postage prepaid, to the following persons and addresses or to such other persons and addresses as any of such persons may from time to time specify in writing

~~**If to Colonial Williamsburg:**~~

~~General Counsel~~

~~P.O. Box 1776~~

~~Williamsburg, Virginia 23187~~

If to James City:

County Administrator

P.O. Box 8784

Williamsburg, Virginia 23187

If to Williamsburg:

City Manager

401 Lafayette Street

Williamsburg, Virginia 23185

If to York:

County Administrator

P.O. Box 532

Yorktown, Virginia 23690

Section 8.3 Governing Law. This Agreement shall be governed by, and construed and enforced in accordance with the substantive laws of the Commonwealth of Virginia.

Section 8.4 Amendments. This Agreement may be changed or amended only with the consent of the Authority and each Member Jurisdiction. If the Authority has any Debt outstanding, no change or amendment to this Agreement shall be effective if such change or amendment would cause a violation of any provision of any resolution, indenture, or agreement evidencing such Debt.

Section 8.5 Effective Date of Agreement. This Agreement will be effective from the date of its execution and delivery by all of the Member Jurisdictions and the Authority.

Section 8.6 Waiver. Any waiver by any party of its rights under this Agreement must be in writing and will not be deemed a waiver with respect to any matter not specifically covered. Nothing in this Agreement authorizes the waiver of any Member Jurisdiction's obligation to make payments when due of all monies required to be paid by the Member Jurisdictions under the terms of this Agreement.

Section 8.7 No Assignment. No party may assign its rights and/or duties hereunder, directly or indirectly, without the prior written consent of all of the other parties hereto.

Section 8.8 No Third-Party Beneficiary Rights. This Agreement is not intended to and shall not be construed to give any party other than a named party hereto any interest or rights (including, without limitation, any third party beneficiary rights) with respect to or in connection with any agreement or provision contained herein or contemplated hereby.

Section 8.98 Entire Agreement. This Agreement, including all documents referred to and incorporated herein, constitutes the entire agreement between the parties and the Authority with respect to the subject matter of this Agreement and there are no representations, understandings, or agreements relating to this Agreement that are not fully expressed herein.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the date above written.

WILLIAMSBURG AREA TRANSIT AUTHORITY

By: _____
_____, Executive Director

APPROVED AS TO FORM

CITY OF WILLIAMSBURG

City Attorney

By: _____
_____, City Manager

APPROVED AS TO FORM

COUNTY OF JAMES CITY

County Attorney

By: _____
_____, County Administrator

APPROVED AS TO FORM

COUNTY OF YORK

County Attorney

By: _____
_____, County Administrator

THE COLONIAL WILLIAMSBURG FOUNDATION

By: _____
Name:

Title:

AMENDED AND RESTATED COOPERATIVE SERVICE AGREEMENT

This **AMENDED AND RESTATED COOPERATIVE SERVICE AGREEMENT** (“**Agreement**”) is made as of **September __, 2023**, by and among the **WILLIAMSBURG AREA TRANSIT AUTHORITY**, a political subdivision of the Commonwealth of Virginia (“**Authority**”), the **CITY OF WILLIAMSBURG**, a municipal corporation, the **COUNTY OF JAMES CITY**, a political subdivision of the Commonwealth of Virginia, the **COUNTY OF YORK**, a political subdivision of the Commonwealth of Virginia, and **THE COLONIAL WILLIAMSBURG FOUNDATION**, a Virginia non-stock, not-for-profit corporation (“**Colonial Williamsburg**”) and amends, restates, and supersedes in its entirety the Cooperative Service Agreement dated August 28, 2008 by and among the City of Williamsburg, the County of James City, the County of York and the Colonial Williamsburg Foundation (the “**Original Agreement**”).

RECITALS

On March 23, 2006, the General Assembly of Virginia adopted Chapter 179 of the Acts of Assembly of 2006, which amended Title 15.2 of the Code of Virginia by adding a Chapter 68 (§§ 15.2-6800 through 15.2-6809) and created the Authority to prepare a regional transit plan for the areas located within the jurisdictional boundaries of each member locality. Pursuant to Title 15.2, Chapter 68 of the Code of Virginia, as amended, the County of James City, the County of York, and the City of Williamsburg (each a “**Member Jurisdiction**” and collectively “**Member Jurisdictions**”) each adopted an approving ordinance to join the Authority. On March 17, 2015 the General Assembly of Virginia repealed Chapter 68 (§§ 15.2-6800 through 15.2-6809) of Title 15.2 and reenacted the authorizing legislation for the Authority as Chapter 33 (§§ 33.2-3300 through 33.2-3308) of Title 33.2 of the Code of Virginia.

Pursuant to the Original Agreement, the Member Jurisdictions agreed to appoint a representative from Colonial Williamsburg as a voting member of the Authority’s Board of Directors and entered into a Bus Service Agreement with Colonial Williamsburg dated October 16, 2008, as subsequently amended on February 28, 2018 and December 31, 2019, and Amended and Restated as of March 31, 2023 (the “**Amended & Restated Bus Service Agreement**”).

Pursuant to the Amended & Restated Bus Service Agreement, Colonial Williamsburg ceased operating any public transit service and resigned as a voting member of the Board of Directors for the Authority, effective as of September 10, 2023. In consideration of the foregoing and the mutual covenants set forth herein, the Authority and the Member Jurisdictions hereby agree as follows:

DEFINITIONS

The capitalized terms in this Agreement have the meanings set forth below unless the context otherwise requires.

“Annual Budget” shall mean an itemized forecast of the Authority's projected income and expenses in accordance with Section 3.3 (c).

“Applicable Laws” shall mean all applicable laws, ordinances, judgments, decrees, injunctions, writs and orders of any court, arbitrator or governmental agency or authority and all rules, regulations, orders, interpretations, licenses and permits of any federal, state, county, municipal, regional, foreign or other governmental body, instrumentality, agency or authority. “Authority” means the Williamsburg Area Transit Authority.

“Authority Default” shall mean those events of default described in Section 7.1.

“Board” shall mean the Board of Directors of the Authority.

“Debt” shall mean all indebtedness for money borrowed and other obligations of the Authority for the payment or repayment of money, whether contingent or otherwise, including obligations of other persons, the payment of which the Authority is responsible or liable as obligor, guarantor or otherwise, but excluding trade accounts payable in the ordinary course of business.

“Fiscal Agent” shall mean the bank, trust company or other entity appointed by the Authority to administer the fiscal duties of the Authority in accordance with Section 3.4.

“Fiscal Year” shall mean the annual accounting period from July 1 of one year to June 30 of the following year.

“FTA” shall mean the Federal Transit Administration of the U.S. Department of Transportation.

“Long Term Debt” shall mean any Debt repayable over a period of thirty-six (36) months, or longer.

“Member Jurisdiction” shall mean each of the County of James City, the County of York, and the City of Williamsburg, each a political subdivision of the Commonwealth of Virginia, but excluding any political subdivision that may have withdrawn from the Authority as provided in Section 4.4.

“Member Jurisdiction Default” shall mean those events of default described in Section 7.2.

“Member(s)” shall refer to Member Jurisdictions and Non-Locality Members collectively.

“Non-Locality Member” shall mean any member of the Authority that is not a Member Jurisdiction.

“Public Transportation” shall mean all transportation service provided by or on behalf of the Authority to the general public whereby the boarding patrons are not denied access upon payment of the proper fare and all of such services are provided over regular routes.

“Quarterly Contribution” shall mean the monetary contribution to be made by each Member Jurisdiction in accordance with Sections 2.2 and 3.3 (c).

“Special Event Transportation” shall mean specific point to point destination transportation in which no FTA buses are used for transportation, except as permitted by applicable guidelines.

“System” shall mean the regional transportation system which shall be operated by or on behalf of the Authority and provide Public Transportation to the County of James City, such portions of York County as mutually agreed upon between York County and the Authority, the City of Williamsburg, and such areas owned and/or operated by Colonial Williamsburg or William & Mary (the “University”) as may be mutually agreed to by the Authority and Colonial Williamsburg and/or the University, as the case may be.

“Transit Funding” shall mean funds that serve as partial reimbursement for expenses associated with the operation of the System made available to the Authority from the FTA and Commonwealth of Virginia by virtue of the Authority's operation of the System.

“Transit Plan” shall mean the plan adopted by the Authority in accordance with Title 33.2, Chapter 33 of the Code of Virginia for the development and provision of the System.

ARTICLE I

The Authority shall be governed by a Board of Directors (“Board”), consisting of the following representatives for each Member Jurisdiction:

<u>Member</u>	<u># of Representatives</u>
James City	2
Williamsburg	1
York	1

Colonial Williamsburg is removed as a party to this Agreement with immediate effect. The Authority may admit Non-Locality Members and additional directors may be elected and serve on the Board pursuant to the bylaws for the Authority or Applicable Law.

Article II

Member Jurisdiction Contributions and Authority Financing

Section 2.1 Member Jurisdictions' Initial Contribution. As an initial start-up contribution to the Authority, each Member Jurisdiction agrees to contribute certain personal property and/or monetary funds as set forth in the attached Exhibit A. In addition to the contribution funds and personal property set forth in Exhibit A, the City of Williamsburg agrees to enter into a use agreement with the Authority regarding the transportation center located at 468 N. Boundary Street, Williamsburg, Virginia, on terms to be negotiated between the Authority and the City of Williamsburg.

Section 2.2 Quarterly Contribution. On the first day of the beginning of each quarter following the Member Jurisdictions' initial contribution, each Member Jurisdiction shall make a Quarterly Contribution to the Authority. The Quarterly Contribution per Member Jurisdiction shall be a percentage of the Authority's operating expenses. The percentage shall be calculated for each Member Jurisdiction as set forth in Chapters 4 and 5 of the Williamsburg Area Public Transportation Study, Technical Report, dated June 2005, prepared by KFH Group Inc. (the “Report”) and which Chapters are incorporated herein by reference. The Authority shall perform once every five (5) years, a comprehensive operation analysis, (the “Operation Analysis”) which will be used to determine the percentage of operations that is attributable to each Member Jurisdiction. The Operation Analysis shall take into account, but not be limited to the following factors: number of resident riders in each Member Jurisdiction, number of visitor riders in each Member

Jurisdiction, entry and exit points of riders, lane miles in each Member Jurisdiction, hours of service in each Member Jurisdiction, and any other factors the Board deems to be reasonable in determining the composition of ridership and actual service provided to each Member Jurisdiction. The Authority shall adjust the allocation of costs among the Member Jurisdictions for any Fiscal Year based on the results of the Operation Analysis. In the event the Member Jurisdictions are unable to agree to a new cost allocation, then the cost allocation determined in the Operation Analysis will be adopted with the limitation that no Member Jurisdiction's required Quarterly Contribution will increase or decrease by more than 10% each year from its previous level.

Section 2.3 Authority Financing. The Authority's capital constitutes the Member Jurisdictions' initial and Quarterly Contributions, and federal and state grants and other revenue or assets obtained by the Authority.

Section 2.4 Repayment of Long Term Debt. The Authority shall enter into or incur Long Term Debt only upon the unanimous approval of the Member Jurisdictions representative on the Board. To the extent not defrayed out of the Authority's regular earnings, each Member Jurisdiction agrees to pay to the Authority with respect to any Long Term Debt incurred by the Authority such Member Jurisdiction's proportionate share of funds necessary to pay interest and principal on such Long Term Debt and any capital reserve funding requirements under the terms of such Long Term Debt. The allocation of each Member Jurisdiction's obligation to make payments toward each issue of Long Term Debt shall be determined by the Authority at the time the Long Term Debt is contracted. As with operating costs, each Member Jurisdiction shall make quarterly payments toward Long Term Debt. The payment required from each Member Jurisdiction shall be expressly conditioned upon funds being appropriated or authorized for such purpose by its governing body. Absent an appropriation/authorization for such purpose by its governing body, no Member Jurisdiction shall be under a legal obligation to make any payment requested under this Section 2.4.

Section 2.5 Limitation of Liability. The only obligation of the Member Jurisdictions to pay for the establishment, operation, or maintenance of the System arises out of this Agreement. No such payment responsibility shall constitute a debt of any Member Jurisdiction within the meaning of any constitutional or statutory limitation.

ARTICLE III

Provisions of Services, Operation, and Maintenance

Section 3.1 Operation of Service.

(a) **Service and Transit Plan.** The Authority shall operate and maintain the System. The Authority shall begin providing Public Transportation on or about July 1, 2008. The Authority will work in tandem with the Member Jurisdictions to implement the Transit Plan by providing and improving service routes, bus stops and all other necessary transportation services throughout the Member Jurisdictions.

Changes to the Transit Plan require approval of a majority of the Board, provided that any permanent change affecting the level of service to a Member Jurisdiction's service area must be approved by such Member Jurisdiction's representative(s) on the Board, unless an objecting Member Jurisdiction has provided a Withdrawal Notice as described in Section 4.4 of this Agreement.

(b) **Legal Compliance.** The System shall be operated in accordance with the rules and laws of the FTA, Commonwealth of Virginia, and all other Applicable Law. The Authority shall be an Equal Opportunity Employer.

(c) **Special Event Transportation.** The Authority shall provide Special Event Transportation to any Member Jurisdiction requesting such service; provided, however, that all costs of such special event transportation shall be borne by the Member Jurisdiction requesting such service and further provided that the Authority then has available equipment and personnel reasonably necessary to provide such transportation. The Authority shall not violate any FTA regulations in providing Special Event Transportation.

Section 3.2 Insurance. The Authority shall maintain hazard, liability or such other insurance as may be required by Applicable Law or which the Authority may deem advisable to protect the interest of the Authority and the Members.

Section 3.3 Accounts. (a) The Authority will maintain proper books and records of account in which proper entries shall be made in accordance with generally accepted accounting principles for Virginia governmental bodies, consistently applied. The books and records of account of the Authority shall be audited annually by a firm of independent public accountant selected by the Authority. All books, records, accounts and documents in the Authority's or its Fiscal Agent's

possession relating to the System shall at all reasonable times be open to inspection by such agents or employees of the Members .

(b) **Annual Report** On or before December 31st of each year the Authority shall provide to each Member a report showing the activities, revenues, expenditures and grants utilized, and employee compensation schedules and other similar data of the Authority for the preceding Fiscal Year, including its audited financial statements.

(c) **Annual Budget.** On or before November 30 of each year the Authority shall provide the Members with its preliminary Annual Budget for the following Fiscal Year and on or before each June 30th its final Annual Budget for the following Fiscal Year. For each Fiscal Year, the Annual Budget shall set the Quarterly Contributions for each Member Jurisdiction calculated pursuant to Section 2.2 of this Agreement and the Member Jurisdictions' share of the Transit Funding. The Annual Budget shall provide appropriate and sufficient funding for the Fiscal Year, so that no supplemental funds will be needed from the Member Jurisdictions during the Fiscal Year. The Authority will promptly provide copies of any amendments to its Annual Budget to each Member.

Section 3.4 Other Contracted Services. James City County shall be the initial Fiscal Agent for the Authority. The Fiscal Agent shall provide services to the Authority to include payroll and purchasing. James City County will receive up to 1% of the Authority's total operating budget for these services. James City County shall continue to serve as the Authority's Fiscal Agent until such services are terminated by the Authority or the Fiscal Agent upon sixty (60) days written notice, prior to the Authority's new Fiscal Year. After such notice of termination, the Authority shall make such arrangements as it deems desirable regarding Fiscal Agent services.

The Authority may contract with one or more of its Member Jurisdictions to provide assistance with procurement, personnel, and human resources to the Authority. The Authority shall retain and maintain independent legal counsel.

Section 3.5 Preliminary Responsibilities. The Authority shall provide for (i) the employment or procurement and equipping of the Transportation Center, bus shelters and any other equipment necessary for the operation of the System, (ii) the adoption of rules, regulations, policies and guidelines for the operation and maintenance of the System, not

inconsistent with the standards of the FTA or the Commonwealth of Virginia, and (iii) the arrangements for financing of the System.

