

AT A REGULAR MEETING OF THE BOARD OF SUPERVISORS OF THE COUNTY OF JAMES CITY, VIRGINIA, HELD ON THE 8TH DAY OF JUNE, 2004, AT 7:00 P.M. IN THE COUNTY GOVERNMENT CENTER BOARD ROOM, 101 MOUNTS BAY ROAD, JAMES CITY COUNTY, VIRGINIA.

**A. ROLL CALL**

Bruce C. Goodson, Chairman, Roberts District  
Michael J. Brown, Vice Chairman, Powhatan District  
John J. McGlennon, Jamestown District  
M. Anderson Bradshaw, Stonehouse District  
Jay T. Harrison, Sr., Chairman, Berkeley District

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

**B. MOMENT OF SILENCE**

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

**C. PLEDGE OF ALLEGIANCE**

Melissa Knutsen, a fourth-grade student at Matthew Whaley Elementary School, led the Board and citizens in the Pledge of Allegiance.

**D. PRESENTATIONS**

**1. Resolution of Appreciation – Gilbert A. Bartlen**

Mr. Goodson presented a Resolution of Appreciation to Gilbert A. Bartlett in recognition of his service to the County through his twelve years of service on the Industrial Development Authority.

Mr. Bradshaw added words of appreciation to Mr. Bartlett for his service to the County

Mr. Bartlett stated that he enjoyed his service to the County and working with those he served with.

**2. Resolution of Appreciation – Let's be Water Smart Landscaping Challenge Partners**

Mr. Goodson presented a Resolution of Appreciation to the Partners of the Let's be Water Smart Landscaping Challenge and the contest winner.

Michele LeBlanc-Pichè, contest winner; Tom Belden of Belden Landscapes, Mike Turkovich of Cooke's Gardens, Glenn Gross of Precipitation Unlimited, Inc., Keith Coulsting of Smith Turf and Irrigation & Vista Professional Lighting, Sassia Niederste-Hollenberg of ServiceMASTER LawnCare of Williamsburg,

Mason Morton of Turf Care, Bob Winters of Turf Love, and Larry Waltrip and Don Broady, Jr., of Waltrip Recycling accepted the Resolution of Appreciation.

3. Resolutions of Appreciation - Military Reservist

Mr. Goodson presented Resolutions of Appreciation to Renea L. Edwards, *in absentia*, Kenton E. Givens, *in absentia*, Wekena E. Glover, Sterling T. Perry, Darryl C. Stanton, Jr., and Irma O. Woodruff who are County and James City Service Authority employees and also reserve members of the uniformed services that were called up for active duty for an extended period of time to defend the United States of America.

E. PUBLIC COMMENT

1. Mr. Ed Oyer, 139 Indian Circle, stated that he appreciated the Memorial Day services at the Williamsburg Memorial Park and he looked forward to the presence of a bugler at the service next year.

F. CONSENT CALENDAR

Mr. Harrison made a motion to adopt the items on the Consent Calendar as amended.

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

1. Minutes

- a. May 25, 2004 - Work Session as amended
- b. May 25, 2004 - Regular Meeting

2. Resolution of Appreciation - Gilbert A. Bartlett

**RESOLUTION**

**RESOLUTION OF APPRECIATION - GILBERT A. BARTLETT**

WHEREAS, Gilbert A. Bartlett served as a member of the Industrial Development Authority of James City County since June 1992 and has chosen to retire from same effective July 2004; and

WHEREAS, Gilbert A. Bartlett served as Chairman of the Industrial Development Authority of James City County from January 1999 to December 2001; and

WHEREAS, throughout this period of service, Gilbert A. Bartlett gave freely of his time, his energy, and his knowledge for the betterment of his County as an active member; and

WHEREAS, Gilbert A. Bartlett consistently demonstrated those essential qualities of leadership, diplomacy, perseverance, and dedication while providing exceptional service to the citizens of James City County.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby extends its sincere appreciation to Gilbert A. Bartlett and recognizes his distinguished service and dedication to the County and its citizenry.

3. Resolution of Appreciation - Let's Be Water Smart Landscape Challenge Partners

**RESOLUTION OF APPRECIATION**

**LET'S BE WATER SMART LANDSCAPE CHALLENGE PARTNERS**

WHEREAS, **Basnight** Land and Lawn, Belden Landscapes, Cooke's Gardens, **Crafter's** Market in the Outlet Mall, Heart's Ease Landscape and Garden Design, Henderson, Inc., Precipitation Unlimited, Inc., Smith Turf and Irrigation, **ServiceMASTER LawnCare** of Williamsburg, Turf Care, **TurfLove**, Virginia **Cooperative Extension** and James City County/**Williamsburg** Master Gardeners Association, Vista Professional Outdoor Lighting, Waltrip Recycling, and Wild Birds Unlimited demonstrated their commitment as Let's be Water Smart Partners (Partners) by donating materials, time, and energy in the Water Smart Landscape Challenge project and educational video; and

WHEREAS, the Partners illustrated a **public/private** effort for promoting responsible water usage in James City County through education and public awareness; and

WHEREAS, the Partners have shown efforts in conserving water and enhancing the community by ensuring the health of the environment for present and future generations; and

WHEREAS, the Water Smart Partners recognize the benefits to using Water Smart principles when establishing landscapes and incorporate those principles into their business practices.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, does hereby recognize the outstanding dedication and partnership of **the** Water Smart Partners.

BE IT FURTHER RESOLVED that this resolution of recognition is presented individually to each above listed Water Smart Partners.

4. Resolution of Appreciation - Military Reservists

**RESOLUTIONS OF APPRECIATION - MILITARY RESERVISTS**

WHEREAS, James City County/**James** City Service Authority employees who are reserve members of the uniformed services were called up for active duty for an extended period of time; and

WHEREAS, these employees spent many months away from families and home while defending the United States of America; and

WHEREAS, these employees were subject to long hours, hard work, and dangerous conditions while **carrying** out their assignments; and

WHEREAS, the Board of Supervisors is proud and appreciative of the role these employees played in the protection of our Country.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby extends its sincere thanks to:

Renea L. Edwards  
**Kenton E. Givens**  
Wekena E. Glover  
Sterling T. Perry  
Darryl C. **Stanton, Jr.**  
Irma O. Woodruff

for their service to our country.

5. Revisions to Chapter 3. Drug Free Workplace Policy; Section 5.4. Employee Benefits - Leave; and Chapter 8, Grievance Procedure: of the James City County Personnel Policies and Procedures Manual, as amended

## **RESOLUTION**

### **REVISIONS TO CHAPTER 3. DRUG FREE WORKPLACE POLICY; SECTION 5.4. EMPLOYEE**

### **BENEFITS - LEAVE, AND CHAPTER 8, GRIEVANCE PROCEDURE: OF THE JAMES CITY**

### **COUNTY PERSONNEL POLICIES AND PROCEDURES MANUAL**

WHEREAS, it's the practice of the County to periodically review its personnel policies for conformance to laws and alignment with the County's values; and

WHEREAS, the Drug Free Workplace policy and Grievance Procedure were revised to conform with changes in the law, to be streamlined, and to be easier to understand and to use; and

WHEREAS, portions of the Employee Benefits -Leave policy were changed to make the use of leave more equitable among employees and more supportive of employees balancing work and life demands.

NOW, THEREFORE, BE IT RESOLVED by the Board of Supervisors of James City County, Virginia, that revisions to the personnel policies and procedures listed above are adopted effective July 1, 2004.

## **G. PUBLIC HEARINGS**

1. Case No. SUP-12-04. Hogan Homestead Children's Nursery

Ms. Sarah Weisiger, Planner, stated that **Cathrine** Hogan has applied for a special use permit amendment to continue to operate a child day care establishment in her home at 233 Nina Lane on approximately 0.331-acres zoned R-2, General Residential, and further identified as Parcel No. (3-203) on James City County Real Estate Tax Map No. (32-4).

Ms. Weisiger stated that no negative impacts to the neighborhood as a result of this establishment have come to staff's attention. Ms. Weisiger also stated that the proposed conditions are in accordance with the Planning Commission's policy on child day cares located within residential neighborhoods.

At its meeting on May 3, 2004, the Planning Commission voted 7-0 to recommend approval of the special use permit.

Staff recommended approval of the application,

Mr. **Goodson** opened the Public Hearing.

1. Mr. John Hogan, representing the applicant, was available to answer questions from the Board, and commented on the success of the business.

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

Mr. Bradshaw recommended adoption of the resolution,

Mr. Bradshaw clarified the limitation prohibiting food preparation in the conditions associated with the resolution is designed to reflect the Health Department's definition of food preparation and it does not prohibit the preparation of snacks.

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

## **RESOLUTION**

### **CASE NO. SUP-12-04. HOGAN HOMESTEAD CHILDREN'S NURSERY**

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

WHEREAS, Ms. Cathrine Hogan has applied for a special use permit to allow for a child day care center to be operated in her home at 233 Nina Lane; and

WHEREAS, the property is located on land zoned R-2, General Residential, and can be further identified as Parcel No. (3-203) on James City County Real Estate Tax Map No. **(23-4)**; and

WHEREAS, the Planning Commission, following its Public Hearing on May 3, 2004, voted 7-0 to recommend approval of this application.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, does hereby approve the issuance of Special Use Permit No. SUP-12-04 as described herein with the following conditions:

1. No more than eight children other than the owners' children shall be cared for at the child day care center.
2. The **owner/operator** of the child day care center shall reside on the property.
3. Hours of operation shall be limited from **7:00** a.m. to 1:30 p.m., Monday through Friday.

4. This special use permit shall be valid for a period of thirty-six months from the date of issuance of this special use permit.
5. No additional exterior lighting shall be **permitted** on the property which relates to its use as a child day care center.
6. No **signage** related to the day care center shall be permitted on the property,
7. No food preparation or laundry services shall be provided as part of the operation of the child day care center.
8. This special permit is not severable. Invalidation of any word, phrase, clause, sentence, or paragraph shall invalidate the remainder.

2. Case Nos. Z-1-04/MP-2-04. New Town Section 5

Ms. Sarah Weisiger, Planner, stated that Greg Davis has applied on behalf of New Town Associates to **rezone** two parcels at 152 and 155 **Tewning** Road of approximately 8.87 acres from R-8, Rural Residential, and M-1, Limited **Business/Industrial**, with proffer to M-1, Limited **Business/Industrial**, with proffers; to remove the parcels from future consideration of New Town Design Review Board and Design Guidelines; and to mitigate the impact of the light industrial development on adjacent New Town sections by proffering a height limit on structures of 45 feet.

Staff found the rezoning proposal to be in accordance with the Comprehensive Plan.

At its meeting on May 3, 2004, the Planning Commission voted 7-0 to recommend approval of the rezoning and master plan.

Staff recommended approval of the applications.

Mr. **Goodson** opened the Public Hearing.

1. Mr. **Tim Trant**, Attorney with Kaufman & Canoles, applicant, provided an overview of the proposal and requested the Board approve the resolution.

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

Mr. Brown made a motion to adopt the resolution.

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

## RESOLUTION

### CASE NOS. Z-1-04/MP-2-04 NEW TOWN SECTION 5

WHEREAS, in accordance with § 15.2-2204 of the Code of Virginia, and Section 24-15 of the James City County Zoning Ordinance, a public hearing was advertised, adjoining property owners notified, and a hearing scheduled on Zoning Case No. 2-1-04, for rezoning approximately 8.87 acres from R-8 Rural Residential, with proffers and **M-1 Limited Business/Industrial** with proffers, to **M-1 Limited Business/Industrial**, with proffers; and

WHEREAS, the Planning Commission of James City County, following its Public Hearing on May 3, 2004, recommended approval of Case Nos. **Z-1-04/MP-2-04**, by a vote of 7 to 0; and

WHEREAS, the properties are located at 155 and 152 Tewing Road as shown on the Master Plan MP-2-04 and further identified as Parcel Nos. (1-3) and (1-4), on James City County Real Estate Tax Map No. (38-2).

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, does hereby approve Case Nos. **Z-1-04/MP-2-04** and accepts the voluntary proffers.

Mr. Goodson recognized Mr. Wilford Kale, Planning Commission member, in the audience.

3. Case No. SUP-17-04. James City County Communications Tower - Forge Road

Mr. Matthew D. Arcieri, Planner, stated that Richard M. Miller, Fire Chief, received approval from the Board for a special use permit to construct a communications tower at 3135 Forge Road zoned **B-1**, General Business, and further identified as Parcel No. (1-27) on James City County Real Estate Tax Map No. (12-3), and has applied to amend the permit to increase the height of the communications tower from 140 to 160 feet to increase the microwave signal path strength between the Emergency Operations Center and the County's Landfill.

Staff found the proposal to be generally consistent with the 2003 Comprehensive Plan and notes that, despite the increase in height, the tower will be thirty feet shorter than the existing tower and thus reduce the existing tower's negative visual impacts.

At its meeting on June 7, 2004, the Planning Commission recommended approval of the case by a vote of 7-0.

Staff recommended the Board approve the permit application with conditions.

Mr. Bradshaw inquired as to where the trees were located that were interfering with the signal strength between the towers.

Mr. Richard Miller, Fire Chief, stated that the trees are near the Emergency Operations Center and that by raising the tower height, the signal strength increases.

Mr. Goodson opened the Public Hearing

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

Mr. **McGlennon** made a motion to adopt the resolution as amended to include the Planning Commission recommended language.

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

## RESOLUTION

### CASE NO. SUP-17-04. JAMES CITY COUNTY COMMUNICATIONS TOWER - FORGE ROAD

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

WHEREAS, antennas and towers in excess of 60 feet in height are a specially permitted use in the **B-1**, General Business, zoning district; and

WHEREAS, the Planning Commission of **James** City County, following its Public Hearing on June 7, 2004, recommended approval of Case No. SUP-17-04 by a 7-0 vote to permit the construction and operation of a 160-foot-tall communication tower as part of the James City County 800-MHz trunked radio system at the James City County Emergency Operations Center (EOC) on 3135 Forge Road and further identified as Parcel No. (1-27) on James City County Real Estate Tax Map No. (12-3).

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, does hereby approve the issuance of Special Use Permit No. SUP-17-04 as described herein with the following conditions:

1. This special use permit shall be valid for a total of one tower. The maximum height of the tower shall not be greater than 160 feet. The tower site shall be developed generally in accordance with the site layout titled "Special Use Permit Plan for 140' Cellular Tower on the James City County Property" dated December 1, 2003, with the exception that the tower height may be increased to **160** feet. Additional minor changes may be approved by the Director of Planning.
2. Final building design, location, orientation, and construction materials for any supporting structures, such as equipment sheds and huts, shall be approved by the Director of Planning prior to final site plan approval.
3. A final Certificate of Occupancy from the James City County Codes Compliance Division shall be obtained within 24 months of approval **of this special use permit**, or the permit shall become void.
4. Within 30 days of the issuance of a final Certificate of Occupancy by the James City County Codes Compliance Division, certification by the manufacturer, or an engineering report by a Virginia-registered structural engineer, shall be filed by the applicant indicating the tower height, design, structure, installation, and total anticipated capacity of the structure, including number and type of antennas which could be accommodated, demonstrating to the satisfaction **of the building official** that all structural requirements and other safety considerations set forth in the 2000 International Building Code, or any amendment thereof, have been met.



5. The tower shall have a finish that is grey in color as approved by the Director of Planning. No additional lighting beyond the minimum required by the Federal Aviation Administration or Federal Communications Commission shall be allowed on the tower.
6. No advertising material or signs shall be placed on the tower.
7. This special use permit is not severable. Invalidation of any word, phrase, clause, sentence, or paragraph shall invalidate the remainder.

5. Case No. SUP-16-04. Williamsburg-Jamestown Airport - SUP Amendment

Ms. Sarah Weisiger, Planner, stated that Larry **Waltrip** has applied on behalf of Mary Waltrip to amend Special Use Permit No. 32-97 to develop portions of Parcel No. (1-12) on James City County Real Estate Tax Map No. (48-2), and include in the amendment Parcel Nos. **(1-5A)** and (1-6) on James City County Real Estate **Tax** Map No. (48-2) for the construction of the proposed T-hangers on Parcel No (1-12) in an area located south of **Marclay** Road and adjacent to the airport.

Staff found the amendment proposal will allow the development of the airport property in accordance with the Master Plan approved with Special Use Permit No. 23-97.

At its meeting on June 7, 2004, the Planning Commission voted 7-0 to recommend approval of the application.

Staff recommended approval of the amendment.

Mr. McGlennon requested verification that the proposal is to include a parcel of land that was presumed to have been included in the SUP application presented in 1997 but was not.

