SUFFOLK CITY COUNCIL MEETING
OF JANUARY 5, 2022

WORK SESSION
Begins at 4:00 P.M.

REGULAR SESSION
Begins at 6:00 P.M.
1. Update on 2021 Redistricting

2.* Appointments

* Proposed Items for Closed Session
AGENDA:  January 5, 2022, Work Session

ITEM:  Update on 2021 Redistricting

The City has engaged the law firm of McGuire Woods to handle the City of Suffolk Redistricting. Attorney Robert Loftin will provide a presentation to update City Council regarding the 2021 Redistricting process.
1. Call to Order

2. Nonsectarian Invocation

3. Approval of the Minutes

4. Special Presentations

5. Removal of Items from the Consent Agenda and Adoption of the Agenda

6. Agenda Speakers

7. Consent Agenda

8. Public Hearing – An ordinance authorizing the acquisition of real property in fee simple and/or permanent and/or temporary easements, either by agreement or condemnation, for the Pughsville Drainage Improvements Phase II Project

9. Ordinances

10. Resolution – A resolution authorizing the City Manager to Execute the Southside Network Authority Project Participation Agreement

11. Resolution – A resolution establishing the Comprehensive Plan Steering Committee

12. Staff Reports

13. Motion – A motion to schedule a City Council Work Session, for Wednesday, January 19, 2022, at 4:00 p.m., unless cancelled

14. Non-Agenda Speakers

15. New Business

16. Announcements and Comments

17. Adjournment
Work Session of the Suffolk City Council was held in the City Council Chamber, 442 West Washington Street, on Wednesday, July 7, 2021, 4:00 p.m.

**PRESENT**
Council Members -  
Michael D. Duman, Mayor, presiding  
Leroy Bennett, Vice Mayor  
Shelley Butler Barlow  
Roger W. Fawcett  
Donald Z. Goldberg  
Timothy J. Johnson  
Lue R. Ward, Jr.  
LeOtis L. Williams

Erika S. Dawley, City Clerk  
William E. Hutchings, Jr., City Attorney  
Albert S. Moor, City Manager

**ABSENT**  
None

**AMERICAN RESCUE PLAN ACT FUNDING**

City Manager Moor offered introductory comments. Utilizing a PowerPoint presentation, Finance Director Tealen Hansen and Interim Deputy City Manager Kevin Hughes gave a report about the above referenced item.

Referring to the presentation, Council Member Goldberg inquired about the use of the funding for internet access expansion. Interim Deputy City Manager Hughes reported that $5,000,000 of the funds will be used for the City’s contribution to the first phase of the Regional Connectivity Ring which is being spearheaded by the Southside Network Authority. He added that an additional $3,000,000 will be used to partner with local service providers for the expansion of internet access in rural areas of the City.

Referring to the presentation, Council Member Johnson called for a copy of the ordinances that would appropriate the proposed funding. Interim Deputy City Manager Hughes confirmed they would be provided for the next meeting.

Referring to the presentation, Vice Mayor Bennett asked for a copy of the current presentation.

Referring to the presentation, Mayor Duman opined about the $1,500,000 of funding for non-profit support, as it relates to the City’s allocations to non-profits in the Operating Budget. City Manager Moor said that the proposed $1,500,000 would be in addition to the funding for non-profits in the Operating Budget.

Referring to the presentation, Mayor Duman solicited information about the timeline to use all of the funding. City Manager Moor reported that the funding must be used by the end of 2026.
DOWNTOWN DRAINAGE AND BMP PROJECT

Utilizing a PowerPoint presentation, Interim Public Works Director Robert Lewis submitted a synopsis about the above referenced item.

CLOSED MEETING

City Clerk Dawley presented the Closed Meeting motion for City Council’s consideration:

1. Pursuant to Virginia Code Sections 2.2-3711(A)(8) and (A)(1), the consultation with legal counsel employed by a public body regarding specific legal matters requiring the legal advice of such counsel, and the discussion, consideration, or interviews of prospective candidates for appointment and the assignment, appointment, and performance of specific public officers or appointees of the City, specifically the appointments as shown on the attached list for vacancies or term expirations for Clean Community Commission, Clean Community Commission Keep Suffolk Beautiful Executive Board, Community Policy and Management Team, Early Childhood Development Commission, Economic Development Authority the City of Suffolk, Fine Arts Commission, Historic Landmarks Commission, Human Services Advisory Board, Library Advisory Board, Local Board of Building Code Appeals, Parks and Recreation Advisory Commission, Paul D. Camp Community College Board, Sister Cities Commission, Suffolk Redevelopment and Housing Authority Board of Commissioners, The Planning Council, and Wetlands Board; and

2. Pursuant to Virginia Code Section 2.2-3711(A)(3), the discussion or 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 bargaining position or negotiating strategy of the public body, specifically regarding Suffolk Executive Airport Ground Leases; and

3. Pursuant to Virginia Code Section 2.2-3711(A)(3), the discussion or 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 bargaining position or negotiating strategy of the public body, specifically regarding the potential use of City rights of way and public places for broadband/telecommunications services.

Council Member Fawcett, on a motion seconded by Council Member Goldberg, moved that City Council convene in a closed meeting for the above referenced purposes, by the following roll call vote:

AYES: Mayor Duman, Vice Mayor Bennett, and Council Members Butler Barlow Fawcett, Goldberg, Johnson, Ward and Williams 8

NAYS: None 0
City Council convened in Closed Meeting at 4:58 p.m. The Closed Meeting concluded at 5:36 p.m.

Teste: ____________________________________________

Erika S. Dawley, MMC, City Clerk

Approved: _________________________________________

Michael D. Duman, Mayor
Regular Meeting of the Suffolk City Council was held in the City Council Chamber, 442 West Washington Street, on Wednesday, July 7, 2021, at 6:00 p.m.

PRESENT
Council Members -
Michael D. Duman, Mayor, presiding
Leroy Bennett, Vice Mayor Bennett
Shelley Butler Barlow
Roger W. Fawcett
Donald Z. Goldberg
Timothy J. Johnson
Lue R. Ward, Jr.
LeOtis L. Williams
Erika S. Dawley, City Clerk
William E. Hutchings, Jr., City Attorney
Albert S. Moor, City Manager

ABSENT
None

CALL TO ORDER/INVOCATION/PLEDGE OF ALLEGIANCE
Mayor Duman called the meeting to order. Council Member Goldberg offered the Invocation and led the Pledge of Allegiance.

FREEDOM OF INFORMATION ACT CERTIFICATION
City Clerk Dawley presented a resolution certifying the Closed Meeting of July 7, 2021, pursuant to Section 2.2-3712 of the Code of Virginia (1950), as amended.

Council Member Goldberg, on a motion seconded by Council Member Williams, moved to approve the resolution, as presented, by the following roll call vote:

AYES: Mayor Duman, Vice Mayor Bennett, and Council Members Butler Barlow Fawcett, Goldberg, Johnson, Ward and Williams 8
NAYS: None 0

A RESOLUTION OF CERTIFICATION OF THE CLOSED MEETING OF JULY 7, 2021, PURSUANT TO SECTION 2.2-3712 OF THE CODE OF VIRGINIA (1950), AS AMENDED

APPROVAL OF THE MINUTES
Council Member Williams, on a motion seconded by Council Member Johnson, moved to approve the minutes from the January 4, 2021, Special Meeting, as presented, by the following roll call vote:

AYES: Mayor Duman, Vice Mayor Bennett, and Council Members Butler Barlow Fawcett, Goldberg, Johnson, Ward and Williams 8
NAYS: None 0
SPECIAL PRESENTATIONS

Special Presentation – A proclamation in recognition of Parks and Recreation Month

Mayor Duman presented the above referenced proclamation to Parks and Recreation Director Mark Furlo.