ARTICLE IV

Additional Agreements

Section 4.1 Sale or Other Conveyance. Upon the Authority commencing Public Transportation pursuant to Section 3.1 of this Agreement, the Authority will not sell, lease, sublease, assign, convey or otherwise voluntarily dispose of any real property, equipment of the System or any material interest in the System unless any debt on such property, equity or interest has been or will be paid or deemed defeased in accordance with its terms. Member Jurisdictions that contribute personal property to the Authority shall maintain a remainder interest in such personal property. In the event the Authority disposes of personal property contributed by a Member Jurisdiction, the Member Jurisdiction shall receive a credit for the disposal value of the personal property. Such value of the personal property shall be determined at the time of disposal and shall be applied to offset the Member Jurisdiction's future Quarterly Contributions.

Section 4.2 Further Documents and Data. Subject to the approval of their governing bodies, the parties to this Agreement will execute and deliver all documents and perform their obligations hereunder and consummate the transactions contemplated by this Agreement that are necessary for the formation and initial capitalization of the Authority.

Section 4.3 Notification. The Authority shall promptly furnish to each Member a copy of any notice or order of any governmental authority asserting that the Authority or the System is not in compliance with any Applicable Law.

Section 4.4 Withdrawal. After commencement of Public Transportation pursuant to Section 3.1 of this Agreement, a Member Jurisdiction may withdraw from the Authority only as follows: The withdrawing Member Jurisdiction shall provide the Authority written notice of its intent to withdraw (“Withdrawal Notice”) a minimum of two Fiscal Years prior to the intended date of withdrawal. Withdrawal Notice must be given to the Authority during the first quarter of a Fiscal Year. Notice sent any time after the first quarter of the Fiscal Year shall not become effective until the first day of the next Fiscal Year immediately following the Withdrawal Notice. The withdrawing Member Jurisdiction shall continue to be responsible for its total Quarterly Contributions, pursuant to this Agreement, during the Fiscal Year in which the Withdrawal Notice

is received and effective, which shall be deemed to be the first Fiscal Year herein. During the first Fiscal Year, and upon the request and/or consent of the withdrawing Member Jurisdiction, the Authority may reduce and/or terminate Public Transportation to the withdrawing Member Jurisdiction. During the second Fiscal Year, the withdrawing Member Jurisdiction shall lose all voting privileges on the Authority Board and the withdrawing Member Jurisdiction's financial responsibility to the Authority shall only be the withdrawing Member Jurisdiction's proportional share of the Authority's overhead costs as set forth in the Annual Budget for the second Fiscal Year. During the second Fiscal Year following the effective date of the Withdrawal Notice, the withdrawing Member Jurisdiction shall be deemed for purposes of receiving service to be effectively withdrawn and the Authority shall terminate any remaining Public Transportation to the withdrawing Member Jurisdiction, notwithstanding the withdrawing Member Jurisdiction's continued obligation to pay a percentage of the overhead costs as hereinabove provided. In no event shall the withdrawing Member Jurisdiction's obligation continue beyond the second Fiscal Year after the effective date of the Withdrawal Notice.

Non-Locality Members may withdraw pursuant to the bylaws of the Authority.

If a Member Jurisdiction withdraws, any and all monetary contributions made by the withdrawing Member Jurisdiction to the Authority shall remain with the Authority. Any personal property contributed to the Authority shall also remain with the Authority, but the withdrawing Member Jurisdiction shall maintain a remainder interest in the personal property. The Authority shall make no payments to the withdrawing Member Jurisdiction unless its personal property is disposed of by the Authority pursuant to Section 4.1 of this Agreement. In such instance, the disposal value of such personal property shall be first applied to any indebtedness of the withdrawing Member Jurisdiction to the Authority and the balance shall be paid to the withdrawing Member Jurisdiction.

ARTICLE V

Representations, Warranties and Covenants of Authority

In addition to the covenants in other Articles of this Agreement, the Authority represents, warrants, and covenants as follows:

Section 5.1 Organization, Authorization, and Validity. The Authority is a political subdivision of the Commonwealth of Virginia duly organized and validly existing under the

laws of the Commonwealth of Virginia and has duly authorized, executed and delivered this Agreement, which is enforceable against the Authority in accordance with its terms.

Section 5.2 Authority. The Authority has all requisite authority to execute and deliver and perform its obligations under this Agreement and is not a party to any indenture, contract or other agreement or arrangement, the performance of which by the Authority would prevent or materially and adversely affect the Authority's ability to perform the terms of this Agreement.

Section 5.3 Non-Contravention. The execution and delivery of this Agreement by the Authority and the consummation of the transactions contemplated in it will not conflict with or result in a breach of or constitute a default under or violate any of the terms, conditions or provisions of the statute or ordinances creating the Authority, the bylaws of the Authority or any material indenture, contract or other agreement or arrangement to which the Authority is a party or by which any of its properties are bound, or any Applicable Law by which the Authority or the System is bound.

Section 5.4 Litigation. The Authority is not a party to any legal, administrative, arbitration or other proceeding or controversy pending, or, to the best of the Authority's knowledge, threatened, which would materially adversely affect the Authority's ability to perform under this Agreement.

Section 5.5 Approvals. The Authority exists as a separate political entity and does not require the consent or approval of any governmental body to carry out the terms of this Agreement, except as provided expressly herein and for approvals that may be required by the Commonwealth of Virginia.

ARTICLE VI

Representations, Warranties and Covenants of Member Jurisdictions and Colonial Williamsburg

Each Member Jurisdiction and Colonial Williamsburg represents, warrants and covenants for itself, separately and not jointly, as follows:

Section 6.1 Organization, Authorization, and Validity. Each Member Jurisdiction is a political subdivision of the Commonwealth of Virginia duly organized and validly existing under the laws of the Commonwealth of Virginia, and each has duly authorized, executed, and delivered

this Agreement. Colonial Williamsburg is a not-for-profit corporation organized under the laws of the Commonwealth of Virginia. The Member Jurisdictions have contributed significant financial resources to the Authority, desire to be a member of the Authority, and are duly authorized to execute and deliver this Agreement. Upon execution by the Authority, each Member Jurisdiction, and Colonial Williamsburg, this Agreement will be a valid, legal, and binding agreement enforceable in accordance with its terms.

Section 6.2 Authority. Each Member Jurisdiction and Colonial Williamsburg has all requisite authority to execute and deliver and perform its obligations under this Agreement and is not a party to any indenture, contract or other agreement or arrangement. the performance of which by it would prevent or materially and adversely affect its individual performance under this Agreement.

Section 6.3 Non-Contravention. The execution and delivery of this Agreement by each Member Jurisdiction and Colonial Williamsburg and the consummation of the transactions contemplated in it will not conflict with or result in a breach of or constitute a default under or violate any of the terms, conditions or provisions of any charter, bylaws or other organizational document, any resolution or ordinance, any material indenture, contract or agreement or arrangement to which such Member Jurisdiction or Colonial Williamsburg is a party or by which any of their properties are bound, or any Applicable Law by which any is bound.

Section 6.4 Litigation. No Member Jurisdiction or Colonial Williamsburg is a party to any legal, administrative, arbitration, or other proceeding or controversy pending, or, to the best of each such Member Jurisdiction's or Colonial Williamsburg's knowledge threatened, that would materially and adversely affect its ability to perform under this Agreement.

ARTICLE VII

Defaults and Remedies

Section 7.1 Default by Authority. The occurrence of any one or more of the following events will constitute an “Event of Default” by the Authority (“Authority Default”):

- (i) Failure of the Authority to pay principal of or interest on any Debt when due beyond any applicable grace period;

- (ii) If the Authority is for any reason rendered incapable of performing any of its material obligations under this Agreement;
- (iii) The Authority makes an assignment of all or a portion of its obligations under this Agreement without the prior consent of the Member Jurisdictions;
- (iv) The Authority defaults on any of its material obligations under any agreement, indenture or other document evidencing Debt and such default is not cured within the applicable cure period;
- (v) Any proceeding is instituted, with the consent or acquiescence of the Authority, for the purpose of effecting a composition between the Authority and its creditors or for the purpose of adjusting the claims of such creditors pursuant to any federal or state statute now or hereafter enacted, if the claims of such creditors are under any circumstances payable from the funds of the Authority; or
- (vi) The Authority defaults in the due and punctual performance of any other of the covenants, conditions, agreements and provisions contained in this Agreement, and the default continues for thirty days after written notice specifying the default and requiring it to be remedied has been given to the Authority by any Member Jurisdiction or Colonial Williamsburg.

Section 7.2 Default by Member Jurisdiction. The occurrence of any one or more of the following events will constitute an “Event of Default” by any Member Jurisdiction (“Member Jurisdiction Default”):

- (a) failure of any Member Jurisdiction to make payments of its Quarterly Contribution when due if such failure is not cured within thirty (30) days of the Member Jurisdiction's receipt of written notice of default by the Authority (the “Authority Default Notice”);
- (b) any proceeding is instituted, with the consent or acquiescence of any Member Jurisdiction, for the purpose of effecting a composition between such Member Jurisdiction and its creditors or for the purpose of adjusting the claims of such creditors pursuant to any federal or state statute now or hereafter enacted, if the claims of such creditors are under any circumstances payable from the funds of such Member Jurisdiction; or

- (c) any Member Jurisdiction defaults in the due and punctual performance of any of the other material covenants, conditions, agreements and provisions contained in this Agreement, if such default is not cured within thirty (30) days of the Member Jurisdiction's receipt of the Authority Default Notice specifying the acts or omissions alleged to constitute a Member Jurisdiction Default.

Section 7.4 Remedies of Member Jurisdictions. Upon the occurrence of any Authority Default, any Member Jurisdiction after giving notice of such Authority Default to all parties, may bring suit by mandamus or other appropriate proceeding to require the Authority to perform its duties under this Agreement or to enjoin any acts in violation of this Agreement.

Section 7.5 Remedies of Authority. Upon the occurrence of a Member Jurisdiction Default, the Authority, after giving notice to all parties of its intent to enforce this Agreement (the "Authority Enforcement Notice") may bring suit by appropriate proceeding to require the defaulting Member Jurisdiction to perform its duties under this Agreement or to enjoin any acts in violation of this Agreement; provided, however, that if the defaulting Member Jurisdiction contests the default in writing (the "Member Jurisdiction's Notice of Contest") within fifteen (15) days of such Member Jurisdiction's receipt of the Authority Enforcement Notice, the Authority and such Member Jurisdiction shall enter into binding arbitration of the matter within thirty (30) days of the date of the Member Jurisdiction's Notice of Contest. Such arbitration shall be conducted in accordance with the American Arbitration Association's Rules for Resolving Commercial Financial Disputes solely to determine whether there has been a Member Jurisdiction Default. The parties agree that the arbitrator(s) shall give effect to the substantive common and statutory law of the Commonwealth of Virginia. Confirmation and judgment upon the award rendered by the arbitrator(s) may be entered by state or federal court having jurisdiction thereof. Upon such confirmation and judgment, the Authority may reduce and/or terminate Public Transportation to the defaulting Member Jurisdiction and such defaulting Member Jurisdiction shall lose voting privileges on the Authority Board. If the Member Jurisdiction Default involves the payment of money, the Member Jurisdiction alleged to be in default may post the funds alleged to be due in an interest-bearing account during the pendency of the proceedings to resolve the matter and upon confirmation of such posting by the Authority, such Member Jurisdiction shall continue

receiving services from the Authority and shall maintain its voting privileges on the Authority Board.

Section 7.6 Remedies Not Exclusive. No remedy in this Agreement conferred upon or reserved to the parties is intended to be exclusive of any other remedy; and each remedy is cumulative and in addition to every other remedy given under this Agreement or now or hereafter existing at law, in equity or by statute.

ARTICLE VIII

Miscellaneous

Section 8.1 Severability of Invalid Provisions. If any clause, provision or section of this Agreement is held to be illegal or invalid by any court, the invalidity of the clause, provision or section will not affect any of the remaining clauses, provisions or sections, and this Agreement will be construed and enforced as if the illegal or invalid clause, provision or section has not been contained in it.

Section 8.2 Notices. Any notice or other communication under or in connection with this Agreement shall be in writing and shall be effective when delivered in person or sent in the United States mail, postage prepaid, to the following persons and addresses or to such other persons and addresses as any of such persons may from time to time specify in writing

If to James City:

County Administrator
P.O. Box 8784
Williamsburg, Virginia 23187

If to Williamsburg:

City Manager
401 Lafayette Street
Williamsburg, Virginia 23185

If to York:

County Administrator
P.O. Box 532
Yorktown, Virginia 23690

Section 8.3 Governing Law. This Agreement shall be governed by, and construed and enforced in accordance with the substantive laws of the Commonwealth of Virginia.

Section 8.4 Amendments. This Agreement may be changed or amended only with the consent of the Authority and each Member Jurisdiction. If the Authority has any Debt outstanding, no change or amendment to this Agreement shall be effective if such change or amendment would cause a violation of any provision of any resolution, indenture, or agreement evidencing such Debt.

Section 8.5 Effective Date of Agreement. This Agreement will be effective from the date of its execution and delivery by all of the Member Jurisdictions and the Authority.

Section 8.6 Waiver. Any waiver by any party of its rights under this Agreement must be in writing and will not be deemed a waiver with respect to any matter not specifically covered. Nothing in this Agreement authorizes the waiver of any Member Jurisdiction's obligation to make payments when due of all monies required to be paid by the Member Jurisdictions under the terms of this Agreement.

Section 8.7 No Assignment. No party may assign its rights and/or duties hereunder, directly or indirectly, without the prior written consent of all of the other parties hereto.

Section 8.8 No Third-Party Beneficiary Rights. This Agreement is not intended to and shall not be construed to give any party other than a named party hereto any interest or rights (including, without limitation, any third party beneficiary rights) with respect to or in connection with any agreement or provision contained herein or contemplated hereby.

Section 8.9 Entire Agreement. This Agreement, including all documents referred to and incorporated herein, constitutes the entire agreement between the parties and the Authority with respect to the subject matter of this Agreement and there are no representations, understandings, or agreements relating to this Agreement that are not fully expressed herein.

MINUTES
JAMES CITY COUNTY BOARD OF SUPERVISORS
REGULAR MEETING
COUNTY GOVERNMENT CENTER BOARD ROOM
101 MOUNTS BAY ROAD, WILLIAMSBURG, VA 23185
November 28, 2023
1:00 PM

A. CALL TO ORDER

B. ROLL CALL

P. Sue Sadler, Stonehouse District
James O. Icenhour, Jamestown District
John J. McGlennon, Roberts District
Ruth M. Larson, Vice Chairman, Berkeley District
Michael J. Hipple, Chairman, Powhatan District

Scott A. Stevens, County Administrator
Adam R. Kinsman, County Attorney

Mr. Hipple sought a motion to amend the Agenda to move the FY 2023 Annual Report to Board Discussion Item No. 3.

A motion to Amend the Agenda was made by Sue Sadler, the motion result was Passed.

AYES: 5 NAYS: 0 ABSTAIN: 0 ABSENT: 0

Ayes: Hipple, Icenhour Jr, Larson, McGlennon, Sadler

Mr. Hipple requested Mr. John Carnifax, Director of Parks & Recreation, join him at the podium. He asked Mr. Carnifax about his involvement with Henderson, Incorporated and the work done at a local park.

Mr. Carnifax stated Mr. Hipple contacted him about a possible project for Henderson, Incorporated. Mr. Carnifax noted Henderson, Incorporated had been a local company since 1957 and sponsored an annual Community Day over the years that entailed a firewood cutting project. He added the company was seeking another project. Mr. Carnifax noted Henderson, Incorporated participated on December 18, 2022, at Chickahominy Riverfront Park. He added more than 30 employees worked for several hours with heavy equipment to clear an area for a future picnic area for County residents near the new pier. Mr. Carnifax further noted additional work with some local Eagle Scouts for other components to finish the project. He added his appreciation to Mr. Hipple and Henderson, Incorporated for the work on this project and the commitment to the County.