Ms. Weisiger confirmed that is the case.

Mr. **Goodson** opened the Public Hearing.

As no one wished to speak to this matter, Mr. **Goodson** closed the Public Hearing.

Mr. McGlennon made a motion to adopt the resolution as amended to include language regarding the Planning Commission recommendation.

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

## **RESOLUTION**

### **CASE NO. SUP-16-04. WILLIAMSBURG-JAMESTOWN AIRPORT - SUP AMENDMENT**

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

WHEREAS, in accordance with Section 15.1-431 of the Code of Virginia, and Section 20-15 of the James City County Zoning Ordinance, a Public Hearing was advertised, adjoining property owners notified, and a hearing scheduled on Zoning Case No. SUP-16-04 for the purpose of amending the existing special use permit for the Williamsburg-Jamestown Airport which is located on Parcel Nos. (1-5A) and (1-6) on James City County Real Estate **Tax Map No.** (48-2) and zoned R-8, Rural Residential, to include a portion of Parcel No. (1-12) on James City County Real Estate Tax Map No. (48-2) as shown on the Airport Layout Plan dated May 24, 2004, that is located generally south of **Marclay** Road and north of Parcel No. (I-SA); and

WHEREAS, the Planning Commission, following its Public Hearing on June 7, 2004, recommended approval of Case No. SUP-16-04, by a vote of 7 to 0.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, does hereby approve the issuance of Special Use Permit No. SUP-16-04 as described herein with the following conditions:

1. No extension of the existing runway shall be permitted. A paved safety **overrun** adjacent to Runway 13 (western end of runway), not to exceed 900 feet may be constructed in accordance with FAA standards. The paved safety overrun shall be marked appropriately and lights shall be installed and maintained across the width of the runway to delineate the runway and safety overrun.
2. The Williamsburg-Jamestown Airport Special Operating Procedures shall be amended such that Condition No. 5 under General Procedures which states that, "the calm wind runway (less than five knots) will be Runway 13, weather and traffic permitting" shall be deleted. The existing Williamsburg-Jamestown Airport Special Airport Operating Procedures, with the above revision noted, shall remain in effect.
3. The Williamsburg-Jamestown Airport shall review, revise, and publish, as necessary, the description of the airport and associated local rules, procedures, and warnings in the following industry publications:
  - a. Airport Facility Directory
  - b. VDOA (5010) Inspection Form - **Remarks/Runway** section.
  - c. Permanent **NOTAM** (Class II)

These publications shall indicate the established flight **patterns** and procedures and notify all pilots of the special established patterns to avoid the surrounding residential neighborhoods and **Rawls Byrd** Elementary School. This condition shall be satisfied prior to the issuance of a building permit for any of the proposed improvements contained within the Master Plan. Documentation shall also be submitted to the Community Airport Committee.

Also the following steps shall be taken:

- a. Report the basic pertinent information by **UNICOM** when pilots check in for takeoff and landing operations.
- b. **Identify/distribute** information through a published set of "Airport Rules and Regulations."
- c. **Post/display** Special Operating Procedures in the flight planning area and other conspicuous areas of the terminal building.

4. The Airport Procedures shall be amended to require runway preference for runway 31 for all arriving aircraft, not just twin-engine aircraft as stated in the current Airport Procedures.

5. Signs shall be erected at both ends of the runway which read as follows:

For departures on Runway 31: "Remember to turn left to avoid flying over the Elementary School."

For departures on Runway 13: "Remember to make right turn for noise abatement."

6. A Community Airport Committee shall be established. The Committee's purpose is to provide a formal setting for an on-going dialogue between all interested parties (i.e., the citizens, the County, the Airport owners and operators, pilots, Williamsburg-James City County Schools, and business community). It shall be the responsibility of the Airport owners to establish the Committee. The Committee shall be a balanced representation of the following interest groups: airport **owners/operators**, citizens, the County, Williamsburg-James City County Schools, and pilots. The Committee shall be comprised of no fewer than five persons and no more than 10 persons. The Airport owners shall submit a list of committee members to the County for approval within six months of the approval of this Special Use Permit application. The Committee shall meet at least four times per year in open session.

7. Approval of the facilities contained in the Master Plan in no way obligates the County to approving the construction of these facilities. The proposed facilities shall undergo the typical site plan and building plan review process and receive County approval before construction of these facilities and improvements shall commence.

8. A lighting plan shall be prepared and approved by the Planning Director for each site plan submittal that contains outdoor lighting. All outdoor lighting, exclusive of lights for the runway, taxiways, and other required safety lighting, shall have recessed lenses.

9. The following size limitations shall apply to the planned facilities:

T-Hangar Units	63 units* maximum
Corporate Hangar Units	14 units* maximum
Apron Parking Tie-Downs	49 spaces maximum
Terminal Building Expansion	2,500 square feet maximum -- Total size of building shall not exceed 7,327 square feet (4,327 + 2,500)
Flight Management Building	2,500 square feet maximum

**\*For T-Hangars and Corporate Hangars - 1 unit is equivalent to 1 aircraft parking space.**

10. The improvements labeled as "Ultimate" on the Master Plan are not approved as part of this application. A 25-foot wide paved apron shall be permitted between the **helipads** (Stage III) and Hangar 14 (Stage I). The purpose of this paved apron would be to provide access to hangars on the west side of the airport.

11. No GPS "straight-in" approach procedure shall be permitted at the Airport.

12. The corporate hangars may include attached accessory office space that is exclusive of the airplane storage area. The office area shall be **used/occupied** by the owners or tenant of the corporate hangar to which the **office/storage** area is attached. The use of the office space shall be strictly limited to airport-related activities. The cumulative amount of office space attached to corporate hangars shall not exceed 5,000 square feet (**i.e.**, five corporate hangars with 1,000 square feet office space OR two corporate hangars with 2,500 square feet -- the other three shall contain no office space, or any combination thereof not to exceed 5,000 square feet).
13. A landscaped buffer around the perimeter of the site shall be maintained or established which accomplishes the goal of screening the proposed airport improvements from adjacent properties. The Planning Director shall determine whether additional landscaping is needed to screen future improvements from adjacent properties at the time of site plan review.

5. Amended Appropriation - FY 2005 Budget

Mr. John E. McDonald, Manager of Financial and Management Services, provided an amended Resolution of Appropriation for Fiscal Year 2005 based upon the changed expectations of State revenue for the County through the adopted State budget and the approved amended transient occupancy **tax**.

Mr. Harrison inquired how much of the increased State revenue would be reoccurring revenue.

Mr. McDonald stated that the **\$2.00/night** tax will expire in 2008 and the others are subject to annual or biannual review by the General Assembly during its budget deliberations.

Mr. **Goodson** opened the Public Hearing.

As no one wished to speak to this matter, Mr. **Goodson** closed the Public Hearing.

Mr. Brown made a motion to adopt the resolution.

Mr. Harrison stated concern that the County needs to be mindful of reoccurring expenditures.

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

## RESOLUTION

### AMENDED APPROPRIATION - FY 2005 BUDGET

WHEREAS, the Board of Supervisors of James City County has been requested to amend the County's FY 2005 Operating Budget to account for adjustments caused by the passage of a State budget by the 2004 General Assembly; and

WHEREAS, a public hearing has been held this date to solicit public comments on the proposed revisions; and

WHEREAS, it is now necessary to appropriate these additional funds to carry out the activities proposed therein for the fiscal year beginning July 1, 2004, and ending June 30, 2005.

NOW, THEREFORE, BE IT RESOLVED by the Board of Supervisors of James City County, Virginia, that the following amounts are hereby approved as additional appropriations for the offices and activities below in the amounts shown, as follows:

**PROPOSED ADDITIONS TO OPERATING REVENUES:**

Other Local Taxes • Transient Occupancy Taxes		\$ 850,000
Revenue from the Commonwealth:		
State Sales Taxes	\$ 780,000	
<b>HB599</b> Funding	170,000	
Compensation Board	<u>75,325</u>	<u>1,025,325</u>
TOTAL		<u>\$ 1,875,325</u>

**PROPOSED ADDITIONS TO OPERATING EXPENDITURES:**

Contributions - Williamsburg Convention/Visitors Bureau		\$ 850,000
Public Safety - Sheriff	\$ 34,125	
Judicial - Commonwealth's Attorney and Clerk of the Circuit Court	32,000	
Financial Administration - Treasurer and Commissioner of the Revenue	5,400	
Elections - Registrar and Board of Elections	2,300	
Community Services - Cooperative Extension	<u>1,500</u>	<u>75,325</u>
General <b>Services</b> - Grounds		\$ 122,000
Schools Debt Service		500,000
Nondepartmental:		
Matching Funds - Grants	\$ 30,000	
Contingency	<u>48,000</u>	<u>78,000</u>
		<u>250,000</u>
Contribution to Capital Projects		<u>\$1,875,325</u>

**PROPOSED ADDITIONS TO CAPITAL REVENUES:**

Contribution -General Fund	\$ 250,000
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**PROPOSED ADDITIONS TO CAPITAL EXPENDITURES:**

Parks and Recreation - Freedom Park	\$ 250,000
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**PROPOSED ADDITIONS TO DEBT SERVICE FUND REVENUES:**

General Fund Contribution - Schools	\$ 500,000
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**PROPOSED ADDITIONS TO DEBT SERVICE FUND EXPENDITURES:**

Fund Reserve	\$ 500,000
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## H. BOARD CONSIDERATIONS

### 1. Amended FY 2006 Operating Budeet

Mr. John E. McDonald, Manager of Financial and Management Services, presented a resolution to amend the FY 2006 Operating Budget to acknowledge the additional State revenues, the proceeds of the amended transient occupancy tax, and the addition of recurring expenditures **from FY 2005**; and that the FY 2006 Budget with amendments is to be used for planning purposes only.

The Board and staff discussed the capping of Personal Property Tax reimbursement to localities for vehicles by the General Assembly, the lack of capping measures for localities on assessing tax rates for Personal Property Taxes, the amount of revenue increase since 2000 for Personal **Property** Tax proceeds, and the potential for citizens to have to pick up the difference in reimbursement levels should the State not reimburse the localities for vehicle Personal Property Taxes.

Mr. **McGlennon** made a motion to adopt the resolution.

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

## RESOLUTION

### AMENDED FY 2006 OPERATING BUDGET

WHEREAS, the Board of Supervisors of James City County has been requested to amend the County's FY 2006 Operating Budget, for planning purposes only, to account for adjustments caused by the State FY **2005**/FY 2006 Budget adopted by the 2004 General Assembly.

NOW, THEREFORE, BE IT RESOLVED by the Board of Supervisors of James City County, Virginia, that the following amounts are hereby approved as amendments to the FY 2006 Operating Budget and shall be included in the adopted budget publication for planning purposes only:

1. Reduce the State Personal Property Tax Relief Act ("Car Tax") reimbursement by \$600,000, adding that revenue to local personal property tax revenues.
2. Add \$850,000 in additional room tax proceeds and the same amount to the contribution to the Williamsburg Area Convention & Visitors Bureau.
3. Add \$79,000 in Compensation Board Salaries to both revenues and expenditures.
4. Add \$780,000 in State Sales Taxes and \$170,000 in **HB599** Revenues. Allocate the additional \$950,000 to the Debt Service Reserve (**\$500,000**), Capital Projects - Undesignated (**\$250,000**), Grounds Maintenance (\$107,000), and **Operating Contingency** (\$93,000).

### 2. Creation of the Five Forks Area Study Committee

Mr. Matthew D. **Arcieri**, Planner, presented a resolution for the Board to endorse the formation of a Five Forks Area Study Committee to develop guiding principles in transportation, land use, and economic development for the development of the Five Forks area.

The Board and staff held a brief discussion regarding the number of members that may be appointed to the Committee and the tentative date for the first meeting being in conflict with the Jamestown Road and Route 199 Improvement Project town meeting scheduled for June 30, 2004.

Mr. Harrison made a motion to adopt the resolution.

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

## **RESOLUTION**

### **CREATION OF THE FIVE FORKS AREA STUDY COMMITTEE**

- WHEREAS, Economic Development Action 12G of the 2003 Comprehensive Plan recommends that James City County evaluate redevelopment and land use issues in the Five Forks area; and
- WHEREAS, **Kimley-Horn** and Associates has conducted a traffic impact analysis to assess current and projected traffic levels in the Five Forks area; and
- WHEREAS, the James City County Environmental Division has provided a preliminary environmental assessment that takes into account the recommendations of the **Powhatan** Creek Watershed Management Plan; and
- WHEREAS, staff has recommended that a study committee be created to be responsible for preparing guiding principles in transportation, land use, and economic development for the development of the Five Forks area; and
- WHEREAS, these principles will be used by citizens, staff, Planning Commission, and Board of Supervisors to guide recommendations and decisions in future land use cases and other development activity in the Five Forks area.
- NOW, THEREFORE, BE IT RESOLVED that the Board of **Supervisors** of James City County, Virginia, does hereby endorse the **formation** of a Five Forks Area Study Committee as described herein.

3. **Contract Change Order - AMEC Earth and Environmental, Inc. - Study for the Establishment of the James City County Stormwater Utility**

Mr. **Wayland** N. Bass, County Engineer, made a presentation on the proposed next phase of the Stormwater Utility establishment and presented a resolution to authorize the County Administrator to execute a change order to the existing AMEC contract for AMEC to provide consulting **services** to establish the James City County stormwater utility.

The Board and staff held a discussion regarding the timing of the next phase and implications of adopting the resolution at this meeting.

The Board concurred to defer action on the proposal until July 27 and to hold a Work Session on the matter on June 22.

The Board directed staff to provide information at the June 22 Work Session regarding the timing opportunity in Fiscal Year 2006 for the establishment of a Stormwater Utility, be prepared to discuss the options and policy analysis for a Stormwater Utility, milestone **dates/events** to **brief the** Board on the process and progress, how the County currently handles Stormwater issues and how that would change if revenue generated by a **Utility** is used to address the issues, information on upcoming Capital projects that will impact Stormwater, and timing of Capital projects in regard to the creation of a Stormwater Utility, as well as current and future funding to address Stormwater concerns.

Mr. **Goodson** deferred action on the item until July 27, 2004, and directed staff to prepare a Work Session on the item for June 22, 2004.

4. **Resolution Requesting the Circuit Court to Order an Election on Issuance of General Obligation Bonds in the Maximum Amount of \$39,820,000 for School Facilities**

Mr. John E. McDonald, Manager of Financial and Management Services, requested the Board approve a resolution requesting the Circuit Court to order an election on the question of issuing general obligation bonds to finance a portion of the costs of a new high school.

The Board and staff discussed the proposed ceiling amount for the bond and the amount including consideration for inflation of steel prices and construction and on addressing the facility needs of the students including an auxiliary **gym**.

Mr. Harrison made a motion to adopt the resolution.

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

**RESOLUTION OF THE BOARD OF SUPERVISORS OF JAMES CITY COUNTY,  
VIRGINIA, TO INCUR A DEBT IN THE FORM OF GENERAL OBLIGATION BONDS  
AND TO REQUEST A PUBLIC REFERENDUM ON THE ISSUANCE OF  
SUCH BONDS TO FINANCE A NEW HIGH SCHOOL**

WHEREAS, the Williamsburg-James City County School Board (the "School Board") has found and determined that there is a need to construct and equip a new high school in the Williamsburg-James City County area (the "Project"), to be financed in part by the issuance of general obligation bonds of James City County, Virginia (the "County"), in the maximum amount of \$39,820,000; and

WHEREAS, the School Board adopted a resolution on June 1, 2004, requesting the Board of Supervisors of the County (the "Board") to request the Circuit Court for the City of Williamsburg and the County of James City, Virginia (the "Circuit Court") to order an election on the question of contracting a debt and issuing general obligation bonds of the County in the maximum amount of \$39,820,000 for the Project; and

WHEREAS, the Board concurs in the need to undertake the Project and desires to determine the interest of the County's qualified voters in issuing debt in the form of general obligation bonds to finance a portion of the cost of such Project; and



WHEREAS, Section 15.2-2640 of the Code of Virginia of 1950, as amended (the "Code"), requires that the purposes for which the bonds are to be issued and the maximum amount of bonds to be issued be set forth in a resolution; and

WHEREAS, Sections 15.2-2610 and 15.2-2638 of the Code require that voter approval be obtained at a referendum before such bonds can be issued, and Section 15.2-2640 requires that the Board by resolution must request the Circuit Court to order an election on the question of contracting the debt and issuing the proposed bonds.

