

# Peninsula Airport Commission Board of Commissioners Meeting Packet

*Lindsey Carney Smith, Chair*

*John Borden, Acting Executive Director*

Thursday, April 27, 2023

8:00 a.m.

Commission Room

900 Bland Blvd

Newport News, VA 23602

# AGENDAS

## **PENINSULA AIRPORT COMMISSION**

### **REGULAR MEETING AGENDA**

**Date: April 27, 2023**

**Time: 8:00 a.m.**

**Location: Commission Room**

- 1) Call to Order
- 2) Approval of Minutes from March 2023
- 3) Approval of Minutes from Special PAC Meeting of April 12, 2023
- 4) Read Instructions for Public Comment
- 5) Public Comment
- 6) Committee Reports
  - a) Finance & Audit
  - b) Planning & Development
- 7) Executive Director Report
  - a) Go Virginia Grant
  - b) Budget
- 8) Old Business
- 9) New Business
  - a) Turnberry Crossing Shopping Center resolution discussion
  - b) Resolution 23-005 Contract Architectural Consulting Services
  - c) Resolution 23-006 Virginia Natural Gas Temporary Construction Easement
- 10) Adjourn

# Newport News Williamsburg Airport

## **PENINSULA AIRPORT COMMISSION COMMITTEE MEETING AGENDA FINANCE & AUDIT COMMITTEE**

**DATE: April 24, 2023  
TIME: 4:00 p.m.**

- 1) Call to Order
  
- 2) New Business
  
- 3) Old Business
  - a) March Financial Results
  
- 4) Adjourn

# Newport News Williamsburg Airport

## **PENINSULA AIRPORT COMMISSION**

### **COMMITTEE MEETING AGENDA**

#### **PLANNING & DEVELOPMENT COMMITTEE**

**DATE: April 24, 2023**

**TIME: 5:00 PM**

- 1) Call to Order
- 2) New Business
  - a) Turnberry Crossing Shopping Center resolution discussion
  - b) Contract for On-call Professional Architectural Consulting Services
  - c) Hampton Roads Transportation Planning Organization Study
- 3) Old Business
- 4) Adjourn

# MINUTES

# Peninsula Airport Commission

Board of Commissioners Meeting Minutes

March 23, 2023, 8:00 a.m.

## **Commissioners in Attendance:**

Chair, Lindsey Carney Smith

Vice Chair, Thomas "Tommy" Garner

Secretary, Sharon Scott (arrived 8:11 a.m.)

Assistant Treasurer, Jennifer Smith (arrived 8:04 a.m.)

## **Staff Members in Attendance:**

Interim Executive Director, John Borden

Office Manager, Barbara Rumsey

Human Resources Manager, Regina Carson

Business Development Manager, Chris Walton

Director of Finance, Mark Adams

## **Public Officials Present:**

Assistant City Manager, Ralph "Bo" Clayton

## **Public Attendees:**

Counsel, L. Scott Seymour

Kiln Creek HOA representative, David Hause

Consultant, Fabio Bendana

Eric Hause

Chair Carney Smith called the meeting to order at 8:01 a.m.

Chair Smith welcomed Jacqueline Wade who now runs PHF's Hero's Lounge (formerly the USO lounge).

**Public Comment:** No comments

**Planning and Development Committee Report:** Commissioner Garner and Chair Smith met with John Borden, Chris Walton, and Barbara Rumsey on Wednesday, March 22, 2023. There are still three land releases pending before Virginia Department of Transportation and the FAA. The forced main project would like to begin work in June (project off of Brick Kiln) but the airport is awaiting approval from the FAA before work can begin.

The second project is the Habersham project. The public comment portion of the process is complete with no comments. The last step is awaiting FAA sign-off.

Chris Walton has been regularly following up on all three land releases. They will be released in order. Habersham will be first, and until Habersham is approved, the remaining two projects are on hold.

The third land release is the Virginia Natural Gas (VNG) easement and a temporary construction easement that is connected to the VNG easement. Draft language has been submitted.

Remaining topics for this committee will be discussed in closed session.

**Finance and Audit Committee Report:** Commissioner J. Smith stated that Commissioner Joseph (the committee chair) sent an email to the rest of the PAC Board of Commissioners. Commissioner J. Smith was unable to attend the Finance and Audit Committee meeting. She requested that the commissioners review the email and she stated that the committee will meet in April.

Chair Smith asked the commissioners to closely examine the report generated by Director of Finance, Mark Adams that was included in the email from Commissioner Joseph. The report projects where the airport will be financially in a year. The April Board of Commissioners meeting will include a budget discussion for fiscal year 2024.

Also, to be discussed at the April Board of Commissioners meeting will be the following:

- The status of the audit contract, confirmation with the City of Newport News and the auditor who have agreed on the date and data to be delivered to the City
- The airport is currently on a hiring freeze due to budget shortfalls
- There is a need to consider what to do with the Virginia Resource Authority Bonds, as far as debt service coverage

The contract with Crawford, Murphy, and Tilly (CMT) ends March 31, 2023. The airport will not be renewing with CMT and a discussion has been held with the Planning and Development Committee and John Borden to determine a different path forward. More discussion will occur in closed session.

**Executive Director Report:** John Borden announced the birth of a son to marketing manager Victoria Hall.

American Airlines is going back up to four flights a day at least through August 2023.

Staff are continuing to examine the budget and evaluate necessary changes.

The annual AIP/ACIP request is due to the FAA and the state by April 1. It is a five year plan outlining how the airport will use federal and state funding for certain projects. Funding for projects under the AIP/ACIP is 90% federal funding and 10% state funding.

The master plan project is ongoing. The scope of work and supporting documentation are due by May 5<sup>th</sup> in order to be included for funding in the AIP/ACIP grant request. The airport is close to having that completed.

The condition of Taxiway Delta needs to be addressed. Staff recently signed a Cat X survey for the taxiway which must be completed before the grant can awarded for the design and environmental impact studies. This is the most critical need. Staff is looking at a 2023/2024 timeline to begin to address this.



The airport will be applying for separate funding through AIG for the terminal roof. Currently the airport has about \$4 million in AIG money that can be utilized anywhere. The FAA is in agreement that AIG funding should be used for the building. The goal is to have a proposal for AIG grant funding in by May 5. If it is approved, the airport will move forward on the roof.

Chair Smith asked when the airport would be notified of whether the grant application was accepted and approved. Mr. Borden said the airport should know by June.

Chair Smith invited Fabio Bendana to provide an update. Mr. Bendana said the master plan is moving along. It is with the FAA now and there will be more to do, but everything is proceeding as expected.

Chair Smith stated that during the Planning and Development Committee meeting, all options for air service was discussed including smaller commuter airlines. EVTOL and Cargo were also discussed as well as expanding general aviation and possibly more commercial hangars. She said there are over 70 people on the wait list for a GA hangar. Mr. Borden mentioned that the airport will remove a potential third runway from the master plan so that land could be considered for other development for airport uses.

Chair Smith said that there was now a quorum present so the commissioners could go back to approving the minutes from the February 23, 2023 Board of Commissioners meeting. She invited questions, comments and revisions. None were made and a motion to approve the minutes as presented was made by Commissioner Scott and seconded by Commissioner Garner. An audible vote was taken and the motion was approved unanimously.

**Charitable Partner Drawing:** Chair Smith announced that the drawing for a charitable partner for the 2023 5K on the Runway would take place next. She gave a brief description of the event. The drawing was broadcast online as a Facebook Live event. Mr. Borden introduced the commissioners and legal counsel. He elaborated about the 5K on the Runway. The names were tumbled and Chair Smith drew the name of **Dream Catchers at the Cori Sikich Therapeutic Riding Center in Toano**. This organization delivers weekly equine-assisted therapeutic interventions to people living with disabilities, at-risk youth, and veterans.

**New Business:** none

**Closed Session:** Counsel Scott Seymour read the Virginia code to enter in to closed session: 2.2-3711.A.(1): Discussion, consideration or interviews of prospective candidates for employment; assignment, appointment, promotion, performance, demotion, salaries, disciplining or resignation of specific public officers, appointees or employees of any public body; (3) Discussion of real property issues for the acquisition of publicly held land where discussing the matter in open session would harm the commission's bargaining power; (5) Prospective business discussion concerning a prospective business or industry or the expansion of an existing business or industry where no previous announcement has been made; (8) Consultation with legal counsel employed or retained by a public body regarding specific legal matters requiring the provision of legal advice by such counsel; (29) To discuss terms of contracts prior to the public approval of a contract, where discussion in open session could adversely affect the bargaining position or negotiating strategy of the commission.

A motion was made by Commissioner J. Smith and seconded by Commissioner Scott. A roll call vote was taken. Chair Smith – For, Commissioner Garner – For, Commissioner Scott – For, Commissioner J. Smith - For. Closed session began at 8:45 a.m.

Attorney Seymour read the following: “To conclude the closed session meeting and return to the open meeting and that prior to a roll call vote, the Commissioners of the Peninsula Airport Commission shall certify that to the best of their knowledge (i) only such public business matters lawfully exempted from open meeting requirements under the Virginia Freedom of Information Act, and (ii) only such public business matters as were identified in the motion by which the closed meeting was convened, were heard, discussed or considered in the meeting by the members of the Commission.

Any member of the Commission who believes that there was a departure from the requirements just stated must so state prior to the roll call vote and indicate the substance of the departure that, in such Commissioner’s judgment has taken place.

If there are no such statements of departure, if we could please have a motion and second to end and certify the closed session and return to open meeting.”

A motion was made by Commissioner Scott and seconded by Commissioner J. Smith. A roll call vote was taken. Chair Smith – For, Commissioner Garner – For, Commissioner Scott – For, Commissioner J. Smith - For. The motion passed unanimously. The meeting resumed in open session at 9:39 a.m.

Commissioner Scott asked when Hampton would be replacing the Col. Brian Kelly on the Board of Commissioners. Chair Smith stated that she had spoken to Hampton City Manager Mary Bunting who did not have an immediate answer. Chair Smith believes Ms. Bunting is waiting to collaborate with Newport News City Manager Cindy Rohlf about who would be the best candidate to put forward. Commissioner Smith said she was concerned about the optics of Hampton not having representation at this meeting since Commissioner Joseph (from Hampton) was unable to attend the March 23 meeting. Commissioner Scott suggested the Board let Hampton know that they would appreciate Hampton putting forth a candidate soon.

Chair Smith asked if there was anything else to come before the commission. There being none, the meeting adjourned at 9:40 a.m.

# Peninsula Airport Commission

## Board of Commissioners Special Meeting Minutes

April 12, 2023, 4:00 p.m.

### **Commissioners in Attendance:**

Chair, Lindsey Carney-Smith  
Treasurer, James “Jay” Joseph  
Assistant Secretary, Thomas “Tommy” Garner

### **Staff Members in Attendance:**

Executive Director, John Borden  
Executive Assistant, Barbara Rumsey

### **Public Attendees:**

None

Chair Carney Smith called the meeting to order at 4:05 p.m. The Chair read the following, “The Chair will now entertain a motion to move the Commissioners of the Peninsula Airport Commission convene in closed session meaning pursuant to Virginia code section 2.2.3711 A(3) and (5) for the following purposes: (3) Discussion and consideration of the acquisition of real property for a public purpose, or of the disposition of publicly held real property where discussion in an open meeting would adversely affect the Commission’s bargaining position or negotiating strategy (regarding the potential lease, license or use of airport property in connection with [expanded air service operations]), and

(5) Discussion concerning prospective business or industry or the expansion of an existing business or industry where no previous announcement has been made of the business’ or industry’s interest in locating or expanding its facilities in the community (regarding expansion of [aviation services] where no previous announcement has been made).

Commissioner Joseph made the motion to go into closed session; Commissioner Garner seconded the motion. Voice vote by roll call: Chair Carney Smith - FOR, Mr. Joseph – FOR, Mr. Garner – FOR. Motion passed unanimously.

Closed session began at 4:06 p.m.

Chair Carney Smith read the following: “To conclude the closed session meeting and return to the open meeting and that prior to a roll call vote, the Commissioners of the Peninsula Airport Commission shall certify that to the best of their knowledge (i) only such public business matters lawfully exempted from open meeting requirements under the Virginia Freedom of Information Act, and (ii) only such public business matters as were identified in the motion by which the closed meeting was convened, were heard, discussed or considered in the meeting by the members of the Commission.

Any member of the Commission who believes that there was a departure from the requirements just stated must so state prior to the roll call vote and indicate the substance of the departure that, in such Commissioner’s judgment has taken place.

If there are no such statements of departure, if we could please have a motion and second to end and certify the closed session and return to open meeting.” The Commission certified that no departures were raised.

A motion to reconvene was made by Commissioner Garner and seconded by Commissioner Joseph. Voice vote by roll call: Chair Carney Smith - FOR, Mr. Joseph – FOR, Mr. Garner – FOR. Motion passed unanimously.

Open session resumed at 4:43 p.m.

Chair Carney-Smith the meeting adjourned at 4:44 p.m.

