

A RESOLUTION, FOLLOWING A PUBLIC HEARING, TO AUTHORIZE THE ACQUISITION, BY VOLUNTARY CONVEYANCE OR CONDEMNATION, OF A 40.285-ACRE TRACT OF LAND, TOGETHER WITH CERTAIN EASEMENTS BEING A PORTION OF THE 164 ± ACRES OF REAL PROPERTY COMMONLY KNOWN AS THE “JACKSONS” TRACT, 4085 CENTERVILLE ROAD IN JAMES CITY COUNTY, OWNED BY SALLIE ARMISTEAD WILSON, INDIVIDUALLY AND AS SUCCESSOR TRUSTEE UNDER THE DEED AND TRUST AGREEMENT MADE BY ROBERT T. ARMISTEAD AND SARAH H. ARMISTEAD DATED DECEMBER 27, 1970; MARY ARMISTEAD HOGGE, INDIVIDUALLY AND AS SUCCESSOR TRUSTEE UNDER THE DEED AND TRUST AGREEMENT MADE BY ROBERT T. ARMISTEAD AND SARAH H. ARMISTEAD DATED DECEMBER 27, 1970; R. TRAVIS ARMISTEAD, JR., INDIVIDUALLY AND AS SUCCESSOR TRUSTEE UNDER THE DEED AND TRUST AGREEMENT MADE BY ROBERT T. ARMISTEAD AND SARAH H. ARMISTEAD DATED DECEMBER 27, 1970; LETITIA A. HANSON, TRUSTEE UNDER THE LETITIA ARMISTEAD HANSON REVOCABLE TRUST; MICHAEL J. CAVANAUGH, TRUSTEE UNDER THE LETITIA ARMISTEAD HANSON REVOCABLE TRUST AND JAMES CITY COUNTY, VIRGINIA, FOR PUBLIC PURPOSES, AND FURTHER TO AUTHORIZE ENTRY UPON SUCH PARCEL PRIOR TO COMPLETION OF CONDEMNATION

PROCEEDINGS AND TO WIT:

CONSTRUCTION OF AN ELEMENTARY SCHOOL

WHEREAS, the Williamsburg-James City County Public Schools (“Schools”) need to construct an eighth elementary school in order to meet the needs of the growing community; and

WHEREAS, the Schools and the County of James City, Virginia (“County”) have determined that the 40.285 acre tract hereinafter described is the necessary and proper location for a new elementary school; and

WHEREAS, on December 13, 2005, the Board of Supervisors of James City County adopted a Resolution authorizing the acquisition of a 44-acre tract of land which in large part is the same as the 40.285 acres hereinafter described, however, due to the refinement of the

plans, the boundary is now different in certain regards and certain easements not described in the December 13, 2005, resolution are now necessary; and

WHEREAS, the December 13, 2005, resolution identified the owners of the herein described Property as Sarah H. Armistead, Trustee/Executor, Letitia A. Hanson and Michael J. Cavanaugh, Trustees under the Letitia Armistead Hanson Revocable Trust and further stated that the County may proceed against any successors in title; and

WHEREAS, the County, prior to filing the Certificate of Take, learned that the ownership of this property was uncertain, and probably includes, in whole or in part, Sallie Armistead Wilson, Mary Armistead Hogge and Robert T. Armistead, as individuals and/or Trustees, of the Deed and Trust Agreement made by Robert T. Armistead and Sarah H. Armistead dated December 27, 1970, and each was given proper notice prior to filing the Certificate of Take; and

WHEREAS, counsel for one or more of the owners who was provided notice of the pre-Resolution and post-Resolution offers and the filing of the Certificate of Take, complained that, despite the savings clause, all property owners were not specifically referenced in the December 13, 2005 Resolution; and

WHEREAS, the County adopted a second Resolution on April 25, 2006, correcting the names of the owners, but identifying the same land as identified in the December 13, 2005 Resolution; and

WHEREAS, the County and the Schools have moved forward with the acquisition of the property described in the aforesaid prior Resolutions by filing the Certificate of Take and a petition in condemnation and by entering upon the property for the design and engineering of the new elementary school; and

WHEREAS, the County believes that the original Certificate is valid, but it needs certain additional land and easements not described in the initial Certificate; and

WHEREAS, certain of the landowners, by counsel, have objected to the efficacy of the first Certificate and have moved to dismiss the pending condemnation proceeding and the matter has been set down for hearing; and

WHEREAS, despite the County's confidence that the original Certificate is valid, the critical nature of this public school project is such that the County cannot accept any risk that the project be delayed in any way and it further being necessary to add certain land and easements and to subtract certain other land; and

WHEREAS, the County has exhausted all reasonable efforts to settle and resolve preliminary challenges to the first Certificate; and

WHEREAS, after holding a public hearing the Board of Supervisors determined that the removal of the hereinafter described 40.285± acres of land from the Gordon's Creek Agricultural and Forestal District will not have an unreasonable adverse effect on state or local policy or the remaining land in the Gordon's Creek Agricultural and Forestal District; and

WHEREAS, after holding a public hearing, the Board of Supervisors of James City County is of the opinion that a public necessity exists for the acquisition of the hereinafter described

property for the construction and operation of a new elementary school in order to provide an adequate public education system and for such public purposes as to provide for the preservation of the health, safety, peace, good order, comfort, convenience, morals, and welfare of the County and that public necessity requires entry onto the property prior to the completion of condemnation proceedings.

