

**AGREEMENT CREATING THE VIRGINIA’S GATEWAY REGION
INDUSTRIAL FACILITIES AUTHORITY**

WHEREAS, the Virginia Regional Industrial Facilities Act, Chapter 64, Title 15.2, Section 15.2-6400. et seq., Code of Virginia, 1950, as amended (the “**Act**”) was enacted by the General Assembly of the Commonwealth of Virginia to provide a regional authority mechanism for member localities of such an authority to cooperate in developing, owning, and operating one or more facilities through combined action; and

WHEREAS, the exercise of the power granted by the Act is to be in all aspects for the benefit of the inhabitants of the geographic region included within the Member Localities, as defined below (the “**Region**”) for the increase of their commerce, and for the promotion of their safety, health, welfare, convenience and prosperity; and

WHEREAS, the governing bodies of the Member Localities (as defined below) have determined that joint action through a regional industrial facility authority will facilitate the development of needed and desired facilities in the Region; and

WHEREAS, pursuant to the Act, the governing bodies of the City of Colonial Heights, the County of Dinwiddie, the City of Hopewell, the City of Petersburg, the County of Prince George, the County of Surry, and the County of Sussex (each, a “**Member Locality**” and collectively, the “**Member Localities**”) by adoption of concurrent ordinances, have proposed to create the Virginia’s Gateway Region Industrial Facilities Authority (the “**Authority**”) for the purpose of enhancing the economic base for the Member Localities by developing, owning, and operating one or more facilities on a cooperative basis involving its Member Localities, which concurrent ordinances will be filed with the Secretary of the Commonwealth causing the creation of the Authority; and

WHEREAS, the Member Localities have agreed to enter into this Agreement Creating the Virginia’s Gateway Region Industrial Facilities Authority (this “**Agreement**”) establishing and describing the respective rights and obligations of the Member Localities with respect to the Authority.

NOW, THEREFORE, in consideration of the mutual promises of the parties and other good and valuable consideration herein stated, the Member Localities hereto agree as follows.

**ARTICLE 1
NAME AND OFFICE**

The name of the authority shall be the “**Virginia’s Gateway Region Industrial Facilities Authority**” (the “**Authority**”), and the address of its initial office is c/o Virginia’s Gateway Region, 256 E. Ellerslie Ave, Suite D, Colonial Heights, Virginia 23834.

ARTICLE 2
PARTIES TO THE VIRGINIA'S GATEWAY REGION
INDUSTRIAL FACILITIES AUTHORITY AGREEMENT

2.1. The initial Member Localities of the Authority are:

County of Dinwiddie
County of Prince George
County of Surry
County of Sussex
City of Colonial Heights
City of Hopewell
City of Petersburg

2.2. At any time subsequent to the creation of this Authority, the membership of the Authority may, with the approval of the Authority Board, be expanded to include any locality within the region that would have been eligible to be an initial member. The governing body of a locality seeking to become a member shall evidence its intent to become a member by adopting an ordinance proposing to join the Authority that conforms to the requirements established by Section 15.2-6402 of the Code of Virginia. The admission of such additional member shall be completed upon the Authority Board approving the admission, after presented with the requisite ordinance adopted by such locality, which then shall be a Member Locality for all purposes, and with all rights, under this Agreement and the Bylaws (as defined below).

ARTICLE 3
FINDINGS AND PURPOSE OF THE AUTHORITY

The Member Localities agree that this Authority has been established for the following purpose and function.

3.1. The Member Localities agree that the creation of the Authority provides a mechanism for the Member Localities to cooperate in the development of facilities needed and desired in the Region.

3.2. The exercise of the powers granted by the Act shall be in all aspects for the benefit of the inhabitants of the Region for the increase of their commerce, and for the promotion of their safety, health, welfare, convenience and prosperity. Special emphasis shall be placed on directing these benefits to the inhabitants of the Member Localities, while recognizing the regional benefit of the Member Localities' economic development projects.

3.3. The Authority shall be nonprofit and no part of its earnings remaining after payment of its expenses and fulfillment of commitments in furtherance of the Authority's purposes shall inure to the benefit of any individual, firm or corporation, and if the Authority is dissolved in accordance with the provisions of the Act, the title to all funds

and other property owned by the Authority shall vest in the Member Localities which have contributed to the Authority in proportion to their respective contributions as provided by the Act. In order to benefit from the dissolution, the Member Locality must be in good standing with this Agreement, the Authority's Bylaws and other documents describing the Member Localities' obligations to the Authority.

3.4. The Act provides the Member Localities with powers by which the Member Localities may interact as one body or as individual participating groups consisting of more than one Member Locality of the Authority which the members believe will give each local government an opportunity to establish successful partnerships for the development of economic projects which will serve the region.