DRAFT

# FINANCIALS

**PENINSULA AIRPORT COMMISSION  
MARCH 2023  
OPERATING INCOME STATEMENT**

DESCRIPTION	MAR 2023 ACTUAL	MAR 2023 BUDGET		YTD ACTUAL	YTD BUDGET		ANNUAL BUDGET		PRIOR YR ACTUAL	
<b>REVENUE</b>										
Airline Fees	43,604	57,382	76.0%	365,792	498,108	73.4%	672,032	54.4%	619,644	59.0%
Fixed Based Operators	39,695	50,068	79.3%	400,595	442,307	90.6%	593,311	67.5%	533,896	75.0%
Property Rental	92,137	94,133	97.9%	889,965	867,336	102.6%	1,149,785	77.4%	1,563,252	56.9%
Rental Cars	120,646	170,439	70.8%	1,482,747	1,415,177	104.8%	1,937,986	76.5%	1,948,834	76.1%
Parking Lot	58,154	71,350	81.5%	584,367	639,168	91.4%	853,512	68.5%	815,823	71.6%
Restaurant Income	30,729	36,172	85.0%	293,212	300,071	97.7%	411,056	71.3%	341,169	85.9%
<b>TOTAL REVENUE</b>	<b>384,965</b>	<b>479,544</b>	<b>80.3%</b>	<b>4,016,678</b>	<b>4,162,167</b>	<b>96.5%</b>	<b>5,617,682</b>	<b>71.5%</b>	<b>5,822,618</b>	<b>69.0%</b>
<b>EXPENSES</b>										
Labor and Benefits	367,417	358,671	102.4%	3,288,765	3,228,039	101.9%	4,304,073	76.4%	4,252,201	77.3%
Marketing & Advertising	22,784	28,177	80.9%	422,475	534,373	79.1%	793,911	53.2%	647,857	65.2%
Office & Administration	86,889	80,915	107.4%	749,750	672,647	111.5%	786,674	95.3%	758,936	98.8%
Utilities	56,455	95,931	58.8%	585,909	535,927	109.3%	677,486	86.5%	646,068	90.7%
Repairs & Maintenance	90,625	48,977	185.0%	1,206,243	441,711	273.1%	588,618	204.9%	751,540	160.5%
Restaurant Expense	41,272	32,247	128.0%	373,166	268,261	139.1%	367,136	101.6%	361,674	103.2%
Bond Debt	18,419	15,838	116.3%	170,177	142,542	119.4%	190,052	89.5%	246,068	69.2%
<b>TOTAL OPERATING EXPENDITURES</b>	<b>683,861</b>	<b>660,756</b>	<b>103.5%</b>	<b>6,796,485</b>	<b>5,823,500</b>	<b>116.7%</b>	<b>7,707,950</b>	<b>88.2%</b>	<b>7,664,344</b>	<b>22.1%</b>
<b>NET INCOME</b>	<b>(298,896)</b>	<b>(181,212)</b>	<b>164.9%</b>	<b>(2,779,807)</b>	<b>(1,661,333)</b>	<b>167.3%</b>	<b>(2,090,268)</b>	<b>133.0%</b>	<b>(1,841,726)</b>	<b>22.1%</b>
<b>OTHER ITEMS</b>										
Trailer Park	(56,628)	-		(637,193)	500,000	-127.4%	(500,000)	127.4%	(361,014)	
Expense Subsidy	-	-		689,688	689,689	100.0%	689,688	100.0%	4,300,988	
Sale of Land	-	-		4,219,249	-		-		302,520	
<b>NET AFTER OTHER</b>	<b>(355,524)</b>	<b>(181,212)</b>		<b>1,491,937</b>	<b>(471,644)</b>		<b>(1,900,580)</b>		<b>2,400,768</b>	

**BALANCE SHEET**

	<u>Total</u>
Cash - Unrestricted	4,100,159
Cash - Restricted	12,786,729
Other Current Assets	398,783
Fixed Assets (Net of Depreciation)	78,648,846
<b>TOTAL ASSETS</b>	<b>95,934,517</b>
Current Liabilities	682,241
Long Term Notes Payable - Restricted	594,228
Long Term Notes Payable - Unrestricted	4,889,154
OPEB	6,441,300
<b>TOTAL LIABILITIES</b>	<b>12,606,923</b>
Net Capital Beginning	58,031,741
Capital Contributions	23,803,916
YTD Earnings Current Year	1,491,937
<b>TOTAL LIABILITIES AND CAPITAL</b>	<b>95,934,517</b>

## PROJECTION OF CASH

	Budget 06/24	Projected 12/24
Unrestricted cash beginning	3,200,896	896,252
Operating (loss) YTD	(1,883,986)	(941,993)
Other income/(Expense)	-	-
Capital expenditures	-	-
Debt principal payments	(470,658)	(235,329)
Other Assets/Liability changes	-	-
	<hr/>	<hr/>
Unrestricted cash received (used)	(2,354,644)	(1,177,322)
Restricted cash expense reimbursement	50,000	25,000
Restricted cash capital reimbursement	-	-
	<hr/>	<hr/>
Unrestricted cash ending	896,252	(256,070)

# AIR SERVICE REPORT



## Monthly Air Service Report Summary March 2023

- Load factors:
  - 88.3% for American
  - 76.5% for Avelo
  - 68.2% for Charters
  - 77.7% Overall
- 3819 Flight Ops (landings & take offs)

<u>FY23 Actual PAX</u> <u>(7/1/22 – 6/30/23)</u>		<u>FY23 Budgeted PAX</u> <u>7/1/22 – 6/30/23</u>		<u>FY22 Actual PAX</u> <u>(7/1/21 – 6/30/22)</u>		<u>FY21 Actual PAX</u> <u>(7/1/20 – 6/30/21)</u>	
Jul:	15,044	Jul:	15,830	Jul:	21,586	Jul:	12,409
Aug:	14,280	Aug:	15,208	Aug:	18,582	Aug:	9,589
Sep:	12,372	Sep:	16,055	Sep:	16,210	Sep:	8,384
Oct:	13,649	Oct:	18,812	Oct:	19,044	Oct:	11,463
Nov:	14,626	Nov:	18,921	Nov:	16,375	Nov:	10,113
Dec:	14,860	Dec:	19,552	Dec:	15,846	Dec:	10,201
Jan:	9,029	Jan:	19,552	Jan:	10,538	Jan:	6,929
Feb:	10,879	Feb:	17,660	Feb:	11,864	Feb:	6,775
Mar:	13,322	Mar:	18,812	Mar:	16,810	Mar:	9,116
Apr:		Apr:	22,902	Apr:	15,896	Apr:	12,840
May:		May:	22,817	May:	12,719	May:	11,744
Jun:		Jun:	22,902	Jun:	13,702	Jun:	20,408
<b>Total: 118,061 PAX</b>		<b>Total: 229,024 PAX</b>		<b>Total: 166,770 PAX</b>		<b>Total: 129,971 PAX</b>	

RESOLUTION(S)

# DRAFT – FOR DISCUSSION PURPOSES ONLY

## PENINSULA AIRPORT COMMISSION

### RESOLUTION WAIVING RIGHT OF FIRST REFUSAL ON PROPERTY KNOWN AS TURNBERRY CROSSING SHOPPING CENTER, NEWPORT NEWS, VIRGINIA

RESOLUTION 23-004

April 27, 2023

**WHEREAS**, the Peninsula Airport Commission (the “Commission”) is a political subdivision of the Commonwealth of Virginia, created pursuant to Chapter 22 of the Acts of the General Assembly of the Commonwealth of Virginia of 1946, as amended, and owns and operates Newport News – Williamsburg International Airport (the “Airport”);

**WHEREAS**, pursuant to the Commission’s Plan of Development Regulations and Standards for the Patrick Henry Commercenter and related instruments of conveyance, the Commission has the prior right and option (the “ROFR”) to purchase the +/- 5.705 acres of real property located at the southwesterly corner of the intersection of Jefferson Avenue and Turnberry Boulevard in Newport News, Virginia, commonly known as the Turnberry Crossing Shopping Center (the “Property”) should the then owner desire to accept a bona fide written offer to sell such Property;

**WHEREAS**, pursuant to written notice, dated March 16, 2023, on behalf of the owner of the Property, the Commission was notified of the owner’s desire to accept a bona fide written offer to sell the Property to a third party (the “Property Sale Notice”); and

**WHEREAS**, the Commissioners of the Peninsula Airport Commission, after mature deliberation and upon the recommendations of Staff, deem it prudent and in the best interest of the Commission and the Airport not to exercise its ROFR in connection with the proposed sale of the Property, reserving unto the Commission such continuing right of first refusal as to *[all/certain]* succeeding owners and sales of the Property or any portion thereof.

### **NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COMMISSIONERS OF THE PENINSULA AIRPORT COMMISSION THAT:**

1. The Commission elects not to exercise its right and option to purchase the Property in connection with the transaction outlined to the Commission in the Property Sale Notice, reserving unto the Commission its continuing right of first refusal as to any transaction other than that set forth in the Property Sale Notice and as to *[all/certain]* succeeding owners of the Property or any portion thereof.

2. Each of the Chair or the Vice Chair, either of whom may act, is authorized and directed to execute and deliver notice of the Commission’s election to the owner of the Property *[and a limited waiver agreement substantially in the form presented to this meeting [together with such certifications and estoppels], including such changes, insertions or omissions thereto as may be acceptable to the Chair or Vice Chair and legal counsel for the Commission not inconsistent with this Resolution]*, reserving unto the Commission its continuing right of first refusal as to any transaction other than that set forth in the Property Sale Notice *[and such limited waiver]* and as to *[all/certain]* succeeding owners, as well as all continuing rights and privileges reserved to the

## DRAFT – FOR DISCUSSION PURPOSES ONLY

Commission with respect to the Property or any portion thereof under the Plan of Development Regulations and Standards for the Patrick Henry Commercenter.

3. This resolution shall take effect immediately.

**PENINSULA AIRPORT COMMISSION**

**RESOLUTION 23-005 AWARDING CONTRACT  
FOR ON-CALL PROFESSIONAL ARCHITECTURAL CONSULTING SERVICES**

April 27, 2023

**WHEREAS**, the Peninsula Airport Commission (the “Commission”) is a political subdivision of the Commonwealth of Virginia, created pursuant to Chapter 22 of the Acts of the General Assembly of the Commonwealth of Virginia of 1946, as amended, and owns and operates Newport News – Williamsburg International Airport (the “Airport”);

**WHEREAS**, the Commission issued its request for qualifications (“RFQ”) for on-call professional architectural consulting services pursuant to the Virginia Public Procurement Act (the “Procurement Act”), and received two proposals in response to the RFQ;

**WHEREAS**, pursuant to the provisions of the Procurement Act, the Commission has considered the proposals that it has received in response to the RFQ and has conducted negotiations with selected offerors deemed fully qualified and best suited among those submitting proposals; and

**WHEREAS**, the Commissioners of the Peninsula Airport Commission, after mature deliberation and upon the recommendations of Staff, deem it prudent and desirable to award the engagement for on-call professional architectural consulting services to Passero, LLC. (Passero) which, in the opinion of the Commissioners of the Commission, has made the best proposal.

**NOW, THEREFORE, BE IT RESOLVED THE BOARD OF COMMISSIONERS  
OF THE PENINSULA AIRPORT COMMISSION THAT:**

1. The Executive Director of the Commission is hereby authorized and directed to enter into an engagement agreement with Passero), such agreement to be upon the terms and conditions as specified in the RFQ, including a term of one year with four additional one year renewal periods at the option of the Commission, and as further negotiated in the RFQ process, and upon such further terms and conditions as the Executive Director, upon the advice of counsel to the Commission, may deem necessary and appropriate.
2. The Commission shall authorize at a later time the particular engagements to be undertaken by such consultants and the budgeted funding for any such engagements.
3. This resolution shall take effect immediately.

**GENERAL ENGINEERING CONSULTING SERVICES AGREEMENT  
FOR  
NEWPORT NEWS/WILLIAMSBURG INTERNATIONAL AIRPORT (PHF)**

**THIS GENERAL ENGINEERING CONSULTING SERVICES AGREEMENT** (“Agreement”) is made and entered into as of July 01, 2022 (the “Effective Date”), by and between PENINSULA AIRPORT COMMISSION, with offices located at 900 Bland Blvd., Suite G, Newport News, Virginia 23602 (hereinafter referred to as either “SPONSOR”), and PASSERO ASSOCIATES, D.P.C., with offices located at 242 West Main Street, Suite 100, Rochester, New York 14614 (hereinafter referred to as either “PASSERO” or “CONSULTANT”).

**WITNESSETH:** WHEREAS, SPONSOR desires CONSULTANT to provide certain professional consulting services as described in separate Work Orders to be issued hereunder pursuant to the terms and conditions hereinafter set forth,

NOW, THEREFORE, the Parties, in consideration of the foregoing recitals and the mutual covenants hereinafter set forth and in subsequently issued Work Orders, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, hereby agree as follows:

**ARTICLE 1—PROVISION OF SERVICES/METHOD OF PROJECT AUTHORIZATION**

- A. This Agreement provides the terms upon which SPONSOR may avail itself of the professional consulting services of CONSULTANT from time to time over the period of time specified hereinafter: An introduction to these General Engineering/Consulting Services is attached to this Agreement as Attachment A, entitled “General Engineering/Consulting Services, Newport News/Williamsburg International Airport (PHF).”
- B. CONSULTANT shall provide, in accordance herewith, the professional consulting services described in separate Work Orders issued hereunder (the “Services”), and referred to as Schedule “A” Scope of Services (Work Order). Each Work Order, when signed by the Parties, shall be incorporated into and form a part of this Agreement. Each such Work Order shall contain a Project Description, Scope of Services, Project Schedule, Deliverables, Compensation Terms and special provisions or conditions specific to the Services for the project being authorized (the “Project”).
- C. Should SPONSOR issue a purchase order or other instrument related to CONSULTANT’S Services, it is understood and agreed that such document is for SPONSOR’S internal accounting purposes only and shall in no way modify, add to, or delete any of the terms and conditions of this Agreement. If SPONSOR does issue a purchase order or other similar instrument, it is understood and agreed that CONSULTANT shall indicate the purchase order number on the invoices sent to SPONSOR.