Mr. Hipple referenced Henderson, Incorporated's annual Wood Drive and the changing trends toward woodburning and a possible corporate project. He noted the project was a cost-saver for County residents and was greatly appreciated. Mr.

Hipple stressed this type of partnership and its positive strengthening for the community and the County. He welcomed the Henderson, Incorporated team to the podium for presentation of a certificate of appreciation.

The Henderson, Incorporated team thanked Mr. Hipple and the County for the opportunity. The team also thanked Mr. Carnifax.

C. PRESENTATION(S)

1. Retiree Recognition - Brenda Grow

Mr. Patrick Page, Director of Information Resources Management, addressed the Board in recognizing Ms. Brenda Grow, Records and Imaging Administrator and the County's Official Records Manager. He noted Ms. Grow started with James City County in 1988. He cited Records at that time consisted mainly of paper documents which were converted to microfilm and microfiche. Mr. Page noted Ms. Grow and the Records staff were responsible for the proper preservation, accessibility, and destruction of recorded information under the laws administered by the Library of Virginia. He cited numerous accolades throughout Ms. Grow's 35-year, eight-month tenure with the County. Mr. Page extended well wishes for retirement and appreciation of Ms. Grow's service.

Ms. Grow expressed her appreciation, adding it was her privilege and honor to work for James City County.

Ms. Larson noted the importance of Records Management could not be overstated.

2. Proclamation - James City-Bruton Volunteer Fire Department 75th Anniversary

Mr. Hipple welcomed Mr. Mike Powers, the 2023 President of the James City-Bruton Volunteer Fire Department, to the podium. Mr. Hipple read the proclamation honoring the 75th anniversary.

Mr. Powers thanked Mr. Hipple. He also thanked the Board for its continued support with financial and training assistance.

Mr. Hipple extended thanks to the volunteers who worked at the James City-Bruton Volunteer Fire Department.

D. CONSENT CALENDAR

Mr. Hipple asked if any Board member wished to pull an item. As no items were pulled, he sought a motion on the Consent Calendar.

1. Contract Award - Bulk Fuel Delivery Services

A motion to Approve was made by Sue Sadler, the motion result was Passed.

AYES: 5 NAYS: 0 ABSTAIN: 0 ABSENT: 0

Ayes: Hipple, Icenhour Jr, Larson, McGlennon, Sadler

2. Grant Award - \$24,644 - Bulletproof Vest Partnership

A motion to Approve was made by Sue Sadler, the motion result was Passed.

AYES: 5 NAYS: 0 ABSTAIN: 0 ABSENT: 0

Ayes: Hipple, Icenhour Jr, Larson, McGlennon, Sadler

3. Grant Award - \$25,000 - Competitive Litter Prevention and Recycling Grant

A motion to Approve was made by Sue Sadler, the motion result was Passed.

AYES: 5 NAYS: 0 ABSTAIN: 0 ABSENT: 0

Ayes: Hipple, Icenhour Jr, Larson, McGlennon, Sadler

4. Grant Award - \$1,000 2023 Fall Green Grant

A motion to Approve was made by Sue Sadler, the motion result was Passed.

AYES: 5 NAYS: 0 ABSTAIN: 0 ABSENT: 0

Ayes: Hipple, Icenhour Jr, Larson, McGlennon, Sadler

5. Grant Award - \$160,078 - Fiscal Year 2022 Homeland Security Grant Program - Urban Area Security Initiative

A motion to Approve was made by Sue Sadler, the motion result was Passed.

AYES: 5 NAYS: 0 ABSTAIN: 0 ABSENT: 0

Ayes: Hipple, Icenhour Jr, Larson, McGlennon, Sadler

6. Grant Award - \$32,246 - Litter Prevention and Recycling Program

A motion to Approve was made by Sue Sadler, the motion result was Passed.

AYES: 5 NAYS: 0 ABSTAIN: 0 ABSENT: 0

Ayes: Hipple, Icenhour Jr, Larson, McGlennon, Sadler

7. Reallocation and Appropriation of Housing and Neighborhood Development Fund Balance

A motion to Approve was made by Sue Sadler, the motion result was Passed.

AYES: 5 NAYS: 0 ABSTAIN: 0 ABSENT: 0

Ayes: Hipple, Icenhour Jr, Larson, McGlennon, Sadler

8. Minutes Adoption

A motion to Approve was made by Sue Sadler, the motion result was Passed.

AYES: 5 NAYS: 0 ABSTAIN: 0 ABSENT: 0

Ayes: Hipple, Icenhour Jr, Larson, McGlennon, Sadler

The Minutes Approved for Adoption included the following meetings:

- October 10, 2023, Regular Meeting
- October 24, 2023, Business Meeting
- November 14, 2023, Regular Meeting

E. BOARD DISCUSSIONS

1. Historic Triangle Recreational Facilities Authority Update

A motion to Approve was made by Michael Hipple, the motion result was Passed.

AYES: 5 NAYS: 0 ABSTAIN: 0 ABSENT: 0

Ayes: Hipple, Icenhour Jr, Larson, McGlennon, Sadler

Mr. Stevens addressed the Board to provide an update on the Historic Triangle Recreational Facilities Authority (HTRFA). He noted he served as a Board member, the Vice Chair, on the HTRFA and was pleased to introduce this exciting project for the community. Mr. Stevens highlighted various points regarding the HTRFA as a governmental entity formed to evaluate, and if feasible, oversee regional recreational and tourism facilities in construction and

management. He noted HTRFA Board membership, responsibilities, and other highlights in a PowerPoint presentation. Mr. Stevens extended his appreciation to the Board, consultants, and design team for the time and work involved in presenting this project. He introduced fellow HTRFA Board members in attendance: Chair, Mr. Andrew Trivett (City Manager, the City of Williamsburg), Secretary, Mr. Neil Morgan (York County, County Administrator), City of Williamsburg Parks & Recreation Director, Mr. Robbi Hutton, and James City County Parks & Recreation Director, Mr. John Carnifax. Mr. Stevens continued the PowerPoint presentation highlighting background dates and grant opportunities for funding regarding this project. He noted site evaluation that benefited all three localities in terms of restaurants, hotels, and opportunities for visitors with sports tourism as a driver for all the financing of this facility. Mr. Stevens stated the HTRFA Board had approved moving forward on this project, adding this meeting provided an opportunity for the Board of Supervisors to ask questions and gather additional information. He noted the HTRFA hoped for approval on the financial agreements at the Board's next meeting or in the December timeframe to move the project forward. Mr. Stevens continued the presentation with the project's current status regarding setup, location, and other project components. He noted the following recommendations from the HTRFA Board included: financial feasibility, positive economic impact to all three localities, and additional recreational facilities for residents. Mr. Stevens added James City County particularly needed additional gymnasium space and he felt this project presented a low-cost alternative to benefit residents on a weekly basis with benefits to local businesses during weekends. He continued the presentation highlighting the remaining steps, adding James City County was the first locality being presented with the project timeline. Mr. Stevens introduced Mr. Rick Hibbett with MEB General Contractors, Inc. He noted Mr. Hibbett was the Business Development Manager with MEB.

Mr. Hibbett addressed the Board to explain the project design aspect. He noted that in addition to being joined by MEB team members, he was also honored to work on this project as he was a James City County resident. Mr. Hibbett thanked the HTRFA and the Design Committee for guidance, input, and leadership. He continued the presentation with a visual depiction of the facility and acknowledged the Design-Build team which consisted of MEB (lead design builder), Clark Nexsen (lead architect/engineer), GuernseyTingle (consulting architect), Timmons Group (civil engineer), Henderson, Incorporated (site and civil contractor), and Victus Advisors (consulting firm). Mr. Hibbett continued with details of the interim agreement and the upcoming design document timeline in addition to schedule and cost details. He provided a breakdown of the original project scope. Mr. Hibbett noted state-of-the-art technology was incorporated into the project for maximum use and lower operational costs. He added the facility included 115,000 square feet of hardwood maple flooring which equated to just less than three acres of wooden flooring. Mr. Hibbett noted additional tasks were presented during the interim agreement and he detailed those scope additions. He continued the presentation with an aerial view of the site with an emphasis on maintaining the majority of existing infrastructure in terms of parking, roadways, and entrances while minimizing impact to the site and incorporating sustainability. Mr. Hibbett provided additional details of the project in the presentation which also included a plan for future development and amenities. He noted the southern part of the plan focused on entertainment and sports with the northern part focused on future commercial development. Mr. Hibbett highlighted the unique architectural features with a 360° view of the facility. He continued the presentation with details on the first and mezzanine level floor plans. Mr. Hibbett added one feature, the Ninja Clip 'n Climb, was very popular with both children and adults. He noted the flexibility of design where rooms could be divided if needed or used as one large room for an event. Mr. Hibbett highlighted the large conference room which could serve as a VIP suite for potential event hosts as a hospitality space. He continued the presentation detailing a breakdown of the facility and its multiple uses of converting basketball/volleyball courts into pickleball courts and other sporting events. Mr. Hibbett stressed the flexibility of uses for the facility. He noted some economic impacts and financial projections in the presentation. Mr. Hibbett further noted the initial budget was \$53,122,000 with \$26,859,000 in design scope changes added for the contract budget of \$79,981,000. He highlighted the schedule with an anticipated substantial completion in the first

quarter of 2026 with some factors dependent on the City of Williamsburg's reviewing, permitting, and planning. Mr. Hibbett noted Mr. Stevens would continue with the presentation.

Mr. Stevens addressed the Board with a breakdown of the financial commitment per locality. He noted a variety of reasons had affected the construction costs including the additional space component and inflation. Mr. Stevens added the initial commitment from the City of Williamsburg was less than the \$2.5 million displayed in the PowerPoint presentation. He noted the City of Williamsburg had stepped up to cover the capital based on the proposal presented to the Board several years ago. Mr. Stevens further noted additional funding from the HTRFA maintenance of effort funding. He added James City County and York County would pay the operating subsidy. Mr. Stevens stated that the financial commitment from two years ago was still in place currently. He provided the subsidy commitment for Year One, Years Two-Five, and Years Five-30 with the County and York County. Mr. Stevens noted the County was in need of gymnasium space currently for residents and ongoing programs. He discussed the management of the facility and the tourism/community aspects. Mr. Stevens noted he and Mr. Morgan were in discussion on a shared funding agreement between the Counties and the details of that agreement. He stated this overview would be presented to each locality. He asked the Board if it had any questions or concerns regarding the cost and the project.

Mr. McGlennon referenced constituent questions regarding what benefits residents would receive from this project and if it was viable. He asked if the County were building its own facility, though smaller, would both operating and capital expenses be included and asked what that impact would be to the County.

Mr. Stevens noted the construction of two gymnasiums was slated for future Capital Improvements Program (CIP), though not in the current five-year CIP. He further noted it would likely occur in five to 10 years after the current CIP. He added if the HTRFA project did not move forward, a gymnasium space would appear in one of the County's parks. Mr. Stevens noted that space would address local needs for citizens with a multi-million capital cost and its association to the debt service. He added the cost of County staff to operate the gymnasium space with no guaranteed return on investment. Mr. Stevens stated he felt the County would get its money back on the HTRFA facility, adding some revenue may be indirect in the form of meals and sales tax. He noted the cost for the County to build a stand-alone facility versus participation in the proposed HTRFA facility would be more expensive.

Mr. Carnifax added in 2008 the County had completed the design process on a three-gymnasium project, which was ready for bid, when the recession hit, and the Board pulled the project. He noted the cost for the three-gymnasium complex in 2008 was over \$200,000 annually for the County to operate. Mr. Carnifax stated the capital cost then to build that project was approximately \$4 million.

Mr. McGlennon thanked Mr. Carnifax. He noted some constituent concerns were also during a time of reports from Virginia Beach regarding significant deficits from its sports center. Mr. McGlennon asked what differences would be between the HTRFA facility and that of the City of Virginia Beach.

Mr. Stevens noted he would invite Mr. Walter Franco of Victus Advisors to come forward and address that point. He further noted the facility was successful, but the management was problematic.

Mr. Franco addressed the Board noting Victus Advisors had been hired by the City of Virginia Beach several years earlier to conduct a feasibility study which then led to the construction of the Virginia Beach Sports Center (VBSC). He added Victus Advisors was also hired to evaluate potential operators to manage the facility. Mr. Franco stated Victus Advisors had initially projected an operational loss. He added the majority of sports tourism complexes often operate at a cost recovery which required some form of subsidy. Mr. Franco noted the City of Virginia

Beach was notified of that point in the projection with three bidders for operation providing details. He further noted two of the bidders' projections were similar to those of Victus Advisors. Mr. Franco stated the third operator projected a positive operation margin which raised a red flag to Victus Advisors who then advised the Virginia Beach City Council and City staff. He noted the Virginia Beach City Council was in favor of the positive margin and chose Eastern Sports Management (ESM). Mr. Franco further noted the actual operation of the facility was neither the challenge nor the issue for the City of Virginia Beach, but rather the operating agreement. He provided details regarding costs and incentive fees incurred with ESM. Mr. Franco noted the City of Virginia Beach then hired Victus Advisors to assist them with the termination from the operating management agreement, determination of the true losses, and selection of a new operator. He provided the details of the approximately \$6.1 million the City of Virginia Beach paid to terminate the agreement and discussed the differences in the VBSC agreement and the agreement with HTRFA. Mr. Franco noted the VBSC agreement was a good learning lesson for many communities regarding operator agreements. He added the importance of this project to aid residents and generate an economic impact. Mr. Franco reiterated the VBSC challenge was with the operating agreement and not the facility operation itself.

Mr. McGlennon thanked Mr. Franco. Mr. McGlennon asked Mr. Carnifax about the weeknight versus weekend demand for court space, particularly for the community.

Mr. Carnifax responded that the community use was high and exceeded the County's gymnasium capacity. He noted the increase in local pickleball participation and the court use.

Mr. McGlennon noted the 36 pickleball courts and questioned the County facility size in relation to the Alabama facility referenced in the presentation.

Mr. Hibbett noted generally it would exceed the Alabama facility which contained 11 courts. He further noted the County facility allowed for ample free space during tournaments with a greater hosting opportunity.

Mr. McGlennon thanked Mr. Hibbett.

Ms. Larson thanked the team and the HTRFA for all the work and presentation. She referenced her association with the Williamsburg Tourism Council and the need for such a local facility. Ms. Larson noted Virginia Beach was not a year-round tourist destination, while the Historic Triangle had become one. She further noted the efforts of Busch Gardens to operate almost 12 months a year. Ms. Larson acknowledged Colonial Williamsburg and Jamestown-Yorktown were also available for families during January tournaments. She referenced the use of tourism money to reinvest in tourism, adding the decision to use the half percent of the Historic Triangle taxes toward capital projects. Ms. Larson noted that may be a decision to consider and requested the amount of the Historic Triangle taxes received to determine its impact for the December meeting. She stressed the need to coordinate operation as the Virginia Association of Counties (VACo) had noted tournaments were being scheduled several years in advance. Ms. Larson noted she was in favor of moving forward on the facility and encouraged development of a slogan.

Ms. Sadler referenced the VACo conference presentation on tourism in rural areas. She noted the HTRFA facility far surpassed her expectations. Ms. Sadler reiterated Ms. Larson's point of tourism money reinvested into tourism. She noted the construction of County gymnasiums were advantageous for citizens, but the HTRFA facility would impact on a broader economic range. Ms. Sadler further noted local businesses would benefit. She commended the team for the presentation.