3.5. The governing body of each Member Locality has found that the economic growth and development of the localities, and the comfort, convenience and welfare of the citizens of the Member Localities require the development of facilities and that joint action through the Authority will facilitate the development of such facilities.

ARTICLE 4 BOARD OF THE AUTHORITY

4.1. All powers, rights and duties conferred by the Act, or other provisions of law, upon the Authority shall be exercised by a Board of Directors, each of whom shall be a resident of the Commonwealth of Virginia (the "**Board**"). The Board shall consist of two board members from each Member Locality appointed by the governing body of each Member Locality pursuant to Section 15.2-6403 (A) of the Act. To encourage participation, and to reduce meeting and regulatory conflicts, Board members should not be an elected member of the locality's governing body. Each Board member shall serve for a term of four years and may be reappointed for as many terms as the Member Locality's governing body desires. If a vacancy occurs by reason of death, disqualification or resignation, the governing body of the Member Locality that appointed the Authority Board member shall appoint a successor to fill the unexpired term.

4.2. The governing body of each Member Locality may appoint up to two alternate Board members. An alternate may serve as an alternate for either Board member from the Member Locality that appoints the alternate. Alternates shall be appointed for terms that coincide with one or more of the Board members from the Member Locality that appoints the alternate. If either Board member for a Member Locality is not present at a meeting of the Authority, an alternate shall have all the voting and other rights of the Board member not present and shall be counted for purpose of determining a quorum and all other purposes at that meeting.

4.3. The Board shall elect from its membership, for each calendar year, a Chair, Vice Chair, Treasurer, and Secretary.

4.4. Appointments, officers, Board meetings and procedures shall be held and conducted in accordance with the Act, this Agreement, and with the Bylaws of this Authority,

attached hereto as Exhibit A and fully incorporated into this Agreement (the “**Bylaws**”).

4.5. The Board shall submit an annual report of the Authority's activities of the preceding year to the governing bodies of the Member Localities, including a complete operating and financial statement.

4.6. The Board may establish dues or other annual financial fees for the operation of the Authority and its approved purposes (“**Operational Dues**”) to be paid by the Member Localities. Such Operational Dues shall be approved by all Member Localities, including (without limitation) by or through a Member Locality’s Economic Development Authority, by appropriate resolutions or ordinances. Such Operational Dues may be separate from amounts due in accordance with Participation Agreements (as defined in Article 5 below). Member Localities who agree to a Participation Agreement in accordance with Article 5 below may agree to have Operational Dues assessed pro rata by the Board against a Project (as defined in Section 5.2 below), or split among the various Projects as determined by the Board.

4.7. No Board member shall receive compensation, but shall be reimbursed for actual expenses incurred in the performance of his or her duties from funds available to the Authority.

4.8. The Authority is vested with the powers of a body corporate, including the powers to sue and be sued in its own name, plead and be impleaded, and adopt and use a common seal and alter the same as may be deemed expedient.

ARTICLE 5 PARTICIPATION AGREEMENTS FOR FACILITIES

5.1. The Authority may enter into participation agreements with more than one or more Member Localities by which any facilities allowed by the Act may be constructed, developed and operated in the Region (“**Participation Agreement(s)**”). Such Participation Agreements may include participation by public and private entities who are not Member Localities of the Authority (“**Other Participants**”). The Authority, and the Board (to the extent applicable) shall not have the authority or right to vote on any Project level decision among the Member Localities who elect to participate in a Project.

5.2. Each Member Locality may consider its terms in the participation in each proposed economic development project (a “**Project**”). The cost for such Participation Agreements and any remuneration from the creation of a Participation Agreement shall only be shared by the Member Localities and Other Participants in accordance with the Participation Agreement for that project. Any individual Member Locality may, at its discretion and as allowed by law, choose to enter into, or not enter into, any particular Project. Any Member Locality not entering into a Participation Agreement for a Project (i) shall have no monetary obligation or other duty or responsibility in relation to that Project, and (ii) its Member Locality status and participation in other Projects shall not be

modified by any decision not to participate in any particular Project. A Project's Participation Agreement shall include a provision to cover the costs associated with administration of the agreement as part of the Project costs.

5.3 The Authority may from time to time finance a Project pursuant to a Participation Agreement through the issuance of notes and bonds by the Authority ("**Bonds**"). Such Bonds shall be limited obligations of the Authority to be paid solely from revenues and receipts of that particular Project and from revenues that may be received pursuant to any Participation Agreement or other agreement related to the Project being financed, and may be secured by collateral encumbered or pledged in support of the financing ("**Project-Based Financing**"). Project-Based Financing is approved and consented to by the Member Localities.

