

BOARD OF SUPERVISORS
COUNTY OF YORK
YORKTOWN, VIRGINIA

Agenda

Regular Meeting
August 21, 2012

Board Room
York Hall
6:00 p.m.

Call to Order.

Invocation.

Pastor M. A. Truckenmiller, Breakthrough Worship Center

Pledge of Allegiance to the Flag of the United States of America.

Roll Call.

PRESENTATIONS.

- A Introduction of New Members to York County Boards and Commissions. Introduce and welcome Carol Scott and Harold Story, newly appointed members of the Senior Center of York Board.
- B National Association of Counties (NACo). Presentation of 2012 NACo Awards to the following York County recipients:
- County Administration
 - *County News Minute:* Christie Powell, Information Officer
 - Fire and Life Safety
 - *Automated Storm Surge Look -Up Tool:* Captain Paul Long, Deputy Coordinator of Emergency Management
 - General Services
 - *"Don't Be A Drip" Water Management Program:* Darren Williams, Irrigation Specialist, Grounds Maintenance & Construction

CITIZENS' COMMENT PERIOD.

*CAPITAL LETTERS INDICATE NO WRITTEN MATERIAL.

COUNTY ATTORNEY REPORTS AND REQUESTS.

COUNTY ADMINISTRATOR REPORTS AND REQUESTS.

MATTERS PRESENTED BY THE BOARD.

6:55 p.m. **RECESS**

7:00 p.m. **PUBLIC HEARINGS.**

1 Application No. UP-808-12, James York Plaza LLC. Consider adoption of proposed Resolution R12-102 to request a special use permit to authorize the establishment of a mini-storage warehouse facility on an approximately 1.7-acre portion of a 10.4-acre parcel of land located at 212 Hubbard Lane (Route 716).

- a. Memorandum from County Administrator.
- b. Planning Commission minutes excerpts, July 11, 2012.
- c. Zoning Map.
- d. Sketch Plan.
- e. Subdivision Plat.
- f. Photos.
- g. Proposed Resolution R12-102.

2 Cable Television Franchise Agreement. Consider adoption of proposed Ordinance No. 12-12 to authorize the execution of a cable television franchise agreement with Cox Communications.

- a. Memorandum from County Administrator.
- b. Proposed Ordinance No. 12-12.

UNFINISHED BUSINESS. None.

CONSENT CALENDAR.

3 Approval of Minutes. Consider approval of the minutes of the following meetings of the York County Board of Supervisors:

- a. Unapproved minutes of the July 17, 2012, Regular Meeting.
- b. Unapproved minutes of the August 3, 2012, Special Meeting.

*CAPITAL LETTERS INDICATE NO WRITTEN MATERIAL.

- 4 Expression of Appreciation to Former Wetlands Board Member. Consider adoption of proposed Resolution R12-104 to express appreciation to Dr. Adam Frisch for 24 years of service on the York County Wetlands Board.
- a. Memorandum from County Administrator.
 - b. Proposed Resolution R12-104.
- 5 Freight Shed Title Transfer. Consider adoption of proposed Resolution R12-103 to execute the transfer of title for the Freight Shed from the Economic Development Authority to the County.
- a. Memorandum from County Attorney.
 - b. Proposed Resolution R12-103.
- 6 Purchase Agreements for the Lightfoot Force Main. Consider adoption of proposed Resolution R12-105 to authorize the execution of purchase agreements for the Lightfoot Force Main.
- a. Memorandum from County Administrator.
 - b. Proposed Resolution R12-105.
- 7 Implementation of the Comprehensive Community Corrections (CCC) Act and the Pretrial Services Act. Consider adoption of proposed Resolution R12-106 to agree to implement the services and programs required by the CCC Act and the Pretrial Services Act.
- a. Memorandum from County Administrator.
 - b. Governance Agreement.
 - c. Proposed Resolution R12-106.

NEW BUSINESS.

CLOSED MEETING.

FUTURE BUSINESS.

Adjournment.

Regular Meetings and Work Sessions of the Board of Supervisors air live on Cable Channel WYCG-TV.

The next Regular Meeting of the York County Board of Supervisors will be held at 6:00 p.m., Tuesday, September 4, 2012, in the East Room, York Hall.

*CAPITAL LETTERS INDICATE NO WRITTEN MATERIAL.

COUNTY OF YORK

MEMORANDUM

DATE: August 7, 2012 (BOS Mtg. 8/21/12)

TO: York County Board of Supervisors

FROM: James O. McReynolds, County Administrator 

SUBJECT: Application No. UP-808-12, James York Plaza LLC

ISSUE

This application requests a Special Use Permit, pursuant to Section 24.1-306 (Category 14, No. 6a) of the York County Zoning Ordinance, to authorize the establishment of a mini-storage warehouse facility on an approximately 1.7-acre portion of a 10.4-acre parcel of land located at 212 Hubbard Lane (Route 716) and further identified as Assessor's Parcel No. 10-22-C.

DESCRIPTION

- Property Owner: James-York Plaza LLC
- Location: 212 Hubbard Lane (behind James York Plaza shopping center, located at 701-A Merrimac Trail)
- Area: 1.7-acre portion of a 10.4-acre parcel
- Frontage: 50 feet on Hubbard Lane (Route 716) and 80 feet on Merrimac Trail (Route 143)
- Utilities: Public water and sewer
- Topography: Moderate to severe slopes to the north and west of the property
- 2025 Land Use Map Designation: General Business
- Zoning Classification: GB – General Business
- Existing Development: Private drive serving James York Plaza from Hubbard Lane)
- Surrounding Development:
 - North: Single-family detached homes (Queenswood)
 - East: Single-family detached homes (Nelson Circle) across Hubbard Lane
 - South: American Classic Self-Storage facility, James York Plaza shopping center
 - West: James York Plaza shopping center

- Proposed Development: 21,425-square foot mini-storage warehouse facility (130 storage units)

BACKGROUND

On November 18, 1998, the Board approved a Special Use Permit (Application No. UP-537-98, Resolution R98-208) to authorize a mini-storage warehouse facility on a 4.1-acre parcel located between the rear of the James York Plaza shopping center (located on Merrimac Trail) and the James York Playhouse (located on Hubbard Lane). In 2008, the owners of the mini-storage facility and the shopping center approached the County about expanding the facility to the opposite side of the private road that runs from Hubbard Lane to the shopping center and the mini-storage facility. By then, however, the Board had amended the Zoning Ordinance to prohibit single-story mini-storage warehouses in the GB zoning district, while allowing multi-story self-storage facilities with ground-floor retail uses with a Special Use Permit. The Board's rationale for this action was that the fiscal benefits of mini-storage warehouses are not strong enough to justify their location on any of the County's limited supply of highly visible GB-zoned parcels. With no opportunity to apply for a use permit, the applicant submitted an application to rezone a portion of the subject property from GB to conditional IL (Limited Industrial), where single-story mini-storage facilities were and are permitted as a matter of right. The Planning Commission considered that application (Application No. ZM-117-08) at its April 9, 2008 meeting and conducted a public hearing at which 21 residents – including four of the eleven Queenswood households whose homes directly abutted the subject property – spoke in opposition to the rezoning, citing concerns about the loss of a natural buffer between the subdivision and the shopping center, the removal of trees, the loss of wildlife habitat, lighting, etc. The Commission then voted 4:1 (two members absent) to recommend denial. The applicant subsequently requested that the Board public hearing on the application be deferred indefinitely, and the application was never considered by the Board and has since been withdrawn.

In 2011 the Board adopted another series of Zoning Ordinance text amendments, including one that reinstated the opportunity for single-story mini-storage establishments to be located in the GB district with a Special Use Permit. This action, which was requested by the applicant, was in recognition of the fact that there are GB-zoned properties in the County that do not have the highway frontage and visibility necessary to support viable retail development and that such parcels may be suitable for other uses, such as mini-storage warehouses. By allowing these facilities with a use permit, the Board ensured that it and the Planning Commission would have the ability to evaluate such proposals on a case-by-case basis, taking property location and development potential into account in the course of the application review.

CONSIDERATIONS/CONCLUSIONS

1. The property is located behind James York Plaza shopping center on Merrimac Trail. Immediately to the north is the Queenswood residential subdivision, and to the east is an undeveloped 3.1-acre parcel also owned by the applicant. The property is designated for General Business development in the Comprehensive Plan

and, accordingly, is zoned GB (General Business) as is most of the surrounding property with the exception of the parcels in Queenswood, which are zoned R13 (High-density single family residential).

2. The property is accessed from the west through the James York Plaza parking lot and from the east by a private drive that extends to Hubbard Lane and serves as the rear shopping center entrance and exit. Directly across this private drive is a 47,000-square foot mini-storage warehouse facility (American Classic Self-Storage) that was authorized through the approval of a Special Use Permit in 1998. Because of the success of the mini-storage business, the applicant wishes to build a second phase on the subject parcel and has submitted this application.
3. The applicant's sketch plan depicts four (4) mini-storage warehouse buildings ranging in size from 3,825 to 7,800 square feet, the largest of which would be climate-controlled. The existing self-storage facility has a manager's office that would serve this project as well. Access to the development would be via the unnamed private drive, which is owned by the property owner and labeled "James York Lane" on the sketch plan. The overall layout of the proposed development as depicted on the plan is generally consistent with the requirements of the County's development regulations; however, the Department of Fire and Life Safety has indicated that the asphalt will need to be extended all the way to the eastern wall of the easternmost warehouse building in order to ensure that fire apparatus will be able to reach within 150 feet of the entire facility.

It should be noted that the current proposal is much smaller and less intensive than the 2008 rezoning proposal. In response to the concerns raised by nearby residents, the applicant has significantly scaled back the project to minimize the potential for any adverse impacts on the surrounding area. The total project area has been reduced from 8.3 acres (80% of the parcel acreage) to 1.7 acres (16% of the parcel acreage), and the total building area has been reduced by two-thirds, from 64,200 to 21,425 square feet. As a result of these changes, the distance between the proposed facility and the nearest residential lot has more than doubled from 120 to 265 feet.

4. Mini-storage warehouse facilities are less intensive than most retail and office uses that are permitted on the subject property as a matter of right. They do not generate significant amounts of noise, activity, or traffic. According to trip generation rates for mini-storage published in the ITE (Institute of Transportation Engineers) *Trip Generation* manual (8th edition), a 130-unit self-storage facility would be expected to generate up to 33 vehicle trips on an average weekday, including three (3) in the AM peak hour and three (3) in the PM peak hour. The facility is open from 7:00 AM to 9:00 PM, although 24-hour access is occasionally provided to clients that operate outside of normal business hours. Furthermore, the mini-storage warehouses would be only fourteen feet (14') in height, which is lower than most commercial uses that would be permitted as a matter of right under the existing GB zoning, for which the maximum allowable building height is fifty feet (50').

5. Along the parcel's northern property line is a perennial stream that generally follows the boundary between the subject parcel and the homes in the Queenswood subdivision. The stream is subject to the requirement for a 100-foot vegetated RPA (Resource Protection Area) buffer, and the remainder of the parcel is located in the RMA (Resource Management Area). The proposed mini-storage facility would be ninety feet (90') from the RPA buffer at its closest point. Because of the property's location in a Chesapeake Bay Preservation Area (CBPA), any development thereon will be subject to the provisions of the Chesapeake Bay Preservation Act. The developer will be required to perform a Natural Resources Inventory that clearly depicts the extent and location of any manmade or natural bodies of water, including but not limited to rivers, creeks, streams, channels, ditches, lakes and ponds; floodplains; tidal and non-tidal wetlands; and tidal shores. The inventory must be submitted to the CBPA Manager for review and approval prior to or concurrent with the submission of an application for a site plan, subdivision, or land disturbing permit for the development.

The RPA buffer encompasses approximately 2.9 acres of the 10.4-acre parcel and ensures that there will be a permanent undisturbed vegetative buffer ranging in width between 90 and 100 feet between the proposed storage facility and the adjacent lots in Queenswood. This is much greater than the 35-foot transitional buffer the Zoning Ordinance requires between the GB and R13 zoning districts.

PLANNING COMMISSION RECOMMENDATION

The Planning Commission considered this application at its July 11 meeting and conducted a public hearing at which the applicant, his engineer, and five adjacent homeowners spoke. Four of the homeowners (representing three households) spoke in opposition to the project, citing concerns about tree removal, possible soil erosion, and the potential exacerbation of existing problems with flooding during storm events; the homeowner who spoke in favor of the application stated that while he also had concerns about stormwater management, he felt the proposal was superior to the 2008 proposal, which he had spoken against at the time. In response to the flooding concerns, the applicant's engineer stated that stormwater would be retained on-site, adding that the flooding problems in Queenswood are caused by the inadequate piping underneath the Colonial Parkway and would not be affected by the project. He also noted that site lighting would be limited to building-mounted fixtures with full cutoff luminaires that direct the light downward. Following the public hearing, the Commission voted 5:0 (Mr. Abel absent; one position vacant) to recommend approval. (For more details, please see the attached Planning Commission minutes.)

COUNTY ADMINISTRATOR RECOMMENDATION

Mini-storage warehouses are a relatively quiet, non-intensive commercial use that does not generate significant levels of activity or traffic. I believe the proposed self-storage facility would be an appropriate transitional use for the area between the shopping center and the adjacent residential neighborhood. Located behind a shopping center over 600

feet from Merrimac Trail, the subject property has little if any visibility from the commercial corridor and little viability, in my opinion, for most of the commercial uses that are permitted in the GB zoning district. In scaling back the project to avoid negative impacts on the surrounding area, the applicant has made a good-faith effort to respond to the concerns raised by nearby residents in 2008, leaving 8.3 acres – 84% of the property – undeveloped and retaining an undisturbed natural buffer ranging from 265 to 795 feet between the development and the adjacent residential lots. Neighboring homeowners' concerns about existing flooding problems are understandable, but I do not believe this project would have any effect on these problems since the County's Stormwater Management regulations are intended to ensure that the *post-development* stormwater runoff rate will not exceed the calculated *pre-development* runoff rate. Therefore, based on the considerations and conclusions as noted, I recommend that the Board approve this application subject to the conditions set forth in proposed Resolution R12-102.

A concern that was raised by an adjacent homeowner at the Planning Commission meeting was that if the application is approved, it could potentially be expanded without any further opportunity for public comments since the Zoning Ordinance provides for the expansion of valid special uses by up to 5% administratively and up to 25% by resolution of the Board with no public hearing or Planning Commission review, provided that there is nothing in the use permit that precludes or otherwise limits such expansion. In this case I believe it would be appropriate for the Board to impose a condition of approval specifying that *any* increase in floor area or lot coverage will be treated as a major amendment requiring both Planning Commission review and public hearings (see proposed Condition No. 4 in the attached resolution). I believe this is reasonable given that the limited scale and scope of the development was a key factor in the Planning Commission's decision to recommend approval after recommending denial of a similar but much more extensive proposal in 2008.

Carter.3337/tcc

Attachments:

- Planning Commission minutes excerpts, July 11, 2012
- Zoning Map
- Sketch Plan
- Subdivision Plat
- Photos
- Proposed Resolution R12-102

Application No. UP-808-12, James York Plaza LLC: Request for a Special Use Permit, pursuant to Section 24.1-306 (Category 14, No. 6a) of the York County Zoning Ordinance, to authorize the establishment of a mini-storage warehouse facility on an approximately 1.7-acre portion of a 10.4-acre parcel of land located at 212 Hubbard Lane (Route 716) and further identified as Assessor's Parcel No. 10-22-C. The property, located behind the James York Plaza shopping center, is zoned GB (General Business) and is designated General Business in the Comprehensive Plan.

Timothy C. Cross, AICP, Principal Planner, summarized the staff report to the Commission dated June 28, 2012, in which staff recommends that the Commission forward the application to the Board of Supervisors with a recommendation of approval subject to conditions contained in proposed Resolution No. PC12-12.

Chair Myer opened the public hearing.

W. Craig Allen, 2236 Admiral Circle, Virginia Beach, representative for the applicant, stated that he is an owner and manager of the existing facility next to the proposal. He stated that in addition to the notices the County sent out, the applicant sent notices to 90 homeowners within Queenswood. He received three calls from nearby homeowners and all were in support of the application. He added that the existing facility has operated since 1998 and has been a good neighbor and would continue to be with this expansion.

Mr. Hamilton noted that the application for a rezoning to expand the mini-storage facility, which was ultimately withdrawn by the applicant, included a place for RV storage, and asked if one is planned as part of the current application. **Mr. Allen** responded that there would be no RV storage.

Mr. Myer asked who owns the private entrance to the shopping center from Hubbard Lane. **Mr. Allen** stated that James York Plaza LLC owns it.

Ms. Dawn Frost, 713 Colonial Avenue, Williamsburg, stated that her property backs up to the property and she spoke against the proposal at the previous hearing in 2008. She expressed concerns about wildlife impacts, lighting, safety and security, stormwater management, and erosion and sediment control. She stated that the area of Colonial Avenue beyond her property tends to flood during regular rainstorms and that any additional impervious surface in that area could exacerbate the problem and cause flooding further up, even at her property. She stated that many trees on this property have fallen down, which has caused soil erosion already and that any additional development would cause more soil erosion. Ms Frost added that in 2008, Planning Commissioners and others stated that the property appeared to be unbuildable and she felt nothing has changed since then.

Ms. Donna Billings, 715 Colonial Avenue, Williamsburg, stated that she is an adjacent property owner. She stated that the information Ms. Frost presented was the same information presented to the Planning Commission in 2008. Other than cutting the size of the project in half, she felt nothing has changed. She noted that the land has steep slopes that lead to a ravine and would be very hard to develop. In addition, she expressed concerns about tree removal, the loss of buffer area and animal habitat, and drainage. She stated that every major rain causes the creek to flood. She acknowledged that the project is smaller than before but felt that it would still adversely affect the area. She was happy to hear there would be no RV storage but still has a concern about lighting on the buildings Ms. Billings noted that all these concerns were presented in the 2008

and that the Planning Commission voted 4-1 to recommend denial,. She urged the Commission to vote against the proposal.

Mr. Suiter asked if she could explain her comments about her neighbors' flooding and whether it is flooding into their house. **Ms. Billings** stated that the land behind their house floods out as the creek rises. **Mr. Suiter** asked how close the flooding comes to their house. **Ms. Billings** said that it comes very close to one house. She stated that the County comes out a couple times a year to clean out the creek bed and that she is concerned that adding more impervious surface will worsen the problem.

Mr. Andrew McKinley, 611 Colonial Avenue, Williamsburg, stated that he lives upstream from his neighbors and is not in danger of the flooding. He echoed the previous speakers' concerns about stormwater management. He said the existing business is a reasonably quiet use with low traffic and has well-manicured grounds. He stated that he is the nearest neighbor to the proposed development. He has a concern about site lighting, particularly in the wintertime as the trees lose their leaves. Mr. McKinley stated that his main reason for purchasing his property was the wooded lot behind. He also has concerns about future expansion, especially if the facility is allowed to expand by 25%, which would not require a public hearing, and he would hoped that any expansion greater than 5% would come back before the Planning Commission.

Mr. Robert Walker, 703 Colonial Avenue, Williamsburg, stated that he is even further up hill from his neighbors. He spoke against the project the last time but is now basically in favor of the scaled-down version, since the area is zoned properly. He expressed concern about lighting and would like the lighting to shine on the building and not toward their homes. He also has a concern about stormwater because of a recent expansion of the shopping which required significant erosion and sediment control where the creek runs under Route 143. He spoke about flooding problems during Tropical Storm Irene and suggested that maybe some kind of berm could be put around the buildings. In addition, he wanted to know if a natural resources inventory had been done for the site. Finally, he suggested that as a good neighbor, the property owner install a sidewalk and lighting along the private road, which is dangerous at night.

Mr. Mitchell Billings, 715 Colonial Avenue, Williamsburg, noted that staff recommended approval four years ago and is doing it again. He opined that a zoning notice sign should have been posted on Hubbard Lane. He acknowledge that the footprint of the development is smaller than in 2008 but that flooding will still be a major problem. He noted that a Planning Commissioner previously said this was the worst place anyone could build anything. Mr. Billings opined that there is no viability for any kind of commercial use on this property because of the topography. Any kind of work done here will be consumed by erosion. He added that the woods provide recreational resources for children that are not available elsewhere. In addition, he stated that the project would detract from the value of their homes. He urged the Planning Commission to vote as it did last time and reject the application.

Mr. Charlie Newbaker, 3312 Sassafras Road, Gloucester County, stated that he is the site planner for this project. He has been in business and working in York County since the 1980s. He stated that he did the original plan in 1998 and the previous submittal in 2008 and stood before the Planning Commission to listen to all the neighbors concerns. He stated that the developer considered those concerns and tremendously reduced the impact this facility would have on this property by limiting construction to the high ground and not disturbing any of the slopes. He noted that there is a 100-foot Chesapeake Bay Resource Protection Area (RPA) adjacent to the rear property lines of the Queenswood subdivision that will not be disturbed.

With regard to flooding concerns that have been raised, Mr. Newbaker stated that in the late 1980s he prepared the plans for Queenwood's development and stormwater was a major concern. He noted that when they designed the project, York County was doing a drainage study and the problem with the drainage basin flooding was found to be the pipes that go under the Colonial Parkway, which were not designed to handle the amount of flow that goes through there. The controlling flood elevation for that drainage basin was the road surface elevation of the Parkway, he explained, and Queenwood was designed and approved with the understanding that all the houses were to be built to the necessary elevations and at that time, it was understood that some flooding in back yards would occur. This issue has been studied many times over the years and unless the National Park Service replaces those culverts, there will continue to be flooding problems. He also noted that site lighting would be mounted on the buildings and directed away from neighborhoods and that the woods surrounding the development would remain intact.

Mr. Suiter asked how paving another 1.7 acres would affect neighboring properties. **Mr. Newbaker** responded that stormwater would be retained on-site, which will allow the water to trickle off at the same rate as it is currently. **Mr. Suiter** asked if that is accounted for in this proposal. **Mr. Carter** responded that the drainage calculations would be submitted during site plan review and that the developer would have to demonstrate how stormwater will be handled.

Ms. Magowan asked about the impact of a berm on stormwater and also about lighting. **Mr. Newbaker** said the berm would not affect stormwater but it could make stormwater control worse and increase lighting pollution because of the clearing that would have to be done around the site. He explained that stormwater would still have to come off the site and that state guidelines for quantity would have to be met, which state that drainage patterns cannot be altered.

Seeing no others who wanted to speak, **Chair Myer** closed the public hearing.

Mr. Suiter stated that in his neighborhood the stormwater ponds hold water from storms, but that if that pond floods the water goes into subsequent ponds, eventually ending up in the river. A small storm is retained in your pond, but a big storm goes to the next level. He expressed concern that a big storm would overflow the retention planned for this site, flow into the creek, and then end up in adjacent houses. **Mr. Carter** stated that stormwater regulations require systems to be designed for the 10-year storm and not the major storm events that have caused problems. He stated that the County and state cannot guarantee that flooding will never occur based on the design criteria that development is required to meet. There will be events where the capacity of well-designed systems will be exceeded and problems will occur. He noted that the developer will be required to do an extensive analysis of the stormwater issues on this site and to prove to the County's stormwater management engineers that their system is designed to meet the minimum requirements of the County Code.

Mr. Hamilton expressed support for the application and it is a good use of land. He noted that the property is zoned GB and that someone will eventually find something that will go back there without having to come to the Planning Commission, and it might be a use that is not appropriate for the neighborhood.

Ms. Magowan stated there is an existing stormwater problem that the County should address, whether or not this application is approved. She stated that residents should approach the County about addressing the stormwater issue.

Chair Myer asked Mr. Allen if lighting will be directed downward and not into the woods. **Mr. Allen** stated that that was correct. The lighting fixtures will be building-mounted and will be almost exactly the same as what is used at the current facility. **Chair Myer** asked if the discussion about the stormwater being retained on site control underneath the paved area was something he agreed to do. **Mr. Allen** responded that he is not an engineer and that he relies on Mr. Newbaker to design the project appropriately. **Chair Myer** asked if Mr. Allen heard the concerns the residents made about the road in front of this proposal and if he would consider the issues they raised. **Mr. Allen** stated that he would certainly consider them.

Mr. Myer stated that the property is zoned GB and there are a lot of uses that can go in there as a matter of right. Comparing the 2008 plan with the current proposal, he noted that the current proposal is much smaller in both acreage and building area and that the closest residential property is 265 feet away. He added that the project would occupy the high ground and that he cannot see how anything else could go on the property.

Mr. Hamilton moved adoption of Resolution No. PC12-9.

A RESOLUTION TO RECOMMEND APPROVAL OF AN APPLICATION TO FOR A SPECIAL USE PERMIT TO ESTABLISH A MINI-STORAGE WAREHOUSE FACILITY BEHIND JAMES YORK PLAZA SHOPPING CENTER

WHEREAS, James York Plaza LLC has submitted Application No. UP-808-12 requesting a Special Use Permit, pursuant to Section 24.1-306 (Category 14, No. 6a) of the York County Zoning Ordinance, to authorize the establishment of a mini-storage warehouse facility on an approximately 1.7-acre portion of a 10.4-acre parcel of land located at 212 Hubbard Lane (Route 716) and further identified as Assessor's Parcel No. 10-22-C; and

WHEREAS, said application has been transmitted to the York County Planning Commission in accordance with applicable procedure; and

WHEREAS, the Planning Commission has conducted a duly advertised public hearing on this application; and

WHEREAS, the Commission has carefully considered the public comments with respect to this application;

NOW, THEREFORE, BE IT RESOLVED by the York County Planning Commission this the ___ day of _____, 2012, that Application No. UP-808-12 be, and it is hereby, transmitted to the York County Board of Supervisors with a recommendation of approval to authorize a Special Use Permit, pursuant to Section 24.1-306 (Category 14, No. 6a) of the York County Zoning Ordinance, for the establishment of a mini-storage warehouse facility on an approximately 1.7-acre portion of a 10.4-acre parcel of land located at 212 Hubbard Lane (Route 716), further identified as Assessor's Parcel No. 10-22-C, subject to the following conditions:

1. This Special Use Permit shall authorize the establishment of a mini-storage warehouse facility on an approximately 1.7-acre portion of a 10.4-acre parcel of land located at 212 Hubbard Lane (Route 716), further identified as Assessor's Parcel No. 10-22-C.

Planning Commission Minutes Excerpts

July 11, 2012

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2. A site plan prepared in accordance with the provisions of Article V of the York County Zoning Ordinance shall be submitted to and approved by the Department of Environmental and Development Services, Division of Development and Compliance, prior to the commencement of any construction or land disturbing activity on the site. Said site plan shall be in substantial conformance with the sketch plan titled "OVERALL PLAN: AMERICAN CLASSIC SELF STORAGE," prepared by C. E. Newbaker Surveying & Planning, Inc. and dated May 31, 2012, except as modified herein.
3. An approved fire apparatus access road shall be provided for the facility in accordance with Section 503.1.1 of the 2009 International Fire Code. Said fire access road shall extend to within 150 feet of all portions of the facility and all portions of exterior walls of the first story of the building as measured by an approved route around the exterior of the building or facility. Accordingly, the asphalt surrounding the 3,823-square foot warehouse building depicted on the referenced plan shall be extended all the way to the eastern wall of the building.
4. The total area of the mini-storage warehouse facility shall not exceed 21,425 square feet.
5. The parking/circulation area, drive aisles, and buildings shall accommodate an inside turning radius of 33 feet for large fire and rescue apparatus.
6. The developer shall install a fire hydrant at the entrance to the facility.
7. In conjunction with the submittal of site plans for the project, the developer shall submit a site-specific and field-verified Natural Resources Inventory in accordance with the provisions set forth in Section 23.2-6 of the Chesapeake Bay Preservation Areas Ordinance.
8. In accordance with Section 24.1-115(b)(6) of the York County Zoning Ordinance, a certified copy of the resolution authorizing this use permit shall be recorded at the expense of the applicant in the name of the property owner as grantor in the office of the Clerk of the Circuit Court within one month of use permit approval.