Mr. Icenhour noted each locality had a fiscal responsibility to the citizens of its jurisdiction. He referenced the projected annual regional tax of \$1.3-\$1.4 million generated from the facility. Mr. Icenhour noted the majority of the surrounding hotels and restaurants in proximity to the

facility were in York County and the City of Williamsburg, but not as much in James City County. He questioned what percentage of the projected \$1.3-\$1.4 million would be generated from County facilities, adding what percentage of the tax benefit would come back to the County. Mr. Icenhour stated that was a critical piece to consider. He referenced two previous studies done for a swim facility and a community gymnasium and the associated cost/benefit of each one. Mr. Icenhour noted the community gymnasium clearly indicated a stronger benefit for County citizens. He further noted the need for comparative costs in relation to the proposed facility versus a community gymnasium in relation to the benefits offered to citizens. Mr. Icenhour requested that information for consideration at the December deliberations. He noted tourism revenue and its use and subsequent decisions to channel revenue into capital projects and the impact on lower-income citizens. Mr. Icenhour further noted his support of tourism revenue, but that revenue should come from the tourism business. He cautioned if certain revenues would exist long-term. He noted that was one of the reasons the Board decided to put money received into funding for one-time capital projects and not part of an ongoing operating budget. Mr. Icenhour further noted that revenue could disappear.

Ms. Larson clarified she was referencing the lodging tax.

Mr. Icenhour stated he understood the lodging tax and room tax aspect. He noted he was referencing the 1% Historic Triangle sales tax. Mr. Icenhour further noted the need for the additional information he requested to make the best decision for the citizens.

Mr. Hipple noted facilities such as the proposed one do not break even on their own. He referenced the Parks & Recreation Department with 54% revenue and the remaining 46% was subsidized. Mr. Hipple compared the HTRFA facility to a Parks & Recreation facility with the varied options offered. He noted the difference was the Parks & Recreation facility would not be able to compare with overnight stays and restaurant visits generated by opportunities offered with the other facility.

Mr. Stevens noted the Board could send him any additional questions or comments over the next few weeks. He further noted he had a draft of the operating agreement he would share with the Board.

Mr. Hipple stated he was hopeful the Board would make a decision at its December 12, 2023, Regular Meeting. He noted that date could change based on receipt of additional information.

Mr. McGlennon referenced the Historic Triangle sales tax and the adjustment made to it for exclusion of groceries. He noted the \$3 head tax was then reinstated to ensure benefits to all participating localities.

Ms. Larson requested the impact of sports tourism to Virginia's economy. She noted Visit Williamsburg could assist with the request. Ms. Larson addressed concerns regarding pools and swim facilities serving citizen needs. She added some local swim teams were using neighborhood facilities, adding the swim community was large and needed swim facilities. Ms. Larson noted that while a swim facility may not be a revenue generator, it served citizen needs.

2. James City County Marina Improvements

Mr. Alister Perkinson, Parks Administrator, addressed the Board with an update on the County's marina improvements. He highlighted the current progress in the PowerPoint presentation which included demolition of covered boat slips that were in poor condition. Mr. Perkinson noted smaller, operational repairs had also been completed and those included structural repairs to the building. He further noted the first phase was completed during summer 2023 and included the fuel and marine pump-out installed and operational. Mr. Perkinson addressed the need for a Stormwater Master Plan to encompass many details in that area for the marina. He noted the contract was set for the installation of additional docks and work would

begin this winter with opening slated for April 2024. Mr. Perkinson further noted a conceptual design for a new bathhouse was in the works. He continued the presentation highlighting the remaining improvements which included 65-70 additional boat slips, bathhouse, new boat ramp, and parking and stormwater infrastructure to support marina operations and the proposed on-site restaurant. Mr. Perkinson noted the County was also reviewing use of the leased property from the Jamestown-Yorktown Foundation for dry storage. He continued highlighting several challenges on the remaining improvements. Mr. Perkinson noted much of the funding was through the American Rescue Plan Act (ARPA). He further noted there were deadlines and requirements for the ARPA funding use. Mr. Perkinson stated the coordination with multiple projects, a Special Use Permit (SUP) for the proposed restaurant and traffic study, permit renewals, stormwater management, and the budget were challenges on this project. He noted the plan for the remaining improvements included pursuit of a design-build to complete all the remaining projects collectively and to coordinate those remaining elements. Mr. Perkinson stated public meetings were also included to ensure public input was gathered on the design decisions. He highlighted the budget and timeline, adding the entire project was not fully funded by ARPA and staff projections were \$2.5-\$3 million were still needed for completion of the projects. Mr. Perkinson stated in early spring 2024 the Request for Proposals for the design-build team would begin. He noted the targeted completion date for all projects was spring 2026. Mr. Perkinson further noted he was joined by Mr. Barry Moses, Capital Projects Coordinator, for any questions.

Mr. Stevens noted there would be a meeting with the boating community to provide an update on the marina project. He further noted his recommendation was to construct uncovered docks and he welcomed opinions over the ensuing weeks. Mr. Stevens stated the covered slips were a significant cost addition compared to the marginal rent markup. He added there had been a number of positive comments received regarding the aesthetics of the Powhatan Creek viewshed with the new uncovered slips.

Ms. Sadler asked if that point impacted the \$2.5-\$3 million price.

Mr. Perkinson noted covered slips would be an additional cost. He added the importance of public input regarding the design-build.

Ms. Larson expressed caution in soliciting public input.

Mr. McGlennon asked about a rate charge that would still provide the same level of revenue.

Mr. Stevens said that could be done with a market study on the rates. He noted previously the covered and uncovered rates were similar due to the poor condition of the covered slips. Mr. Stevens further noted significant pushback when the covered slip rates were considered for an increase. He added the rate increase would need to be substantially higher in his opinion and an annual contract was required. Mr. Stevens referenced Ms. Larson's comment on public input, adding the input was important, but balancing the recommendations was also necessary.

Mr. Hipple noted the price of covered slips and notifying the public of the increased costs for those slips when garnering public input. He further noted that option allowed citizens to see the cost to them for that amenity and allowed staff to gauge responses to determine feasibility.

Ms. Larson asked how many other local marinas offered covered slips. She referenced Gloucester County as an example. Ms. Larson questioned if marinas were eliminating covered slips as they aged and needed repairs.

Mr. Perkinson responded few marinas had covered slips based on market studies. He referenced covered slips were used in Hopewell, but that marina was experiencing a similar situation to James City County's experience last year.

Ms. Larson noted the future maintenance costs for covered slips.

Mr. Hipple asked if the design for uncovered slips could be modified in the future to add covered slips.

Mr. Perkinson noted deferment to Mr. Moses, adding he thought some challenges due to flotation were presented there.

Mr. Moses addressed the Board confirming it would be difficult to have that capability later. He noted such a modification would also reduce the number of slips slightly to accommodate the covers. Mr. Moses further noted uncovered slips required less flotation and walkways were not between every boat slip.

Mr. Carnifax addressed the Board regarding the fees. He noted a market study was currently being done with studies done at least every two years for all department programs and fees. Mr. Carnifax stated the studies allowed the department to remain current with costs, adding the current slip rate was under market. He noted additional fees for covered slips could be implemented, but the decision needed to be made sooner in the process. Mr. Carnifax stated a rate increase was more likely for implementation once the facility updates were completed. He noted whether the slips were covered or uncovered, the rates would go up to match the market.

Mr. Icenhour referenced several constituents who had used the boat slips and then removed or sold their boats. He noted those people were concerned regarding the ability to get a slip and the process, whether it would be a lottery system or something else. Mr. Icenhour further noted the process should be addressed when speaking to the boating community. He referenced the cost of the covered slips as another discussion point, adding some boat owners may opt to not pay the higher rate for a covered slip. Mr. Icenhour noted constituent concern regarding a lack of communication and time information. He further noted the need to address those concerns when speaking to the boating community.

Mr. Hipple noted the marina had seen major improvements, particularly in the timeline identified.

The Board thanked Mr. Perkinson.

3. FY 2023 Annual Report

Ms. Latara Rouse, Communications Manager, addressed the Board with an overview of the County's Fiscal Year (FY) 2023 Annual Report. She noted the Annual Report highlighted County departmental accomplishments which she would show in her presentation. Ms. Rouse stated the full report would be posted on the County's website, jamescitycountyva.gov. She began the presentation with highlights from Community Development which included finalization of the Skiffes Creek Connector project, Board adoption of the Natural & Cultural Assets Plan, and leverage of a state grant for assistance to 25 households for septic tank pump-outs. Ms. Rouse continued with Economic Development's accomplishments, which included presentation of Founder's Awards to three local businesses celebrating their 50th anniversaries. The companies included AB InBev, Ball Metal, and the Williamsburg-Jamestown Airport. Ms. Rouse noted the County received an award of \$485,500 in Virginia Business Ready Sites Program grant funding for work toward the Hazelwood Farm Enterprise Center. She further noted Economic Development facilitated the sale of 58 acres of property owned by the Economic Development Authority. Ms. Rouse noted Financial and Management Services overcame unprecedented staffing challenges, achievement of two major milestones with software enhancements which included the launch of a budget module in MUNIS and a Teams/OneDrive channel, and processing of over 4,100 sales and 1,100 permits through its Real Estate Assessment Division. She stated the Fire Department began carrying O+ whole blood on the Emergency Medical Services Supervisor's vehicle (James City County is one of

only a handful of Virginia localities with this capability), placed a new technical rescue truck and fire boat into service, and continued collaboration with the Social Services Department for the Community, Outreach, Network, Educate, Care, Thrive (CONNECT) program. Ms. Rouse noted General Services received a \$10,000 grant from the Virginia Department of Environmental Quality for septic pump-outs for income-eligible property owners, staff rehabilitation of the Warhill Sports Complex baseball infield and basketball court renovation, and installation of a dual port electric vehicle charging station at the James City County Recreation Center through a Dominion Energy grant. She continued noting Human Resources was honored by the Greater Williamsburg Chamber of Commerce as the Health Promoter of the Year, received a 96% approval rating from employees on the Open Enrollment online process, and increased the minimum wage to \$14.78 per hour. Ms. Rouse noted Information Resources Management's Video Team expanded live streaming to all public, education, and government channels, the Geographic Information System (GIS) completed the requirements for Next Generation 9-1-1 implementation, and the County was announced as a winner in the 20th Annual Digital Counties Survey by the Center for Digital Government and the National Association of Counties. She further noted Parks & Recreation installed a new grant-supported outdoor classroom at Freedom Park, provided year-round accommodations to over 400 special needs customers, created new tourism activities including the 5&Dime Trail, and received six national Parks & Recreation top honors. Ms. Rouse stated Police highlights included securing \$177,159 in grants for public safety enhancement, hosting the 3rd Annual Halloween with Heroes, and hosting the Shop with a Cop event for local children. She noted Social Services' Children's Services Division had a 90% success rate in placing foster care youth with Kinship families, the Housing Unit implemented the local Housing Voucher Subsidy Program funded by ARPA with a 90% goal attainment, local homeowners received assistance with repairs through a partnership with Habitat for Humanity, affordable housing construction through grants, first-time homebuyer support, and significant participation increases in Medicaid and the Supplemental Nutrition Assistance Program (SNAP). Ms. Rouse noted the Williamsburg Regional Library's (WRL) accomplishments included its ranking as one of the country's top public libraries, recipient of the Friends of the Library Award from the Virginia Library Association, and recipient of a \$7,000 national grant from the Public Library Association for digital literacy workshops.

Mr. McGlennon asked about a slide for the Public Information Office. He noted some substantial accomplishments from that Department also. Mr. McGlennon acknowledged congratulations there as well.

Ms. Rouse thanked Mr. McGlennon.

Mr. McGlennon noted the tree on the front cover of the Annual Report and the numerous times official County publications had a tree displayed on their covers. He further noted the importance of that aspect in ways to improve the community.

Ms. Larson noted the familiarity of the tree and its location.

Ms. Rouse responded it was Chickahominy Riverfront Park.

Mr. Hipple reflected on the amazing work of County staff for the citizens. He thanked staff for all their work across the many County departments.

The Board extended its thanks for a great presentation.

F. BOARD CONSIDERATION(S)

1. 2024 Legislative Program

A motion to Adopt the resolution was made by John McGlennon, the motion result was Passed.
AYES: 5 NAYS: 0 ABSTAIN: 0 ABSENT: 0
Ayes: Hipple, Icenhour Jr, Larson, McGlennon, Sadler

Mr. Kinsman addressed the Board noting its 2024 Legislative Program was included in the Agenda Packet. He stated the Board had discussed various points at its October 24, 2023, Business Meeting, and the documentation represented those points. Mr. Kinsman noted three points to highlight included an amendment to Virginia Code Section 24.2-604 to extend the 40-foot no contact rule to include the entire building, not just the entrances. He further noted this first point dealt with County voting centers. Mr. Kinsman stated the second point was support for an additional Circuit Court judge in the 9th Judicial Circuit. He added this request had already been viewed by the Judicial Review Panel and was included on all the Board and Council Agendas in the 9th Circuit. Mr. Kinsman noted short-term rentals continued to be a contentious point in every General Assembly. He further noted James City County permitted short-term rentals as a matter of right in approximately 40% of the land area in James City County, adding an SUP was required for the other cases where no homeowners association (HOA) was present and the Board almost acted as the HOA if the short-term rental was appropriate in that location. Mr. Kinsman stated the County had fought hard to retain that local ability regarding short-term rentals while Airbnb had fought against it. He welcomed any questions and if there were none, he recommended adoption of the resolution establishing these points as the Board's 2024 Legislative Agenda. Mr. Kinsman noted that upon the Board's approval then he would forward it to all the legislators.

Mr. McGlennon questioned the establishment of relationships with the new legislators.

Mr. Kinsman replied he had not met the Honorable Virginia Senator Ryan McDougle, but he was familiar with the Honorable Delegate Amanda Batten and the Honorable Senator-Elect J. D. Diggs. Mr. Kinsman noted he would introduce himself in the letter when he forwarded the Legislative Agenda.

Mr. McGlennon asked about the Honorable Delegate-Elect Chad Green.

Mr. Kinsman noted he would include the Honorable Delegate-Elect Green also.

Ms. Larson stated she and Mr. Hipple met with the Honorable Delegate-Elect Green last week and reviewed the Board's Legislative Agenda with him. She noted the Honorable Delegate-Elect Green was familiar with the local control aspect and was not planning on introducing any legislation that would differ from that aspect. Ms. Larson further noted she and Ms. Sadler had an opportunity to meet the Honorable Virginia Senator McDougle, but due to the timing of their arrival at the meeting, she was not able to convey what legislation he would or would not bring forward.

G. BOARD REQUESTS AND DIRECTIVES

Ms. Sadler reminded everyone of precautions for the pending cold weather.

Mr. McGlennon noted his recent attendance at a session on the state of transit in Hampton Roads. He noted representatives from the Williamsburg Area Transit Authority (WATA), the Hampton Roads Transportation, and Suffolk Transit were present. Mr. McGlennon further noted the local area was well represented with WATA and local business leaders.

Ms. Larson thanked Mr. McGlennon for his attendance at the transit meeting. She noted the prior week Verizon had experienced a failure in her part of the County with citizens receiving an SOS message on their phones. Ms. Larson further noted people's reliance on their phones and many no longer had landlines. She stated citizens who called Verizon were told there was no issue in the area. Ms. Larson noted she contacted Mr. Stevens over the weekend about the

issue. She further noted the need to get an answer from Verizon on the problem.

Mr. McGlennon referenced a previous meeting when a Verizon representative had addressed the Board after numerous concerns. He noted requesting a written report from the representative regarding that particular time period when the issues occurred.

Discussion ensued.

Mr. Icenhour addressed several Board members' attendance at the Swearing-In ceremony for the County's newest Police Officers. He noted nine Officers were sworn in at that ceremony and he was impressed. Mr. Icenhour further noted he was very pleased with the progress in that area.