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

1. The Board finds and determines that it is necessary and expedient to undertake the Project, which will promote the public welfare of the County and its inhabitants.
2. The Board hereby determines that it is advisable to determine the interest of the qualified voters of the County on the incurrence of debt by the County in the form of the County's general obligation bonds in an amount not to exceed \$39,820,000 to finance the cost of the Project.
3. The Board hereby requests that the Circuit Court, pursuant to Sections 15.2-2610, 15.2-2611, and 24.2-684 of the Code, enter an Order requiring County election officials to conduct a special election for the qualified voters of the County on November 2, 2004, the day of the general election, and that the referendum question be placed on the ballot in substantially the following form:

QUESTION: Shall James City County, Virginia, contract a debt and issue its general obligation bonds in a principal amount not to exceed \$39,820,000 pursuant to the Public Finance Act of 1991, as amended, for the purpose of financing a portion of the costs of the construction and equipping of a new high school that will serve the residents and students of James City County?

( ) YES  
( ) NO

4. The Clerk of the Board shall certify a copy of this resolution to the Circuit Court.
5. This Resolution shall take effect immediately.

**I. PUBLIC COMMENT** -None

**J. REPORTS OF THE COUNTY ADMINISTRATOR**

Mr. Wanner recommended that the Board go into Closed Session pursuant to Section 2.2-3711(A)(1) of the Code of Virginia to consider the appointment of individuals to County Boards and/or Commissions.

**K. BOARD REQUESTS AND DIRECTIVES**

Mr. McGlennon stated that a public **informational** meeting will be held on June 30 at 6:30 p.m. at the Rawls **Byrd** Elementary School to provide citizens with an update on the progress of the Route 199 and **Jamestown** Road intersection improvement project.

**L. MATTERS OF SPECIAL PRIVILEGE**

Mr. Morton announced his retirement from his position as the County Attorney to be effective September 1,2004.

Mr. Morton indicated his interest in serving in the community and perhaps on a County Board or Committee at some point in the future, stated that his 31 years with the County have been rewarding, and thanked the Board and citizens for allowing him to serve.

**M. CLOSED SESSION**

Mr. Harrison made a motion to go into Closed Session pursuant to Section 2.2-3711(A)(1) of the Code of Virginia to consider the appointment of individuals to County Boards **and/or** Commissions.

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

Mr. **Goodson** adjourned the Board into Closed Session at 8:41 p.m.

Mr. **Goodson** reconvened the Board into Open Session at 9:03 p.m.

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

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

**RESOLUTION**

**CERTIFICATION OF CLOSED MEETING**

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

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

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby certifies that, to the best of each member's knowledge: i) only public business matters lawfully exempted from open meeting requirements by Virginia law were discussed in the closed meeting to which this certification resolution applies; and, (ii) only such public business matters were heard, discussed, or considered by the Board as were identified in the motion, Section 2.2-3711(A)(1), to consider personnel matters, the appointment of individuals to County boards **and/or** commissions.


Mr. **Goodson** stated that the Board will defer making appointments to the Five Forks Study Committee until June **22**, during which time the potential members will be contacted to verify interest in serving on the Committee.

**N. AJOURNMENT**

Mr. Harrison made a motion to adjourn.

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

At 9:04 p.m., Mr. **Goodson** adjourned the Board until 4 p.m. on June **22,2004**.

  
Sanford B. Wanner  
Clerk to the Board

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CHAPTER 3

DRUG FREE WORKPLACE

Policy

Section 3.1 Policy Statement

James City County is committed to a work environment free from the use of alcohol and illegal drugs.

Section 3.2 Guiding Principles

- A. Support the County's values of "Diversity, mutual respect, trust, honesty and personal responsibility" and "Demonstrating high standards of excellence, efficiency and commitment to service."
- B. Assure that employees are not impaired in their ability to perform assigned duties in a safe and productive manner and to protect our employees and the public from the risks posed by the misuse of alcohol and the use of prohibited drugs.
- C. Create a workplace free from the adverse effects of drug abuse and alcohol misuse.
- D. Prohibit the unlawful manufacture, distribution, dispensing, possession, or use of controlled substances.
- E. Encourage employees to seek professional assistance any time personal problems, including alcohol or drug dependency, adversely affect their ability to perform their assigned duties.
- F. Use and apply all aspects of this policy in a fair and equitable manner. Disregarding the requirements or deliberate misuse of this policy is unacceptable.
- G. Protect individual dignity, privacy, and confidentiality throughout the testing process.

Section 3.3 Legal Basis

James City County is committed to ensuring that our Personnel Policies are in compliance with all applicable Federal regulations governing workplace anti-drug and alcohol programs, to include:

- A. The Federal Transit Administration of the United States Department of Transportation 49 Code of Federal Regulations Part 655, as amended, which mandates urine drug testing and breath alcohol testing for safety-sensitive positions and prohibits performance of safety-sensitive functions when there is a positive test result.
- B. Department of Transportation 49 Code of Federal Regulations Part 40, as amended, which sets standards for the collection and testing of urine and breath specimens.
- C. 49 Code of Federal Regulations Part 29, "The Drug-Free Workplace Act of 1988," which requires the establishment of drug-free workplace policies and the reporting of certain drug-related offenses to the Federal Transit Administration.
- D. Schedules I through V of Section 202 of the Controlled Substances Act (21 U.S.C. 812), as further defined by 21 Code of Federal Regulations 1300.11 through 1300.15, which identifies illegal drugs or substances.

Bolded text is James City County Policy and is not specifically required by Department of Transportation regulations.

Section 3.4 Definitions

- A. Alcohol Screening Device – a device that measures the level of alcohol in either breath or other bodily fluids.
- B. Breath Alcohol Technician – a person who instructs and assists employees in the alcohol testing process and operates an evidential breath testing device.
- C. Commercial Driver's License – special certification to drive vehicles with a gross weight rating of 26,001 pounds or more; a combination of vehicles with gross combination weight rating of 26,001 pounds or more if the vehicle(s) being towed has a gross weight rating of more than 10,000 pounds; vehicles that carry 16 or more passengers, including the driver; or, any size vehicle that transports hazardous materials and that requires federal placarding.

- D. County Safety Sensitive Position – positions identified by James City County as having significant safety responsibilities for James City County property, staff, and citizens. All County Safety Sensitive Positions are identified in the County Compensation Plan.
- E. Department of Health and Human Services - agency of the Federal government that advises the President on health, welfare, and income security plans, policies, and programs of the Federal government.
- F. Department of Transportation - agency of the Federal government that oversees the formulation of national **transportation policy** and promotes intermodal transportation. Other responsibilities range from negotiation and implementation of international transportation agreements, assuring the fitness of US airlines, enforcing airline consumer protection regulations, issuance of regulations to prevent alcohol and illegal **drug** misuse in transportation systems, and preparing transportation legislation.
- G. Evidential Breath Testing Device – device approved by the National Highway Traffic Safety Administration for the evidential testing of breath at the .02 and above alcohol concentrations. The concentration of alcohol is expressed in terms of grams of alcohol per 210 liters of breath as measured by an Evidential Breath Testing Device.
- H. Federal Safety Sensitive Position – position defined by the Federal government as having a level of safety importance requiring drug and alcohol testing. These positions perform any duty related to the safe operation of mass transit service including the operation of a revenue service vehicle, dispatch or maintenance of a revenue service vehicle or equipment used in revenue service, and any other position that requires a Commercial Driver's License. Performance is any period of time in which a driver is actually performing, ready to perform, or immediately **after** performing safety sensitive duties. All Federal Safety Sensitive Positions are identified in the County Compensation Plan.
- I. Federal Transit Administration – an agency of the Department of Transportation that assists in developing an improved mass transportation system for cities and communities nationwide. The Federal Transit Administration maintains the National Transit Images, a repository of reports, documents, and data generated by professionals and others from around the country.

- J. Legally Prescribed Drug – a **drug** for which an individual has a prescription or other written approval from a licensed physician for its use in the course of medical treatment. The prescription or written approval must include the patient's name, the name of the substance, the **quantity/amount** to be taken, and the period of authorization.
- K. Medical Review Officer - a licensed physician (medical doctor or doctor of osteopathy) responsible for receiving laboratory results generated by an employer's drug testing program who has detailed knowledge of substance abuse disorders, and has appropriate medical training to interpret and evaluate an individual's confirmed positive test results, together with his or her medical history and any other relevant biomedical information.
- L. National Highway Traffic Safety Administration – an agency of the Department Of Transportation responsible for reducing deaths, injuries and economic losses resulting **from** motor vehicle crashes. National Highway Traffic Safety Administration sets and enforces safety performance standards for motor vehicles and equipment and effective means of bringing about safety improvements.
- M. Reasonable Suspicion - specific contemporaneous, **articulable** observations concerning the appearance, behavior, speech, or body odors of the covered employee. A supervisor or other company official who is trained in detecting the signs and symptoms of drug use and alcohol misuse must make the required **observations**.
- N. Refusal To Test - can include the following. This list is not all-inclusive and incorporates all circumstances of refusal listed in Department of Transportation 49 Code of Federal Regulations Part 40 by reference.
- 1. Refusal to provide a specimen.**
  - 4.2. An inability to provide a sufficient urine specimen or breath sample without a valid medical explanation.
  - ~~2.3.~~ 3.3. Tampering with the collection container
  - 3.4. Adulteration or substitution of the specimen
  - 4.5. Not reporting to the test site in the allotted time

- 5.6. Refusal to sign Step 2 of the breath alcohol form
  - ~~7~~7. Leaving the scene of an accident without a valid reason before testing is done.
  - ~~7.8~~7.8. Failure to remain once testing has started.
  - 8.9. Failure to undergo a medical evaluation when required.
  - 10. *Failure to cooperate with any part of the testing process.*
  - ~~9.11~~9.11. Failure/refusal to permit monitoring or observation where required.
  - ~~10.12~~10.12. Refusal to take a second test.
- O. Reportable Accident - any accident:
- 1. With a fatality; or,
  - 2. Where an individual suffers a bodily injury and immediately receives medical treatment away from the scene of an accident; or,
  - 3. Where one or more vehicles involved incurs disabling damage as the result of the occurrence and is transported away from the scene by a tow truck or other vehicle.
- P. Safety-sensitive function - any function related to the safe operation of mass transit service including the operation of a revenue service vehicle (whether or not the vehicle is in revenue service), and the dispatch or maintenance of a revenue service vehicle or equipment used in revenue service. Maintenance functions include the repair, overhaul, and rebuild of engines, vehicles and/or equipment.
- Q. Substance Abuse Professional - a licensed physician or certified psychologist, social worker, employee assistance professional, or addiction counselor certified by the National Association of Alcoholism and Drug Abuse Counselors Certification Commission, or by the International Certification Reciprocity Consortium/Alcohol and Other Drug Abuse. The Substance Abuse Professional must also have clinical experience in the diagnosis and treatment of drug and alcohol related diseases.



- R. Screening Test Technician – An individual who meets the requirements to be a Breath Alcohol Technician, provided that the individual has demon<sup>23</sup> proficiency in the operation of the non-evidential screening ~~DEVICE~~ or she is using, or an individual who has ~~sucesssfully~~ completed a course concerning the procedures required for conducting alcohol screening tests.

Section 3.5 Coverage

- A. This policy applies to:
1. All employees;
  2. Individuals offered employment in positions identified as Federal Safety Sensitive Positions and County Safety Sensitive Position;
  - ~~3. Contract employees or contractors while on County property or when performing any safety sensitive or non safety sensitive function.~~
  4. Off-site lunch periods or breaks when an employee is scheduled to return to work; and,
  5. In addition, visitors, vendors, and contract employces while on James City County premises will not he permitted to conduct James City County business if found to be in violation of the terms and conditions of this policy.
- B. All contractors performing Federal safety-sensitive functions must have a drug and alcohol testing program that meets the same requirements as the County's.
- C. Employees are subject to different levels of drug and alcohol testing based on the level of safety required of their positions. The following is a listing of these groups and the testing levels required.

Random	Drug and/or Alcohol		
Transfer to Safety Sensitive	Drug	Drug	Drug
Reasonable Suspicion	Drug and/or Alcohol	Drug and/or Alcohol	Drug and/or Alcohol
Return to Work	Alcohol	Alcohol	Alcohol

*D. Participation in the drug and alcohol testing program is a requirement of each safety sensitive employee and, therefore, is a condition of employment.*

Section 3.6 Prohibited Substances

A. Any illegal drug or any substance identified in Schedules I through V of Section 202 of the Controlled Substance Act (21 U.S.C. 812), as further defined by 21 Code of Federal Regulations 1300.11 through 1300.15 is prohibited at all times unless a legal prescription has been written for the substance. This includes, but is not limited to:

1. Marijuana, amphetamines, opiates, phencyclidine (PCP), and cocaine.

~~D.B.~~ Any beverage, mixture, preparation, medication, or other substance containing alcohol.

~~C.~~ Any prescription or over the counter (OTC) medication including, but not limited to:

~~2.1. Any drug not approved for medical use by the U.S. Drug Enforcement Administration or the U.S. Food and Drug Administration.~~

~~3.2. Misuse of legally prescribed drugs.~~

~~4.3. Use of illegally obtained prescription drugs.~~

~~B.4. Any substance that carries a warning label that indicates that mental function, motor skills, or judgment may be adversely affected, unless reported to an employee's supervisor.~~

~~C.5. Any performance altering drug unless an employee has written authorization from his/her job duties.~~

Section 3.7 Prohibited Conduct

- A.** Employees are prohibited from engaging in the unlawful manufacture, distribution, dispensing, possession, or use of any substance identified in Section 3.6 while on James City County or James City Service Authority premises, *in James City County or James City Service Authority vehicles or uniform, or while on James City County or James City Service Authority business.*
- B.** ~~Employees are prohibited from misusing a~~Any prescription or over-the-counter (OTC) medication *in any manner* including, but not limited to, *the situations described below.*
- 2.1. ~~Use of a~~Any drug not approved for medical use by the U.S. Drug Enforcement Administration or the U.S. Food and Drug Administration.
- 3.2. Misuse of legally prescribed drugs.
- 4.3. Use of illegally obtained prescription drugs,
- 8.4. ~~Use of a~~Any substance that carries a warning label that indicates that mental function, motor skills, or judgment may be adversely affected, ~~unless without reporting it to~~ an employee's supervisor.
- C.** ~~Use of a~~Any performance altering drug ~~unless an employee has~~ *without* written authorization from ~~his/her~~ attending physician releasing the employee to perform ~~his/her~~ job duties.
- B.C** Employees are prohibited from being intoxicated, impaired, or under the influence of any substance identified in Section 3.6 while on James City County or James City Service Authority premises, *in James City County or James City Service Authority vehicles, or uniform, or while on James City County or James City Service Authority business.*
- C.D.** Employees are prohibited from reporting for duty or remaining on duty when their ability to perform assigned functions is adversely affected by alcohol or when their breath alcohol concentration is 0.02 or greater.
- E** . Employees are prohibited from using alcohol when on duty, in uniform, while performing safety-sensitive functions, or just before or just after performing safety-sensitive functions.
- . Employees in Federal Safety Sensitive Positions or County Safety Sensitive Positions are prohibited from using alcohol within four hours of reporting for duty.
- RG.** *Employees in Federal Safety Sensitive positions are prohibited from using alcohol for eight (8) hours after an accident.*
- ~~F.G.H.~~ Employees are prohibited from using alcohol during the hours that they are on-call or on stand by status.

Section 3.8 Exceations

The Police Chief may allow police officers assigned to undercover duty to consume alcoholic beverages while **on** duty when the integrity of the operation warrants. The officer must report consumption to **his/her** supervisor within **24** hours.

Section 3.9 Required Compliance

- A. All individuals offered employment in a Federal Safety Sensitive Position or a County Safety Sensitive Position will be subject to urine drug testing ~~as a condition of employment.~~
- B. Any employee promoted, demoted, or transferred to a Federal Safety Sensitive Position *or County Safety Sensitive Position* will be subject to urine drug testing.
- C. All employees in Federal Safety Sensitive Positions will be subject to random testing for drugs and alcohol.
  - 1. Drug tests can be performed any time an employee in a Federal Safety Sensitive Position is on duty.
  - 2. Alcohol tests can be performed when an employee in a Federal Safety Sensitive Position is actually performing a safety sensitive function, or just before or just after the performance of a safety sensitive function.
- D. All employees will be subject to drug and alcohol testing whenever there is reasonable suspicion that they are under the influence of drugs **and/or** alcohol.
- E. All employees in Federal Safety Sensitive Position will be subject to post-accident testing for **drugs** and alcohol when involved in a reportable accident and it is determined that their performance could have contributed to the accident, as determined by the employer using the best **information** available at the time of the decision.
  - 1. **Drug** tests must be performed as soon as possible but no more than 32 hours **after** the reportable accident. Exceptions must be documented.