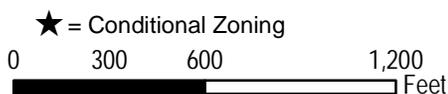
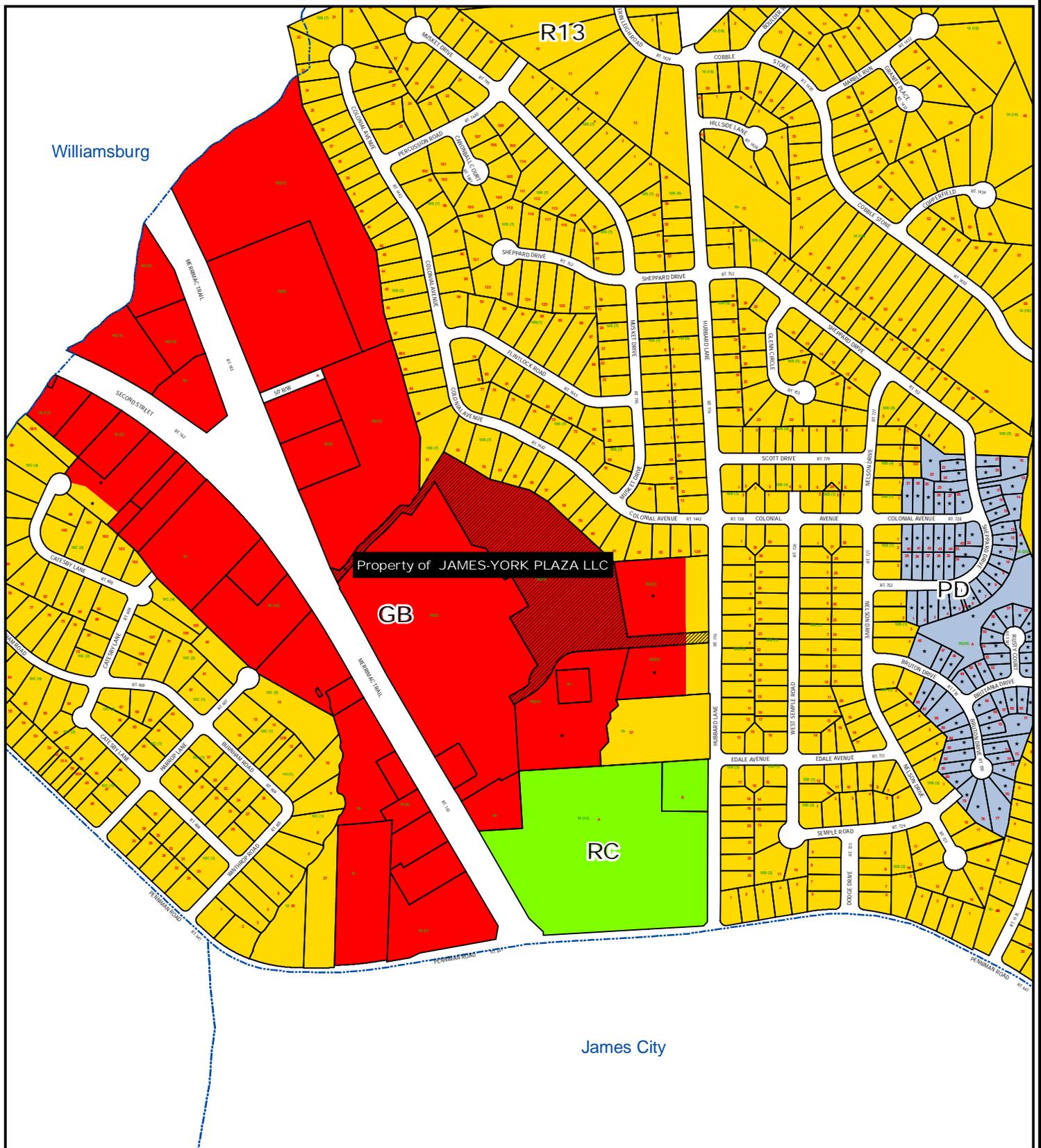
BE IT FURTHER RESOLVED that this Special Use Permit is not severable, and invalidation of any word, phrase, clause, sentence, or paragraph shall invalidate the remainder.

Yea: (5) Suiter, Hamilton, Magowan, Buffa, Myer
Nay: (0)

APPLICANT
James York Plaza, LLC
Mini-storage warehouse facility
212 HUBBARD LN

ZONING MAP

APPLICATION NUMBER: UP-808-12



SOURCE: YORK COUNTY
GIS PARCEL DATA and
ZONING COVERAGE

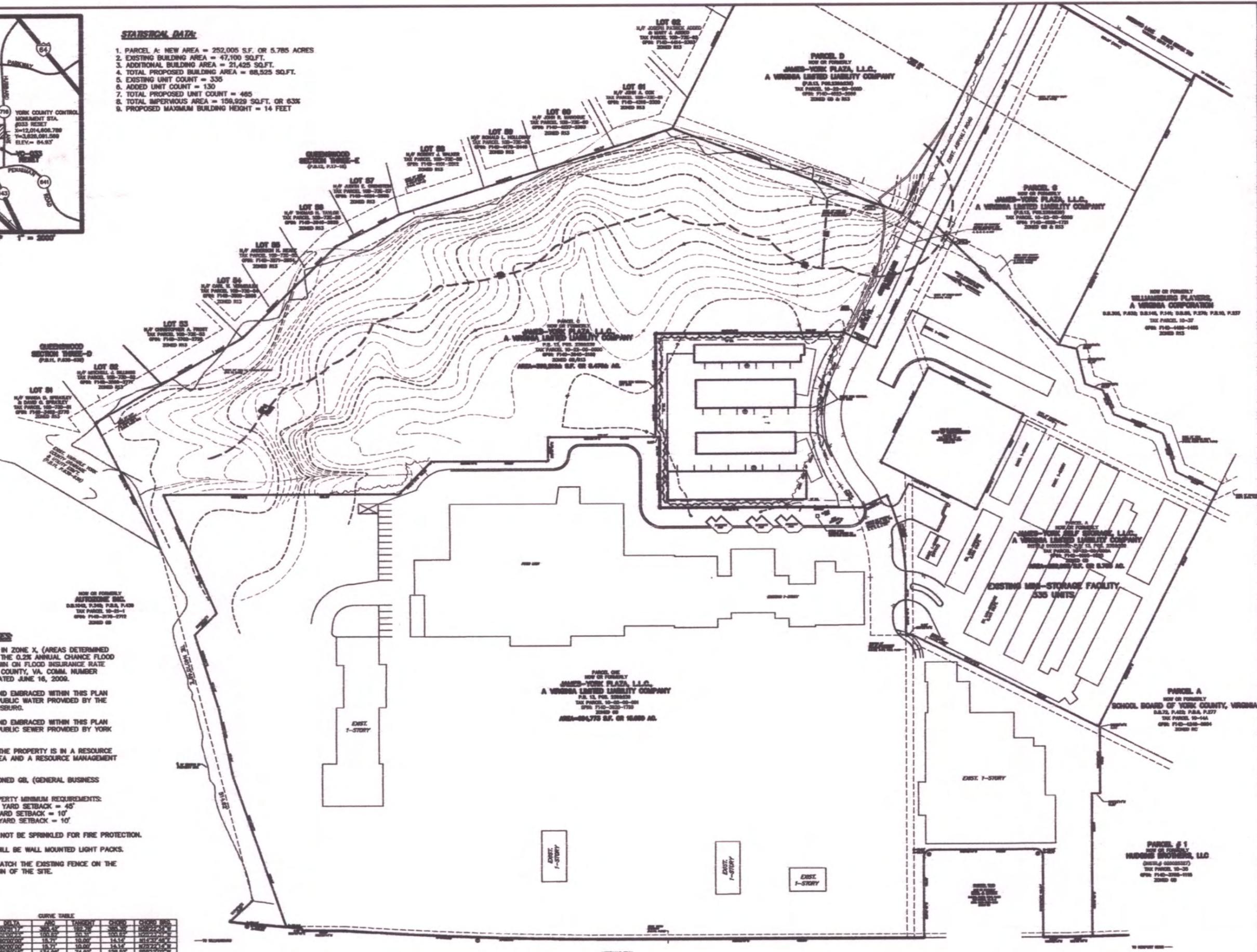
THIS IS NOT A LEGAL PLAT.
This map should be used for
information purposes only. It is
not suitable for detailed site planning.

Printed on June 04, 2012



STATISTICAL DATA:

1. PARCEL A: NEW AREA = 252,005 S.F. OR 5.785 ACRES
2. EXISTING BUILDING AREA = 47,100 SQ.FT.
3. ADDITIONAL BUILDING AREA = 21,425 SQ.FT.
4. TOTAL PROPOSED BUILDING AREA = 68,525 SQ.FT.
5. EXISTING UNIT COUNT = 330
6. ADDED UNIT COUNT = 130
7. TOTAL PROPOSED UNIT COUNT = 460
8. TOTAL IMPERVIOUS AREA = 108,929 SQ.FT. OR 63%
9. PROPOSED MAXIMUM BUILDING HEIGHT = 14 FEET



RECEIVED
York County

MAY 31 2012

Planning Director



OVERALL PLAN
AMERICAN CLASSIC SELF STORAGE
JAMES-YORK SELF STORAGE, L.L.C.
A VIRGINIA LIMITED LIABILITY COMPANY
SCHOOL BOARD OF YORK COUNTY, VIRGINIA
DATE: 05/27/2012
1 OF 2

GENERAL NOTES:

1. PROPERTIES LIE IN ZONE X, (AREAS DETERMINED TO BE OUTSIDE THE 0.2% ANNUAL CHANCE FLOOD PLAIN), AS SHOWN ON FLOOD INSURANCE RATE MAP FOR YORK COUNTY, VA. COMM. NUMBER 511960070C DATED JUNE 16, 2009.
2. WATER: THE LAND EMBRACED WITHIN THIS PLAN IS SERVED BY PUBLIC WATER PROVIDED BY THE CITY OF WILLIAMSBURG.
3. SEWER: THE LAND EMBRACED WITHIN THIS PLAN IS SERVED BY PUBLIC SEWER PROVIDED BY YORK COUNTY.
4. A PORTION OF THE PROPERTY IS IN A RESOURCE PROTECTION AREA AND A RESOURCE MANAGEMENT AREA.
5. PROPERTY IS ZONED GB, (GENERAL BUSINESS DISTRICT)
GB ZONED PROPERTY MINIMUM REQUIREMENTS:
MINIMUM FRONT YARD SETBACK = 45'
MINIMUM SIDE YARD SETBACK = 10'
MINIMUM REAR YARD SETBACK = 10'
6. BUILDINGS WILL NOT BE SPRINKLED FOR FIRE PROTECTION.
7. SITE LIGHTING WILL BE WALL MOUNTED LIGHT PACKS.
8. FENCING WILL MATCH THE EXISTING FENCE ON THE EXISTING PORTION OF THE SITE.

NO.	RADIUS	DELTA	ARC LENGTH	CHORD	CHORD BEG.	CHORD END.
1	10.00'	90.00°	31.42'	20.00'	10.00'	30.00'
2	10.00'	90.00°	31.42'	20.00'	30.00'	10.00'
3	10.00'	90.00°	31.42'	20.00'	10.00'	30.00'
4	10.00'	90.00°	31.42'	20.00'	30.00'	10.00'
5	10.00'	90.00°	31.42'	20.00'	10.00'	30.00'
6	10.00'	90.00°	31.42'	20.00'	30.00'	10.00'
7	10.00'	90.00°	31.42'	20.00'	10.00'	30.00'
8	10.00'	90.00°	31.42'	20.00'	30.00'	10.00'
9	10.00'	90.00°	31.42'	20.00'	10.00'	30.00'





NOTES:

1. PROPERTIES LIE IN ZONE X, (AREAS DETERMINED TO BE OUTSIDE THE 0.2% ANNUAL CHANCE FLOOD PLAIN), AS SHOWN ON FLOOD INSURANCE RATE MAP FOR YORK COUNTY, VA. COMM. NUMBER 51199C0070C DATED JUNE 16, 2009.
2. PORTIONS OF THIS PROPERTY ARE WITHIN LANDS DESIGNATED BY YORK COUNTY AS CHESAPEAKE BAY PRESERVATION AREAS (CBPA). ALL FUTURE CONSTRUCTION OR LAND DEVELOPMENT ACTIVITIES SHALL BE SUBJECT TO THE REQUIREMENTS OF THE CHESAPEAKE BAY PRESERVATION AREA DESIGNATION AND MANAGEMENT REGULATIONS (9 VAC 10-20-10) AND CHAPTER 23.2 OF THE YORK COUNTY CODE.

3. PROPERTIES CONTAINED WITHIN THIS BOUNDARY LINE ADJUSTMENT ARE NOT LOCATED WITHIN THE WATERSHED MANAGEMENT PROTECTION AREA OVERLAY DISTRICT AS SHOWN ON YORK COUNTY MAPPING.
4. WATER: THE LAND EMBRACED WITHIN THIS PLAT IS SERVED BY PUBLIC WATER PROVIDED BY THE CITY OF WILLIAMSBURG.
5. SEWER: THE LAND EMBRACED WITHIN THIS PLAT IS SERVED BY PUBLIC SEWER PROVIDED BY YORK COUNTY.

6. PROPERTY IS ZONED GB, (GENERAL BUSINESS DISTRICT) AND R13, (SINGLE FAMILY RESIDENTIAL DISTRICT)

GB ZONED PROPERTY MINIMUM REQUIREMENTS:
 MINIMUM FRONT YARD SETBACK = 45'
 MINIMUM SIDE YARD SETBACK = 10'
 MINIMUM REAR YARD SETBACK = 10'

R13 ZONED PROPERTY MINIMUM REQUIREMENTS:
 MINIMUM FRONT YARD SETBACK = 30'
 MINIMUM SIDE YARD SETBACK = 12.5'
 MINIMUM REAR YARD SETBACK = 25'

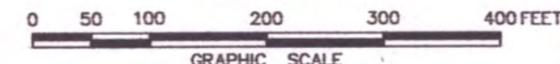
BOUNDARY LINE ADJUSTMENT OF THE PROPERTIES OF JAMES YORK SELF STORAGE, L.L.C. & JAMES-YORK PLAZA, L.L.C.

P.B. 13, PGS. 238 & 239

BRUTON DISTRICT - COUNTY OF YORK, VIRGINIA
 SCALE: 1" = 100' APRIL 20, 2012

C.E. Newbaker
 SURVEYING & PLANNING, INC.
 P.O. BOX 1298
 YORKTOWN, VA. 23692
 PH: 757-240-2562
 FAX: 757-926-4880

SHEET 1 OF 2



SURVEYOR'S CERTIFICATE

TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL THE REQUIREMENTS AS SET FORTH IN THE ORDINANCE FOR APPROVING PLATS OF SUBDIVISIONS IN THE COUNTY OF YORK, VIRGINIA, HAVE BEEN COMPLIED WITH, INCLUDING A CLOSURE OF NOT LESS THAN 1'/20,000'.

THIS IS TO CERTIFY THAT THE LAND EMBRACED IN THIS BOUNDARY LINE ADJUSTMENT IS AS FOLLOWS:

TAX PARCEL 10-02-00-001

TAX PARCEL 10-02-00-001 IS IN THE NAME OF JAMES-YORK PLAZA, L.L.C., A VIRGINIA LIMITED LIABILITY COMPANY, (FORMERLY, JAMES-YORK PLAZA, A VIRGINIA GENERAL PARTNERSHIP) AND WAS ACQUIRED FROM JAMES-YORK PLAZA SHOPPING CENTER, INC., A VIRGINIA CORPORATION BY DEED OF CONFIRMATION DATED JULY 29, 1993 AND DULY RECORDED IN DEED BOOK 995, PAGE 63 IN THE CLERK'S OFFICE OF THE CIRCUIT COURT FOR THE COUNTY OF YORK-POQUOSON, VIRGINIA. JAMES-YORK PLAZA, A VIRGINIA GENERAL PARTNERSHIP CONVERTED INTO JAMES-YORK PLAZA, L.L.C. BY ARTICLES OF ORGANIZATION AND CONVERSION DATED JUNE 18, 1997 AND DULY FILED WITH THE VIRGINIA STATE CORPORATION COMMISSION.

TAX PARCEL 10-22-00-000A

TAX PARCEL 10-22-00-00A IS IN THE NAME OF JAMES YORK SELF STORAGE, L.L.C., A VIRGINIA LIMITED LIABILITY COMPANY, AND WAS ACQUIRED FROM JAMES-YORK PLAZA, L.L.C., A VIRGINIA LIMITED LIABILITY COMPANY BY DEED DATED DECEMBER 8, 2000 AND DULY RECORDED AS INSTRUMENT # 010008180 IN THE CLERK'S OFFICE OF THE CIRCUIT COURT FOR THE COUNTY OF YORK-POQUOSON, VIRGINIA.

TAX PARCEL 10-22-00-000C

TAX PARCEL 10-02-00-000C IS IN THE NAME OF JAMES-YORK PLAZA, L.L.C., A VIRGINIA LIMITED LIABILITY COMPANY, (FORMERLY, JAMES-YORK PLAZA, A VIRGINIA GENERAL PARTNERSHIP) AND WAS ACQUIRED FROM JAMES-YORK PLAZA SHOPPING CENTER, INC., A VIRGINIA CORPORATION BY DEED OF CONFIRMATION DATED JULY 29, 1993 AND DULY RECORDED IN DEED BOOK 995, PAGE 63 IN THE CLERK'S OFFICE OF THE CIRCUIT COURT FOR THE COUNTY OF YORK-POQUOSON, VIRGINIA. JAMES-YORK PLAZA, A VIRGINIA GENERAL PARTNERSHIP CONVERTED INTO JAMES-YORK PLAZA, L.L.C. BY ARTICLES OF ORGANIZATION AND CONVERSION DATED JUNE 18, 1997 AND DULY FILED WITH THE VIRGINIA STATE CORPORATION COMMISSION.

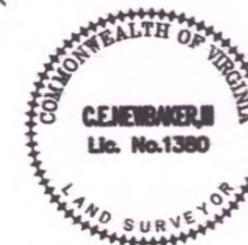
I CERTIFY THAT THE IRON PINS AS SHOWN ON THIS PLAT WILL BE SET ON OR BEFORE DECEMBER 31, 2012.

SIGNED: _____ DATE: _____
 C.E. NEWBAKER, III L.S.# 1380

PARCEL ONE: FORMER AREA = 684,806 S.F. OR 15.721 ACRES
 PARCEL A: FORMER AREA = 179,497 S.F. OR 4.120 ACRES
 PARCEL C: FORMER AREA = 451,687± S.F. OR 10.37± ACRES

PARCEL ONE: NEW AREA= 694,773 S.F. OR 15.950 ACRES
 PARCEL A: NEW AREA = 252,005 S.F. OR 5.785 ACRES
 PARCEL C: NEW AREA= 369,212± S.F. OR 8.476± ACRES

TOTAL SUBDIVIDED AREA = 1,315,990± S.F. OR 30.211± ACRES



OWNER'S CONSENT

THIS PLAT OF BOUNDARY LINE ADJUSTMENT OF THE LAND HERON SHOWN IS WITH THE FREE CONSENT AND IN ACCORDANCE WITH THE DESIRES OF THE UNDERSIGNED OWNERS, PROPRIETORS AND TRUSTEES, IF ANY.

JAMES-YORK PLAZA, L.L.C.
 A VIRGINIA LIMITED LIABILITY COMPANY

BY: **MARC A. SHOOK, MANAGER**

BY: _____ DATE: _____
 MARC A. SHOOK, MANAGER

BY: **STOKES PROPERTIES, L.L.C., MANAGER**

BY: _____ DATE: _____
 J. RANDOLPH STOKES, MANAGER

JAMES YORK SELF STORAGE, L.L.C.
 A VIRGINIA LIMITED LIABILITY COMPANY

BY: **JAMES-YORK PLAZA, L.L.C., MANAGER**

BY: _____ DATE: _____
 MARC A. SHOOK, MANAGER

BY: **STOKES PROPERTIES, L.L.C., MANAGER**

BY: _____ DATE: _____
 J. RANDOLPH STOKES, MANAGER

BY: **JYSS DEVELOPMENT, L.L.C., MANAGER**

BY: _____ DATE: _____
 MARC A. SHOOK, MANAGER

BY: _____ DATE: _____
 J. RANDOLPH STOKES, MANAGER

STATE OF VIRGINIA, COUNTY OR CITY OF _____, TO WIT:

I, _____, A NOTARY PUBLIC IN AND FOR THE COUNTY AND STATE AFORESAID, DO HEREBY CERTIFY THAT THE ABOVE NAMED PERSONS WHOSE NAMES ARE SIGNED TO THE FOREGOING WRITING HAS ACKNOWLEDGED THE SAME BEFORE ME IN MY JURISDICTION AFORESAID.

GIVEN UNDER MY HAND THIS _____ DAY OF _____, 2012

 NOTARY PUBLIC REGISTRATION No. _____

MY COMMISSION EXPIRES: _____

THE RECORDATION OF THIS PLAT SHALL OPERATE TO TRANSFER TO THE COUNTY OF YORK ANY EASEMENT INDICATED ON THE PLAT FOR DRAINAGE AND/OR SANITARY SEWER TO CREATE A PUBLIC RIGHT-OF-PASSAGE OVER THE SAME, UNLESS OTHERWISE NOTED ON THIS PLAT.

DRAINAGE AND UTILITY EASEMENTS CONVEYED TO THE COUNTY BY RECORDATION OF THIS PLAT SHALL BE EXCLUSIVE TO THE COUNTY, UNLESS OTHERWISE NOTED. CONVEYANCE OF SUCH EASEMENTS TO THE COUNTY ALSO INCLUDE: (I) THE COUNTY'S RIGHT OF INGRESS AND EGRESS OVER THE OWNER'S LAND ADJACENT TO THE EASEMENT AS NECESSARY TO INSPECT, MAINTAIN AND OPERATE THE COUNTY'S FACILITIES WITHIN THE EASEMENT AND (II) THE RIGHT OF THE COUNTY TO ASSIGN TO OTHERS FROM TIME TO TIME THE RIGHT TO LOCATE FACILITIES THEREIN SERVING THE PUBLIC, INCLUDING, BUT NOT LIMITED TO, WATER, ELECTRIC, TELEPHONE, COMMUNICATIONS, AND GAS UTILITY FACILITIES.

THE LAND PROPOSED TO BE CONVEYED OR EXCHANGED SHALL NOT FOR ANY PURPOSE BE OR BECOME A SEPARATE OR INDEPENDENT LOT, TRACT, OR PARCEL, BUT FOR ALL PURPOSES SHALL BECOME AND BE CONSIDERED A PART OF THE ADJACENT LOT, TRACT, OR PARCEL ALREADY OWNED BY JAMES YORK SELF STORAGE, L.L.C. & JAMES-YORK PLAZA, L.L.C. AT THE TIME OF THIS CONVEYANCE OR EXCHANGE.

RECEIVED
 York County

MAY 31 2012

Planning Director

APPROVED:
 YORK COUNTY BOARD OF SUPERVISORS

BY: _____ DATE: _____
 PLAT APPROVING AGENT

STATE OF VIRGINIA
 COUNTY OF YORK
 IN THE CLERK'S OFFICE OF THE CIRCUIT COURT FOR THE COUNTY OF YORK-POQUOSON, VIRGINIA, THE _____ DAY OF _____, 2012, THIS PLAT WAS PRESENTED AND ADMITTED TO RECORD AS THE LAW DIRECTS AS INSTRUMENT NUMBER _____

TESTE: _____
 CLERK

BY: _____

PROPERTY IS TAX PARCEL NUMBER:
 10-02-00-001; GPIN: F14D-3620-1799
 10-22-00-000A; GPIN: F14D-4095-1525
 10-22-00-000C; GPIN: F14D-3945-2189

CURVE TABLE						
NO.	RADIUS	DELTA	ARC	TANGENT	CHORD	CHORD BRG.
1 (RT)	5729.08'	03°51'17"	385.42'	192.78'	385.35'	N28°22'34"W
2 (RT)	5729.08'	01°00'23"	100.62'	50.31'	100.62'	N25°23'37"W
3	10.00'	90°00'00"	15.71'	10.00'	14.14'	N14°37'46"E
4	10.00'	90°00'00"	15.71'	10.00'	14.14'	N75°22'14"W
5	275.00'	25°08'36"	120.68'	61.33'	119.71'	S47°03'27"W

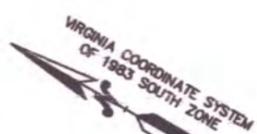
LEGEND:
 ○ DENOTES PIN, PIPE, OR MONUMENT FOUND
 ● DENOTES IRON PINS SET
 --- (N86°08'10"E) (38.26') --- DENOTES PROPERTY LINE HEREBY VOIDED.
 RPA-RESOURCE PROTECTION AREA
 RMA-RESOURCE MANAGEMENT AREA

THIS PROPERTY IS SUBJECT TO A 10' CHESAPEAKE AND POTOMAC TELEPHONE COMPANY OF VIRGINIA RIGHT-OF-WAY AGREEMENT OF UNDETERMINED LOCATION PER DEED BOOK 224, P.441.
 THIS PROPERTY IS SUBJECT TO A 10' VIRGINIA ELECTRIC AND POWER COMPANY EASEMENT OF UNDETERMINED LOCATION PER DEED BOOK 236, PAGE 412 AND DEED BOOK 246, PAGE 701.

