

# **PENINSULA AIRPORT COMMISSION**

## **MINUTES**

November 28, 2017

PRESIDED: George Wallace

The special meeting of the Peninsula Airport Commission was held on Tuesday, November 28, 2017 at 8:00 a.m. in the Airport Commission Room at the Newport News/Williamsburg International Airport.

### **Commissioners present were:**

Rob Coleman, Walter Jubien, Jr., Steve Mallon, Sharon Scott, George Wallace and David Wasson.

### **Executive Director**

Mr. Michael Giardino

### **Assistant Executive Director**

Ms. Melissa Cheaney

### **Director, Air Service, Marketing & P.R.**

Ms. Jessica Wharton

### **Executive Assistant**

Ms. Rhonda Wissinger

### **Legal Counsel**

James S. McNider, III  
Hon. Walter D. Kelley, Jr.

### **Public in Attendance**

Dave Ress-The Daily Press  
Matt Gregory-Wavy 10  
Niko Clemmons-WVEC  
Joel Rubin-Rubin Communications Group  
Viveca Munger-Legal Assistant

## **CLOSED MEETING**

**BE IT RESOLVED**, that the Commission enter into a Closed Meeting pursuant to the Virginia Freedom of Information Act; Section 2.2-3711.A. pertaining to:

Consultation with legal counsel and briefings by staff members or consultants pertaining to actual or probable litigation, where such consultation or briefing in open meeting would adversely affect the negotiating or litigating posture of the public body; and consultation with legal counsel employed or retained by a public body regarding specific legal matters requiring the provision of legal advice by such counsel.

Specifically, the closed meeting shall be held to discuss legal issues relating to the VDOT audit, the People Express Airlines, Inc. loan, and the business designated in the Chairman's call of today's special meeting, except the PAC minutes.

Commissioner Steve Mallon made the motion, seconded by Commissioner Walter Jubien, Jr. to hold a closed meeting.

Voting yes were:

Rob Coleman, Walter Jubien, Jr., Steve Mallon, George Wallace and David Wasson.

The Commission entered into a Closed Meeting at 8:02 a.m. and reconvened in Open meeting at 9:10 a.m. Upon reconvening, it was

**RESOLVED**, that to the best of the Commission's knowledge, only public business matters lawfully exempt from open meeting requirements, and only such public business matters as were identified in the motion by which the Closed Meeting was convened, were heard, discussed or considered in Closed Meeting.

Voting yes were:

Rob Coleman, Walter Jubien, Jr., Steve Mallon, Sharon Scott, George Wallace and David Wasson

(Commissioner Sharon Scott arrived at 8:07 a.m.)

**RESOLVED**, that the Peninsula Airport Commission hereby accepts the offer of a Tolling Agreement with TowneBank to extend all applicable statutes of limitation by 90 additional days as attached to its law firm's November 27, 2017 letter (which shall be made a part of today's special meeting minutes), and the Chairman of the Peninsula Airport Commission is hereby authorized to execute and deliver this Tolling Agreement to TowneBank.

Commissioner Rob Coleman made the motion and Commissioner Steve Mallon seconded the motion.

Voting yes were:

Rob Coleman, Walter Jubien, Jr., Steve Mallon, Sharon Scott, George Wallace and David Wasson

There being no further business, the meeting was adjourned at 9:13 a.m.

**NEXT MEETING**

The next regular meeting of the Peninsula Airport Commission will be held on Thursday, December 21, 2017 at 8:00 a.m. in the Commission Room.

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November 27, 2017

**Via Electronic Mail**

Walter D. Kelley, Jr.  
Hausfeld General Litigation Solutions  
[wkelly@hausfeld.com](mailto:wkelly@hausfeld.com)

James S. McNider  
James S. McNider, III PLC  
[jmcnider@valaw.com](mailto:jmcnider@valaw.com)

**RE: Tolling Agreement**

Dear Messrs. Kelley and McNider:

Enclosed please find an executed copy of the proposed Tolling Agreement between TowneBank and the Peninsula Airport Commission ("PAC"). Should the PAC accept and adopt the Tolling Agreement by public resolution, McGuireWoods LLP, as counsel to TowneBank, agrees to honor and be bound by its terms. This letter is conditioned on the understanding that you, as counsel for the PAC, will also honor and be bound by the Tolling Agreement if so adopted.

Sincerely,



Brandon M. Santos

Enclosure

cc: Richard Cullen  
Gilbert E. Schill, Jr.

## STATUTE OF LIMITATIONS TOLLING AGREEMENT

This Statute of Limitations Tolling Agreement (“the Tolling Agreement”), dated November 28, 2017, is made and entered into by and between the Peninsula Airport Commission (“PAC”) and TowneBank (individually, a “Party” and collectively, “the Parties”).