REMOVAL OF ITEMS FROM THE CONSENT AGENDA AND ADOPTION OF THE AGENDA

Mayor Duman advised that a motion was in order at this time to adopt the agenda, as presented.

Council Member Williams, on a motion seconded by Council Member Fawcett, to adopt the agenda, as presented, by the following roll call vote:

AYES: Mayor Duman, Vice Mayor Bennett, and Council Members Butler Barlow Fawcett, Goldberg, Johnson, Ward and Williams 8
NAYS: None 0

AGENDA SPEAKERS

Pamela Brandy, 5016 Pearl Street, Chesapeake, Virginia, was not present when called.

Carolyn White, 4216 Coltrane Avenue, was not present when called.

CONSENT AGENDA

City Clerk Dawley presented the following Consent Agenda items:

Consent Agenda Item #7 – An ordinance to authorize the transfer of State funds from the Portsmouth Boulevard Sidewalk Phase II Project to the Portsmouth Boulevard Sidewalk Phase I and Phase III Projects

Consent Agenda Item #8 – An ordinance to authorize the transfer of funds from the Transit Fund to the Capital Projects Fund to advance the Transit Operations Facility Capital Project

Consent Agenda Item #9 – An ordinance to accept and appropriate additional funds from the Federal Transit Administration for the City’s public transit service

Referring to Consent Agenda Items #7 through #9, City Manager Moor submitted a review of the background information as printed in the official agenda.

Council Member Fawcett, on a motion seconded by Vice Mayor Bennett, moved to approve the Consent Agenda, as presented, by the following roll call vote:

AYES: Mayor Duman, Vice Mayor Bennett, and Council Members Butler Barlow Fawcett, Goldberg, Johnson, Ward and Williams 8
NAYS: None 0
PUBLIC HEARINGS

**Public Hearing** – An ordinance to authorize a quitclaim deed between the City of Suffolk and Birdco Energy Incorporated in reference to an abandoned water distribution system public utility easement located on Tax Map & Parcel 34G29(A)*1*2+

Utilizing a PowerPoint presentation, Interim Public Utilities Director Paul Retel offered a presentation of the background information as printed in the official agenda.

Witt Harper, no address provided, Saunders and Ojeda, spoke in support of the proposed ordinance.

Hearing no additional speakers, the public hearing was closed.

Council Member Goldberg, on a motion seconded by Council Member Fawcett, moved to approve the proposed ordinance.

Council Member Williams queried about the process used by residents to obtain a quick claim deed, when they have maintained City owned parcels. City Manager Moor deferred to City Attorney Hutchings, who explained that the quit claim process for City owned land depends on the type of property.

Council Member Goldberg, on a motion seconded by Council Member Fawcett, moved to approve the proposed ordinance, as presented, by the following roll call vote:

**AYES:** Mayor Duman, Vice Mayor Bennett, and Council Members Butler Barlow Fawcett, Goldberg, Johnson, Ward and Williams  8

**NAYS:** None  0

AN ORDINANCE TO AUTHORIZE A QUITCLAIM DEED BETWEEN THE CITY OF SUFFOLK AND BIRDCO ENERGY INCORPORATED IN REFERENCE TO AN ABANDONED WATER DISTRIBUTION SYSTEM PUBLIC UTILITY EASEMENT LOCATED ON TAX MAP & PARCEL 34G29(A)*1*2+

ORDINANCES

**Ordinance** – An ordinance approving a reclassification in the Fiscal Year 2021-2022 City Classification and Compensation Plan

Utilizing a PowerPoint presentation, City Manager Moor supplied a summation of the background information as printed in the official agenda.

Vice Mayor Bennett, on a motion seconded by Council Member Ward, moved to approve the ordinance, as presented, by the following roll call vote:

**AYES:** Mayor Duman, Vice Mayor Bennett, and Council Members Butler Barlow Fawcett, Goldberg, Johnson, Ward and Williams  8

**NAYS:** None  0
AN ORDINANCE APPROVING A RECLASSIFICATION IN THE FISCAL YEAR 2021-2022 CITY CLASSIFICATION AND COMPENSATION PLAN

RESOLUTIONS

There were no items under this portion of the agenda.

STAFF REPORTS

There were no items under this portion of the agenda.

MOTIONS

Motion – A motion to schedule a public hearing on July 21, 2021, regarding an amendment to the Fiscal Year 2021-2022 Operating and Capital Budget to accept and appropriate American Rescue Plan Act (ARPA) funding

Council Member Fawcett, on a motion seconded by Council Member Williams, moved to schedule a public hearing on July 21, 2021, regarding an amendment to the Fiscal Year 2021-2022 Operating and Capital Budget to accept and appropriate American Rescue Plan Act (ARPA) funding, by the following roll call vote:

AYES: Mayor Duman, Vice Mayor Bennett, and Council Members Butler Barlow Fawcett, Goldberg, Johnson, Ward and Williams 8
NAYS: None 0

Motion – A motion to schedule a public hearing for the August 18, 2021 City Council meeting regarding authorizing the issuance and sale of General Obligation Public Improvement Bonds, Series 2021

Council Member Goldberg, on a motion seconded by Council Member Ward, moved to schedule a public hearing for the August 18, 2021 City Council meeting regarding authorizing the issuance and sale of General Obligation Public Improvement Bonds, Series 2021, by the following roll call vote:

AYES: Mayor Duman, Vice Mayor Bennett, and Council Members Butler Barlow Fawcett, Goldberg, Johnson, Ward and Williams 8
NAYS: None 0

Motion – A motion to schedule a public hearing to be held on July 21, 2021, to receive public comment on ordinances to enter into new ground lease agreements for the .67 acre Corporate Hangar 2 Parcel, the .49 acre Corporate Hangar 3 Parcel and the .25 acre Corporate Hangar 4 Parcel at the Suffolk Executive Airport
Council Member Fawcett, on a motion seconded by Vice Mayor Bennett, moved to schedule a public hearing to be held on July 21, 2021, to receive public comment on ordinances to enter into new ground lease agreements for the .67 acre Corporate Hangar 2 Parcel, the .49 acre Corporate Hangar 3 Parcel and the .25 acre Corporate Hangar 4 Parcel at the Suffolk Executive Airport, by the following roll call vote:

**AYES:** Mayor Duman, Vice Mayor Bennett, and Council Members Butler Barlow Fawcett, Goldberg, Johnson, Ward and Williams 8

**NAYS:** None 0

**Motion** – A motion to schedule a public hearing to be held on July 21, 2021, to receive public comment on changes to the transit routes per the Transit Master Plan

Council Member Williams, on a motion seconded by Vice Mayor Bennett, moved to schedule a public hearing to be held on July 21, 2021, to receive public comment on changes to the transit routes per the Transit Master Plan, by the following roll call vote:

**AYES:** Mayor Duman, Vice Mayor Bennett, and Council Members Butler Barlow Fawcett, Goldberg, Johnson, Ward and Williams 8

**NAYS:** None 0

**Motion** – A motion to cancel the August 4, 2021, City Council Meeting

Council Member Fawcett, on a motion seconded by Council Member Goldberg, moved to cancel the August 4, 2021, City Council Meeting, by the following roll call vote:

**AYES:** Mayor Duman, Vice Mayor Bennett, and Council Members Butler Barlow Fawcett, Goldberg, Johnson, Ward and Williams 8

**NAYS:** None 0

**Motion** – A motion to schedule a City Council Work Session, for Wednesday, July 21, 2021, at 4:00 p.m., unless cancelled

Council Member Johnson, on a motion seconded by Council Member Butler Barlow, moved to schedule a City Council Work Session, for Wednesday, July 21, 2021, at 4:00 p.m., unless cancelled, by the following roll call vote:

**AYES:** Mayor Duman, Vice Mayor Bennett, and Council Members Butler Barlow Fawcett, Goldberg, Johnson, Ward and Williams 8

**NAYS:** None 0

**NON-AGENDA SPEAKERS**

Pamela Brandy, 5016 Pearl Street, Chesapeake, Virginia, was not present when called.