BOUNDARY LINE ADJUSTMENT OF THE PROPERTIES OF JAMES-YORK SELF STORAGE, L.L.C. & JAMES-YORK PLAZA, L.L.C.
 P.B.13, P.238 & 239
 BRUTON DISTRICT - COUNTY OF YORK, VIRGINIA
 SCALE: 1" = 100' APRIL 20, 2012

C. E. Newbaker
 SURVEYING & PLANNING, INC.
 P.O. BOX 1298
 YORKTOWN, VA. 23692
 PH# 757-240-2562
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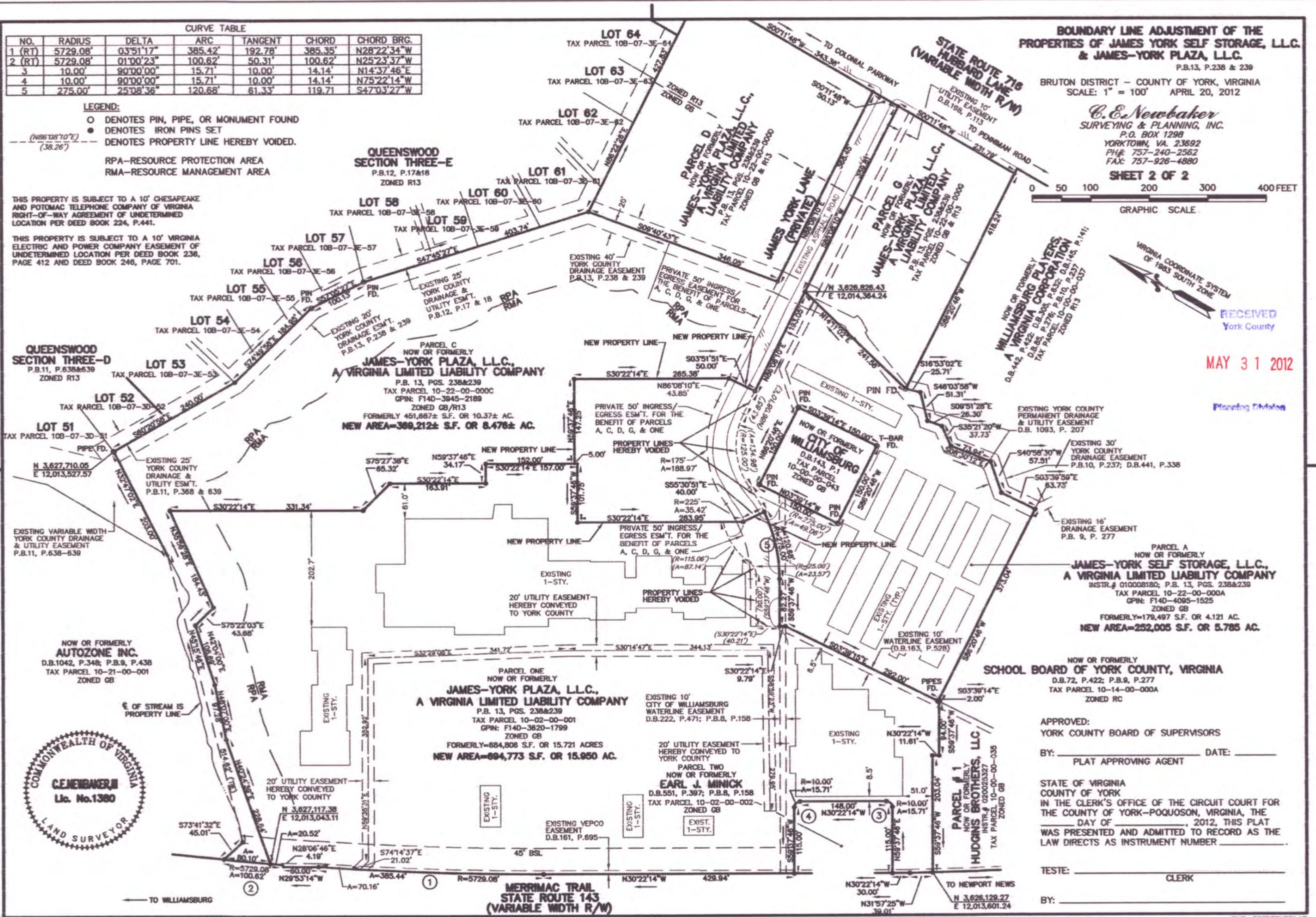
SHEET 2 OF 2
 GRAPHIC SCALE
 0 50 100 200 300 400 FEET



RECEIVED
 York County

MAY 31 2012

Planning Division



APPROVED:
 YORK COUNTY BOARD OF SUPERVISORS
 BY: _____ DATE: _____
 PLAT APPROVING AGENT

STATE OF VIRGINIA
 COUNTY OF YORK
 IN THE CLERK'S OFFICE OF THE CIRCUIT COURT FOR THE COUNTY OF YORK-POQUOSON, VIRGINIA, THE _____ DAY OF _____, 2012, THIS PLAT WAS PRESENTED AND ADMITTED TO RECORD AS THE LAW DIRECTS AS INSTRUMENT NUMBER _____

TESTE: _____ CLERK
 BY: _____

James York Plaza LLC Self Storage Expansion – Exhibits of Existing Self Storage



BOARD OF SUPERVISORS
COUNTY OF YORK
YORKTOWN, VIRGINIA

Resolution

At a regular meeting of the York County Board of Supervisors held in York Hall, Yorktown, Virginia, on the ____ day of _____, 2012:

Present

Vote

Thomas G. Shepperd, Jr., Chairman
Sheila S. Noll, Vice Chairman
Walter C. Zaremba
Donald E. Wiggins
George S. Hrichak

On motion of _____, which carried ____, the following resolution was adopted:

A RESOLUTION TO APPROVE AN APPLICATION TO FOR A SPECIAL USE PERMIT TO ESTABLISH A MINI-STORAGE WAREHOUSE FACILITY BEHIND JAMES YORK PLAZA SHOPPING CENTER

WHEREAS, James York Plaza LLC has submitted Application No. UP-808-12 requesting a Special Use Permit, pursuant to Section 24.1-306 (Category 14, No. 6a) of the York County Zoning Ordinance, to authorize the establishment of a mini-storage warehouse facility on an approximately 1.7-acre portion of a 10.4-acre parcel of land located at 212 Hubbard Lane (Route 716) and further identified as Assessor’s Parcel No. 10-22-C (GPIN F14d-3945-2189); and

WHEREAS, said application has been transmitted to the York County Planning Commission in accordance with applicable procedure; and

WHEREAS, the Planning Commission recommends approval of this application; and

WHEREAS, the York County Board of Supervisors has conducted a duly advertised public hearing on this application; and

WHEREAS, the Board has carefully considered the public comments and Planning Commission recommendation with respect to this application;

NOW, THEREFORE, BE IT RESOLVED by the York County Board of Supervisors this the ___ day of _____, 2012, that Application No. UP-808-12 be, and it is hereby, approved to authorize a Special Use Permit, pursuant to Section 24.1-306 (Category 14, No. 6a) of the York County Zoning Ordinance, for the establishment of a mini-storage warehouse facility on an approximately 1.7-acre portion of a 10.4-acre parcel of land located at 212 Hubbard Lane (Route 716), further identified as Assessor's Parcel No. 10-22-C (GPIN F14d-3945-2189), subject to the following conditions:

1. This Special Use Permit shall authorize the establishment of a mini-storage warehouse facility on an approximately 1.7-acre portion of a 10.4-acre parcel of land located at 212 Hubbard Lane (Route 716), further identified as Assessor's Parcel No. 10-22-C (GPIN F14d-3945-2189).
2. A site plan prepared in accordance with the provisions of Article V of the York County Zoning Ordinance shall be submitted to and approved by the Department of Environmental and Development Services, Division of Development and Compliance, prior to the commencement of any construction or land disturbing activity on the site. Said site plan shall be in substantial conformance with the sketch plan titled "OVERALL PLAN: AMERICAN CLASSIC SELF STORAGE," prepared by C. E. Newbaker Surveying & Planning, Inc. and dated May 31, 2012, except as modified herein.
3. An approved fire apparatus access road shall be provided for the facility in accordance with Section 503.1.1 of the 2009 International Fire Code. Said fire access road shall extend to within 150 feet of all portions of the facility and all portions of exterior walls of the first story of the building as measured by an approved route around the exterior of the building or facility. Accordingly, the asphalt surrounding the 3,823-square foot warehouse building depicted on the referenced plan shall be extended all the way to the eastern wall of the building.
4. The total area of the mini-storage warehouse facility shall not exceed 21,425 square feet. Any proposal to expand the facility beyond the limits depicted on the referenced plan and/or set forth herein shall be considered a major amendment of the special use and shall be approved in the same manner and under the same procedures as are applicable to the issuance of the original permit.
5. The parking/circulation area, drive aisles, and buildings shall accommodate an inside turning radius of 33 feet for large fire and rescue apparatus.
6. The developer shall install a fire hydrant at the entrance to the facility.
7. In conjunction with the submittal of site plans for the project, the developer shall submit a site-specific and field-verified Natural Resources Inventory in accordance with the provisions set forth in Section 23.2-6 of the Chesapeake Bay Preservation Areas Ordinance.

8. In accordance with Section 24.1-115(b)(6) of the York County Zoning Ordinance, a certified copy of this Resolution shall be recorded at the expense of the applicant in the name of the property owner as grantor in the office of the Clerk of the Circuit Court within one month of use permit approval.

BE IT FURTHER RESOLVED that this Special Use Permit is not severable, and invalidation of any word, phrase, clause, sentence, or paragraph shall invalidate the remainder.

COUNTY OF YORK

MEMORANDUM

DATE: August 10, 2012 (BOS Mtg. 8/21/12)

TO: York County Board of Supervisors

FROM: James O. McReynolds, County Administrator 

SUBJECT: Cable Television Franchise Renewal Agreement with Cox Communications Hampton Roads, LLC

The current 15 year cable television franchise agreement between the County and Cox Communications Hampton Roads, LLC (Cox) expires August 27, 2012. Over the course of the past several months, County staff have been in communication with representatives of Cox, and have negotiated a draft renewal franchise agreement for the provision of cable television services in York County for a new 15 year term which is provided to be adopted as Ordinance No. 12-12. The renewal agreement provides for continued service from Cox on the same basis as in the past, with only a few minor differences that I suspect you will find inconsequential.

You will recall that in February 2009, the County granted a nonexclusive 15 year franchise agreement with Verizon Virginia, Inc. (Verizon), and the proposed agreement with Cox follows the form of, and generally follows the substance of, the agreement with Verizon. The Verizon agreement, in turn, was very similar to the existing Cox agreement, except that Verizon was a new provider and its agreement had to address a number of start-up issues that no longer concerned Cox. Changes to the Virginia statutes regulating the ability of local governments to enter into cable television franchise agreements which were adopted in 2006 generally prohibit a locality from demanding of any cable television provider any franchise terms and conditions which are more onerous than those demanded of its competitors, and to a significant degree establishes the framework for such significant franchise conditions as service to governmental buildings, and the provision of governmental information and access channels. Cable television franchise agreements are also governed by the Federal Telecommunications Act, and between the state and federal statutes, localities have long been deprived of the ability to establish cable television rates charged to customers, or to dictate the availability of programming. Moreover, you will note that this agreement does not provide for a cable franchise fee to be paid to the County. By statute in Virginia, cable companies no longer pay franchise fees directly to localities, but now pay a state tax in the amount of 5% of their revenues (that is, an amount equal to the maximum franchise fee which a locality formerly could have charged) and those revenues are then returned to the localities. See Code of Virginia § 58.1-645 et seq.

The pertinent provisions of the proposed renewal agreement with Cox are as follows:

Coverage

The franchise area being extended is, as before, and as with Verizon, the entire territory of the County. The service area is defined as all portions of the County where Cox currently provides cable television service. Moreover, Cox agrees to provide service to not less than 80% of all occupied residential dwelling units within the County, subject to certain limitations, which is the maximum that the Virginia statutes will allow a locality to demand of a cable provider. I am informed that Cox currently exceeds that limitation. The 80% requirement does not include, however, areas where developments or buildings may have exclusive arrangements for cable television through another provider or which for one reason or another do not agree to allow Cox to provide service, areas where it is not technically feasible to provide cable television service, or in low density areas where there are fewer than 30 occupied residential dwelling units per mile as measured from the nearest access point on the cable system.

Because Cox has been the County's main cable provider for years, and has provided coverage throughout the County, it is not necessary in this agreement for us to specify, as was required with the Verizon agreement, a phasing schedule for service to be expanded from an initial smaller service area.

Service to Municipal Buildings

Cox currently provides free service to each of the County's and School Board's buildings and to a number of other facilities, including the dock master's office on the Yorktown waterfront and the Senior Center, which the County leases but does not own. Exhibit A shows a list of facilities currently receiving free service. That service will continue, and during the term of the franchise agreement, the County may add as many as 15 additional buildings. If Cox is required to run its feeder line to the new facility more than 250', the County (or the School Division in the case of a school building) would either have to pay the costs of the cable in excess of 250' or forego the free service.

Governmental and Educational Access Channel Capacity and Interconnection

As with the existing Verizon franchise, and has been the case with Cox over many years, the County will continue to be provided at no charge one non-commercial channel for educational purposes and use by the school system, and two non-commercial channels available to the County. Currently, the County and the School Division together have utilized only two of the three available channels. Cox will continue to provide signal origination points for programming originating not only from the broadcast center jointly operated by the County and the School Division and located at York High School, but also from each of the other high schools, the Griffin-Yeates Center, the Public Safety Building, and the Board of Supervisors meeting room.

Governmental Channel “Capital Fee”

By statute in Virginia, localities may under some circumstances assess by ordinance a “capital fee” to be collected from cable providers to help pay for capital costs incurred in providing governmental and educational channel programming. York County is actually not in a position under the applicable statutes to demand such a fee, although cable providers may certainly agree to pay such a fee. York’s position is hampered by the fact that, by statute, a locality cannot require such a fee (other than by agreement) in an amount larger than any such fee charged to an incumbent cable provider, and York County has never charged a capital fee of either Cox or Verizon in previous years. Instead, when Cox first began providing cable services in York County, it made a sizeable one-time grant to be used to purchase broadcast equipment for the County and School Division channels. Nonetheless, Verizon agreed in 2009 that a fee of up to 20¢ per subscriber per month would be a “reasonable” fee provided that all other cable providers agreed to pay the same. During earlier discussions with the Board, there was a reluctance to impose any such fee which would almost surely be passed on to consumers and thereby increase monthly cable bills for York County residents. Cox has likewise agreed to pay the same capital fee. However, in accordance with the Board’s expressed desires, this franchise agreement does not currently impose any such fee. Rather, it reserves the right to the Board at any time during the ensuing 15 years to impose such a fee by ordinance, so long as the requirement was applied equally to all cable providers in the County. Whether the Board wishes ever to do so will of course be entirely at the Board’s discretion. For your information, some Virginia localities charge such a fee and others (including neighboring James City County) have not imposed a capital fee.

Enforcement Procedures

The County’s ability to enforce the provisions of the proposed Cox franchise agreement is nearly identical to those under the existing Cox agreement and the Verizon franchise agreement. For certain violations of the franchise agreement, there are liquidated damages provided. However, at Cox’s insistence, the liquidated damages in each case are less than are provided in the Verizon agreement. Notwithstanding, staff determined that they should be adequate. I will point out that at no time since cable television first came to York County has the County ever felt compelled to assess liquidated damages against any cable provider.

In addition to the liquidated damages provisions, the agreement provides for the opportunity for the revocation of the franchise in the event of noncompliance and a failure by Cox to cure a violation after adequate notice. Moreover, Cox will be required to post a \$20,000 letter of credit payable to York County to ensure that all payments to which the County is entitled, including any liquidated damages, are paid when due.

Customer Service Standards

Exhibit B to the agreement sets out the customer service standards which Cox will be obligated to follow. They are identical to those set out in the Verizon agreement, and essentially the same as were in previous Cox franchise agreements. From my examination of agreements with other localities, they appear to be essentially identical to those in force in surrounding jurisdictions both for Cox and for Verizon.

Conclusion

Having reviewed the agreement, and having participated with staff in the negotiation of this agreement, I believe that it one that the Board should be pleased to consider. This matter has been advertised for a public hearing for the adoption of the franchise agreement as an ordinance.

Barnett/3440:swb

Attachment

- Ordinance O12-12

BOARD OF SUPERVISORS
COUNTY OF YORK
YORKTOWN, VIRGINIA

Ordinance

At a regular meeting of the York County Board of Supervisors held in York Hall, Yorktown, Virginia, on the ____ day of ____, 2012:

Present

Vote

Thomas G. Shepperd, Jr., Chairman
Sheila S. Noll, Vice Chairman
Walter C. Zaremba
Donald E. Wiggins
George S. Hrichak

On motion of _____, which carried ____, the following ordinance was adopted:

AN ORDINANCE TO AUTHORIZE THE COUNTY ADMINISTRATOR TO EXECUTE A NONEXCLUSIVE NEGOTIATED FRANCHISE RENEWAL AGREEMENT BETWEEN THE COUNTY OF YORK AND COX COMMUNICATIONS HAMPTON ROADS, LLC, PURSUANT TO CODE OF VIRGINIA SECTION 15.2-2108.19 ET. SEQ. FOR THE PROVISION OF CABLE TELEVISION SERVICE WITHIN THE COUNTY, AND PROVIDING THAT THE TERMS AND CONDITIONS OF THE FRANCHISE AGREEMENT WITH COX SHALL SUPERSEDE THE TERMS AND CONDITIONS OF THE EXISTING YORK COUNTY CABLE COMMUNICATIONS ORDINANCE (ORDINANCE O97-7) TO THE EXTENT INCONSISTENT WITH THE PROPOSED AGREEMENT.

WHEREAS, on August 27, 1997, the County adopted Ordinance O97-7 amending in its entirety the County's Cable Communications Ordinance providing for the provision of cable television within the County by means of franchise agreements with private cable television service providers; and

WHEREAS, effective July 1, 2006, the Virginia General Assembly adopted Article 1.2 of Chapter 21 of Title 15.2 of the Code of Virginia, substantially amending the applicable statutes relative to the granting of cable television franchise agreements by local governments in Virginia and overriding various provisions of the County's Cable Communications Ordinance; and

WHEREAS, the County has entered into negotiations with Cox Communications Hampton Roads, LLC (Cox) for the granting of a negotiated cable television franchise agreement for the provision of cable television services within the County, and following the holding of a public hearing has determined that it is in the best interests of the public, and consistent with the public's general welfare, that the County enter into a nonexclusive cable television franchise agreement with Cox, that the County Administrator be authorized to execute the same, and that provisions of the Cox franchise agreement be deemed to control over inconsistent provisions of the County's Cable Communications Ordinance (O97-7).

NOW, THEREFORE, BE IT ORDAINED by the York County Board of Supervisors, this ____ day of _____, 2012, as follows:

THIS FRANCHISE AGREEMENT (the "Franchise" or "Agreement") is entered into by and between York County, Virginia, a political subdivision of the Commonwealth of Virginia (the Local Franchising Authority or "York County") and Cox Communications Hampton Roads, LLC, a limited liability company duly organized under the applicable laws of the State of Delaware (the "Franchisee"), together the "Parties."

WHEREAS, York County wishes to grant Franchisee a nonexclusive franchise to construct, install, maintain, extend and operate a cable communications system in the Franchise Area as designated in this Franchise;

WHEREAS, York County is a "franchising authority" in accordance with Title VI of the Communications Act (*see* 47 U.S.C. §522(10)) and is authorized to grant one or more nonexclusive cable franchises pursuant to the Code of Virginia, Va. Code Ann. § 15.2-2108;

WHEREAS, York County intends to exercise the full scope of its governmental powers to the extent not prohibited by Commonwealth of Virginia law, including both its police power and contracting authority, to promote the public interest and to protect the health, safety and welfare of the citizens of York County, Virginia;

WHEREAS, the Cable System will occupy the Public Rights-of-Way within York County, and Franchisee desires to use portions of the Cable System to provide Cable Services (as hereinafter defined) in the Franchise Area;

WHEREAS, York County has reviewed Franchisee's performance and the quality of service under the prior franchise, identified the future cable-related needs and interests of York County and its community, considered the financial, technical and legal qualifications of Franchisee, and determined that Franchisee's Cable System is adequate and meets the requirements of 47 U.S.C. § 546 in a full public proceeding affording due process to all parties;

WHEREAS, York County has found Franchisee to be financially, technically and legally qualified to operate the Cable System;

WHEREAS, York County has determined that the grant of a nonexclusive franchise to Franchisee is consistent with the public interest; and,

WHEREAS, York County and Franchisee have reached agreement on the terms and conditions set forth herein and the parties have agreed to be bound by those terms and conditions.

NOW, THEREFORE, in consideration of York County's grant of a franchise to Franchisee, Franchisee's promise to provide Cable Service to residents of the Service Area of York County pursuant to and consistent with the Communications Act (as hereinafter defined), pursuant to the terms and conditions set forth herein, the promises and undertakings herein, and other good and valuable consideration, the receipt and the adequacy of which are hereby acknowledged,

THE SIGNATORIES DO HEREBY AGREE AS FOLLOWS:

1. **DEFINITIONS**

Except as otherwise provided herein, the definitions and word usages set forth in the Communications Act (as hereinafter defined) are incorporated herein and shall apply in this Agreement. References in this section to any federal or state law shall include amendments thereto as may be enacted from time-to-time. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number and words in the singular number include the plural number. The words "shall" and "will" are mandatory and "may" is permissive. Words not defined shall be given their common and ordinary meaning. In addition, the following definitions shall apply:

1.1. *Access Channel*: A video Channel for the transmission of non-commercial Educational or Governmental access programming as directed by York County.

1.2. *Affiliate*: Shall be defined herein as it is defined under Title 15.2 of the Code of Virginia, Chapter 21, Article 1.2, Section 15.2-2108.19, meaning in relation to any Person, another Person who owns or controls, is owned or controlled by, or is under common ownership or control with, such Person.

1.3. *Basic Service or Basic Service Tier*: Shall be defined herein as it is defined under Title 15.2 of the Code of Virginia, Chapter 21, Article 1.2, Section 15.2-2108.19, meaning the Cable Service tier that includes (i) the retransmission of local television broadcast Channels and (ii) EG Channels required to be carried in the basic tier.

1.4. *Cable Service or Cable Services*: Shall be defined herein as it is defined under Title 15.2 of the Code of Virginia, Chapter 21, Article 1.2, Section 15.2-2108.19, meaning the one-way transmission to Subscribers of (i) Video Programming or (ii) other programming service, and Subscriber interaction, if any, which is required for the selection or use of such Video Programming or other programming service.

Cable Service does not include any Video Programming provided by a commercial mobile service provider defined in 47 U.S.C. § 332(d).

1.5. *Cable System or System*: Shall be defined herein as it is defined under Section 602 of the Communications Act, 47 U.S.C. § 522(7), Title 15.2 of the Code of Virginia, Chapter 21, Article 1.2, Section 15.2-2108.19, meaning Franchisee's facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide Cable Service that includes Video Programming and that is provided to multiple Subscribers within the Service Area, except that such term shall not include (i) a system that serves fewer than twenty (20) Subscribers; (ii) a facility that serves only to retransmit the television signals of one or more television broadcast stations; (iii) a facility that serves only Subscribers without using any Public Rights-of-Way; (iv) a facility of a common carrier that is subject, in whole or in part, to the provisions of Title II of the Communications Act of 1934, 47 U.S.C. § 201 *et seq.*, except that such facility shall be considered a Cable System to the extent such facility is used in the transmission of Video Programming directly to Subscribers, unless the extent of such use is solely to provide interactive on-demand services; (v) any facilities of any electric utility used solely for operating its electric system; (vi) any portion of a system that serves fewer than fifty (50) Subscribers in any locality, where such portion is a part of a larger system franchised in an adjacent locality; or (vii) an open video system that complies with § 653 of Title VI of the Communications Act of 1934, as amended, 47 U.S.C. § 573.

1.6. *Channel*: Shall be defined herein as it is defined under Section 602 of the Communications Act, 47 U.S.C. § 522(4), meaning a portion of the electromagnetic frequency spectrum which is used in a cable system and which is capable of delivering a television channel, as defined by the Federal Communications Commission by regulation.

1.7. *Communications Act*: The Communications Act of 1934, as amended.

1.8. *Drop*: The cable that connects the ground block on the Subscriber's residence or institution to the nearest feeder cable of the System.

1.9. *EG or EG Access Channels*: Educational or Governmental Channels available for non-commercial programming produced by members of the educational or governmental institutions pursuant to 47 U.S.C. § 531.

1.10. *FCC*: The United States Federal Communications Commission or successor governmental entity thereto.

1.11. *Force Majeure*: Shall be defined herein as it is defined under Title 15.2 of the Code of Virginia, Chapter 21, Article 1.2, Section 15.2-2108.19, meaning an event or events reasonably beyond the ability of Franchisee to anticipate and control. "Force majeure" includes, but is not limited to, acts of God, incidences of terrorism, war or riots, labor strikes or civil disturbances, floods, earthquakes, fire,

explosions, epidemics, hurricanes, tornadoes, governmental actions and restrictions, work delays caused by waiting for utility providers to service or monitor or provide access to utility poles to which Franchisee's facilities are attached or to be attached or conduits in which Franchisee's facilities are located or to be located, and unavailability of materials or qualified labor to perform the work necessary.

1.12. *Franchise Area*: The jurisdictional boundary of York County and such additional areas as may be included in the jurisdictional boundary of York County during the term of this Franchise.

1.13. *Franchisee*: Cox Communications Hampton Roads, LLC, and its lawful and permitted successors, assigns and transferees.

1.14. *Local Franchise Authority or LFA (York County)*: York County, Virginia or the lawful successor, transferee, or assignee thereof.

1.15. *Non-Cable Services*: Any service that does not constitute the provision of Cable Services.

1.16. *Non-commercial*: Non-commercial means for use other than (i) the carriage of programming in return for compensation (including programming selected by a third party), or (ii) the carriage of advertising; provided that York County or any entity responsible for managing an Access Channel may enter into underwriting or sponsorship arrangements with third party entities that conform with sponsorship guidelines used by the Public Broadcasting Service ("PBS").

1.17. *Normal Business Hours*: Shall be defined herein as it is defined under 47 C.F.R. § 76.309(c)(4)(i), meaning those hours during which most similar businesses in the community are open to serve customers. In all cases, "normal business hours" must include some evening hours at least one night per week and/or some weekend hours.

1.18. *Normal Operating Conditions*: Shall be defined herein as it is defined under 47 C.F.R. § 76.309(c)(4)(ii), meaning those service conditions which are within the control of the Franchisee. Those conditions which are not within the control of the Franchisee include, but are not limited to, natural disasters, civil disturbances, power outages, telephone network outages, and severe or unusual weather conditions. Those conditions which are ordinarily within the control of the Franchisee include, but are not limited to, special promotions, pay-per-view events, rate increases, regular peak or seasonal demand periods, and maintenance or rebuild of the Cable System.

1.19. *Person*: An individual, partnership, association, joint stock company, trust, corporation, or limited liability entity, but not, however, York County.

1.20. *Public Rights-of-Way*: Shall mean the surface, the air space above the surface, below the surface of any public street, highway, lane, path, alley, sidewalk, boulevard, drive, bridge, tunnel, park, parkway, waterway, easement, or

similar right-of-way property in which York County now or hereafter holds any property interest, which, consistent with the purposes for which it was dedicated, may be used for the purpose of installing and maintaining the Cable System. No reference in this Agreement to a Public Rights-of-Way shall be deemed to be a representation or guarantee by York County that its interest or other right to control the use of such property is sufficient to permit its use for such purposes, and the Franchisee shall be deemed to gain only those rights to use the Public Rights-of-Way as are properly in York County and as York County may have the undisputed right and power to give. Public Rights-of-Way do not include the airwaves above a right-of-way with regard to cellular or other non-wire communications or broadcast services.

1.21. *Service Area*: All portions of the Franchise Area where Cable Service is being offered by the Franchisee in York County.

1.22. *Service Interruption*: The loss of picture or sound on one or more cable channels.

1.23. *Standard Installation*: Any residential or commercial installation which can be completed by using a Drop of one hundred fifty (150) feet or less.

1.24. *Subscriber*: A Person or governmental entity who lawfully receives Cable Service over the Cable System with Franchisee's express permission.

1.25. *Telecommunication Services*: Shall be defined herein as it is defined under Section 3 of the Communications Act, 47 U.S.C. § 153(46), meaning the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used.

1.26. *Transfer of the Franchise*: Shall be defined herein as it is defined under Title 15.2 of the Code of Virginia, Chapter 21, Article 1.2, §15.2-2108.19, meaning any transaction in which (i) an ownership or other interest in the Franchisee is transferred, directly or indirectly, from one person or group of persons to another person or group of persons, so that majority control of the Franchisee is transferred; or (ii) the rights and obligations held by the Franchisee under the Franchise are transferred or assigned to another person or group of persons. However, notwithstanding clauses (i) and (ii) of the preceding sentence, a transfer of the cable franchise shall not include (a) transfer of an ownership or other interest in the Franchisee to the parent of the Franchisee or to another affiliate of the Franchisee; (b) transfer of an interest in the cable franchise granted under this article or the rights held by the Franchisee under the Franchise to the parent of the Franchisee or to another affiliate of the Franchisee; (c) any action that is the result of a merger of the parent of the Franchisee; (d) any action that is the result of a merger of another affiliate of the Franchisee; or (e) a transfer in trust, by mortgage, or by assignment of any rights, title, or interest of the Franchisee in the Franchise or the Cable System used to provide Cable Services in order to secure indebtedness.

1.27. *Video Programming*: Shall be defined herein as it is defined under Title 15.2 of the Code of Virginia, Chapter 21, Article 1.2, §15.2-2108.19, meaning programming provided by, or generally considered comparable to, programming provided by a television broadcast station.

2. GRANT OF AUTHORITY; LIMITS AND RESERVATIONS

2.1. *Grant of Authority*: Subject to the terms and conditions of this Agreement and applicable provisions of Section 15.2 of the Code of Virginia and the Communications Act, York County hereby grants the Franchisee the right to own, construct, operate and maintain a Cable System along the Public Rights-of-Way within the Franchise Area, in order to provide Cable Service. This Agreement grants no additional authority for Franchisee to utilize York County's Public Rights-of-Way for any other purpose unless otherwise expressly provided herein or provided by law. No privilege or power of eminent domain is bestowed by this grant; nor is such a privilege or power bestowed by this Agreement.

2.2. *Term*: This Franchise shall become effective on the date of adoption by York County (the "Effective Date"). The term of this Franchise shall be until August 31, 2027. Consistent with Section 11, the Franchisee, at its option, shall notify York County of its intent to extend the franchise term in writing not less than thirty (30) months from the expiration date of the term of this Franchise.