2. Alcohol tests shall be conducted within two hours but no later than eight hours after the reportable accident. Exceptions must be documented.
- F. All employees suspended for an alcohol test between .02 and .039 will be subject to a retest before returning to duty. In order for such an employee to return to duty he/she must:
1. Meet with the Substance Abuse Professional to whom James City County refers him/her and comply with the treatment plan and education prescribed by the Substance Abuse Professional;
  2. Upon **recommendation** of the Substance Abuse Professional, during the first year **after** testing between .02 and .039 on an alcohol test, the employee will undergo a minimum of six non-Department Of Transportation **random** tests. The Substance Abuse Professional will determine **the** frequency of the tests. Follow up testing may extend beyond a year but will not exceed 60 months; and,
  3. Have a result of less than .02 on the retest.

Section 3.10 Non-Compliance with Testing Requirements

- A. Any individual offered employment with James City County who refuses to submit to a drug test will have the offer of employment withdrawn.
- B. Any employee who refuses to submit to a **drug** or alcohol test shall be suspended without pay pending termination.
- C. Any employee who is suspected of providing false information in connection with a test, or who is **suspected** of **falsifying** test results through tampering, contamination, adulteration or substitution will be required to undergo an observed collection before leaving the testing site.
- D. Verification of falsified test results will result in the employee's suspension without pay pending termination.

Section 3.11 Treatment

- A. All employees are encouraged to voluntarily make use of the available resources for treatment of alcohol misuse **and** illegal drug use problems. Under certain circumstances, employees may be required to undergo treatment for alcohol misuse.
- B. Any **employee** who refuses or fails to comply with James City County requirements for treatment, after care, or return to duty shall be suspended pending termination.
- C. Treatment may be covered under James City County's Employee Assistance Program or the employee's health insurance plan.

The cost of any treatment or rehabilitation services not covered will be paid for by the employee.

- D. Employees will be allowed to use accumulated sick leave and vacation leave to participate in the prescribed treatment or rehabilitation program.

Section 3.12 Required Notification of Criminal Drug Conviction

- A. All employees are required to notify their **supervisor** of any criminal drug statute conviction within five days after such conviction.
- B. Failure to comply with this provision shall result in suspension without pay pending termination.

Section 3.13 ~~Drug~~ Testing Procedures

- A. Testing shall be conducted in a manner to assure a high degree of accuracy and reliability and using **techniques**, equipment, and laboratory facilities that have been approved by the **Department** of Health And Human Services.
- B. All testing will be conducted consistent with the procedures put forth in 49 Code of Federal Regulations Part 40, as amended.
- C. The procedures will be performed in a **private**, confidential manner and every effort will be made to protect the employee, the integrity of the testing procedure, and the validity of the test result.
- D. The drugs that will be tested for include marijuana, cocaine, opiates, amphetamines, and phencyclidine and others that may be added under 49 Code of Federal Regulations 40, as amended.

Urine specimens will be collected using the split specimen collection method described in 49 Code of Federal Regulations Part 40, as amended.

Each specimen will be accompanied by a Department of Transportation or non-Department of Transportation Chain of Custody and Control Form and identified using a unique identification number that attributes the specimen to the correct individual.

An initial drug screen will be conducted on the primary urine specimen. For those specimens that are not negative, a confirmatory Gas Chromatography/Mass Spectrometry test will be performed.

The test will be considered positive if the amounts present are above the minimum thresholds established in 49 Code of Federal Regulations Part 40, as amended. The minimum thresholds are listed in Attachment B.

The test results from the laboratory will be reported to a Medical Review Officer. The Medical Review Officer will review the test results to ensure the scientific validity of the test and to determine whether there is a legitimate medical explanation for a confirmed positive test result.

In the event of a positive laboratory result, the Medical Review Officer will contact the employee or the individual offered employment and provide opportunity for the employee or individual offered employment to explain the confirmed test result. The Medical Review Officer will subsequently review the employee's medical history/medical records to determine whether there is a legitimate medical explanation for a positive laboratory result.

If no legitimate medical explanation is found, the test will be verified positive and reported to James City County's designated contact. If a legitimate explanation is found, the Medical Review Officer will report the test result as negative.

Test results reported by the laboratory to be "dilute" will be repeated as follows:

1. Dilute-Positive - are considered positive results.

2. Dilute-Negative - requires a second test at the County's expense. If the second test is also reported as dilute, the second test becomes the test of record.
- M. The split specimen will be stored at the initial laboratory until the analysis of the primary specimen is completed.
1. If the primary specimen is negative, the split specimen will be discarded.
  2. If the primary specimen is positive, the split sample will be retained for testing if so requested of the Medical Review Officer by the employee or individual offered employment.
- N. In instances where there is reason to believe an employee or individual offered employment is abusing a substance other than the five drugs listed above, James City County reserves the right to test for additional drugs under James City County's own authority using standard laboratory testing protocols.

Section 3.14 Alcohol Testing Procedures

- A. Testing shall be conducted in a manner to assure a high degree of accuracy and reliability and using techniques, equipment, and laboratory facilities that have been approved by the Department Of Health And Human Services.
- B. All testing will be conducted consistent with the procedures put forth in 49 Code of Federal Regulations Part 40. as amended.
- C. The procedures will be performed in a private, confidential manner and every effort will be made to protect the employee, the integrity of the testing procedure, and the validity of the test result.
- D. All initial and confirmatory tests for breath alcohol concentration will be conducted using a National Highway Traffic Safety Administration approved Evidential Breath Testing Device or Alcohol Screening Device operated by a trained Breath Alcohol Technician or Screening Test Technician.
- E. A drug or alcohol test is considered positive if the individual is found to have a quantifiable presence of a prohibited substance in the body above the minimum thresholds defined in 49 Code Of Federal Regulations Part 40, as amended.



- F. If the initial test indicates an alcohol concentration of 0.02 or greater, a second confirmation test will be performed to ensure that no residual mouth alcohol may have affected the test results.
- G. The Evidential Breath Testing Device will identify each test by a unique sequential identification number. This number, time, and unit identifier will be provided on each Evidential Breath Testing Device printout. If the screening test is performed with an alcohol screening device, a number assigned by the Screening Test Technician will be used and recorded on the form.
- H. The Evidential Breath Testing Device printout along with an approved alcohol testing form will be used to document the test, the subsequent results, and to attribute the test to the correct employee. If the screening test is performed with an alcohol screening device, the result along with the lot number and expiration date of the alcohol screening device will be recorded on the form.
- I. An employee in a Federal Safety Sensitive Position or County Safety Sensitive Position who has a confirmed alcohol concentration of greater than 0.02 but less than 0.04 will be removed from his/her position for eight hours unless a retest results in a concentration measure of less than 0.02.
- J. The inability to perform safety-sensitive duties due to an alcohol test result of greater than 0.02 but less than 0.04 will be considered an unexcused absence subject to James City County disciplinary procedures.
- K. An alcohol concentration of 0.04 or greater will be considered a positive alcohol test and in violation of this policy and a violation of the requirements set forth in 49 Code of Federal Regulations Part 655 for safety-sensitive employees.
- L. If at any time the integrity of the testing procedures or the validity of the test results is compromised, the test will be cancelled.

#### Section 3.15 Employee Requested Testing

- A. Any employee or individual offered employment in a Federal Safety Sensitive Position or County Safety Sensitive Position who questions the results of a required drug test under Section 3.13.A through

Section 3.13.L of this policy may request that the split sample be tested.

- B. This test must be conducted at a different Department Of Health And Human Services-certified laboratory.
- C. The test must be conducted on the split sample that was provided by the employee or individual offered employment at the same time as the original sample.
- D. The employee or individual offered employment will pay all costs for such testing unless the result of the split sample test invalidates the result of the original test.
- E. The method of collecting, storing, and testing the split sample will be consistent with the procedures set forth in 49 Code Of Federal Regulations Part 40, as amended.
- F. The employee's or individual offered employment's request for a split sample test must be made to the Medical Review Officer within 72 hours of notice of the original sample verified test result. Requests after 72 hours will only be accepted if the delay was due to documentable facts that were beyond the control of the employee or individual offered employment.

#### Section 3.16 Post-Offer Testing

- A. All individuals offered employment in Federal Safety Sensitive Position or County Safety Sensitive Position covered by this Policy shall undergo urine drug testing prior to hire. This also includes employees transferring from anon-safety sensitive to a Federal Safety Sensitive Position or County Safety Sensitive Position or employees who have been removed from the random pool for a period of ~~120~~ 90 days or more.
- B. Receipt by James City County of a negative drug test result is required prior to employment.
- C. A positive post-offer drug test will disqualify an individual offered employment from applying for a position with James City County or James City Service Authority for a period of ~~120~~ 90 days.
  - 1. After the ~~120~~ 90 day waiting period, evidence of the absence of drug dependency from a Substance Abuse Professional that

meets with the approval of James City County and a negative drug test will be required prior to further consideration for employment.

2. The cost for the assessment and any subsequent treatment will be the sole responsibility of the individual.

*D. Individuals offered employment who have a positive drug test will be provided the names of Substance Abuse Professionals.*

~~D.E.~~ In instances where an individual is on temporary leave, i.e. vacation, sick, jury duty, no drug test is required before an individual can resume his/her safety-sensitive duties provided the individual has not been out of the random pool for more than ~~120~~ 90 days. If selected for a random test while on temporary leave of ~~120~~ 90 days or less, the individual will be tested if he/she returns to duty prior to the next random testing.

F . In instances where the individual's status within the organization changes or is reclassified for more than ~~120~~ 90 days (i.e., seasonal layoff, leave of absence, out of work or reassigned for worker's compensation), a drug test is required prior to reassignment to a safety-sensitive job function.

### Section 3.17 Reasonable Suspicion Testing

- A. All employees may be subject to urine and/or breath testing when there are specific contemporaneous, articulable observations concerning the appearance, behavior, speech, or body odors of the covered employee that may indicate drug use or alcohol abuse.
- B. A reasonable suspicion referral for testing will be made on the basis of documented objective facts and circumstances that are consistent with the short-term effects of substance abuse or alcohol misuse.
- C. Reasonable suspicion referrals must be made by a supervisor who is trained to detect the signs and symptoms of drug and alcohol use and who reasonably concludes that an employee may be adversely affected or impaired in his/her work performance due to possible prohibited substance abuse or alcohol misuse.
- D. Employees referred for reasonable suspicion testing will immediately be removed from any safety sensitive job function.*

Section 3.18 Post-Accident Testing

- A. All employees in Federal **Safety Sensitive Positions** are required to undergo urine and breath testing if they are involved in a reportable accident with a James City County or James City Service Authority vehicle regardless of whether or not the vehicle is in revenue service and whether or not their performance could have contributed to the accident.
- B. This includes all surviving safety-sensitive employees that are operating the vehicle and any other whose **performance** could have contributed to the accident.
- C. Employees involved in reportable accidents will immediately be removed from duty.
- ~~C.D.~~ Following an accident, employees in Federal Safety Sensitive Position shall be tested as soon as possible, but not to exceed eight hours for alcohol testing and **32** hours for drug testing.
- ~~D.E.~~ Any employee in a Federal Safety **Sensitive** Position involved in a reportable accident must refrain from alcohol use for eight hours following the accident.
- ~~E.F.~~ **Any employee** in a Federal Safety Sensitive Position who leaves the scene of the accident without justifiable explanation prior to submission to drug and alcohol testing will be considered to have refused the test and will be placed on suspension without pay pending termination.
- ~~R.G.~~ Employees tested under this provision will include not only the operations personnel, but also any other covered employee whose performance could have contributed to the accident.
- ~~G.H.~~ If James City County is unable to perform a Federal Transit Administration drug and alcohol test (**i.e.**, employee is unconscious, employee is detained by law enforcement agency), James City County may use drug and alcohol post-accident test results administered by State and local law enforcement officials provided the tests are performed in accordance with Federal Transit Administration/Department Of Transportation requirements. The State and local law enforcement officials must have independent authority for the test and the employer must obtain the results in conformance with State and local law.

Section 3.19 Random Testing

- A. Employees in Federal Safety Sensitive Position will be subjected to random, unannounced testing.
- B. The selection of safety-sensitive employees for random alcohol testing will be made using a scientifically valid method that ensures each covered employee that they will have an equal chance of being selected each time selections are made.
- C. The random tests will be unannounced and spread throughout the year. Tests can be conducted at any time during an employee's shift (i.e. beginning, middle, end).
- D. Employees are required to proceed immediately to the collection site upon notification of their random selection.

Section 3.20 Return-To-Duty Testing

- A. All employees who previously tested ~~between~~ .02 and .04 on an alcohol test must test below 0.02 on a return-to-duty test and be evaluated and released to duty by a Substance Abuse Professional before returning to work.
- B. Before scheduling the return to duty test, the Substance Abuse Professional must assess the employee and determine if the required treatment has been completed.

Section 3.21 Consequences

- A. Any employee who has a confirmed positive drug test or breath alcohol test greater than .04 will be:
  - 1. *Immediately removed from safety sensitive or other job function.*
  - ~~1.2.~~ 2. Suspended without pay pending termination;
  - 3 . Informed of educational and rehabilitation programs available; and,
  - ~~3.4.~~ 4. Provided the names of Substance Abuse Professionals.

- B. Assessment by a Substance Abuse Professional or participation in James City County's Employee Assistance Program does not shield an employee from disciplinary action.

Section 3.22 Information Disclosure

- A. All drug and alcohol testing records will be maintained in a secure manner so that disclosure of information to unauthorized persons does not occur. Information will only be released in the following circumstances:
  - 1. To a third party only as directed by specific, written instruction by the employee;
  - 2. To the decision-maker in a lawsuit, grievance, or other proceeding initiated by or on the behalf of the employee tested;
  - 3. To a subsequent employer upon receipt of a written request from the employee;
  - 4. To the National Transportation Safety Board during an accident investigation;
  - 5. To the Department of Transportation or any Department Of Transportation agency with regulatory authority over the employer or any of its employees, or to a State oversight agency authorized to oversee rail fixed-guideway systems; or
  - 6. To the employee, upon written request.

Section 3.23 Records Retention and Disposition

Drug and alcohol screening or testing records that document the administration and results of screening or testing of job applicants or employees for illegal drug or alcohol use will be retained for five years after administration of tests and then destroyed.

Section 3.24 Employee and Supervisor Training

- A. All employees in Federal Safety Sensitive Position will undergo a minimum of 60 minutes of training on the signs and symptoms of drug use including the effects and consequences of drug use on personal health, safety, and the work environment. The training must

also include **manifestations** and behavioral cues that may indicate prohibited drug use.

- B. Employees in supervisory positions will also receive 60 minutes of reasonable suspicion training on the physical, behavioral, and performance indicators of probable drug use and 60 minutes of additional reasonable suspicion training on the physical, **behavioral**, speech, and performance indicators of probable alcohol misuse.
- C. **Information** on the signs, symptoms, health effects and consequences of alcohol misuse is presented in Attachment A of this policy.

Section 3.25 Prior Substance Abuse Violations

- A. Employees or individuals offered employment who have a prior record of substance abuse must **furnish** the following to be considered for employment.
  - 1. A release to work statement from a Substance Abuse Professional.
  - 2. A negative test for **drugs and/or** alcohol.
  - 3. An agreement to submit to random testing.
  - 4. An agreement to follow specified **after** care requirements with the understanding that violation of the agreement is grounds for termination.

Section 3.26 System Contacts

Any questions regarding this policy or any other aspect of the drug free workplace policy should be referred to the Dmg and Alcohol ~~Coordinator~~ Program Manager, Medical Review Officer or Substance Abuse Professional listed in Attachment C of this policy.

### Alcohol Fact Sheet

Alcohol is a socially acceptable drug that has been consumed throughout the world for centuries. It is considered a recreational beverage when consumed in moderation for enjoyment and relaxation during social gatherings. However, when consumed primarily for its physical and mood-altering effects, it is a substance of abuse. As a depressant, it slows down physical responses and progressively impairs mental functions.

#### Signs and Symptoms of Use

- Dulled mental process
- Lack of coordination
- Odor of alcohol on breath
- Possible constricted pupils
- Sleepy or stuporous condition
- Slowed reaction rate
- Slurred speech

(Note: Except for the odor, these are general signs and symptoms of any depressant substance.)