- D. Since CONSULTANT has no control over the cost of labor, materials, or equipment or over a contractor's method of determining prices, or over competitive bidding or market conditions, when requested by SPONSOR to estimate project construction costs, CONSULTANT'S opinions of probable costs provided as a service hereunder are to be made on the basis of its experience and qualifications and represent its best judgment as a design professional familiar with the construction industry. However, CONSULTANT cannot and does not guarantee that proposals, bids, or the construction costs will not vary from opinions of probable costs prepared by it. If SPONSOR wishes greater assurance as to the construction costs, it shall employ an independent cost estimator at its own expense. Services to modify approved documents to bring the construction cost within any limitations established by SPONSOR will be considered Additional Services and entitle CONSULTANT to additional compensation which shall be negotiated and mutually agreed upon by the Parties.
- E. If the Services are to include services during construction, any resident engineering, construction inspection, or testing provided by CONSULTANT is for the purpose of determining the contractor's compliance with the functional provisions of Project specifications only. CONSULTANT neither guarantees nor insures any contractor's work nor assumes responsibility for (i) the means, methods, or materials used by any contractor, (ii) Project site safety, or (iii) any contractor's compliance with laws and regulations. SPONSOR agrees that, in accordance with generally accepted construction practices, the construction contractor will be required to assume sole and complete responsibility for Project site conditions during the course of construction of the Project, including safety of all persons and property, and that this responsibility shall be continuous and not be limited to normal working hours.
- F. The Services shall be performed by CONSULTANT utilizing the standard of care normally exercised by professional consulting firms in performing comparable services under similar conditions (this standard of care does not mean such Services shall be perfect or error free). Other than that as expressly set forth herein, CONSULTANT makes no warranties or guarantees whatsoever, whether expressed or implied, of merchantability or fitness for a particular purpose, with respect to any services performed under this Agreement. CONSULTANT shall have no liability for indirect, special, incidental, punitive, or consequential damages of any kind.

## ARTICLE 2—PROVISION FOR PAYMENT

- A. **COST PLUS FIXED FEE COMPENSATION AGREEMENT** – Under a Cost Plus Fixed Free Compensation Agreement the SPONSOR shall pay the CONSULTANT, and the CONSULTANT shall accept, as full compensation for the performance by the CONSULTANT of the Services under this Agreement, the following:

**Item I:** Actual Direct Salary Cost for actual time incurred by employees assigned to the Project on a full-time and/or part-time basis for all or part of the term of this Agreement. An estimate of Direct Salary costs will be provided in a project-specific Work Order. Overtime in accordance with the terms of this Agreement shall be charged under this Item.

**Item II—**Actual Direct Non-Salary Costs incurred during the term of this Agreement, as defined in the Work Order.

**Item III**— Overhead Allowance based on actual expenses during the terms of this Agreement. The overhead allowance shall be established as a percentage of Item I (Actual Direct Salary Cost) of this Article.

**Item IV** - Fixed Fee. A lump sum fee which in this Agreement shall be based on an agreed amount.

A summary of the monies due to the CONSULTANT under Items I, II, III and IV shall be listed in the Work Order.

**Item V** - In the event of any claims being made or any actions being brought in connection with the Project, the CONSULTANT agrees to render to the SPONSOR assistance requested by the SPONSOR. Compensation for work performed and costs incurred in connection with such request shall be made on a fair and equitable basis. In all cases provided for in this Agreement for the additional services above described, the SPONSOR'S directions shall be exercised by the issuance of a supplemental agreement.

**Item VI** – In the event of a change in scope, complexity, character, or duration of the work to be performed in conjunction with this Agreement, the CONSULTANT shall notify the SPONSOR of such change and prepare a supplemental or amendatory agreement outlining the change in scope and costs. The CONSULTANT agrees to notify the funding agency(ies) of said change and provide, on the SPONSOR'S behalf, documentation necessary to seek approval and funding for the change in scope and cost.

**Partial Payments** - The CONSULTANT shall be paid in monthly progress payments based on actual allowable costs incurred. Monthly bills shall clearly identify the costs of the work performed and are subject to approval of the SPONSOR. A percentage of the Fixed Fee defined in Item IV of this Article shall be paid with each monthly payment. The percentage to be used in calculating the monthly payment under Item IV shall equal the ratio of the costs expended during the billing period to the maximum amount payable (exclusive of Fixed Fee) allocated to fulfill the terms of this Agreement as established herein.

Accounts of the CONSULTANT shall clearly identify the costs of the work performed under this Agreement and may be subject to periodic and final audit by the SPONSOR and funding agency(ies). Such an audit shall not be a condition for making partial payments.

**Final Payment** - Upon completion and acceptance of the Project by the SPONSOR and the funding agency(ies), final payment, including any retainage, shall be made. The acceptance by the CONSULTANT of the final payment shall constitute and operate as a release to the SPONSOR for all claims and liability to the CONSULTANT or its representatives, except as otherwise provided in Item V, herein.

Except for any collection costs and indemnities provided in this Agreement or defined in the Work Order, the maximum amount payable under this Agreement, including profit, shall be defined in the Work Order unless there is a change in scope, complexity, character, or duration of the work to be performed. (See Article 11)



**B. LUMP SUM AGREEMENTS** – The SPONSOR shall pay to the CONSULTANT and the CONSULTANT agrees to accept as full compensation for its services under this Agreement, a lump sum fee as defined in the Work Order, covering salaries of employees assigned to the Project, all indirect costs, all direct expenses, and profit. The maximum lump sum fee under this Agreement cannot be exceeded for any reason, unless additional services are performed in accordance with the Extra Work Provision in Article 11 of this Agreement.

Partial payments of the lump sum fee shall be made monthly on account. Such monthly installments shall be based on a monthly progress report submitted by the CONSULTANT.

The CONSULTANT specifically agrees that the Agreement shall be deemed executor only to the extent of the monies available from the funding agency(ies), and no liability shall be incurred by the SPONSOR beyond the monies available for that purpose, unless otherwise agreed to.

The method of computation of the CONSULTANT lump sum fee is prescribed in Schedule “B” as defined in the Work Order.

Execution of this Agreement by the SPONSOR and the CONSULTANT constitutes the SPONSOR'S written authorization to the CONSULTANT to proceed with the performance of the Services as described in an approved Work Order. Payment shall be due to CONSULTANT upon providing the Services. SPONSOR shall make all payments to CONSULTANT at the address indicated above or other address noticed to SPONSOR.

### **ARTICLE 3—STANDARD OF CARE, STANDARD PRACTICES, AND REQUIREMENTS**

The standard of care for all professional engineering, architectural design and related services performed or furnished by the CONSULTANT under this Agreement shall be the care and skill ordinarily used by members of the CONSULTANT'S profession practicing under similar conditions at the same time and in the same locality. Before beginning to perform or furnish any service hereunder, the CONSULTANT shall ascertain the standard practices of the SPONSOR, the funding agency(ies), if any, for projects of a type similar to this Project. Where the CONSULTANT deems it practicable to do so, the services to be provided or furnished under this Agreement shall be performed in accordance with these standard practices as long as they are consistent with the standard of care. If any of these standard practices are inconsistent with the CONSULTANT'S standard of care or are in conflict with one another, or if strict adherence to the same is impossible or undesirable, then the CONSULTANT'S services may vary or deviate from such standards.

### **ARTICLE 4—ENTIRE AGREEMENT**

This Agreement, with the Schedule(s) referenced below, constitutes the entire agreement between the SPONSOR and the CONSULTANT with respect to its subject matter, and supersedes any prior agreement, whether written or verbal, with respect to that subject matter. This Agreement may be amended or modified only by written instrument signed by the SPONSOR and the CONSULTANT. All Schedules shall be deemed part of this Agreement. If any term in a Schedule conflicts with a term herein, the term contained in the Schedule shall prevail. The Mandatory Federal Contract Provisions contained in Attachment “B” may be amended, from time to time, by applicable changes in the Federal law or regulations.

## **LIST OF SCHEDULES**

Attachment A	Scope of Services – General Engineering/Consulting Services
Attachment B	Required Federal Contract Provisions

### **ARTICLE 5—TAXES, ROYALTIES, AND EXPENSES**

The CONSULTANT shall pay all taxes, royalties, and expenses incurred by the CONSULTANT in connection with performing its services under this Agreement, unless otherwise provided in Article 2.

### **ARTICLE 6—CONSULTANT LIABILITY**

To the fullest extent permitted by law, the CONSULTANT shall indemnify the SPONSOR against, and hold it harmless from, any suit, action, actual damage, and cost resulting solely from the negligent performance of services or omission of the CONSULTANT under this Agreement, up to the limits of any available insurance. Negligent performance of services, within the meaning of this Article, shall include, in addition to negligence founded upon tort, negligence based upon the CONSULTANT'S failure to meet professional standards and resulting in obvious or patent errors in the services performed hereunder.

Nothing in this Article or in this Agreement shall create or give to third parties any claim or right of action against the CONSULTANT or the SPONSOR beyond such as may legally exist irrespective of this Article or this Agreement.

SPONSOR shall indemnify CONSULTANT and hold it harmless from any suit, action, actual damage and cost resulting solely from the negligence of SPONSOR related to the Project.

### **ARTICLE 7—LABOR LAW REQUIREMENTS**

The CONSULTANT, and any subconsultant or subcontractor retained by it in connection with the performance or furnishing of services under this Agreement, shall comply with the requirements of state or federal statutes, regulations, or orders applicable to the employment of employees.

### **ARTICLE 8—NONDISCRIMINATION PROVISIONS**

During the performance of its services under this Agreement, the CONSULTANT, and any subconsultant, subcontractor, or vendor retained by it, will abide by the provisions of *41 CFR 60-1.4*, *41 CFR 60-300.5*, and *41 CFR 60-741.5*, as appropriate. CONSULTANT is an equal opportunity employer.

## ARTICLE 9—WORKER'S COMPENSATION AND LIABILITY INSURANCE

The CONSULTANT agrees to procure and maintain at its own expense, and without direct expense to the SPONSOR, until final acceptance by the SPONSOR of the services covered by this Agreement, insurance of the kinds and in the amounts hereafter provided, written by insurance companies authorized to do business in the State of New York. Upon request, the CONSULTANT shall furnish the SPONSOR a certificate or certificates, in form satisfactory to the SPONSOR, showing that it has complied with this Article, which certificate or certificates shall provide that the policies shall not be changed or canceled until thirty (30) days' written notice has been given to the SPONSOR. The kinds and amounts of insurance required are as follows:

A. Policy - CONSULTANT'S General Liability (covering claims for bodily injury, death, or property damage, and contractual obligations)

Limits - \$2,000,000/\$4,000,000

Period - From the effective date of this Agreement to the expiration date of the construction contract guarantee period (one (1) year after acceptance of the Project by the SPONSOR).

B. Policy - CONSULTANT'S Professional Liability

Limits - \$2,000,000/\$2,000,000

Period - Same as A

C. Policy - Automobile Bodily Injury Liability and Property Damage (covering owned, non-owned, and hired vehicles)

Limits - \$1,000,000 combined single limit

Period - Same as A

If requested by the SPONSOR, the SPONSOR shall be named as additional insured, as its interests may appear, under the automobile and general liability policies. The CONSULTANT shall also procure a policy or policies covering its obligation in accordance with any Workmen's Compensation or Disability Benefits Law and shall maintain the same in force during the term of this Agreement. This coverage shall be noted or submitted on the insurance certificate referenced above.

## ARTICLE 10—ASSIGNMENT REQUIREMENTS

The CONSULTANT specifically agrees that:

A. It is prohibited from assigning, transferring, conveying, subletting, or otherwise disposing of this Agreement or of its right, title, or interest herein, or its power to execute this Agreement, to any other person, company, or corporation without the previous consent in writing of the SPONSOR.

- B. If this provision of the Agreement is violated, the SPONSOR may terminate this Agreement for cause in accordance with the provisions of Article 12. Furthermore, the SPONSOR shall be relieved from any liability and obligation hereunder to the person, company, or corporation to whom the CONSULTANT shall assign, transfer, convey, sublet, or otherwise dispose of this Agreement in violation of the foregoing paragraph (A), and such transferee shall forfeit and lose all monies assigned to it under this Agreement, except so much as may be required to pay its employees.

#### **ARTICLE 11—EXTRA WORK**

If the CONSULTANT is of the opinion that any work he has been directed to perform is beyond the scope of work identified in the Work Order and constitutes Extra Work, he shall promptly notify the SPONSOR of the fact.

If the SPONSOR determines that such work does constitute Extra Work, it shall provide extra compensation to the CONSULTANT upon a fair and equitable basis. A Supplemental Agreement providing for such compensation for Extra Work shall be prepared and executed by the CONSULTANT and SPONSOR.