2.3. *Grant Not Exclusive*: The Franchise and the rights granted herein to use and occupy the Public Rights-of-Way to provide Cable Services shall not be exclusive, and York County reserves the right to grant other franchises for similar uses or for other uses of the Public Rights-of-Way, or any portions thereof, to any Person, or to make any such use themselves, at any time during the term of this Franchise. Any such rights which are granted shall not be inconsistent with the rights granted to the Franchisee under this Franchise or under applicable federal or state law. Consistent with Section 15.2-2108.21 of the Code of Virginia, Franchisee shall have the right to opt into the terms of an ordinance cable franchise pursuant to Section 15.2-2108.26 of the Code of Virginia. Further, except to the extent permitted by applicable federal and state law, franchises granted for the provision of Cable Services or Video Programming shall be no less burdensome nor more favorable than the obligations imposed upon the Franchisee hereunder, in order that one operator not be granted an unfair competitive advantage over another. If a franchise or other authorization is granted that creates an unfair competitive advantage as described herein, Franchisee and York County shall discuss the discrepancy and York County shall consider amendments to this Agreement in accordance with state law to provide a level playing field. Franchisee acknowledges that it has reviewed the Cable Franchise Agreement between York County and Verizon Virginia Inc., approved by the Board of Supervisors of York County on February 17, 2009 (the Verizon Franchise), and agrees further that the Verizon Franchise is neither less burdensome nor more favorable than the obligations imposed upon Franchisee hereunder, and confers no unfair competitive advantage upon Verizon Virginia Inc. as compared to Franchisee.

2.4. *Franchise Subject to Federal Law:* Notwithstanding any provision to the contrary herein, this Franchise is subject to and shall be governed by all applicable provisions of federal law as it may be amended, including but not limited to the Communications Act; provided, however, that this Section 2.4 shall not be construed as in any way limiting or waiving the Parties' right to assert or claim that any amendment or change to federal law made after the Effective Date improperly interferes with or takes without compensation any contractual property rights of the Parties hereunder.

2.5. *No Waiver:*

2.5.1. The failure of York County on one or more occasions to exercise a right or to require compliance or performance under this Franchise, the Communications Act or any other applicable local, State or Federal law shall not be deemed to constitute a waiver of such right or a waiver of compliance or performance by York County, nor to excuse Franchisee from complying or performing, unless such right or such compliance or performance has been specifically waived in writing.

2.5.2. The failure of the Franchisee on one or more occasions to exercise a right under this Franchise or applicable law, or to require performance under this Franchise, shall not be deemed to constitute a waiver of such right or of performance of this Agreement, nor shall it excuse York County from performance, unless such right or performance has been specifically waived in writing.

2.6. *Construction of Agreement:*

2.6.1. The provisions of this Franchise shall be liberally construed to effectuate their objectives.

2.6.2. Notwithstanding Section 4-6(a) of York County Ordinance O97-7, in the event of a conflict between Ordinance O97-7 and this Agreement, this Agreement shall prevail. In the event a conflict does not exist between Ordinance O97-7 and this Agreement, then only the terms and conditions of this Agreement shall be applicable to the Franchisee. In the case of a conflict between Ordinance O97-7 and Virginia Code Sections 15.2-2108.19, et seq., the Virginia Code shall prevail.

2.6.3. Nothing herein shall be construed to limit the scope or applicability of Section 625 Communications Act, 47 U.S.C. § 545.

2.7. *Police Powers:* Except as otherwise provided in this Section 2.7, Franchisee's rights under this Franchise shall be subject to the lawful police powers of York County to adopt and enforce ordinances of general applicability necessary to protect and preserve the health, safety and welfare of the public. Franchisee shall comply with all applicable general laws and ordinances lawfully enacted by York County pursuant to such police powers. York County agrees that ordinances which it adopts that impact this Agreement must be enacted upon reasonable conditions and of a character appropriate to the public purpose justifying enactment. Nothing

herein prohibits the Franchisee from challenging any future ordinances enacted by York County as may be permitted under applicable law.

3. **PROVISION OF CABLE SERVICE**

3.1. *Service Area:*

3.1.1. Franchisee shall make Cable Service available to all of the occupied residential dwelling units in the Service Area, and to not less than eighty per cent (80%) of all occupied residential dwelling units within the Franchise Area. Franchisee may make Cable Service available to businesses in the Service Area. Notwithstanding the foregoing, Franchisee shall not be required to make Cable Service available: (a) by reason of Force Majeure; (b) for periods of delay caused by York County; (c) for periods of delay resulting from the Franchisee's inability to obtain authority to access Public Rights-of-Way in the Service Area; (d) in areas where developments or buildings are subject to claimed exclusive arrangements; (e) in developments or buildings that the Franchisee cannot access under industry standard terms and conditions after good faith negotiation; (f) in developments or buildings that the Franchisee is unable to provide Cable Service for technical reasons or that require facilities that are not available or cannot be deployed on a commercially reasonable basis; (g) in areas where it is not technically feasible to provide Cable Service due to the technology used by the Franchisee to provide Cable Service; (h) in areas where the average occupied residential household density is less than thirty (30) occupied residential dwelling units per mile as measured in strand footage from the nearest technically feasible point on the Franchisee's active Cable System and, (i) when the Franchisee's prior service, payment, or theft of Service history with a Subscriber or potential Subscriber has been unfavorable. Should, through new construction, an area within the Franchisee's Service Area meet the density requirement as set forth in this subsection, Franchisee shall, subject to exclusions (a) through (i) set forth in this Subsection and Subsection 3.2, provide Cable Service to such area within six (6) months of receiving notice from York County that the density requirements have been met.

3.1.2. Franchisee shall have the right but not the obligation to extend its Cable System and/or to provide Cable Services to any other areas within the Franchise Area during the term of this Franchise or any renewals thereof, not meeting the density requirements described in Section 3.1.1

3.1.3. **Line Extensions to Residential Subscriber.** If a potential Subscriber resides in an area of the Service Area that does not meet the density requirements of Section 3.1.1(h) above (*i.e.*, the subscriber's residence is located where there are fewer than thirty (30) occupied residential dwelling units per mile as measured in strand footage from the nearest technically feasible point on the Franchisee's active Cable System), the Franchisee shall only be required to extend the Cable System if the Subscribers in that area are willing to share the capital costs of extending the Cable System by making a capital contribution in aid of construction including cost of material, design, labor and easements. Subscribers who request service hereunder shall bear the construction costs on a pro rata basis. The Franchisee may require that the payment of

the capital contribution in aid of construction borne by potential subscribers be paid in advance. Subscribers shall also be responsible for any applicable installation charges to extend the Cable System from the tap to the residence.

3.1.4. Franchisee agrees that, upon request and with no less than thirty (30) days' written notice, but no more than once per year, a representative of the Franchisee will meet with representatives of York County to confirm compliance with the requirements set forth in this Subsection 3.1. Nothing herein shall prevent York County from contacting at any time the single point of contact identified in Section 13.5 with respect to other matters regarding this Agreement.

3.2. *Availability of Cable Service:* Franchisee shall make Cable Service available to all occupied residential dwelling units and may make Cable Service available to businesses within the Service Area in conformance with Section 3.1 and Franchisee shall not discriminate between or among any individuals in the availability of Cable Service. In the areas in which Franchisee shall provide Cable Service, Franchisee shall be required to connect, at Franchisee's expense, other than a standard installation charge, all occupied residential dwelling units that are within one hundred-fifty (150) feet of trunk or feeder lines not otherwise already served by Franchisee's Cable System. Franchisee shall be allowed to recover, from a Subscriber that requests such connection, actual costs incurred for residential dwelling unit connections that exceed one hundred-fifty (150) feet and actual costs incurred to connect any non-residential dwelling unit Subscriber.

3.3. *Cable Service to Municipal Buildings:*

3.3.1. Subject to Section 3.1, Franchisee shall provide, without charge throughout the term of the Franchise within the Service Area, installation of one (1) Drop, one (1) cable outlet, and the most commonly subscribed-to tier of Cable Service, to each fire station, police station, public school public library, and any other local government building as set forth in Exhibit A hereof and also required of other cable operators in York County.

3.3.2. Subject to Section 3.1, Franchisee shall provide, without charge throughout the term of the Franchise within the Service Area, installation of one (1) Drop, one (1) cable outlet, and the most commonly subscribed-to tier of Cable Service, to each fire station, police station, public school public library, or any newly constructed or acquired government building that may be designated by York County and also required of other cable operators in York County (collectively, "Additional Buildings"), so long as such Additional Buildings do not exceed fifteen (15) during the term of the Agreement; provided, however, that if it is necessary to extend Franchisee's trunk or feeder lines more than two hundred fifty (250) feet solely to provide service to any such Additional Building, York County or the school (as applicable) shall have the option either of paying Franchisee's direct costs for such extension in excess of two hundred fifty (250) feet, or releasing Franchisee from the obligation to provide Cable Service to such Additional Building. Franchisee shall not be required to provide Cable Service without charge to non-staffed or non-habitable locations.

3.3.3. Additional subscriber drops and/or outlets in any of the locations set forth in Subsection 3.3.1 or 3.3.2 above will be installed by Franchisee on written request by York County or the school (as applicable) at the lowest actual cost of Franchisee's time and material. Alternatively, York County or the school (as applicable) may add additional outlets at its own expense (or use existing additional outlets), as long as such installation and/or/outlets meet Franchisee's standards and approval, which approval shall not be unreasonably withheld.

3.3.4. Cable Service provided pursuant to this Section 3.3 may not be resold or otherwise used in contravention of Franchisee's rights or obligations with respect to third parties. Equipment provided by Franchisee, if any, shall be replaced at retail rates if lost, stolen or damaged.

3.3.5. The requirements of this Section 3.3 shall not apply in cases where it is not technically feasible for the Franchisee to comply.

4. SYSTEM FACILITIES

4.1. *System Characteristics:* The Franchisee's Cable System shall meet or exceed the following requirements:

4.1.1. The System shall be an active two-way plant for Subscriber interaction, if any, required for selection or use of Cable Service.

4.1.2. The System shall utilize an architecture that permits additional improvements necessary for high quality and reliable service throughout the term of this Agreement.

4.1.3. The System shall have protection against outages due to power failures with back-up power available for at least twenty-four (24) hours at each headend and, in conformance with industry standards, back-up power at each power supply site rated for at least four (4) hours.

4.1.4. The System shall use facilities and equipment of good and durable quality, generally used in high-quality, reliable, systems of similar design.

4.1.5. The Franchisee shall maintain facilities and equipment sufficient to cure violations of any applicable FCC technical standards and to ensure that the Cable System remains in compliance with the standards specified in Subsection 4.1.15 below.

4.1.6. The Franchisee shall maintain facilities and equipment as necessary to maintain, operate, and evaluate the Cable System to comply with any applicable FCC technical standards, as such, standards may be amended from time to time.

4.1.7. The System shall utilize facilities and equipment capable of continuous twenty-four (24) hour daily operation in accordance with applicable FCC standards except as caused by a Force Majeure event.

4.1.8. The System shall be designed, built and operated in such a manner as to comply with all applicable FCC requirements regarding (i) consumer electronic equipment and (ii) interference with the reception of off-the-air signals by a subscriber.

4.1.9. The System shall be designed, built and operated in such a manner as to protect the safety of the Cable System workers and the public.

4.1.10. The Franchisee shall maintain sufficient trucks, tools, testing equipment, monitoring devices and other equipment and facilities and trained and skilled personnel required to enable the Franchisee to substantially comply with applicable law, including applicable customer service standards and including requirements for responding to System outages.

4.1.11. The Franchisee shall maintain facilities and equipment required to properly test the Cable System and conduct an ongoing and active program of preventive maintenance and quality control and to be able to quickly respond to customer complaints and resolve system problems.

4.1.12. The System shall be capable of interconnecting with other cable systems in the Service Area as set forth in Section 4.2 below.

4.1.13. The Franchisee shall maintain facilities and equipment at the headend to transmit or cablecast signals in substantially the form received without substantial alteration or deterioration. For example, the headend should include equipment that will transmit color video signals received at the headend in color, stereo audio signals received at the headend in stereo, and a signal received with a secondary audio track with both audio tracks. Similarly, all closed-captioned programming retransmitted over the Cable System shall include the closed captioned signal in a manner that renders that signal available to Subscriber equipment used to decode the captioning.

4.1.14. The System shall provide adequate security provisions in its Subscriber site equipment to permit parental control over the use of Cable Services on the System consistent with federal law.

4.1.15. The System shall conform to or exceed all applicable FCC technical performance standards, as amended from time to time, and any other future applicable technical performance standards, which York County is permitted by a change in law to enforce, and shall substantially conform in all material respects to applicable provisions of the following standards and regulations to the extent such standards and regulations remain in effect and are consistent with accepted industry procedures:

- 4.1.15.1. Occupational Safety and Health Administration (OSHA) Safety and Health Standards;
- 4.1.15.2. National Electrical Code;
- 4.1.15.3. National Electrical Safety Code (NESC);
- 4.1.15.4. Obstruction Marking and Lighting, AC 70/7460 i.e., Federal Aviation Administration;
- 4.1.15.5. Constructing, Marking and Lighting of Antenna Structures, Federal Communications Commission Rules, Part 17; and,
- 4.1.15.6. Requirements set forth in the Virginia Uniform Statewide Building Code.

4.1.16. The System shall be capable of transmitting in high definition any Channels that are received in high definition format. Actual carriage of any such high definition Channels will be at the Franchisee's sole discretion unless otherwise required by federal law.

4.1.17. The provision of additional Channels, increased Channel capacity, and/or upgrades of any kind to the Cable System is solely within the control and discretion of the Franchisee.

4.2. *Interconnection:* The Franchisee shall design its Cable System so that it may be interconnected with other cable systems in the Service Area. York County may request, in writing, that the Franchisee interconnect with another cable operator authorized by York County to provide Cable Service in the Service Area, and may, pursuant to Code of Virginia §15.2-2108.22(1), require such interconnection to ensure the carriage of EG Channels. All decisions regarding the terms and conditions of any such interconnect shall be a matter of agreement between the cable operators involved. Interconnection of systems may be made by direct cable connection, microwave link, satellite, or other appropriate methods, at the sole discretion of the Franchisee and the interconnecting cable operator. The interconnection capabilities created pursuant to this Section 4.2 shall be solely for the exchange of EG programming required to be provided on the Cable System pursuant to this Franchise. Franchisee shall not be required to build such interconnection if it is not economically feasible Franchisee may charge the connecting cable operator in advance for any construction costs and/or monthly charges associated with the interconnection.

4.3. *Emergency Alert System:*

4.3.1. Franchisee shall comply with the Emergency Alert System ("EAS") Federal Emergency Alert System regulations, 47 C.F.R. Sec. 76 Part 1.

4.3.2. In the event of a state or local civil emergency, the EAS shall be remotely activated as set forth in the Virginia EAS plan.

4.4. *System Tests, Maintenance, Inspections and Performance Monitoring*: Franchisee shall perform all tests required under federal law necessary to demonstrate compliance with the requirements of this Agreement and to ensure that the Cable System components are operating as required. Subject to Section 8.3, Franchisee shall provide York County with copies of the results of any such required tests upon request.

5. EG CHANNELS

5.1. *EG Channel Capacity*: Franchisee shall provide at no charge to York County, one (1) non-commercial Educational Access Channel, and two (2) non-commercial Government Access Channels (collectively, “EG Channels”).

5.2. *EG Transmission*:

5.2.1. York County or its designee shall be responsible for management, operation, and programming of the EG Channels.

5.2.2. York County may at its option provide and maintain up-stream equipment and facilities necessary to transmit the current EG signals, and Franchisee at York County’s request shall transmit EG Channels, from the following EG signal origination points located at (1) York High School, 9300 George Washington Memorial Highway, Yorktown, Virginia, both at the school auditorium and at the York County-owned Aggregation Point (“CAP”) at York Broadcast Center; (2) Bruton High School, 185 East Rochambeau Drive, Williamsburg, Virginia; (3) Grafton High School, 403 Grafton Drive, Yorktown, Virginia; (4) Tabb High School, 4431 Big Bethel Road, Yorktown, Virginia; (5) Griffin-Yeates Center, 1490 Government Road, Williamsburg, Virginia; (6) Public Safety Building, 301 Goodwin Neck Road, Yorktown, Virginia; (7) Board of Supervisors Meeting Room, York Hall, 301 Main St., Yorktown, Virginia. However, should York County decide to relocate the current EG signal origination points described herein or request additional EG signal origination points, York County shall be solely responsible for all related costs and expenses. Franchisee shall maintain equipment capable of receiving and processing the EG signals transmitted by York County. Franchisee shall maintain the links listed herein to transmit the EG Channel signals from the origination points to its headend without significant degradation.

5.2.3. The Franchisee shall obtain, without charge to York County, the EG Access Channel programming via a dedicated fiber connection to the CAP. Further, the Franchisee shall, without charge to York County, aggregate EG Access Channel programming at the CAP by providing two (2) auxiliary fiber connections (the “Initial Auxiliary Links”) to transport EG Access Channel programming to the CAP facility from the following locations: (1) York Hall; and (2) York High School. The Franchisee’s obligations under this Subsection 5.2, including its obligation to pro-

vide upstream equipment and facilities necessary to transmit signals, shall be subject to the provision by York County, without charge to the Franchisee, of: (1) access to the CAP, York Hall, and York High School facilities; (2) access to any required EG equipment within the CAP, York Hall, and York High School facilities, and suitable required space, environmental conditions, electrical power supply, access, and pathways within such facilities; (3) video and audio signal feeds in a mutually agreed upon format suitable for EG Access Channel programming; (4) any third-party consent that may be necessary to transmit EG signals (including, without limitation, any consent that may be required with respect to third-party facilities, including the facilities of the Incumbent Cable Operator, used to transmit EG content to the CAP facility from auxiliary locations); and (5) any other cooperation and access to facilities as are reasonably necessary for the Franchisee to fulfill the obligations stated herein. York County shall further be responsible for ensuring that such video and audio signal feeds are properly connected to the correct EG Access Channel for distribution to Subscribers.

5.2.4. Notwithstanding the obligations in 5.1.1, Franchisee shall not be obligated to provide York County with either cablecast equipment and facilities or personnel responsible for maintaining and operating such cablecast equipment and facilities used to generate any such EG signals.

5.2.5. York County hereby authorizes Franchisee to transmit EG Channel programming within and without County's jurisdictional boundaries. Except as otherwise set forth in this Subsection 5.2.4 with respect to EG Channels, Franchisee specifically reserves its right to make or change all other Channel assignments in its sole discretion. With respect to EG Channels, the Franchisee shall reserve the right to initially assign such Channels at its sole discretion; provided, however, that the Franchisee shall provide any EG Access Channels on the basic tier, at no additional charge, and such EG Access Channels shall be viewable by the Subscriber without the need for equipment other than the equipment, if any, that is required to view other channels on the basic tier. In addition, the Franchisee may change EG Channel assignments as it reasonably deems appropriate so long as the Franchisee gives York County at least forty-five (45) days notice of any such EG Access Channel assignment change if the reason for the change is within the control of Franchisee, and as soon as possible if the reason for the change is not within the control of Franchisee; provided, however, that the Franchisee shall not arbitrarily or capriciously change EG Channel assignments, and the Franchisee shall minimize the number of EG Channel assignment changes.

5.2.6. York County shall require all local producers and users of any of the EG facilities or Channels to agree in writing to authorize Franchisee to transmit programming consistent with this Agreement. York County shall further require all local producers and users of any of the EG facilities or Channels other than the York County and the York County School Board ("School Board") to defend and hold harmless Franchisee, York County, and the School Board from and against any and all liability or other injury, including the reasonable cost of defending claims or litigation, arising from or in connection with claims for failure to comply with applicable cable federal laws, rules, regulations or other requirements of local, state or federal authorities; for claims of libel, slander, invasion of privacy, or the infringement of common law

or statutory copyright; for unauthorized use of any trademark, trade name or service mark; for breach of contractual or other obligations owing to third parties by the producer, user, Franchisee, York County, or the School Board; and for any other injury or damage in law or equity, which result from the use of a EG facility or Channels.

5.2.7. Franchisee shall transmit EG Channels to its Subscribers in the same format, without any significant degradation in signal strength or quality, that it uses to transmit the broadcast channels included in the Basic Service Tier.

5.3. *EG Capital Fee:*

5.3.1. York County may by ordinance or resolution impose on the Franchisee an EG Capital Fee payable to York County on a quarterly basis (the "EG Capital Fee"), in an amount not to exceed twenty cents (\$0.20) per month for each Subscriber in the Service Area that receives the Franchisee's Basic Service Tier, so long as such requirement applies equally to all franchised cable operators in York County. If so imposed, the EG Capital Fee shall be delivered to York County within forty-five (45) days following the end of each calendar quarter during the Franchise Term. The EG Capital Fee shall be used by York County to support the capital costs of EG Access Channel facilities consistent with the Communications Act (47 U.S.C. § 542).

5.3.2. If the initial EG Capital Fee shall be less than an amount equal to twenty cents (\$0.20) per month for each Subscriber in the Service Area to Franchisee's Basic Service Tier, the EG Capital Fee may be uniformly increased for York County cable franchisees by ordinance or resolution of the Board of Supervisors not more than once each year commencing after the first anniversary of the Effective Date of this Agreement by an amount not to exceed six cents (\$0.06), but under no circumstances shall the monthly per-Subscriber fee exceed twenty cents (\$0.20) per month for each Subscriber in the Service Area that receives the Franchisee's Basic Service Tier. York County shall provide Franchisee with thirty (30) days advance notice of any public hearing or meeting where an increase will be considered or voted on by the Board of Supervisors. York County shall forward to the Franchisee a copy of the adopted ordinance or resolution that authorizes an increase in the EG Capital Fee and establishes the effective date of the increase. Franchisee shall have not less than ninety (90) days to implement the EG Capital Fee increase.

5.4. To the extent permitted by law the Franchisee may recover from Subscribers the costs of an EG Capital Fee or any other costs arising from the provision of EG services and shall be allowed to include such costs as a separately billed line item on each Subscriber's bill. Without limiting the forgoing, if allowed under state and federal laws, Franchisee may externalize, line-item, or otherwise pass-through any unrecovered EG interconnection costs to Subscribers.

5.5. York County shall not sell time on the EG Channels, nor allow any third party to do so, nor shall any channel be leased at any price to any third party. York County may allow programmers on the EG Channels to seek support for their

programming consistent with the “Funding Standards and Practices” of the Public Broadcasting System (found at: <http://www.pbs.org/producers/guidelines/>) as they exist on the Effective Date of this Agreement.

6 COMMUNICATIONS SALES AND USE TAX

The parties shall comply with all applicable requirements of the provisions of Section 58.1-645 of the Code of Virginia (the “Communications Sales and Use Tax”) in its current form and as it may be amended.

7 CUSTOMER SERVICE

Customer Service Requirements are set forth in Exhibit B, which shall be binding unless amended by written consent of the parties.

8 REPORTS AND RECORDS

8.1 *Open Books and Records:* Subject to applicable law, upon reasonable notice to the Franchisee, which shall be no less than thirty (30) days, and no more frequently than once every twenty-four (24) months, York County shall have the right to inspect at any time during normal business hours and on a non-disruptive basis, all books and records, including all documents in whatever form maintained and electronic media, to the extent that such books and records relate to the Cable System or the provision of Cable Service in the Franchise Area and are reasonably necessary to monitor or ensure compliance with the terms of this Franchise (Books and Records”). Such notice shall specifically reference the section or subsection of the Franchise which is under review, so that Franchisee may organize the necessary Books and Records for appropriate access by York County. Franchisee shall not be required to maintain any Books and Records for Franchise compliance purposes longer than three (3) years, except for any Books and Records relating to an on-going audit under Section 8.2 or a pending dispute between the Franchisee and York County as reasonably agreed by the parties. Franchisee shall not be required to disclose any of its or an affiliate’s books and records not relating to the provision of Cable Service in the Franchise Area or to its compliance with this Franchise. Franchisee shall not be required to provide Subscriber information in violation of Section 631 of the Communications Act, 47 U.S.C. §551.

8.2 *Audit:* Inspections performed pursuant to Section 8.1 of this Agreement may include an audit of all records reasonably necessary to confirm the accurate payment of the EG Capital Fee. York County shall bear all of its out-of-pocket expenses of any such audit, except that Franchisee shall bear York County’s reasonable, documented out-of-pocket expenses of any such audit performed by a qualified, independent third-party auditor, up to a maximum of twenty thousand dollars (\$20,000), if such audit discloses an underpayment by Franchisee of more than three percent (3%) of any quarterly payment and five thousand dollars (\$5,000) or more. York County shall not audit Franchisee more frequently than once every twenty-four (24) months. York County shall have no more than three (3) years from the time Franchisee delivers a payment to provide a written, detailed objection to or dispute of that payment, and if

York County fails to object to or dispute the payment within that time period, York County shall be barred from objecting to or disputing it after that time period. Franchisee shall be provided a reasonable opportunity to review the results of any audit and to dispute any audit results which indicate an underpayment to York County. In the event that Franchisee disputes any underpayment discovered as the result of an audit conducted by York County, York County shall work together with Franchisee in good faith to promptly resolve such dispute. York County and Franchisee maintain all rights and remedies available at law regarding any disputed amounts. York County may require Franchisee to pay any additional undisputed amounts due to York County as a result of an audit performed by York County pursuant to this Section 8.2 within thirty (30) days following receipt by Franchisee of written notice by York County.

8.3 *Proprietary and Confidential Information:* Notwithstanding anything to the contrary set forth herein, Franchisee shall not be required to disclose information that it reasonably deems to be proprietary or confidential in nature except in accordance with the following procedures, or to disclose any of its or an Affiliate's books and records not relating to the provision of Cable Service in the Service Area. If Franchisee believes that any requested information is confidential and proprietary, Franchisee must provide the following documentation to York County: (i) specific identification of the information; (ii) a statement attesting to the reason(s) Franchisee believes the information is confidential and/or proprietary; and (iii) a statement that the document(s) are available for inspection by York County. Franchisee shall be responsible for clearly and conspicuously stamping the word "Confidential" on each page that contains any "confidential" or "proprietary" information. Unless otherwise ordered by a court or agency of competent jurisdiction, York County agrees that, to the extent permitted by applicable law, it shall deny access to any of Franchisee's information marked "Confidential" as set forth in this Section 8.3 to any Person or governmental entity. If, in the course of enforcing this Franchise or for any other reason, York County believes it must disclose any information marked "Confidential" as set forth in this Section 8.3, York County shall provide reasonable advance notice of such disclosure so that Franchisee can take appropriate steps to protect its interests. If York County receives a demand from any Person or governmental entity for disclosure of any information identified as "Confidential" pursuant to this Section 8.3, York County shall, so far as consistent with applicable law, advise Franchisee and provide Franchisee with a copy of any written request prior to granting the Person or governmental entity access to such information.

8.4 *Inspection Location:* Books and Records produced pursuant to Sections 8.1 and 8.2, and documents produced pursuant to Section 8.3 shall be produced at a mutually agreed location within York County. If any requested Books and Records are too voluminous, not available locally in York County, or for security reasons cannot be moved, then Franchisee may request that the inspection take place at a location mutually agreed to by York County and Franchisee, provided that Franchisee shall pay all reasonable and documented travel expenses incurred by York County and any additional copying expenses incurred by York County above those that would have been incurred had the documents been produced in York County.

8.5 *Records Required:* Franchisee shall at all times maintain:

8.5.1 Records of all written complaints for a period of three (3) years after receipt by Franchisee. The term “complaint” as used herein refers to complaints about any aspect of the Cable System or Franchisee’s cable operations, including, without limitation, complaints about employee courtesy;

8.5.2 Records of outages for a period of three (3) years after occurrence, indicating date, duration, area, and the number of Subscribers affected, type of outage, and cause;

8.5.3 Records of service calls for repair and maintenance for a period of three (3) years after resolution by Franchisee, indicating the date and time service was required, the date of acknowledgment and date and time service was scheduled (if it was scheduled), and the date and time service was provided, and (if different) the date and time the problem was resolved;

8.5.4 Records of installation/reconnection and requests for service extension for a period of two (2) years after the request was fulfilled by Franchisee, indicating the date of request, date of acknowledgment, and the date and time service was extended.