H. REPORTS OF THE COUNTY ADMINISTRATOR

Mr. Stevens noted a Swearing-In ceremony would take place on December 12, 2023, for newly elected and re-elected Board members. He stated the reception would begin at 3:30 p.m., followed by the ceremony at 4:15 p.m. and prior to the Board's December 12, 2023, Regular Meeting. Mr. Stevens noted family, friends, and community members were invited to attend the ceremony. He further noted leaf disposal collection was beginning December 1, 2023, and would run until the middle of the month. Mr. Stevens stated the leaves should be in clear plastic bags for neighborhood pickup. He noted if anyone had questions, call General Services. He added residents could drop off leaves at no charge at the Jolly Pond Convenience Center until January 15, 2024. Mr. Stevens addressed public meeting notice, adding Ms. Larson had a resident contact her about the meeting changeover to CivicClerk and the ease of the process. He added that once Agendas were published on the website, residents could sign up and receive notification of that publishing to get information. Mr. Stevens noted sign up was also available on the website under the Agenda and Minutes tab or call the Clerk to the Board at 757-253-6609 to sign up for that notification service when Agendas for Boards and Commissions are published.

Ms. Larson thanked Mr. Stevens. She noted some background on the request and the accessibility for citizens regarding Agendas.

Mr. McGlennon reiterated that leaf collection would start on December 1, 2023, for the Roberts and Berkeley Districts. He added leaves should be curbside at 7 a.m. on that date.

I. CLOSED SESSION

A motion to Enter a Closed Session was made by James Icenhour, the motion result was Passed.
AYES: 5 NAYS: 0 ABSTAIN: 0 ABSENT: 0
Ayes: Hipple, Icenhour Jr, Larson, McGlennon, Sadler

At approximately 2:52 p.m., the Board of Supervisors entered a Closed Session.

At approximately 3:39 p.m., the Board re-entered Open Session.

A motion to Certify the Board only spoke about those matters indicated that it would speak about in Closed Session was made by John McGlennon, the motion result was Passed.
AYES: 5 NAYS: 0 ABSTAIN: 0 ABSENT: 0
Ayes: Hipple, Icenhour Jr, Larson, McGlennon, Sadler

1. Code of Virginia section 2.2-3711.A(8): Consultation with legal counsel employed or retained by a public body regarding specific legal matters requiring the provision of legal advice by such counsel; specifically, the New Town Section 7 and 8 Proffers.

2. Discussion or consideration of the acquisition of real property for a public purpose, where discussion in an open meeting would adversely affect the bargaining position or negotiating strategy of the public body, pursuant to Section 2.2-3711(A)(3) of the Code of Virginia and pertaining to Fire Station 6 Land Acquisition.

3. Discussion of the award of a public contract involving the expenditure of public funds, and discussion of the terms or scope of such contract, where discussion in an open session would adversely affect the bargaining position or negotiating strategy of the public body, pursuant to Section 2.2-3711(A)(29) of the Code of Virginia and pertaining to the contract between the County, the City of Williamsburg, and WJCC Schools.

4. Consideration of a personnel matter, the appointment of individuals to County Boards and/or Commissions, pursuant to Section 2.2-3711(A)(1) of the Code of Virginia.
 - a. Appointments - Chesapeake Bay Board and the Wetlands Board

 - b. Appointment - Stormwater Program Advisory Committee

A motion to Appoint Mr. John Lynch to the Stormwater Program Advisory Committee for a four-year term effective immediately and expiring June 30, 2027, was made by James Icenhour, the motion result was Passed.

AYES: 5 NAYS: 0 ABSTAIN: 0 ABSENT: 0

Ayes: Hipple, Icenhour Jr, Larson, McGlennon, Sadler

5. Certification of Closed Session

J. ADJOURNMENT

1. Adjourn until 8:30 a.m. on December 1, 2023 for the Joint Meeting located at Room 127 in the Stryker Building, 412N Boundary Street, Williamsburg, VA

A motion to Adjourn was made by Ruth Larson, the motion result was Passed.

AYES: 5 NAYS: 0 ABSTAIN: 0 ABSENT: 0

Ayes: Hipple, Icenhour Jr, Larson, McGlennon, Sadler

At approximately 3:41 p.m., Mr. Hipple adjourned the Board of Supervisors.

**SPECIAL USE PERMIT-22-0027. 3426 North Riverside Drive Family Subdivision Withdrawal Request
Staff Report for the December 12, 2023, Board of Supervisors Public Hearing**

SUMMARY FACTS

Applicant: Mr. Daniel Samuels
Landowner: Mr. David L. Samuels
Proposal: To create a three-lot family subdivision for the Samuels family.
Location: 3426 North Riverside Drive
Tax Map/Parcel No.: 0940100008K
Project Acreage: ± 28.57 acres
Current Zoning: A-1, General Agricultural
Comprehensive Plan: Rural Lands
Primary Service Area Outside
Staff Contact: Thomas Wysong, Principal Planner

PUBLIC HEARING DATES

Board of Supervisors: November 14, 2023, 5:00 p.m. (Postponed)
December 12, 2023, 5:00 p.m.

WITHDRAWAL REQUEST

The applicant has requested a withdrawal of this case (see Attachment No. 1). Staff recommends the Board of Supervisors grant this request.

TW/ap
SUP22-27_3426NRivWD

Attachment:
1. Deferral Request

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

November 22, 2023

Thomas Wysong
James City County Planning Department

Re: SUP-22-0027 3426 N. Riverside Dr.

Mr. Wysong,

We would like to formally request to withdraw this case from the Board of Supervisors meeting. During our review with staff of the project and working through two final items we would like to have them accurately reflected on our proposed subdivision plat prior to a presentation to the board for approval. The first item is the newly approved shared driveway location. VDOT has approved the drive as shown on the newly submitted plat. Secondly we need to reflect reserve drainfields as required by the health department to ensure their recommendation of approval of our project. These items have taken longer then expected so for the time being we would like to withdraw the case and bring back a complete package at the correct time.

If you have any questions feel free to contact me.

Sincerely,



W. Chase Grogg, L.S.

V.P. / Survey Coordinator

MEMORANDUM

DATE: December 12, 2023

TO: The Board of Supervisors

FROM: Michael D. Woolson, Section Chief, Stormwater and Resource Protection Division
Adam R. Kinsman, County Attorney

SUBJECT: Ordinance to Amend and Reordain Chapter 22, Wetlands by Amending Article I, In General, Section 22-3, Permitted uses; Article II, Use Permits, Section 22-5, Applications, maps, documents to be open to public inspection; Article II, Use Permits, Section 22-6, Public hearing; Article II, Use Permits, Section 22-7, Wetlands board action; and Article II, Use Permits, Section 22-11, Permit to be in writing

Chapter 22 - Wetlands of the James City County Code was adopted pursuant to Title 28.2, Chapter 13, § 28.2-1300 et seq. of the Code of Virginia, 1950, as amended (the “Virginia Code”) to regulate the use and development of wetlands in the County. The Virginia Code requires that local wetlands ordinances exactly match the state’s model wetlands ordinance. The state’s model wetlands ordinance was amended in the General Assembly’s 2023 regular session and localities are required to amend their wetlands ordinances to match it by January 1, 2024.

The only substantive revisions include updates to the public notice procedures, which include posting on-line notices for wetlands board meetings, submitting the notice to the Virginia Regulatory Town Hall, and a “savings clause” for when newspapers fail to publish or incorrectly publish a submitted public notice. Additionally, the requirement for a wetlands permit to be notarized has been eliminated.

The remaining changes are housekeeping measures to correctly identify the Division of Stormwater and Resource Protection.

We recommend adoption of the attached Ordinance.

MDW/ARK/ap
WetOrdAmd-mem

ORDINANCE NO. _____

AN ORDINANCE TO AMEND AND REORDAIN CHAPTER 22, WETLANDS, OF THE CODE OF THE COUNTY OF JAMES CITY, VIRGINIA, BY AMENDING ARTICLE I, IN GENERAL, SECTION 22-3, PERMITTED USES, AND BY AMENDING ARTICLE II, USE PERMITS, SECTION 22-5, APPLICATIONS, MAPS, DOCUMENTS TO BE OPEN TO PUBLIC INSPECTION; SECTION 22-6, PUBLIC HEARING; SECTION 22-7, WETLANDS BOARD ACTION; AND SECTION 22-11, PERMIT TO BE IN WRITING.

BE IT ORDAINED, by the Board of Supervisors of the County of James City, Virginia, that Chapter 22, Wetlands, is hereby amended and reordained by amending Article I, In general, Section 22-3, Permitted uses, and by amending Article II, Use permits, Section 22-5, Applications, maps, documents to be open to public inspection, Section 22-6, Public hearing, Section 22-7, Wetlands board action; and Section 22-11, Permit to be in writing.

Chapter 22. WETLANDS

ARTICLE I. - IN GENERAL

Sec. 22-3. Permitted uses.

The following uses of and activities on wetlands are permitted, if otherwise permitted by law:

- (a) The construction and maintenance of noncommercial catwalks, piers, boathouses, boat shelters, fences, duckblinds, wildlife management shelters, footbridges, observation decks and shelters and other similar structures; provided, that such structures are so constructed on pilings as to permit the reasonably unobstructed flow of the tide and preserve the natural contour of the wetlands;
- (b) The cultivation and harvesting of shellfish and worms for bait;
- (c) Noncommercial outdoor recreational activities, including hiking, boating, trapping, hunting, fishing, shellfishing, horseback riding, swimming, and skeet and trap shooting and shooting on shooting preserves; provided, that no structure shall be constructed except as permitted in subsection (a) of this section;
- (d) Other outdoor recreational activities, provided they do not impair the natural functions or alter the natural contour of the wetlands;
- (e) Grazing, haying, and cultivating and harvesting agricultural, forestry or horticultural products;
- (f) Conservation, repletion and research activities of the commission, the Virginia Institute of Marine Science, the Department of Game and Inland Fisheries and other conservation-related agencies;

- (g) The construction or maintenance of aids to navigation ~~which~~ *that* are authorized by governmental authority;
- (h) Emergency measures decreed by any duly appointed health officer of a governmental subdivision acting to protect the public health;
- (i) The normal maintenance and repair of, or addition to, presently existing roads, highways, railroad beds, or the facilities abutting on or crossing wetlands, provided, that no waterway is altered and no additional wetlands are covered;
- (j) Governmental activity in wetlands owned or leased by the Commonwealth of Virginia or a political subdivision thereof;
- (k) The normal maintenance of man-made drainage ditches, provided that no additional wetlands are covered. This subdivision does not authorize construction of any drainage ditch; and
- (l) The construction of living shoreline projects authorized pursuant to a general permit developed under subsection B of Virginia Code § 28.2-104.1.

ARTICLE II. - USE PERMITS

Sec. 22-5. Applications, maps, documents to be open to public inspection.

All applications, maps and documents submitted shall be open for public inspection at the ~~engineering~~ *stormwater* and resource protection division office.

Sec. 22-6. Public hearing.

Not later than 60 days after receipt of a complete application, the wetlands board shall hold a public hearing on the application. The applicant, the local governing body, commissioner, owner of record of any land adjacent to the wetlands in question, known claimants of water rights in or adjacent to the wetlands in question, the Virginia Institute of Marine Science, the department of ~~Game and Inland Fisheries~~ *Wildlife Resources*, the *State* Water Control Board, the *Virginia* Department of Transportation, and any governmental agency expressing an interest in the application shall be notified of the hearing. The board shall mail *or email* these notices not less than 20 days prior to the date set for the hearing. The wetlands board shall also *(i) cause notice of the hearing to be published at least once a week for two weeks in the seven days* prior to such hearing in a newspaper of general circulation in this county; *(ii) post a notice of the hearing on the county website at least 14 days prior to such hearing; and (iii) provide a copy of such notice to the Commission for submittal to the Virginia Regulatory Town Hall.* The published notice shall specify the place or places within the county where copies of the application may be examined. The costs of such publication shall be paid by the applicant. *In the event that the board submits a correct and timely notice for publication and the newspaper fails to publish the notice or publishes the notice incorrectly, the board shall be deemed to have met the notice requirements of this subsection so long as the notice is published in the next available edition of such newspaper.*

Sec. 22-7. Wetlands board action.

- (a) Approval of a permit application shall require the affirmative vote of three members of a five-member board or four members of a seven-member board.
- (b) The chairman of the board, or in his absence the acting chairman, may administer oaths and compel the attendance of witnesses. Any person may testify at the public hearing. Each witness at the hearing may submit a concise written statement of his testimony. The board shall make a record of the

proceedings, which shall include the application, any written statements of witnesses, a summary of statements of all witnesses, the findings and decision of the board and the rationale for the decision.

- (c) The board shall make its determination within 30 days of the hearing. If the board fails to act within that time, the application shall be deemed approved. Within 48 hours of its determination, the board shall notify the applicant and the commissioner of its determination. If the board fails to make a determination within the 30-day period, it shall notify the applicant and the commission that the application is deemed approved. For purposes of this section, "act" means taking a vote on the application. If the application receives less than four affirmative votes from a seven-member board or less than three affirmative votes from a five-member board, the permit shall be denied.
- (d) If the board's decision is reviewed or appealed, the board shall transmit the record of its hearing to the commissioner. Upon a final determination by the commission, the record shall be returned to the board. The record shall be open for public inspection at the ~~engineering~~ stormwater and resource protection division office of this county.

Sec. 22-11. Permit to be in writing.

The permit shall be in writing, ~~and~~ and signed by the chairman of the board or his authorized representative, ~~and notarized~~. A copy of the permit shall be transmitted to the commissioner.

 Michael J. Hipple
 Chairman, Board of Supervisors

ATTEST:

 Teresa J. Saeed
 Deputy Clerk to the Board

	VOTES			
	<u>AYE</u>	<u>NAY</u>	<u>ABSTAIN</u>	<u>ABSENT</u>
SADLER	_____	_____	_____	_____
ICENHOUR	_____	_____	_____	_____
MCGLENNON	_____	_____	_____	_____
LARSON	_____	_____	_____	_____
HIPPLE	_____	_____	_____	_____

Adopted by the Board of Supervisors of James City County, Virginia, this 12th day of December, 2023.

ORDINANCE NO. _____

AN ORDINANCE TO AMEND AND REORDAIN CHAPTER 22, WETLANDS, OF THE CODE OF THE COUNTY OF JAMES CITY, VIRGINIA, BY AMENDING ARTICLE I, IN GENERAL, SECTION 22-3, PERMITTED USES, AND BY AMENDING ARTICLE II, USE PERMITS, SECTION 22-5, APPLICATIONS, MAPS, DOCUMENTS TO BE OPEN TO PUBLIC INSPECTION; SECTION 22-6, PUBLIC HEARING; SECTION 22-7, WETLANDS BOARD ACTION; AND SECTION 22-11, PERMIT TO BE IN WRITING.

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- (e) Grazing, haying, and cultivating and harvesting agricultural, forestry or horticultural products;
- (f) Conservation, repletion and research activities of the commission, the Virginia Institute of Marine Science, the Department of Game and Inland Fisheries and other conservation-related agencies;

- (g) The construction or maintenance of aids to navigation that are authorized by governmental authority;
- (h) Emergency measures decreed by any duly appointed health officer of a governmental subdivision acting to protect the public health;
- (i) The normal maintenance and repair of, or addition to, presently existing roads, highways, railroad beds, or the facilities abutting on or crossing wetlands, provided, that no waterway is altered and no additional wetlands are covered;
- (j) Governmental activity in wetlands owned or leased by the Commonwealth of Virginia or a political subdivision thereof;
- (k) The normal maintenance of man-made drainage ditches, provided that no additional wetlands are covered. This subdivision does not authorize construction of any drainage ditch; and
- (l) The construction of living shoreline projects authorized pursuant to a general permit developed under subsection B of Virginia Code § 28.2-104.1.

ARTICLE II. - USE PERMITS

Sec. 22-5. Applications, maps, documents to be open to public inspection.

All applications, maps and documents submitted shall be open for public inspection at the stormwater and resource protection division office.

Sec. 22-6. Public hearing.