#### Health Effects

The chronic consumption of alcohol (average of three servings per day of beer [12 ounces], whiskey [1 ounce], or wine [6 ounce glass]) over time may result in the following health hazards:

- Decreased sexual functioning
- Dependency (up to 10 percent of all people who **drink** alcohol become physically and/or mentally dependent on alcohol and can be termed alcoholic)
- Fatal liver diseases
- Increased cancers of the mouth, tongue, pharynx, esophagus, rectum, breast, and malignant melanoma
- Kidney disease
- Pancreatitis
- Spontaneous abortion and neonatal mortality
- Ulcers
- Birth defects (up to 54 percent of all birth defects are alcohol related).



### Social Issues

- Two-thirds of all homicides are committed by people who drink prior to the crime.
- Two to three percent of the driving population is legally drunk at any one time. This rate is doubled at night and on weekends.
- Two-thirds of all Americans will be involved in an alcohol-related vehicle accident during their lifetimes.
- The rate of separation and divorce in families with alcohol dependency problems is 7 times the average.
- Forty percent of family court cases are alcohol problem related.
- Alcoholics are 15 times more likely to commit suicide than are other segments of the population.
- More than 60 percent of bums, 40 percent of falls, 69 percent of boating accidents, and 76 percent of private aircraft accidents are alcohol related.

### The Annual Toll

- 24,000 people will die on the highway due to the impaired driver.
- 12,000 more will die on the highway due to the alcohol-affected driver.
- 15,800 will die in non-highway accidents.
- 30,000 will die due to alcohol-caused liver disease.
- 10,000 will die due to alcohol-induced brain disease or suicide.
- Up to another 125,000 will die due to alcohol-related conditions or accidents.

### Workplace Issues

- It takes one hour for the average person (150 pounds) to eliminate one serving of an alcoholic beverage from the body.
- Impairment in coordination and judgment can be objectively measured with as little as two drinks in the body.
- A person who is legally intoxicated is 6 times more likely to have an accident than a sober person is.

## Minimum Thresholds for Tested Drugs

<b>Drug</b>	<b>Initial Levels Mg/ml</b>	<b>Confirmation Levels Mg/ml</b>
Marijuana	50	15
Cocaine	300	150
Opiate	2,000	2,000
Phencyclidine (PCP)	25	25
Amphetamines	1,000	500

**System Contacts**

Drug and Alcohol Program Manager:

Name: Sandra P. Hale  
Title: Human Resource Specialist II  
Address: James City County  
P. O. Box 8784  
Williamsburg, VA 23187-8784  
Telephone Number: (757) 253-6681  
FAX Number: (757) 253-6878

Medical Review Officer:

Name: Dr. Michael Williams  
Address: Safety Management, Inc.  
5129 Stannart Street  
Norfolk, VA 23503  
Telephone Number: (757) 461-1430  
FAX Number: (757) 461-1352

Substance Abuse Professional:

Name: Sentara Employee Assistance Program  
Address: Koger 11, Suite 142  
Norfolk, VA 23502  
Telephone Number: (800) 899-8174  
FAX Number: (757) 461-0833

CHAPTER 5

EMPLOYEE BENEFITS

Section 5.1 Policy - General

Section 5.2 Eligibility - General

Section 5.3 Holidays

Section 5.4 Leave

Section 5.5 Health Related Benefits

Section 5.6 Retirement, Long-Term Disability, and Life Insurance

Section 5.7 Workers' Compensation (Policy) (Procedures)

Section 5.8 Tax-Related Benefits

Section 5.9 Credit Union

Chapter 5  
Employee Benefits

Section 5.1 Policy - General

It is the policy of James City County to provide employee benefits that complement the County's values and strategic direction, that help meet certain needs of County employees and their families, and that help the County to attract and retain quality employees. The County strives to offer high quality benefits, at a reasonable cost to both employees and the County, which prove valuable and useful to employees. The County will communicate the availability of these benefits to eligible individuals and will provide assistance in understanding and using them.

Section 5.2 Eligibility - General

The benefits contained in this chapter are available to all employees in full-time permanent and limited-term positions. Benefits are also available to employees in part-time permanent and limited-term positions, to former employees and retirees, and to employees in temporary positions where specifically indicated in the policy. Eligibility of employees in other positions varies by department and is recorded in the Human Resource Department.

Section 5.3 Holidays

The County observes the following eleven designated holidays:

New Year's Day	January 1
Lee/Jackson/King Day	3rd Monday in January
George Washington's Birthday	3rd Monday in February
Memorial Day	Last Monday in May
Independence Day	July 4
Labor Day	1st Monday in September
Veterans' Day	November 11
Thanksgiving Day	4th Thursday in November
Day After Thanksgiving	Friday following Thanksgiving
Christmas Eve	December 24
Christmas Day	December 25

The Board of Supervisors may declare any other day an additional holiday.

- A. Eligibility. Employees in full-time permanent and part-time permanent term positions are eligible for paid holidays or compensatory leave in the amount of their monthly sick leave accrual rate.

B. Observance of Holidays

1. If a holiday falls on a Saturday, the preceding Friday shall be observed as the holiday; if a holiday falls on a Sunday, the following Monday shall be observed as the holiday. County operations which are open on holidays shall observe the actual holiday for purposes of holiday pay.
2. If an observed holiday falls on a day an employee is not otherwise scheduled to work, the employee shall earn compensatory leave in the amount of his monthly sick leave accrual rate for the observed holiday. In cases where this would present a hardship because of workload, the department manager may authorize payment in lieu of the compensatory leave if the budget permits.
3. An employee who is on approved leave with pay during a period in which a holiday falls, shall not be charged leave for the observed holiday.
4. An employee who is on military leave with pay during a period in which a holiday falls shall not receive any additional pay or compensatory leave for the holiday.
5. An employee forfeits eligibility to be compensated for the holidays observed by the County unless the employee works the last scheduled work day before the holiday and the first scheduled work day after the holiday. The forgoing does not apply to employees who are on authorized leave with pay.

C. Working on Holidays

1. If an employee is required to work on an observed holiday, he shall receive holiday pay as outlined in Chapter 4, Section 4.12.
2. Certain employees who are called to work on a County-observed holiday on which they are not scheduled to work may be eligible for premium pay as outlined in Chapter 4, Section 4.14.

Section 5.4 Leave

- A. Policy Statement - James City County recognizes the importance of balancing the productivity needs of the County with the needs of County employees and their families by providing employees with time away from work. It is the policy of the County to provide employees with continued income and benefits during certain approved absences of specified durations.

- B. Eligibility - Employees in part-time permanent and limited-term positions are eligible for leave on a pro-rated basis.
- C. Definition of Immediate Family - The immediate family is defined as: spouse, parent, ~~spouse's parent~~, son, daughter, brother, sister, grandparents, grandchildren, step-children, step-parents, guardian, *spouse's parent*, and any persons residing in the same household as the employee.
- D. Family and Medical Leave Act (FMLA) of 1993 - is a Federal law which guarantees employees who have worked for the County at least 1,250 hours in the previous 12 months, up to 12 weeks away from work during a fiscal year for the purposes outlined below. An employee must use the appropriate type of leave during the absence. An employee who is absent under the FMLA will retain his employee benefits. Upon returning to work, the employee will return to the same job or a job with equivalent status, pay, and benefits.
1. Purpose - FMLA protects employees' jobs and benefits for specified periods of time, if they are absent from work because of:
    - a. the birth of a child and the care of that child;
    - b. the adoption or foster care placement of a child with the employee;
    - c. the need to care for a spouse, child, or parent with a serious health condition; or
    - d. the serious health condition of the employee that makes the employee unable to perform the essential functions of his position.
  2. Definition - For purposes of this policy, a week is defined as the annual authorized hours of the employee's position divided by 52.
  3. Employee Requirements - An eligible employee wishing to take time off for one of the purposes listed in 1. above must comply with certain requirements. An employee must:
    - a. inform his supervisor that he is requesting leave under the FMLA and of the purpose of the leave;
    - b. work with his supervisor to identify the type of County leave(s) which will be taken during the FMLA absence;
    - c. provide medical certification of the situation necessitating the absence and a date on which the employee can be expected to return to work; ~~on a form provided by the County;~~
    - d. keep the supervisor informed of the status of the absence, including any change in the circumstances for which the leave is being taken, and the employee's intent to return to work; and

- e. provide a fitness for duty certification from a physician before returning to work if the leave was taken for the employee's own serious health condition.
  - 4. **Supervisor Responsibility** - If an employee requests leave for one of the purposes listed in 5.4.D.1 above, the supervisor may inform the employee that it qualifies under FMLA and ask the employee to follow the requirements covered in 5.4.D.3 above. The supervisor shall inform the employee who has requested or taken leave under FMLA, in writing, of his rights and responsibilities.
- E. **Types of Leave** - The County offers the following types of leave. A brief summary of purposes for which leave may be used is listed below. For more details, see individual subsections.

Annual Leave	Any purpose.
Sick Leave	Personal doctor appointment, illness, or short-term disability.
	Immediate family member doctor appointment or illness ( <del>three days per fiscal year</del> ).
<del>Personal</del> <b><i>Funeral Leave</i></b>	Death or life threatening illness of immediate family member ( <del>three days per incident</del> ).
Civil Leave	Serving on a jury.
	Attending court as a witness under subpoena.
Military Leave	National Guard or reserve member to engage in annual active duty for training or called forth by Governor during a disaster ( <del>15 days per Federal fiscal year</del> ).
School Leave	Meet with teachers, attend school functions, or do volunteer work in any public or private school grades K-12 <b><i>or a licensed preschool or daycare center</i></b> ( <del>eight hours per fiscal year</del> ).
Leave Without Pay	Unpaid absences from work.

- 1. **Annual Leave** - may be used by an employee to provide paid absences for any purpose.
  - a. **Accrual** -
    - 1) ***New employees will have available up to the equivalent of five (5) months of annual leave accrual upon employment. The leave will be available immediately and leave ~~accrual will begin in~~ not used will be credited to the employee's annual leave balance at the beginning of the sixth (6th) month.***



- 2) ***Beginning in the sixth (6) month of employment***, annual leave shall be accrued in accordance with the chart below:

Monthly Accrual Rate			
Annual Authorized Hours	< 5 years of service	5<15 years of service	≥ 15 years of service
< 261	1	1.5	2
261-520	2	3.0	4
521-780	3	4.5	6
781-1,040	4	6.0	8
1,041-1,300	5	7.5	10
1,301-1,560	6	9.0	12
1,561-1,820	7	10.5	14
1,821-2,080	8	12.0	16
2,081-2,340	9	13.5	18
2,341-2,600	10	15.0	20
2,601-2,860	11	16.5	22
>2,860	12	18.0	24

- 2) The maximum amount of leave that an employee may accumulate is the amount of leave he can earn in a two-year period.
- 3) The employee's leave balance must be within the maximum accumulation amount on July 1 of each year or the excess shall be forfeited.
- b. Payment for Accumulated Leave Upon Separation from Employment
- 1) ***No payment shall be made for any unused portion of annual leave if an employee leaves employment within the first five months.***
- 2) Employees shall receive the monetary equivalent of their annual leave balance up to the annual maximum accumulation ***except as noted in item one (1) above.*** If two weeks' notice is not given by an employee, the equivalent of one day shall be deducted from the leave payments for each day that the employee failed to give notice of termination up to a two-

week maximum. Exceptions may be made by the department manger.

2. Sick Leave - may be used by an employee to provide paid absences for health-related reasons as outlined below. Accumulated sick leave provides continued income for employees during periods of disability.

a. Purpose - Sick leave provides paid absences for the following reasons:

- 1) A personal illness, injury, and/or disability not incurred in the line of duty, which incapacitates the employee from being able to perform assigned duties;
- 2) Appointments for examination and/or treatment related to health when approved in advance by the department manager and when such appointments cannot reasonably be scheduled during nonwork hours.
- 3) An illness or appointment for examination and/or treatment related to the health of an immediate family member requiring the attendance of the employee and approved by the department manager, not to exceed ~~three (3)~~ twelve (12) days per fiscal year. Use of additional sick leave requested in excess of the permitted allowance may be approved if recommended by the department and approved by the Human Resource Manager.

b. Accrual

- 1) Sick leave shall be accrued in accordance with the chart below:

Annual Authorized Hours	Monthly Accrual Rate
< 261	1
261-520	2
521-780	3
781-1,040	4
1,041-1,300	5
1,301-1,560	6
1,561-1,820	7
1,821-2,080	8
2,081-2,340	9
2,341-2,600	10
2,601-2,860	11
>2,860	12

- 2) There is no limit to the amount of sick leave an employee may accrue.
- c. Payment for Accumulated Leave Upon Separation from Employment - Employees with two (2) years or more of continuous service with the County shall be compensated for their sick leave balance at the rate of one hour's pay for every four hours of accrued sick leave or ~~\$1,000~~ *the maximum amount listed below*, whichever is less. If two weeks' notice is not given by the employee, or if the employee is discharged for disciplinary reasons, sick leave payments shall be forfeited. Exceptions may be made by the department manager.

<i>Years of Service</i>	<i>Maximum Payment</i>
<i>2 - 14</i>	<i>\$1,000</i>
<i>15 - 24</i>	<i>\$2,500</i>
<i>25 or more</i>	<i>\$5,000</i>

- d. Sick Leave Bank - Employees may elect to pool accumulated sick leave into a sick leave bank for the purpose of providing participating employees additional leave for extended illness or injury. Such a bank shall be administered by employees, supported by employees, and shall cease to exist should there be insufficient employee interest.
3. Personal Funeral Leave - may be used by an employee to provide paid absences upon the death of a member of an employee's immediate family ~~or upon the life threatening illness of a member of an employee's immediate family which requires the employee's attendance.~~
- a. Amount of Leave - ~~Personal Funeral~~ *Personal Funeral* leave, if requested by the employee, shall be granted by the supervisor for up to three (3) days per death ~~or life threatening illness which requires the attendance of the employee~~ *of an employee's immediate family member*. Exceptions may be granted by the department manager.
4. Civil Leave - may be used by an employee to provide paid absences while serving on a jury, or attending court ~~as~~ a witness under subpoena.

- a. Compensation - An employee compensated for civil duties, as by **jury** or witness fees, shall either take annual or compensatory leave, or turn over compensation received to the County.
  - b. Exclusion - In those circumstances where a County employee is acting as an expert witness in a court proceeding which is not directly related to his duties for the County, the employee shall be charged annual or compensatory leave or leave without pay.
5. Military Leave - may be used by an employee who is a member of the organized reserve forces of any of the armed services of the United States, National Guard, or naval militia to provide paid absences of up to fifteen days per Federal fiscal year during which he is engaged in annual active duty for training, or **when** called forth by the Governor during a disaster.
- a. Special Circumstances - Employees who are members of the forces listed above and are involuntarily called to Federally funded military active duty shall receive the following:
    - 1) **A Military Pay Differential** in the amount of the difference between the employee's military base pay plus basic allowances for housing and subsistence, and the employee's regular County base pay. If the employee's military pay plus allowance exceeds the County pay, no differential shall be paid.
    - 2) Up to one year's accrual of sick and annual leave credited to the employee 30 days after return to employment. Exceptions may be granted by the County Administrator.
- (This section shall expire on 6/30/20045.)*
6. School Leave - may be used by an employee to provide paid absences to perform volunteer work in a school, to meet with a teacher or administrator concerning the employee's children, step-children, or children over whom the employee has custody, or to attend a school function in which such a child is participating. School leave may be used for these purposes in a public or private elementary, middle, or high school, *or a licensed preschool or daycare center.*
- a. Amount of Leave
    - 1) Employees in full-time permanent and limited-term positions may take up to eight (8) hours of School Leave **per** fiscal year.

- 2) Employees in part-time permanent and limited-term positions may take up to the number of hours of their monthly sick leave accrual rate per fiscal year.
7. Leave Without Pay - may be used by an employee to provide unpaid absences for a variety of reasons outlined below including any mutually agreeable reason.
- a. Purpose - An employee shall be on leave without pay under the following circumstances:
    - 1) Approved absence for which the employee has insufficient accrued leave, or for which the employee elects, with the concurrence of the department manager, not to use accrued leave.
    - 2) Absences authorized as a condition of employment; or
    - 3) Unapproved absence from the job during a scheduled work period;
  - b. Other Benefits and Conditions of Employment
    - 1) Sick and annual leave shall not be earned for any pay period during which an employee takes leave without pay that is not approved prior to use or which exceeds one full work day.
    - 2) An employee's *first* performance increase date after returning to work shall be ~~deferred one calendar month~~ pro-rated for each period of thirty (30) consecutive calendar days the employee is on leave without pay. ~~If the performance increase date is not changed, the first performance increase after the employee returns to work shall be prorated.~~
    - 3) The County shall pay its share of County health and life insurance premiums, and for up to three (3) months of long-term disability premiums during approved leave without pay unless otherwise provided in writing to the employee.
    - 4) Should an employee fail to return to work by the date the employee agreed to in writing, the County Administrator may declare the employee to have terminated voluntarily as of the expected return to work date, except where the employee requires additional leave under the Family and Medical Leave Act, Chapter 5, Section 5.4.D of this Manual. An employee who accepts employment elsewhere while on leave without pay, unless approved, shall be considered to have terminated

employment with the County without notice as of the original date the leave was begun.