8.5.5 A map showing the area of coverage for the provisioning of Cable Services.

8.6 *Annual Report:* Unless this requirement is waived in whole or in part by York County, no later than April 30th of each year of this Agreement, Franchisee shall electronically submit a written report to York County, in a form reasonably satisfactory to York County, which shall include:

8.6.1 A summary of the previous calendar year’s activities in development of the Cable System, including but not limited to descriptions of Services begun or dropped, homes passed and miles of cable in service;

8.6.2 A summary description of the complaints during the previous calendar year; such summary shall provide the number and category of such complaints received during such period, including a description of the issues involved (excluding personally identifiable information of Subscribers) and the category of each resolved complaint;

8.6.3 A copy of the annual report, if any, of Franchisee’s parent corporation;

8.6.4 A current list of any person or entity with an ownership interest in the Franchisee of five (5) percent or more as reflected in the annual report of Franchisee’s corporate parent;

8.6.5 A report on technical tests and measurements on the Cable System made by Franchisee for compliance with applicable FCC standards; and,

8.6.6 Subject to 8.3, such other information as the County Administrator or the York County Board of Supervisors reasonably and lawfully may request in order to ascertain Franchisee's compliance with this Agreement.

8.7 *Quarterly Report:* Beginning six (6) months after the Effective Date, Franchisee shall electronically submit a written report to York County no later than forty-five (45) days after the end of each calendar quarter during the term of this Agreement, which report shall be in a form reasonably satisfactory to York County, that shall include:

8.7.1 A report showing the number of service calls received and sorted by descriptive code indicating the actual service calls that were resolved during that quarter;

8.7.2 A summary of complaints identifying both the number and nature of the complaints received and an explanation of their dispositions, as such records are kept by the Franchisee; and

8.7.3 A report of all Significant Outages (as defined in Exhibit B).

8.8 *Periodic Meetings:* Franchisee agrees that, upon request and with no less than thirty (30) days' written notice, but no more than once per year, a representative of Franchisee will meet with representatives of York County to provide additional information on the status of Franchisee's deployment of Cable Services in the Franchise Area. During these meetings, the Franchisee representative will show York County representatives, for viewing only, a map showing the availability of Cable Services in the Franchise Area. Nothing herein shall prevent York County from contacting at any time the single point of contact identified in Section 13.14 with respect to any additional matters regarding this Agreement. In addition, Franchisee shall, during the Term of this Agreement, provide a means of making information available to York County residents regarding the availability of the Franchisee's Cable Services in York County and other matters related to the System.

8.9 *Performance Evaluation:* York County may, at its discretion, hold scheduled performance evaluation sessions once every three (3) years from the Effective Date and as may be required by federal and state law. Franchisee shall fully cooperate with York County and shall, subject to Section 8.3, provide such information and documents as York County may reasonably need to perform its review.

9 INSURANCE AND INDEMNIFICATION

9.1 *Insurance:*

9.1.1 Franchisee shall maintain in full force and effect, at its own cost and expense, during the Franchise Term, the following insurance coverage:

9.1.1.1 Commercial General Liability Insurance in the amount of one million five hundred thousand dollars (\$1,500,000.00) combined single limit and two million dollars (\$2,000,000.00) aggregate for property damage and bodily injury. Such insurance shall cover the construction, operation and maintenance of the Cable System, and the conduct of Franchisee's Cable Service business in York County.

Said limit shall be maintained until January 1, 2021, when it will be increased to four million dollars (\$4,000,000.), which limit shall be thereafter maintained through the remainder of the Franchise term.

9.1.1.2 Automobile Liability Insurance in the amount of one million dollars (\$1,000,000.00) combined single limit for bodily injury and property damage. Said limit shall be maintained until January 1, 2021, when it will be increased to two million dollars (\$2,000,000.), which limit shall be thereafter maintained through the remainder of the Franchise term.

9.1.1.3 Workers' Compensation Insurance meeting all legal requirements of the Commonwealth of Virginia.

9.1.1.4 Employers' Liability Insurance in the following amounts: (A) Bodily Injury by Accident: one hundred thousand dollars (\$100,000.00); (B) Bodily Injury by Disease: one hundred thousand dollars (\$100,000.00) employee limit; and (C) Bodily Injury by Disease: five hundred thousand dollars (\$500,000.00) policy limit.

9.1.1.5 Umbrella Liability Insurance shall be maintained above the primary Commercial General Liability, Automobile Liability, and Employers' Liability policies required herein. The limit of such Umbrella Liability Insurance shall not be less than five million dollars (\$5,000,000.00) each occurrence and in the annual aggregate.

9.1.2 The limits required above may be satisfied with a combination of primary and excess coverage.

9.1.3 York County, its officers, boards, commissions, agents, and employees shall be included as an additional insured under each of the insurance policies required in this Article 9 except Workers' Compensation and Employers' Liability Insurance.

9.1.4 Franchisee shall not cancel any required insurance policy without obtaining alternative insurance in conformance with this Agreement, and shall promptly notify York County in the event that any required policy is cancelled or modified for any reason.

9.1.5 Each of the required insurance policies shall be with insurers qualified to do business in the Commonwealth of Virginia, with an A.M. Best Financial Strength rating of “A-: VII” or better.

9.1.6 Franchisee shall deliver to York County Certificates of Insurance showing evidence of the required coverage as well as copies of endorsement to each insurance policy which indicates York County, its officers, boards, commissions, agents, and employees is an additional insured.

9.2 *Indemnification:*

9.2.1 Franchisee agrees to indemnify, save and hold harmless, and defend York County, its officers, agents, boards and employees, from and against any liability for damages or claims resulting from tangible property damage or bodily injury (including accidental death), to the extent proximately caused by Franchisee’s construction, operation, or maintenance of its Cable System, provided that upon receipt of a claim or action pursuant to this subsection York County shall give Franchisee written notice of its obligation to indemnify York County within ten (10) business days so as not to materially prejudice Franchisee. Franchisee also agrees to indemnify, save and hold harmless, and defend York County, its officers, commissions agents, boards and employees, from and against any liability for damages arising out of copyright infringements or a failure by Franchisee or its officers, employees, agents, contractors, or subcontractors to secure consents from the owners or authorized distributors of programs to be delivered by the Cable System. These damages shall include but not be limited to penalties arising out of copyright infringements and damages arising out of any failure by Franchisee or its officers, employees, agents, contractors, or subcontractors to secure consents from the owners, authorized distributors or licensees of programs to be delivered by Franchisee's Cable System, whether or not any act or omission complained of is authorized, allowed or prohibited by the Agreement. Notwithstanding the foregoing, Franchisee shall not indemnify York County, for any damages, liability or claims resulting from the willful misconduct or negligence of York County, its officers, agents, employees, attorneys, consultants, independent contractors or third parties or for any activity or function conducted by any Person or governmental entity other than Franchisee in connection with EG Access or EAS, or the distribution of any Cable Service over the Cable System.

9.2.2 With respect to Franchisee’s indemnity obligations set forth in Subsection 9.2.1, Franchisee shall provide the defense of any claims brought against York County by selecting counsel of Franchisee’s choice to defend the claim, subject to the consent of the York County Attorney, which shall not unreasonably be withheld. Such defense shall include, but not be limited to, reasonable and documented attorney’s fees incurred by such counsel. Nothing herein shall be deemed to prevent York County from cooperating with the Franchisee and participating in the defense of any litigation by its own counsel at its own cost and expense, provided however, that after consultation with the York County Attorney, Franchisee shall have the right to defend, settle or compromise any claim or action arising hereunder, and Franchisee shall have the authority to decide the appropriateness and the amount of any such settlement. In the

event that the terms of any such proposed settlement includes the release of York County and York County does not consent to the terms of any such settlement or compromise, Franchisee shall not settle the claim or action but its obligation to indemnify York County shall in no event exceed the amount of such settlement.

9.2.3 York County shall be responsible for its own acts of willful misconduct or negligence, or breach of obligation committed by York County for which York County is legally responsible, subject to any and all defenses and limitations of liability provided by law. The Franchisee shall not be required to indemnify York County for acts of York County, which constitute willful misconduct or negligence on the part of York County, its officers, employees, agents, attorneys, consultants, independent contractors or third parties.

10 TRANSFER OF FRANCHISE

Subject to Section 617 of the Communications Act, 47 U.S.C. § 537, no Transfer of the Franchise shall occur without the prior consent of the York County Board of Supervisors, provided that such consent shall not be unreasonably withheld, delayed or conditioned. No such consent shall be required, however, for transactions excluded under Section 1.25 above. No Transfer of the Franchise shall be made to a Person that is not legally, technically, and financially qualified to operate the Cable System.

11 RENEWAL OR EXTENSION OF FRANCHISE

11.1 York County and Franchisee agree that any proceedings undertaken by York County that relate to the renewal of this Franchise shall be governed by and comply with the provisions of Section 626 of the Communications Act, 47 U.S.C. § 546 and Title 15.2 of the Code of Virginia, Chapter 21, Article 1.2, Section 15.2-2108.30, as applicable.

11.2 Notwithstanding anything to the contrary set forth herein, Franchisee and York County agree that at any time during the term of the then current Franchise, while affording the public appropriate notice and opportunity to comment, York County and Franchisee may agree to undertake and finalize informal negotiations regarding renewal of the then current Franchise and York County may grant a renewal thereof.

12 ENFORCEMENT AND TERMINATION OF FRANCHISE

12.1 *Notice of Violation:* If at any time York County believes that Franchisee has not substantially complied with the terms of the Franchise, York County shall informally discuss the matter with Franchisee. If these discussions do not lead to resolution of the issue, York County shall then notify Franchisee in writing of the exact nature of the alleged noncompliance (for purposes of this Article, the “Noncompliance Notice”).

12.2 *Franchisee's Right to Cure or Respond:* Franchisee shall have fifteen (15) days from receipt of the Noncompliance Notice to: (i) respond to York County, if Franchisee contests (in whole or in part) the assertion of noncompliance; (ii) cure such noncompliance; or (iii) in the event that, by its nature, such noncompliance cannot be cured within such fifteen (15) day period, initiate all reasonable steps to remedy such noncompliance as quickly as possible and notify York County of the steps being taken and the projected date by which cure is projected to be completed. Upon cure of any noncompliance, the Franchisee shall notify York County in writing and York County shall provide written confirmation that such cure has been accepted by York County provided that York County agrees that a satisfactory cure has been effected.

12.3 *Public Hearing:* York County shall schedule a public hearing if York County seeks to continue its investigation into the alleged noncompliance in the event that: (1) Franchisee contests the Noncompliance Notice pursuant to section 12.2, (2) Franchisee fails to respond to the Noncompliance Notice pursuant to the procedures required by this Article, or (3) in the event that Franchisee has not remedied the alleged noncompliance within fifteen (15) days or the date projected pursuant to Section 12.2(iii) above. York County shall provide Franchisee at least fifteen (15) days prior written notice of such public hearing, which will specify the time, place and purpose of such public hearing, and provide Franchisee the opportunity to be heard.

12.4 *Enforcement:* Subject to applicable federal and state law, in the event York County, after the public hearing set forth in Section 12.3, determines that Franchisee is in default of any provision of this Franchise, York County may:

12.4.1 Seek specific performance of any provision that reasonably lends itself to such remedy, as an alternative to damages; or

12.4.2 Commence an action at law for monetary damages or seek other equitable relief; or,

12.4.3 In the case of a substantial default of a material provision of the Franchise, seek to revoke the Franchise in accordance with Section 12.5, or

12.4.4 Enforce the following liquidated damages for the following violations of this Agreement, because such violations will result in injury to York County, and because it is and will be impracticable to determine the actual amount of such damage in the event of delay or nonperformance:

12.4.4.1 For failure to comply with the records and reporting provisions as set forth in Section 8 of this Agreement or in Exhibit B ("Customer Service Standards"): Two hundred dollars (\$200.00) per day for each day the violation continues;

12.4.4.2 For failure to materially comply with the carriage of EG Access Channel(s) requirements as set forth in Section 5 of this Agreement: Three hundred dollars (\$300.00) per day for each day the violation continues;

12.4.4.3 For failure to materially comply with Customer Service Standards set forth in Section 7 of this Agreement: Two hundred dollars (\$200.00) per day for each day the violation continues, except where compliance is measured quarterly, in which case liquidated damages shall be as follows: (i) Franchisee shall be liable for liquidated damages in the amount of Five Hundred Dollars (\$500.00) for each quarter in which such standards were not met if the failure was by less than five percent (5%); (ii) One Thousand dollars (\$1,000.00) for each quarter in which such standards were not met if the failure was by five percent (5%) or more but less than fifteen percent (15%); or, (iii) Two Thousand dollars (\$2,000.00) for each quarter in which such standards were not met if the failure was by fifteen percent (15%) or more; and,

12.4.4.4 For failure to materially comply with timely and full payment of the EG Capital Fee: One hundred fifty dollars (\$150.00) per day for each day the violation continues, in addition to the balance of such fees owed and applicable interest.

12.4.4.5 For purposes of any liquidated damages assessments, all similar violations or failures arising out of the same factual events affecting multiple Subscribers shall be assessed as a single violation, and a violation or a failure may only be assessed under any single one of the above-referenced categories. Violations or failures shall not be deemed to have occurred or commenced until they are deemed not cured as provided in Section 12.2.

12.4.4.6 The amount of all liquidated damages per annum shall not exceed fifteen thousand dollars (\$15,000.00) in the aggregate and Franchisee shall not be required to pay liquidated damages for violations that occur more than one (1) year in the past.

12.4.4.7 York County may reduce or waive any of the above liquidated damages if it determines, in its discretion, that such a reduction or waiver is reasonable.

12.4.4.8 If a court of competent jurisdiction determines that liquidated damages cannot be imposed by this Agreement, York County may impose such penalties for violations of the terms of this Agreement as are permitted under applicable law.

12.5 *Revocation:*

12.5.1 Should York County seek to revoke this Franchise after following the procedures set forth above in this Article, including the public hearing described in Section 12.3., York County shall give written notice to Franchisee of such

intent. The notice shall set forth the specific nature of the noncompliance. The Franchisee shall have sixty (60) days from receipt of such notice to object in writing and to state its reasons for such objection. In the event York County has not received a satisfactory response from Franchisee, it may then seek termination of the Franchise at a second public hearing. York County shall cause to be served upon the Franchisee, at least thirty (30) days prior to such public hearing, a written notice specifying the time and place of such hearing and stating its intent to revoke the Franchise.

12.5.2 At the designated hearing, consistent with applicable federal and state law, Franchisee shall be provided a fair opportunity for full participation, including the right to be represented by legal counsel, to introduce relevant evidence, to require the production of evidence consistent with applicable federal and state law, to compel the relevant testimony of persons as permitted by law, and to question and/or cross examine witnesses. A complete verbatim record and transcript shall be made of such hearing, the cost of which shall be shared by the Franchisee and York County.

12.5.3 Following the public hearing, Franchisee shall be provided up to thirty (30) days to submit its proposed findings and conclusions in writing and thereafter York County shall determine (i) whether an event of default has occurred; (ii) whether such event of default is excusable; and (iii) whether such event of default has been cured or will be cured by the Franchisee. York County shall also determine whether to revoke the Franchise based on the information presented, or, where applicable, grant additional time to the Franchisee to affect any cure. If York County determines that the Franchise shall be revoked, York County shall promptly provide Franchisee with a written decision setting forth its reasoning. Franchisee may appeal such determination of York County to an appropriate court. Franchisee shall be entitled to such relief as the court finds appropriate. Such appeal must be taken within sixty (60) days of Franchisee's receipt of the determination of the franchising authority.

12.5.4 York County may, at its sole discretion, take any lawful action, which it deems appropriate to enforce York County's rights under the Franchise in lieu of revocation of the Franchise.

12.6 *Letter of Credit:*

12.6.1 Franchisee shall maintain throughout the term of this Agreement an irrevocable letter of credit as set forth in this Section 12.6 (the "Letter of Credit"). The Franchisee shall be required to maintain the Letter of Credit in the amount of twenty thousand dollars (\$20,000.00) (the "Letter of Credit") so long as such requirement applies equally: (1) to all new franchised cable operators; and (2) beginning on the Effective Date of this Franchise, to existing franchised cable operators. Should at any time during the term of this Agreement any new franchised cable operator or, starting on the Effective Date of this Franchise, any existing franchised cable operator be required to provide a letter of credit or other security in an amount less than twenty thousand dollars (\$20,000.00), Franchisee shall have the right to reduce the Letter of Credit to an amount no greater than that provided by such franchised cable operator.

The Letter of Credit shall be issued from a federally insured lending institution licensed to do business in Virginia (“Lending Institution”). A sample Letter of Credit is attached hereto as Exhibit C; copies of any relevant replacement or re-issued Letters of Credit will be provided to York County by the Franchisee subsequent to issuance by the Lending Institution. The Letter of Credit shall be the sole collateral provided by the Franchisee to York County with respect to this Agreement, and shall be used to ensure Franchisee’s substantial compliance with the material terms and conditions of this Agreement.

12.6.2 Franchisee shall file with York County an original copy of the Letter of Credit (including all terms and conditions applying to the Letter of Credit or to draws upon it) subsequent to its effective date, and shall keep such copy current with respect to any changes over the term of the Agreement.

12.6.3 If York County notifies the Franchisee of any amounts lawfully due to York County pursuant to the terms of this Agreement and the Franchisee does not make such payment within thirty (30) days, York County may draw upon the Letter of Credit by presentation of a draft at sight drawn on the Lending Institution, accompanied by a written certificate signed by the County Administrator certifying that Franchisee has failed to comply with this Agreement and citing the specific provision of the Agreement at issue and the specific basis for the amount being withdrawn.

12.6.4 In the event the Lending Institution serves notice to York County that it elects not to renew the Letter of Credit, York County may withdraw the entire amount of the Letter of Credit unless the Franchisee provides, before the effective Letter of Credit expires, a substitute Letter of Credit from a Lending Institution in substantially the same form as that attached hereto as Exhibit C.

12.6.5 No later than thirty (30) days after receipt by the Franchisee of notification by certified mail, return receipt requested of a withdrawal under the Letter of Credit, the Franchisee shall restore the amount of the Letter of Credit to the applicable amount as set forth in this Section 12.6.

12.6.6 No recovery by York County of any sum by reason of the Letter of Credit required in this Section 12.6 shall be any limitation upon the liability of Franchisee to York County under the terms of this Agreement, except that any sums so received by York County shall be deducted from any recovery which York County shall otherwise establish against Franchisee for the same violation or violations under the terms of this Agreement.

13 MISCELLANEOUS PROVISIONS

13.1 *Actions of Parties*: In any action by York County or Franchisee that is mandated or permitted under the terms hereof, such party shall act in a reasonable, expeditious, and timely manner. Furthermore, in any instance where

approval or consent is required under the terms hereof, such approval or consent shall not be unreasonably withheld, delayed or conditioned.

13.2 *Binding Acceptance*: This Agreement shall bind and benefit the parties hereto and their respective heirs, beneficiaries, administrators, executors, receivers, trustees, successors and assigns, and the promises and obligations herein shall survive the expiration date hereof.

13.3 *Preemption*:

13.3.1 In the event that federal or state law, rules, or regulations preempt a provision or limit the enforceability of a provision of this Agreement, the provision shall be read to be preempted to the extent, and for the time, but only to the extent and for the time, required by law. In the event such federal or state law, rule or regulation is subsequently repealed, rescinded, amended or otherwise changed so that the provision hereof that had been preempted is no longer preempted, such provision shall thereupon return to full force and effect, and shall thereafter be binding on the parties hereto, without the requirement of further action on the part of York County.

13.3.2 If, subsequent to the Effective Date, there is a change in federal or state law that eliminates the authority of local governments to require and grant cable television franchises for the provision of Cable Service, then to the extent permitted by law this Franchise shall survive such legislation and remain in effect for the term of this Agreement.

13.3.3 In the event that federal or state laws, rules or regulations preempt, or substantially preempt, the material provisions of this Agreement, Franchisee agrees to enter into a new agreement governing Franchisee's provision of Cable Service in the Service Area to the extent such an agreement is not prohibited by federal or state laws, rules or regulations and is consistent with this Agreement.

13.4 *Interest on Unpaid Amounts*: Interest on any unpaid amounts due and owing York County pursuant to this Agreement shall accrue at the legal rate set forth in Section 6.2-301 of the Virginia Code, as amended from time to time.

13.5 *Rights Cumulative*: All rights and remedies given to York County and Franchisee by this Franchise shall be in addition to and cumulative with any and all other rights or remedies, existing or implied, now or hereafter available to York County and Franchisee at law or in equity.

13.6 *Governing Law*: To the extent state law rather than federal law controls, this Franchise Agreement shall be governed in all respects by the law of the Commonwealth of Virginia.

13.7 *Force Majeure*: Franchisee shall not be held in default under, or in noncompliance with, the provisions of the Franchise, nor suffer any enforcement or penalty relating to noncompliance or default, where such noncompliance or alleged

defaults occurred or were caused by a Force Majeure. In the event that any such delay in performance or failure to perform affects only part of Franchisee's capacity to perform, Franchisee shall perform to the maximum extent it is able to perform and shall take all reasonable steps within its power to correct such causes(s) in as expeditious a manner as reasonably possible.

13.8 *Notices:* Unless otherwise expressly stated herein, notices required under the Franchise shall be sent to the addressees below. Each party may change its designee by providing written notice to the other party.

Notices to Franchisee shall be sent to:

Cox Communications Hampton Roads, LLC
1341 Crossways Blvd.
Chesapeake, VA 23320
Attn: General Manager

with a non-binding courtesy copy to:

Cox Communications
1400 Lake Hearn Drive
Atlanta, GA 30319
Attn: Government Affairs/Legal

Cox Communications
3080 Centreville Road
Herndon, VA 20171
Attn: Government Affairs

Notices to York County shall be sent to:

County Administrator
County of York
224 Ballard Street
Yorktown, Virginia 23690

With a copy to:

County Attorney, County of York
224 Ballard Street
Yorktown, Virginia 23693

13.9 *Entire Agreement:* This Franchise and the Exhibits hereto constitute the entire agreement between Franchisee and York County, and it supersedes all prior or contemporaneous agreements, representations or understanding (whether

written or oral) of the parties regarding the subject matter hereof. Any ordinances or parts of ordinances that conflict with the provisions of this Agreement are superseded by this Agreement.

13.10 *Amendments*: Amendments to this Franchise shall be mutually agreed to in writing by the parties.

13.11 *Captions*: The captions and headings of articles and sections throughout this Agreement are intended solely to facilitate reading and reference to the sections and provisions of this Agreement. Such captions shall not affect the meaning or interpretation of this Agreement.

13.12 *Severability*: If any section, subsection, sentence, paragraph, term, or provision hereof is determined to be illegal, invalid, or unconstitutional, by any court of competent jurisdiction or by any state or federal regulatory authority having jurisdiction thereof, such determination shall have no effect on the validity of any other section, subsection, sentence, paragraph, term or provision hereof, all of which will remain in full force and effect for the term of the Franchise.

13.13 *Recitals*: The recitals set forth in this Agreement are incorporated into the body of this Agreement as if they had been originally set forth herein.

13.14 *Single Point of Contact for York County*: Franchisee shall provide York County with contact information for an individual who shall be the single point of contact for Franchisee on Cable Services and issues. Contact information shall include the contact's name, address, business telephone and facsimile numbers, and e-mail address. If any contact information changes, Franchisee will inform York County as soon as reasonably possible.

13.15 *Equal Employment Opportunity*: Franchisee shall comply with all applicable federal and state laws and regulations regarding equal opportunity and non-discrimination with respect to employment of all individuals, regardless of their race, color, religion, age, sex, national origin, sexual orientation or disability.

13.16 *Communications with Regulatory Agencies*: Upon request and subject to Section 8.3, Franchisee shall provide York County with a copy of any document filed by Franchisee or any of its Affiliates with any regulatory agency or other legislative body (other than publicly available agency mailings or publications) that materially or expressly pertains to the provision of Cable Services within York County.

13.17 *Independent Review*: York County and Franchisee each acknowledge that they have received independent legal advice in entering into this Agreement. In the event that a dispute arises over the meaning or application of any term(s) of this Agreement, such term(s) shall not be construed by the reference to any doctrine calling for ambiguities to be construed against the drafter of the Agreement.

13.18 *Duplicate Originals:* This Agreement may be executed in duplicate, and each such duplicate shall be deemed an original, and the parties may become a party hereto by executing any such duplicate, so long as such duplicate contains an original signature of both parties. This Agreement and any duplicate so executed shall be deemed to be one and the same instrument. It shall not be necessary in making proof of this Agreement or any duplicate hereof to produce or account for any other duplicate.

SIGNATURE PAGE FOLLOWS

AGREED TO THIS _____ DAY OF AUGUST, 2012
YORK COUNTY, VIRGINIA

By: _____
James O. McReynolds, County Administrator

COX COMMUNICATIONS HAMPTON ROADS, LLC

By: _____
Gary T. McCollum, SVP and General Manager

EXHIBITS

Exhibit A: Local Government Buildings to be Provided Courtesy Cable Service

Exhibit B: Customer Service Standards

Exhibit C: Sample Letter of Credit

EXHIBIT A

LOCAL GOVERNMENT BUILDINGS TO BE PROVIDED COURTESY CABLE SERVICE

1. County Administration Building
224 Ballard Street, Yorktown, VA 23690
2. York/Poquoson Courthouse
300 Ballard Street, Yorktown, VA 23690
3. York Hall ***
301 Main Street, Yorktown, VA 23690
4. Computer Support Building
126 Ballard Street, Yorktown, VA 23690
5. Finance Office Building
120 Alexander Hamilton Blvd., Yorktown, VA 23690
6. Public Safety Building
301 Goodwin Neck Road, Yorktown, VA 23692
7. Parks, Recreation & Extension Building
100 County Drive, Yorktown, VA 23692
8. Dockmasters Office, Yorktown Waterfront
425 Water Street, Yorktown, VA 23690
9. Community Services Center, Brown Park
1950 Old Williamsburg Road, Lackey, VA 23690
10. Griffin-Yeates Center
1490 Government Road, Williamsburg, VA 23185
11. Crossroads Community Youth Home
5684 Mooretown Road, Williamsburg, VA 23185
12. Senior Center of York
5314 George Washington Memorial Highway, Yorktown, VA 23692
13. Tabb Library
100 Long Green Blvd., Yorktown, VA 23693

14. Yorktown Library
8500 George Washington Memorial Highway, Yorktown, VA 23692
15. Environmental & Developmental Services Building
105 Service Drive, Yorktown, VA 23692
16. Building Regulations Building
103 Service Drive, Yorktown, VA 23692
17. Waste Management Admin Building
145 Goodwin Neck Road, Yorktown, VA 23692
18. Utilities Satellite Building (Penniman Road)
1490 Government Road, Williamsburg, VA 23185
19. General Services Administration Building
102 County Drive, Yorktown, VA 23692
20. Vehicle Maintenance Building
201 Operations Drive, Yorktown, VA 23692
21. Building & Grounds offices
1801 Wolf Trap Road, Yorktown, VA 23692
22. 911 Communications Center
301 A Goodwin Neck Road, Yorktown, VA 23692
23. Fire Stations:
 - a) Station 1 Grafton – 5751 George Washington Memorial Highway, Yorktown, VA 23692
 - b) Station 2 Tabb – 4450 Big Bethel Road, Yorktown, VA 23693
 - c) Station 3 Bruton – 114 Hubbard Lane, Williamsburg, VA 23185
 - d) Station 4 Yorktown – 901 Goosley Road, Yorktown, VA 23690
 - e) Station 5 Skimino – 2000 Newman Road, Williamsburg, VA 23188
 - f) Station 6 Seaford – 503 Back Creek Road, Seaford, VA 23696
24. York County School Board offices
320 Dare Road, Yorktown, VA 23692
25. York County Schools:
 - a) Elementary
 - i. Bethel Manor ES – 1797 First Avenue, Langley AFB, VA 23665
 - ii. Coventry ES – 200 Owens Davis Blvd., Yorktown, VA 23693
 - iii. Dare ES – 300 Dare Road, Yorktown, VA 23692
 - iv. Grafton Bethel ES – 410 Lakeside Drive, Yorktown, VA 23692
 - v. Magruder ES – 700 Penniman Road, Williamsburg, VA 23185
 - vi. Mt. Vernon ES – 310 Mt. Vernon Drive, Yorktown, VA 23693
 - vii. Seaford ES – 1105 Seaford Road, Seaford, VA 23696

- viii. Tabb ES – 3711 Big Bethel Road, Yorktown, VA 23693
 - ix. Waller Mill ES-Fine Arts Magnet – 314 Waller Mill Road, Williamsburg, VA 23185
 - x. Yorktown ES -Math, Science & Technology Magnet – 131 Seige Lane, Yorktown, VA 23692
- b) Middle Schools
- i. Grafton MS – 405 Grafton Drive, Yorktown, VA 23692
 - ii. Queens Lake MS – 124 West Queens Drive, Williamsburg, VA 23185
 - iii. Tabb MS – 300 Yorktown Road, Yorktown, VA 23693
 - iv. Yorktown MS – 11201 George Washington Memorial Highway, Yorktown, VA 23692
- c) High Schools
- i. Bruton HS – 185 East Rochambeau Drive, Williamsburg, VA 23188
 - ii. Grafton HS – 403 Grafton Drive, Yorktown, VA 23692
 - iii. Tabb HS – 4431 Big Bethel Road, Yorktown, VA 23693
 - iv. York HS *** – 9300 George Washington Memorial Highway, Yorktown, VA 23692
 - v. York River Academy-11201 George Washington Memorial Highway, Yorktown, VA 23692
26. Broadcast Center in Life Long Learning Building (adjacent to York High School) *** 9300 E George Washington Memorial Highway, Yorktown, VA 23692
27. York County Sports Field Complex - 4311 George Washington Mem Hwy, Yorktown, VA
28. York County Sheriff's Satellite Office - 5338 George Washington Mem Hwy Ste D, Yorktown, VA
29. Yorktown School Bus Garage - 500 Cook Rd, Yorktown, VA

EXHIBIT B
CUSTOMER SERVICE STANDARDS

These standards shall apply to the Franchisee to the extent it is providing Cable Services over the Cable System in the Franchise area.