Not later than 60 days after receipt of a complete application, the wetlands board shall hold a public hearing on the application. The applicant, the local governing body, commissioner, owner of record of any land adjacent to the wetlands in question, known claimants of water rights in or adjacent to the wetlands in question, the Virginia Institute of Marine Science, the department of Wildlife Resources, the State Water Control Board, the Virginia Department of Transportation, and any governmental agency expressing an interest in the application shall be notified of the hearing. The board shall mail or email these notices not less than 20 days prior to the date set for the hearing. The wetlands board shall also (i) cause notice of the hearing to be published at least once in the seven days prior to such hearing in a newspaper of general circulation in this county; (ii) post a notice of the hearing on the county website at least 14 days prior to such hearing; and (iii) provide a copy of such notice to the Commission for submittal to the Virginia Regulatory Town Hall. The published notice shall specify the place or places within the county where copies of the application may be examined. The costs of such publication shall be paid by the applicant. In the event that the board submits a correct and timely notice for publication and the newspaper fails to publish the notice or publishes the notice incorrectly, the board shall be deemed to have met the notice requirements of this subsection so long as the notice is published in the next available edition of such newspaper.

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- (a) Approval of a permit application shall require the affirmative vote of three members of a five-member board or four members of a seven-member board.
- (b) The chairman of the board, or in his absence the acting chairman, may administer oaths and compel the attendance of witnesses. Any person may testify at the public hearing. Each witness at the hearing may submit a concise written statement of his testimony. The board shall make a record of the

proceedings, which shall include the application, any written statements of witnesses, a summary of statements of all witnesses, the findings and decision of the board and the rationale for the decision.

- (c) The board shall make its determination within 30 days of the hearing. If the board fails to act within that time, the application shall be deemed approved. Within 48 hours of its determination, the board shall notify the applicant and the commissioner of its determination. If the board fails to make a determination within the 30-day period, it shall notify the applicant and the commission that the application is deemed approved. For purposes of this section, "act" means taking a vote on the application. If the application receives less than four affirmative votes from a seven-member board or less than three affirmative votes from a five-member board, the permit shall be denied.
- (d) If the board's decision is reviewed or appealed, the board shall transmit the record of its hearing to the commissioner. Upon a final determination by the commission, the record shall be returned to the board. The record shall be open for public inspection at the stormwater and resource protection division office of this county.

Sec. 22-11. Permit to be in writing.

The permit shall be in writing and signed by the chairman of the board or his authorized representative. A copy of the permit shall be transmitted to the commissioner.

MEMORANDUM

DATE: December 12, 2023

TO: The Board of Supervisors

FROM: Scott A. Stevens, County Administrator
John H. Carnifax, Director of Parks & Recreation

SUBJECT: Actions Related to the Proposed Historic Triangle Sports Facility

At its November 28, 2023, meeting, the Board was briefed on the status of the Historic Triangle Sports Facility. Members of the Design team and representatives of the partnering localities were in attendance to support the concept and the process that is before the Board at the December 12, 2023, meeting. Because of the complexity of the inter-jurisdictional agreements, there are three resolutions for consideration at this meeting. All of the approvals are necessary to move the project forward.

1. Resolution reconstituting the Historic Triangle Recreational Facilities Authority (HTRFA): This resolution was previously approved, but Attorneys for the organization requested re-approval by all three localities due to slight, non-substantive differences in the original actions. Identical language for all three localities has been attached.
2. Approval of the funding agreement for the construction of the facility: this memorializes the 30-year plan of finance for the construction of the roughly 200,000-square-foot indoor sports facility. This resolution is titled “Funding Agreement Regarding the Historic Triangle Recreational Facilities Authority”.
3. Subsidiary agreement between York County and James City County: This defines how the two localities would divide total operating contributions.

Project Context and History

The HTRFA has invited James City County and York County to participate with the City of Williamsburg in funding a regional sports center per the attached letter. The sports center would be a 200,000-square-foot facility with 115,000 square feet of hardwood maple court space, meeting rooms, food and beverage areas, offices, rock wall and ninja gym, and a conversion turf system located at the Colonial Williamsburg Visitor Center site estimated to cost \$80 million.

If approved, the project would go to construction in early 2024 and is anticipated to be completed by early 2026.

The funding agreement prescribes that the City of Williamsburg and HTRFA provide the funds necessary to service the debt for the facility’s construction. The agreement further details that the Counties will satisfy any annual operating deficit with an annual maximum and minimum contribution. The proposed yearly financial commitment of the Counties includes meeting any operational deficit and contributions for operating and capital reserves. Given the initial performance analysis, we expect an operating deficit to approximate \$300,000 in a stabilized year (the minimum annual contribution), but that amount shall not exceed \$800,000 per County annually subject to all annual inflation adjustment equivalent to USCPI. Funding the purchase of furniture, fixtures, and equipment (FF&E) while establishing adequate reserves is critical to the initial success of the project and will require an initial investment of maximum funding from the Counties (\$1.6 million total or \$800,000 each) which is also a component of the agreement. This will

Actions Related to the Proposed Historic Triangle Sports Facility

December 12, 2023

Page 2

be accomplished through an initial year's payment of \$400,000 from each County, in years two-five the payment will increase to \$800,000 per County, and in years five-30 will be established by the HTRFA budget request within the limits of the minimum and maximum payment amounts.

The initial term of the agreement is 30 years to coincide with the anticipated debt term with two 25-year extensions, if approved by the participating localities.

In addition to the funding agreement, a separate subsidiary agreement between James City County and York County is required that will determine the percentage of operational cost payments of each locality based on citizen usage at the facility. For years one and two, each County would pay equal amounts. For year three and beyond, where local participation rates are unavailable, James City County will pay 54% and York County will pay 46% of the HTRFA requested amount. For year three and beyond, where local participation rates are available, the HTRFA request shall be divided into a 90% share and 10% share. For the 90% share, the Counties will each pay 50% and for the 10% share, the Counties will each pay a pro rata share as determined by each locality's rate of citizen participation. In no case will the annual contribution for either James City County or York County be more than \$880,000.

Staff recommends approval of the attached resolutions authorizing the authority, agreeing to the funding agreement, and allowing the County Administrator to approve of the Subsidiary Funding Agreement with York County.

SAS/JHC/ap
AcPropHTSF-mem

Attachments:

1. Funding Request Letter
2. Draft Funding Agreement
3. Draft Subsidiary Agreement
4. Resolutions



HTRFA

HISTORIC TRIANGLE RECREATIONAL FACILITIES AUTHORITY

November 27, 2023

Neil Morgan
York County Administrator
224 Ballard Street
Yorktown, Virginia 23690

Scott Stevens
James City County Administrator
101 Mounts Bay Road, Building D
Williamsburg, Virginia 23185

Mr. Morgan and Mr. Stevens:

This letter formally invites James City County and York County to participate with the City of Williamsburg as part of the Historic Triangle Recreational Authority's funding of a regional sports center.

Background:

Since 2014, the concept of a regional field house has been under review by our localities. The Williamsburg Hotel & Motel Association (WHMA) has long advocated for this effort as a collection of lodging owners who feel such a complex would improve overnight stays. Numerous studies have been completed at the direction of WHMA, demonstrating the potential positive impacts of a sports facility. Despite the potential positive impact on the region, the project has never advanced due to the financial requirements of acquiring land, facility construction, and long-term operations. The 2018 passage of SB942 provided the Historic Triangle with an additional half percent of sales tax for regional tourism promotion and a half percent for locality use. The City of Williamsburg committed its share of the realized new revenues to an annual grant program to increase tourism products and improve tourism trade inside the City and region. 2019 was the first year of the grant program, and the City received 22 applications, invited 11 of those to proceed with further analysis, and awarded \$2,239,153 to seven of those proposals. One such project is the WHMA application for designing and constructing a regional sports facility. Through consideration of the WHMA application, the City has committed design/study funding for each of the last three years and the debt service for one-half of the construction costs of the sports facility until the debt is retired. The City Council is now considering increasing this funding commitment to provide 64 percent of the needed debt service each year.

Action Steps:

The City and the HTRFA identified steps that would allow the project to be methodically planned and concurrently evaluated for success before committing to construction. The following steps have been completed:

- (1) The Historic Triangle Sports Advisory Committee (HTSAC), comprised of Chief Administrative Officers, appropriate Parks and Recreation staff, tourism staff members, economic development staff, and a representative from WHMA, met to discuss and define the required local programming elements. Such elements included the number and specifications for hard courts, recreation fields, aquatic features, play areas, training elements, therapy spaces, medical service



HTRFA

HISTORIC TRIANGLE RECREATIONAL FACILITIES AUTHORITY

areas, meeting space requirements, and performance venue needs. This step included consultation with the public school divisions and William & Mary to review and provide input on other strategic needs that should be considered part of a regional facility.

- (2) The City selected a sports tourism consultant and an economist to evaluate the defined local programming schedule for applicability and success in annually drawing sports tourism events to the facility. This initial analysis included direct and indirect revenues, attendance estimates, market competition reviews, and suggested recruitment strategies.
- (3) HTSAC convened to review contending sites inside the City of Williamsburg for the location of the regional sports facility and rank them in order of preference. This step included consulting with local public school divisions and W&M. Additional HTSAC action items consisted of revising earlier projections for revenue and competitiveness to include analysis of the sites selected in order of preference and developing construction and operational costs for the chosen locations. A final component of this step was creating a partnership agreement outlining each participating entity's roles and the required financial commitments.
- (4) At the request of the HTRFA and the localities, the General Assembly revised §58.1-603.2 Code of Virginia to redirect Maintenance of Effort (MoE) funding to the Historic Triangle Recreational Authority, providing a direct and dedicated source of funds for HTRFA operations.
- (5) The HTRFA successfully negotiated an annual lease for the unused/underused property surrounding the Colonial Williamsburg Visitor Center, resulting in several development sites. The first of these sites will be used to develop the regional sports center, allowing for future development opportunities and expansion of the regional recreational offering. Despite the HTRFA having control of the site now, the lease payments of \$225,000 annually do not begin until the construction of the regional sports center is underway.
- (6) The HTRFA received, evaluated, and selected a qualified, unsolicited Private Public Education Facilities and Infrastructure Act (PPEA) proposal from MEB Construction (Chesapeake). Over the last year, working with MEB, the HTRFA, and its design review committee have evaluated example sports centers, selected sports elements, and refined the design to allow confirmed pricing and completion of 35% of drawings needed for construction.
- (7) The HTRFA evaluated operating models for municipal sports facilities and solicited responses from operators consistent with the needs of the Historic Triangle. Four qualified responses were received, and the HTRFA interviewed all four. Using this information, the HTRFA advanced to the more formal Request for Proposal (RFP) phase of selection, and as a result, expected operating costs and revenues for the first five years are now defined.



HTRFA

HISTORIC TRIANGLE RECREATIONAL FACILITIES AUTHORITY

The remaining steps include:

- (8) Approval by each of the three locality's elected bodies for the Memorandum of Agreement (MoA) to establish the financial partnership of the jurisdictions.
- (9) HTRFA execution of the comprehensive development agreement with MEB, including the Guaranteed Maximum Price (GMP).

Sports Center Fiscal Analysis:

The City contracted with Victus Advisors to update and verify the results of the previous field house study completed by Sports Facility Advisors. Additionally, the City contracted with HVS Convention, Sports & Entertainment Facilities Consulting (HVS) to independently evaluate the Victus Advisors' assumptions and complete a more robust economic impact assessment. The outcomes of these assessments are positive. The expected operating deficit with such a publicly owned facility has decreased from the 2017 and 2019 cost analyses completed by SFA. The direct and indirect spending by visitors further offsets losses at the facility to make the project viable.

The annual operating costs remain estimates. The completed studies by Victus Advisors and HVS indicate that the operational model favoring sports tourism with community use will create an annual operating deficit of \$363,400 in a normalized year. HVS estimates that the annual tax revenues generated using only local sales and use tax, lodging tax, and the per-room night tax will be \$1,362,800. This estimate does not include meal tax revenues. The HTRFA acknowledges that a typical recreational facility is unlikely to profit or satisfy its expenses through directly generated revenues due to the public use of parks and recreation programming. However, the HTRFA believes, as do the consultants, that the possibility of revenue generation is much more substantial with this regional facility proposal. Despite that analysis, there is always the possibility of an operating shortfall. The indirect gains generated in each of our localities will offset our financial commitments toward operating the facility and help to reduce the burdens of accepting capital costs.

Locality Financial Commitment:

The success of this project is dependent on regional support. The City's commitment to funding for the project is designed to satisfy 64 percent of the estimated debt service following the decision to proceed with construction. After the 2022 statutory amendment, the HTRFA's MoE funding will fulfill the remaining 36 percent of the capital needs.

The most significant obstacle to completing the project remains meeting the anticipated operating costs and funding the required reserve accounts. The HTRFA asks the counties to satisfy any operating shortfall up to a maximum of \$800,000 and meet the needs of two reserve accounts with an annual minimum contribution of \$300,000.



HTRFA

HISTORIC TRIANGLE RECREATIONAL FACILITIES AUTHORITY

Financing the project will depend on a binding financial commitment from all parties before authorizing construction. The elected bodies are asked to execute the attached MoA outlining annual financial responsibilities. The MoA prescribes that the City of Williamsburg and HTRFA provide the funds necessary to service the debt for the facility's construction. The MoA further details that the Counties will satisfy any annual operating deficit with an annual maximum and minimum contribution. The proposed yearly financial commitment of the Counties includes meeting any operational deficit and contributions for operating and capital reserves. Given the initial performance analysis, we expect an operating deficit to approximate \$300,000 in a stabilized year (the minimum annual contribution), but that amount shall not exceed \$800,000 per County annually. Funding the purchase of furniture, fixtures, and equipment (FF&E) while establishing adequate reserves is critical to the initial success of the project and will require an initial investment of maximum funding from the counties (\$1.6 million total or \$800,000 each) which is also a component of the MoA. This will be accomplished through an initial year's payment of \$400,000 from each county, in years 2-5 the payment will increase to \$800,000 per county, and in years 5-30 will be established by the HTRFA budget request within the limits of the minimum and maximum payment amounts.

Below is an example of the financing formula applied to the regional sports center project after the third year:

- i. Capital Construction Costs - \$80 million (debt service)
 1. The City of Williamsburg - \$7.7 million existing project account balance
 2. The City of Williamsburg - \$2.5 million annually
 3. HTRFA - \$5 million existing project account balance
 4. HTRFA - \$1.5 million annually (MoE funds, §58.1-603.2 Code of Virginia)
- ii. Operating Costs - \$3,869,500 Annually (based on a stabilization year)
 1. Annual contribution to Operating Reserve - \$200,000
 2. Annual contribution to Capital Reserve - \$118,300
 3. Annual Lease Payment - \$220,000
 4. Operator Fee - \$222,000
 5. **Total annual operating costs = \$4,629,800**
- iii. Operating Revenues - \$3,506,100 Annually (based on stabilization year)
 1. Annual JCC Supplement – \$561,850 (capped at \$800,000)
 2. Annual York Supplement - \$561,850 (capped at \$800,000)
 3. **Total annual revenues = \$4,629,800**



HTRFA

HISTORIC TRIANGLE RECREATIONAL FACILITIES AUTHORITY

Schedule:

The City of Williamsburg publicly announced its intention to pursue a regional sports center through collaboration with James City County and York County with its initial commitment of funds for the WHMA application in 2020. The localities authorized the formation of the HTRFA in November of 2021. The HTRFA was tasked to diligently define the proposed programming of the regional sports center, the anticipated operating costs, and the capital needs. The HTRFA completed this task and now presents a project that, following the commitment of the localities, can proceed to construction in the first quarter of 2024 with an expected substantial completion date in the fourth quarter of 2025.

Request:

I have attached the proposed Memorandum of Agreement (MoA) that, when executed, serves as the financial commitment to participate in the regional sports center project outlined above. This document will allow the project to proceed to the construction phase when approved by the City Council, the James City County Board of Supervisors, and the York County Board of Supervisors. Please let me know when the Board of Supervisors can consider these actions and how you would like the HTRFA to participate.

