C: Dir., Norfolk Community Services Board

City of NORFOLK

To the Honorable Council
City of Norfolk, Virginia

July 21, 2015

From: Sarah Paige Fuller, Director, NCSB

Subject: Purchase of two Group Homes from the Commonwealth of Virginia through its Department of Behavioral Health and Developmental Services

Reviewed: Wynter C. Benda, Deputy City Manager

Ward/Superward: Citywide

Approved: Marcus D. Jones, City Manager

Item Number: **R-3**

I. **Recommendation:** Adopt Ordinance

II. **Applicant:** City of Norfolk

III. **Description:**

This agenda item is an ordinance authorizing the City Manager to negotiate funding agreements and to accept deeds for properties located at 5809 Hartwick Drive and 1826 East Bayview Boulevard from the Commonwealth of Virginia for the purpose of developing group homes for persons with intellectual disabilities.

IV. **Analysis:**

As part of the Department of Justice ("DOJ") Settlement for the deinstitutionalization of persons with intellectual disabilities, the Commonwealth of Virginia ("State"), through its Department of Behavioral Health and Developmental Services ("DBHDS"), has established a program to develop properties for group home use in communities. Once developed, ownership of the properties will then be transferred to local community services boards.

There are two renovated group homes under this project which are now being operated by the Norfolk Community Services Board ("NCSB"). These properties are still owned by the State. The final step is for the City of Norfolk ("City") to accept ownership of these properties from the State.

810 Union Street #1101 ▪ Norfolk, Virginia 23510
Phone: 757-664-4242 ▪ Fax: 757-664-4239

This is a request to purchase:

- 5809 Hartwick Drive
- 1826 East Bayview Boulevard

V. Financial Impact

The original State associated costs for the purchase and the build-out of these properties has been provided and accomplished. The costs are as follows:

Hartwick:

Property Purchase	$272,669
Improvements	$278,342
Furnishings	$ 35,000
Total Cost	$586,011 (DBHDS Contribution)

Bayview:

Property purchase	$195,000
Improvements	$333,111
Furnishings	$ 35,000
Total Cost	$563,111 (DBHDS Contribution)

The City and NCSB have held responsibility for the ongoing maintenance and repair of these facilities for the past twenty (20) months that they have been operational and occupied. Full responsibility for the properties will transfer to the City and NCSB upon conveyance of the properties to the City. This is in accordance with the original agreement between the State and NCSB - prior to NCSB becoming a City department.

The City will not incur any costs associated with the actual purchase of these properties from the State.

VI. Environmental

N/A – Any environmental issues would have been addressed by the State and their contracted developer prior to occupancy by NCSB.

VII. Community Outreach/Notification

NCSB completed full community outreach activities, including meeting with the civic leagues when these homes were proposed by the state to be redeveloped for this use. There is no additional outreach required for the transition of ownership from the State to the locality since the use is not changing.

VIII. Board/Commission Action

The Board of Directors for NCSB has been kept fully informed of the activities of the original redevelopment and the plan for the final transfer.

IX. Coordination/Outreach

This letter has been coordinated with the City Attorney's office and the Board of Director's for NCSB. A meeting of several City departments was held in April to review the transfer and discuss responsibilities for the ownership of these homes.

Supporting Material from the Department of Community Services Board:

- Ordinance
- Funding Agreement – Hartwick
    - Exhibit A Funding restrictions
    - Exhibit B Project Description
    - Exhibit C Project Budget
- Funding Agreement – Bayview
    - Exhibit A Funding restrictions
    - Exhibit B Project Description
    - Exhibit C Project Budget

04/01/15 tsv

Form and Correctness Approved: RAP

By _____
Office of the City Attorney

Contents Approved:

By SPRL
DEPT. CSB

NORFOLK, VIRGINIA

ORDINANCE No.

AN ORDINANCE AUTHORIZING THE CITY MANAGER TO NEGOTIATE AGREEMENTS IN SUBSTANTIAL CONFORMITY WITH THE TERMS AND CONDITIONS OF THE ATTACHED FUNDING AGREEMENTS, FOR THE PURPOSE OF PURCHASING FROM THE COMMONWEALTH OF VIRGINIA CERTAIN PARCELS OF PROPERTY KNOWN AS 5809 HARTWICK DRIVE AND 1826 EAST BAYVIEW BOULEVARD, IN THE CITY OF NORFOLK, AND APPROVING THE CONVEYANCE OF SAID PARCELS OF PROPERTY TO THE CITY OF NORFOLK BY THE COMMONWEALTH OF VIRGINIA.

- - -

BE IT ORDAINED by the Council of the City of Norfolk:

Section 1:- That the conveyance to the City of Norfolk, by the Commonwealth of Virginia, of certain parcels of property, which parcels are more particularly described hereinafter, is hereby approved.

5809 Hartwick Drive

All that certain lot, piece or parcel of land with the buildings and improvements thereon, situate, lying and being in the City of Norfolk, Virginia, said parcel being further described as follows: Lot 10, as shown on that certain plat entitled, "Subdivision of Azalea Lakes," said plat being duly recorded in the Clerk's Office of the Circuit Court of the City of Norfolk, Virginia, in Map Book23 at Page 18.

The above-described parcel contains 0.206 acre of land, more or less.

1826 East Bayview Boulevard

All that certain lot, piece or parcel of land with the buildings and improvements thereon, situate, lying and being in the City of Norfolk, Virginia, said parcel being further described as follows: Lots Thirty (30) and Thirty One (31), in Block Six (6). as shown on that certain plat entitled, "Plat of Property of Bay View

Beach Corporation," said plat being duly recorded in the Clerk's Office of the Circuit Court of the City of Chesapeake (formerly Norfolk County), Virginia, in Map Book 17 at Pages 17 & 18.

The above-described parcel contains 0.459 acre of land, more or less.

Section 2: - That the City Manager is hereby authorized to negotiate agreements for the purchase of the aforesaid property in substantial conformity with the terms and conditions of the Funding Agreements, copies of which are hereto attached as Exhibits A and B.

Section 3:- That the City Manager is hereby authorized to accept deeds, in form satisfactory to the City Attorney, conveying the said parcels of property, and to do all other things necessary and proper to effect the conveyance of the property to the City.

Section 4:- That this ordinance shall be in effect from and after its adoption.

Exhibit A

FUNDING AGREEMENT

Between

COMMONWEALTH OF VIRGINIA,

acting by and through its

DEPARTMENT OF BEHAVIORAL HEALTH AND DEVELOPMENTAL SERVICES

and

CITY OF NORFOLK

Dated as of _____, 2015

(HARTWICK DRIVE)

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EXHIBITS

Exhibit A.	Funding Restrictions
Exhibit B.	Project Description
Exhibit C.	Project Budget

FUNDING AGREEMENT

THIS FUNDING AGREEMENT is made as of this _____ day of _____, 2015, between the **COMMONWEALTH OF VIRGINIA** (the "**Commonwealth**"), acting by and through its **DEPARTMENT OF BEHAVIORAL HEALTH AND DEVELOPMENTAL SERVICES** (formerly known as the Department of Mental Health, Mental Retardation and Substance Abuse Services) (the "**Department**"), and the **CITY OF NORFOLK**, a municipal corporation of the Commonwealth of Virginia (the "**City**").

The Virginia Public Building Authority, a political subdivision of the Commonwealth of Virginia ("**VPBA**"), has previously entered into one or more Facilities Agreements, as they may be amended or supplemented from time to time (collectively, the "**Facilities Agreement**"), with the Department, providing for VPBA to apply proceeds of its public facilities revenue bonds to the payment of various project costs for certain authorized projects, all as described in such Facilities Agreement.