SECTION 1. DEFINITIONS

- A. Respond: Franchisee's investigation of a Service Interruption by receiving a Subscriber call and opening a trouble ticket, if required.
- B. Service Call: The action taken by the Franchisee to correct a Service Interruption the effect of which is limited to an individual Subscriber.
- C. Significant Outage: A significant outage of the Cable Service shall mean any Service Interruption lasting at least four (4) continuous hours that affects at least ten percent (10%) of the Subscribers in the Service Area.
- D. Standard Installation: Installations where the subscriber is within one hundred-fifty (150) feet of trunk or feeder lines.

SECTION 2. TELEPHONE AVAILABILITY

- A. The Franchisee shall maintain a toll-free Courtesy number to receive all calls and inquiries from Subscribers in the Franchise Area and/or residents regarding Cable Service. Franchisee representatives shall be available to receive reports of Service Interruptions twenty-four (24) hours a day, seven (7) days a week, and other inquiries at least forty (45) hours per week. After normal business hours, the access line may be answered by a service or an automated response system, including an answering machine. Inquiries received after normal business hours must be responded to by a trained company representative on the next business day.
- B. The Franchisee's telephone numbers shall be listed, with appropriate description (e.g. administration, customer service, billing, repair, etc.), in the directory published by the local telephone company or companies serving the Service Area, beginning with the next publication cycle after acceptance of this Franchise by the Franchisee.
- C. Franchisee may use an Automated Response Unit ("ARU") or a Voice Response Unit ("VRU") to distribute calls. If a foreign language routing option is provided, and the Subscriber does not enter an option, the menu will default to the first tier menu of English options.
- D. Under Normal Operating Conditions, telephone answer time by a customer service representative, including wait time, shall not exceed thirty (30)

seconds once the connection is made. If the call needs to be transferred, transfer time shall not exceed thirty (30) seconds. These standards shall be met no less than ninety percent (90%) of the time under Normal Operating Conditions, measured on a quarterly basis.

- E. Under Normal Operating Conditions, callers to the Franchisee shall receive a busy signal no more than three (3%) percent of the time during any calendar quarter.
- F. Beginning six (6) months after the Service Date, upon request from York County, but in no event more than once a quarter thirty (30) days following the end of each quarter, Franchisee shall report to York County the following for all call centers receiving calls from Subscribers except for temporary telephone numbers set up for national promotions:
 - (1) Percentage of calls answered within thirty (30) seconds as set forth in Subsection 2.D.
 - (2) Percentage of time customers received busy signal when calling the Cox service center as set forth in Subsection 2.E.

Subject to consumer privacy requirements, underlying activity will be made available to York County for review upon reasonable request.

- G. At Franchisee's option, the measurements and reporting above may be changed from calendar quarters to billing or accounting quarters. Franchisee shall notify York County of such a change at least thirty (30) days in advance of any implementation.

SECTION 3. INSTALLATIONS AND SERVICE APPOINTMENTS

- A. All installations will be in accordance with federal, state and local rules, including but not limited to, appropriate grounding, connection of equipment to ensure reception of Cable Service, and the provision of required consumer information and literature to adequately inform the Subscriber in the utilization of the Franchisee-supplied equipment and Cable Service.
- B. The Standard Installation shall be performed within seven (7) business days after order has been placed. "Standard" Installations are those that are located up to one hundred fifty feet (150) from existing distribution system that does not require location of underground utilities and/or direct bore or trenching. Franchisee shall meet this standard for ninety-five percent (95%) of the Standard Installations it performs, as measured on a calendar quarter basis.
- C. The Franchisee will offer Subscribers "appointment window" alternatives for arrival to perform installations, Service Calls and other activities of a

maximum four (4) hours scheduled time block during appropriate daylight available hours, usually beginning at 8:00 AM unless it is deemed appropriate to begin earlier by location exception. At the Franchisee's discretion, the Franchisee may offer Subscribers appointment arrival times other than these four (4) hour time blocks, if agreeable to the Subscriber. These hour restrictions do not apply to weekends.

- D. The Franchisee may not cancel an appointment with a Subscriber after Normal Business Hours on the business day preceding the appointment. If Franchisee's representative is running late for an appointment with a Subscriber and will not be able to keep the appointment as scheduled, under Normal Operating Conditions the Subscriber will be contacted and the appointment rescheduled as necessary.
- E. Franchisee service representatives will have the ability to issue service credits, at Franchisee's sole discretion, to address customer complaints related to missed appointments.
- F. The Franchisee shall use due care in the process of installation and shall substantially restore the Subscriber's property to its prior condition. Such restoration shall be undertaken and completed within seven (7) business days after the damage is incurred.

SECTION 4. SERVICE INTERRUPTIONS AND OUTAGES

- A. The Franchisee shall notify York County of any Significant Outage of the Cable Service.
- B. The Franchisee shall exercise commercially reasonable efforts to limit any Significant Outage for the purpose of maintaining, repairing, or constructing the Cable System. Except in an emergency or other situation necessitating a more expedited or alternative notification procedure, the Franchisee may schedule a Significant Outage for a period of more than four (4) hours during any twenty-four (24) hour period only after York County and each affected Subscriber in the Service Area have been given fifteen (15) business days prior notice of the proposed Significant Outage. Notwithstanding the forgoing, Franchisee may perform modifications, repairs and upgrades to the System between 12:01 a.m. and 6 a.m. which may interrupt service, and this Section's notice obligations respecting such possible interruptions will be satisfied by notice provided to Subscribers upon installation and in the annual subscriber notice.
- C. Franchisee representatives who are capable of responding to Service Interruptions must be available to respond twenty-four (24) hours a day, seven (7) days a week.

- D. Under Normal Operating Conditions, the Franchisee must Respond to a call from a Subscriber regarding a Service Interruption or other service problems within the following time frames:
- (1) Within twenty-four (24) hours, including weekends, of receiving subscriber calls respecting Service Interruptions in the Service Area.
 - (2) The Franchisee must begin actions to correct all other Cable Service problems the next business day after notification by the Subscriber or York County of a Cable Service Problem.
- E. Under Normal Operating Conditions, the Franchisee shall complete Service Calls within seventy-two (72) hours of the time Franchisee commences to Respond to the Service Interruption, not including weekends and situations where the Subscriber is not reasonably available for a Service Call to correct the Service Interruption within the seventy-two (72) hour period.
- F. The Franchisee shall meet the standard in Subsection E. of this Section for ninety percent (90%) of the Service Calls it completes, as measured on a quarterly basis.
- G. Under Normal Operating Conditions, the Franchisee shall provide a credit upon Subscriber request when all Channels received by that Subscriber are out of service for a period of four (4) consecutive hours or more. The credit shall equal, at a minimum, a proportionate amount of the affected Subscriber(s) current monthly bill. In order to qualify for the credit, the Subscriber must promptly report the problem and allow the Franchisee to verify the problem if requested by the Franchisee. If Subscriber availability is required for repair, a credit will not be provided for such time, if any, that the Subscriber is not reasonably available.
- H. Under Normal Operating Conditions, if a Significant Outage affects all Video Programming Cable Services for more than twenty-four (24) consecutive hours, the Franchisee shall issue an automatic credit to the affected Subscribers in the amount equal to their monthly recurring charges for the proportionate time the Cable Service was out, or a credit to the affected subscribers in the amount equal to the charge for the basic plus enhanced basic level of service for the proportionate time the Cable Service was out, whichever is technically feasible or, if both are technically feasible, as determined by Franchisee provided such determination is non-discriminatory. Such credit shall be reflected on Subscriber billing statements within the next available billing cycle following the outage.

SECTION 5. CUSTOMER COMPLAINTS

Under Normal Operating Conditions, the Franchisee shall investigate Subscriber complaints referred by York County within five (5) business days. The Franchisee shall notify York County of those matters that necessitate an excess of five (5) business days to resolve, but those matters must be resolved within fifteen (15) business days of the initial complaint. York County may require reasonable documentation to be provided by the Franchisee to substantiate the request for additional time to resolve the problem. For purposes of this Section, "resolve" means that the Franchisee shall perform those actions, which, in the normal course of business, are necessary to investigate the Customer's complaint and advise the Customer of the results of that investigation.

SECTION 6. BILLING

- A. Bills will be clear, concise and understandable. Subscriber bills must be itemized to describe Cable Services purchased by Subscribers and related equipment charges. Bills shall clearly delineate activity during the billing period, including optional charges, rebates, credits, and aggregate late charges. Franchisee shall, without limitation as to additional line items, be allowed to itemize as separate line items the Communications Sales and Use Tax, and/or other taxes or governmentally imposed fees. The Franchisee shall maintain records of the date and place of mailing of bills.
- B. Every Subscriber with a current account balance sending payment directly to Franchisee shall be given at least twenty (20) days from the date statements are mailed to the Subscriber until the payment due date.
- C. A specific due date shall be listed on the bill of every Subscriber whose account is current. Delinquent accounts may receive a bill which lists the due date as upon receipt; however, the current portion of that bill shall not be considered past due except in accordance with Subsection 6.B. above.
- D. Any Subscriber who, in good faith, disputes all or part of any bill shall have the option of withholding the disputed amount without disconnect or late fee being assessed until the dispute is resolved provided that:
 - (1) The Subscriber pays all undisputed charges;
 - (2) The Subscriber provides notification of the dispute to Franchisee within five (5) days prior to the due date; and
 - (3) The Subscriber cooperates in determining the accuracy and/or appropriateness of the charges in dispute.
 - (4) It shall be within the Franchisee's sole discretion to determine when the dispute has been resolved.

- E. Under Normal Operating Conditions, the Franchisee shall initiate investigation and resolution of all billing complaints received from Subscribers within five (5) business days of receipt of the complaint. Final resolution shall not be unreasonably delayed.
- F. The Franchisee shall provide a telephone number and address on the bill for Subscribers to contact the Franchisee.
- G. The Franchisee shall provide all Subscribers with the option of paying for Cable Service by check or an automatic payment option where the amount of the bill is automatically deducted from a checking account designated by the Subscriber. Franchisee may, at its discretion, permit payment by using a major credit card on a preauthorized basis. Based on a Subscriber's credit history, at the option of the Franchisee, the payment alternatives may be limited.

SECTION 7. DEPOSITS, REFUNDS AND CREDITS

- A. The Franchisee may require refundable deposits from Subscribers 1) with a poor credit or poor payment history, 2) who refuse to provide credit history information to the Franchisee, or 3) who rent Subscriber equipment from the Franchisee, so long as such deposits are applied on a non-discriminatory basis. The deposit the Franchisee may charge Subscribers with poor credit or poor payment history or who refuse to provide credit information may not exceed an amount equal to an average Subscriber's monthly charge multiplied by six (6). The maximum deposit the Franchisee may charge for Subscriber equipment is the cost of the equipment which the Franchisee would need to purchase to replace the equipment rented to the Subscriber.
- B. The Franchisee shall refund or credit the Subscriber for the amount of the deposit collected for equipment, which is unrelated to poor credit or poor payment history, after one year and provided the Subscriber has demonstrated good payment history during this period. The Franchisee shall pay interest on other deposits if required by law.
- C. Under Normal Operating Conditions, refund checks will be issued within the next available billing cycle following the resolution of the event giving rise to the refund, (e.g. equipment return and final bill payment).
- D. Credits for Cable Service will be issued no later than the Subscriber's next available billing cycle, following the determination that a credit is warranted, and the credit is approved and processed. Such approval and processing shall not be unreasonably delayed.
- E. Bills shall be considered paid when appropriate payment is received by the Franchisee or its authorized agent. Appropriate time considerations

shall be included in the Franchisee's collection procedures to assure that payments due have been received before late notices or termination notices are sent.

SECTION 8. RATES, FEES AND CHARGES

- A. The Franchisee shall not, except to the extent permitted by law, impose any fee or charge for Service Calls to a Subscriber's premises to perform any repair or maintenance work related to Franchisee equipment necessary to receive Cable Service, except where such problem is caused by a negligent or wrongful act of the Subscriber (including, but not limited to a situation in which the Subscriber reconnects Franchisee equipment incorrectly) or by the failure of the Subscriber to take reasonable precautions to protect the Franchisee's equipment (for example, a dog chew).
- B. The Franchisee shall provide reasonable notice to Subscribers of the possible assessment of a late fee on bills or by separate notice.

SECTION 9. DISCONNECTION / DENIAL OF SERVICE

- A. The Franchisee shall not terminate Cable Service for nonpayment of a delinquent account unless the Franchisee mails a notice of the delinquency and impending termination prior to the proposed final termination. The notice shall be mailed to the Subscriber to whom the Cable Service is billed. The notice of delinquency and impending termination may be part of a billing statement.
- B. Cable Service terminated in error must be restored without charge within twenty-four (24) hours of notice. If a Subscriber was billed for the period during which Cable Service was terminated in error, a credit shall be issued to the Subscriber if the Service Interruption was reported by the Subscriber.
- C. Nothing in these standards shall limit the right of the Franchisee to deny Cable Service for non-payment of previously provided Cable Services, refusal to pay any required deposit, theft of Cable Service, damage to the Franchisee's equipment, abusive and/or threatening behavior toward the Franchisee's employees or representatives, or refusal to provide credit history information or refusal to allow the Franchisee to validate the identity, credit history and credit worthiness via an external credit agency.
- D. Every notice of termination of Cable Service shall include the following information:
 - (1) The name and address of the Subscriber whose account is delinquent;

- (2) The amount of the delinquency for all services billed;
- (3) The date by which payment is required in order to avoid termination of Cable Service; and
- (4) The telephone number for the Franchisee where the Subscriber can receive additional information about their account and discuss the pending termination.

SECTION 10. COMMUNICATIONS WITH SUBSCRIBERS

- A. All Franchisee personnel, contractors and subcontractors contacting Subscribers or potential Subscribers outside the office of the Franchisee shall wear a clearly visible identification card bearing their name and photograph. The Franchisee shall make reasonable effort to account for all identification cards at all times. In addition, all Franchisee representatives shall wear appropriate clothing while working at a Subscriber's premises. Every service vehicle of the Franchisee and its contractors or subcontractors shall be clearly identified as such to the public. Specifically, Franchisee vehicles shall have the Franchisee's logo plainly visible. The vehicles of those contractors and subcontractors working for the Franchisee shall have the contractor's / subcontractor's name plus markings (such as a magnetic door sign) indicating they are under contract to the Franchisee.
- B. All contact with a Subscriber or potential Subscriber by a Person representing the Franchisee shall be conducted in a courteous manner.
- C. The Franchisee shall send annual notices to all Subscribers informing them that any complaints or inquiries not satisfactorily handled by the Franchisee may be referred to York County.
- D. All notices identified in this Section shall be by either:
 - (1) A separate document included with a billing statement or included on the portion of the monthly bill that is to be retained by the Subscriber; or
 - (2) A separate electronic notification.
- E. The Franchisee shall provide reasonable notice to Subscribers of any pricing changes or additional charges (excluding sales discounts, new products or offers) and, subject to the forgoing, any changes in Cable Services, including channel line-ups, disconnect fees or technical services charges. Such notice must be given to Subscribers a minimum of thirty (30) days in advance of such changes if within the control of the Franchisee.
- F. The Franchisee shall provide information to all Subscribers about each of the following items at the time of installation of Cable Services, annually

to all Subscribers, at any time upon request, and, subject to Subsection 10.E., at least thirty (30) days prior to making significant changes in the information required by this Section if within the control of the Franchisee:

- (1) Products and Cable Service offered;
 - (2) Prices and options for Cable Services and condition of subscription to Cable Services. Prices shall include those for Cable Service options, equipment rentals, program guides, installation, downgrades, late fees and other fees charged by the Franchisee related to Cable Service;
 - (3) Installation and maintenance policies including, when applicable, information regarding the Subscriber's in-home wiring rights during the period Cable Service is being provided;
 - (4) Channel positions of Cable Services offered on the Cable System;
 - (5) Billing and complaint procedures, including the name, address and telephone number of York County.
 - (6) Procedures for requesting Cable Service credit;
 - (7) The availability of a parental control device;
 - (8) Franchisee practices and procedures for protecting against invasion of privacy; and
 - (9) The address and telephone number of the Franchisee's office to which complaints may be reported.
- G. Franchisee shall provide a designated regional office located on the Virginia Peninsula accessible to Subscribers that provides customer services such as bill payment, equipment pick up or drop off and similar services. With regard to mobility-limited Subscribers, upon Subscriber request, Franchisee shall arrange for pickup and/or replacement of converters or other equipment at Subscriber's address or by a satisfactory equivalent (such as the provision of a mailer).

It is a condition of this Irrevocable Letter of Credit that it shall be automatically extended without amendment for additional one year periods from the present or each future expiration date, but not beyond [insert date], unless at least 30 days prior to that current expiry date, we send you notice in writing by overnight carrier or hand delivery at the above address that we elect not to renew this Letter of Credit for such additional period.

Unless otherwise specifically stated, this credit is subject to the uniform customs and practice for documentary credits 2007 revision, the International Chamber of Commerce Publication No. 600.

If you require assistance or have any questions regarding this transaction, please call _____.

Sincerely,

Authorized Signature

Address: _____ Phone No. _____ Fax No.

MINUTES
BOARD OF SUPERVISORS
COUNTY OF YORK

Regular Meeting
July 17, 2012

6:00 p.m.

Meeting Convened. A Regular Meeting of the York County Board of Supervisors was called to order at 6:01 p.m., Tuesday, July 17, 2012, in the Board Room, York Hall, by Chairman Thomas G. Shepperd, Jr.

Attendance. The following members of the Board of Supervisors were present:, Sheila S. Noll, Donald E. Wiggins, George S. Hrichak, and Thomas G. Shepperd, Jr.

Walter C. Zaremba arrived at 6:12 p.m.

Also in attendance were James O. McReynolds, County Administrator; J. Mark Carter, Assistant County Administrator; and James E. Barnett, County Attorney.

Invocation. Mr. McReynolds, County Administrator, gave the invocation.

Pledge of Allegiance to the Flag of the United States of America. Vice Chairman Noll led the Pledge of Allegiance

PRESENTATIONS

EMPLOYEE RECOGNITION PROGRAM

Chairman Shepperd congratulated Joanna S. Bauer, Department of Financial & Management Services, for her 25 years of service with the County, and presented her with her service pin and certificate.

VIRGINIA DEPARTMENT OF TRANSPORTATION (VDOT)

Mr. Rossie Carroll, VDOT Williamsburg Residency Administrator, made a presentation regarding the evolution of the Hampton Roads Residency and the plans to reverse some of the actions that moved various responsibilities from the Residency to the District offices. He reviewed the Williamsburg Residency organizational diagram and the Williamsburg Residency Administrator's responsibilities, stating he would try to attend the Board of Supervisors' meetings quarterly to provide an update.

Mr. Hrichak asked if the size of the Hampton Roads District would remain the same.

Mr. Rossie Carroll stated for the present time the Hampton Road District footprint was staying basically the same size with eleven cities and nine counties. He noted most of the cities have their own roadway maintenance program.

Mr. Hrichak stated he had read an article in the newspaper in the past week regarding the new software for the signaling on Route 17, and he asked Mr. Carroll to speak about the software.

Mr. Carroll stated the new signaling software, InSync, allows VDOT the ability to cycle the traffic along Route 17 and the side streets to help with traffic congestion. He stated the soft-

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ware had been installed, and they were in the process of evaluating the software and trying to get the bugs worked out.

Discussion followed regarding adjustments being made to the system by the VDOT residency.

Chairman Shepperd asked if it would be of value to Board of Supervisors to view the product to get a better understanding of the process.

Mr. Carroll stated he would provide information to the Board regarding what the program will do, how it was setup, and what abilities it provides VDOT. He stated after the Board reviewed the information, a hands-on demonstration could certainly be set up.

Mrs. Noll noted that she, along with the other Board members, was delighted that Mr. Carroll would be attending the Board meetings on a routine basis. She stated one of the big complaints she hears at the VACo Transportation Committee meetings was the lack of direct communication with VDOT. She stated Mr. Carroll's willingness to come to the meetings quarterly would be very helpful to both the Board and the citizens and will give VDOT an opportunity to explain issues and initiatives.

Mr. Zarembo spoke of a recent Historic Triangle Collaborative meeting he had attended with a lot of movers and shakers who had spoken about the VDOT bureaucracy and the seven separate approval processes to get a project approved.

Mr. Carroll stated that at one time the approval process was long and lengthy, but some changes have been made by creating a tier process for the project approvals. He explained the difference between the tiers and where the projects fell in the tier system. He stated some of the processes are still lengthy, but they have tried to make changes to help streamline the entire process.

Chairman Shepperd stressed the importance of the Board being able to have interaction with VDOT and Mr. Carroll to pass along information from their constituents. He stated Mr. Carter has been a great liaison with VDOT, but direct interaction between VDOT and the elected officials was very important. The Board members received emails about potholes being filled, and it was unfortunate that it had taken the Governor getting involved for that to happen. He stated it was his understanding that citizens still contact VDOT through the Customer Service Center.

Mr. Carroll stated the citizen contact will still be the Customer Service Center which can be reached by either calling the toll free 800 number or by going to the VDOT website and send an email.

Chairman Shepperd stated ditch maintenance in his district has become critical because of the flooding issues caused by more and more rains, and he asked Mr. Carroll if he had any insight as to how VDOT was going to handle these issues with no new revenue.

Mr. Carroll stated VDOT has been doing a lot of work in the past six months to try and get the ditches cleaner to help keep water off the roadway, which was one of VDOT's worst enemies. He stated they are also in the process of making sure ditches are getting cleaned as the customer service requests come in; but with the limited staff and resources, they are trying to get the biggest bang for the buck and hit the issues that are going to serve everyone the most.

Chairman Shepperd stated that recently the County had started receiving a letter in response to their citizen requests i.e. for reducing a speed limit or establishing a deer warning sign etc., not only giving a yes or no answer but also detailing the rationale to the answer. He wanted to encourage that this continue rather than getting the feeling that requests just went into a black hole. Mr. Shepperd stated he wanted to underscore the point that Secretary Connaugh-

ton had stated that VDOT will run out of operational money by 2014. He then expressed his concerns about VDOT's use of surface treatments, stating the treatment was not appropriate for York County neighborhoods. He spoke of how some of streets are rutted with the seal, have large sized loose gravel, and gaps; and he felt if the seal was not being appropriately applied, it was a total waste of money. He noted he understood VDOT was trying to protect the roads, but people live in these neighborhoods. He stated he had heard from a constituent that was very concerned about the appearance of the surface treatment and the effect it would have on the community. He stated he also saw this as a safety issue because residents also walk and ride bikes on the streets.

Mr. Carroll explained the two types of maintenance treatments are slurry seal and surface treatment, and they have different types of application procedures, but both treatments were preventative maintenance overlays. The County's secondary program was only allocated \$600,000 for pavement maintenance, but the amount of asphalt throughout the County on the secondary system where the pavements were becoming deficient far exceeded that allocation. He stated this was VDOT's only way of preserving the pavements to make them last an average of five to seven years longer. He then spoke of the cost difference between the maintenance overlays and asphalt, and he noted VDOT has contracted with a sweeper to come in after the streets cure, which would be between two to three weeks, to sweep up the residual material that did not bond. Mr. Carroll stated the bottom line was the benefit of surface treatment and slurry seal to the County roads which was something that could not be ignored in order to have an effective preventative pavement preservation program given the amount of limited funds.

Discussion followed regarding VDOT's decision to provide a preventative pavement maintenance program rather than simply filling the potholes.

Mr. Wiggins stated when this type project had been done some years ago in his district in the Sommerville neighborhood there had been complaints, but the project turned out very well in the end after all the residual material had been removed. He stated he felt the important thing was to educate the public as to what to expect during the treatment application. He also suggested that VDOT have meetings with the neighborhood homeowners associations.

Mr. Carroll stated he had made a presentation last February at the County's Homeowners Association meeting providing an overview of the pavement resurfacing program that included information on funding, restorative vs. preventative overlays, the process for determining needs, and the 2012 York County resurfacing schedule. He stated VDOT had also put together a one-page fact sheet that gave residents contact information on who to contact if they had additional questions. Mr. Carroll stated the preferred treatment would be to mill and repave all the streets with asphalt, but this type of surface treatment would preserve the roads for a long time at a \$1 per square yard vs. \$10 per square yard for asphalt.

Chairman Shepperd thanked Mr. Carroll for attending the meeting and welcomed him to York County, stating he was looking forward to seeing him every quarter.

CITIZENS COMMENT PERIOD

Mr. M. Kenneth Taylor, Jr., 109 Dawn Place, Chairman of the Woodlake Homeowners Architectural Review Committee, addressed the Board regarding the planned surface treatment for the streets in the Woodlake subdivision, stating he found the proposed product to be a bad product. When the houses in Woodlake were built, VDOT had outlawed the same surface treatment from all subdivisions in York County. He felt no surface treatment would be better than the proposed product, and he presented the Board with some pictures of the poor street conditions in Woodlake. He stated he was shocked to hear the VDOT official say earlier that there was only \$600,000 to do all of York County's secondary road maintenance for the year, and he

requested that the Board adopt a resolution to the Governor and state representatives to get this matter corrected.

COUNTY ATTORNEY REPORTS AND REQUESTS

Mr. Barnett reminded the Board members that it was time to starting thinking about the 2013 session of the General Assembly, and he requested they provide him with any legislative items they would like to see included in the County's legislative program.

COUNTY ADMINISTRATOR REPORTS AND REQUESTS

Mr. McReynolds stated he was happy to report that the Fourth of July event turned out well, and he thanked all the volunteers and County staff who had a hand in making it a successful day. He noted he had met with the National Park Service today, and they had discussed a few items that might need to be addressed for next year's events. He then reminded the Board and the citizens of the Board's next two regular meetings to be held on August 7 and 21.

Mr. Hrichak asked when the proposed tax structure for penalties would be coming before the Board.

Mr. McReynolds stated he thought that would be before the Board at the August 7 meeting.

Mr. Hrichak asked if the advertising policy for the ball fields had been established.

Mr. McReynolds stated it was his understanding that information about advertising opportunities was online, but he would verify that tomorrow.

Mr. Hrichak stated he had a meeting with a businessman in the Seaford area, and they had talked about a problem Seaford was having with feral cats. He stated Animal Control would bring a cage to try and capture the cats, but more often than not there was not room at the shelter for them, so the cats stay and the situation is getting worse. He thought the County should check and see if there were any options to control the feral cat population before it got out of hand.

Mr. McReynolds stated it was his understanding that under the State Code the County's options were very limited. He noted the County works with a feral cat group to try and address these issues. He asked Mr. Hrichak for the contact information of the businessman, stating he would get in touch with him.

Mr. Hrichak then indicated he had spoken with an individual from another county who told him they had saved money on their health care costs by hiring a county nurse to act as a kind of triage to ferret out false claims and false problems. He felt this was an interesting approach, and he asked Mr. McReynolds to look into the matter to see if it had any validity.