#### **ARTICLE 12—ABANDONMENT OR AMENDMENT OF PROJECT AND TERMINATION**

A. **ABANDONMENT OR AMENDMENT OF THE PROJECT**—The SPONSOR shall have the absolute right to abandon or to amend its Project or to change the general basis of performance at any time, and such action on its part shall in no event be deemed a breach of this Agreement. If the SPONSOR amends its Project or changes the general basis thereof, and the CONSULTANT is of the opinion that Extra Work is made necessary thereby, then provisions of Article 11 of this Agreement with respect to Extra Work shall apply. If the Sponsor abandons the Project, then the provisions of Paragraph B(1)(b) below shall govern payment to the CONSULTANT.

#### **B. TERMINATION**

The obligation to provide further services under this Agreement may be terminated:

1. **For Cause:**
  - a. By either party upon thirty (30) days' prior written notice in the event of substantial failure by the other party to perform in accordance with the terms of this Agreement through no fault of the terminating party. Notwithstanding the foregoing, this Agreement will not terminate as the result of such substantial failure if the party receiving notice begins, within seven (7) days after receipt of such notice, to correct its failure to perform and proceeds diligently to cure such failure within thirty (30) days of such receipt; provided that, if and to the extent that such substantial failure cannot reasonably be cured within such thirty (30) day period, and if the party has diligently attempted to cure the failure and thereafter continues diligently to cure the problem, then the cure period may, in the discretion of the terminating party, be extended to sixty (60) days after the receipt of notice.

- b. By the CONSULTANT upon seven (7) days' written notice if (a) the CONSULTANT believes that it is being requested by the SPONSOR to perform or furnish services contrary to or in conflict with the CONSULTANT'S responsibilities as a licensed professional or the standard of care set forth in Article 3 hereof; or (b) the CONSULTANT'S services are delayed or suspended for more than ninety (90) days, consecutively or in the aggregate, for reasons beyond the CONSULTANT'S control; or (c) the SPONSOR has abandoned, or is considered to have abandoned, the Project.
2. **For Convenience** by the SPONSOR, effective upon the receipt of notice by the CONSULTANT.

C. **PAYMENTS UPON TERMINATION.**

1. **For Cause:**

- a. By the SPONSOR: If the SPONSOR terminates this Agreement for cause upon completion of any phase of Services, then payments due the CONSULTANT in accordance with this Agreement for all such services performed by or furnished through the CONSULTANT and its subconsultants, subcontractors, and vendors through the completion of such phase shall be paid through the date of termination as indicated in the Work Order or as otherwise provided herein. The CONSULTANT will also be paid for the charges of its subconsultants, subcontractors, or vendors who performed or furnished Services to the extent that such services have been performed or furnished in accordance with this Agreement through the effective date of the termination. The SPONSOR shall also pay the CONSULTANT for all unpaid Extra Work and unpaid reimbursable expenses.
- b. By the CONSULTANT: If the CONSULTANT terminates this Agreement for cause upon completion of any phase of Services, then payments due the CONSULTANT in accordance with this Agreement for all such services performed or furnished by the CONSULTANT and its subconsultants, subcontractors, or vendors through the completion of such phase shall be paid through the date of termination as indicated in the Work Order or as otherwise provided herein. The CONSULTANT shall also be paid for all unpaid Extra Work and unpaid reimbursable expenses, as well as for the CONSULTANT'S reasonable expenses directly attributable to termination in accordance with the rates for Extra Work set forth in the Work Order measured from the date of termination, including fair and reasonable sums for overhead and profit and the costs of terminating the CONSULTANT'S contracts with its subconsultants, subcontractors, or vendors.

2. **For Convenience**

- a. If the SPONSOR terminates this Agreement for convenience upon completion of any phase of Services, then payments due the CONSULTANT in accordance with this Agreement for all such services performed by or furnished through the CONSULTANT through the completion of such phase shall be paid through the date of termination as indicated in the Work Order or as otherwise provided herein. Additionally, the CONSULTANT will be paid for the charges of its subconsultants, subcontractors, or vendors who performed or furnished Services through the effective date of termination. The SPONSOR shall also pay the CONSULTANT for all unpaid Extra Work and unpaid reimbursable expenses, as well as for the CONSULTANT'S reasonable expenses directly attributable to termination in accordance with the rates for Extra Work, as agreed to by the

parties, measured from the date of termination, including fair and reasonable sums for overhead and profit and the costs of terminating the CONSULTANT'S contracts with its subconsultants, subcontractors, or vendors.

#### **ARTICLE 13—INTERCHANGE OF DATA**

During the performance of this Agreement, all technical data in regard to the Project whether (a) existing in the office of the SPONSOR or (b) existing in the office of the CONSULTANT, shall be made available (upon reasonable notice), to the other party to this Agreement without expense to such other party.

#### **ARTICLE 14—OWNERSHIP OF DRAWINGS AND AGREEMENT DOCUMENTS**

Original documents, such as tracings, plans, specifications, maps, basic survey notes and sketches, charts, computations, and other data prepared or obtained under the terms of this Agreement are instruments of service and remain the property of the CONSULTANT.

At the time of completion of its services and upon payment in full therefore, the CONSULTANT, upon the request of SPONSOR, shall make available to the SPONSOR copies of documents prepared as the result of this Agreement. These documents shall then become the property of the SPONSOR and the maintenance of the data therein shall be the sole responsibility of the SPONSOR. Any reuse of the documents by the SPONSOR or others on extensions of the Project, or on any other project, without written verification or adaptation by the CONSULTANT and its subconsultants, subcontractors, or vendors, as appropriate, for the specific purpose intended will be at the SPONSOR'S sole risk and expense and without liability or legal exposure to the CONSULTANT or its subconsultants, subcontractors, or vendors. The SPONSOR shall indemnify the CONSULTANT, its subconsultants, subcontractors, and vendors against, and hold them harmless from, all claims, damages, losses, and expenses (including reasonable expert and attorneys' fees) arising out of or resulting from such reuse.

#### **ARTICLE 15—INDEPENDENT CONTRACTOR**

The CONSULTANT, in accordance with its status as an independent contractor, shall conduct itself consistent with such status; shall neither hold itself out as nor claim to be an officer or employee of the SPONSOR by reason hereof; and shall not, by reason hereof, make any claim, demand, or application to or for any right or privilege applicable to an officer or employee of the SPONSOR, including, but not limited to, workers' compensation coverage, unemployment insurance benefits, Social Security coverage, or retirement membership or credit.

#### **ARTICLE 16—DOCUMENT REVIEW**

The CONSULTANT and the SPONSOR agree that properly authorized officials of the funding agency(ies) may from time to time inspect all Project documents for the purpose of insuring compliance with Federal and State laws and protecting the interests of the funding agency(ies).

## **ARTICLE 17—OTHER CONSIDERATIONS**

- A. The CONSULTANT shall require all persons employed to perform services hereunder, including its subconsultants or subcontractors, agents, officers, and employees, to comply with all applicable laws in the jurisdiction in which the Project is located.
- B. If any provision of this Agreement is held invalid, the remainder of this Agreement shall not be affected thereby if such remainder would then continue to conform to the terms and requirements of applicable law.
- C. By execution of this Agreement, the CONSULTANT represents that it has not paid, and also agrees not to pay, any fee, bonus, commission or consideration of any kind for the purpose of procuring or carrying out this Agreement, except as stated herein. Furthermore, CONSULTANT certifies that it has not agreed, as an express or implied condition for obtaining this Agreement, to employ or retain the service of any firm or person in connection with carrying out this Agreement.
- D. Any notice required under this Agreement shall be in writing, addressed to the appropriate party at the address set forth above (as modified in writing from time to time by such party), and shall be given personally; by registered or certified first-class mail, postage prepaid and return receipt requested; by facsimile transmission, with confirmation of receipt; or by a nationally-recognized overnight courier service, with proof of receipt. Notice shall be effective upon the date of receipt. For purposes of this Agreement, failure or refusal to accept receipt shall constitute receipt nonetheless.
- E. This Agreement, and the interpretation and enforcement of the provisions hereof, is governed by the laws of the State of New York.

## **ARTICLE 18 — SUBCONSULTANTS/SUBCONTRACTORS**

All subconsultants and subcontractors performing services for or work on this Project shall be bound by the same required provisions of this Agreement and all the attached Schedules as is the CONSULTANT. As set forth above, all agreements between the CONSULTANT and a subconsultant, subcontractor, or vendor shall include all standard required contract provisions, and such agreements may be subject to review by the State or Federal government or agencies.

## **ARTICLE 19 — FORCE MAJEURE**

Any delay in or failure of performance of any party to this Agreement shall not constitute a default under this Agreement nor give rise to any claim for damage, if and to the extent such delay or failure is caused by occurrences or events beyond the control of the party affected, including, but not limited to, acts of God, expropriation or confiscation of facilities or compliance with any order or request of government authority, affecting to a degree not presently existing, the supply, availability, or use of personnel or equipment; loss of utility services; blizzard, flood, fire; labor unrest; war, riot or any causes the party is unable to prevent with reasonable diligence. A party who is prevented from performing for any reason shall immediately notify the other in writing of the reason for the nonperformance and the anticipated extent of any delay. Additionally, if the delay resulting from any of the foregoing increases the cost of or time required by CONSULTANT to perform its services hereunder in an orderly and efficient manner, then CONSULTANT shall be entitled to an equitable adjustment in schedule and/or compensation.

**ARTICLE 20 — DISPUTE RESOLUTION**

SPONSOR and CONSULTANT agree to negotiate in good faith for a period of thirty (30) days from the date of notice of disputes between them prior to exercising their right under the following paragraph. The thirty-day (30) period may be extended upon mutual agreement of the parties.

If any dispute cannot be resolved pursuant to the above paragraph, and only if mutually agreed by SPONSOR and CONSULTANT, said dispute and all unsettled claims, counterclaims, and other matters in question between them arising out of or relating to this Agreement or the breach of any provision hereof ("disputes") shall be submitted to mediation by a mediator, to be selected by the parties jointly, prior to a party initiating a legal action against the other, unless initiating mediation would irrevocably prejudice one of the parties. It is the intention of the parties that any agreement reached at mediation become binding. The cost of mediation shall be shared equally between the parties.

**ARTICLE 21 – CONSEQUENTIAL DAMAGES**

Notwithstanding any other provision of the Agreement, neither party shall be liable to the other for any consequential damages incurred due to the fault of the other party, regardless of the nature of this fault or whether it was committed by the SPONSOR or the CONSULTANT, their employees, agents, subconsultants, or subcontractors. Consequential damages include, but are not limited to, loss of use and loss of profit.

**ARTICLE 22 – TERM OF THE AGREEMENT**

The term of this Agreement shall be from the Effective Date through September 30, 2027, unless sooner terminated as provided herein or extended by a written instrument signed by both Parties.

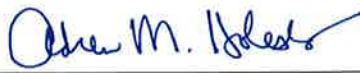
IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized representatives as of the \_\_\_\_\_ day of \_\_\_\_\_, 2023.

**CONSULTANT**

**SPONSOR**

PASSERO ASSOCIATES, ENGINEERING,  
ARCHITECTURE & SURVEYING, D.P.C.

PENINSULA AIRPORT COMMISSION

By:   
Andrew M. Holesko, CM

By: \_\_\_\_\_  
Lindsey Smith

Title: Vice President

Title: Chairwoman

Date: 04/17/2023

Date: \_\_\_\_\_



**ATTACHMENT “A”  
SCOPE OF SERVICES – GENERAL ENGINEERING /  
CONSULTING SERVICES**

**NEWPORT NEWS/WILLIAMSBURG INTERNATIONAL AIRPORT (PHF)**

**Sponsor: Peninsula Airport Commission**

**I. GENERAL**

The General Engineering/Consulting, (GEC) Services to be provided shall be on a continuing basis. Specifically authorized GEC services shall be described in separate work orders. The Consultant shall prepare each work order and forward it to the Sponsor for review, action, and approval. Consultant shall not proceed on projects until receipt of written authorization to proceed from the Sponsor. If Consultant does proceed prior to receipt of written authorization, Consultant services may not be eligible for payment from the Sponsor.

Scope of services, fees, and schedule for each phase of the development program (or a specific project within a development program) shall be set forth in each work order. If there are any inconsistencies between the Master Consulting Services Agreement and a work order, the work order shall govern. Work orders shall be approved by the Sponsor, Federal, and/or State Funding Agencies.

The sections that follow describe potential forms of professional General Engineering/Consulting Services to be provided. Consultant may provide services with in-house professionals or provide services through a subconsultant, whichever is agreed to by the Sponsor.

**II. PROGRAM MANAGEMENT SERVICES**

In general, Program Management (PM) services involve the detailed coordination of individual projects within overall development programs, including a continuing review of active development procedures relating to specific Sponsor goals and objectives. Specifically, PM services provide the Sponsor with program/project direction, consulting and review from initial program concepts to final project closeout. PM services also provide multi-disciplined, multi-sponsored project coordination (i.e., projects “by others”), to update the Sponsor on “other” development programs that may have an effect (or interaction) on Sponsor programs. PM services may be assigned by the Sponsor for programs related to the airport, roads, drainage systems, golf courses, economic development initiatives, public involvement and information, and other programs requested by the Sponsor.