Carolyn White, 4216 Coltrane Avenue, representing the Pughsville Civic League, opined about infrastructural needs in Pughsville.

Wayne White, 4216 Coltrane Avenue, representing the Pughsville Civic League, opined about infrastructural needs in Pughsville.
Kelly Hengler, 9345 Eclipse Drive, representing the Crittenden Eclipse Hobson Heritage Civic League, opined about funding for community revitalization.

NEW BUSINESS

City Clerk Dawley presented the following board and commission nominations to the respective bodies: Paul D. Camp Community College Board – Marcus Gersbach and Sister Cities Commission – Deborah Harris Austin and Susan Blair.

Vice Mayor Bennett, on a motion seconded by Council Member Fawcett, moved to nominate and appoint the above referenced individuals to the aforementioned bodies, by the following roll call vote:

AYES: Mayor Duman, Vice Mayor Bennett, and Council Members Butler Barlow Fawcett, Goldberg, Johnson, Ward and Williams 8

NAYS: None 0

Council Member Butler Barlow, on a motion seconded by Council Member Johnson, moved to direct the City Manager and staff review and provide recommendations regarding amendment to Section 31-612(c)(3) and (f)(8) of the Unified Development Ordinance.

Council Member Goldberg asked for an explanation of the motion. Council Member Butler Barlow advised that the section addresses construction standards on private streets with two or more access points and serve 25 or more homes. She further explained that this motion intends to address public safety access in cul-de-sacs with only one access point.

Members of City Council opined about the proposed motion.

Vice Mayor Bennett asked whether the City is reviewing the Unified Development Ordinance. City Manager Moor reported that a review would be conducted later in the year.

Mayor Duman asked whether a pending land use application would be held to newly adopted standards or if it would be grandfathered in. City Attorney Hutchings advised that the answer would be dependent upon where the application is in the process and the will of City Council.

Mayor Duman solicited a report on the process for amending the Unified Development Ordinance. City Attorney Hutchings said that the Planning Commission generally reviews proposed amendments to the Unified Development Ordinance before the measure is considered by City Council.

Mayor Duman asked for clarification about whether the motion would need amendment to send the matter to the Planning Commission. City Attorney Hutchings replied that it would depend on the intent of the motion. He explained that if the intent is to get information, then the motion can remain the same. He concluded, if the maker of the motion is requesting an amendment to the Unified Development Ordinance, then an amended motion to send the issue to the Planning Commission would be needed.
Council Member Butler Barlow, on an amended motion seconded by Council Member Johnson, moved to request that the Planning Commission to review and provide recommendations regarding amendment to Section 31-612(c)(3) and (f)(8) of the Unified Development Ordinance, by the following roll call vote:

**AYES:** Mayor Duman and Council Members Butler Barlow, Johnson, Ward and Williams 5

**NAYS:** Vice Mayor Bennett, Council Members Fawcett and Goldberg 3

Council Member Fawcett, on motion seconded by Council Member Ward, moved to direct City Attorney Hutchings to draft an ordinance to amend Section 2-40 of the City Code to provide City Council and the Mayor salary compensations at the amounts provided by the Code of Virginia and to allow City Council Members and the Mayor to opt in or opt out of the health insurance provided to City employees, by the following roll call vote:

**AYES:** Mayor Duman, and Council Members Butler Barlow Fawcett, Goldberg, Johnson, Ward and Williams 7

**NAYS:** Vice Mayor Bennett 1

**ANNOUNCEMENTS AND COMMENTS**

Utilizing a PowerPoint presentation, Media and Community Relations Assistant Director Timothy Kelley provided a report on the following: the Suffolk Fire and Rescue Department’s Emergency Services Division’s receipt of an honor from Tidewater Emergency Medical Services; smoke testing by the sewer lines; the Commissioner of the Revenue’s Car Tax Reduction Drive-Thru; the availability of free mosquito dunks and the State’s vaccine website and telephone number.

Council Member Williams announced he attended the investiture for Judge Helivi Holland.

Council Member Ward announced he attended the investiture for Judge Helivi Holland.

Council Member Ward acknowledged he attended a celebration in honor of Sylvia Copeland Murphy at Oak Grove Baptist Church.

Council Member Ward reported that he recently attended a town hall hosted by the Greater Oakland/Chuckatuck Civic League.

Council Member Butler Barlow opined about the City’s Independence Day Celebration.

Council Member Johnson opined about the City’s Independence Day Celebration.

Council Member Fawcett opined the presentation at today’s Work Session about the American Rescue Plan Act Funding.

Council Member Fawcett opined about the incoming hurricane.

Council Member Fawcett congratulations on the Suffolk Fire and Rescue Department’s recent recognition by the Tidewater Emergency Medical Services.
Council Member Fawcett acknowledged the members of the Suffolk Fire and Rescue Department participating in the emergency response to the condominium collapse in Surfside, Florida.

Council Member Fawcett encouraged residents to participate in the Commissioner of the Revenue’s Car Tax Reduction Drive-Thru.

Council Member Fawcett announced he attended the investiture for Judge Helivi Holland.

Vice Mayor Bennett reported that he attended an event honoring Sylvia Copeland Murphy at Oak Grove Baptist Church.

Vice Mayor Bennett announced he attended the investiture for Judge Helivi Holland.

Vice Mayor Bennett opined about the City’s Independence Day Celebration event.

Mayor Duman opined the presentation at today’s Work Session about the American Rescue Plan Act Funding.

Mayor Duman reported that he attended the following events: an event at Lake Prince Woods hosted by Suffolk Clergy United; the Juneteenth Celebration in Pughsville; a town hall hosted by the Greater Oakland/Chuckatuck Civic League; the investiture for Judge Helivi Holland and the Independence Day Celebration in Eclipse.

Mayor Duman encouraged residents to participate in the Commissioner of the Revenue’s Car Tax Reduction Drive-Thru.

Mayor Duman congratulated the Nansemond River High School Softball Team on their recent championship.

Mayor Duman acknowledged the members of the Suffolk Fire and Rescue Department participating in the emergency response to the condominium collapse in Surfside, Florida.

Mayor Duman opined about a recent Letter to the Editor in the Suffolk News-Herald commending the Suffolk Fire and Rescue Department and the Suffolk Police Department.

Council Member Fawcett, on a motion seconded by Council Member Ward, moved to adjourn, by the following vote:

AYER: Mayor Duman, Vice Mayor Bennett, and Council Members Butler Barlow Fawcett, Goldberg, Johnson, Ward and Williams 8

NAYS: None 0
There being no further business to come before City Council, the regular meeting was adjourned at 7:47 p.m.