Following an extensive evaluation of comparable facilities, a complete review of local needs, and a comprehensive design process, the HTRFA believes that the Historic Triangle Regional Sports Center is a desirable asset that will draw additional tourism to our region. The design quality, our region's many attractions, and the desirability of our communities will ensure that the project is another example of a Historic Triangle collaborative success.

I look forward to your response.

Sincerely,

Andrew O. Trivette
HTRFA Chairman
City Manager, City of Williamsburg

AOT/ms

CC: File

**FUNDING AGREEMENT REGARDING THE HISTORIC TRIANGLE
RECREATIONAL FACILITIES AUTHORITY**

THIS FUNDING AGREEMENT is made this ____ day of _____, 2023 to set forth the understanding and agreement by and among the **CITY OF WILLIAMSBURG, VIRGINIA** (“**Williamsburg**”) a city and municipal corporation of the Commonwealth of Virginia, **JAMES CITY COUNTY, VIRGINIA**, a county and political subdivision of the Commonwealth of Virginia (“**James City County**”) and **YORK COUNTY, VIRGINIA**, a county and political subdivision of the Commonwealth of Virginia (“**York County**”), **each a “Participating Locality” and together, the “Participating Localities”**) and the **HISTORIC TRIANGLE RECREATIONAL FACILITIES AUTHORITY**, a political subdivision of the Commonwealth of Virginia (“**HTRFA**”); and

WHEREAS, the Participating Localities determined it to be in the best interest of each of the Participating Localities to establish the HTRFA as a public recreational facilities authority under the Public Recreational Facilities Authority Act, Section 15.2-5600 *et seq.* of the Code of Virginia of 1950, as amended (**the “Act”**) for the acquisition, construction and operation of various public facilities as described below (**the “Projects”**) in order to promote and enhance recreation, sports, and tourism activities in the geographic area of the Participating Localities; and

WHEREAS, the creation of the HTRFA benefits the inhabitants of the Commonwealth, and in particular, the citizens and visitors to the Historic Triangle Area in the Participating Localities, by the increase of their commerce and the promotion of their safety, health, welfare, convenience and prosperity, and the operation and maintenance of any project which such an authority may undertake will constitute the performance of an essential governmental function as set forth in Section 15.2-5613 of the Act; and

WHEREAS, the HTRFA has entered into a Master Lease with the Colonial Williamsburg Foundation (“**CWF**”) for a long-term lease of certain real property in the CWF Visitors Center of Williamsburg upon which to construct and operate an indoor sports facility of approximately 200,000 square feet (**the “Initial Project”**) and have considered the construction and operation of such Initial Project and the financing of the same; and

NOW, THEREFORE, for the mutual benefit of the citizens of the Participating Localities, and for the mutual consideration to be provided by the Participating Localities pursuant to the terms of this Agreement, the receipt and sufficiency of which is acknowledged by the Participating Localities and the HTRFA, the following is hereby agreed to:

- 1. Term.** The Term of this Agreement shall be for thirty (30) years and may be extended for two separate additional twenty-five (25) year terms, each by a written certification of such extension from the Participating Localities and the HTRFA.
- 2. Projects.** The Initial Project is to be acquired, constructed, and financed by the HTRFA.

3. **Operation of Projects.** The Initial Project will be owned, and operated by the Authority. Any change in use from the Initial Project must be agreed to by at least 5 members of the Board of the Authority.
4. **Fiscal Agent for the Authority.** The fiscal agent for the HTRFA is Williamsburg.
5. **Initial Construction Financing.** All construction costs for the Initial Project which is estimated to be \$80,000,000 as described in **Exhibit A**, will be financed through a borrowing of the HTRFA as permitted under Section 15.2-5604(9) and Section 15.2-5607 of the Act. Debt service on HTRFA's borrowing will be paid as follows: Sixty-Four percent (64%) of the annual debt service will be paid by Williamsburg and is estimated to be **\$2,500,000** ("**Williamsburg Annual Payment**") and Thirty-Six percent (36%) will be paid from the tax monies provided to the Participating Localities under Section 58.1-607.2(D)(2) of the Code of Virginia of 1950, as amended and referred to therein as the "Collections of Historic Triangle Sales Tax".
6. **Budget, Operations and Operating Reserve.** It is intended that the HTRFA will generate revenues through use fees, leasing of the Initial Project, or by other means. It is also the intent of the Participating Localities that the HTRFA will establish an operating reserve in order to have readily available funds with which to manage day-to-day operations. The HTRFA Board will determine an annual budget to include estimates of revenue generated by the HTRFA and expenses of the HTRFA, including but not limited to ground lease rental payments to CWF ("**CWF Rental**") as well as annual debt service requirements. The HTRFA Board will include in such annual budget an annual amount for operational reserve needs (not including debt service requirements) in excess of revenues of the HTRFA operating revenues (the "**Operating Reserve Funding**"), capital reserve needs for maintenance, repair and replacement (the "**Capital Reserve Funding**") and detail any supplement needed for operations of HTRFA (i.e. deficit in revenues from operations) for a balanced budget (the "**Operational Supplemental Amount**") and communicate HTRFA's budget and funding necessary from the Participating Localities to the Participating Localities on or before January 1st of each year for the next budget year (beginning July 1st), beginning January 1, 2024. Of the funding to be provided by the Participating Localities, York County and James City County are expected to pay 100% of the Operational Supplemental Amount, Capital Reserve Funding and the Operating Reserve Funding (the "**County Annual Payment**"). The County Annual Payment for James City County and for York County will not exceed \$1,600,000 (indexed over time for inflation in subsequent years by U.S. CPI each prior January 1) to be divided in the percentages set forth in Exhibit B paid by James City County and by York County (e.g. \$800,000 each). Notwithstanding the above, the County Annual Payment to be paid by James City County shall not be less than \$300,000 per year and by York County shall not be less than \$300,000 per year (the "**Minimum Payment**"), even if the deficit funding for Operational Supplemental Amount, Operating Reserve Funding and Capital Reserve Funding is less than such amount in order to build up sufficient reserves for

funding in future years and the early retirement of debt for the Initial Project. In year one of this agreement the County Annual Payment shall be \$800,000. In years two through five the County Annual Payment shall be \$1,600,000. Thereafter if determined by the HTRFA Board, the County Annual Payment will be based on actual financial results and will not be less than the Minimum Payment. The expectation is that once there is no more debt outstanding of the HTRFA, the Participating Localities shall determine a different formula for funding among the Participating Localities. Payments to be made under this Agreement by the Participating Localities are subject to annual appropriation by the governing body of the respective Participating Locality.

7. Example of County Annual Payment. Set forth below is an example of the calculation of the County Annual Payment.

i. Operating Costs - \$3,869,500 Annually (based on a stabilization year)

1. Annual Contribution to Operating Reserve -	\$200,000
2. Annual Contribution to Capital Reserve -	\$118,300
3. Annual Lease Payment to CW -	\$220,000
4. Operator/Management Fee -	\$222,000
Total Operating Costs -	\$4,629,800

ii. Operating Revenues - \$3,506,100 Annually (based on stabilization year)

1. Annual JCC Supplement -	\$561,850 (capped at \$800,000)
2. Annual York Supplement -	\$561,850 (capped at \$800,000)
Total Annual Revenues -	\$4,629,800

8. Annual Audit. HTRFA will provide the Participating Localities annually with audited financial statements, within 180 days following the end of the fiscal year (June 30th ending year). If the audit during such preceding year reflects an increase in undesignated fund balance or surplus (i.e. not designated to reserves) then such amount may be distributed by the HTRFA Board to the Participating Localities in equal amounts or treated as credit equally for the then current year's required payments by the Participating Localities, provided, however, the Minimum Payment shall not be lessened by such amount.

9. Dissolution and Withdrawal from Membership. Withdrawal by a Participating Locality from HTRFA may only occur with the consent of each Participating Locality and HTRFA at the time of such withdrawal and following amendment to the Concurrent Resolution creating HTRFA adopted by each Governing Body. Dissolution of HTRFA may only occur with the unanimous consent of each then Participating Locality and HTRFA and an amendment to the Concurrent Resolution creating HTRFA adopted by each Governing Body. No withdrawal or dissolution shall be permitted in there are then outstanding bonds or notes of HTRFA without approval of the bondholders. Upon dissolution, the Projects owned by HTRFA will be deemed transferred and conveyed to Williamsburg.

10. Amendment. The Participating Localities and HTRFA may amend this Agreement, provided that any such amendment shall be in writing and duly approved and executed by each Participating Locality and HTRFA.

11. Effective Date. This Agreement shall be immediately effective upon the date of execution by all parties.

DRAFT

In witness of the foregoing, the parties have caused this Agreement to be executed by the following duly authorized officials.

COUNTY OF YORK

By: _____

Title: _____

Date of Execution: _____

CITY OF WILLIAMSBURG

By: _____

Title: _____

Date of Execution: _____

COUNTY OF JAMES CITY

By: _____

Title: _____

Date of Execution: _____

**HISTORIC TRIANGLE RECREATIONAL
FACILITIES AUTHORITY**

By: _____

Title: _____

Date of Execution: _____

MEMORANDUM OF UNDERSTANDING
FOR THE SHARING OF CAPITAL AND OPERATING COSTS OF
THE HISTORIC TRIANGE REGIONAL SPORTS FACILITY

THIS MEMORANDUM OF UNDERSTANDING (“MOU”), made by and between the **COUNTY OF YORK**, a political subdivision of the Commonwealth of Virginia (hereinafter “York”), and the **COUNTY OF JAMES CITY**, a political subdivision of the Commonwealth of Virginia (hereinafter “James City”), collectively the “Parties,” do state and agree as follows:

WHEREAS, the Parties have entered into a master funding agreement (“Funding Agreement”) with the Historic Triangle Recreational Facilities Authority (“Authority”) for the construction and operation of a regional sports facility (“Facility”) to be located in the City of Williamsburg; and

WHEREAS, the Authority seeks to promote sports tourism and provide a venue for regional community recreational and sporting activity; and

WHEREAS, the Parties intend to share responsibility for the Facility’s operating costs in conjunction with the Funding Agreement; and

WHEREAS, the Funding Agreement provides that the Parties will collectively contribute a “combined contribution amount” up to a maximum of \$1,600,000 set forth in the Funding Agreement ; and

WHEREAS, the Parties anticipate that the Authority will track and provide data on the two party “local participation rate,” being the relative percentage at which the residents of each party to this agreement use the Facility in relation to the residents of the other party; and

WHEREAS, the Parties desire to further delineate the terms of joint funding required of them under the master funding agreement.

NOW THEREFORE, for and in consideration of the terms and conditions herein contained and the mutual benefits accruing to each of the Parties, York and James City do agree as follows:

1. Commencement Date: This MOU shall commence and be in full force and effect upon execution hereof and as of the date upon which the Funding Agreement for the Facility has been endorsed by each of the party thereto, including the date of endorsement by any necessary party to that agreement who is not a party to this MOU.

2. Operating Costs: Per the terms of the Funding Agreement, York and James City together will contribute the combined contribution amount to the capital and operating costs of the Facility. The Parties further agree among themselves to split the contribution amount, and respectively pay, as follows:
 - a) For year one and two, beginning on July 1, 2024, each party will contribute \$400,000 for year one and \$800,000 for year two;

 - b) For any subsequent year for which local participation rates are unavailable, James City will pay 54 percent of the combined contribution amount and York will pay 46 percent of the combined contribution amount;

 - c) For subsequent years for which local participation rates are available, the Authority combined contribution amount will be divided into a 90 percent share and a 10 percent share, to be allocated as follows:
 1. The ninety percent share will be divided equally, with each party contributing $\frac{1}{2}$ of the share; and

 2. The ten percent share shall be divided such that each party will pay a percentage of the share equal to the party's local participation rate (as defined above).

 - d) Notwithstanding the above, in no case will the individual annual contribution of either party be less than \$300,000 or will it exceed \$880,000.

 - e) Notwithstanding the above, the increase in either Party's contribution from one year to the next cannot exceed \$50,000.

3. Review and modification: This MOU shall be reviewed from time to time, at least every five (5) years beginning on or about the fifth anniversary of the commencement date herein, and at any time the Authority determines that the required operating subsidy may be reduced. This MOU can only be amended or modified by an instrument in writing, signed by the parties.

IN WITNESS WHEREOF, York and James City have caused the signatures of their duly authorized representatives to be affixed below:

COUNTY OF YORK

COUNTY OF JAMES CITY

Administrator, County of York

Administrator, County of James City

APPROVED AS TO FORM

Attorney, County of York

Attorney, County of James City

RESOLUTION

THE READOPTION OF A CONCURRENT RESOLUTION FOR THE ESTABLISHMENT

OF THE HISTORIC TRIANGLE RECREATIONAL FACILITIES AUTHORITY

WHEREAS, the City of Williamsburg, Virginia, James City County, Virginia, and York County, Virginia (**together, the “Participating Localities” and individually each a “Participating Locality”**) desire to acquire, construct, and operate regional public recreational facilities in an area located in the City of Williamsburg, Virginia; and

WHEREAS, each Participating Locality finds it to be in the best interest of their respective localities to establish a public recreational facilities authority pursuant to the Public Recreational Facilities Authorities Act, Chapter 56 of Title 15.2 of the Code of Virginia § 15.2-5600, *et. seq.*, (**the “Act”**) to be known as Historic Triangle Recreational Facilities Authority (**the “Authority”**); and

WHEREAS, the initial purpose of the Authority is to lease a portion of real property known as the Colonial Williamsburg Visitors Center currently owned by Colonial Williamsburg Foundation and to design, construct, finance, and operate public recreational facilities on such real property (**the “Projects”**); and

WHEREAS, each Participating Locality has held a public hearing before its governing body (**“Governing Body”**) on the readoption of this resolution, the creation of the Authority, and the Articles of Incorporation set forth in this resolution pursuant to the Act.

NOW, THEREFORE, BE IT RESOLVED by the Governing Body of the Participating Locality as follows:

1. The Authority is hereby established as a political subdivision and a body politic and corporate of the Commonwealth of Virginia.
2. The members of the Authority shall be the Participating Localities.
3. The Authority shall be governed by a board consisting of six (6) Board members to represent the Participating Localities (**the “Board”**). Each Participating Locality shall appoint two (2) Board members of the Authority Board who shall serve terms of four (4) years. The City Manager shall appoint two (2) City of Williamsburg Board members. The James City County Administrator shall appoint two (2) James City County Board members. The York County Administrator shall appoint two (2) York County Board members. The appointed members must be employees of the respective Participating Locality. If a member ceases to be an employee of such Participating Locality, the membership is considered vacant. Vacancies on the Board shall be filled by appointment of the City Manager or County Administrator, as the case may be, of such Participating Locality for which the vacancy has occurred. In that event, the new Board member shall fill the remainder of the term of the former Board member. A quorum shall consist of four Board members, as long as at least one member from each Participating Locality is present.

4. The following individuals are hereby appointed to serve as the first Board members to represent the Governing Bodies of each of the Participating Localities on the governing board of the Authority:

Williamsburg:

- Andrew O. Trivette
- Robbi Hutton

York County:

- Neil Morgan
- Brian Fuller

James City County:

- Scott Stevens
- John Carnifax

5. The Articles of Incorporation of the Authority shall be and are hereby reaffirmed and readopted as follows:

**ARTICLES OF INCORPORATION OF THE HISTORIC TRIANGLE
RECREATIONAL FACILITIES AUTHORITY**

Article I The name of the Authority is the Historic Triangle Recreational Facilities Authority. The address of the Authority’s principal office is 401 Lafayette Street, Williamsburg, Virginia 23185.

Article II The Authority is created as a political subdivision and a body politic and corporate of the Commonwealth of Virginia pursuant to the authority of Chapter 56 of Title 15.2 of the Code of Virginia of 1950, as amended § 15.2-5600, *et. seq.*, (the “Act”).

Article III The Participating Localities of the Authority are the City of Williamsburg, Virginia, James City County, Virginia, and York County, Virginia.