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

1. The acquisition of the hereinafter described property for a public school is declared to be a public necessity pursuant to Section 15.2-1903, Code of Virginia (1950), as amended, and to constitute an authorized public undertaking pursuant to Section 15.2-1901.1, Code of Virginia (1950), as amended, and it is further declared that the acquisition and use of such property by the County will constitute a public use as defined by Section 15.2-1900, Code of Virginia (1950), as amended, and that said public use is approved pursuant to Section 15.2-1903 and it is directed that the County and/or the law firm of Randolph, Boyd, Cherry and Vaughan acquire the property for said use by voluntary transfer or condemnation if necessary.
2. A public necessity exists that the County enter upon and take the hereinafter described property for the purposes described hereinabove prior to or during the condemnation proceedings and the County declares its intent pursuant to Section 15.2-1905 C, Code of Virginia (1950), as amended, to so enter and take the property under the power granted the County by Chapter 3 of Title 25.1, Code of Virginia (1950), as amended (Section 25.1-300, et seq.).
3. Prior to the initiation of condemnation proceedings the County Attorney and/or the law firm of Randolph, Boyd, Cherry and Vaughan is directed to make a bona fide effort to purchase the property by compliance with Section 25.1-204 Code of Virginia (1950), as amended. The offer shall be based upon the revised, approved appraisal in the amount of \$506,001 by Michael Simerlein which includes \$449,888 for the fair market value of the land and easements acquired and \$56,113 for damages to the residue.
4. The names of the present owners of the property to be acquired, if the current Certificate is invalidated, are: Sallie Armistead Wilson, individually and as Successor Trustee under the Deed and Trust Agreement made by Robert T. Armistead and Sarah H. Armistead dated December 27, 1970; Mary Armistead Hogge, individually and as Successor Trustee under the Deed and Trust Agreement made by Robert T. Armistead and Sarah H. Armistead dated December 27, 1970; R. Travis Armistead, Jr., individually and as Successor Trustee under the Deed and Trust Agreement made by Robert T. Armistead and Sarah H. Armistead dated December 27, 1970; Letitia A. Hanson, Co-Trustee under the Letitia Armistead Hanson Revocable Trust; Michael J. Cavanaugh, Co-Trustee under the Letitia Armistead Hanson Revocable Trust and James City County, Virginia, as their respective interests may appear.
5. A substantial description of the property is:

40.285 acres in fee simple located on the north side of Route 613,

Brick Bat Road and more particularly described on a plat of survey titled "Plat Showing 40.285 acres of Land and Various Easements Lying on the North Line of Brick Bat Road (State Rte 613)" by Paul N. Huber, land surveyor of Timmons Group, dated June 8, 2006 a copy of which (3 pages) is attached hereto and recorded herewith.

Reserving unto the owners a variable width access easement comprising 31,107 square feet, more or less, to run with the land, as described in the "Note" appearing on the aforesaid plat and running partial along the western boundary of the aforesaid property as shown on said plat.

Together with the following easements as shown on the aforesaid plat: Permanent Slope Easement, Variable ("Var.") Width JCSA Utility easement for conveyance to the James City Service Authority comprising 2,377 square feet, more or less.

BEING apart of the same property as that conveyed to Rosa L. Armistead by deed of W.A. Bozarth, et als. dated June 7, 1920, recorded April 11, 1921 in James City Deed Book 19, page 241, the said Rosa L. Armistead having died seized and possessed of the said property at her death on August 11, 1956 and by her will dated September 20, 1953, and recorded in James City County Will Book 6, at page 195, she devised the said property to R. T. Armistead and Letitia Hanson; and

BEING a part of the same property a partial interest in which was conveyed to THE LETITIA ARMISTEAD HANSON REVOCABLE TRUST, Letitia Armistead Hanson and Michael J. Cavanaugh, Trustees, from Letitia Armistead Hanson, by Deed of Gift dated December 5, 2003 and recorded in the Clerk's Office of the Circuit Court of the City of Williamsburg and James City County, Virginia as Document No. 030038497; a portion of such property being subject to the Certificate of Take recorded as Instrument No. 060000510 on January 9, 2006 in the Clerk's office of the Circuit Court of Williamsburg and James City County.

6. In the event that the original Certificate is held valid the County Attorney and/or firm of Randolph, Boyd, Cherry and Vaughan is directed to move to amend any Certificate filed pursuant to this Resolution to delete therefrom any land not needed and to adjust the compensation offered and the new Certificate shall remain valid only as to new land acquired in fee and the easements taken and reserved.
7. In the event the landowners elect to withdraw the funds under this Certificate, the prior Certificate, identified in paragraph 5 above, shall with leave of the Court be invalidated and the funds thereunder refunded to the County.
8. In the event any of the property described in paragraph 5 of this resolution has been conveyed, the County Attorney and/or the law firm of Randolph, Boyd,

Cherry and Vaughan is authorized and directed to institute proceedings against the successors in title.

9. An emergency is declared to exist and this resolution shall be in effect from the date of its passage.

Bruce C. Goodson
Chairman, Board of Supervisors

ATTEST:

Sanford B. Wanner
Clerk to the Board

Adopted by the Board of Supervisors of James City County, Virginia, this 10th day of October, 2006.

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