Teste: ______________________________________
Erika S. Dawley, MMC, City Clerk

Approved: ______________________________________
Michael D. Duman, Mayor
Removal of Items from the Consent Agenda and Adoption of the Agenda
Agenda Speakers
Consent Agenda
AGENDA:  January 5, 2022, Regular Session

ITEM:  Public Hearing – An ordinance authorizing the acquisition of real property in fee simple and/or permanent and/or temporary easements, either by agreement or condemnation, for the Pughsville Drainage Improvements Phase II Project

This project proposes to provide much needed drainage improvements in the Pughsville area. This will be accomplished by installing a drainage trunk line down John Street from Townpoint Road to the outfall at the end of John Street in the City of Chesapeake. A stormwater pond will also be included south of Queen Street to help attenuate some of the flow going into Chesapeake. The stormwater pond will also provide some water quality credits for the project. With a portion of the project along John Street being in the City of Chesapeake, it should be noted that coordination between the two municipalities is required.

RECOMMENDATION:

Adopt the attached ordinance

ATTACHMENT:

Ordinance
ORDINANCE NO. ___________

AN ORDINANCE AUTHORIZING THE ACQUISITION OF REAL PROPERTY IN FEE SIMPLE AND/OR PERMANENT AND/OR TEMPORARY EASEMENTS, EITHER BY AGREEMENT OR CONDEMNATION, FOR THE PUGHSVILLE DRAINAGE IMPROVEMENTS PHASE II PROJECT

WHEREAS, on January 5, 2022, the City Council of the City of Suffolk, Virginia held a public hearing concerning the acquisition of real property in fee simple and/or permanent and/or temporary easements, either by agreement or condemnation, for the Pughsville Drainage Improvements Phase II project; and,

WHEREAS, it is the opinion of the City Council of the City of Suffolk, Virginia, that a public necessity exists for the construction of the Pughsville Drainage Improvements Phase II project to improve transportation within the City and for other related public purposes for the preservation of the safety, health, peace, good order, comfort, convenience, and for the welfare of the people in the City of Suffolk.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF SUFFOLK, AS FOLLOWS:

Section 1. That the City Council authorizes the acquisition by purchase or condemnation pursuant to Sections 15.2-1901, et. seq., and Title 25.1 of the Code of Virginia (1950), as amended, and City Charter Section 2.05, et. seq., of real property in fee simple, and/or permanent and/or temporary easements (the "Property"), as shown on the plans (the "Plans") entitled "Pughsville Drainage Improvements Phase II" (the "Project"), the Plans being on file in the Department of Public Works, Engineering Division, City of Suffolk, Virginia.

Section 2. That the City Manager is hereby authorized to make or cause to be made on behalf of the City of Suffolk, to the extent that funds are available, a reasonable offer to the owners or persons having an interest in said Property, and is further authorized to enter into agreements and do other things as may be necessary to acquire said Property. Further, if efforts to acquire such Property are not successful, the City Attorney is hereby authorized to institute condemnation proceedings to acquire same.

Section 3. This ordinance shall be effective upon passage and shall not be published.

PASSED: ____________________________

TESTE: ____________________________

Erika S. Dawley, City Clerk

Approved as to Form:

[Signature]

William E. Hutchings, Jr., City Attorney
Ordinances
AGENDA: January 5, 2022, Regular Session

ITEM: Consent Agenda – A resolution authorizing the City Manager to execute the Southside Network Authority Project Participation Agreement

In late 2019, the cities of Chesapeake, Norfolk, Portsmouth, Suffolk, and Virginia Beach formed the Southside Network Authority for the essential public purpose of increasing the speed and availability of broadband internet and information services in South Hampton Roads. Over the past three (3) years, the Authority and its consultants have developed, designed, and received construction bids for the initial loop through the participating cities. To finance the construction, a participation agreement has been developed with participation based on purchased shares into the project. The amount of purchase shares determines the percentage of future revenues to each city. Construction of the network ring is anticipated to start by mid-2022 with completion scheduled for 2023.

RECOMMENDATION:

Approve the attached resolution

ATTACHMENTS:

Resolution
Draft Agreement
RESOLUTION NUMBER ____________

A RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE THE SOUTHSIDE NETWORK AUTHORITY PROJECT PARTICIPATION AGREEMENT

WHEREAS, the Councils of the Cities of Chesapeake, Norfolk, Portsmouth, Suffolk, and Virginia Beach have created the Southside Network Authority for the essential public purpose of increasing the speed and availability of broadband Internet and information services in South Hampton Roads; and,

WHEREAS, the Southside Network Authority and its member cities desire to construct, manage, and operate the Southside Regional Connectivity Ring ("Project"); and,

WHEREAS, the member cities desire to enter into an Agreement governing the funding, construction, management, and operation of the Project ("Project Participation Agreement"), draft of which has been presented to the Council in substantially final form.

NOW THEREFORE BE IT RESOLVED by the Council of the City of Suffolk that:

Section 1:- The Council hereby approves the adoption of the Southside Network Authority Project Participation Agreement, a copy of which is attached hereto as Exhibit A, with such corrections as may be necessary and proper, the necessity and propriety of which is conclusively evidenced by execution thereof.

Section 2:- The Council authorizes and directs the City Manager to execute the Project Participation Agreement and take all necessary actions to implement the provisions of the Agreement.

Section 3:- That the Council’s appointee to the Board of Directors of the Authority, or his or her alternate if he or she is absent or otherwise unable to participate, is authorized to purchase up to 5 shares in the Project, as set forth in the Agreement.

Section 4:- That this Resolution shall be effective upon its adoption and shall not be published.

READ AND ADOPTED: ______________

TESTE:
Erika S. Dawley, City Clerk

Approved as to Form:

[Signature]
William E. Hutchings, Jr., City Attorney
PROJECT PARTICIPATION AGREEMENT

Southside Regional Fiber Connectivity Ring

This project participation agreement ("Agreement") is entered as of the 14th day of January, 2022, by and between the Southside Network Authority, a body politic and corporate and a political subdivision of the Commonwealth, whose address is 723 Woodlake Drive, Chesapeake, Virginia 23320 (the "Authority"), the City of Chesapeake, Virginia, a municipal corporation of the Commonwealth, whose address is 306 Cedar Road, Chesapeake, Virginia 23322, the City of Norfolk, Virginia, a municipal corporation of the Commonwealth, whose address is 810 Union Street, Norfolk, Virginia 23510, the City of Portsmouth, Virginia, a municipal corporation of the Commonwealth, whose address is 801 Crawford Street, Portsmouth, Virginia 23704, the City of Suffolk, Virginia, a municipal corporation of the Commonwealth, whose address is 442 West Washington Street, Suffolk, Virginia 23434, and the City of Virginia Beach, Virginia, a municipal corporation of the Commonwealth, whose address is 2401 Courthouse Drive, Virginia Beach, Virginia 23456.

Recitals:

WHEREAS, the Authority was formed by the Cities of Chesapeake, Norfolk, Portsmouth, Suffolk, and Virginia Beach (the "Member Jurisdictions") under the provisions of the Virginia Wireless Service Authorities Act, Code of Virginia, Chapter 54.1 of Title 15.2 (the "Act") for the purpose of providing or facilitating the provision of qualifying communications services, as provided in the Act and the Articles of Incorporation of the Authority; and

WHEREAS, the initial project is as described in Appendix A, and as let in [scope of work of contract in which initial construction was authorized], as constructed in accordance with such
contract, as amended, and financing, operations, maintenance, marketing, reconstruction, renovation, extensions, and management thereof; and

WHEREAS, the Authority and its Member Jurisdictions wish to set forth their mutual agreements as to the manner of carrying out such activities.