Section 5.5 Health Related Benefits

- A. Policy Statement - James City County recognizes the importance of the physical and mental health of employees and their dependents to the employees' quality of life and productivity at work. It is the policy of James City County to provide employees with assistance to care for their physical and mental health.
  
- B. Health Insurance
  - 1. Group Health Insurance Plan - The County shall provide at least one group health insurance option.
  
  - 2. Eligibility and Cost
    - a. Employees in full-time permanent and limited term positions, their spouses, and dependent children are eligible for group health insurance coverage. The County shall pay at least a portion of the cost of the group health insurance coverage for active employees.
  
    - b. Retirees, at least 50 years of age, who have worked for the County for at least 15 years or who have worked for the County fewer than 15 years but have retired because of a line of duty injury, are eligible to continue group health insurance for themselves and their dependents until they are eligible for Medicare, if they elect to participate prior to leaving County employment. The County bears none of the cost for this coverage.
  
    - c. Employees who are terminating employment or reducing their hours to part-time may elect to continue the group insurance coverage for themselves and their dependents at that time. This option is available only for as long as the employee or eligible family member is not covered by another group plan and only for designated periods of time. The County bears none of the cost of this coverage and an administrative charge is added to the premium.
  
  - 3. Medicare - Both the County and the employee contribute to the Medicare account of employees in full-time and part-time permanent, limited-term, temporary, and on-call positions as required by law. All questions regarding Medicare coverage should be directed to the Social Security Administration.

- C. Employee Assistance Program - The County shall offer a program to provide confidential counseling and referral services.
  - 1. Eligibility - Employees in full-time and part-time permanent and limited-term positions, their spouses, and dependent children are eligible for counseling and referral services.
  - 2. Cost - The County shall bear the cost of short-term counseling and referral services. The Employee Assistance service provider shall refer the employee and dependents to an affordable community resource, including coordination with the employee's health insurance plan, for longer-term counseling.
- D. Fitness Program - The County shall assist employees in accessing at least one fitness center and in obtaining educational materials on wellness.

Section 5.6 Retirement, Long-Term Disability and Life Insurance

- A. Policy Statement - James City County recognizes the importance of income after retirement and in the event of disability, and the financial needs of surviving family members in the event of death. It is the policy of the County to assist employees in meeting these needs through financial contributions to retirement and insurance plans or by providing group plans in which employees may choose to participate at their own expense.
- B. Retirement - James City County believes that an employee is best served by having retirement income from more than one source. It is the policy of the County to contribute towards Social Security (FICA) and the Virginia Retirement System (VRS), on behalf of the employee. The County also provides an IRS Section 457 Deferred Compensation Plan to which the employee may choose to contribute.
  - 1. Social Security (FICA) - Both the County and the employee contribute to the social security account of employees in full-time and part-time permanent, limited-term, temporary, and on-call positions as required by law. All questions, including those regarding estimated retirement income, account balances, and the like, should be directed to the local Social Security Administration Office.
  - 2. VRS Service Retirement - The VRS provides an employee with retirement benefits if the employee is at least 50 years old and has at least five (5) years of contributions in the VRS. The amount of retirement benefits varies based on factors such as years of covered service, age

upon retirement, and salary. The County pays the full cost of the VRS contribution for the employee.

3. Deferred Compensation - The County sponsors a deferred compensation plan to allow County employees to save a portion of their pretax salary for retirement purposes. The plan is voluntary and is administered in accordance with appropriate Federal and State laws. Employees in full-time and part-time permanent and limited-term positions are eligible to participate.
- C. Long-Term Disability - The County recognizes the employee's need for income during a long-term disability of a temporary or permanent nature.
1. VRS Disability Retirement - Provides an employee with disability retirement if the employee becomes mentally or physically unable to perform the employee's present duties, the disability is likely to be permanent, and the employee is under age 65. Employees are eligible from the first day of employment, provided the disability did not exist at the time of employment, and regardless of whether the cause of the disability is work-related or is compensable under Workers' Compensation. The County pays the full cost of the VRS contribution for the employees.
  2. Long-Term Disability Insurance - Provides an employee with payments after the employee is out of work for a specified period of time, and is unable to perform the employee's present duties. The disability need not be permanent, and rehabilitation services are provided. Payments are coordinated with other employee income. The County pays at least a portion of the cost of coverage for the group long-term disability coverage.
- D. Life Insurance
1. VRS Standard Life Insurance - Provides payment to an employee's designated beneficiary in the event of the employee's death or to the employee in the event of his dismemberment. A medical examination is not required in order to be covered by this insurance. The County pays the full cost of the coverage. The insurance continues at a reduced amount for employees who retire and receive VRS payments and may be converted to an individual policy by employees who are terminating employment.
  2. VRS Optional Life Insurance - Employees may, at their own expense, purchase additional life insurance for themselves as well as coverage for their spouses and dependent children through a VRS-sponsored program. A medical examination is not required for some levels of coverage.



Section 5.7 Workers' Compensation

A. Policy Statement

When an employee experiences an employment-related injury or illness as defined in the Workers' Compensation Act of the Virginia Code, the County provides medical reimbursement lost wage payments, and fixed awards as outlined in the Code. The County also provides a salary supplement to help offset the difference between the lost wage payment and the employee's normal net pay, after taxes. Where the injury or illness is outside the scope of the Code, employees are encouraged to contact the Human Resource Department to determine what other benefits may apply.

B. Eligibility

Employees in full-time and part-time permanent, limited-term, temporary, and on-call positions are eligible for workers' compensation benefits.

Section 5.8 Tax-Related Benefits

- A. Policy Statement - James City County recognizes the value of paying certain expenses outlined in IRS Code Section 125 with pretax dollars. It is the policy of the County to offer such opportunities where there are a sufficient number of interested employees.
- B. Pretax Health Insurance Premiums - Also called Premium Conversion, allows employees who pay a portion of their County-sponsored group health insurance plan premiums to pay them before taxes. Employees are automatically enrolled unless they waive participation.
- C. Reimbursement Accounts - Also called Flexible Spending Accounts, allow employees in full-time and part-time permanent and limited-term positions who enroll in the program to pay for eligible health care or dependent care expenses with pretax dollars on a reimbursable basis.

Section 5.9 Credit Union

Employees in full-time and part-time permanent, limited-term, temporary, and on-call positions and members of their families are eligible to join any credit union with which James City County is affiliated and receive the membership benefits available.

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**CHAPTER 8**

**Grievance Procedure**

Section 8.1 Policy

Section 8.2 Legal Basis

Section 8.3 Definitions

Section 8.4 Time Periods

Section 8.5 Compliance with Procedural Requirements

Section 8.6 Eligibility to Use the Procedure

Section 8.7 Grievability

Section 8.8 Decisions Regarding Grievability

Section 8.9 First Step: Immediate Supervisor Level

Section 8.10 Second Step: Department Manager Level

Section 8.11 Third Step: County Administrator Level

Section 8.12 Fourth Step: The Grievance Panel Hearing

Section 8.13 Composition of the Grievance Panel

Section 8.14 Rules for Grievance Panel Hearing

Section 8.15 Decision of Grievance Panel

Section 8.16 Implementation of Remedy

Section 8.17 Human Resource Department Responsibilities

Section 8.18 Consolidation of Grievances

Section 8.19 Voluntary Termination of Grievance

CHAPTER 8

GRIEVANCE PROCEDURE

Section 8.1 Policy

To support our value of "Communicating openly and constructively and working in a collaborative manner," James City County provides a process to afford an immediate and impartial method for the resolution of disputes that may arise between the County government and employees.

Section 8.2 Legal Basis

James City County hereby provides this Grievance Procedure for all eligible employees in accordance with §15.2-1506 et seq. of the Code of Virginia.

Sworn Police personnel also have access to the Law Enforcement Officers' Procedural Guarantee Act, in accordance with the Code of Virginia, Chapter 5, Title 9.1 (§ 9.1-500 et. eq.).

Section 8.3 Definitions

The following definitions shall apply to this Chapter:

- A. County Administrator - shall be either the County Administrator or his designee.
- B. Human Resource Manager - shall be either the Human Resource Manager or her designee.
- C. Department Manager - shall also include the General Registrar, County Treasurer, Commissioner of the Revenue, Library Director, and Executive Director, Williamsburg Area Medical Assistance Corporation.
- D. Grievant - shall be any employee eligible to use this procedure having a grievance, as defined in Section 8.7 (A).
- E. Management - shall be the Board of Supervisors and its designees who establish policy for James City County.
- F. Days - shall be defined as calendar days, including weekends and holidays.
- G. Workdays - shall be defined as Monday through Friday, excluding weekends and legal holidays, as defined in §2.2-3300 of the Code of Virginia.

Section 8.4 Time Periods

- A. Computation of Time - For the purpose of the Grievance Procedure, the time period for any action or report shall begin on the day following that on which the action is to be taken or report rendered.

If the time period ends on a weekend or holiday, the last day of the time period shall be the first working day following the weekend or holiday.

In all instances, the deadline for any action or report is 5:00 p.m. on the last day of the time period.

- B. Failure to Comply with Time Limits - Time limits established under this procedure are intended to be strictly construed and enforced to ensure a timely resolution to the grievance. Failure by either party to comply with the time limits may result in a decision in favor of the other party in accordance with Section 8.5 below.
- C. Time Limit Extensions - Any time limits may be extended if both parties agree to such extensions in writing.

Section 8.5 Compliance with Procedural Requirements

- A. Effect of Noncompliance - Failure of either party to comply with all substantial procedural requirements of the Grievance Procedure, including the time limits imposed by this Procedure, without just cause, shall result in a decision in favor of the other party on any grievable issue, provided the party not in compliance fails to correct the noncompliance within five (5) workdays of receipt of written notification of the compliance violation.
- B. Notification of Noncompliance - Written notification by the Grievant shall be made to the Human Resource Department. The Human Resource Department shall be responsible for providing written notification to the appropriate party.

If the Grievant is not in compliance, the immediate supervisor, Department Manager, or County Administrator shall notify the Human Resource Department. The Human Resource Department shall be responsible for providing written notification to the Grievant.

- C. Determinations of Noncompliance - The County Administrator shall determine compliance issues. The County Administrator may require a clear written explanation of the basis for just cause extensions or exceptions.

Compliance determinations made by the County Administrator shall be subject to judicial review by filing a petition with the Circuit Court within thirty days of the compliance determination.

Section 8.6    Eligibility to Use the Procedure

- A.    Eligible - The Grievance Procedure shall apply to all non-probationary employees in permanent and limited-term positions in the following:
1.    James City County, James City Service Authority, Williamsburg Area Transport, Williamsburg Regional Library, and Williamsburg Area Medical Assistance Corporation;
  2.    Department of Social Services of James City County, in accordance with Section 15.2-1507(A)(4) of the Code of Virginia;
  3.    Office of the General Registrar of James City County;
  4.    Office of the Commissioner of the Revenue; and
  5.    Office of the Treasurer
- B.    Ineligible - The Grievance Procedure shall not apply to the following:
1.    Appointees of elected groups or individuals;
  2.    Officials and employees who by charter or other law serve at the will or pleasure of an appointing authority;
  3.    Deputies and executive assistants to the chief administrative officer of James City County;
  4.    Agency heads or chief executive officers of James City County defined as department managers reporting directly to the County Administrator;
  5.    Employees whose terms of employment are limited by law;
  6.    Employees in temporary or on-call positions, or employees in their probationary period; and
  7.    Law-enforcement officers as defined in Chapter 5 (§9.1-500 et seq.) of Title 9.1 of the Code of Virginia whose grievance is subject to the provisions of Chapter 10.1 of the Code of Virginia and who have elected to proceed pursuant to those provisions in the resolution of their grievance, or any other employee electing to proceed pursuant to any other existing procedure in the resolution of his grievance.

- C. Inclusion of Excepted Categories - The Board of Supervisors may include employees in any of the excepted categories, found in Section 8.6(B), within the coverage of this Grievance Procedure.
- D. Officers and Employees Excluded from Procedure - The County Administrator shall determine the officers and employees excluded from the Grievance Procedure, pursuant to Subsection (B), and shall be responsible for maintaining an up-to-date list of the affected positions. Accordingly, the County Administrator has determined that the following officers and employees are excluded from the Grievance Procedure:
1. Assistant County Administrator
  2. Circuit Court Judge
  3. Clerk of Circuit Court and employees of that office
  4. Commissioner of Revenue
  5. Commonwealth Attorney and employees of that office
  6. Community Services Manager
  7. County Administrator
  8. County Attorney
  9. Court Appointed Special Advocate (CASA) Program employees
  10. Development Manager
  11. Financial and Management Services Manager
  12. Fire Chief
  13. Fire Marshal
  14. General Registrar
  15. Human Resource Manager
  16. James City Service Authority General Manager
  17. Library Director
  18. Merrimac Juvenile Detention Center Director and employees
  19. Executive Director, Williamsburg Area Medical Assistance Corporation
  20. Police Chief
  21. Sheriff and employees of that office
  22. Treasurer
  23. Victim-Witness Assistance Program employees
  24. Virginia Peninsula Regional Jail Director and employees

#### Section 8.7 Grievability

- A. Issues that are Grievable - A grievance shall be a complaint or dispute by an eligible employee relating to her employment, including, but not limited to, the following:
1. Disciplinary actions, including dismissals resulting from formal discipline or unsatisfactory job performance, demotions, and suspensions;

2. The application of personnel policies, procedures, rules and regulations, including the application of policies involving matters referred to in Section 8.7 (B)(3) below;
3. Discrimination on the basis of race, color, creed, religion, political affiliation, age, disability, national origin, sex or sexual orientation;
4. Acts of retaliation as the result of the use of or participation in the grievance procedure or because the employee has complied with any law of the United States or of the Commonwealth, has reported any violation of such law to a governmental authority, has sought any change in law before the Congress of the United States or the General Assembly, or has reported an incidence of fraud, abuse, or gross mismanagement. For the purpose of this subsection, there shall be a rebuttable presumption that increasing the penalty that is the subject of the grievance at any level of the grievance shall be an act of retaliation; and,
5. Any additional complaint or dispute by an employee relating to his employment not specifically excluded in Section 8.7 (B) below.

B. Issues That are Not Grievable - In accordance with §15.2-1507 of the Code of Virginia, local governments retain the exclusive right to manage the affairs and operations of government. Accordingly, the following issues are deemed nongrievable:

1. The establishment and revision of wages or salaries including performance evaluations and/or accompanying pay raises, position classifications or general benefits;
2. Work activity accepted by the employee as a condition of employment or work activity which may reasonably be expected to be a part of the job content;
3. The contents of ordinances, statutes or established personnel policies, procedures, rules and regulations;
4. The failure to promote, except where an employee can show established promotional policies or procedures were not followed or fairly applied;
5. The methods, means and personnel by which work activities are to be carried on;
6. Termination, layoff, demotion or suspension from duties because of lack of work, reduction in work force, or job abolition except when such action affects an employee who has been reinstated

within the previous six months as the result of the final determination of a grievance.

In any grievance brought under the exception to this subsection, the action shall be upheld upon a showing by the County that there was a valid business reason for the action and the employee was notified of such reason in writing prior to the effective date of the action;

7. The hiring, promotion, transfer, assignment and retention of employees within the County service; and
8. The relief of employees from duties of the County in emergencies.

#### Section 8.8 Decisions Regarding Grievability and Employee Eligibility

- A. Who May Raise Issue of Grievability - The Grievant or his Department Manager may raise the issue of grievability or employee eligibility.
- B. Deadline for Raising Issue of Grievability - The issues of grievability and employee eligibility may be raised at any time prior to the Panel Hearing described in Section 8.12 below. Parties are encouraged to raise the issues of grievability and employee eligibility as soon as practicable.

Once raised, the issue shall be resolved before further processing of the grievance. A request that grievability be determined shall suspend the time limits under this procedure. Time limits shall begin to run again the day after the decision on grievability is made by the County Administrator or the Circuit Court.