Pursuant to Item 2, page 8 of Chapters 1 and 2 of the 2008 Special Session I of the Virginia General Assembly (the "**Initial Legislation**"), the Virginia General Assembly authorized VPBA to issue revenue bonds to fund, among other projects, the repair and replacement of the Department's Southeastern Virginia Training Center. The Virginia General Assembly supplemented the Initial Legislation in Item 103.05 of Chapter 781 of the 2009 Regular Session of the General Assembly (the "**Revised Legislation").** The Revised Legislation in combination with the Initial Legislation (in combination, the "**Authorizing Legislation**") designate a portion of such remaining appropriation for the acquisition, construction, renovation and equipping of Community Housing for Health Planning Region V.

VPBA has provided funding through the Department, as and to the extent available under the Facilities Agreement, to fund a portion of the Project. The Department approved and has provided funding under the Authorizing Legislation for the Project in the amount of $586,011 as set forth in the Project Budget attached hereto as ***Exhibit C***.

The purpose of this Agreement is to set forth the terms and conditions pertaining to this Project and Waiver Home.

ARTICLE I

DEFINITIONS

The capitalized terms contained in this Agreement shall have the meanings set forth below unless the context requires otherwise and any capitalized terms not otherwise defined herein shall have the meaning assigned to such terms in the Facilities Agreement:

"**Agreement**" means this Funding Agreement between the Department and the City, together with any amendments or supplements hereto.

"**Authorized Representative**" means any member, official or employee of the City authorized by the City Charter or a resolution or an ordinance of the City Council to perform the act or sign the document in question.

"**City**" means the City of Norfolk, Virginia.

"**Council**" means the governing body of the City of Norfolk, including the Mayor.

"**Department**" means the Department of Behavioral Health and Developmental Services, an agency of the Commonwealth of Virginia, formerly known as the Department of Mental Health, Mental Retardation and Substance Abuse Services.

"NCSB" means the Norfolk Community Services Board, the department of the City, established pursuant to Virginia Code § 37.2-500 *et seq.*, dedicated to the provision of mental health, developmental and substance abuse services.

"**Permitted Use**" shall have the meaning set forth in Section 5.1.

"PPEA" means the Public-Private Education Facilities and Infrastructure Act of 2002 as codified in Section 56.575.1 et seq. of the Code of Virginia of 1950, as amended.

"**Project**" means the particular project described in ***Exhibit B*** to this Agreement, the real property with all its improvements, to be constructed, acquired or improved and transferred to the City by the Commonwealth of Virginia with, among other monies, funds made available by this Agreement, with such changes thereto as the Department may approve in writing.

"**Project Budget**" means the budget for the Project, a copy of which is attached to this Agreement as ***Exhibit C***, with such changes therein as may have been approved in writing by the Department.

"**Project Costs**" means the costs incurred in connection with the Project, provided same constitute "capital costs" and are eligible under the terms hereof, the Authorizing Legislation, and the definition of "Costs" in the VPBA authorizing legislation.

"**Project Description**" means the description of the Project to be undertaken using the funds made available by this Agreement, a copy of which is attached to this Agreement as ***Exhibit B***, with such changes therein as may have been approved in writing by the Department.

"**Term**" shall have the meaning set forth in Article III.

"**VPBA**" means the Virginia Public Building Authority, a political subdivision of the Commonwealth of Virginia.

"**Waiver Home**" means a waiver group home for persons with intellectual disability licensed by the Department as a "Group Home Residential Service" in accordance with 12 VAC 35-105-20, which "means a congregate service providing 24-hour supervision in a community-based home having eight or fewer residents. Services include supervision, supports, counseling, and training in activities of daily

living for individuals whose individualized services plan identifies the need for the specific types of services available in this setting."

ARTICLE II

SCOPE OF WORK

The City shall take title to the Project at closing as set forth in the Project Description (***Exhibit B***) of this Agreement. The Department shall cause the Project to be designed and constructed according to sound construction, engineering and architectural principles and commonly accepted safety standards.

ARTICLE III

TIME OF PERFORMANCE; TERM

This Agreement shall commence on the date of complete execution hereof and transfer of title to the property to the City and it shall end when no VPBA bonds issued to finance or refinance Project Costs are outstanding or this Agreement is otherwise terminated under the provisions hereof (such period being the "**Term**").

ARTICLE IV

FUNDING; NATURE OF TRANSACTION

Section 4.1. Amount of Funding. The Department shall pay W. M. Jordan Construction Company the amount set forth in the Project Budget. Disbursement of all such funds shall be in accordance with the Project Description and the payment provisions set forth in the PPEA Agreement described below in Section 5.1. No funds were disbursed to the City, and the City is not obligated to contribute funds to the Project, pursuant to ***Exhibit C*** of this Agreement.

ARTICLE V

GENERAL PROVISIONS

Section 5.1. Acquisition of the Project and Permitted Uses by City.

(a) The parties acknowledge that the construction of the Waiver Home described in ***Exhibit B*** was not under the control or direction of the City. The construction was solely under the control of W. M. Jordan Construction Company and the Virginia Department of General Services, pursuant to a contract between W. M. Jordan Construction Company and the Commonwealth of Virginia, acting by and through its Department of General Services, subsequent to a PPEA proposal tendered by W. M. Jordan Construction Company (the "**PPEA Agreement**"). The parties also acknowledge that employees of the NCSB, which at the time the Project was designed, was an operating community

services board independent of the City, participated in the design of the Project, as described in ***Exhibit B***. Notwithstanding the foregoing, the City is unaware of any reason why the Project will not satisfy the purposes of the Authorizing Legislation, i.e., providing a community-based Waiver Home for individuals with intellectual disabilities (the "**Permitted Use**").

(b) After the closing on the Project and the City's taking of title to the Project and Waiver Home, and throughout the Term, the City shall own the entire Project and Waiver Home and shall not dispose of its interests in the Project and Waiver Home, without the written consent of the Department in its sole discretion, which discretion shall not be unreasonably withheld. Unless the Department otherwise agrees, the Project and Waiver Home, as described in ***Exhibit B***, shall be owned, managed and operated by the City for the Permitted Use and in accordance with such requirements as may be set forth therein and by applicable law for the Project and Waiver Home from time to time.

(c) After the closing on the Project and the City's taking title to the Project and Waiver Home, and throughout the Term, the City shall keep the Project and Waiver Home in as reasonably safe condition as its operation shall permit and keep the Project and Waiver Home in good repair and operating condition, making from time to time, as the owner of the property, all necessary repairs, renewals and replacements, interior and exterior, structural and nonstructural. The Department shall not be required to rebuild or to make any repairs, renewals or replacements of the Project or Waiver Home of any nature whatsoever or to bear any costs for same.

(d) Subject to compliance with the provisions of this Agreement, including but not limited to ***Exhibit A***, the City, as owner of the property, in its discretion and at its expense, may make any additions, enlargements, improvements and expansions to, or repairs, reconstruction and restoration of, or install machinery, equipment and furnishings in and about, the Project and Waiver Home that it deems desirable. Any damage resulting from such modification or removal shall be repaired by the City.

(e) The City shall promptly comply with, or cause to be complied with, all applicable laws, rules, regulations and other governmental requirements (including, but not limited to, the Authorizing Legislation and the provisions of ***Exhibit A***).

(f) The City covenants not to commit, suffer, or permit to exist any waste or damage to, or public or private nuisance upon, the Project or Waiver Home.

(g) The City shall at all times fully comply with each provision and requirement set forth in ***Exhibit A***, which are hereby incorporated by reference as fully as if set forth herein.