ARTICLE I
Definitions

“Act” means the Virginia Wireless Service Authorities Act, Code of Virginia, Chapter 54.1 of Title 15.2.

“Annual Budget” has the meaning given to it in Section 3.2.

“Applicable Laws” means all applicable laws, judgments, decrees, injunctions, writs, and orders of any court, arbitrator, or governmental agency or authority and all rules, regulations, orders, interpretations, licenses, and permits of any federal or state governmental body, instrumentality, agency, or authority. A requirement to comply with an Applicable Law shall not prevent the Authority from challenging or disputing, in good faith, the interpretation or applicability of any Applicable Law.

“Asset Management Plan” or “AMP” means the running inventory of the purchase price, depreciation status, and probable replacement cost, and long-term planned replacement schedule of the Project’s durable capital as set forth in Section 3.3.B.

“Authority” means the Southside Network Authority.

“Board” means the Board of Directors of the Southside Network Authority.

“Bonds” means revenue bonds issued by the Authority in accordance with the Act or other Applicable Laws.

“Capital Improvement Program” or “CIP” means the annually-adopted plan of capital improvements necessary to carry out the goals of the Asset Management Plan and the Strategic
Plan as set out in Section 5.1. The CIP shall include estimates of costs of facilities and life-cycle costs and the means of financing them for the next ensuing five Fiscal Years as set forth in Section 3.3.A.

“Capital Reserve Fund” or “Sinking Fund” has the meaning given to it in Section 2.6.C.

“Code of Virginia” means the Code of Virginia, 1950, as amended, or successor provisions of law.

“Commonwealth” means the Commonwealth of Virginia.

“Consulting Engineer” means an engineer or firm of independent consulting engineers of recognized standing and experienced in the field of broadband and fiber optic engineering and registered to do business in the Commonwealth.

“Executive Director” means the chief administrative officer of the Authority, or, if none, the chair of the Board.

“Fiscal Year” means the period beginning on July 1 of one year, and ending on June 30 of the next.

“Initial Offering” has the meaning given to it in Section 2.3.

“In-Kind Contribution” means any real or personal property, including tangible or intangible property or transferrable permits or other rights, that the Board accepts in lieu of a cash payment for Shares under Section 2.3.B.

“Notes” means short-term obligations of the Authority, including notes issued in anticipation of the receipt of revenue, grants, or the proceeds of long-term Obligations.

“Obligations” means the Notes, Bonds, or other indebtedness of the Authority.

“Participating Member” or “Participant” means a member of the Authority that has purchased Shares in the Project under Section 2.3.
“Project” means the Southside Regional Connectivity Ring as described in Appendix A, and as let in [scope of work of contract in which initial construction was authorized], as constructed in accordance with such contract, as amended, and financing, operations, maintenance, marketing, reconstruction, renovation, extensions, and management thereof.

“Project Committee” means the committee, established pursuant to Section 2.2, that exercises control over the Project as provided in this Agreement.

“Reserved Strand” has the meaning given to it in Section 4.4.

“Share” has the meaning given to it in Section 2.3.

“Staff” means the Executive Director and his or her appointees, as may be provided from time to time, or, where legally permitted, contractors, consultants, or other agents of the Authority.

ARTICLE II
Acquisition, Construction, and Financing

Section 2.1. Construction of Regional Fiber Connectivity Ring. The Authority shall, either through its own forces or contractors, acquire, construct, equip, finance, operate, maintain, market, and manage the Project as provided in this Agreement.

Section 2.2. Project Committee. The Board hereby creates a Project Committee. The Project Committee is hereby delegated the full power of the Board to (i) within funds duly available and budgeted by the Board, organize and manage the acquisition, construction, and equipping of the Project, including but not limited to issuing notice to proceed and negotiating, approving, and disapproving payment applications and change orders, (ii) organize and manage the operation, maintenance, and marketing of the Project, including, within funds duly available and budgeted by the Board, entering such contracts as it deems advisable on behalf of the Authority to carry out these purposes, (iii) obtain all federal, state, and local permits for the Project, and (iv) enter agreements, including indefeasible rights of use and other similar lease and use-sharing
arrangements, for the use of the Project. The Project Committee may further delegate the administration of these matters to Staff.

The Board reserves to itself the functions of (a) setting the budget for the Project Fund, (b) approving the issuance of the Authority’s Obligations and the terms thereof, (c) approving acquisition or disposition of interests in real estate, including municipal franchises or master lease agreements for the use of rights of way. However, in all such decisions, the Board shall consider the needs of the Project and the recommendation, if any, of the Project Committee.

The Project Committee shall consist of one appointee from each Participating Member. Each Participating Member may appoint its own voting member of the Project Committee, who may be, but need not be, one of its appointees to the Board. The Project Committee may establish its own bylaws, which must be approved by the Board before going into effect. The Project Committee is authorized to appoint a chair, vice-chair, and secretary/treasurer, any of whom may be members of the Board or members of Staff. The Project Committee shall transmit its minutes to the Board regularly, but in any event within 10 days after the meeting for which such minutes are taken. In all substantive matters and recommendations to the Board on which the Project Committee acts, the proportional weight of each Participating Member’s vote shall be determined by the number of Shares it possesses.

Section 2.3. Shares.

A. The Board hereby authorizes an Initial Offering of 100 Shares in the Project, to be made on January 14, 2021, or a convenient date and time thereafter, as chosen by the Project Committee, but not more than 12 months thereafter. The Initial Offering contains only one class of Shares, and Shares may only be purchased by Participating Members. The par value of each Share shall be $250,000.
[Not for inclusion in text: By way of example only, if the cost of constructing, equipping, and providing initial operating capital were $8,000,000, and the Authority’s engineering, marketing, and financial consultants recommended a 25% margin of safety (i.e., $2,000,000), the total cost to be financed through Shares would be $10,000,000. Since 100 Shares are authorized, the par value of each Share would be $100,000. Each Participating Member would be entitled to purchase up to 20 Shares, for a cost of up to $2,000,000. If one Participating Member purchased only ½ of its allocation, or 10 Shares, then the remaining 10 Shares would be offered at par to the remaining Participating Members for purchase. This could result in purchase of fractional shares under some circumstances.] B. In-Kind Contributions to be used by the Authority to complete the Project may, at the Board’s discretion, be considered in lieu of cash contributions for the purchase of Shares in the Project. The cash value of this In-Kind Contributions shall be determined by a Consulting Engineer chosen by the Board using a cost or cost-avoidance basis, in the sole discretion of the Consulting Engineer. A Member Jurisdiction seeking to make an In-Kind Contribution In-Kind Contributions shall become the sole property of the Authority.

C. Each Participating Member shall be offered 20 Shares of the Initial Offering, which that Participant may purchase at a par value of $250,000 each. Each Participating Member shall purchase at least eight (8) Shares at the initial offering. If any Participating Member elects to purchase fewer than 20 Shares, the unpurchased Shares shall be offered at par to the remaining Participating Members, who may each purchase an equal number of unpurchased Shares, with this process being repeated until all available Shares have been purchased or retained by the Authority. Within 30 days after purchase,
each Participating Member shall either make payment for all Shares or appropriate such funds and enter a legally binding agreement with the Authority providing for the Authority to draw down available funds as needed by the Authority.