Specifically, PM services may consist of the following:

1. Providing consultation with the Sponsor on both overall development program and specific project requirements, finances, schedules and other pertinent matters early in the life (and throughout the life) of the program (or project).
2. Review programs (and projects) in accordance with FAA and Virginia Department of Aviation (VDOA) airport design standards, recommendations, advisories, regulations and orders.
3. Coordination with the FAA, VDOA, Sponsor, general public and other concerned agencies involved with the airport and other development programs within the Sponsor’s jurisdiction.
4. Conducting and attending progress meetings.

5. Conducting and attending public information meetings, public hearings, and other associated presentations.
6. Collecting data necessary to prepare financial, planning, environmental, architectural, engineering, and other feasibility studies.
7. Conducting grants-related research and/or administration throughout the life of the program/project, including the preparation of necessary applications for local, state, and federal grant programs and studies.
8. Any other program management-related services, as requested by the Sponsor and agreed to by Consultant.

### **III. PLANNING SERVICES**

As directed, the GEC will provide planning-related services. In general, the GEC shall prepare technical studies, feasibility studies, interim reports, and provide status update presentations as each portion of a development program progresses, for Sponsor review and comment.

Planning services may consist of the following:

1. Project feasibility, operational, and financial planning.
2. Airport Master Plans and Airport Layout Plans.
3. Transportation and traffic planning.
4. Drainage master planning.
5. Environmental Assessments and Environmental Impact Statements.
6. Noise Compatibility Studies, Noise Measurement and Monitoring.
7. Financial studies.
8. Economic Development and/or Impact Studies.
9. Assistance with state and federal-level MBE/DBE Programs.
10. Participate in public information programs and/or public hearings relating to airport planning and development, and other development programs.
11. Monitor and maintain ground and aerial surveys.
12. Any other planning-related services, as requested by the Sponsor and agreed to by Consultant.

### **IV. ENGINEERING & ARCHITECTURAL DESIGN AND CONSTRUCTION PHASE SERVICES**

As directed, the GEC will provide engineering design and construction-phase services. In general, the GEC shall provide technical services, prepare interim reports and provide status update presentations as each portion of a development program progresses, for Sponsor review and comment.

Engineering design and construction-phase services may consist of the following:

1. Civil Engineering.
2. Site Engineering.
3. Environmental Engineering and Stormwater Management.
4. Structural, Mechanical, and Electrical Engineering.
5. Transportation and Traffic Planning and Engineering (including drainage analysis).
6. Architectural Design and Interior Design Services.
7. Landscape Architecture Services.

8. Bid preparation, review, and recommendation of award.
9. Construction Administration and Resident Engineering/Inspection.
10. Design-Build coordination, Management, and Construction.
11. Value Engineering.
12. Geotechnical Investigation.
13. Surveying.
14. Any other engineering design and construction-phase services, as requested by the Sponsor and agreed to by Consultant.

## ATTACHMENT "B"

### **REQUIRED FEDERAL CONTRACT PROVISIONS FOR PROFESSIONAL SERVICES CONTRACTS**

(Note: The term 'Contractor' is understood to mean a Subconsultant, and means one who participates, through a contract of subcontract (at any tier)).

#### **ACCESS TO RECORDS AND REPORTS**

The Contractor must maintain an acceptable cost accounting system. The Contractor agrees to provide the Owner, the Federal Aviation Administration, and the Comptroller General of the United States or any of their duly authorized representatives access to any books, documents, papers, and records of the Contractor which are directly pertinent to the specific contract for the purpose of making audit, examination, excerpts, and transcriptions. The Contractor agrees to maintain all books, records and reports required under this contract for a period of not less than three years after final payment is made and all pending matters are closed.

#### **GENERAL CIVIL RIGHTS PROVISIONS**

In all its activities within the scope of its airport program, the Contractor agrees to comply with pertinent statutes, Executive Orders, and such rules as identified in Title VI List of Pertinent Nondiscrimination Acts and Authorities to ensure that no person shall, on the grounds of race, color, national origin (including limited English proficiency), creed, sex (including sexual orientation and gender identity), age, or disability be excluded from participating in any activity conducted with or benefiting from Federal assistance.

The above provision binds the Contractors and Subcontractors from the bid solicitation period through the completion of the contract. This provision is in addition to that required by Title VI of the Civil Rights Act of 1964.

#### **CIVIL RIGHTS – TITLE VI ASSURANCES**

Compliance with Nondiscrimination Requirements:

During the performance of this contract, the Contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "Contractor") agrees as follows:

1. **Compliance with Regulations:** The Contractor (hereinafter includes Consultants) will comply with the Title VI List of Pertinent Nondiscrimination Acts and Authorities, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
2. **Non-discrimination:** The Contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin (including limited English proficiency), creed, sex (including sexual orientation and gender identity), age, or disability in the selection and retention of Subcontractors, including procurements of materials and leases of equipment. The Contractor will not participate directly or indirectly in the discrimination prohibited by the Nondiscrimination Acts and Authorities, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.
3. **Solicitations for Subcontracts, including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding or negotiation made by the Contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential Subcontractor or supplier will be notified by the Contractor of the Contractor's obligations under this contract and the Nondiscrimination Acts and Authorities on the grounds of race, color, or national origin.

4. **Information and Reports:** The Contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Sponsor or the Federal Aviation Administration to be pertinent to ascertain compliance with such Nondiscrimination Acts and Authorities and instructions. Where any information required of a Contractor is in the exclusive possession of another who fails or refuses to furnish the information, the Contractor will so certify to the Sponsor or the Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.
5. **Sanctions for Noncompliance:** In the event of a Contractor's noncompliance with the non-discrimination provisions of this contract, the Sponsor will impose such contract sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to:
  - a. Withholding payments to the Contractor under the contract until the Contractor complies; and/or
  - b. Cancelling, terminating, or suspending a contract, in whole or in part.
6. **Incorporation of Provisions:** The Contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations, and directives issued pursuant thereto. The Contractor will take action with respect to any subcontract or procurement as the Sponsor or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the Contractor becomes involved in, or is threatened with litigation by a Subcontractor, or supplier because of such direction, the Contractor may request the Sponsor to enter into any litigation to protect the interests of the Sponsor. In addition, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.

#### **Title VI List of Pertinent Nondiscrimination Acts and Authorities**

During the performance of this contract, the Contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "Contractor") agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

- Title VI of the Civil Rights Act of 1964 (42 USC § 2000d *et seq.*, 78 stat. 252) (prohibits discrimination on the basis of race, color, national origin);
- 49 CFR part 21 (Non-discrimination in Federally-Assisted programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act of 1964);
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 USC § 4601) (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Section 504 of the Rehabilitation Act of 1973 (29 USC § 794 *et seq.*), as amended (prohibits discrimination on the basis of disability); and 49 CFR part 27 (Nondiscrimination on the Basis of Disability in Programs or Activities Receiving Federal Financial Assistance);
- The Age Discrimination Act of 1975, as amended (42 USC § 6101 *et seq.*) (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 USC § 47123), as amended (prohibits discrimination based on race, creed, color, national origin, or sex);

- The Civil Rights Restoration Act of 1987 (PL 100-259) (broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, the Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients and Contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act of 1990, (42 USC § 12101, et seq) (prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities) as implemented by U.S. Department of Transportation regulations at 49 CFR parts 37 and 38;
- The Federal Aviation Administration’s Nondiscrimination statute (49 USC § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (ensures nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations);
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs [70 Fed. Reg. at 74087 (2005)];
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 USC 1681 *et seq*).

## **DISADVANTAGED BUSINESS ENTERPRISES**

**Contract Assurance (49 CFR § 26.13)** - The Contractor, Subrecipient or Subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of Department of Transportation-assisted contracts. Failure by the Contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the Owner deems appropriate, which may include, but is not limited to: (1) Withholding monthly progress payments; (2) Assessing sanctions; (3) Liquidated damages; and/or (4) Disqualifying the Contractor from future bidding as non-responsible.

**Prompt Payment (49 CFR § 26.29)** - The Prime Contractor agrees to pay each Subcontractor under this prime contract for satisfactory performance of its contract no later than 30 days from the receipt of each payment the Prime Contractor receives from the Sponsor. The Prime Contractor agrees further to return retainage payments to each Subcontractor within 30 days after the Subcontractor's work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the Sponsor. This clause applies to both DBE and non-DBE Subcontractors.

## **FEDERAL FAIR LABOR STANDARDS ACT (FEDERAL MINIMUM WAGE)**

This contract incorporates by reference the provisions of 29 CFR part 201, et seq. the Federal Fair Labor Standards Act (FLSA), with the same force and effect as if given in full text. The FLSA sets minimum wage, overtime pay, recordkeeping, and child labor standards for full and part-time workers. Consultant has full responsibility to monitor its compliance to the referenced statute or regulation. Consultant must address any claims or dispute that arise from this requirement directly with the U.S. Department of Labor – Wage and Hour Division.

All subcontracts that the Consultant enters into as a result of this contract incorporates by reference the provisions of 29 CFR part 201, et seq. the Federal Fair Labor Standards Act (FLSA), with the same force and effect as if given in full text. The FLSA sets minimum wage, overtime pay, recordkeeping, and child labor standards for full and part-time workers. Each Subconsultant has full responsibility to monitor its compliance to the referenced statute or regulation. Each Subconsultant must address any claims or dispute that arise from this requirement directly with the U.S. Department of Labor – Wage and Hour Division.

### **OCCUPATIONAL SAFETY AND HEALTH ACT OF 1970**

This contract and all subcontracts that result from this contract incorporate by reference the requirements of 29 CFR Part 1910 with the same force and effect as if given in full text. Each employer must provide a work environment that is free from recognized hazards that may cause death or serious physical harm to the employee. Each employer retains full responsibility to monitor its compliance with the applicable requirements of the Occupational Safety and Health Act of 1970 (20 CFR Part 1910). Each employer must address any claims or disputes that pertain to a referenced requirement directly with the U.S. Department of Labor – Occupational Safety and Health Administration.

### **CERTIFICATION REGARDING TAX DELINQUENCY & FELONY CONVICTIONS**

**Note:** If Subconsultant cannot affirm both of the following certification statements, the Subconsultant shall be ineligible to enter into this agreement with the Consultant.

- 1) The Subconsultant, by signing this Agreement, certifies that it is not a corporation that has any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability.
- 2) The Subconsultant, by signing this Agreement, certifies that it is not a corporation that was convicted of a criminal violation under any Federal law within the preceding 24 months.

#### **Term Definitions:**

**Felony conviction:** Felony conviction means a conviction within the preceding twenty-four (24) months of a felony criminal violation under any Federal law and includes conviction of an offense defined in a section of the U.S. Code that specifically classifies the offense as a felony and conviction of an offense that is classified as a felony under 18 USC § 3559.

**Tax Delinquency:** A tax delinquency is any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted, or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability.

**Note:** If a Consultant or Subconsultant responds in the affirmative to either of the above representations, the applicant is ineligible to receive an award unless the Sponsor has received notification from the agency suspension and debarment official (SDO) that the SDO has considered suspension or debarment and determined that further action is not required to protect the Government's interests. The applicant therefore must provide information to the Owner about its tax liability or conviction to the Owner, who will then notify the FAA Airports District Office, which will then notify the agency's SDO to facilitate completion of the required considerations before award decisions are made.

### **TRADE RESTRICTION CERTIFICATION**

By signing this Agreement, the Offeror/Contractor certifies that with respect to this solicitation and any resultant contract, the Offeror/Contractor –

- 1) is not owned or controlled by one or more citizens of a foreign country included in the list of countries that discriminate against U.S. firms as published by the Office of the United States Trade Representative (USTR);

- 2) has not knowingly entered into any contract or subcontract for this project with a person that is a citizen or national of a foreign country included on the list of countries that discriminate against U.S. firms as published by the USTR; and
- 3) has not entered into any subcontract for any product to be used on the Federal project that is produced in a foreign country included on the list of countries that discriminate against U.S. firms published by the USTR.

This certification concerns a matter within the jurisdiction of an agency of the United States of America and the making of a false, fictitious, or fraudulent certification may render the maker subject to prosecution under Title 18 USC § 1001.

The Offeror/Contractor must provide immediate written notice to the Owner if the Offeror/Contractor learns that its certification or that of a Subcontractor was erroneous when submitted or has become erroneous by reason of changed circumstances. The Contractor must require Subcontractors provide immediate written notice to the Contractor if at any time it learns that its certification was erroneous by reason of changed circumstances.

Unless the restrictions of this clause are waived by the Secretary of Transportation in accordance with 49 CFR § 30.17, no contract shall be awarded to a Offeror/Contractor or Subcontractor:

- 1) who is owned or controlled by one or more citizens or nationals of a foreign country included on the list of countries that discriminate against U.S. firms published by the USTR; or
- 2) whose Subcontractors are owned or controlled by one or more citizens or nationals of a foreign country on such USTR list; or
- 3) who incorporates in the public works project any product of a foreign country on such USTR list.

Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the certification required by this provision. The knowledge and information of a Contractor is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

The Offeror/Contractor agrees that, if awarded a contract resulting from this solicitation, it will incorporate this provision for certification without modification in all lower tier subcontracts. The Contractor may rely on the certification of a prospective Subcontractor that it is not a firm from a foreign country included on the list of countries that discriminate against U.S. firms as published by USTR, unless the Offeror/Contractor has knowledge that the certification is erroneous.