ARTICLE 6 DONATIONS; REMITTANCE OF TAX REVENUE; REVENUE SHARING AGREEMENTS

6.1. Member Localities, including (without limitation) by or through a Member Locality's Economic Development Authority, are hereby authorized to lend, or donate money or other property to the Authority for any of its purposes. The Member Locality, including (without limitation) by or through a Member Locality's Economic Development Authority, making a grant or loan may restrict the use of such grants or loans to a specific facility owned by the Authority within or outside of that Member Locality.

6.2. The governing body of the Member Locality in which a facility owned by the Authority is located may direct, by resolution or ordinance, that all tax revenues collected with respect to the facility shall be remitted to the Authority. Such revenues may be used for the payment of debt service on bonds of the Authority and other obligations of the Authority incurred with respect to such facility. The action of such governing body shall not constitute a pledge of the credit or taxing power of such Member Locality.

6.3. Notwithstanding the requirements of Chapter 34 of Title 15.2 of the Code of Virginia (Section 15.2-3400 et seq.), the Member Localities may agree to a revenue and economic growth sharing arrangement with respect to tax revenues and other income and revenues generated by any properties owned, controlled or managed by the Authority. The obligations of the parties to any such agreement shall not be construed to be debt within the meaning of Article VII, Section 10 of the Constitution of Virginia. Any such agreement shall be approved by a majority vote of the governing bodies of the Member Localities reaching such an agreement, but shall not require any other approval.

ARTICLE 7 BOND ISSUES

The Authority may, including by request of Project participants, at any time issue bonds for any valid purpose, including the establishment of reserves and the payment of interest only in accordance with the Act. Any such bonds issued pursuant to the Act shall comply with all terms and conditions identified in Sections 15.2-6409, 15.2-6410, 15.2-6411, and 15.2-6412

of the Code of Virginia, as amended.

ARTICLE 8 ACCOUNTS AND RECORDS

The accounts and records of the Authority showing the receipt and disbursement of funds from whatever source derived shall be in such form as the Auditor of Public Accounts prescribes, provided that such accounts correspond as nearly as possible to the accounts and records for such matters maintained by corporate enterprises. The accounts and records of the Authority shall be subject to audit pursuant to Section 30-140 of the Code of Virginia and the costs of such audit services shall be borne by the Authority. The Authority's fiscal year shall be the same as the Commonwealth's.

Until the Authority's Board determines otherwise, or until a resignation of the following duties, the Virginia's Gateway Region will act as the staff and the fiscal agent for the Authority. The Authority may elect to provide compensation to Virginia's Gateway Region for such services, but the Authority will reimburse Virginia's Gateway Region for all costs and expenses incurred for or on behalf of the Authority. The VGR will not have any authority to bind the Authority.

ARTICLE 9 MEMBER LOCALITIES APPROVALS

The Authority may request action or approvals by the governing bodies of the Member Localities for any appropriate matters or actions in accordance with the Act. The Authority shall not act without approvals of the governing bodies of the Member Localities for any of the following:

- (i) Participation Agreements for individual Projects in accordance with Article 5 of this Agreement;
- (ii) tax revenue remittances in accordance with Section 15.2-6406.B of the Act;
- (iii) revenue sharing agreements in accordance with Section 15.2-6407 of the Act and Article 6 of this Agreement;
- (iv) Operational Dues in accordance with Article 4, Section 6 of this Agreement;
- (v) Any modification of the Board provisions in Article 4 Sections 1 and 2 of this Agreement; and
- (vi) Any other requirement or limitation as may be imposed by the Act, as may be amended.

Any Member Locality which does not elect to participate in a Project (in accordance with Article 5) shall not have any right or authority to vote on or interfere with any Project level decision.

ARTICLE 10 DISSOLUTION OF AUTHORITY

10.1. Any Member Locality of the Authority may withdraw from the Authority (i) upon dissolution of the Authority as set forth herein, or (ii) with majority approval of all other Member Localities of the Authority, upon a resolution adopted by the governing body of such Member Locality and after satisfaction of such Member Locality's legal obligations, including repayment of its portion of any debt incurred with regard to the Authority, or after making contractual provisions for the repayment of its portion of any debt incurred with regard to the Authority, as well as pledging to pay any Operational Dues for the Authority for the current and succeeding fiscal year following the effective date of withdrawal.

No Member Locality seeking withdrawal shall retain, without the consent of a majority of the remaining Member Localities, any rights to contributions made by such Member Locality, to any property held by the Authority or to any revenue sharing as allowed by the Act.

Upon withdrawal, the withdrawing Member Locality also shall return to the Authority any dues or other contributions refunded to such Member Locality during its membership in the Authority.