D. The Board, upon recommendation of the Project Committee, may issue further Shares to finance further capital expenditures in support of the Project. The method of sale of such Shares shall be determined by such future authorizing resolution by both the Board and each of the Member Jurisdictions.

Section 2.4. **Grants.** The Authority shall actively seek grant opportunities in support of the goals of the Project. The Participating Members shall not unreasonably withhold or delay their support for any such grant. Unless the grant documents require or restrict use otherwise, grant funds shall be used for the following purposes, in order of priority: (i) to pay current costs of construction, if any; (ii) to defease for savings outstanding Obligations prorated based on initial debt allocations pursuant to Section 2.5; then (iii) into the Debt Service Reserve Fund, if any, until fully funded; and then (iv) deposited into the Capital Reserve Fund.

Section 2.5. **Agreement to Finance.**

A. **General Provisions.** The Authority may use a combination of cash and debt financing for the initial cost of acquiring, constructing, and equipping the Project and providing working capital for its initial operations by issuance of Shares pursuant to Section 2.3. The Board may, upon recommendation of the Project Committee, issue, from time to time, Obligations of the Authority to provide long-term or short-term financing of costs upon such terms as it may determine to be in the best interest of the Authority and in accordance with law. All debt service payment schedules will be provided to the Member Jurisdictions within 20 days after closing on an issuance of Obligations.
B. **Obligations to be Debts of Authority Only.** All Obligations authorized to be entered by this Agreement or which the Board issues pursuant to this Agreement shall be the obligations of the Authority only, unless also entered by or guaranteed by one or more Participating Members under such terms and conditions as their governing body or bodies might agree.

Section 2.6. **Cash Reserves.** There are three types of cash reserves that may be established for the Project to assure financial health. Outlined below are the descriptions, means of funding, and general balances of each type. The order of precedence of funding, unless varied by applicable financing documents related to Obligations, is as follows:

A. **Debt Service Reserve Fund**—The lenders for the Obligations may require a Debt Service Reserve Fund, generally equal up to the maximum annual debt service payment (principal and interest) for each issuance of Obligations. If required, this amount should be established at the time of the issuance of the Obligations, in consultation with the Authority’s financial advisor. The budget shall be set such that there are sufficient revenues each year to pay the debt service for the Fiscal Year. If, however, the revenue is insufficient, then the difference may be withdrawn from the Debt Service Reserve Fund, which shall then be replenished in accordance with the provisions of the documents establishing the Obligations, if so provided, or as part of the annual budgeting process under Article III.

B. **Operating Reserve Fund**—As part of each Fiscal Year’s Annual Budget, the Operating Reserve Fund shall be adjusted to contain operating and maintenance expenses in an amount approximating the costs of operations for ninety (90) days, to provide cash flow during transitions, lag time between delivery of service and payment, or other
operational shortfalls or unusual events. The ongoing Operating Reserve Fund shall also serve as a revenue stabilization fund during market changes during fiscal years.

C. Capital Reserve Fund (Sinking Fund)—A Capital Reserve Fund or Sinking Fund shall be established using the Asset Management Plan and the Capital Improvement Program to fund both capital replacements and future upgrades and expansions of the Project. The approved annual budget shall include funding for not less than 25% of the initial gross construction cost, exclusive of soft costs, of the Project based upon the AMP, which shall either be expended to fund future capital improvements in accordance with the CIP. The initial capitalization of the Capital Reserve Fund shall occur over a reasonable budgetary period, in the discretion of the Board, not to exceed seven years in length.

Section 2.7. Withdrawal; Transfer of Shares; Impact.

A. Withdrawal from Project. A Participating Member may withdraw, in whole or in part, from this Agreement if the following conditions are met:

1. Withdrawal is not prohibited by the terms of any applicable Obligations, nor will it materially impair any existing Obligations, in the reasonable opinion of a qualified independent municipal financial adviser, to be chosen by the Board; and

2. The Participating Member seeking to withdraw has disposed of some or all of its Shares to one or more other Participating Members on such terms as they may agree.

B. Impact of Withdrawal. Upon partial or complete withdrawal, the proportional voting Shares as provided in Section 2.3 and all other matters to be allocated
by Share ownership under this Agreement shall be reallocated based upon the new Share ownership.

ARTICLE III  
Annual Budget & Fiscal Policies

Section 3.1. **Project Fund to be Separate Fund.** The Project Fund shall be treated as a fund and budgetary unit separate and apart from the general operating fund or any other project or dedicated fund of the Authority.

Section 3.2. **Setting the Annual Budget.** On or before each January 15 the Authority shall provide to each Participant the Authority’s proposed Annual Budget for the next Fiscal Year. The Annual Budget shall consider all anticipating operating costs including, but not necessarily limited to, (i) all direct and indirect costs of operation and maintenance of the Project, (ii) any debt service cost of the Authority, (iii) all major capital expenditures anticipated during the five following Fiscal Years, including reasonable funding of replacements and any desired deposits to the Capital Reserve Fund, (iv) all revenues and fees to be paid by any person under long-term contracts, (v) all revenues and fees anticipated to be paid by any person under short-term contracts, and (vi) special categories of costs and revenues.

Section 3.3. **Capital Management; Replacement Fund.**

A. The Authority shall annually adopt, as part of its budget process, a Capital Improvement Program (CIP) for planning of capital improvements and replacements in the following five years. The CIP shall form the basis and provide guidance for the preparation and adoption of the annual capital budget of the Authority.

B. The Authority shall keep and maintain, as the basis for the CIP, an inventory of its durable and capital assets, together with an ongoing accounting of depreciation status and anticipated remaining useful life and anticipated replacement cost, to be called its Asset
Management Plan (AMP). The depreciation status and probable replacement schedule shall be updated annually as part of the budget process; assets shall be timely added or removed from the AMP upon their acquisition, sale, or disposal.

C. The Authority shall budget for the Sinking Fund in each annual budget as provided in Section 2.6.C.

Section 3.4. Quarterly Reporting on Budget. Within 30 days after the end of each of the first three quarters of each fiscal year, the Authority will provide each Participating Member with a statement of revenues and expenditures of the Authority for the preceding quarter. The Authority will provide to each Participating Member on or before each August 1 an unaudited report showing the activities and revenues, expenditures, and accounts of the Project Fund, for the preceding Fiscal Year.

Section 3.5. Forecasting. To assist the Participating Members in estimating their obligations to or revenues from the Project, the Authority shall develop a policy, which may be amended from time to time, for forecasting its revenues and expenditures over future periods of up to five years beyond the then-current Fiscal Year. The forecast shall be routinely monitored and revised as necessary. The forecast will be distributed annually to Participating Members during the budgetary process for review and consideration prior to Board approval.

Section 3.6. Books & Accounts. The Board shall adopt a system of accounts compliant with the standards of the Governmental Accounting Standards Board (GASB) and Applicable Laws, and shall keep an accounting of all property of the Authority and (i) its initial gross purchase price and (ii) its depreciation using uniform, accepted depreciation schedules, as part of the AMP established pursuant to Section 3.3.B.
Section 3.7. **Fiscal Agent.** The Authority may contract with any Member Locality or regional organization or qualified entity to act as its fiscal agent upon such terms and conditions as the Board and the fiscal agent may agree.