Article IV The names and addresses and terms of office of the first members of the Authority are as follows:

Name	Address	Term
Andrew O. Trivette	401 Lafayette Street Williamsburg, Virginia 23185	12/1/2021-11/30/2025
Robbi Hutton	401 Lafayette Street Williamsburg, Virginia 23185	12/1/2021-11/30/2025
Scott Stevens	101 Mounts Bay Road Williamsburg, Virginia 23185	12/1/2021-11/30/2025
John Carnifax	101 Mounts Bay Road Williamsburg, Virginia 23185	12/1/2021-11/30/2025
Neil Morgan	224 Ballard Street Yorktown, Virginia 23690	12/1/2021-11/30/2025
Brian Fuller	224 Ballard Street Yorktown, Virginia 23690	12/1/2021-11/30/2025

The Authority shall be governed by a board consisting of six (6) members to represent the Participating Localities (**the “Board”**). Each Participating Locality shall appoint two (2) members of the Authority Board who shall serve terms of four (4) years. The City Manager shall appoint two (2) City of Williamsburg Board members. The James City County Administrator shall appoint two (2) James City County Board members. The York County Administrator shall appoint two (2) York County Board members. The appointed members must be employees of the respective Participating Locality. If a member ceases to be an employee of such Participating Locality, the membership is considered vacant. Vacancies on the Board shall be filled by appointment of the City Manager or County Administrator, as the case may be, of such Participating Locality for which the vacancy has occurred. In that event, the new Board member shall fill the remainder of the term of the former Board member. A quorum shall consist of four Board members, as long as at least one member from each Participating Locality is present.

Article V The Authority is created for the initial purpose of acquiring, constructing, and operating one or more public recreational facilities to not only serve the citizens of the Participating Localities, but also to promote and enhance recreation, sports, and tourism activities in the geographic area of the Participating Localities and shall have all powers of such an authority under the Act.

- 6. This resolution will be effective immediately upon adoption by the Governing Body of this Participating Locality and the Authority’s creation shall be reaffirmed effective immediately upon the date on which all Participating Localities have adopted this Concurrent Resolution.

Michael J. Hipple
Chairman, Board of Supervisors

ATTEST:

Teresa J. Saeed
Deputy Clerk to the Board

	<u>VOTES</u>			
	<u>AYE</u>	<u>NAY</u>	<u>ABSTAIN</u>	<u>ABSENT</u>
SADLER	_____	_____	_____	_____
ICENHOUR	_____	_____	_____	_____
MCGLENNON	_____	_____	_____	_____
LARSON	_____	_____	_____	_____
HIPPLE	_____	_____	_____	_____

Adopted by the Board of Supervisors of James City County, Virginia, this 12th day of December, 2023.

RESOLUTION

FUNDING AGREEMENT REGARDING THE HISTORIC TRIANGLE

RECREATIONAL FACILITIES AUTHORITY

WHEREAS, James City County is a member of the Historic Triangle Recreational Facilities Authority; and

WHEREAS, the initial primary project is the construction and operation of a regional sports facility; and

WHEREAS, a draft copy of the document entitled “Funding Agreement Regarding the Historic Triangle Recreational Facilities Authority” (Funding Agreement) was provided for review which memorialized the details of the initial project, including the term length (30 years) and financial responsibilities; and

WHEREAS, each participating locality must approve the document prior to project commencement.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby authorizes the County Administrator to approve and execute all necessary documents related to the Funding Agreement for the Historic Triangle Recreational Facilities project.

Michael J. Hipple
Chairman, Board of Supervisors

ATTEST:

Teresa J. Saeed
Deputy Clerk to the Board

SADLER
ICENHOUR
MCGLENNON
LARSON
HIPPLE

VOTES			
<u>AYE</u>	<u>NAY</u>	<u>ABSTAIN</u>	<u>ABSENT</u>
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

Adopted by the Board of Supervisors of James City County, Virginia, this 12th day of December, 2023.

FAgrHTRFA-res

RESOLUTION

SUBSIDIARY FUNDING AGREEMENT BETWEEN JAMES CITY COUNTY

AND YORK COUNTY REGARDING THE HISTORIC TRIANGLE

RECREATIONAL FACILITIES AUTHORITY

WHEREAS, James City County is a member of the Historic Triangle Recreational Facilities Authority; and

WHEREAS, the initial primary project is the construction and operation of a regional sports facility and the Master Funding Agreement was approved on December 12, 2023, in the resolution titled “Funding Agreement Regarding the Historic Triangle Recreational Facilities Authority”; and

WHEREAS, a subsidiary agreement is proposed between James City County and York County to further clarify the handling of the operational costs of the facility and will be determined by a pro rata share of each locality’s rate of citizen participation.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby authorizes the County Administrator to approve and execute all necessary documents related to the Subsidiary Funding Agreement Between James City County and York County Regarding the Historic Triangle Recreational Facilities Authority project.

Michael J. Hipple
Chairman, Board of Supervisors

ATTEST:

Teresa J. Saeed
Deputy Clerk to the Board

	VOTES			
	<u>AYE</u>	<u>NAY</u>	<u>ABSTAIN</u>	<u>ABSENT</u>
SADLER	_____	_____	_____	_____
ICENHOUR	_____	_____	_____	_____
MCGLENNON	_____	_____	_____	_____
LARSON	_____	_____	_____	_____
HIPPLE	_____	_____	_____	_____

Adopted by the Board of Supervisors of James City County, Virginia, this 12th day of December, 2023.

MEMORANDUM

DATE: December 12, 2023

TO: The Board of Supervisors

FROM: Adam R. Kinsman, County Attorney

SUBJECT: An Ordinance to Permit the Use of Alternative Discharge Sewer Systems

GENERAL BACKGROUND

The Board recently became aware of several properties in Cypress Point that are having difficulty with failure of both traditional septic systems and an Alternate Onsite Sewage System (“AOSS”). Following extensive research, the property owners have sought permission to install an Alternate Discharging Sewer System (“ADSS”) on the Property. Permission for an ADSS was granted by the Virginia Department of Health (“VDH”) and the Virginia Department of Environmental Quality (“DEQ”); however, the James City County Code (the “County Code”) does not permit the installation of an ADSS.

SEWAGE DISPOSAL BACKGROUND

The Board may find the use of “AOSS” and “ADSS” to be confusing; accordingly, a summary of each follows to assist the understanding of the proposed change to the County Code. There are generally five legal methods of eliminating sewage from a property, which are set forth below.

1. **Sanitary sewer.** A sanitary sewer system transports waste from a property to the Hampton Roads Sanitation District treatment plant located along Ron Springs Road, where it is treated and released back into the James River.
2. **Septic system.** A septic system is the traditional method of waste disposal for uses without access to sanitary sewer. Waste is delivered to a septic tank where it is pretreated via biological processes. The liquid is then delivered to a drain field, where it leaches into the soil.
3. **Alternative onsite sewer system.** An AOSS is necessary when the on-site soils are incapable of percolation and new medium is necessary to provide an area for the liquids to leach.
4. **Alternative discharging sewer system.** An ADSS is a device or system that results in a point source discharge of treated sewage (i.e., the final treatment stage is internal and treated water exits the system through a single pipe). This type of system is regulated by both the DEQ and VDH.
5. **Pump and haul.** Pump and haul pertains to an unusual circumstance wherein sewage is permitted to be transported by vehicle to a point of disposal. Pump and haul includes all facilities and appurtenances necessary to collect and store the sewage for handling by a contractor having a valid sewage handling permit. Pump and haul is not generally allowed as a permanent method of sewage disposal.

LEGAL BACKGROUND

The Virginia Code has long permitted sanitary sewer and septic installations. In 2009, the General Assembly amended the Virginia Code to require that localities permit the use of alternative onsite sewage systems. James City County has permitted alternative onsite sewage systems since 2004.¹ The Virginia does

¹ James City County Ordinance No. 30A-31 adopted April 13, 2004 (amending County Code section 19-60 from requiring a “conventional septic tank system” to a “soil absorption system of conventional or alternate design.”).

not require localities to accept alternative discharge sewer systems and there is no provision for such in the County Code.

PROPOSED CHANGE TO THE JAMES CITY COUNTY CODE

Following a number of meetings between affected property owners, County staff, and the Board Chair, staff was asked to prepare a revision to the County Code to permit ADSS on a limited, permit-only basis.

The proposed revision creates a new Article I to Chapter 17 of the County Code. This new Article permits the use of ADSS only when: (1) the Department of Health has determined in writing that an existing AOSS has failed and cannot be repaired or replaced and there is no other means of waste disposal available and (2) the Board of Supervisors has granted a permit for the use of an AOSS on the property. Once permitted and installed, the property owner will need to file a copy of all state-required testing and inspections with the James City Service Authority (the "JCSA") and the Division of Stormwater and Resource Protection (the "Division"), file yearly testing results to the JCSA in a form and with information deemed necessary by the JCSA, and to permit such on-site inspections as the JCSA and Division deem necessary.

Importantly, when a sanitary or other system owned or operated by the JCSA becomes available within 200 linear feet from any property line, the owner shall be required to connect to the JCSA-owned or operated system no later than one year after such system is available.

RECOMMENDATION

Staff is of the opinion that granting permission to install ADSS on those properties where every other legal method of waste disposal has failed will allow property owners a reasonable use of their property, will result in greater environmental protection than allowing a failed septic or AOSS.

ARK/ap

ADSSOrd-mem

ORDINANCE NO. _____

AN ORDINANCE TO AMEND AND REORDAIN CHAPTER 17, SEWERS AND SEWAGE, OF THE CODE OF THE COUNTY OF JAMES CITY, VIRGINIA, BY AMENDING AND RENAMING ARTICLE I, RESERVED, SECTION 17-1 - 17.7, RESERVED TO ARTICLE I, ALTERNATIVE DISCHARGING SEWER SYSTEM, SECTION 17-1, DEFINITIONS, SECTION 17-2, LIMITATIONS ON THE USE OF ALTERNATIVE DISCHARGING SEWER SYSTEMS, SECTION 17-3, JAMES CITY COUNTY ALTERNATIVE DISCHARGING SEWAGE SYSTEM PERMIT, SECTION 17-4, ALTERNATIVE DISCHARGING SEWAGE SYSTEM MAINTENANCE AND TESTING, SECTION 17-5, AVAILABILITY OF SANITARY OR OTHER SEWER; DISCONTINUANCE OF ALTERNATIVE DISCHARGING SEWAGE SYSTEM, AND SECTIONS 17-6 - 17.7, RESERVED.

BE IT ORDAINED, by the Board of Supervisors of the County of James City, Virginia, that Chapter 17, Sewers and Sewage is hereby amended and reordained by renaming Article I, Alternative Discharging Sewer System, Section 17-1, Definitions, Section 17-2, Limitations on the use of alternative discharging sewer systems, Section 17-3, James City County alternative discharging sewage system permit, Section 17-4, Alternative discharging sewage system maintenance and testing, Section 17-5, Availability of sanitary or other sewer; discontinuance of alternative discharging sewage system, and Sections 17-6 - 17.7, Reserved.

ARTICLE I. ALTERNATIVE DISCHARGING SEWER SYSTEM

Sec. 17-1. Definitions.

For the purposes of this section, the following words and phrases shall have the meanings respectively ascribed to them by this subsection:

“Alternative onsite sewage system” or “alternative onsite system” means a treatment works that is not a conventional onsite sewage system and does not result in a point source discharge.

“Alternative discharging sewage system” or “ADSS” shall mean any device or system which results in a point source discharge of treated sewage for which the State Board of Health may issue a permit authorizing construction and operation when such system is regulated by the State Water Control Board pursuant to a general Virginia Pollutant Discharge Elimination System permit issued for an individual single-family dwelling with flows less than or equal to 1,000 gallons per day.

“Authority” or “JCSA” shall mean the James City Service Authority.

“Conventional onsite sewage system” shall mean a treatment works consisting of one or more septic tanks with gravity, pumped, or siphoned conveyance to a gravity distributed subsurface drainfield.

“Division” shall mean the James City County Division of Stormwater and Resource Management.

“Health Department” or “VDH” shall mean the Commonwealth of Virginia Department of Health or an authorized official, agent or employee thereof.

“Board of Health” shall mean the Virginia Board of Health.

Sec. 17-2. Limitations on the use of alternative discharging sewage systems.

No ADSS shall be permitted unless each of the following is true or occurs:

- 1. The property to be served by the ADSS is located outside of the County’s Primary Service Area.*
- 2. The Health Department determines in writing that an existing alternative onsite sewage system serving an existing, occupied structure has failed and cannot be repaired or replaced and that the only available means of providing sewage disposal to such structure other than pump-and-haul is by an alternative discharging sewage system.*
- 3. The Board of Supervisors issues an ADSS operating permit.*

Sec. 17-3. James City County ADSS Permit.

- 1. Application. An application to obtain a permit to operate an ADSS in James City County shall be submitted in writing to the County Administrator and shall include, at a minimum, the following:*
 - a. A copy of the combined application as defined in 12VAC5-640.5, as amended, and material(s) submitted to the VDH; and*
 - b. Written documentation from VDH that all other methods of sewage disposal permitted in the Commonwealth of Virginia have been investigated and that the alternative discharging sewage system is the only remaining alternative for this previously improved property;*
 - c. a copy of all required and approved permits (e.g., VDH, DEQ, James City County Wetlands Board, etc.); and*
 - d. A written narrative from the property owner.*
- 2. Consideration.*
 - a. Within four (4) months of receipt of a complete application or as soon thereafter as they are reasonably able, the County Administrator shall place the application on a Board of Supervisors agenda for its consideration as a Board Discussion item.*
 - b. The Board shall determine if the application materials are complete and whether issuance of the permit will be in the best interests of the public’s health, safety, and welfare.*
 - c. The Board may approve, approve with conditions, deny, or defer any application before it.*

Sec. 17-4. Alternative discharging sewage system maintenance and testing.

In addition to all state-mandated testing and maintenance requirements, the property owner is required to comply with the following responsibilities:

1. *File with the General Manager of the Authority and the Director of the Division a copy of the results of all state-mandated testing and inspections no later than one week after the results are submitted to the Health Department, and to repair or replace such system, as necessary, to correct any deficiencies identified in any inspection report in compliance with the applicable regulations of the Board of Health.*
2. *Provide yearly testing results to the Authority and the Division in such form and with such information deemed necessary by the Authority.*
3. *Permit the Health Department, Authority, and Division staff to enter the property to inspect such system and to determine whether such system is installed, operated, and maintained in accordance with this section, any conditions associated with the County-issued permit, and the regulations of the Board of Health.*
4. *Failure to conduct mandatory monitoring or to report monitoring results as required in 12VAC5-640-490 and 12VAC5-640-510 may constitute a violation of county code and may also result in the revocation of the ADSS permit granted pursuant to this section.*

Sec. 17-5. Availability of sanitary or other sewer; discontinuance of alternative discharging sewage system.

If sanitary or other sewer system owned or operated by James City County or the Authority becomes available within two hundred (200) linear feet from the boundary of any parcel served by an alternative discharging sewage system, the owner of said property shall be required to connect to the sanitary or other sewer system within one (1) year of the date of availability or when necessary or desired work to the alternative discharging sewage system equals or exceeds 50% of its then-current replacement cost, whichever comes first.

Secs. 17-6.-17-7. Reserved.

 Michael J. Hipple
 Chairman, Board of Supervisors

ATTEST:

 Teresa J. Saeed
 Deputy Clerk to the Board

VOTES				
<u>AYE</u>	<u>NAY</u>	<u>ABSTAIN</u>	<u>ABSENT</u>	
_____	_____	_____	_____	SADLER
_____	_____	_____	_____	ICENHOUR
_____	_____	_____	_____	MCGLENNON
_____	_____	_____	_____	LARSON
_____	_____	_____	_____	HIPPLE

Adopted by the Board of Supervisors of James City County, Virginia, this ????? day of ?????, 2023.

Ordinance to Amend and Reordain
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