- C. Procedure for Raising Issue of Grievability - Pursuant to §15.2-1507 (A)(9) of the Code of Virginia, decisions regarding grievability and employee eligibility shall be made by the County Administrator in accordance with the following procedure:
  1. The Grievant or her Department Manager shall raise the issue of grievability or employee eligibility by filing Grievance Form B with the County Administrator. The party filing Grievance Form B shall also provide copies to the other party and the Human Resource Department.
  2. The other party has, within five (5) days of receipt of Grievance Form B, the option to file a written response with the County Administrator. The other party shall provide copies of the response to all filing parties and the Human Resource Department.
  3. The County Administrator shall render his decision on Grievance Form B within five (5) days of receipt of the written response, or



within ten (10) days of the initial request if no response is filed. The County Administrator shall provide copies of his decision to all parties and the Human Resource Department.

- D. Appealing Decision of County Administrator - Decisions by the County Administrator that an issue is not grievable or that an employee is not eligible to file a grievance may be appealed by the Grievant to the Circuit Court of James City County for a hearing on the issue as provided in §15.2-1507(A)(9) of the Code of Virginia:
1. Proceedings for review of the decision of the County Administrator shall begin by the Grievant submitting written notification of intent to appeal on Grievance Form B to the County Administrator within ten (10) days from the date of receipt of his decision. The Grievant shall also provide a copy of Grievance Form B to the Human Resource Department.
  2. Within ten (10) days after receiving Grievance Form B, the County Administrator shall transmit the following to the Clerk of Circuit Court of James City County: a) a copy of his decision; b) a copy of the written notification to appeal; and c) any exhibits the County Administrator used to make the decision. The County Administrator shall provide to the Grievant a list of the exhibits furnished to the Court.
  3. The failure of the County Administrator to transmit the record within the allowed time period shall not prejudice the rights of the Grievant.
  4. If the County Administrator fails to transmit the record within the time allowed, the Circuit Court, on motion of the Grievant, may issue a Writ of Certiorari requiring the County Administrator to transmit the record on or before a certain date.
  5. Within thirty (30) days of receipt by the Clerk of Court, the Court, sitting without a jury, shall hear the appeal on the record and such additional evidence as may be necessary to resolve any controversy as to the correctness of the record. The Court, in its discretion, may receive such other evidence as the ends of justice may require. The Court may affirm, reverse or modify the decision of the County Administrator. The decision of the Court shall be rendered no later than the fifteenth (15th) day from the date of conclusion of the hearing. The decision of the Court is final and is not appealable.
- E. Resolution of Nongrievable Complaints - The classification of a complaint as **nongrievable** by either the County Administrator or the Circuit Court of James City County shall not be construed to restrict any employee's right

to seek, or management's right to provide, customary administrative review of complaints outside of the scope of the Grievance Procedure.

Section 8.9 First Step: Immediate Supervisor Level

A. Informal Process

1. Time Limit for Notifying Immediate Supervisor of Grievance - No later than twenty (20) days after the occurrence or condition giving rise to the grievance, the employee shall identify the grievance verbally to her immediate supervisor.

The failure of the employee to identify the grievance within the time specified above shall constitute a forfeiture and a waiver of any rights to proceed further and shall terminate the grievance.

2. Immediate Supervisor's Response - The Grievant's immediate supervisor shall provide a verbal response within seven (7) days of the Grievant's notification.
3. Resolution - If the parties reach a mutually acceptable resolution to the grievance, the grievance is terminated and no further steps are necessary.

If the Grievant is not satisfied with her immediate supervisor's response, the Grievant may proceed with filing a written grievance, as described below.

B. Filing Written Grievance

If the parties do not reach a satisfactory resolution through the informal process, the Grievant shall notify the Human Resource Department of the intent to file a written grievance and complete a copy of Grievance Form A.

1. Time Limit for Filing Written Grievance - The Grievant shall deliver a copy of the written grievance to his immediate supervisor within seven (7) days of the immediate supervisor's verbal response described above. The Grievant shall also provide the Human Resource Department with a copy of the written grievance.
2. Content of Written Grievance - The Grievant shall identify, in detail, the nature of the grievance, including all facts giving rise to the grievance and the expected remedy.

Grievants shall be entitled, should they prevail in their grievance, only to the relief specifically requested. Relief requested may include reversal of action taken by the County, such as, but not

limited to, reinstatement to a former position; back pay; a lesser disciplinary action, or removal of information contained in the Grievant's personnel files or other files maintained by the County.

3. Immediate Supervisor's Response to Written Grievance - The Grievant's immediate supervisor shall provide a written response to the Grievant within seven (7) days of the supervisor receiving the written grievance. The supervisor shall also provide a copy of the response to the Human Resource Department.
4. Resolution - If the parties reach a mutually acceptable resolution to the grievance at this stage, the parties shall so indicate on Grievance Form A, and shall provide a copy to the Human Resource Department.

If the Grievant is not satisfied with the immediate supervisor's response, the Grievant may proceed to the Second Step – Department Manager level, described in Section 8-10 below.

If the Grievant's immediate supervisor is the Department Manager, the Grievant shall skip the Second Step of the Grievance Procedure and go directly to the Third Step – County Administrator level, described in Section 8.11 below. If the Grievant's immediate supervisor is the County Administrator, the Grievant shall proceed directly to the Fourth Step – Grievance Panel level, described in Section 8.12 below.

#### Section 8.10 Second Step: Department Manager Level

If the parties do not reach a satisfactory resolution of the grievance at the First Step above, the Grievant shall so indicate on Grievance Form A and notify the Human Resource Department.

- A. Time Limit for Proceeding with Grievance - The Grievant shall submit Grievance Form A, including the immediate supervisor's response, to the Department Manager within seven (7) days of receipt of the immediate supervisor's written response.
- B. Meeting with Department Manager - Within seven (7) days of receipt of the written grievance, the Department Manager shall schedule and hold a meeting with the Grievant to review the Grievance. The Department Manager shall notify the Human Resource Department of the time and place of the scheduled meeting.

The only persons who may be present at this meeting are the Department Manager, the Grievant, and appropriate witnesses for each side. Witnesses shall be present only when actually providing testimony.

The parties may adjourn the meeting to another time or place by mutual agreement. The parties shall notify the Human Resource Department of the new dates and places for the meeting.

- C. Department Manager's Response to the Grievance - The Department Manager shall provide a written response to the Grievance within seven (7) days after the conclusion of the meeting. The Department Manager shall provide a copy of the written response to the Grievant and to the Human Resource Department.
- D. Resolution - If the parties reach a mutually acceptable resolution to the grievance at this stage, the parties shall so indicate on Grievance Form A, and shall provide a copy to the Human Resource Department.

If the Grievant is not satisfied with the immediate supervisor's response, the Grievant may proceed to the Third Step – County Administrator Level.

#### Section 8.11 Third Step: County Administrator Level

If the parties do not reach a satisfactory resolution of the grievance at the previous step, the Grievant shall so indicate on Grievance Form A and notify the Human Resource Department.

- A. Time Limit for Proceeding with Grievance - The Grievant shall provide a copy of Grievance Form A, including the responses from all previous steps, to the County Administrator within seven (7) days of receipt of the response.
- B. Meeting with County Administrator - Within seven (7) days of receipt of the written Grievance, the County Administrator shall schedule and hold a meeting with the Grievant to review the grievance. The County Administrator shall notify the Human Resource Department of the time and place of the scheduled meeting.

***At this meeting, the County Administrator, Grievant, and appropriate witnesses for each side may be present.*** Witnesses shall be present only when actually providing testimony.

The Grievant, at her option, may have a representative, including legal counsel, present at the meeting. The Grievant shall bear any cost involved in employing representation and in preparing the case. The person representing the Grievant shall not serve as both a witness and a representative.

If the Grievant is represented by legal counsel, the County likewise has the option of being represented by counsel. The Grievant shall notify the County Administrator and the Human Resource Department at least five

(5) days prior to the meeting if the Grievant will have legal counsel present at the meeting.

The parties may adjourn the meeting to another time or place by mutual agreement. The parties shall notify the Human Resource Department of the new dates and places for the meeting.

- C. County Administrator's Response to the Grievance - The County Administrator shall provide a written response to the grievance within seven (7) days after the conclusion of the meeting. The County Administrator shall provide a copy of the written response to the Grievant and to the Human Resource Department.
- D. Resolution - If the parties reach a mutually acceptable resolution to the grievance at this stage, the parties shall so indicate on Grievance Form A, and shall provide a copy to the Human Resource Department.

If the Grievant is not satisfied with the immediate supervisor's response, the Grievant may proceed to the Fourth Step – Grievance Panel Hearing.

#### Section 8.12 Fourth Step: The Grievance Panel Hearing

If a satisfactory resolution to the Grievance is not reached at the Third Step, the Grievant shall notify the Human Resource Department and so indicate on Grievance Form A, and request a hearing before a Grievance Panel (Panel).

- A. Time Limit for Proceeding with Grievance - The Grievant shall submit the request for a hearing to the Human Resource Department within seven (7) days of receipt of the County Administrator's response to the grievance.
- B. Selection of Panel Members - A new impartial Grievance Panel shall be created for each grievance. The Human Resource Manager shall coordinate the Panel selection in accordance with the procedures set forth in Section 8.13, below.

If the Human Resource Manager is a party to the grievance, the Grievant shall submit the request form to the County Administrator and the County Administrator shall make the necessary arrangements.

#### Section 8.13 Composition of the Grievance Panel

- A. The Panel shall be composed of three (3) members who are County employees and who shall be chosen in the following manner: One member shall be appointed by the Grievant, one member shall be appointed by the County Administrator, and the third member shall be selected by the first two members. To ensure objectivity, the Panel shall not be composed of the following persons:

1. The Grievant;
  2. The County Administrator;
  3. The Assistant County Administrator;
  4. The Grievant's Department Manager
  5. The Grievant's immediate supervisor;
  6. Any person directly involved with the grievance being heard or the complaint or dispute giving rise to the grievance;
  7. Persons residing in the same household as the Grievant;
  8. The following relatives of anyone directly involved with the grievance or that person's spouse: spouse, parent, child, descendants of a child, sibling, niece, nephew, and first cousin;
  9. An attorney having direct involvement with the subject matter of the grievance or a partner, associate, employee, or co-employee of the attorney; and
  10. Managers who are in the direct line of supervision of the Grievant.
- B. Both the Grievant and the County Administrator shall make their appointments to the Panel on Grievance Form C. These two members shall select the third member. All appointments shall be made by notifying the Human Resource Manager on Grievance Form C. A complete panel shall be designated on Grievance Form C within ten (10) days of the request for a panel hearing.
- C. In the event the first two members cannot reach an agreement as to the third member within ten (10) days, as provided above, the Human Resource Manager, after confirming such fact, shall immediately notify the County Attorney's Office. The County Attorney shall request the Chief Judge of the Circuit Court to appoint the third member.
- D. The third member of the Panel shall serve as Chairperson. The Chairperson shall set the time for the hearing and notify the Grievant, the County Administrator, and the Human Resource Manager. The Grievant and the County Administrator shall be responsible for arranging the presence of their witnesses. The hearing shall be held as soon as possible after the date of the original request for a hearing, allowing sufficient time for access to records as specified in 8.14(B) below. Either party may have an attorney or a representative of his choice present at this hearing.

#### Section 8.14 Rules for Grievance Panel Hearing

- A. The Panel is constituted solely for the purpose of determining whether a grievance filed by an employee is merited and what remedy, if any, should be provided. The Panel may not formulate or change policy, rules or procedures. The Panel shall determine whether the Grievant has demonstrated, by a preponderance of the evidence, that the action complained of was without cause, or done in violation of a law, regulation, procedure, or other policy. It shall not otherwise substitute its judgment for that of management.

- B. The Human Resource Manager shall provide the Panel with copies of the Grievance Forms, including any attachments, prior to the hearing, and provide the Grievant with a list of documents furnished to the Grievance Panel.

The Grievant and his attorney shall be allowed access to and copies of all relevant files or materials intended to be used in the proceeding at least ten (10) days prior to the scheduled hearing.

- C. Documents, exhibits, and lists of witnesses are to be exchanged between the parties at least ten (10) days in advance of the hearing.

- D. The Panel shall conduct the hearing as follows:

1. Persons Who May Attend the Hearing - The Grievant, and her attorney or representative and the County Administrator and his attorney or representative, may be present at the hearing. The Grievant shall notify the County Administrator and the Human Resource Department if she intends to have an attorney present at the hearing at least ten (10) working days prior to the hearing. Failure to provide this notice shall preclude the Grievant from having an attorney present at the hearing.

Additionally, the parties may call witnesses to testify on their behalf. Such witnesses may only be present during their own testimony.

2. Issues Covered - The issues presented to the Panel shall be limited to those issues arising out of the grievance and the expected remedy, as identified by the Grievant on Grievance Form A.

Unless the Grievant and the County Administrator shall agree, in writing, the Panel shall consider any Grievance without regard to any proposed disposition at any other steps in the Procedure.

The Panel may at any time ask the parties or their representatives for statements clarifying the issues involved in the grievance.

3. Exhibits and Evidence - The Grievant or the County Administrator may introduce exhibits into evidence. Such exhibits shall be marked and made a part of the record.

The Panel may, at its discretion, exclude any such exhibits or evidence if the party introducing the evidence did not disclose the evidence to the other party at least ten (10) days prior to the hearing.

4. Procedure - The Grievant shall proceed first, and shall bear the ultimate burden of persuasion. At the conclusion of the Grievant's evidence, the County Administrator shall have the opportunity to present his evidence.

The parties may offer evidence and cross examine witnesses and shall produce such additional evidence as the Panel may deem necessary to an understanding and determination of the dispute. There shall be no formal rules of evidence for the Panel; however, the Panel shall be the judge of the relevancy of any evidence offered. All evidence shall be taken in the presence of the Panel and the parties, except by mutual consent of the parties.

At the conclusion of the County Administrator's presentation, the Chairperson shall specifically inquire of all parties whether they have any further proof to offer or witnesses to be heard. If there is none, the Chairperson shall permit the parties to summarize their cases and shall then declare the hearing closed.

5. Reopening Hearing - The hearing may be reopened by the Panel on its own motion or upon application of a party for good cause shown at any time before a final decision is made.
6. Record Retention - Upon the request of the Panel, the County Administrator or the Grievant, the Human Resource Manager shall ensure that a record of the hearing is made and retained for not less than 12 months. The record may be in writing or by a taped recording. The Grievant shall be entitled to a copy of such record ~~upon payment of~~ **and may be charged** a reasonable fee, including the costs of labor, in providing the record.
7. Policy Interpretation - The Human Resource Manager may be called upon by the Panel as a witness at any time to provide specific policy interpretation or clarification of applicable County policy and these procedures.
8. Procedures Not Addressed - In all matters not otherwise covered by this section, the Panel shall determine the procedures to be followed.

#### Section 8.15 Decision of Grievance Panel

- A. Written Decision by Board - The Panel Chairperson shall deliver the decision of the Panel, in writing, on Grievance Form D to the Grievant, and the County Administrator, not later than fifteen (15) days after the completion of the hearing. The decision shall state in full the reasons for the decision, and the remedy to be granted. Decisions shall be by majority



vote of the entire Panel. The decision of the Panel shall be final and binding and shall be consistent with law and written policy.

- B. Consistency with Written Policy - The question of whether the decision of the Panel is consistent with written policy shall be determined by the Human Resource Department Manager, unless she has a direct personal involvement with the event or events giving rise to the grievance, in which case the decision shall be made by the Commonwealth Attorney of James City County. The Commonwealth Attorney shall request the Grievance Panel to reconsider any decision which in his judgment is not consistent with the policies applicable to grievance resolution. He shall not disturb any decision consistent with the written policies.
- C. Remedy - If the Panel determines that the Grievant prevails on any grievable complaint or dispute, it may remedy the complaint by awarding all or some of the relief that the Grievant has specifically requested. The Panel may not award relief beyond that requested by the Grievant, nor may it increase the severity of any action taken by the County.

If the Panel finds procedures governing promotion, demotion, transfer, hiring or layoff were not followed, it shall remand the grievance to that Department Manager with the instruction that the action taken be rescinded, and proper procedures be followed.

#### Section 8.16 Implementation of Remedy

- A. The County Administrator shall implement any remedy that may be ordered by the Grievance Panel, provided that such decision is consistent with law and written policies.
- B. The Grievant or the County Administrator may petition the Circuit Court for an order to implement the decision of the Panel.
- C. The review of the Circuit Court shall be limited to the question of whether the Panel's decision was consistent with provisions of law and written policy.
- D. If the Circuit Court finds the Panel's decision was consistent, the County Administrator will implement the decision.