Section 3.8. **Liability & Insurance.** The Authority shall procure and contract for insurance or a lawful policy of self-insurance in its own name or a combination of both insurance and self-insurance to protect itself against liability, damages, and other matters subject to insurance as determined by the Board.

Section 3.9. **Procurement.** No funds shall be spent or expended without a purchase order or contract requiring payment of such funds, or, in the case of a donation of goods and services, a written receipt accepting the donation. Contracts with non-governmental entities shall be governed by the Virginia Public Procurement Act, *Code of Virginia*, Chapters 43 and 43.1 of Title 2.2, or the Public-Private Education Facilities and Infrastructure Act of 2002 (PPEA), *Code of Virginia*, Chapter 22.1 of Title 56, as the Project Committee deems appropriate.

Section 3.10. **Audits.** The Authority shall obtain an annual financial audit of its accounts, or may contract with any Member Locality or regional organization or to cooperatively or jointly contract for an annual financial audit to be completed by a certified public accountant or accounting firm licensed to practice in the Commonwealth of Virginia by December 31 of each year. The audit shall be conducted according to generally accepted auditing and accounting standards or according to the audit specifications and audit program prescribed by the Auditor of Public Accounts. The annual audit shall be transmitted to the chief administrative officer of each Participating Member promptly upon delivery to the Board.

**ARTICLE IV**
**Revenues and Distributions**
Section 4.1. **Fees for Dark Fiber.** The Project Committee shall actively market dark fiber (other than Reserved Strands) and may enter contracts and agreements for the same upon such terms and conditions as it may approve. The Board shall set guidelines for standard rates for dark fiber, but the Project Committee may deviate from such guidelines for sound business or planning, community development, or economic development reasons, including but not limited to, (i) a request from a Participating Member for preferential treatment for an economic development prospect, (ii) service to neighborhoods, developments, or persons that are underserved, underserved, or served only with uneconomical internet, or (iii) bulk purchase (e.g., lease to a large institutional user).

Section 4.2. **Fees and Charges for Lit Fiber.** The Project Committee may offer lit fiber services to the public upon approval of the Board, in accordance with the Act, and pursuant to this Section.

A. In the event the Authority offers lit services through its own forces or contractors, the rates, fees, and charges at which the Authority’s lit fiber services are offered to the public shall be set in accordance with *Code of Virginia*, Section 15.2-5431.25. Rates, fees, and charges shall be set by the Board upon recommendation of the Project Committee.

B. In conjunction with offering lit services through the Project, including in conjunction with a lease of dark fiber, the Authority may enter into a public-private partnership, in accordance with Applicable Laws, under such terms and conditions as the Board shall determine are in the best interest of the Authority and the goals in the Strategic Plan. The rates, fees, and charges shall be set in accordance with the provisions of any public-private partnership governing documents.
Section 4.3. Contributions & Distributions. Participating Members shall pay rates, fees, and charges, or receive distributions of net revenues, as follows:

A. If, during the budgeting process, the anticipated budget for the next following Fiscal Year indicates a deficit, after funding for all reserves, the Participating Members shall pay to the Authority, paid on a quarterly basis in arrears, rates, fees, and charges proportional to their ownership of Shares. The rates, fees, and charges shall be increased or decreased and reported to the Participating Members quarterly and shall be updated based upon actual costs and payments and as approved by the Board. These rates, fees, and charges are in the nature of a fee for the continuing provision and availability of a service, not a debt, and shall not be construed to be a general obligation within the meaning of the Virginia Constitution, Art. VII § 10.

B. If, during the budgeting process, the anticipated budget for the next following Fiscal Year indicates a surplus, after funding for all reserves, the Authority shall distribute, on a quarterly basis, net revenues to the Participating Members proportional to their ownership of Shares pursuant to Sections 2.2 and 2.3. The distributions shall be updated and reported to the Participating Members quarterly and may be updated based upon actual costs and payments.

Section 4.4. Reserved Strands. Participating Members shall be entitled to use up to six strand pairs of dark fiber (the “Reserved Strands”) for their own internal use without payment of any rate, fee, or charge, except those fees set under Section 4.3.A. The number of strands reserved at different levels of purchase of Shares are:

- 8 to 14 ..........................................................................................2 strands (1 pair)
- 14 to 20 .......................................................................................4 strands (2 pairs)
The Participating Members agree that none will sell, lease, or otherwise offer access to Reserved Strands to third parties commercially at rates below those charged by the Authority for like access.

**ARTICLE V**

**Operations and Maintenance**

Section 5.1. **Strategic Planning.** The Project Committee shall develop and submit to the Board, not more than 12 months after the date of this Agreement, a Strategic Plan for achievement of its goals and for future expansion of the Project. In development of the Strategic Plan, the Project Committee shall consider, without limitation: The economic needs of the region; marketplace demand for its services; the provisions of the Comprehensive Plans and strategic plans of the Participating Members and other jurisdictions in which portions of the Project or its customers might exist or operate; and such other matters as may be relevant to its operations. Considerations in the development of the Strategic Plan shall include those matters designated in **Appendix B**.

Section 5.2. **Operating the Regional Connectivity Ring.** During the period of acquisition, construction, and immediate post-construction maintenance of the Project, the Project Committee shall procure the services of one or more qualified contractors to inspect, operate, maintain, and market the Project in accordance with this Agreement. These contractors may be procured as part of a public-private partnership arrangement. If, in the opinion of the Project Committee, adequate

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20+ ........................................................................................................................................6 strands (3 pairs)
contractors cannot be obtained, the Board may authorize the Project Committee to carry out some or all of these functions with the Authority’s own forces. The Project Committee shall ensure that the Project is operated in an efficient and economical manner, considering advances in technology and changes in the needs of the Participating Members and the public, making all necessary and appropriate repairs, replacements, and renewals, consistent with good business and operating practices, in accordance with applicable standards of local, state, and federal law, and in accordance with the provisions of the Strategic Plan and this Agreement.

ARTICLE VI
Defaults and Remedies

Section 6.1. Default by the Authority. The following events are “Events of Default” by the Authority:

A. Failure of the Authority to pay principal and interest on any Obligations issued for the Project or obtained by the Authority pursuant to this Agreement when due;

B. If the Authority is for any reason rendered incapable of performing any of its material obligations under this Agreement;

C. The Authority makes an assignment of all or a substantial portion of its obligations under this Agreement without the prior consent of all the Participating Members;

D. The Authority defaults on any of its material obligations under any agreement pursuant to which any Obligation issued for the Project is obtained by the Authority pursuant to this Agreement and such default is not cured within any applicable cure period;

E. Any proceeding is instituted, with the consent or acquiescence of the Authority, for the purpose of effecting a composition between the Authority and its
creditors or for the purpose of adjusting the claims of such creditors pursuant to any state
or federal statute now or hereafter in effect, if the claims of such creditors are under any
circumstances payable from the funds of the Authority; or

F. The Authority defaults in the due and punctual performance of any other of
the covenants, conditions, agreements, and provisions contained in this Agreement.

Section 6.2. Default by Participating Members. The occurrence of any one or more of
the following events shall constitute an “Event of Default” by any Participating Member:

A. Failure of any Participating Member to make any payment to the Authority
when due and outside any applicable grace period;

B. Any Participating Member becomes unable to fulfil its material obligations
under this Agreement;

C. Any proceeding is instituted, with the consent or acquiescence of any
Participating Member, for the purpose of effecting a composition between such
Participating Member and its creditors for the purpose of adjusting the claims of such
creditors pursuant to any federal or state statute now or hereafter in effect, if the claims of
such creditors are under any circumstances payable from the general funds of such
Participating Member; or

D. Any Participating Jurisdiction defaults in the due and punctual performance
of any other of the covenants, conditions, agreements, and provisions contained in this
Agreement.