This certification is a material representation of fact upon which reliance was placed when making an award. If it is later determined that the Contractor or Subcontractor knowingly rendered an erroneous certification, the Federal Aviation Administration (FAA) may direct through the Owner cancellation of the contract or subcontract for default at no cost to the Owner or the FAA.

## **VETERAN'S PREFERENCE**

In the employment of labor (excluding executive, administrative, and supervisory positions), the Contractor and all sub-tier Contractors must give preference to covered veterans as defined within Title 49 United States Code Section 47112. Covered veterans include Vietnam-era veterans, Persian Gulf veterans, Afghanistan-Iraq war veterans, disabled veterans, and small business concerns (as defined by 15 USC § 632) owned and controlled by disabled veterans. This preference only applies when there are covered veterans readily available and qualified to perform the work to which the employment relates.



## **PROHIBITION ON CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT**

Contractor and Subcontractor agree to comply with mandatory standards and policies relating to use and procurement of certain telecommunications and video surveillance services or equipment in compliance with the National Defense Authorization Act [Public Law 115-232 § 889(f)(1)].

## **CERTIFICATION REGARDING DOMESTIC PREFERENCES FOR PROCUREMENTS**

The Bidder or Offeror certifies by signing and submitting this bid or proposal that, to the greatest extent practicable, the Bidder or Offeror has provided a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including, but not limited to, iron, aluminum, steel, cement, and other manufactured products) in compliance with 2 CFR § 200.322.

## **TEXTING WHEN DRIVING**

In accordance with Executive Order 13513, "Federal Leadership on Reducing Text Messaging While Driving", (10/1/2009) and DOT Order 3902.10, "Text Messaging While Driving", (12/30/2009), the Federal Aviation Administration encourages recipients of Federal grant funds to adopt and enforce safety policies that decrease crashes by distracted drivers, including policies to ban text messaging while driving when performing work related to a grant or sub-grant.

The Contractor must promote policies and initiatives for employees and other work personnel that decrease crashes by distracted drivers, including policies to ban text messaging while driving. The Contractor must include these policies in each third-party subcontract involved on this project.

## **EQUAL EMPLOYMENT OPPORTUNITY (EEO)**

### **Equal Opportunity Clause**

During the performance of this contract, the Contractor agrees as follows:

- (1) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff, or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
- (2) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
- (3) The Contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individual who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the Contractor's legal duty to furnish information.

- (4) The Contractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer, advising the labor union or workers' representative of the Contractor's commitments under this section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- (5) The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- (6) The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- (7) In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- (8) The Contractor will include the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each Subcontractor or Vendor. The Contractor will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions, including sanctions for noncompliance: *Provided*, however, that in the event the Contractor becomes involved in, or is threatened with, litigation with a Subcontractor or Vendor as a result of such direction, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

#### **DEBARMENT AND SUSPENSION (NON-PROCUREMENT)**

By signing this contract agreement, the Consultant certifies that neither it nor its principals are presently debarred or suspended by any Federal department or agency from participation in this transaction.

#### **Certification Regarding Debarment and Suspension Regarding Subconsultants:**

The Consultant, by administering each lower tier subcontract that exceeds \$25,000 as a "covered transaction", must verify each lower tier participant of a "covered transaction" under the project is not presently debarred or otherwise disqualified from participation in this federally-assisted project. The Consultant will accomplish this by:

1. Checking the System for Award Management at website: <http://www.sam.gov>.
2. Collecting a certification statement similar to the Certificate Regarding Debarment and Suspension (Bidder or Offeror), above.
3. Inserting a clause or condition in the covered transaction with the lower tier contract.

If the Federal Aviation Administration later determines that a lower tier participant failed to disclose to a higher tier participant that it was excluded or disqualified at the time it entered the covered transaction, the FAA may pursue any available remedies, including suspension and debarment of the non-compliant participant.

## CONTRACT WORKHOURS AND SAFETY STANDARDS ACT REQUIREMENTS

### 1. Overtime Requirements.

No Contractor or Subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic, including watchmen and guards, in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

### 2. Violation; Liability for Unpaid Wages; Liquidated Damages.

In the event of any violation of the clause set forth in paragraph (1) of this clause, the Contractor and any Subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Contractor and Subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this clause, in the sum of \$29 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this clause.

### 3. Withholding for Unpaid Wages and Liquidated Damages.

The Federal Aviation Administration (FAA) or the Owner shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or Subcontractor under any such contract or any other Federal contract with the same Prime Contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same Prime Contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or Subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this clause.

### 4. Subcontractors.

The Contractor or Subcontractor shall insert in any subcontracts the clauses set forth in paragraphs (1) through (4) and also a clause requiring the Subcontractor to include these clauses in any lower tier subcontracts. The Prime Contractor shall be responsible for compliance by any Subcontractor or lower tier Subcontractor with the clauses set forth in paragraphs (1) through (4) of this clause.

## LOBBYING AND INFLUENCING FEDERAL EMPLOYEES

The Consultant certifies by signing this agreement, to the best of his or her knowledge and belief, that:

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the Consultant, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- (3) The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

### **CLEAN AIR AND WATER POLLUTION CONTROL**

Consultant agrees to comply with all applicable standards, orders, and regulations issued pursuant to the Clean Air Act (42 USC §§ 7401-7671q) and the Federal Water Pollution Control Act as amended (33 USC §§ 1251-1387). The Consultant agrees to report any violation to the Owner immediately upon discovery. The Owner assumes responsibility for notifying the Environmental Protection Agency (EPA) and the Federal Aviation Administration.

Consultant must include this requirement in all subcontracts that exceeds \$150,000.

### **BREACH OF CONTRACT TERMS**

Any violation or breach of terms of this contract on the part of the Consultant or its Subcontractors and or Subconsultants may result in the suspension or termination of this contract or such other action that may be necessary to enforce the rights of the parties of this agreement.

Owner will provide Consultant written notice that describes the nature of the breach and corrective actions the Consultant must undertake in order to avoid termination of the contract. Owner reserves the right to withhold payments to Consultant until such time the Consultant corrects the breach or the Owner elects to terminate the contract. The Owner's notice will identify a specific date by which the Consultant must correct the breach. Owner may proceed with termination of the contract if the Consultant fails to correct the breach by the deadline indicated in the Owner's notice.

The duties and obligations imposed by this contract and the rights and remedies available thereunder are in addition to, and not a limitation of, any duties, obligations, rights, and remedies otherwise imposed or available by law.

**[End of Attachment "B" – Federal Contract Provisions]**

Return to:  
Phoenix Consulting Services, Inc.  
250 Ryan Lane  
Covington, GA 30014  
Attn: Donna Coody

**Parcel ID#112000101**

**This document was prepared by  
VIRGINIA NATURAL GAS, INC.**

**RESOLUTION 23-006  
TEMPORARY CONSTRUCTION EASEMENT of RIGHT OF WAY**

**THIS DEED OF TEMPORARY CONSTRUCTION EASEMENT of RIGHT OF WAY**

made this \_\_\_\_ day of \_\_\_\_\_, 2023, by and between:

**GRANTOR:**

**PENINSULA AIRPORT COMMISSION**

a Virginia corporation with offices at  
900 Bland Boulevard, #4933  
Newport News, VA 23602  
hereinafter referred to as "**Owner**",

and

**GRANTEE:**

**VIRGINIA NATURAL GAS, INC.**

a Virginia public service corporation with offices at  
5100 East Virginia Beach Boulevard  
Norfolk, Virginia 23502  
hereinafter referred to as "**VNG**",

**WITNESSES THAT:**

For the sum of TEN DOLLARS (\$10.00), and other valuable considerations, the receipt and sufficiency of which are hereby acknowledged, Owner grants and conveys unto VNG, its successors and assigns the following temporary construction easement (hereinafter referred to collectively as the "**Easement**"):

(A) an exclusive temporary easement over, under, upon and across certain land of Owner situated in the City of Newport News, Virginia, and identified as GPIN/Tax Map No. 112000101, and more particularly described in property plat of survey titled "Exhibit "A"" (hereinafter referred to as the "**Property**"). with the location and size of the easement being shown on Exhibit "A", attached hereto and incorporated herein (hereinafter referred to as the "**Easement Area**"), to move, stage and store construction and other machinery, apparatus, equipment, vehicles and personnel and to do such other activities as shall deem necessary or desirable in connection with certain activities on, in, under or above the adjacent property, such activities on the adjacent property including, without limitation, the construction, installation, laying, maintenance, inspection, testing, operation, repair, replacement, alteration, renewing, rebuilding, reconstruction, improvement, upgrading, enhancement, changing,

patrolling, addition and removing of pipes, mains, equipment, cables, lines, conduits, valves, regulators, heaters, meters, anodes, ground beds, fittings, markers, cathodic protection facilities, regulator stations, and data and voice transmission lines, of every nature and description (collectively called the “**Systems**”);

(B) a non-exclusive easement of unrestricted and free access, ingress and egress to and from the Easement Area on, over and through the Property;

(C) a non-exclusive easement to go on, over and through Property and the Easement Area to inspect and survey the Property and Easement Area;

(D) a non-exclusive easement to cut, clear, remove, and dispose of all trees, undergrowth, improvements, and any other obstructions now or in the future located in the Easement Area that may interfere with or hinder the exercise of the rights and privileges of the Easements granted in this Agreement; and

(E) all other rights, privileges, and easements necessary or convenient for the full enjoyment and use of the Easement Area, the Easements and the rights and privileges of the granted in this Agreement.

2. **Expiration of Agreement.** This Easement shall expire automatically on or before the date one hundred and eighty (180) days after the date of commencement of construction of the Systems on the adjacent property. Upon the expiration of this Agreement, VNG agrees to fill any holes VNG created, level the ground of the Easement Area to approximately the same contour as existed on the Easement Area just prior to the commencement of construction and to spread grass seed over the Easement Area.

3. **Enforcement; Strict Compliance.** VNG shall have the right to take any action, at law and in equity, to enforce or prevent the interference with, the easements, rights and privileges granted in this Agreement. Failure of any party to exercise any power or right given hereunder or to insist upon strict compliance with the terms hereof shall not be, or be deemed to be, a waiver of such party’s right to demand exact compliance with the terms of this Agreement.

4. **Transferability.** VNG shall have the full right and authority to assign, transfer, and grant easements and convey to others, the, interests, rights, and privileges declared in this Agreement, in whole or in part, without the prior consent of Property Owner or any other party.

5. **Authority.** The parties warrant and represent one to the other that they have full power and authority to enter into this Agreement.

6. **Binding Effect.** This Agreement shall be binding upon and enforceable against, and shall be for the benefit of, the parties hereto and their respective heirs, legal representatives, successors and assigns.

7. **Running with the Land.** The provisions of this Agreement shall run with and bind the Property and inure to the benefit of VNG.

8. **Integrated Agreement; Modification.** This Agreement constitutes the entire and complete agreement between the parties with respect to the transaction contemplated hereby, and conversations, representations, promises, inducements, warranties or statements not reduced to writing and expressly set forth in this Agreement shall be of no force or effect whatsoever. No conduct or course of action undertaken or performed by the parties shall have the effect of, or be deemed to have the effect of, modifying, altering or amending the terms, covenants and conditions of this Agreement. This Agreement may not be modified, altered or amended except by a written instrument executed by the party to be bound.

9. **Severability.** If any of the provisions of this Agreement are hereinafter expressly declared by a court of competent jurisdiction to be invalid or unenforceable, then any such provision shall be canceled and severed from this Agreement and the other provisions of this Agreement shall continue in full force and effect.

10. **Headings.** The headings of this Agreement are for convenience only, shall in no way define or limit the scope or content this Agreement, and shall not be considered in any construction or interpretation of the provisions of this Agreement or any part of this Agreement.

11. **Construction.** No provision of this Agreement shall be construed against or interpreted to the disadvantage of any party by any court or other governmental or judicial authority by reason of such party's having or being deemed to have prepared or imposed such provision.

12. **Exhibits.** Each and every exhibit referred to or otherwise mentioned in this Agreement is attached to this Agreement and shall be construed to be a part of this Agreement by such reference or other mention at each point in which such reference or other mention occurs, in the same manner and with the same effect as if each exhibit were set forth in full and at length every time such terms are used.

13. **Counterparts.** This Agreement may be signed in counterparts and shall be considered a complete instrument when all parties have affixed their signatures.

14. **Governing Law.** This Agreement shall be construed, enforced and interpreted in accordance with the laws of the State in which the Property is located, and those laws shall control in the event of any conflict of laws.

**TO HAVE AND HOLD**, the rights, privileges and duties set out herein.

**IN WITNESS WHEREOF**, Owner has caused this Deed of Easement to be properly executed by an authorized officer the date first above written, intending to be legally bound hereby.