(h) Transfer of Location or Change of Permitted Use. The City shall not transfer or change the Permitted Use except as provided by this section.

i. Notwithstanding any other provisions within this Agreement and its Exhibits or supplements, if through no fault of the City a serious change in circumstances occurs concerning the Project and Waiver Home, the City may, subject to the restrictions within this section, permanently transfer the services of the Project and Waiver Home, i.e., the Permitted Use, to another suitable location within the city of Norfolk. In the event of a transfer pursuant to this section, the City shall continue to provide services as defined

in Section 5.1(a) (the "Permitted Use") and as were provided at the location provided in ***Exhibit B*** herein. The City shall pay all the costs related to any transfer pursuant to this section.

ii. For purposes of this section, the phrase "serious change in circumstances" means the occurrence of any event not under the control of the City making the continued operation of the Project and Waiver Home for the Permitted Use at the location provided in ***Exhibit B*** herein physically or economically impossible or cost prohibitive as determined by the Department.

iii. The City shall not make a permanent transfer of the Permitted Use pursuant to this section without the prior written consent of the Department, which consent shall not be unreasonably withheld.

iv. In the event the City fails or ceases to operate the Project and Waiver Home during the Term of this Agreement for the Permitted Use as defined in Section 5.1(a) without the Department's prior written consent, this shall constitute a breach by the City pursuant to Section 5.13 herein.

v. The foregoing provisions of this section shall not apply to emergencies requiring a temporary shift of the location of the Permitted Use. Within seven (7) days of the occurrence of any such emergency, the City shall provide a plan to the Department explaining the nature of the emergency, the steps taken by the City in response to the emergency, and a schedule for returning to normal operation at the location provided in ***Exhibit B*** herein. Such plan may be amended by mutual agreement of both parties.

Section 5.2 Taxes, Other Governmental Charges and Utility Charges. In addition to payment of any taxes and legally required governmental charges that may be lawfully assessed, levied or imposed against the City, as owner of the Project or Waiver Home, the City shall pay when due all taxes and governmental charges of any kind whatsoever lawfully assessed, levied or imposed against the Department or the Project or Waiver Home with respect to the Project or Waiver Home or any machinery, equipment or other improvements made by the City to the Project or Waiver Home. The City shall pay when due all utility and other charges incurred in the operation, maintenance, use and occupancy of the Project and Waiver Home and all assessments and charges lawfully made by any governmental body for public improvements to the Project or Waiver Home. The City, however, upon reasonable prior notice to the Department of its intention to do so, at its own expense and in its own name or in the name of the Department, may contest in good faith any such tax, assessment, utility or other charge, in which event it may permit such charge to remain unpaid during the period of such contest and any appeal. The Department shall cooperate with the City in the conduct, at the expense of the City, of any such contest and shall, to the extent that it may lawfully do so, permit the City to conduct any such contest.

Section 5.3. Liability Insurance, Indemnification. The City shall take out and maintain during the Term comprehensive general liability insurance with a combined single limit of $1,000,000 per year against liability for bodily injury, including death resulting therefrom, and for damage to property, including loss of use thereof, which may arise from the City's activities under this Agreement. All such insurance shall be taken out and maintained with generally recognized responsible insurers authorized to do business in the Commonwealth of Virginia and reasonably acceptable to the Department. Copies of the insurance certificates shall be provided to the Department on the anniversary of the renewal of the policy.

In lieu of obtaining any of the policies of insurance required above, the City may adopt alternative risk management programs which it determines to be reasonable, including, without limitation, to self-insure in whole or in part, individually or in connection with other units of local government or other institutions, to participate in programs of captive insurance companies, to participate with other units of local government or other institutions in mutual or other cooperative insurance or other risk management programs, to participate in state or federal insurance programs, to take advantage of state or federal laws now or hereafter in existence limiting liability, or to establish or participate in other alternative risk management programs, all as may be reasonable and appropriate risk management by the City, and that provide comparable coverages as required by this Section and approved by the Department. In addition, any insurance coverage pursuant to this Section may be pursuant to a program whereby the City self-insures against certain losses up to a stated loss amount, and retains excess coverage from an insurer meeting the requirements of this Section.

The Department hereby recognizes Scottsdale, VA Risk and the City as responsible insurers acceptable to the Department, until further notice by the Department.

Section 5.4. Proof of Payment of Taxes and Other Charges and Insurance Matters. Upon request of the Department or VPBA, the City shall furnish the Department proof of payment of any taxes, utility charges, insurance premiums, or other charges or payments required to be paid by the City under this Agreement. Further, the City shall furnish to the Department, upon request, a listing of all insurance coverage in place with respect to the Project and Waiver Home and a copy of any report of any insurance agent or consultant with respect thereto. The City shall provide notice to the Department if, during the Term, the City changes insurers or changes from an insurer to an alternative risk management program and vice versa.

The City agrees to notify the Department immediately in the case of damage to or destruction from fire or other casualty of all or any portion of the Project and Waiver Home in any amount that the City determines in good faith will cost more than $50,000 to repair, reconstruct and restore.

Section 5.5. Condemnation and Loss of Title. In the case of a taking of all or any part of the Project or Waiver Home or any rights in them under the exercise of the power of eminent domain or any loss of all or any part of the Project or Waiver Home because of loss of title to them, or the commencement of any proceedings or negotiations which might result in such a taking or loss, the City shall give immediate notice to the Department.

Section 5.6. Liens. The City will not suffer or permit a lien or liens for taxes to be imposed on or attached to the Project or Waiver Home, unless the City is contesting in good faith the tax or claim that is the basis of the lien, in which event the City shall dissolve the lien or stay or prevent its foreclosure by bond or other appropriate legal procedure.

Section 5.7 Sale, Conveyance, Licensing, Assignment, Leasing of Project. Except as provided in Section 5.1(b) or (h) the City may not change the Permitted Use or sell, license, lease, sublease, assign or otherwise dispose of or encumber its interest in the Project or Waiver Home without in each instance the written consent of the Department in its sole discretion. In such instances, the City and the Department agree to notify VPBA in writing prior to such a change with respect to the Project or Waiver Home. No such sale, license, lease, sublease, assignment, disposal, or encumbrance or management contract shall relieve the City from primary liability for any of its obligations under this Agreement, and the City shall

continue to remain primarily liable for the observance and performance of all its obligations under this Agreement.

The provisions of this Section 5.7 shall apply to any involuntary conveyance of the Project or Waiver Home (including but not limited to by way of a taking, condemnation or loss of title under Section 5.5, under a sale at foreclosure, trustee's sale or other final sale of the Project and Waiver Home). The City shall give immediate notice to the Department of any such proceeding, matter, conveyance or the like.

Section 5.8. Right of Inspection. The Department and VPBA and their respective duly authorized agents shall have such rights of access to the Project as may be reasonably necessary for the proper maintenance of the Project in the event of the City's failure to perform its obligations under this Agreement. The Department, VPBA and their duly authorized agents shall have the right at all reasonable times to enter upon, examine and inspect any part of the Project and to examine the books and records of the City, insofar as such books and records relate to the funding, operations and maintenance of the Project.

Section 5.9. Condition and Suitability of Project. Neither the Department nor VPBA makes any warranties or representations and accepts no liabilities or responsibilities with respect to, or for the adequacy, sufficiency or suitability of, or for defects in, the Project or any contracts or agreements for the acquisition, construction, improving, equipping, furnishing or operation of the Project. The Department makes no warranties or representations that the City shall have quiet and peaceful possession of the Project.

Section 5.10. Reserved.

Section 5.11. Cooperation by the City. The City shall give the Department its reasonable cooperation and assistance in all matters relating to the financing of the acquisition, construction, improving, equipping and furnishing of the Project.

