

**PORT OF VIRGINIA WATERWAY MAINTENANCE FUND
GRANT PROGRAM**

MEMORANDUM OF UNDERSTANDING

This **Memorandum of Understanding** dated the 20 day of September, 2021 (the "MOU"), and entered into by and between the Virginia Port Authority, a political subdivision of the Commonwealth of Virginia (the "VPA"), and Mathews County, Virginia (the "County").

WHEREAS, in 2018 the Virginia General Assembly established the Virginia Waterway Maintenance Grant Program (the "Program"), to be administered by the VPA, in order to support shallow draft dredging projects throughout the Commonwealth; and

WHEREAS, on July 24, 2018 the Board of Commissioners of the Authority adopted guidelines administering the Program (the "Policy") in accordance with Virginia Code Section 62.1 – 132.3:4; and

WHEREAS, in accordance with Policy Section II.A.2(ii), the County has submitted an application for One Million Five Hundred Thousand Dollars to support the dredging of a waterway project conducted by a political subdivision of the Commonwealth; and

WHEREAS, in accordance with Policy Section II.C.2, special consideration will be given to any project application that supports waterway enhancement in rural coastal Virginia as defined by §15.2-7600.

WHEREAS, the County attests that the Project is economically feasible based on a preplanning study or current level of business and will not directly competitively disadvantage existing publicly owned port facilities, and furthers the interest of the Commonwealth of Virginia.

WHEREAS, on May 25, 2021 the Board of Commissioners of the VPA approved Program funding, up to the amount of One Million Five Hundred Thousand Dollars and 00/100 (\$1,500,000.00), to the County for activities to address the dredging needs of Hole in the Wall.

NOW, THEREFORE, in consideration of the foregoing, the mutual promises stated below, and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows.

Section 1. Obligations.

1) Mathews County:

- a) The County shall use the Program funding to pursue its stated goal activities to address the dredging needs of Hole in the Wall and for no other purpose. The County will be responsible for all activities necessary to complete the Project, including, but not limited to:
 - i) Permit Process and associated Procurement for dredging and beach placement of material services and for final design and construction of shoreline protection structures.

- ii) Contractual – Dredging and Beach Placement Services: The procured contractor will dredge ~40,000 cubic yards of sediment at Hole in the Wall and place it on Haven Beach. Hole in the Wall will be dredged to -6 ft. MLLW with 1 ft. over dredge.
- iii) Contractual – Shoreline Protection Structures Final Design and Construction: The procured contractor will provide final engineering designs and construct breakwaters at Haven Beach using a combination of traditional structures (granite) or alternative technologies. Priority will be to construct an extension (55ft) to the smaller of the two existing breakwaters and at least one additional breakwater (230 ft.) to the south of the existing breakwaters to be constructed as funding allows and in accordance with the designs included in the final approved Joint Permit Application.
- iv) Project administration and financial management

2) **Virginia Port Authority:**

- a) The VPA shall monitor progress of the Project and review and respond to Progress Reports submitted by the County outlined in Section 4 of this MOU.

Section 2. Disbursement of VPA Grant.

- 1) The County has qualified for a VPA Program funding up to \$1,500,000.00.
- 2) On a quarterly basis throughout the Project, the County shall submit reimbursement requisitions to the VPA for payment pursuant to Section 4 of this MOU.
 - a) Each reimbursement requisition shall be accompanied by supporting paid invoices or other proof of payment documentation as well as certification that the work has been performed.
 - b) Each reimbursement requisition shall identify the name of the person or entity to whom payment is to be made, the amount of payment, and the project for which the payment is to be made.
- 3) The amount above is subject to available funds and in the event that the amount above exceeds the funds available, the amount above or the amount above minus the amount already then received by the County, whichever is applicable, shall be paid in the next fiscal year in which funds are available.

Section 3. Repayment Obligation.

- 1) The VPA reserves the right to discontinue, modify or withhold any payments to be made under this grant award or to require a total or partial refund of any grant funds, if, in the VPA's sole discretion, such action is necessary: (1) because the County has not fully complied with the terms and conditions of this MOU; (2) to protect the purpose and objectives of the Project and this MOU; (3) to comply with any law or regulation applicable to the County, to the VPA, or to this MOU.

Section 4. Progress Reports; Project Completion

- 1) The County shall provide, at the County's expense, reasonably detailed verification of the County's progress on the Project accompanied by a reimbursement requisition (the "Progress Report").
- 2) Each Progress Report shall be accompanied by supporting paid invoices or other proof of payment documentation as well as certification that the work has been performed.
- 3) Each Progress Report shall identify the name of the person or entity to whom payment is to be made, the amount of payment, and the project for which the payment is to be made.
- 4) Progress Reports will be provided quarterly on April 30, July 30, October 30, and January 30, covering the period through the prior three (3) months.
- 5) Upon completion of the project, the County will provide certification of project completion by the party contracted to perform the work.

Section 5. Notices.

Any notices required or permitted under this MOU shall be given in writing, and shall be deemed to be received upon receipt or refusal after mailing of the same in the United States Mail by certified mail, postage fully pre-paid or by overnight courier (refusal shall mean return of certified mail or overnight courier package not accepted by the addressee):

if to the County, to:

Sanford B. Wanner
Mathews County Interim
County Administrator
P.O. Box 839
50 Brickbat Road
Mathews, VA. 23109

if to the County, to:

Andrea Erard
9702 Gayton Road
Ste. 324
Richmond, VA 23238

with a copy to:

Lewis Lawrence
Middle Peninsula Planning District Commission
Executive Director
P.O. Box 826
125 Bowden Street
Saluda, VA. 23149

if to the VPA, to:

Stephen A. Edwards CEO
& Executive Director
Virginia Port Authority
600 World Trade Center
Norfolk, VA 23510

with a copy to:

Melissa Fularon
Manager, Grant Administration
Virginia Port Authority
600 World Trade Center
Norfolk, VA 23510

Section 6. Miscellaneous.

1) Entire Understanding; Amendments: this MOU constitutes the entire agreement between the parties hereto as to the VPA Grant and may not be amended or modified, except in writing, signed by each of the parties hereto. This MOU shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. Except to an affiliate of the County, the County may not assign its rights and obligations under this MOU without the prior written consent of the VPA which shall not be unreasonably withheld, conditioned or delayed.

2) Governing Law; Venue: This MOU is made, and is intended to be performed, in the Commonwealth of Virginia and shall be construed and enforced by the laws of the Commonwealth. Jurisdiction and venue for any litigation arising out of or involving this MOU shall lie in the Circuit Court of the City of Norfolk, and such litigation shall be brought only in such court.

3) Counterparts: This MOU may be executed in one or more counterparts, each of which shall be an original, and all of which together shall be one and the same instrument.


4) Severability: If any provision of this MOU is determined to be unenforceable, invalid or illegal, then the enforceability, validity and legality of the remaining provisions will not in any way be affected or impaired, and such provision will be deemed to be restated to reflect the original intentions of the parties as nearly as possible in accordance with applicable law.

5) Subject to Available Funds: This MOU is subject to appropriations by the Virginia General Assembly.

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IN WITNESS WHEREOF, the parties hereto have executed this Memorandum of Understanding as of the date first written above.

VIRGINIA PORT AUTHORITY

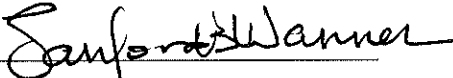
By:  _____

Name: Stephen A. Edwards

Title: CEO & Executive Director

Date: September 20, 2021

MATHEWS COUNTY

By:  _____

Name: Sanford B. Wanner

Title: Interim County Administrator

Date: September 14, 2021