Mr. McReynolds stated he would be happy to get in touch with the locality if Mr. Hrichak could pass along the name of the County.

Mr. Zaremba asked Mr. McReynolds to expand on the comment in reference to the charcoal grills on the Fourth of July.

Mr. McReynolds stated people like to bring their charcoal grills to the Village and cook out during the day, but there was no way to dispose of the hot coals which could continue to burn for hours, so there was a danger of a fire or children stepping on hot coals after dark. He

stated he was not aware of any injuries this year, but it was something that needed to be addressed with the Park Service to figure out how to best handle the situation for next year.

Mr. Zaremba asked if there was any indication of how many piles of charcoal were identified after the event.

Mr. McReynolds stated there was not a good count.

Mr. Zaremba asked if any thought had been given to banning the use of charcoal grills.

Mr. McReynolds stated there had been discussion about everything from saying that grills would not be allowed at all, to saying grills could be used only at the Park Service beach picnic area, or the possibility of saying only gas grills would be allowed.

Discussion followed on the modified and reduced size of the 4th of July event, the possibility of going back to the traditional parade and original sizing of the event, the number of participants this year, and holding this year's event on a weekday vs. the weekend.

Chairman Shepperd stated over the coming months the fees would need to be looked at as he had been receiving complaints. He stated he was also in the process of going back over the solicitation code proposal from Mr. Barnett, stating he wanted the proposal to come back before the Board next month.

Mr. McReynolds noted the Board needed to address the transition of going from a calendar year tax rate basis to a fiscal year tax rate basis.

Chairman Shepperd stated the recycling issue also needed to be readdressed by the Board around November to figure out how to modernize it, so there were several big issues that would be coming before the Board in the next six months.

Mr. McReynolds stated staff was working diligently talking with the vendors to identify the recycling options. He stated the plan was to have the recycling material back to the Board no later than early October with an October work session and probable action in November.

MATTERS PRESENTED BY THE BOARD

Mr. Hrichak updated the Board on the Hampton Roads Partnership, noting that Mr. Dana Dickens, President and CEO, will be retiring from the organization, and Mr. Digby Solomon will become the new Chairman of the Board for the organization. He spoke of the County's Sister City relationship with Port Vendres, France, stating Sister Cities International had raised funds to be sending 11 school students with a chaperone to Port Vendres in October. He stated the delegation would be willing to make a presentation to the Board after their return from Port Vendres.

Mr. Wiggins spoke of the opportunity he and Mrs. Noll had last Friday to attend the Governor's conference reception and hear him speak. He noted he also had a chance to meet with the Governor that morning and discuss his concerns regarding transportation funding and the fact that Virginia's ability to attract new businesses has dropped from number one to number three because of Virginia's transportation situation. He reminded the citizens that about 10 years ago there had been a transportation referendum that would have raised taxes a cent and a half to get a third crossing to Norfolk to relieve some of the traffic congestion, but it failed; and nothing was going to be done now either. Mr. Wiggins stated he felt it was time as a community to get behind the Governor and General Assembly and get something done.

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Mrs. Noll spoke of the importance of transportation to the viability of Hampton Roads and to the business and economics of the Commonwealth of Virginia. She stated the political will was not present, and it takes political will to move forward; and the citizens needed to let their elected leaders know how they feel about the transportation issues, the alternatives, and the alternatives for paying for transportation.

Mr. Zaremba reminded the Board members that at the last meeting he had apprised them of the current proposal to merge the Marketing Resource Task Force, a part of the Williamsburg Area Destination Marketing Committee (WADMC), and the marketing portion of the Greater Williamsburg Chamber and Tourism Alliance (GWCTA) into a Destination Marketing Organization in order to get more for the money currently being spent on marketing the Historic Triangle. He reported the vote had been taken on this proposal, and it had passed unanimously. He stated no objective analysis had been performed to ensure that it would work, but it was a way to get more mileage from the tourism tax dollars.

Mr. Hrichak asked if any goals had been established or any performance measures had been put in place to see whether it was working.

Mr. Zaremba stated it had been brought up a few times in deliberations, but much of it was still in the conceptional phase. He stated the marketing plan for 2012 would be prepared as it had been for the last several years by the WADMC; and its subordinate organization, the Marketing Task Force, would give the combination of key people in the Alliance time to identify performance measures and things that should have been done a long time ago.

Mr. Wiggins stated he had spoken with Mr. Zaremba a couple of times about the fact that he thought York County should have a representative on the Executive Committee of the Williamsburg Chamber. He noted he had served as a representative for several years; and he felt by the time regional issues came to the Board, the decisions had already been made because the Executive Committee was controlled by Williamsburg. He stated his concern was that most all of the members were directly tied to Colonial Williamsburg or have been at one time.

Mr. Zaremba stated the membership of the Executive Committee was a smaller committee of about 11 people as opposed to the 35 member Board of Directors. He noted the last time York County had a member on the Executive Committee was when Mr. Jim Noel served several years ago. He stated the so called criteria to be a member of the Executive Committee was participation in the various subcommittees. Mr. Zaremba stated that with respect to this merger, the Executive Committee would not be an approving authority of the plan that was going to be the result of this merger.

Discussion followed regarding York County having a member on the Greater Williamsburg Chamber and Tourism Alliance.

Chairman Shepperd asked Mr. McReynolds to look into the matter and come back with some recommendations for a Board work session.

Chairman Shepperd gave the Supervisors an overview of what transpires during a Transportation Planning Organization (TPO) meeting, stating the bottom line was that there was no money for transportation. He noted there was a huge problem in the local area, but it was not the local area's problem alone; and the people in the legislature need to step up and pass laws that would generate revenue for transportation. He then addressed how the costs had escalated over the years, stating the longer transportation projects are put off, the more expensive it was going to become to fund them. The transportation problem through the Hampton Roads Bridge Tunnel was rated the worst traffic condition in the United States which was why Virginia has dropped from a number one to a number three business State. The State has slowly started making an effort to bypass transportation in the Hampton Roads region; and in the end

the people of the Peninsula will end up paying for it because of the lost opportunities, lost jobs, higher prices, and the loss of the quality of life. He noted high speed rail had already been approved to bypass this area. If communities were bypassed by transportation means, their operations were going to die. There was a cost of doing business, and the issue could not be avoided by not funding transportation. He also updated the Board on the HRPDC and the unfunded mandates regarding stormwater and stormwater plans. Mr. Shepperd then updated the Board on the status of HRMFFA and sequestration.

Mr. Zaremba stated the latest word from the General Assembly was that they had managed to put together a balanced budget without raising any taxes, and he asked Mr. Shepperd if this was not inconsistent with what he had just said.

Chairman Shepperd stated the General Assembly had put together a budget that they are now pushing down on the localities to raise taxes. He then spoke of how VDOT has been reshuffled and how the lack of funding causes VDOT to have to use lower standards for maintenance treatments to County streets. He then updated the Board regarding a luncheon meeting he had attended with a Korean Delegation from the City of Icheon at the Williamsburg Pottery.

CONSENT CALENDAR

Mr. Wiggins addressed Item No. 2, recognizing Mr. Dan Nortman, the Virginia Cooperative Extension Agent, stating he had done a good job, and it had been a pleasure working with him.

Chairman Shepperd asked Mr. Nortman to briefly describe his job function to the Board.

Mr. Norman stated Virginia Cooperative Extension was the outreach portion of Virginia Tech and Virginia State University, and his main focus was on horticulture; but there was also 4-H programming, and they are currently in the process of gearing up for 4-H Camp next week. He stated Extension also holds seminars, public clinics, and provides answers to the community regarding horticulture and environmental stewardship. He expressed his appreciation to the Board for its continued support of the Extension program.

Mr. Wiggins then asked for further information on Item No. 3.

Mr. McReynolds stated there was a small frame building on Main Street that was owned by the National Park Service that was referred to as The Museum on Main. The County has an agreement with the Park Service that allows it to use the building, and this item was to extend the five-year agreement with the Park Service. He stated staff would later be asking the Board to renew the agreement with the Museum Board to allow them to continue using the building.

Mr. Zaremba asked if there was any fiscal cost to agreement.

Mr. Jim Funk, a volunteer at the museum, stated there was no cost involved.

Mr. Hrichak addressed Item No. 4, asking if there would be any cost savings by combining this function with Williamsburg and James City County.

Mr. Hudgins stated the County has the TV camera that was purchased to do the normal and preventative maintenance operations. He stated this proposed purchase would support the effort required to respond to the special consent order from the Department of Environmental Quality.

Mr. Hrichak asked what the difference was between normal preventative maintenance and these inspections, and why it needed to be contracted.

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Mr. Hudgins stated the County was not resourced to do the 20 percent annually for the 40 some miles of sewer lines that was required by the consent order. He stated the existing crews had other tasks to do as well.

Mr. Hrichak asked if a cost benefit analysis had been done to see if the equipment and crew could be purchased to do this operation and maybe share it with the other municipalities rather than contracting it out.

Mr. Hudgins stated this was an outsource contract, and other communities have to do the same thing. He stated staff was doing a cost benefit process.

Mr. Hrichak asked if it was cheaper to contract this out rather than to do it in-house.

Mr. Hudgins stated engineering costs were saved in developing the RFP by using James City County's competed contract and in that sense the County saved the design costs.

Mr. McReynolds asked Mr. Hudgins if the County had looked at the possibility of pooling resources with the surrounding localizes and putting together their own force to perform this task.

Mr. Hudgins stated normally each community has its own TV camera and process.

Mr. McReynolds stated he understood the difference between daily maintenance needs and the consent order requirements; but asked, given that the consent order task was so massive, had the County looked at it with the other jurisdictions and the possibility of pooling resources and putting together possibly an authority to do this operation.

Mr. Hudgins stated he could not answer the question, but he would ask.

Mrs. Noll moved that the Consent Calendar be approved as submitted, Item Nos. 1, 2, 3, 4, and 5, respectively.

On roll call the vote was:

Yea: (5) Zaremba, Noll, Wiggins, Hrichak, Shepperd
Nay: (0)

Item No. 1. APPROVAL OF MINUTES

The minutes of the following meetings of the York County Board of Supervisors were approved:

June 5, 2012, Regular Meeting
June 19, 2012, Regular Meeting

Item No. 2. VIRGINIA COOPERATIVE EXTENSION: Resolution R12-86

A RESOLUTION TO AUTHORIZE THE EXECUTION OF AN AGREEMENT TO PROVIDE FOR THE OPERATION OF THE VIRGINIA COOPERATIVE EXTENSION OFFICE FOR FY2013

WHEREAS, Virginia Cooperative Extension Service has long served York County citizens by offering a wide array of services ranging from youth activities to horticultural guidance that protects our wetlands and greater environment, as well as providing access to a broader network of technical information and resources through Virginia's Land Grant University Sys-

tem at both VPI and Virginia State University; and

WHEREAS, County and Extension staff plan and coordinate services throughout the year to prevent duplication of effort and to assure that Extension activities extend and enhance County programs; and

WHEREAS, the Board of Supervisors authorized funding for this activity in the FY2013 approved budget sufficient to continue participation in this program and to provide an adequate level of service to the citizens of York County;

NOW, THEREFORE, BE IT RESOLVED by the York County Board of Supervisors this 17th day of July, 2012, that the County Administrator be, and he is hereby, authorized to execute for and on behalf of the Board a Memorandum of Understanding with Virginia Cooperative Extension, including any necessary amendments thereto, that has been approved as to form by the County Attorney and which is substantially in the same form as that which was transmitted to the Board by report of the County Administrator dated June 8, 2012, for the provision of Virginia Cooperative Extension within the County.

Item No. 3. BUILDING USE AGREEMENT—NATIONAL PARK SERVICE: Resolution R12-87

A RESOLUTION TO AUTHORIZE EXECUTION OF A BUILDING USE AGREEMENT BETWEEN THE COUNTY OF YORK AND THE NATIONAL PARK SERVICE FOR 408 MAIN STREET, YORKTOWN, VIRGINIA

WHEREAS, the York County Historical Committee has long planned a Museum for the County, and the Board of Supervisors desires to support such an effort; and

WHEREAS, the County has identified a building located at 408 main Street, Yorktown, Virginia, which is owned by the National Park Service and is suitable for such a Museum, and the National Park Service has agreed to permit such use; and

WHEREAS, it is the desire of the York County Board of Supervisors to enter into a building use agreement with the National Park Service and thereafter enter into an agreement with the Board of Directors of the York County Historical Museum for the sole purpose of use of the building as an Historical Museum;

NOW, THEREFORE, BE IT RESOLVED by the York County Board of Supervisors this 17th day of July, 2012, that the County Administrator be, and he is hereby, authorized to execute a building use agreement between the County of York and the National Park Service for occupancy of the Park Service-owned property referred to as 408 Main Street, Yorktown, Virginia, for use as an Historical Museum.

Item No. 4. CLOSED CIRCUIT TELEVISION INSPECTIONS OF SEWER LINES: Resolution R12-92

A RESOLUTION TO AUTHORIZE THE COUNTY ADMINISTRATOR TO EXTEND THE ANNUAL SERVICES CONTRACT FOR CLEANING AND CLOSED CIRCUIT TELEVISION (CCTV) INSPECTIONS TO ASSIST THE COUNTY WITH MEETING THE REGULATORY REQUIREMENTS OF THE HAMPTON ROADS SPECIAL ORDER BY CONSENT WITH THE COMMONWEALTH OF VIRGINIA STATE WATER CONTROL BOARD

July 17, 2012

WHEREAS, it is the policy of the Board of Supervisors that all procurements of goods and services by the County involving the expenditure of \$30,000 or more be submitted to the Board for its review and approval; and

WHEREAS, the County Administrator has determined that the following procurements are necessary and desirable, they involve the expenditure of \$30,000 or more, and that all applicable laws, ordinances, and regulations have been complied with;

NOW, THEREFORE, BE IT RESOLVED BY THE York County Board of Supervisors this 17th day of July, 2012, that the County Administrator be, and he is hereby, authorized to execute procurement arrangements with PRISM Engineering for the following:

	<u>AMOUNT</u>
CCTV Sewer Line Inspections	\$125,000

Item No. 5. SANITARY SEWER ENGINEERING SERVICES: HAMPTON ROADS SPECIAL ORDER BY CONSENT: Resolution: R12-93

A RESOLUTION TO AUTHORIZE THE COUNTY ADMINISTRATOR TO EXTEND THE ANNUAL PROFESSIONAL ENGINEERING SERVICES CONTRACT TO SUPPORT THE COUNTY WITH MEETING THE REGULATORY REQUIREMENTS OF THE HAMPTON ROADS SPECIAL ORDER BY CONSENT WITH THE COMMONWEALTH OF VIRGINIA STATE WATER CONTROL BOARD

WHEREAS, it is the policy of the Board of Supervisors that all procurements of goods and services by the County involving the expenditure of \$30,000 or more be submitted to the Board for its review and approval; and

WHEREAS, the County Administrator has determined that the following procurements are necessary and desirable, they involve the expenditure of \$30,000 or more, and that all applicable laws, ordinances, and regulations have been complied with;

NOW, THEREFORE, BE IT RESOLVED BY THE York County Board of Supervisors this 17th day of July, 2012 that the County Administrator be, and he is hereby, authorized to execute procurement arrangements with URS Corporation for the following:

	<u>AMOUNT</u>
Sanitary Sewer Professional Engineering Services for Special Order by Consent	\$250,000

NEW BUSINESS

APPROPRIATION OF REVENUE SHARING FUNDS

Mr. Carter made a presentation on proposed Resolution R12-89 to appropriate Revenue Sharing Program Funds returned to the County by the Virginia Department of Transportation.

Mr. Hrichak moved the adoption of proposed Resolution R12-89 that reads:

A RESOLUTION TO APPROPRIATE REVENUE SHARING PROGRAM FUNDS RETURNED TO THE COUNTY BY THE VIRGINIA DEPARTMENT OF TRANSPORTATION (VDOT) PURSUANT TO VDOT'S DEALLOCATION PROCESS

WHEREAS, the Virginia Department of Transportation (VDOT) has refunded the sum of \$308,036 to York County as a result of the recently completed Revenue Sharing Program de-allocation process; and

WHEREAS, this sum represents the unexpended County matching amounts for ten completed Revenue Sharing Program projects; and

WHEREAS, the Board wishes to appropriate these funds in the Shared Roads CIP account to be available for use as the required County match for such future Revenue Sharing Program projects as the County may request that VDOT approve and establish;

NOW, THEREFORE, BE IT RESOLVED, by the York County Board of Supervisors, this the 17th day of July, 2012, that the sum of \$308,036 returned to the County by the Virginia Department of Transportation as a result of the Revenue Sharing Program de-allocation process be, and is hereby, appropriated in the County Capital Fund.

On roll call the vote was:

Yea: (5) Noll, Wiggins, Hrichak, Zaremba, Shepperd
Nay: (0)

ROUTE 171 MULTI-USE TRAIL PROJECT

Mr. Carter made a presentation on proposed Resolution R12-91 to appropriate Congestion Mitigation Air Quality (CMAQ) funds for the proposed Route 171 (Victory Boulevard) Multi-Use Trail to be constructed between North Bowman Terrace and East Yorktown Road and to authorize execution of a the required project administration agreement.

Mr. Hrichak asked if this multi-use trail would complement the bike trail planned in the Comprehensive Plan.

Mr. Carter stated in the Comprehensive Plan there was a proposal to establish a bikeway greenway up the power line easement, and this would serve that same purpose in an easier to accomplish manner.

Mr. Hrichak asked if VDOT would be responsible for the maintenance of this area since it would be in the VDOT right of way.

Mr. Carter stated the trail would be built to VDOT specifications, so it will be responsible for the maintenance of the asphalt. He stated the County would have to do some mowing along the edges because VDOT does not maintain to the level that the County desires to see.

Mr. Zaremba asked if this project tied in anywhere to the proposed bike trails throughout the County.

Mr. Carter stated the eventual goal was to have shoulder bike lanes along Big Bethel which would tie into this Victory Boulevard trail. He stated there was a small portion of existing shoulder bike lanes between Victory Boulevard and the intersection of Yorktown Road in front of Tabb High School. He noted there is a portion of the multi-use trail in front of Kiln Creek

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between the two legs of Kiln Creek Parkway, but it would be difficult to make some of the other legs of the trails work given the right-of-way situation between 134 and Kiln Creek Parkway.

Chairman Shepperd thanked the staff for finding the Federal funding for this project for the community, and he also thanked the TPO for approving the project.

Mr. Zaremba moved the adoption of proposed Resolution R12-91 that reads:

A RESOLUTION TO AUTHORIZE EXECUTION OF THE REQUIRED PROJECT ADMINISTRATION AGREEMENT FOR THE PROPOSED ROUTE 171 (VICTORY BOULEVARD) MULTI-USE TRAIL TO BE CONSTRUCTED BETWEEN NORTH BOWMAN TERRACE AND EAST YORKTOWN ROAD

WHEREAS, the Hampton Roads Transportation Planning Organization (HRTPO) and the Virginia Department of Transportation (VDOT) have approved an allocation of \$2,296,000 of Congestion Mitigation and Air Quality (CMAQ) funds, to be supplemented by the required County funds match of \$574,000 (20%) to be used for construction of a multi-use pedestrian/bike trail approximately 8,700 feet in length to extend between North Bowman Terrace and East Yorktown Road; and

WHEREAS, in accordance with VDOT guidelines, the County has committed to administer and implement the project and, therefore, must execute a Standard Project Administration Agreement;

NOW, THEREFORE, BE IT RESOLVED, by the York County Board of Supervisors, this 17th day of July, 2012, that the County Administrator be, and is hereby, authorized to execute the VDOT-required Project Administration Agreement for the project.

On roll call the vote was:

Yea: (5) Wiggins, Hrichak, Zaremba, Noll, Shepperd
Nay: (0)

CLOSED MEETING. At 8:15 p.m. Mrs. Noll moved that the meeting be convened in Closed Meeting pursuant to Section 2.2-3711(a)(1) of the Code of Virginia pertaining to appointments to Boards and Commissions.

On roll call the vote was:

Yea: (5) Hrichak, Zaremba, Noll, Wiggins, Shepperd
Nay: (0)

Meeting Reconvened. At 8:25 p.m. the meeting was reconvened in open session by order of the Chair.

Mrs. Noll moved the adoption of proposed Resolution SR-1 that reads:

A RESOLUTION TO CERTIFY COMPLIANCE WITH THE FREEDOM OF INFORMATION ACT REGARDING MEETING IN CLOSED MEETING

WHEREAS, the York County Board of Supervisors 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 2.2-3711.1 of the Code of Virginia requires a certification by the York County Board of Supervisors that such closed meeting was conducted in conformity with Virginia law;

NOW, THEREFORE, BE IT RESOLVED by the York County Board of Supervisors this the 17th day of July, 2012, hereby certifies that, to the best of each member's knowledge, (1) 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 (2) only such public business matters as were identified in the motion convening the closed meeting were heard, discussed, or considered by the York County Board of Supervisors.

On roll call the vote was:

Yea: (5) Zaremba, Noll, Wiggins, Hrichak, Shepperd
Nay: (0)

APPOINTMENTS TO THE YORK COUNTY ARTS COMMISSION

Mrs. Noll moved the adoption of proposed Resolution R12-88 that reads:

A RESOLUTION TO REAPPOINT MEMBERS TO THE YORK COUNTY ARTS COMMISSION

WHEREAS, on July 31, 2012, the terms of Ms. Jeanne Eickhoff, Ms. Sheila Myers, and Mr. James Obernesser to the York County Arts Commission will expire; and

WHEREAS, they have all indicated their willingness to serve another term for which they are eligible;

NOW, THEREFORE, BE IT RESOLVED by the York County Board of Supervisors this 17th day of July, 2012, that Jeanne Eickhoff, Sheila Myers, and James Obernesser be, and they are hereby, reappointed as members to the York County Arts Commission for a term of three years to begin August 1, 2012, and expire July 31, 2015.

On roll call the vote was:

Yea: (5) Noll, Wiggins, Hrichak, Zaremba, Shepperd
Nay: (0)

APPOINTMENT TO THE PLANNING COMMISSION

Mr. Wiggins moved the adoption of proposed Resolution R12-51 that reads:

A RESOLUTION TO APPOINT A MEMBER TO THE YORK COUNTY PLANNING COMMISSION

WHEREAS, the District 3 Planning Commission term of M. Sean Fisher will expire on June 30, 2012; and

WHEREAS, the Board desires to make an appointment to fill this position;

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NOW, THEREFORE, BE IT RESOLVED by the York County Board of Supervisors this the 17th day of July, 2012, that it does hereby appoint the following individual to the York County Planning Commission to serve a term that begins July 1, 2012, and expires June 30, 2016:

Tim McCulloch

On roll call the vote was:

Yea: (5) Wiggins, Hrichak, Zaremba, Noll, Shepperd
Nay: (0)

APPOINTMENT TO THE WILLIAMSBURG ARTS COMMISSION

Mr. Zaremba moved the adoption of proposed Resolution R12-95 that reads:

A RESOLUTION TO APPOINT A YORK COUNTY REPRESENTATIVE TO THE WILLIAMSBURG ARTS COMMISSION

WHEREAS, Lanette McNeil has resigned as the York County representative to the Williamsburg Arts Commission;

WHEREAS, her term on the Commission does not expire until June 30, 2014;

NOW, THEREFORE, BE IT RESOLVED by the York County Board of Supervisors this the 17th day of July, 2012, that Shelia L. Myers be, and is hereby, appointed to the Williamsburg Arts Commission to fill the unexpired term of Ms. Lanette McNeil, such term to begin immediately and expire June 30, 2014.

On roll call the vote was:

Yea: (5) Hrichak, Zaremba, Noll, Wiggins, Shepperd
Nay: (0)

Meeting Adjourned. At 8:29 p.m. Chairman Shepperd declared the meeting adjourned sine die.

James O. McReynolds, Clerk
York County Board of Supervisors

Thomas G. Shepperd, Jr., Chairman
York County Board of Supervisors

MINUTES
BOARD OF SUPERVISORS
COUNTY OF YORK

Special Meeting
August 3, 2012

1:00 p.m.

Meeting Convened. A Special Meeting of the York County Board of Supervisors was called to order at 1:01 p.m., Friday, August 3, 2012, in the East Room, York Hall, by Chairman Thomas G. Shepperd, Jr.

Attendance. The following members of the Board of Supervisors were present: Donald E. Wiggins, George S. Hrichak, and Thomas G. Shepperd, Jr.

Sheila S. Noll was absent.

Walter C. Zaremba arrived at 1:08 p.m.

Also in attendance were James O. McReynolds, County Administrator; and J. Mark Carter, Assistant County Administrator.

CLOSED MEETING. At 1:02 p.m. Chairman Shepperd moved that the meeting be convened in Closed Meeting pursuant to Section 2.2-3711(a)(5) of the Code of Virginia pertaining to a prospective business or industry or the expansion of an existing business or industry.

On roll call the vote was:

Yea: (3) Wiggins, Hrichak, Shepperd
Nay: (0)

Meeting Reconvened. At 2:14 p.m. the meeting was reconvened in open session by order of the Chair.

Mr. Hrichak moved the adoption of proposed Resolution SR-1 that reads:

A RESOLUTION TO CERTIFY COMPLIANCE WITH THE FREE-
DOM OF INFORMATION ACT REGARDING MEETING IN CLOSED
MEETING

WHEREAS, the York County Board of Supervisors 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 2.2-3711.1 of the Code of Virginia requires a certification by the York County Board of Supervisors that such closed meeting was conducted in conformity with Virginia law;

NOW, THEREFORE, BE IT RESOLVED by the York County Board of Supervisors this the 3rd day of August, 2012, hereby certifies that, to the best of each member's knowledge, (1) 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 (2) only such public business matters as were identified in the motion convening the closed meeting were heard, discussed, or considered by the York County Board of Supervisors.

On roll call the vote was:

Yea: (4) Wiggins, Hrichak, Zaremba, Shepperd
Nay: (0)

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August 3, 2012

Meeting Adjourned. At 2:15 p.m. Chairman Shepperd declared the meeting adjourned sine die.

James O. McReynolds, Clerk
York County Board of Supervisors

Thomas G. Shepperd, Jr., Chairman
York County Board of Supervisors

COUNTY OF YORK

MEMORANDUM

DATE: August 3, 2012 (BOS Mtg. 8/21/12)

TO: York County Board of Supervisors

FROM: James O. McReynolds, County Administrator 

SUBJECT: Expression of Appreciation to Former Wetlands Board Member

The term of Adam Frisch to the York County Wetlands Board expired on June 30, 2012, and he did not request reappointment. Dr. Frisch served on the Wetlands Board for 24 years, and staff has prepared the attached proposed Resolution R12-104 for the Board's consideration in expressing its appreciation for his service.

I recommend the adoption of proposed Resolution R12-104.

JOM:mes

Attachment

BOARD OF SUPERVISORS
COUNTY OF YORK
YORKTOWN, VIRGINIA

Resolution

At a regular meeting of the York County Board of Supervisors held in York Hall, Yorktown, Virginia, on the ____ day of _____, 2012:

Present

Vote

Thomas G. Shepperd, Jr., Chairman
Sheila S. Noll, Vice Chairman
Walter C. Zaremba
Donald E. Wiggins
George S. Hrichak

On motion of _____, which carried ____, the following resolution was adopted:

A RESOLUTION OF APPRECIATION TO ADAM A. FRISCH

WHEREAS, Adam A. Frisch was appointed to the York County Wetlands Board on August 18, 1988, and served until June 30, 2012; and

WHEREAS, Dr. Frisch has provided twenty-four years of dedicated service to the Wetlands Board; and

WHEREAS, he has served diligently and wisely as Chair of the Wetlands Board numerous times, leading and guiding the Wetlands Board to deal positively and effectively with current wetlands use issues; and

WHEREAS, Dr. Frisch was actively involved with the development of the Wetlands Board Policies and Procedures Manual; and

WHEREAS, Dr. Frisch has given thoughtful and considered advice to the citizens of York County to preserve a better environment for all; and

WHEREAS, through the many years Dr. Frisch has unselfishly devoted many hours of his time and expertise in service to the citizens of York County to preserve a better environment for all.

NOW, THEREFORE, BE IT RESOLVED by the York County Board of Supervisors on this ____ day of _____, 2012, that, on the occasion of his resignation from

the Wetlands Board, the Board of Supervisors does hereby sincerely acknowledge, commend, and thank Dr. Adam A. Frisch for his many years of service to York County.