Section 5.12. Authority of the City. Nothing in this Agreement shall be construed as authority for either party to make commitments that will bind the other party beyond the covenants contained herein, and the City is specifically without authority to commit or bind the Department or VPBA.

Section 5.13. Termination.

(a) At the time of the execution of this Agreement, the Department is authorized to provide funding up to $586,011 for the Project. To the extent that the Authorizing Legislation may be amended, modified or terminated, the parties may amend, modify or terminate this Agreement.

(b) Any written or oral representation, warranty or other statement furnished or made by or on behalf of either party after the execution of this Agreement in connection with this Agreement that is intentionally false or misleading in any material respect shall constitute a breach of this Agreement.

(c) In the event of a breach by the City, the Department shall give written notice to the City specifying the manner in which this Agreement has been breached and providing the City fifteen (15) working days within which to cure the breach or submit a written plan of correction. The

written plan of correction, when required, shall explain and display how the City intends to regain compliance with the Agreement and shall include a schedule for same. Such written plan of correction shall be submitted to the Department for review and approval. If such a notice of breach is given, and the City has not substantially corrected the breach within fifteen (15) working days or such longer time set forth in the written plan of correction approved by the Department, the Department shall have the right forthwith to terminate this Agreement. In the event of a termination of this Agreement, the City shall reimburse the Department any amount of the bonds that is unpaid and outstanding at the time of the breach including costs associated with the defeasement of the bonds, but if the City does not so reimburse the Department, ownership of the Project and Waiver Home shall revert to the Department. Notwithstanding the foregoing, in the event of the amendment, modification, or termination of the Authorizing Legislation, the City shall not be required to repay previously disbursed proceeds unless such repayment is mandated in or required by the amended or modified Legislation.

Section 5.14. Integration and Modification. This Agreement constitutes the entire Agreement between the City and the Department with respect to the funding made available pursuant to this Agreement for the undertaking of the Project. No alteration, amendment or modification in the provisions of this Agreement shall be effective unless reduced to writing, and executed with all the formalities of the original Agreement.

Section 5.15. Collateral Agreements. Where there exists any inconsistency between this Agreement and other provisions of collateral contractual agreements that are made a part of this Agreement by reference or otherwise, the provisions of this Agreement shall control.

Section 5.16. Non-Discrimination. In the performance of this Agreement, the City warrants that it will not discriminate against any employee, or other person, on account of race, color, sex, religious creed, ancestry, age, national origin, other non-job related factors or any basis prohibited by law. The City agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

In all solicitations or advertisements for employees the City shall state that the City is an equal opportunity employer; however, notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this Agreement.

Henceforth, the City shall include the provisions of the foregoing paragraphs of this section in every contract, subcontract or purchase order of over ten thousand dollars entered into in connection with the Project, so that such provisions will be binding upon each contractor, subcontractor or vendor.

Section 5.17. Certificate as to No Default. The City shall deliver to the Department and to VPBA, within 90 days after the close of each of the fiscal years of the City, a certificate signed by an authorized representative of the City stating that during such fiscal year and as of the date of such certificate no event or condition has happened or existed, or is happening or existing, which constitutes, or which, with notice or lapse of time or both, would constitute an event of default hereunder, or if such an event or condition has happened or existed, or is happening or existing, specifying the nature and duration of such event or condition and what action the City has taken, is taking or proposes to take with respect to it.

Section 5.18. Applicable Laws. This Agreement shall be governed by the applicable laws of the Commonwealth of Virginia.

Section 5.19. Severability. Each paragraph and provision of this Agreement is severable from the entire Agreement, and if any provision is declared invalid, the remaining provisions shall nevertheless remain in effect.

Section 5.20. Contingent Fee Warranty. The City warrants that it has not paid or agreed to pay any company or person any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon the award or making of this Agreement. For breach of the foregoing warranty, the Department shall have the right to terminate this Agreement without liability, or, in its discretion, to deduct from the agreed fee, payment or consideration, or otherwise recover the full amount of said prohibited fee, commission, percentage, brokerage fee, gift, or contingent fee.

Section 5.21. Reserved.

Section 5.22. Conflict of Interest. The City warrants that it has fully complied with the Virginia Conflict of Interest Act.

Section 5.23. Ownership of Documents. Upon the request of the Department, the City shall provide copies of any reports, studies, photographs, negatives, or other documents prepared by the City in the performance of its obligations under this Agreement.

Section 5.24. Notices. Unless otherwise provided for herein, all notices, approvals, consents, correspondence and other communications under this Agreement shall be in writing and shall be deemed delivered to the following:

Department: Department of Behavioral Health
and Developmental Services
1220 Bank Street, 7th Floor
P.O. Box 1797
Richmond, VA 23218-1979
Attention: Office of A & E Services

CSB: City of Norfolk
Community Services Board
225 West Olney Road
Norfolk, VA 23510-1523
Attention: Office of the Executive Director

A duplicate copy of each notice, approval, consent, correspondence or other communications shall be given to each of the other parties named.

ARTICLE VI

COUNTERPARTS

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

WITNESS the following signatures, all duly authorized.

COMMONWEALTH OF VIRGINIA, acting by and through its **DEPARTMENT OF BEHAVIORAL HEALTH AND DEVELOPMENTAL SERVICES**

By: _____

Its: _____

Title: _____

CITY OF NORFOLK

By: _____
Marcus Jones, City Manager

ATTEST:

_____
City Clerk

CONTENTS APPROVED:

_____
Sarah P. Fuller, Executive Director
of the Norfolk Community Services Board

FORM AND CORRECTNESS APPROVED:

_____
Jack E. Cloud, Deputy City Attorney

Exhibit A

FUNDING RESTRICTIONS

Department Requirements:

1) The funding shall be used to construct a Waiver Home for individuals with intellectual disabilities. During the initial downsizing of Southeastern Virginia Training Center ("SEVTC"), individuals with intellectual disabilities who are residents of SEVTC shall have priority to occupy the Waiver Home. In the event that SEVTC does not provide to the City current SEVTC residents willing and able to move into the facility within 30 days of notification of the facility's readiness to accept residents, the City retains the right to fill the beds with individuals with intellectual disabilities from other Commonwealth of Virginia training centers, and individuals with intellectual disabilities from the Commonwealth of Virginia. Once the initial downsizing of SEVTC occurs, the City has the right to fill the beds with other individuals with intellectual disabilities;

2) The acquisition and operation of the Waiver Home shall comply with all existing agreements between the Department and theCity;

3) The Waiver Home shall remain in operation for the Permitted Use for so long as the corresponding VPBA bonds are outstanding, and the City shall not change, alter, or otherwise modify its use to or for any other purpose, or fail or cease to operate the Waiver Home for the Permitted Use, without the express, written consent of the Department pursuant to sections 5.1(b) or 5.1(h) of this Agreement;

4) All land and structures to be used for the Waiver Home shall be free and clear of environmental hazards;

5) The City shall have clear title to the land, with no easements or encumbrances that might lead to an interruption of services; and

6) The City shall operate the Waiver Home in accordance with all applicable laws and regulations.

VPBA Requirements:

1) Capital Costs Only. Funds provided hereunder may only be spent for capital costs, and not operating costs.