#### Section 8.17 Human Resource Department Responsibilities

The Human Resource Department shall serve as an impartial administrator of this process. The Human Resource Department shall: Open a file and assign a number to the grievance; ensure that all parties are aware of the process; monitor procedures and time frames; notify either party of noncompliance; be informed of the status of the grievance by both parties at each step; maintain appropriate documentation, and perform all other responsibilities as specified in the

Procedure. In the event that the Grievant is an employee of the Human Resource Department, the Assistant County Administrator shall serve as the impartial administrator of the process.

#### Section 8.18 Consolidation of Grievances

If more than one grievance is filed arising from the same factual circumstances, the County Administrator may, at any time prior to a panel hearing, consolidate those grievances for joint processing unless one of the Grievants objects. If the grievances are consolidated, all time limits set forth in this Procedure shall thereafter be calculated from the date of the last filed Grievance. Once consolidated, the grievances shall all be processed as a single matter.

#### Section 8.19 Voluntary Termination of Grievance

A Grievant may voluntarily terminate the Grievance at any time by notifying the Human Resource Department. The Human Resource Department shall notify all parties to the Grievance.

The decision to voluntarily terminate a grievance shall be final and shall preclude the Grievant from filing a grievance arising under the same facts.

Revised: June 2, 2004  
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**NEW TOWN - SECTION 5 PROFFERS**

THESE PROFFERS are made as of this 23rd day of April, 2004, by **NEW TOWN ASSOCIATES, LLC**, a Virginia limited liability company (together with its successors and assigns, "Owner") (index as a "grantor"); and the **COUNTY OF JAMES CITY, VIRGINIA** (the "County") (index as the "grantee").

**RECITALS**

**R-1.** Owner is the owner of certain real property in James City County, Virginia, being more particularly described on **EXHIBIT A** attached hereto and made a part hereof (the "Property").

**R-2.** The Property is currently subject to the New Town Proffers (the "New Town Proffers"), dated December 9, 1997, of record in the Clerk's Office of the Circuit Court for the City of Williamsburg and County of James **City**, Virginia (the "Clerk's Office") as document no. 980001284.

**R-3.** The New Town Proffers provide for development of the Property as part of the New Town project, in accordance with (i) a conceptual master land use plan entitled, "NEW TOWN PLAN" prepared by Cooper, Robertson & Partners and AES Consulting Engineers, dated July 23, 1997, and revised December 8, 1997 (the "New Town Plan of Development"), and (ii) design guidelines entitled "NEW TOWN DESIGN GUIDELINES, JAMES CITY COUNTY,

**Prepared by:**  
**Kaufman & Canoles, P.C.**  
**P.O. Box 6000**  
**Williamsburg, VA 23188**

VIRGINIA" prepared by Cooper, Robertson & Partners dated September 3, 1997 (the "New Town Design Guidelines").

R-4. Owner has applied for a rezoning of the Property from R-8, Rural Residential with proffers, in part, and M-1, Limited Business/Industrial with proffers, in part, to M-1, Limited Business/Industrial, with proffers. The rezoning of the Property to M-1, Limited Business/Industrial, with proffers, is in fact consistent both with the land use designation for the Property on the County's Comprehensive Plan and the statement of intent for the M-1, Limited Business/Industrial zoning district set forth in Section 24-410 of the County's Zoning Ordinance, ("Zoning Ordinance"), Section 24-1 *et seq.* of the James City County Code ("County Code"), in effect on the date hereof.

R-5. Owner has submitted an update to the New Town Community Impact Statement previously filed with the County's Director of Planning which satisfies the New Town Proffers and the requirements of Section 24-23(a)(2) and Section 24-515(c) of the Zoning Ordinance, which update to the Community Impact Statement includes, without limitation, a Fiscal Impact Statement which has been accepted by the County as satisfying all requirements for submission of such Fiscal Impact Study in connection with the rezoning request referenced above. The update to the Community Impact Statement, as well as the Community Impact Statement, are on file with the County's Director of Planning.

R-6. Pursuant to the New Town Proffers, a Phase I Archaeological Study recommending no further treatment or further study for the Property, entitled "A Phase I Archaeological Survey of the Casey Property, James City County, Virginia", dated July 30, 1990, prepared for the Casey Family c/o Virginia Landmark Corporation by the William and

Mary Archaeological Project Center, has been submitted to, and reviewed and approved by, the County Director of Planning.

R-7. Owner's predecessor in title has caused a small whorled pogonia survey to be conducted on the Property in 1996 and 2001 revealing that no small whorled pogonia plants or small whorled pogonia habitat exist on the Property. The reports generated from these surveys are entitled "SEARCHES FOR THE SMALL WHORLED POGONIA, ISOTRIA MEDEOLOIDES, ON THE CASEY TRACT, CHISEL RUN WATERSHED, WILLIAMSBURG/JAMES CITY COUNTY, VIRGINIA SPRING/SUMMER 1996" (the "1996 Report") and "SEARCHES FOR THE SMALL WHORLED POGONIA, ISOTRIA MEDEOLOIDES, ON THE WINDSORMEADE PROPERTY JAMES CITY COUNTY, VIRGINIA JULY 2001" (the "2001 Report"). The 1996 Report and the 2001 report were prepared by Dr. Donna M. E. Ware of the College of William & Mary for Williamsburg Environmental Group, Inc. A copy of the 1996 Report and 2001 Report are on file with the County's Director of Planning.

R-8. In accordance with the requirements of Section 4 of the New Town Proffers, Owner has submitted to the County an updated traffic study entitled "TRAFFIC STUDY FOR 8.865 ACRES OF NEW TOWN LAND IN SECTION 5 OF NEW TOWN, JAMES CITY COUNTY, VIRGINIA", dated January 19, 2004, prepared by DRW Consultants, Inc., Midlothian, Virginia (the "Traffic Study"), which is on file with the County's Director of Planning. The Traffic Study recommended no traffic improvements in connection with this rezoning request.

R-9. Pursuant to subsection 2(b) of the New Town Proffers, there has been established a Design Review Board ("DRB") to oversee development of the Property in accordance with the New Town Proffers.

R-10. The provisions of the Zoning Ordinance, may be deemed inadequate for protecting and enhancing orderly development of the Property. Accordingly, Owner, in furtherance of its application for rezoning, desires to proffer certain conditions, which are specifically limited solely to those set forth herein, in addition to the regulations provided for by the Zoning Ordinance for the protection and enhancement of the development of the Property, in accordance with the provisions of Section 15.2-2296 *et seq.* of the Code of Virginia (1950), as amended (the "Virginia Code") and Section 24-16 of the Zoning Ordinance.

R-11. The County constitutes a high-growth locality as defined by Section 15.2-2298 of the Virginia Code.

NOW, THEREFORE, for and in consideration of the approval by the Board of Supervisors of the County of the rezoning set forth above and the Section 5 Plan of Development (defined below) and all related documents described herein, and pursuant to Section 15.2-2296, *et seq.*, of the Virginia Code, Section 24-16 of the Zoning Ordinance, Owner agrees that all of the following conditions shall be met and satisfied in developing the Property.

PROFFERS:

1. Application of New Town Proffers, Plan of Development and Design Guidelines.

Except as otherwise specifically noted in paragraph 2 herein, these Proffers shall supersede, amend and restate in their entirety the New Town Proffers, the New Town Plan of

Development and the New Town Design Guidelines, but only as applicable to the Property. Except as set forth in paragraph 2 of these Proffers, no portion of the New Town Proffers, the New Town Plan of Development or the New Town Design Guidelines shall apply to or control use or development of the Property. Accordingly, this document contains the only proffers hereinafter applicable to the Property. Owner shall not be required to submit to the DRB nor shall the DRB have any review authority over any subdivision plats, site plans, landscaping plans, architectural plans and elevations, or other development plans for the Property.

2. Development. The Property shall be developed in one or more phases but subject to the buffers, development restrictions and density limitations shown on that certain master plan of development entitled: "NEW TOWN SECTION 5 MASTER PLAN, BERKELEY DISTRICT, JAMES CITY COUNTY, VIRGINIA" dated January 21, 2004, revised April 23, 2004, made by AES Consulting Engineers (the "Section 5 Plan of Development") which is incorporated herein by reference. All of such development shall be expressly subject to such changes in configuration, composition and location as may be required by other governmental authorities (if any) having jurisdiction over such development.

3. Visual Screening Buffer. In order (i) to ensure development which minimizes the environmental and land use impacts associated with noise, glare, and dust, (ii) to reduce the visual impact of development of the Property, and (iii) to preserve the character of adjacent sections of New Town, Owner shall provide a natural and/or planted buffer along the southern and western boundary lines of the Property adjacent to Sections 3 and 6 of New Town (the "Visual Buffer") compliant with the following:

(a) A landscaping plan for the portion of the Visual Buffer located on area(s) of the Property then proposed for development shall be submitted to the County Director of Planning for review and approval before or as a part of site plan approval for development on any portion(s) of the Property adjoining the southern or western boundary line(s) of the Property. Plantings within the Visual Buffer shall be native species only, and subject to approval by the County Environmental Director so as to assure minimization of adverse impacts on wetland(s) buffering caused by such plantings.

(b) The Visual Buffer shall occupy the area of the Variable Width Wetlands Buffer created for environmental protection and shown on the Section 5 Plan of Development, located on the southern and western boundary lines of the Property.

(c) The Visual Buffer shall be left in its undisturbed natural state and supplemented only as necessary in order to create an effective visual screen which complies with the transitional screening requirements of Section 24-98 or successor provision of the Zoning Ordinance.

(d) In the event that trees and/or vegetation within the above-referenced Variable Width Buffer are disturbed due to establishment of stormwater management facilities, best management practices, placement of utilities or activities otherwise permitted by the County Code, the Visual Buffer may be required by the County Planning Director to be supplemented so as to effectively protect adjacent users in New Town from visual impacts of development of the Property. The intent of this proffer and buffering undertaken pursuant to its terms is to preserve the visual enjoyment of the appearance, architectural and design standards governing the



remainder of New Town, given the industrial use to be made of the Property. Supplementation of the Visual Buffer may include the following:

- i) specification of building colors within the Property;
- ii) screening fences;
- iii) plantings or landscaping adjacent to building faces; visible from other sections of New Town; and/or
- iv) supplemental plantings of native species within the Buffer.

(e) Disputes as to the requirements of this proffer imposed by the County Planning Director or Environmental Director and/or variances from the requirements of this paragraph shall be resolved or granted by the Development Review Committee of the County's Planning Commission.

4. Water Conservation. Owner shall be responsible for developing water conservation standards, as to the Property or any portion thereof proposed for development. The standards shall address such water conservation measures as limitations on installation and use of irrigation systems and irrigation wells, the use of approved landscaping materials and the use of water conserving fixtures and appliances to promote water conservation and minimize the use of public water resources in accordance with the Water Conservation Guidelines published by the County and the James City Service Authority ("JCSA"). The standards for each site or portion of the Property to be developed shall be approved by the JCSA prior to final approval of the site plan for development of the subject portion of the Property.

5. Height Limitation. No structure shall be erected on the Property which exceeds three (3) stories or forty-five (45) feet in height as defined by the Zoning Ordinance, whichever is less.

6. Certain Uses Prohibited. The following uses of land or buildings shall be prohibited on the Property:

- (a) adult day care centers
- (b) automobile service stations
- (c) banks and other similar financial institutions
- (d) barber and/or beauty shops
- (e) child day care centers
- (f) drug stores
- (g) dry cleaning or laundry retail shop offering customer pick up and delivery
- (h) farmers market
- (i) hotel, motel, or convention center
- (j) house(s) of worship
- (k) kennels
- (l) restaurants and taverns
- (m) retail food stores, bakeries, fish markets
- (n) retail stores, but this prohibition shall not apply to retail uses which are

secondary to a use primarily directed to manufacturing, distribution and/or warehousing.

Terms utilized in this paragraph shall be defined as in the Zoning Ordinance.

7. Design Elements. In order to ensure that the pattern of development of the Property is efficient, unobtrusive, and does not unduly impact other sections of New Town, all plans for development of the Property shall be subject to review and approval by the County's Director of Planning relative to the following elements of site usage:

(a) **Lighting:** Any new exterior site lighting shall be limited to fixtures which are mounted (i) on light poles not to exceed 30 feet in height and/or (ii) on other structures, and shall be recessed fixtures with no bulb, lens or globe extending below the casing. The casing shall be opaque and shall completely surround the entire light fixture and light source in such a manner that all light will be directed downward and the light source is not visible from the side. No glare, defined as 0.1 footcandle or higher, shall extend outside the property lines.

(b) **Building orientation:** Buildings and pedestrian entrances to buildings shall be, to the greatest extent practicable, oriented toward Tewning Road or its cul-de-sac.

(c) **Connectivity:** Pedestrian and/or vehicular connectivity and access from the Property to Sections 3 and/or 6 of New Town shall be permitted (but not required) based upon road, sidewalk or other pedestrian walkways, the design and location of which shall be approved by the Director of Planning to minimize to the greatest extent possible, the visual, traffic and safety impacts upon adjoining sections of New Town generated by such connectivity pursuant to this paragraph.

8. Recitals. The Recitals set forth above are incorporated by reference.

9. Successors and Assigns. This Proffer Agreement shall be binding upon and shall inure to the benefit of the parties hereto, and their respective heirs, successors and/or

assigns. Any obligation(s) of Owner hereunder shall be binding upon and enforceable against any subsequent owner or owners of the Property or any portion thereof.

10. Severability. In the event that any clause, sentence, paragraph, section or subsection of these Proffers shall be judged by any court of competent jurisdiction to be invalid or unenforceable for any reason, including a declaration that it is contrary to the Constitution of the Commonwealth of Virginia or of the United States, or if the application thereof to any owner of any portion of the Property or to any government agency is held invalid, such judgment or holding shall be confined in its operation to the clause, sentence, paragraph, section or subsection hereof, or the specific application thereof directly involved in the controversy in which the judgment or holding shall have been rendered or made, and shall not in any way affect the validity of any other clause, sentence, paragraph, section or provision hereof.

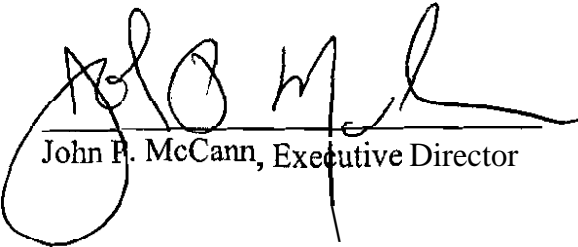
11. Headings. All section and subsection headings of Conditions herein are for convenience only and are not a part of these Proffers.

12. Conditions Applicable Only To The Property. Notwithstanding anything in these Proffers to the contrary, the failure to comply with one or more of the conditions herein in developing the Property shall not affect the rights of Owner and its successors in interest to develop its other property in accordance with the other applicable provisions of the Zoning Ordinance.

WITNESS the following signatures, thereunto duly authorized:

NEW TOWN ASSOCIATES. LLC

By:

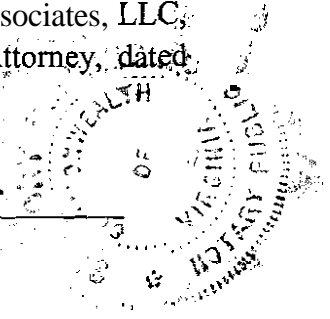
  
John P. McCann, Executive Director

STATE OF VIRGINIA

~~CITY~~/COUNTY OF JAMES CITY, to wit:

The foregoing instrument was acknowledged before me this 23rd day of April, 2004 by John P. McCann, Executive Director of New Town Associates, LLC, a Virginia limited liability company, on its behalf, under Limited Power of Attorney, dated October 19, 2001.

  
\_\_\_\_\_  
Y PUBLIC



My commission expires: August 31, 2006

**EXHIBIT A**

All those certain pieces or parcels of land located in James City County, Virginia, shown and set out as "Section 5" and "Lot 13" on that certain plat entitled "PLAT OF SUBDIVISION SHOWING SECTION 3, SECTION 5, SECTION 6 AND LOT 13 OWNED BY NEW TOWN ASSOCIATES, LLC", prepared by AES Consulting Engineers, dated May 7, 2003, revised July 28, 2003, recorded in the Circuit Court Clerk's Office for the City of Williamsburg and the County of James City, Virginia as Instrument Number 030027269.

#6051558 v6

VIRGINIA: CITY OF WILLIAMSBURG & COUNTY OF JAMES CITY

This document was admitted to record on 5 Aug -04  
at 2:32 ~~AM~~ PM. The taxes imposed by Virginia Code  
Section 58.1-801, 58.1-802 & 58.1-814 have been paid.

STATE TAX LOCAL TAX ADDITIONAL TAX

\$        \$        \$       

TESTE: BETSY B. WOOLRIDGE, CLERK

BY: Betsy B Woolridge Clerk