Owner: **PENINSULA AIRPORT COMMISSION**

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

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

City/County of Newport News

Commonwealth of Virginia

The foregoing Deed of Temporary Easement was acknowledged before me this \_\_\_\_ day of \_\_\_\_, 2023, by:

\_\_\_\_\_, \_\_\_\_\_ on behalf of \_\_\_\_\_.  
Name Title Owner

Notary Public: \_\_\_\_\_

My Commission Expires: \_\_\_\_\_


[Notary Seal]



# VNG 2105050 Kiln Creek Regulator Station

Proposed 50' Temporary Construction Easement  
Peninsula Airport Commission  
PID#112000101

Legend

 JEFFERSON

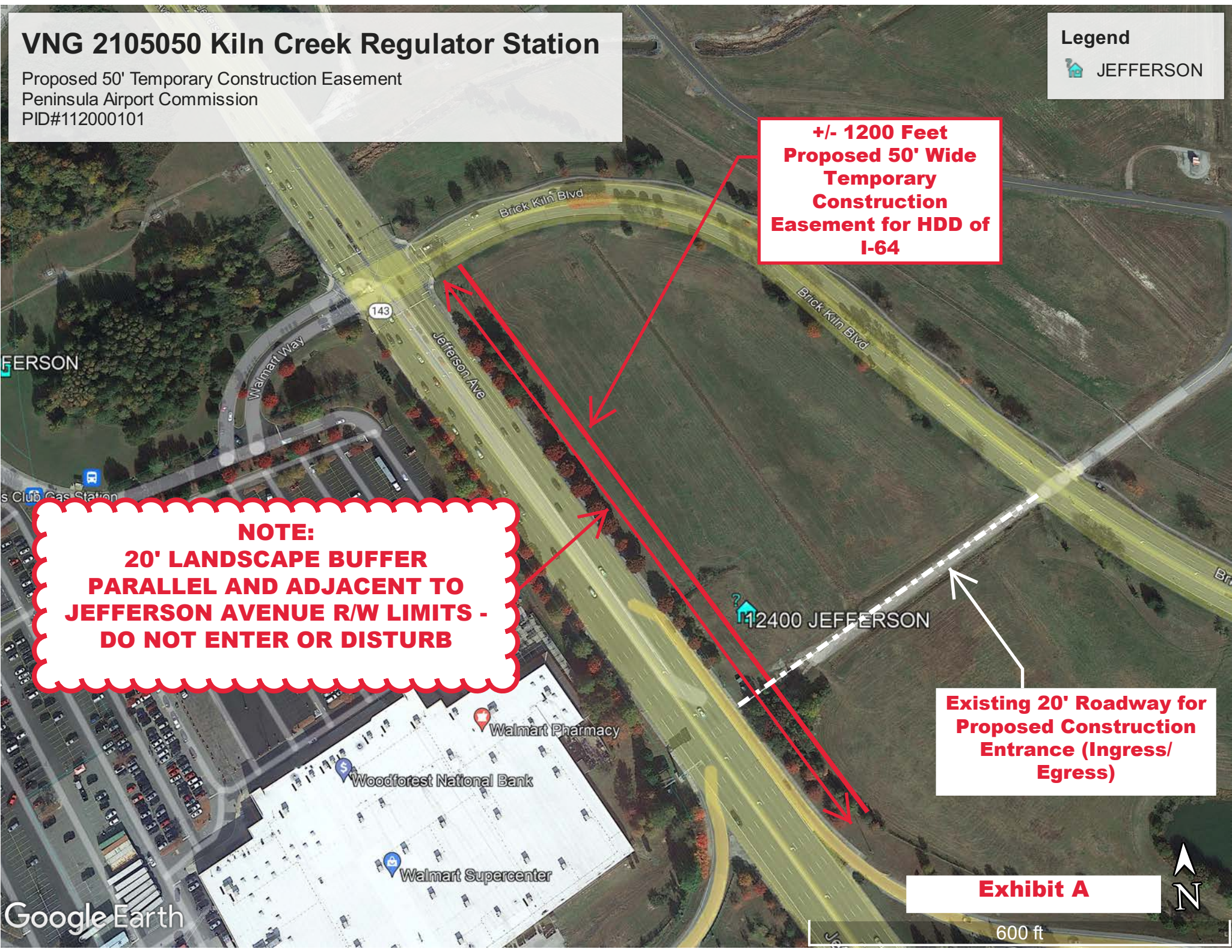
**+/- 1200 Feet  
Proposed 50' Wide  
Temporary  
Construction  
Easement for HDD of  
I-64**

**NOTE:  
20' LANDSCAPE BUFFER  
PARALLEL AND ADJACENT TO  
JEFFERSON AVENUE R/W LIMITS -  
DO NOT ENTER OR DISTURB**

**Existing 20' Roadway for  
Proposed Construction  
Entrance (Ingress/  
Egress)**

**Exhibit A**

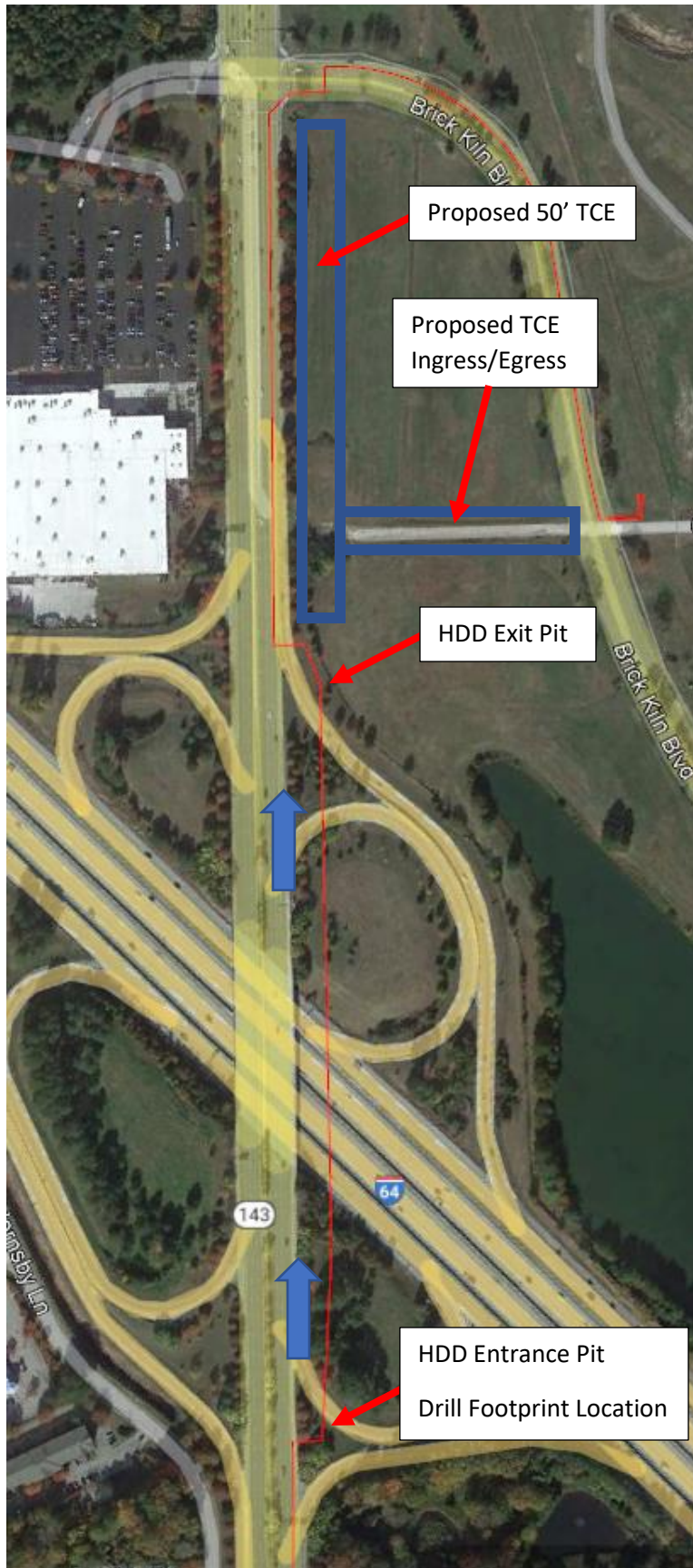
600 ft





## 8" Steel - Kiln Creek Pressure Improvement Project

This gas main installation project is required to increase the pressures and system reliability for the existing customers in the Kiln Creek area of Newport News. In order to complete this project, VNG is required to install an 8" steel gas main in public ROW as well as complete a large Horizontal Directional Drill (HDD) underneath I-64 from the Patrick Henry Mall side of Jefferson Ave to Brick Kiln Blvd. This will require VNG and the Awarded Contractor, Southeast Connections, to utilize the proposed Temporary Construction Easement (TCE) as a staging, equipment and material laydown, and pipe string area as it falls directly in line with the bore. We looked at other options in this area but are unable to perform the drill and pipe installation without utilizing this area outside of the public ROW. This project is expected to take 4 months to complete that includes restoration efforts. We will comply with any and all of the Newport News Airport Planning & Development Committees' requests.