Exhibit B

PROJECT DESCRIPTION

Legal Description of the Property:

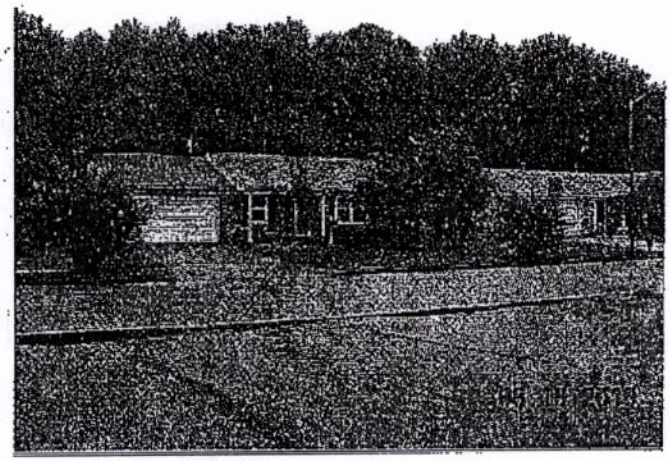
Property located in Azalea Lakes. Lot 10, Norfolk VA.

Commonly Known Property Address:

5809 Hartwick Drive, Norfolk. VA 23518

Property Description:

Single story, 3,500 square foot, wood framed, brick house set on a slab with four bedrooms and 2.5 bathrooms. Also includes a full kitchen living room, den, deck, swimming pool and a two car garage. Major appliances include; gas-fired furnace, central air-conditioning, and electric hot water healer.



Proposed Improvements:

The improvements consist of installations of the ADA accessible bathroom, new sprinkler system, new HVAC system, new whole-house generator, new roof, interior renovations, new flooring, new furniture, and updated appliances.

Referenced Documents:

1	*Waiver Home Drawings - 5809 Hartwick Drive. Norfolk. VA*			
	Pages	*Description*	*Author*	*Date*
	T100	*Title Sheet*	*Paul Finch and Associates*	*9/29/2010*
=	*AS100*	*Architectural Site Plan*	*Paul Finch and Associates*	*9/29/2010*
_	*AD110*	*Demolition Plan*	*Paul Finch and Associates*	*9/29/2010*
	A110	*Floor Plan*	*Paul Finch and Associates*	*9/29/2010*
-	*A600*	*Schedules*	*Paul Finch and Associates*	*9/29/2010*
_	*A610*	*Furniture Plan*	*Paul Finch and Associates*	*9/29/2010*
2	*Waiver Home Specifications – 5809 Hartwick Drive, Norfolk, VA*			
_	*See Drawings*		*Paul Finch and Associates*	*9/29/2010*

Exhibit C

PROJECT BUDGET

1) **Community Service Board financial contribution**

CSB contribution is none

2) **Commonwealth of Virginia, Department of Behavioral Health and Services financial contribution**

DBHD contribution is $586,011

Costs associated with the referenced property located at 5809 Hartwick Drive, Norfolk, VA

The Cost breakdown will be as follows:

Property Purchase	$ 272,669
Improvements	$ 278,342
Furnishings	$ 35,000
Total Cost:	$ 586,011

3) **Summary of**

CSB contribution	$ 0.00
DBHDS contribution	$ 586,011
Total Cost:	$ 586,011

Exhibit B

FUNDING AGREEMENT

Between

COMMONWEALTH OF VIRGINIA,

acting by and through its

DEPARTMENT OF BEHAVIORAL HEALTH AND DEVELOPMENTAL SERVICES

and

CITY OF NORFOLK

Dated as of _____, 2015

(EAST BAYVIEW BLVD.)

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EXHIBITS

Exhibit A. Funding Restrictions
Exhibit B. Project Description
Exhibit C. Project Budget

FUNDING AGREEMENT

THIS FUNDING AGREEMENT is made as of this _____ day of _____, 2015, between the **COMMONWEALTH OF VIRGINIA** (the "**Commonwealth**"), acting by and through its **DEPARTMENT OF BEHAVIORAL HEALTH AND DEVELOPMENTAL SERVICES** (formerly known as the Department of Mental Health, Mental Retardation and Substance Abuse Services) (the "**Department**"), and the **CITY OF NORFOLK**, a municipal corporation of the Commonwealth of Virginia (the "**City**").

The Virginia Public Building Authority, a political subdivision of the Commonwealth of Virginia ("**VPBA**"), has previously entered into one or more Facilities Agreements, as they may be amended or supplemented from time to time (collectively, the "**Facilities Agreement**"), with the Department, providing for VPBA to apply proceeds of its public facilities revenue bonds to the payment of various project costs for certain authorized projects, all as described in such Facilities Agreement.

Pursuant to Item 2, page 8 of Chapters 1 and 2 of the 2008 Special Session I of the Virginia General Assembly (the "**Initial Legislation**"), the Virginia General Assembly authorized VPBA to issue revenue bonds to fund, among other projects, the repair and replacement of the Department's Southeastern Virginia Training Center. The Virginia General Assembly supplemented the Initial Legislation in Item 103.05 of Chapter 781 of the 2009 Regular Session of the General Assembly (the "**Revised Legislation").** The Revised Legislation in combination with the Initial Legislation (in combination, the "**Authorizing Legislation**") designate a portion of such remaining appropriation for the acquisition, construction, renovation and equipping of Community Housing for Health Planning Region V.

VPBA has provided funding through the Department, as and to the extent available under the Facilities Agreement, to fund a portion of the Project. The Department approved and has provided funding under the Authorizing Legislation for the Project in the amount of $563,111 as set forth in the Project Budget attached hereto as ***Exhibit C***.

The purpose of this Agreement is to set forth the terms and conditions pertaining to this Project and Waiver Home.

ARTICLE I

DEFINITIONS

The capitalized terms contained in this Agreement shall have the meanings set forth below unless the context requires otherwise and any capitalized terms not otherwise defined herein shall have the meaning assigned to such terms in the Facilities Agreement:

"**Agreement**" means this Funding Agreement between the Department and the City, together with any amendments or supplements hereto.

"**Authorized Representative**" means any member, official or employee of the City authorized by the City Charter or a resolution or an ordinance of the City Council to perform the act or sign the document in question.

"**City**" means the City of Norfolk, Virginia.

"**Council**" means the governing body of the City of Norfolk, including the Mayor.

"**Department**" means the Department of Behavioral Health and Developmental Services, an agency of the Commonwealth of Virginia, formerly known as the Department of Mental Health, Mental Retardation and Substance Abuse Services.

"NCSB" means the Norfolk Community Services Board, the department of the City, established pursuant to Virginia Code § 37.2-500 *et seq.*, dedicated to the provision of mental health, developmental and substance abuse services.

"**Permitted Use**" shall have the meaning set forth in Section 5.1.

"PPEA" means the Public-Private Education Facilities and Infrastructure Act of 2002 as codified in Section 56.575.1 et seq. of the Code of Virginia of 1950, as amended.

"**Project**" means the particular project described in ***Exhibit B*** to this Agreement, the real property with all its improvements, to be constructed, acquired or improved and transferred to the City by the Commonwealth of Virginia with, among other monies, funds made available by this Agreement, with such changes thereto as the Department may approve in writing.

"**Project Budget**" means the budget for the Project, a copy of which is attached to this Agreement as ***Exhibit C***, with such changes therein as may have been approved in writing by the Department.

"**Project Costs**" means the costs incurred in connection with the Project, provided same constitute "capital costs" and are eligible under the terms hereof, the Authorizing Legislation, and the definition of "Costs" in the VPBA authorizing legislation.

"**Project Description**" means the description of the Project to be undertaken using the funds made available by this Agreement, a copy of which is attached to this Agreement as ***Exhibit B***, with such changes therein as may have been approved in writing by the Department.

"**Term**" shall have the meaning set forth in Article III.

"**VPBA**" means the Virginia Public Building Authority, a political subdivision of the Commonwealth of Virginia.

"**Waiver Home**" means a waiver group home for persons with intellectual disability licensed by the Department as a "Group Home Residential Service" in accordance with 12 VAC 35-105-20, which "means a congregate service providing 24-hour supervision in a community-based home having

eight or fewer residents. Services include supervision, supports, counseling, and training in activities of daily living for individuals whose individualized services plan identifies the need for the specific types of services available in this setting."