10.2. Whenever the Board determines that the purpose for which the Authority was created has been substantially fulfilled or is impractical or impossible to accomplish and that all obligations incurred by the Authority have been paid or that cash or sufficient amount of approved securities has been deposited for their repayment, or provisions satisfactory for the timely payment of all its outstanding obligations have been arranged, the Board may adopt resolutions declaring and finding that the Authority shall be dissolved.

Appropriate attested copies of such resolutions shall be delivered to the Governor so that legislation dissolving the Authority may be introduced in the General Assembly. The dissolution of the Authority shall become effective according to the terms of such legislation. The title to all funds and other property owned by the Authority at the time of such dissolution shall vest (i) in the Member Localities which have contributed to the Authority in proportion to their respective contributions, (ii) as stated in the Authority's dissolution resolution(s), or (iii) as otherwise mutually agreed upon by the Member Localities.

ARTICLE 11 MISCELLANEOUS

This Agreement may be amended or altered, from time to time, in any manner not

inconsistent with the provisions of the Act and other applicable law. This Agreement shall be amended or altered only by an amendment, resolution or other approval of all of the governing bodies of the Member Localities. No such amendment shall reduce the rights, or modify the obligations of a Member Locality, for any previously approved Participation Agreement. All amendments shall be in writing and shall be signed by the Authority Chairman and Secretary after approval in accordance with this Agreement and the Bylaws. The Authority shall provide a copy of any amendment to each Member Locality not later than ten (10) days after final approval of all Member Localities.

The title of and article headings in this Agreement are solely for convenience of reference and shall not constitute a part of this Agreement nor shall they affect its meaning, construction or effect.

This Agreement may be executed in any number of counterparts, each of which shall be an original and all of which together shall constitute but one and the same instrument.

If any clause, provision or section of this Agreement shall be held illegal or invalid by any court, the illegality or invalidity of such clause, provision or section shall not affect the remainder of this Agreement which shall be construed and enforced as if such illegal or invalid clause, provision or section had not been contained in this Agreement. If any agreement or obligation contained in this Agreement is held to be in violation of law, then such agreement or obligation shall be deemed to be the agreement or obligation of the parties hereto only to the extent permitted by law. In the event that the General Assembly amends the Act in a manner that conflicts herewith, the provisions of this Agreement are hereby amended in conformity with such amendment of the Act.

(Signatures on the following pages)

IN WITNESS WHEREOF, the governing bodies identified, by authorized action, have caused this Agreement to be executed and their respective seals to be affixed hereto and attested by their respective clerks or secretaries commencing effective on the date when fully executed.

CITY OF COLONIAL HEIGHTS

By: _____

Name: _____

Title: _____

ATTEST:

By: _____

Name: _____

Title: _____

Approved as to form:

By: _____

_____, City Attorney

[Signatures continue on next page]

IN WITNESS WHEREOF, the governing bodies identified, by authorized action, have caused this Agreement to be executed and their respective seals to be affixed hereto and attested by their respective clerks or secretaries commencing effective on the date when fully executed.

COUNTY OF DINWIDDIE

By: _____
Name: _____
Title: _____

ATTEST:

By: _____
Name: _____
Title: _____

Approved as to form:

By: _____
_____, County Attorney

[Signatures continue on next page]

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CITY OF HOPEWELL

By: _____
Name: _____
Title: _____

ATTEST:

By: _____
Name: _____
Title: _____

Approved as to form:

By: _____
_____, City Attorney

[Signatures continue on next page]

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CITY OF PETERSBURG

By: _____
Name: _____
Title: _____

ATTEST:

By: _____
Name: _____
Title: _____

Approved as to form:

By: _____
_____, City Attorney

[Signatures continue on next page]

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COUNTY OF PRINCE GEORGE

By: _____
Name: _____
Title: _____

ATTEST:

By: _____
Name: _____
Title: _____

Approved as to form:

By: _____
_____, County Attorney

[Signatures continue on next page]

IN WITNESS WHEREOF, the governing bodies identified, by authorized action, have caused this Agreement to be executed and their respective seals to be affixed hereto and attested by their respective clerks or secretaries commencing effective on the date when fully executed.

COUNTY OF SURRY

By: _____
Name: _____
Title: _____

ATTEST:

By: _____
Name: _____
Title: _____

Approved as to form:

By: _____
_____, County Attorney

[Signatures continue on next page]

IN WITNESS WHEREOF, the governing bodies identified, by authorized action, have caused this Agreement to be executed and their respective seals to be affixed hereto and attested by their respective clerks or secretaries commencing effective on the date when fully executed.

COUNTY OF SUSSEX

By: _____
Name: _____
Title: _____

ATTEST:

By: _____
Name: _____
Title: _____

Approved as to form:

By: _____
_____, County Attorney

EXHIBIT A

BYLAWS