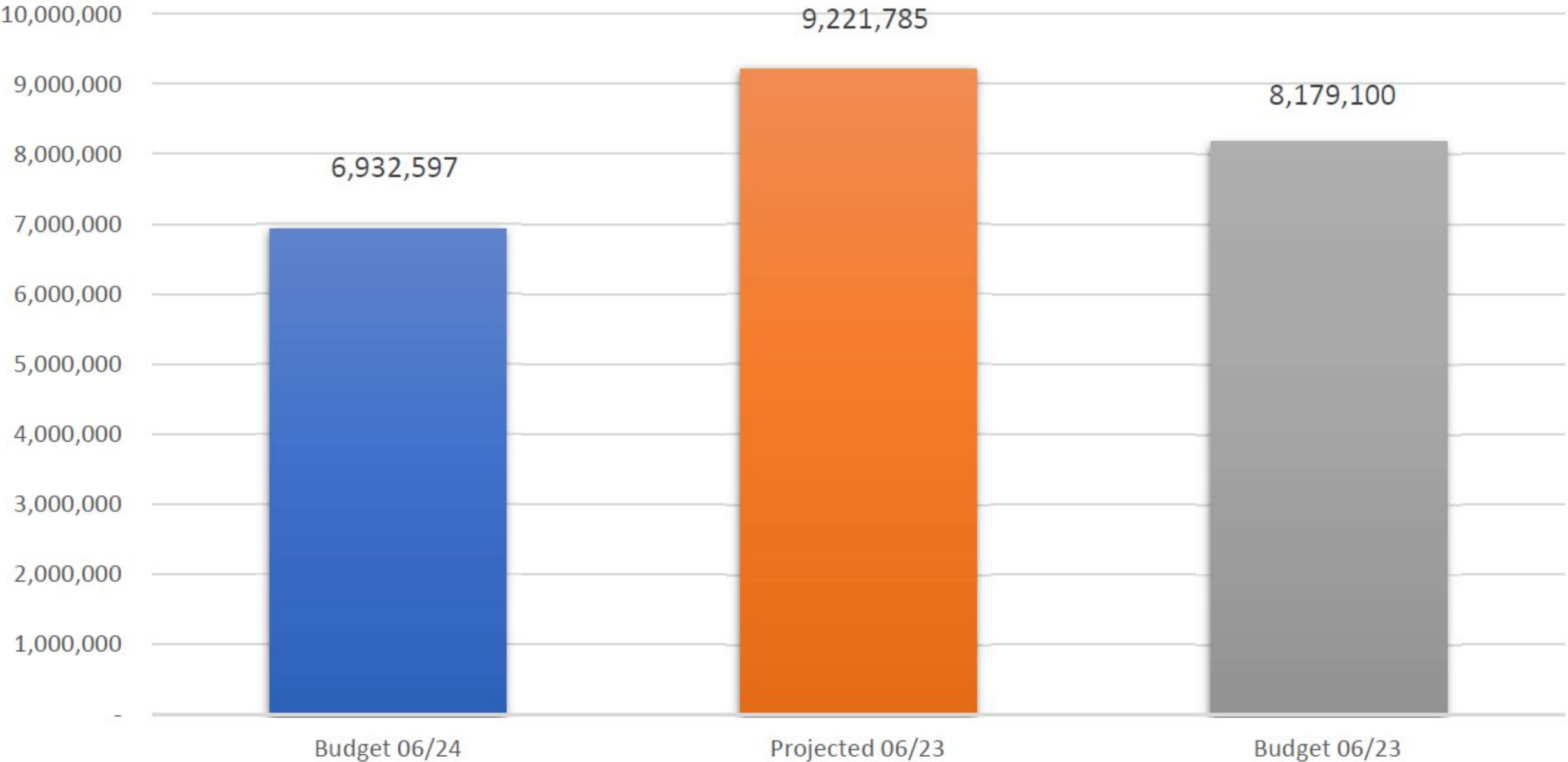
# EXHIBIT ONE

# PENINSULA AIRPORT COMMISSION FY24 BUDGET

**PENINSULA AIRPORT COMMISSION  
ANNUAL CASH FLOW BUDGET  
for  
FISCAL YEAR ENDING JUNE 2024**

# Peninsula Airport Commission

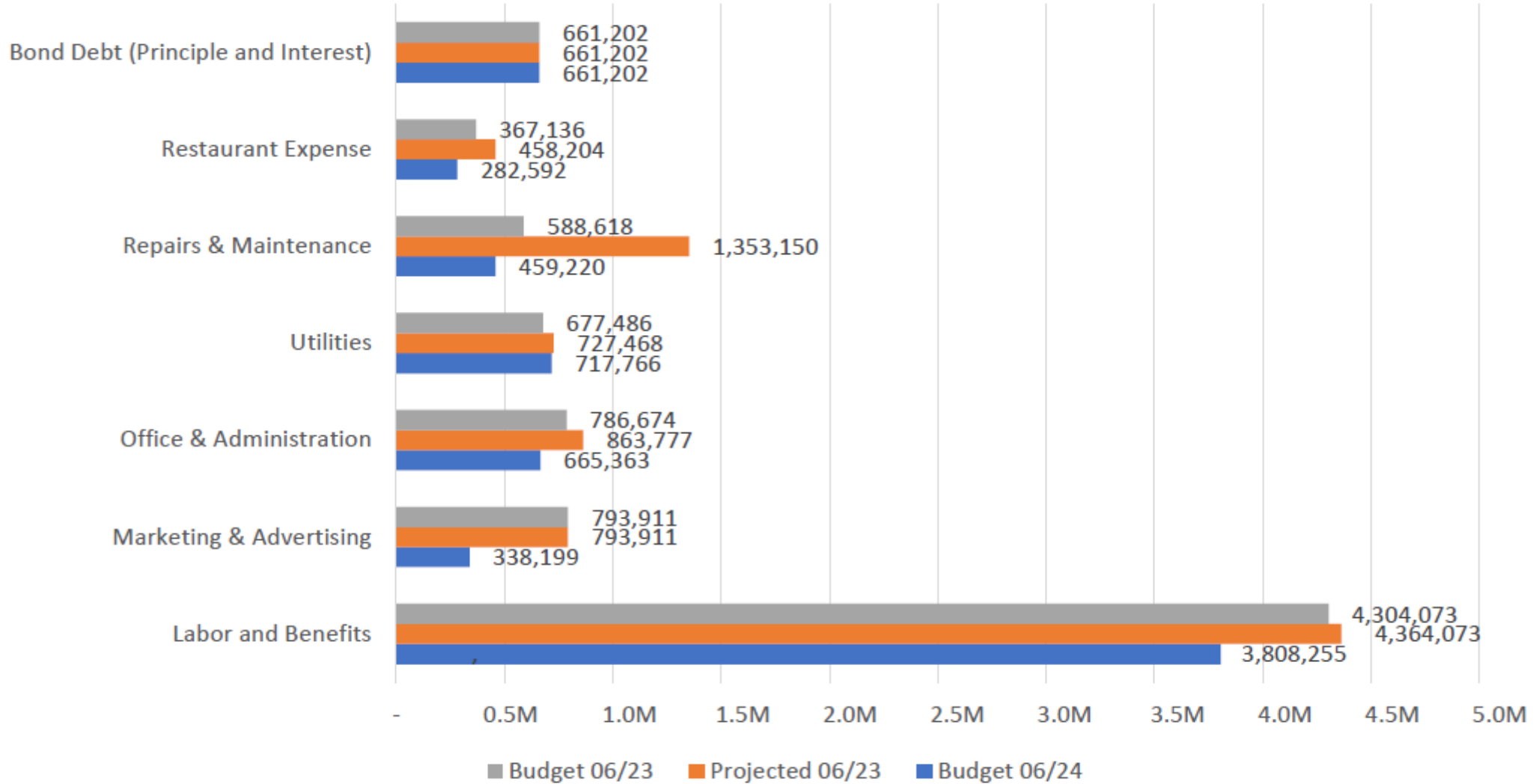
## Expense Budget Fiscal Year June 2024



## Expense Categories

- Labor expenses are based on the current list of employed associates. Headcount reductions due to the termination of Avelo ground handling and customer service activities were implemented prior to the beginning of the budget year.
- Marketing and Advertising expenses have been reduced to a level consistent with only a legacy carrier operating. Maintenance level market education and change awareness programs are expected to be significantly less than the prior year campaigns related to new airline service.
- Office and Administration expenses are mostly fixed in nature and not expected to vary relative to the passenger count range used for the budget. All items have been reviewed to make sure the expense is necessary.
- Repairs and Maintenance have been reviewed to make sure everything necessary for the continued efficient operation of all buildings and equipment is accounted for. This budget line item includes an additional contingency amount of \$90K.
- Utility expense has been reviewed while looking for all usage efficiency possibilities. There is still a big unknown as to the potential inflation increases. The possibility of increases has not been factored into these budget amounts.

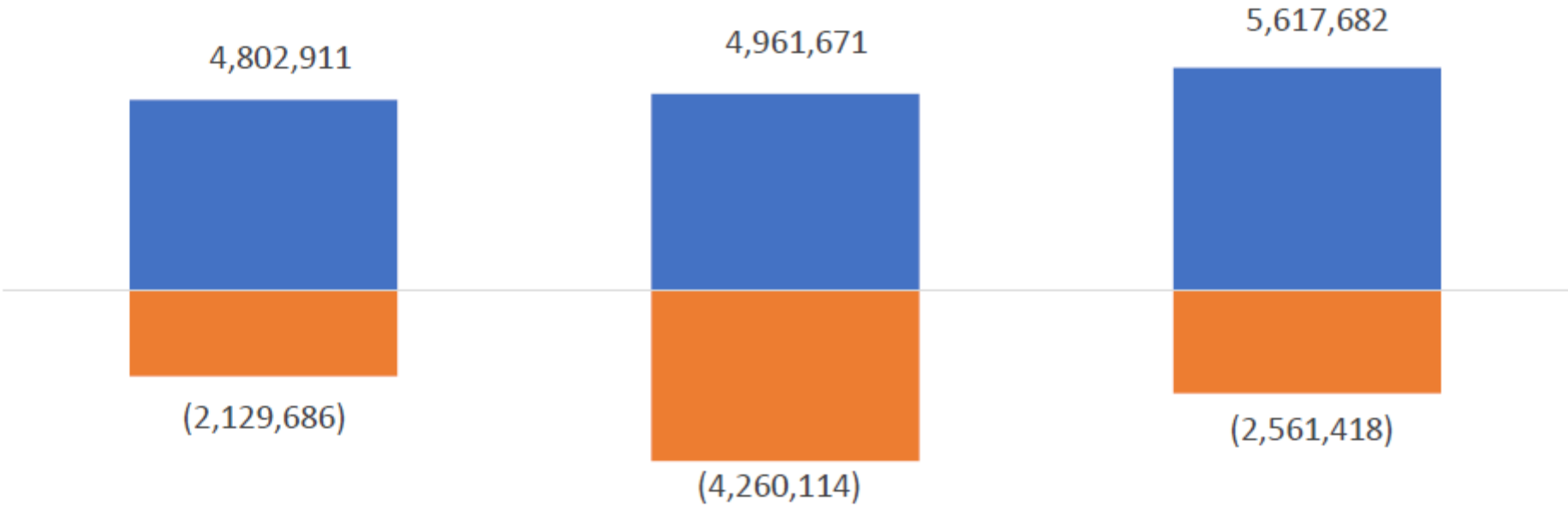
## Peninsula Airport Commission Expense Budget Fiscal Year June 2024





# Peninsula Airport Commission Cash Flow Budget Fiscal Year June 2024

■ Revenue    ■ Net Loss

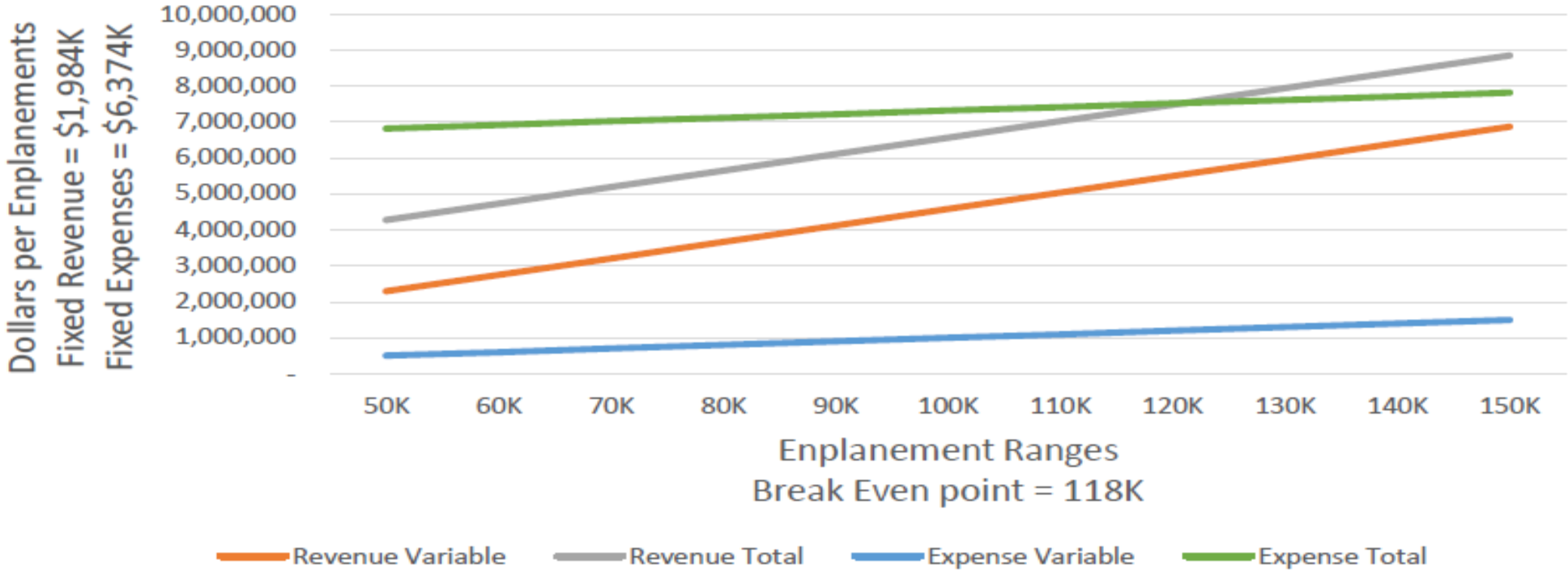


	Budget 06/24	Projected 06/23	Budget 06/23
Net Loss	(2,129,686)	(4,260,114)	(2,561,418)
Revenue	4,802,911	4,961,671	5,617,682

## Revenue Categories

- Airline revenues are based on a steady passenger count for American Airlines. The seats available are expected to be 225 per day with 75% fill rate. Total enplaned passengers for the year budgeted at 61,600. This is down drastically from the budget for the year ending June 2023.
- Fixed Based Operators' revenues are expected to continue at the current trend.
- Property Rental revenue is based on the current list of tenants. Existing hangars and rental spaces are approximately 100% full and no new rental assets are scheduled to be brought on board in the budget year.
- Rental car revenue is directly tied to passenger count. This revenue is budgeted consistent with the historical rate per passenger count.
- Parking lot revenue is directly related to the number of passengers. The slight increase in per day charge to \$10 for all lots is expected to have a small impact on overall revenue dollars. The budget is based on a conservative amount per passenger count.

# Peninsula Airport Commission Break Even Analysis Fiscal Year June 2024 Dollars per Enplanement Estimates



PENINSULA AIRPORT COMMISSION  
 BUDGET FOR THE YEAR ENDED JUNE 2024

	Budget 06/24	Projected 06/23	Budget 06/23
	Total		
Revenue	4,802,911	4,961,671	5,617,682
Expense	6,932,597	9,221,785	8,179,100
Net	(2,129,686)	(4,260,114)	(2,561,418)
<b>REVENUE</b>			
Airline Fees	450,482	460,649	672,032
Fixed Based Operators	664,881	452,725	593,311
Property Rental	1,145,311	1,149,785	1,149,785
Rental Cars	1,690,718	1,820,947	1,937,986
Parking Lot	567,572	717,534	853,512
Restaurant Income	283,947	360,030	411,056
<b>TOTAL REVENUE</b>	<b>4,802,911</b>	<b>4,961,671</b>	<b>5,617,682</b>
<b>EXPENSES</b>			
Labor and Benefits	3,808,255	4,364,073	4,304,073
Marketing & Advertising	338,199	793,911	793,911
Office & Administration	665,363	863,777	786,674
Utilities	717,766	727,468	677,486
Repairs & Maintenance	459,220	1,353,150	588,618
Restaurant Expense	282,592	458,204	367,136
Bond Debt (Principle and Interest)	661,202	661,202	661,202
<b>TOTAL EXPENSES</b>	<b>6,932,597</b>	<b>9,221,785</b>	<b>8,179,100</b>

PENINSULA AIRPORT COMMISSION  
CAPITAL PROJECT BUDGET

**2023**

**PROJECT COST/FUNDING**

Update Airport Master Plan	\$1,600,000 AIP/STATE
Rehabilitate Taxiway D Design (result of 2021 PMS)	\$1,000,000 AIP/STATE
Main Terminal Roof Replacement	\$2,400,000 AIG(A)/STATE

**2024**

Main Terminal Life Safety Egress Phase 1	\$2,400,000 AIG(A)/STATE
--	--------------------------

**2025**

Rehabilitate Taxiway D Construction Phase 1	\$6,000,000 AIP/STATE
---	-----------------------

**2026**

Rehabilitate Taxiway D Construction Phase 2	\$5,500,000 AIG(C)/STATE
Taxiway J Connector Extension to Full Parallel Design	\$1,700,000 AIP/STATE
Entrance Canopy and Wayfinding	\$2,851,967 AIG(A)/STATE

**2027**

No AIP/AIG A projects scheduled

**2028**

Taxiway J Extension to Full Parallel Construction Phase 1	\$6,000,000 AIP/STATE
---	-----------------------

The background of the slide is a vibrant green color. On the left side, there are several thin, white, wavy lines that curve across the page, creating a sense of movement and depth. The word "QUESTIONS?" is centered in the middle of the slide in a bold, dark blue font.

**QUESTIONS?**