ARTICLE II

SCOPE OF WORK

The City shall take title to the Project at closing as set forth in the Project Description (***Exhibit B***) of this Agreement. The Department shall cause the Project to be designed and constructed according to sound construction, engineering and architectural principles and commonly accepted safety standards.

ARTICLE III

TIME OF PERFORMANCE; TERM

This Agreement shall commence on the date of complete execution hereof and transfer of title to the property to the City and it shall end when no VPBA bonds issued to finance or refinance Project Costs are outstanding or this Agreement is otherwise terminated under the provisions hereof (such period being the "**Term**").

ARTICLE IV

FUNDING; NATURE OF TRANSACTION

Section 4.1. Amount of Funding. The Department shall pay W. M. Jordan Construction Company the amount set forth in the Project Budget. Disbursement of all such funds shall be in accordance with the Project Description and the payment provisions set forth in the PPEA Agreement described below in Section 5.1. No funds were disbursed to the City, and the City is not obligated to contribute funds to the Project, pursuant to ***Exhibit C*** of this Agreement.

ARTICLE V

GENERAL PROVISIONS

Section 5.1. Acquisition of the Project and Permitted Uses by City.

(a) The parties acknowledge that the construction of the Waiver Home described in ***Exhibit B*** was not under the control or direction of the City. The construction was solely under the control of W. M. Jordan Construction Company and the Virginia Department of General Services, pursuant to a contract between W. M. Jordan Construction Company and the Commonwealth of Virginia, acting by and through its Department of General Services, subsequent to a PPEA proposal

tendered by W. M. Jordan Construction Company (the "**PPEA Agreement**"). The parties also acknowledge that employees of the NCSB, which at the time the Project was designed, was an operating community services board independent of the City, participated in the design of the Project, as described in ***Exhibit B***. Notwithstanding the foregoing, the City is unaware of any reason why the Project will not satisfy the purposes of the Authorizing Legislation, i.e., providing a community-based Waiver Home for individuals with intellectual disabilities (the "**Permitted Use**").

(b) After the closing on the Project and the City's taking of title to the Project and Waiver Home, and throughout the Term, the City shall own the entire Project and Waiver Home and shall not dispose of its interests in the Project and Waiver Home, without the written consent of the Department in its sole discretion, which discretion shall not be unreasonably withheld. Unless the Department otherwise agrees, the Project and Waiver Home, as described in ***Exhibit B***, shall be owned, managed and operated by the City for the Permitted Use and in accordance with such requirements as may be set forth therein and by applicable law for the Project and Waiver Home from time to time.

(c) After the closing on the Project and the City's taking title to the Project and Waiver Home, and throughout the Term, the City shall keep the Project and Waiver Home in as reasonably safe condition as its operation shall permit and keep the Project and Waiver Home in good repair and operating condition, making from time to time, as the owner of the property, all necessary repairs, renewals and replacements, interior and exterior, structural and nonstructural. The Department shall not be required to rebuild or to make any repairs, renewals or replacements of the Project or Waiver Home of any nature whatsoever or to bear any costs for same.

(d) Subject to compliance with the provisions of this Agreement, including but not limited to ***Exhibit A***, the City, as owner of the property, in its discretion and at its expense, may make any additions, enlargements, improvements and expansions to, or repairs, reconstruction and restoration of, or install machinery, equipment and furnishings in and about, the Project and Waiver Home that it deems desirable. Any damage resulting from such modification or removal shall be repaired by the City.

(e) The City shall promptly comply with, or cause to be complied with, all applicable laws, rules, regulations and other governmental requirements (including, but not limited to, the Authorizing Legislation and the provisions of ***Exhibit A***).

(f) The City covenants not to commit, suffer, or permit to exist any waste or damage to, or public or private nuisance upon, the Project or Waiver Home.

(g) The City shall at all times fully comply with each provision and requirement set forth in ***Exhibit A***, which are hereby incorporated by reference as fully as if set forth herein.

(h) Transfer of Location or Change of Permitted Use. The City shall not transfer or change the Permitted Use except as provided by this section.

i. Notwithstanding any other provisions within this Agreement and its Exhibits or supplements, if through no fault of the City a serious change in circumstances occurs concerning the Project and Waiver Home, the City may, subject to the restrictions within this section, permanently transfer the

services of the Project and Waiver Home, i.e., the Permitted Use, to another suitable location within the city of Norfolk. In the event of a transfer pursuant to this section, the City shall continue to provide services as defined in Section 5.1(a) (the "Permitted Use") and as were provided at the location provided in ***Exhibit B*** herein. The City shall pay all the costs related to any transfer pursuant to this section.

ii. For purposes of this section, the phrase "serious change in circumstances" means the occurrence of any event not under the control of the City making the continued operation of the Project and Waiver Home for the Permitted Use at the location provided in ***Exhibit B*** herein physically or economically impossible or cost prohibitive as determined by the Department.

iii. The City shall not make a permanent transfer of the Permitted Use pursuant to this section without the prior written consent of the Department, which consent shall not be unreasonably withheld.

iv. In the event the City fails or ceases to operate the Project and Waiver Home during the Term of this Agreement for the Permitted Use as defined in Section 5.1(a) without the Department's prior written consent, this shall constitute a breach by the City pursuant to Section 5.13 herein.

v. The foregoing provisions of this section shall not apply to emergencies requiring a temporary shift of the location of the Permitted Use. Within seven (7) days of the occurrence of any such emergency, the City shall provide a plan to the Department explaining the nature of the emergency, the steps taken by the City in response to the emergency, and a schedule for returning to normal operation at the location provided in ***Exhibit B*** herein. Such plan may be amended by mutual agreement of both parties.

Section 5.2 Taxes, Other Governmental Charges and Utility Charges. In addition to payment of any taxes and legally required governmental charges that may be lawfully assessed, levied or imposed against the City, as owner of the Project or Waiver Home, the City shall pay when due all taxes and governmental charges of any kind whatsoever lawfully assessed, levied or imposed against the Department or the Project or Waiver Home with respect to the Project or Waiver Home or any machinery, equipment or other improvements made by the City to the Project or Waiver Home. The City shall pay when due all utility and other charges incurred in the operation, maintenance, use and occupancy of the Project and Waiver Home and all assessments and charges lawfully made by any governmental body for public improvements to the Project or Waiver Home. The City, however, upon reasonable prior notice to the Department of its intention to do so, at its own expense and in its own name or in the name of the Department, may contest in good faith any such tax, assessment, utility or other charge, in which event it may permit such charge to remain unpaid during the period of such contest and any appeal. The Department shall cooperate with the City in the conduct, at the expense of the City, of any such contest and shall, to the extent that it may lawfully do so, permit the City to conduct any such contest.

Section 5.3. Liability Insurance, Indemnification. The City shall take out and maintain during the Term comprehensive general liability insurance with a combined single limit of $1,000,000 per year against liability for bodily injury, including death resulting therefrom, and for damage to property, including loss of use thereof, which may arise from the City's activities under this

Agreement. All such insurance shall be taken out and maintained with generally recognized responsible insurers authorized to do business in the Commonwealth of Virginia and reasonably acceptable to the Department. Copies of the insurance certificates shall be provided to the Department on the anniversary of the renewal of the policy.