WHEREAS, each Party wishes to preserve its respective rights to any claims that may be asserted now or in the future against the other Party (the “Potential Claims”);

WHEREAS, the Parties believe that it is mutually beneficial to delay the commencement of any action related to the Potential Claims in order to allow for, among other things, an opportunity for further negotiation;

WHEREAS, the Parties, without admitting any liability, wrongdoing, or responsibility, or lack thereof, wish to delay and perhaps avoid the cost, expense, and disruption of unnecessary litigation;

WHEREAS, the Parties find it mutually desirable to enter into the Tolling Agreement;

NOW, THEREFORE, in consideration of the mutual promises contained herein and intending to be legally bound hereby, the Parties, for themselves and their respective successors and assigns, understand and agree as follows:

1. The Tolling Agreement relates to any and all affirmative causes of action and claims, defenses, and counterclaims arising from or related to the Potential Claims that either Party may have against the other.

2. The Parties each hereby agree that each and every statutes of limitations, statutes of repose, notice or other time-related defense or claim, whether statutory, contractual, or otherwise, whether under federal or state law, and whether at law, in equity, or otherwise (including the doctrines of waiver, laches, acquiescence or estoppel), which are or may be applicable to any Potential Claims, respectively, shall be extended for a period of ninety (90) days from the date on which each otherwise would have expired. The Parties each agree not to assert directly or indirectly, plead, raise in any fashion by defense or avoidance, or otherwise rely on any

passage of time covered by this Tolling Agreement in asserting any time-related defenses against the other Party in connection with the Potential Claims or applicable counterclaims, offsets, and defenses.

3. Nothing in this Agreement waives, impairs, or limits the Parties from raising, responding to, addressing, or defending any Potential Claims, or any related claims, brought by or against any person or entity not party to this Agreement.

4. This Tolling Agreement shall not renew automatically. Any further tolling shall occur only via a new tolling agreement executed by both Parties.

5. The execution of the Tolling Agreement is not an admission of liability, wrongdoing, or responsibility by the Parties to any person or entity, and nothing herein shall prejudice or affect any other rights or liabilities of the Parties or be used to form the basis of any liability against the Parties.

6. Nothing in the Tolling Agreement shall itself have the effect of reviving any claims that are otherwise barred by any statute of limitations, statute of repose, or similar rule of law or equity prior to November 28, 2017.

7. The Tolling Agreement constitutes the entire agreement and understanding between the Parties respecting the subject matter herein and shall not be modified except in writing signed by all the Parties.

8. The construction and effect of the Tolling Agreement shall be governed by the laws of the Commonwealth of Virginia. The Parties intend that this agreement be enforceable under Virginia Code section 8.01-232; neither party shall take a contrary position in court or otherwise to the mutual assertion that section 8.01-232 validates the expressed intent of this Tolling Agreement.

9. The Tolling Agreement may be executed in counterparts, each of which shall be deemed an original, but together shall constitute one and the same instrument.

10. A faxed or electronically mailed signature shall be deemed an original signature for the purpose of the Tolling Agreement.

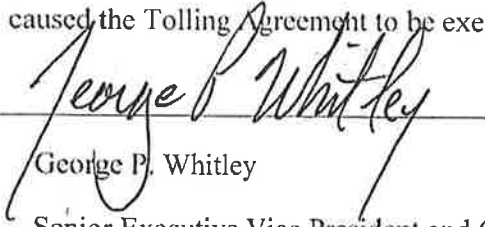
11. This Tolling Agreement shall be binding upon the parties hereto, as well as their legal representatives (as exemplified by the attorney letters exchanged contemporaneously with this Tolling Agreement and made a part hereof).

12. The undersigned, George P. Whitley, is a Senior Executive Vice President and Chief Legal Officer of TowneBank and he personally and on behalf of TowneBank represents and warrants that (i) he is authorized to enter into the Tolling Agreement on behalf of TowneBank and (ii) the Tolling Agreement is a valid and binding obligation of TowneBank, enforceable in accordance with its terms.

13. The undersigned, George Wallace, is the Chairman of the PAC and he personally and on behalf of the PAC represents and warrants that (i) he is authorized to enter into the Tolling Agreement on behalf of the PAC and (ii) the Tolling Agreement is a valid and binding obligation of the PAC, enforceable in accordance with its terms.

IN WITNESS WHEREOF, AND INTENDING TO BE LEGALLY BOUND, the Parties have caused the Tolling Agreement to be executed effective as of November 28, 2017.

By:



George P. Whitley

Senior Executive Vice President and Chief Legal Officer

TowneBank

By: \_\_\_\_\_

George Wallace

Chairman

Peninsula Airport Commission