COUNTY OF YORK

MEMORANDUM

DATE: July 26, 2012 (BOS Mtg. 8/21/12)

TO: York County Board of Supervisors

FROM: James E. Barnett, County Attorney 

SUBJECT: Acceptance of title to the Yorktown Freight Shed, forgiveness of notes of the Economic Development Authority

You may recall that in 2001, the U. S. National Park Service, which formerly held title to the Yorktown Freight Shed for so long as it was being used for governmental purposes, relinquished title to the building to Yorktown Freight Shed, LP, a limited partnership which had been formed expressly for the purpose of holding title to the building for purposes related to state and federal historic building renovation tax credits. A full understanding of the way in which the tax credits work is beyond the scope of this memorandum, but the County utilized the services of the Richmond law firm of Kutak Rock who had worked with other Virginia jurisdictions on similar arrangements and who has continued to work with us in reconveying the building to the Economic Development Authority, and now from the EDA to the County.

Briefly, as applied to the Yorktown Freight Shed, title has been held by a limited partnership which then sold a limited partnership interest to W. M. Jordan Company for the sum of \$310,000, as a consequence of which W. M. Jordan Company was able to take advantage of numerous tax credits to be applied against both state and federal taxes. The funds received from W. M. Jordan were then utilized by the limited partnership to help underwrite the cost of relocating the building from its prior location on a concrete pier on the waterfront, where the building previously served as the Yorktown post office. The building was moved to its present location, and substantially renovated according to plans approved by the U. S. Department of the Interior, the result being the building which stands on Water Street today. The total cost for the project exceeded \$1 million, and the majority of the cost came from York County in the form of a credit line loan in the original amount of \$1 million to the EDA (later increased to \$1.1 million), which the EDA in turn loaned to the limited partnership. The limited partnership executed a note in the original amount of \$1 million, later also increased to \$1.1 million, with a due date of July 1, 2012. The note was secured by a credit line deed of trust. The EDA likewise delivered a note to York County with the same due date. Although the limited partnership has realized rental income from the building, the total amount of principal and interest due on the note is approximately \$1,230,000. The fair market value of the building, as assessed by the County Assessor's Office on a cost basis, is \$259,100, and the limited partnership currently has on hand approximately \$64,000 in cash, some of which consists of rental security deposits, which ultimately will be returned to individuals who have rented the facility, and some of which will be required to pay the cost of winding up the limited partnership once it ceases to exist.

The limited partnership is no longer deemed the appropriate entity to own and operate the building, and a transfer of the building back to the EDA, and then from the EDA to the County, is contemplated. The EDA is currently in the process of obtaining title to the building and all assets of the partnership by acquiring all outstanding partnership interests for the total sum of \$131 (a value which the limited partnership agreement contemplated), with the limited partnership confirming the EDA's title to the building by a recorded deed and then dissolving. The EDA will then hold all assets of the partnership, including the building, and its cash assets. By the time this matter comes to the Board for action, it is anticipated that the EDA will have record title to the building and will be able to convey the building and all other partnership assets to the County in exchange for a forgiveness of its own note. Any costs related to the windup of the partnership will be paid from the partnership's cash assets before any remaining funds can be remitted to the County. While this transaction sounds complex, both Kutak Rock and the partnership's tax adviser have recommended this course of action as a way of avoiding the possibility of taxable income being attributed to the partnership by reason of forgiven debt.

Presented for your approval is a resolution which will authorize the County Administrator to execute a settlement agreement with the EDA by which the County will forgive the EDA's \$1,100,000 note in exchange for the title to the Freight Shed and the partnership's remaining assets. The EDA has already adopted a resolution authorizing execution of the agreement. I recommend the adoption of the attached resolution.

Barnett/3340:swh

Attachment

- Resolution R12-103

BOARD OF SUPERVISORS
COUNTY OF YORK
YORKTOWN, VIRGINIA

Resolution

At a regular meeting of the York County Board of Supervisors held in York Hall, Yorktown, Virginia, on the ____ day of _____, 2012:

Present

Vote

Thomas G. Shepperd, Jr., Chairman
Sheila S. Noll, Vice Chairman
Walter C. Zaremba
Donald E. Wiggins
George S. Hrichak

On motion of _____, which carried ____, the following resolution was adopted:

A RESOLUTION AUTHORIZING THE COUNTY ADMINISTRATOR TO EXECUTE A SETTLEMENT AGREEMENT WITH THE ECONOMIC DEVELOPMENT AUTHORITY OF YORK COUNTY, VIRGINIA (THE EDA) WHEREBY A NOTE MADE BY THE EDA AND PAYABLE TO THE COUNTY IN THE ORIGINAL AMOUNT OF \$1,000,000 SHALL BE FORGIVEN IN EXCHANGE FOR A CONVEYANCE OF TITLE TO THE YORKTOWN FREIGHT SHED AND OF ALL OTHER ASSETS IN THE HANDS OF THE EDA AND FORMERLY OF YORKTOWN FREIGHT, LP

WHEREAS, in 2001 the County entered into a loan agreement with the EDA whereby the County extended a line of credit loan to the EDA in the original principal amount of \$1,000,000, later increased to \$1,100,000 in exchange for which the EDA executed a note dated December 19, 2001, later modified; and

WHEREAS, the EDA in turn entered into a loan agreement with Yorktown Freight Shed, LP, owner of the Yorktown Freight Shed, for a credit line loan in a similar amount in exchange for a note and a deed of trust; and

WHEREAS, the EDA has acquired or will acquire from the limited partnership title to the Yorktown Freight Shed and all other assets of the partnership in partial payment of the partnership's note and wishes to convey the same to the County in forgiveness of the EDA's note; and

WHEREAS, this Board deems it to be in the public's interest to enter into such settlement agreement with the EDA, to acquire title to the Yorktown Freight Shed and

all other assets formerly held by Yorktown Freight Shed, LP and thereafter to own and operate the Yorktown Freight Shed as public property.

NOW, THEREFORE, BE IT RESOLVED, by the York County Board of Supervisors this the ____ day of _____, 2012, that the County Administrator is authorized to execute on behalf of the County a settlement agreement with the Economic Development Authority of York County, Virginia, whereby the County shall accept from the EDA title to the Yorktown Freight Shed and ownership of all other assets formerly belonging to Yorktown Freight Shed, LP, in exchange for which the County shall forgive all indebtedness of the EDA to the County as evidenced by the above-referenced note, and to take all further actions as may be required to effectuate the settlement agreement.

COUNTY OF YORK

MEMORANDUM

DATE: August 8, 2012 (BOS Mtg. 8/21/12)

TO: York County Board of Supervisors

FROM: James O. McReynolds, County Administrator



SUBJECT: Conveyance of the Lightfoot Interceptor Force Mains to the Hampton Roads Sanitation District

As part of its economic development initiative in the Lightfoot corridor, the County financed and constructed a public water distribution system and force main to provide the backbone infrastructure for future development. Due to the size of the force main, in 1995 the County and the Hampton Roads Sanitation District (HRSD) entered into a Lease Purchase Agreement. Subsequently, in 2003 the County entered another Lease Purchase Agreement with HRSD by extending the force main to support the Skimino Hills Sanitary Sewer Project and further promote economic development in this corridor (i.e., Great Wolf Lodge).

Both of the agreements have the same terms and conditions. In summary, the County financed the design and the construction of the force mains, and HRSD assumed responsibility for the operation and maintenance. In return for the County's investment, HRSD makes payments to the County based on a percent of flow through the force mains. Since the Great Wolf Lodge and the Williamsburg Sentara Hospital opened, HRSD has paid the County in excess of \$600,000 in lease payments. The agreements provide an option for HRSD to purchase the force mains from the County for the full cost of the original construction plus the cost of the engineering design work when the purchase is advantageous to HRSD.

HRSD's Commission has already approved the purchase of both the Lightfoot force mains, Lightfoot Interceptor Force Main Part 1, and Lightfoot Interceptor Force Main Part 2. The purchase price for each force main is \$623,492.54 and \$423,108.63 for a total sum of \$1,046,601.17. HRSD has transmitted the funds to the County for the purchase. In return, the County must officially convey the facilities associated with each agreement.

Therefore, I recommend the Board of Supervisors approve proposed Resolution R12-105 to formally transfer ownership of the force mains to HRSD.

BW/3721

Attachment

BOARD OF SUPERVISORS
COUNTY OF YORK
YORKTOWN, VIRGINIA

Resolution

At a regular meeting of the York County Board of Supervisors held in York Hall, Yorktown, Virginia, on the ____ day of _____, 2012:

Present

Vote

Thomas G. Shepperd, Jr., Chairman
Sheila S. Noll, Vice Chairman
Walter C. Zaremba
Donald E. Wiggins
George S. Hrichak

On motion of _____, which carried ____, the following resolution was adopted:

A RESOLUTION TO CONVEY OWNERSHIP OF THE SANITARY SEWER FACILITIES CONSTRUCTED AS PART OF THE LIGHT-FOOT INTERCEPTOR FORCE MAIN PART 1 AND THE LIGHTFOOT INTERCEPTOR FORCE MAIN PART 2 TO THE HAMPTON ROADS SANITATION DISTRICT

WHEREAS, the County and the Hampton Roads Sanitation District entered into two lease purchase agreements titled "Lightfoot Interceptor Force Main Part 1" and "Lightfoot Interceptor Force Main Part 2"; and

WHEREAS, the terms and conditions of the agreements provide a clause for the Hampton Roads Sanitation District to purchase the interceptor facilities from the County for the cost of the original construction and design work; and

WHEREAS, Hampton Roads Sanitation District Commission has voted in favor of purchasing the interceptor facilities for \$623,492.54 and \$423,108.63 respectfully for a total purchase price of \$1,046,601.17;

NOW, THEREFORE, BE IT RESOLVED by the York County Board of Supervisors, this the ____ day of _____, 2012, that the Board hereby approves the conveyance of the interceptor facilities as part of the "Lightfoot Interceptor Force Main Part 1" and Lightfoot Interceptor Force Main Part 2" to the Hampton Roads Sanitation District. The County Administrator is authorized to execute deeds and other documents as may be required to complete the conveyance, such documents to be approved as to form by the County Attorney.

COUNTY OF YORK

MEMORANDUM

DATE: August 10, 2012 (BOS Mtg. 8/21/12)

TO: York County Board of Supervisors

FROM: James O. McReynolds, County Administrator 

SUBJECT: Implementation of the Comprehensive Community Corrections Act and the Pretrial Services Act

In July of 1995 the General Assembly enacted the Comprehensive Community Corrections (CCC) Act and the Pretrial Services Act, and the Colonial Community Criminal Justice Board (CCCJB) was created to assist with the implementation of probation and pretrial services programs for the participating counties of Charles City, James City, New Kent, and York, and the cities of Poquoson and Williamsburg. In order for the County to continue to be eligible to receive State funding necessary for the continuation of the community-based probation and pretrial services programs, the State Department of Criminal Justice Services now requires the County to adopt a resolution formally implementing the subject Acts which direct the creation of the CCCJB.

James City County serves as the fiscal and administrative agent for carrying out the programs, and has determined that the current Joint Exercise of Powers agreement between the participating localities needs to be updated to set forth more specifically the terms and conditions governing CCC, as well as the responsibilities of the participating localities, in order to facilitate future operations and transitions in administration and fiscal responsibility. A copy of the drafted new Governance Agreement, which would replace the current Joint Exercise of Powers agreement in place since 2002, is attached.

Attached proposed Resolution R12-106 has been prepared for the Board's consideration to authorize the County Administrator to complete negotiations and enter into the new Governance Agreement with the participating localities of the CCCJB. I recommend its adoption.

JOM:mes

Attachments

- Governance Agreement
- Proposed Resolution R12-106

**Governance Agreement for Localities Participating in
Colonial Community Corrections**

This Governance Agreement for Localities Participating in Colonial Community Corrections made and entered into this ____ day of _____, 2011 by and between the Counties of Charles City, James City, New Kent and York, and the Cities of Poquoson and Williamsburg, each a political subdivision of the Commonwealth of Virginia, hereinafter referred to as the "Participating Localities," or individually, "Participating Locality".

Whereas, on July 1, 1995, the Colonial Community Criminal Justice Board (CCCJB) was established by the Participating Localities pursuant to the Comprehensive Community Corrections Act for Local Responsible Offenders (now codified in Virginia Code §9.1-173 *et. seq.*) and the Pretrial Service Act (Virginia Code § 19.2-152.2 *et. seq.*);

Whereas, all of the Participating Localities are required by law to establish a system of community based probation and pretrial services programs;

Whereas, James City County has, in the past, served as fiscal and administrative agent for the regional agency since its inception and James City County continues to serve in this capacity;

Whereas, the Participating Localities desire to reconfirm their commitment to an agency of joint regional community based probation and pretrial services programs and to formally consent to the designation of James City County as fiscal and administrative agent; and

Whereas, the Participating Localities desire to more specifically set forth the terms and conditions governing the regional agency in order to facilitate future operations and transitions in administration and fiscal responsibility.

Now, therefore, for and in consideration of the mutual covenants set forth herein the parties agree as follows:

ARTICLE I – ESTABLISHED PURPOSE AND DURATION

1.1. This Agreement serves to formalize the establishment of and operational requisites of the programs monitored by the CCCJB, established on July 1, 1995 by the Participating Localities pursuant to Virginia Code § 53.1, Art. II, Chapter 5, now codified in Virginia Code § 9.1-174.

1.2. The purpose of this Agreement is to establish a cooperative regional agency, known as Colonial Community Corrections (hereinafter “CCC”), to provide community based probation and pretrial services programs for use by the courts in diverting offenders and defendants from local correctional facility placements.

1.3. This Agreement supersedes the Joint Exercise of Powers Agreement for the Colonial Community Criminal Justice Board, adopted on August 21, 1995, and last revised in July 2008.

1.4. The Agreement supplements Resolutions enacted by each Participating Locality relating to the establishment of the CCCJB.

1.5. This Agreement shall be in full force and effect for a period of one (1) year, at which time it shall automatically renew for consecutive one (1) year terms unless and until terminated as hereinafter provided. This Agreement may be amended by written instrument signed by the parties as approved.

1.6. A Participating Locality may opt to withdraw from this Agreement in accordance with the following:

- a. Pursuant to § 9.1-179 of the Code of Virginia, 1950, as amended, at the beginning of any calendar quarter, by ordinance or resolution of its governing body, Participating Locality may notify the Director of the Department of Criminal Justice Services and other Participating Localities of its intention to withdraw from CCC and CCCJB.
- b. Withdrawal shall be effective as of the last day of the quarter in which the notice is provided.
- c. Upon the withdrawal of a locality, the remaining Participating Localities shall remain bound by the terms of this Agreement.

1.7. This Agreement shall terminate upon mutual agreement of the Participating Localities or at such time as five (5) localities have opted to withdraw pursuant to the provisions of Section 1.6 of this Agreement.

1.8. This Agreement shall be effective upon the execution of it by the city managers and county administrators of all of the Participating Localities following authorization by their respective city councils and boards of supervisors.

1.9. This Agreement may be executed in more than one counterpart and with separate signature pages, each of which shall constitute a part of and be deemed to be an original.

ARTICLE II – COLONIAL COMMUNITY CRIMINAL JUSTICE BOARD

2.1. The CCCJB is an advisory board and shall have only the powers, duties and responsibilities provided by law pursuant to Title 9.1, Chapter 1, Article 9 of the Code of Virginia, 1950, as amended.

2.2. The CCCJB shall consist of up to twenty-four (24) members, of which four (4) will be appointed by each local governing body provided that the total appointees must include those appointees required by § 9.1-178 of the Code of Virginia, 1950, as amended. It is anticipated that some appointees by local governing bodies will be residents of other jurisdictions, so that the required membership will be met and, further, that members whose expertise is important to the CCCJB may be appointed to the CCCJB. All such appointments will be made by resolution.

2.3. The governing body of each Participating Locality shall make all required appointments to the CCCJB by Resolution in a timely manner.

2.4. The CCCJB shall create a Finance Committee which shall be comprised of the governing body representatives on the CCCJB and the Agency Director. Such Committee shall consult with the Agency Director on budgetary matters including, but not limited to, fee amounts and local funding.

ARTICLE III – COLONIAL COMMUNITY CORRECTIONS

3.1. CCC is a local community based probation and pretrial services agency serving the residents of the Participating Localities.

3.2. CCC will administer programs including, but not limited to, those mandated by § 9.1-176 of the Code of Virginia, 1950, as amended, in the areas of (i) probation supervision; (ii) pretrial services, both investigative and supervisory; and (iii) transitional services.

ARTICLE IV – FISCAL & ADMINISTRATIVE AGENT

4.1. Effective immediately, the Participating Localities select James City County, with its consent, to continue to serve as the fiscal and administrative agent for CCC.

4.2. The scope of the fiscal and administrative agent’s responsibilities include both fiscal functions and administrative functions necessary for the implementation, development, and management of the CCC agency and its programs, as delineated more fully in the terms of this Agreement.

4.3. The fiscal and administrative agent shall be solely responsible for the appropriation of the budget for CCC.

4.4. The fiscal and administrative agent may be changed by an amendment to this Agreement. No Participating Locality shall be required to serve as fiscal and administrative agent without its consent.

ARTICLE V – FINANCIAL PROVISIONS

- 5.1. The Agency Director shall be responsible for development of a budget for CCC.
- a. The budget shall specify the expected contribution amounts for each Participating Locality.
 - b. The budget shall include a designation of salaries and benefits for CCC staff.
 - c. In developing the budget, the Agency Director will follow the fiscal and administrative agent’s budgetary process but, will make every effort to address other localities’ funding requests by their particular deadlines.

5.2. All expenses of CCC shall flow through the fiscal and administrative agent unless, otherwise provided for in a valid memorandum of understanding.

5.3. Participating Localities agree that all grant funds received for CCC programs shall be transferred to the fiscal and administrative agent upon receipt and such funds shall be added to the CCC's budget.

5.4. Funding for CCC operations and programs shall originate from the following sources:

- a. Funds allocated by the Commonwealth through the general appropriations act.
 - i. Pursuant to § 9.1-182 of the Code of Virginia, 1950, as amended, funding received from the Commonwealth shall be used for the provision of services and operation of programs and facilities, but shall not be used for capital expenditures.
- b. Fees authorized by statute and/or the Department of Criminal Justice Services and collected by CCC from individuals utilizing their services (e.g. supervision fees).
 - i. The Department of Criminal Justice Services, in conjunction with the CCCJB, is required to establish a statewide system of supervision and intervention fees to be paid by offenders participating in programs for reimbursement towards the costs of their supervision.
 - ii. Any supervision or interventions fees collected by local programs shall be submitted to and retained by the fiscal and administrative agent and shall be utilized solely for program expansion and program development, or to supplant local costs of the program operation.
 - iii. CCC shall be responsible for keeping records of the collected fees, report the amounts to the fiscal and administrative agent and make all records available to the CCCJB and the fiscal and administrative agent.
 - iv. Such fees shall be in addition to any other imposed on an offender as a condition of a deferred finding, conviction, or sentencing by a court.
 - v. The Agency Director, in consultation with CCCJB, shall recommend fee rates to the fiscal and administrative agent as part of CCC's budget and, such fees shall be approved by the fiscal and administrative agent.

- c. Other Grant Revenues
 - i. All additional sources of revenue (e.g. grants) shall be transferred to the fiscal and administrative agent for inclusion in CCC's budget.

- d. Local funding from Participating Localities
 - i. The Participating Localities acknowledge that in some fiscal years state funding may be insufficient to adequately fund CCC programs and maintain the service levels to citizens of the Participating Localities. As such, each Participating Locality agrees to contribute Local funding to CCC's budget through the payment of a percentage amount to address a shortfall, if any, between state funding and collected service fees, and the actual monies necessary for full funding of CCC.
 - ii. The Agency Director, in consultation with the Finance Committee of the CCCJB shall determine for each fiscal year the total amount of local funding necessary to implement and maintain CCC programs.
 - iii. The amount of Local funding due from each Participating Locality shall be in the same ratio to the total amount of local funding needed, as each locality's population bears to the total population of all Participating Localities, utilizing population data as maintained by the Weldon Cooper Center for Public Service.
 - iv. Beginning in fiscal year 2013, the amount of Local funding due from each Participating Locality shall be designated in the budget documents of the fiscal and administrative agent.
 - v. Local funding shall not be collected when monies from subsections (a), (b) and (c) are sufficient to cover program expenses.
 - vi. Each Participating Locality shall be responsible for timely payment, on at least a quarterly basis, of Local funding to the fiscal and administrative agent. A payment schedule will be established by the fiscal and administrative agent.
 - vii. Failure of a Participating Locality to contribute local funding shall be deemed a breach of this Agreement and shall automatically terminate the locality's participation in CCC. Users from such locality shall be immediately denied access to programs and no new users from the defaulting locality shall be accepted.
 - viii. Local funding shall be used to absorb reductions in state aid, the addition of services, and increases in employee salaries and benefits.

5.5. The fiscal and administrative agent shall be reimbursed from state CCCA/PSA funds for the actual costs of the fiscal responsibilities associated with the implementation of CCC, including fiscal administration, accounting, payroll services, financial reporting, and auditing. Prior to reimbursement such costs shall be approved by the CCCJB in accordance with § 9.1-183 of the Code of Virginia, 1950, as amended. Also pursuant to § 9.1-183, the actual costs may not exceed one percent (1%) of those funds received from the Commonwealth for the operation of CCC programs in a single fiscal year even though the costs associated with the services provided by the fiscal and administrative agent may, in actuality, exceed one percent (1%). The Participating Localities consent to the transfer of up to one percent (1%) from CCC's budget to the fiscal and administrative agent for reimbursement purposes.

5.6. The fiscal and administrative agent shall be reimbursed by Participating Localities, in a total amount equivalent to one percent (1%) of the overall budget of CCC, for its administrative responsibilities specifically, the human resource management, general administrative costs which include procurement, and legal costs associated with implementation of CCC. The amount to be contributed by each locality shall be based upon the population formula set forth in Section 5.3 (d).

5.7. The parties acknowledge that there may be an occasion where one Participating Locality provides specific services to CCC (e.g. fleet maintenance). CCC shall be billed by the Participating Locality who provided such services. The invoice shall be paid by the fiscal and administrative agent and shared by the Participating Localities pursuant to the same percentage allocation used in calculating the amount of Local funding as delineated in Section 5.3 (d) of this Agreement.

5.8. The fiscal and administrative agent shall be responsible for ensuring that CCC agency funds are properly spent in accordance with state laws governing expenditures of such local community based probation and pretrial services programs.

ARTICLE VI – STAFF

6.1. An Agency Director shall serve as staff for CCC. Additional staff may be hired by the fiscal and administrative agent, as needed.

6.2. Staff of CCC shall be considered employees of the fiscal and administrative agent and shall be subject to all personnel policies and procedures and receive comparable pay and benefits, including salary and benefit adjustments.

- i. Salary amounts shall be established by the fiscal and administrative agent.
- ii. In the event that salaries of employees of the fiscal and administrative agent are increased, CCC staff shall also receive equivalent increases.
- iii. Any portion of such increase that is not covered by state funding shall be allocated among the Participating Localities through inclusion of such deficit in the calculation of the amount of Local funding to be contributed.

IN WITNESS WHEREOF, the Participating Localities have caused this Agreement to be executed and attested by their duly authorized officials.

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CHARLES CITY COUNTY

By: _____

John F. Miniclier
County Administrator

ATTEST:

Clerk

Form & Correctness Approved:

County Attorney

CITY OF POQUOSON

By: _____

J. Randall Wheeler
City Manager

ATTEST:

City Clerk

Form & Correctness Approved:

City Attorney

CITY OF WILLIAMSBURG

By: _____

Jackson C. Tuttle
City Manager

ATTEST:

City Clerk

Form & Correctness Approved:

City Attorney

JAMES CITY COUNTY

By: _____

Robert C. Middaugh
County Administrator

ATTEST:

Clerk

Form & Correctness Approved:

County Attorney

NEW KENT COUNTY

By: _____

G. Cabell Lawton, IV
County Administrator

ATTEST:

Clerk

Form & Correctness Approved:

County Attorney

YORK COUNTY

By: _____

James O. McReynolds

County Administrator

ATTEST:

Clerk

Form & Correctness Approved:

County Attorney

BOARD OF SUPERVISORS
COUNTY OF YORK
YORKTOWN, VIRGINIA

Resolution

At a regular meeting of the York County Board of Supervisors held in York Hall, Yorktown, Virginia, on the ____ day of _____, 2012:

Present

Vote

Thomas G. Shepperd, Jr., Chairman
Sheila S. Noll, Vice Chairman
Walter C. Zaremba
Donald E. Wiggins
George S. Hrichak

On motion of _____, which carried ____, the following resolution was adopted:

RESOLUTION PROVIDING FOR THE IMPLEMENTATION OF THE
COMPREHENSIVE COMMUNITY CORRECTIONS ACT FOR LOCAL
RESPONSIBLE OFFENDERS, THE PRETRIAL SERVICES ACT AND
THE ESTABLISHMENT OF THE COLONIAL COMMUNITY CRIMI-
NAL JUSTICE BOARD

WHEREAS, the Virginia General Assembly has adopted legislation entitled the Comprehensive Community Corrections Act for Local Responsible Offenders, Article 9 (§ 9.1-173 et. seq.) of the *Code of Virginia*, 1950, as amended (the “CCC Act”), and the Pretrial Services Act, Article 5 (§ 19.2-152.2 et seq.) of the *Code of Virginia*, 1950, as amended (the “Pretrial Services Act” and, together with the CCC Act, the “Acts”); and

WHEREAS, §§ 9.1-174 and 19.2-152.2 of the *Code of Virginia*, 1950 as amended (the “Virginia Code”), require counties and cities approved for a jail project pursuant to § 53.1-82.1 to develop and establish services in accordance with the Acts; and

WHEREAS, §§ 9.1-178 and 19.2-152.5 of the Virginia Code require that each county and city establishing and operating local community-based probation and pretrial services establish a Community Criminal Justice Board (the “Board”), and in the case of multi-jurisdictional efforts, that each jurisdiction have an equal number of representatives or, in the alternative, mutually agree upon the number of appointments to the Board;

NOW, THEREFORE, BE IT RESOLVED by the York County Board of Supervisors this ____ day of _____, 2012, that the Counties of Charles City, James

City, New Kent, and York, and the Cities of Poquoson and Williamsburg (individually, a “Participating Locality” and together, the “Participating Localities”) agree to implement the services and programs required by the CCC Act and the Pretrial Services Act with the County of James City acting as the administrator and fiscal agent on behalf of the Participating Localities pursuant to § 9.1-183 of the Virginia Code.

BE IT FURTHER RESOLVED that the Colonial Community Criminal Justice Board (the “CCCJB”) is hereby established and the Participating Localities mutually agree to the following appointments to the CCCJB:

1. One representative from each Participating Locality;
2. Three Ninth Judicial Circuit judges, one of whom shall be drawn from a Juvenile and Domestic Relations Court, one of whom shall be drawn from a General District Court, and one of whom shall be drawn from a Circuit Court;
3. The Chief Magistrate of the Ninth Judicial Circuit;
4. One Commonwealth’s Attorney from one of the Participating Localities;
5. A public defender or an attorney experienced in the defense of criminal matters who is a licensed, active member of the Virginia State Bar and who regularly practices in the courts of the Participating Localities;
6. One sheriff from one of the Participating Localities. If no Sheriff is available, then the regional jail administrator responsible for the jail which serves the Participating Localities shall fill this appointment;
7. The chief law enforcement officer from one Participating Locality;
8. A Community Services Board Administrator from one Participating Locality;
and
9. A representative of a local adult education program serving at least one Participating Locality.

BE IT FURTHER RESOLVED that this Resolution supersedes and replaces all prior Resolutions approved by the Participating Localities relating to the establishment of required services and the formation of the Colonial Community Criminal Justice Board.

BE IT STILL FURTHER RESOLVED that this Resolution is enacted in anticipation of the execution of a Governance Agreement between the Participating Localities setting forth in greater detail the administration of the Colonial Community Corrections program and the fiscal responsibilities of the Participating Localities, which Agreement the County Administrator is authorized to negotiate and execute.