In lieu of obtaining any of the policies of insurance required above, the City may adopt alternative risk management programs which it determines to be reasonable, including, without limitation, to self-insure in whole or in part, individually or in connection with other units of local government or other institutions, to participate in programs of captive insurance companies, to participate with other units of local government or other institutions in mutual or other cooperative insurance or other risk management programs, to participate in state or federal insurance programs, to take advantage of state or federal laws now or hereafter in existence limiting liability, or to establish or participate in other alternative risk management programs, all as may be reasonable and appropriate risk management by the City, and that provide comparable coverages as required by this Section and approved by the Department. In addition, any insurance coverage pursuant to this Section may be pursuant to a program whereby the City self-insures against certain losses up to a stated loss amount, and retains excess coverage from an insurer meeting the requirements of this Section.

The Department hereby recognizes Scottsdale, VA Risk and the City as responsible insurers acceptable to the Department, until further notice by the Department.

Section 5.4. Proof of Payment of Taxes and Other Charges and Insurance Matters. Upon request of the Department or VPBA, the City shall furnish the Department proof of payment of any taxes, utility charges, insurance premiums, or other charges or payments required to be paid by the City under this Agreement. Further, the City shall furnish to the Department, upon request, a listing of all insurance coverage in place with respect to the Project and Waiver Home and a copy of any report of any insurance agent or consultant with respect thereto. The City shall provide notice to the Department if, during the Term, the City changes insurers or changes from an insurer to an alternative risk management program and vice versa.

The City agrees to notify the Department immediately in the case of damage to or destruction from fire or other casualty of all or any portion of the Project and Waiver Home in any amount that the City determines in good faith will cost more than $50,000 to repair, reconstruct and restore.

Section 5.5. Condemnation and Loss of Title. In the case of a taking of all or any part of the Project or Waiver Home or any rights in them under the exercise of the power of eminent domain or any loss of all or any part of the Project or Waiver Home because of loss of title to them, or the commencement of any proceedings or negotiations which might result in such a taking or loss, the City shall give immediate notice to the Department.

Section 5.6. Liens. The City will not suffer or permit a lien or liens for taxes to be imposed on or attached to the Project or Waiver Home, unless the City is contesting in good faith the tax or claim that is the basis of the lien, in which event the City shall dissolve the lien or stay or prevent its foreclosure by bond or other appropriate legal procedure.

Section 5.7 Sale, Conveyance, Licensing, Assignment, Leasing of Project. Except as provided in Section 5.1(b) or (h) the City may not change the Permitted Use or sell, license, lease, sublease, assign

or otherwise dispose of or encumber its interest in the Project or Waiver Home without in each instance the written consent of the Department in its sole discretion. In such instances, the City and the Department agree to notify VPBA in writing prior to such a change with respect to the Project or Waiver Home. No such sale, license, lease, sublease, assignment, disposal, or encumbrance or management contract shall relieve the City from primary liability for any of its obligations under this Agreement, and the City shall continue to remain primarily liable for the observance and performance of all its obligations under this Agreement.

The provisions of this Section 5.7 shall apply to any involuntary conveyance of the Project or Waiver Home (including but not limited to by way of a taking, condemnation or loss of title under Section 5.5, under a sale at foreclosure, trustee's sale or other final sale of the Project and Waiver Home). The City shall give immediate notice to the Department of any such proceeding, matter, conveyance or the like.

Section 5.8. Right of Inspection. The Department and VPBA and their respective duly authorized agents shall have such rights of access to the Project as may be reasonably necessary for the proper maintenance of the Project in the event of the City's failure to perform its obligations under this Agreement. The Department, VPBA and their duly authorized agents shall have the right at all reasonable times to enter upon, examine and inspect any part of the Project and to examine the books and records of the City, insofar as such books and records relate to the funding, operations and maintenance of the Project.

Section 5.9. Condition and Suitability of Project. Neither the Department nor VPBA makes any warranties or representations and accepts no liabilities or responsibilities with respect to, or for the adequacy, sufficiency or suitability of, or for defects in, the Project or any contracts or agreements for the acquisition, construction, improving, equipping, furnishing or operation of the Project. The Department makes no warranties or representations that the City shall have quiet and peaceful possession of the Project.

Section 5.10. Reserved.

Section 5.11. Cooperation by the City. The City shall give the Department its reasonable cooperation and assistance in all matters relating to the financing of the acquisition, construction, improving, equipping and furnishing of the Project.

Section 5.12. Authority of the City. Nothing in this Agreement shall be construed as authority for either party to make commitments that will bind the other party beyond the covenants contained herein, and the City is specifically without authority to commit or bind the Department or VPBA.

Section 5.13. Termination.

(a) At the time of the execution of this Agreement, the Department is authorized to provide funding up to $563,111 for the Project. To the extent that the Authorizing Legislation may be amended, modified or terminated, the parties may amend, modify or terminate this Agreement.

(b) Any written or oral representation, warranty or other statement furnished or made by or on behalf of either party after the execution of this Agreement in connection with this Agreement that is intentionally false or misleading in any material respect shall constitute a breach of this Agreement.

(c) In the event of a breach by the City, the Department shall give written notice to the City specifying the manner in which this Agreement has been breached and providing the City fifteen (15) working days within which to cure the breach or submit a written plan of correction. The written plan of correction, when required, shall explain and display how the City intends to regain compliance with the Agreement and shall include a schedule for same. Such written plan of correction shall be submitted to the Department for review and approval. If such a notice of breach is given, and the City has not substantially corrected the breach within fifteen (15) working days or such longer time set forth in the written plan of correction approved by the Department, the Department shall have the right forthwith to terminate this Agreement. In the event of a termination of this Agreement, the City shall reimburse the Department any amount of the bonds that is unpaid and outstanding at the time of the breach including costs associated with the defeasement of the bonds, but if the City does not so reimburse the Department, ownership of the Project and Waiver Home shall revert to the Department. Notwithstanding the foregoing, in the event of the amendment, modification, or termination of the Authorizing Legislation, the City shall not be required to repay previously disbursed proceeds unless such repayment is mandated in or required by the amended or modified Legislation.

Section 5.14. Integration and Modification. This Agreement constitutes the entire Agreement between the City and the Department with respect to the funding made available pursuant to this Agreement for the undertaking of the Project. No alteration, amendment or modification in the provisions of this Agreement shall be effective unless reduced to writing, and executed with all the formalities of the original Agreement.

Section 5.15. Collateral Agreements. Where there exists any inconsistency between this Agreement and other provisions of collateral contractual agreements that are made a part of this Agreement by reference or otherwise, the provisions of this Agreement shall control.

Section 5.16. Non-Discrimination. In the performance of this Agreement, the City warrants that it will not discriminate against any employee, or other person, on account of race, color, sex, religious creed, ancestry, age, national origin, other non-job related factors or any basis prohibited by law. The City agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

In all solicitations or advertisements for employees the City shall state that the City is an equal opportunity employer; however, notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this Agreement.

Henceforth, the City shall include the provisions of the foregoing paragraphs of this section in every contract, subcontract or purchase order of over ten thousand dollars entered into in connection with the Project, so that such provisions will be binding upon each contractor, subcontractor or vendor.

Section 5.17. Certificate as to No Default. The City shall deliver to the Department and to VPBA, within 90 days after the close of each of the fiscal years of the City, a certificate signed by an authorized representative of the City stating that during such fiscal year and as of the date of such certificate no event or condition has happened or existed, or is happening or existing, which constitutes, or which, with notice or lapse of time or both, would constitute an event of default hereunder, or if such an event or condition has happened or existed, or is happening or existing, specifying the nature and duration of such event or condition and what action the City has taken, is taking or proposes to take with respect to it.

Section 5.18. Applicable Laws. This Agreement shall be governed by the applicable laws of the Commonwealth of Virginia.

Section 5.19. Severability. Each paragraph and provision of this Agreement is severable from the entire Agreement, and if any provision is declared invalid, the remaining provisions shall nevertheless remain in effect.

Section 5.20. Contingent Fee Warranty. The City warrants that it has not paid or agreed to pay any company or person any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon the award or making of this Agreement. For breach of the foregoing warranty, the Department shall have the right to terminate this Agreement without liability, or, in its discretion, to deduct from the agreed fee, payment or consideration, or otherwise recover the full amount of said prohibited fee, commission, percentage, brokerage fee, gift, or contingent fee.

Section 5.21. Reserved.

Section 5.22. Conflict of Interest. The City warrants that it has fully complied with the Virginia Conflict of Interest Act.

Section 5.23. Ownership of Documents. Upon the request of the Department, the City shall provide copies of any reports, studies, photographs, negatives, or other documents prepared by the City in the performance of its obligations under this Agreement.

Section 5.24. Notices. Unless otherwise provided for herein, all notices, approvals, consents, correspondence and other communications under this Agreement shall be in writing and shall be deemed delivered to the following:

Department: Department of Behavioral Health
and Developmental Services
1220 Bank Street, 7th Floor
P.O. Box 1797
Richmond, VA 23218-1979
Attention: Office of A & E Services

CSB: City of Norfolk
Community Services Board
225 West Olney Road
Norfolk, VA 23510-1523
Attention: Office of the Executive Director

A duplicate copy of each notice, approval, consent, correspondence or other communications shall be given to each of the other parties named.

ARTICLE VI

COUNTERPARTS

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

WITNESS the following signatures, all duly authorized.

COMMONWEALTH OF VIRGINIA, acting by and through its **DEPARTMENT OF BEHAVIORAL HEALTH AND DEVELOPMENTAL SERVICES**

By: _____

Its: _____

Title: _____

CITY OF NORFOLK

By: _____
Marcus Jones, City Manager

ATTEST:

_____
City Clerk

CONTENTS APPROVED:

_____
Sarah P. Fuller, Executive Director
of the Norfolk Community Services Board

FORM AND CORRECTNESS APPROVED:

_____
Jack E. Cloud, Deputy City Attorney

1083703

Exhibit A

FUNDING RESTRICTIONS

Department Requirements:

1) The funding shall be used to construct a Waiver Home for individuals with intellectual disabilities. During the initial downsizing of Southeastern Virginia Training Center ("SEVTC"), individuals with intellectual disabilities who are residents of SEVTC shall have priority to occupy the Waiver Home. In the event that SEVTC does not provide to the City current SEVTC residents willing and able to move into the facility within 30 days of notification of the facility's readiness to accept residents, the City retains the right to fill the beds with individuals with intellectual disabilities from other Commonwealth of Virginia training centers, and individuals with intellectual disabilities from the Commonwealth of Virginia. Once the initial downsizing of SEVTC occurs, the City has the right to fill the beds with other individuals with intellectual disabilities;

2) The acquisition and operation of the Waiver Home shall comply with all existing agreements between the Department and theCity;

3) The Waiver Home shall remain in operation for the Permitted Use for so long as the corresponding VPBA bonds are outstanding, and the City shall not change, alter, or otherwise modify its use to or for any other purpose, or fail or cease to operate the Waiver Home for the Permitted Use, without the express, written consent of the Department pursuant to sections 5.1(b) or 5.1(h) of this Agreement;

4) All land and structures to be used for the Waiver Home shall be free and clear of environmental hazards;

5) The City shall have clear title to the land, with no easements or encumbrances that might lead to an interruption of services; and

6) The City shall operate the Waiver Home in accordance with all applicable laws and regulations.

VPBA Requirements:

1) Capital Costs Only. Funds provided hereunder may only be spent for capital costs, and not operating costs.

Exhibit B

PROJECT DESCRIPTION

Legal Description of the Property:

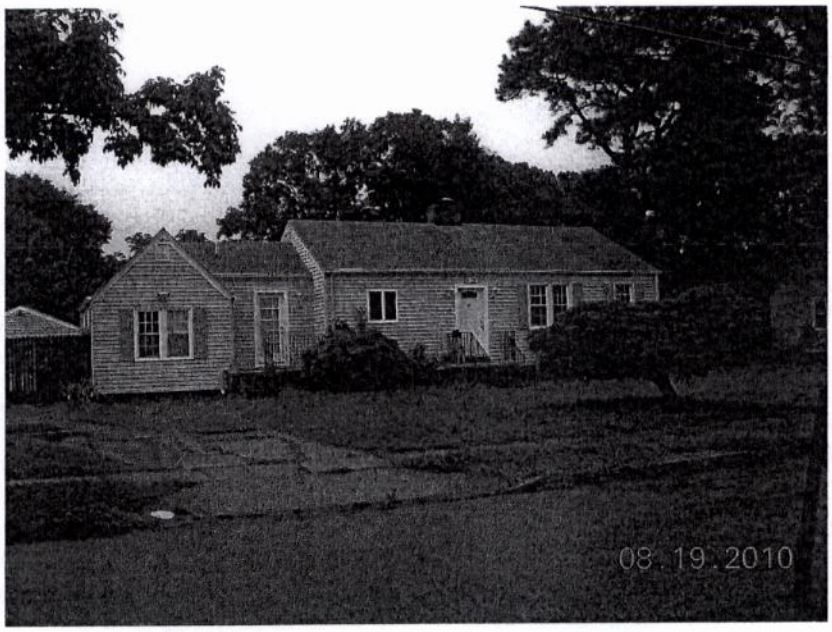
Property located at 1826 East Bayview Blvd. on lots 30 and 31 of Block 6 in Norfolk, Virginia.

Commonly Known Property Address:

1826 East Bayview Boulevard, Norfolk, VA, 23503

Property Description:

One story, 2,100 square foot vinyl sided house with four bedrooms and two baths. Also includes; full kitchen, breakfast nook, living room, detached garage, and wood deck. Major appliances include: central air and heating system and hot water heater.



Proposed Improvements:

The improvements consist of installations of an ADA accessible bathroom, new sprinkler system, new HVAC system, fifth bedroom addition on rear of house, rear handicapped entrance ramp, new whole-house generator, new roof, interior renovations, new flooring, new furniture, and updated appliances.

Referenced Documents:

1	*Waiver Home Drawings - 1826 E. Bayview Boulevard, Norfolk, VA*			
	Pages	*Description*	*Author*	*Date*
	T100	*Title Sheet*	*Paul Finch and Associates*	*9/29/2010*
	AS100	*Architectural Site Plan*	*Paul Finch and Associates*	*9/29/2010*
	AD110	*Demolition Plan*	*Paul Finch and Associates*	*9/29/2010*
	A110	*First Floor New Work Plan*	*Paul Finch and Associates*	*9/29/2010*
	A500	*Building Elevations and Sections*	*Paul Finch and Associates*	*9/29/2010*
	A600	*Schedules*	*Paul Finch and Associates*	*9/29/2010*
	A610	*Furniture Plan*	*Paul Finch and Associates*	*9/29/2010*
2	*Waiver Home Drawings - 1826 E. Bayview Boulevard, Norfolk, VA*			
	See Drawings		*Paul Finch and Associates*	*9/29/2010*

Exhibit C

PROJECT BUDGET

1) **City contribution:**

City contribution is zero ($0.00)

2) **Commonwealth of Virginia, Department of Behavioral Health and Development Services financial contribution:**

DBHDS contribution is $563,111

Costs associated with the referenced property located at 1826 East Bayview Boulevard, Norfolk, VA

The cost breakdown is as follow:

Property Purchase	*$ 195,000*
Improvements	*$ 333,111*
Furnishing	*$ 35,000*
Total Cost:	*$ 563,111*

3) **Summary of Contributions:**

City contribution	*$ 0.00*
DBHDS contribution	*$563,111*
Total Cost	*$563,111*