Section 6.3. Remedies of Participating Members. Upon the occurrence of an Event of
Default by the Authority and the default continues for thirty (30) days after written notice
specifying the default and requiring it to be remedied has been given to the Authority by any
Participating Member, any Participating Member, after giving notice of such Event of Default to all parties, may bring suit by mandamus or other appropriate proceeding to require the Authority to perform its duties under the Act and this Agreement or to enjoin any acts in violation of the Act or this Agreement.

Section 6.4. Remedies of Authority. Upon the occurrence of an Event of Default by a Participating Member and the default continues for thirty (30) days after written notice specifying the default and requiring it to be remedied has been given to such Participating Member by the Authority or other Participating Member, the Authority, after giving notice of such Event of Default to all parties, may bring suit by mandamus or other appropriate proceeding to require the Participating Member to perform its duties under the Act and this Agreement or to enjoin any acts in violation of the Act or this Agreement.

Section 6.5. Remedies Not Exclusive. No remedy in this Agreement conferred upon or reserved to the parties is intended to be exclusive of any other remedy, and each remedy is cumulative and in addition to every other remedy given under this Agreement or now or hereafter existing.

Article VII
Additional Agreements

Section 7.1. Further Documents and Data. The parties to this Agreement will execute and deliver such further documents and perform all other acts that are reasonably necessary to perform the obligations and consummate the transactions contemplated by this Agreement.

Section 7.2. Notification. The Authority will promptly furnish to each Participating Member a copy of any notice or order of any governmental authority asserting that the Project is not in compliance in any material respect with any Applicable Law.

Section 7.3. Tax-Exemption Covenant; Continuing Disclosure.
A. The Authority may issue Obligations in a manner such that the interest thereon is excludable from gross income for income tax purposes under Applicable Laws. The Authority and each Participating Member agree that after an Obligation is issued they will not knowingly take any action or omit to take any action that would intentionally adversely affect such exclusion.

B. Pursuant to Section 15c2-12(b) of regulations issued by the U.S. Securities and Exchange Commission, the Authority and the Member Jurisdictions may be required to agree with the owners of Obligations, for as long as such Obligations are outstanding, to supply certain national municipal securities information repositories (i) annually, certain financial and operating information, and (ii) periodically, notification of certain specified material events affecting the Authority, the Participating Members, and such Obligations. The particulars of this ongoing disclosure requirement will be set forth in one or more of an indenture, loan agreement, or continuing disclosure agreement. Each Participating Member agrees to cooperate with the Authority in fulfilling this requirement, including providing the Authority with timely notice of the occurrence of any of the specified events that are material to its operations and hereby authorizes the Authority’s Executive Director to execute and deliver any agreement considered necessary or appropriate to evidence such Participating Member’s continuing disclosure undertaking.

**Article VIII**

**Covenants & Guaranties**

Section 8.1. **Covenants of the Authority.** The Authority represents, warrants, and covenants as follows:

A. **Organization, Authorization and Validity.** The Authority is a body corporate and politic and a political subdivision of the Commonwealth duly organized and
validly existing under the laws of the Commonwealth and has duly authorized, executed, and delivered this Agreement.

B. **Authority.** The Authority has all requisite authority under the Act to execute and deliver and perform its obligations under this Agreement and is not a party to any indenture, contract, or other agreement or arrangement the performance of which by the Authority would prevent or materially and adversely affect the Authority’s ability to perform the terms of this Agreement.

C. **Non-Contravention.** The execution and delivery of this Agreement by the Authority and the consummation of the transactions contemplated in it will not conflict with or result in a breach of or constitute a default under or violate any of the terms, conditions or provisions of the Act, the bylaws of the Authority or any material indenture, contract, or other agreement or arrangement to which the Authority is a party or by which any of its properties are bound, or any Applicable Law by which the Authority is bound.

D. **Litigation.** The Authority is not a party to any legal, administrative, arbitration, or other proceeding or controversy pending, or, to the best of the Authority’s knowledge, threatened, which would materially adversely affect the Authority’s ability to perform its obligations under this Agreement.
B. **Authority.** Each Participating Member has all requisite authority to execute and deliver and perform its obligations under this Agreement and is not a party to any indenture, contract, or other agreement or arrangement, the performance of which by it would prevent or materially and adversely affect its individual performance under this Agreement.

C. **Non-Contravention.** The execution and delivery of this Agreement by each Participating Member and the consummation of the transactions contemplated in it will not conflict with or result in a breach of or constitute a default under or violate any of the terms, conditions, or provisions of any charter, resolution, or ordinance, any material indenture, contract, or agreement or arrangement to which it is a party or by which any of its properties are bound, or any Applicable Law by which it is bound.

D. **Litigation.** No Participating Member is a party to any legal, administrative, arbitration, or other proceeding or controversy pending, or, to the best of its knowledge, threatened, which would materially and adversely affect its ability to perform under this Agreement.

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**Article IX**

**Miscellaneous Clauses**

Section 9.1. **Severability of Invalid Provisions.** If any clause, provision, or section of this Agreement is held to be illegal or invalid by any court, administrative agency, or other governmental authority, the invalidity of the clause, provision, or section will not affect any of the remaining clauses, provisions, or sections, and this Agreement will be construed and enforced as if the illegal or invalid clause, provision, or section has not been contained in it.

Section 9.2. **Notices.** Any notice or other communication under or in connection with this Agreement shall be in writing to the below persons and addresses, or to such other persons
and addresses as any Participating Member may from time to time specify in writing. A notice shall be construed to be delivered upon the earliest of (i) execution of a registered mail return receipt by the addressee, (ii) refusal of the mail by the addressee, or (iii) seven days from the notice being deposited in the U.S. Mail, first-class postage prepaid by registered mail, return receipt requested.

Notice to: 

For the Authority:

Southside Network Authority
The Regional Building
723 Woodlake Drive
Chesapeake, Virginia 23320
Attn: Executive Director

With a copy to:

Guynn, Waddell, Carroll & Lockaby, P.C.
415 South College Avenue
Salem, Virginia 24153
Attn: Authority Counsel

Section 9.3. Execution of Agreement. A sufficient number of copies for each party approving this Agreement, each of which shall be deemed to be an original having identical legal effect, shall be executed by the parties.

Section 9.4. Governing Law. This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the Commonwealth. Venue for any dispute hereunder shall be in the state and federal courts for the City of Chesapeake, Virginia, or the locality of any future location of the Authority’s corporate office.

Section 9.5. Amendments. This Agreement may be changed or amended only with the consent of the Authority and each Participating Member. No such change or amendment may be made which will affect adversely the prompt payment when due of all moneys required to be paid by the Participating Members under the terms of this Agreement, and no such change or amendment shall be effective which would cause a violation of any provision of any resolution,
indenture, or agreement pursuant to which any Obligation has been issued or obtained by the Authority for the Project.

Section 9.6. Waiver. Sufferance of violation of any term of this Agreement, no matter how long continued, shall not operate as a waiver of that term in any future situation. Any waiver by any party of its rights under this Agreement must be in writing, and will not be deemed a waiver with respect to any matter not specifically covered. Nothing in this Agreement authorizes the waiver of any Participating Member’s obligation to make payments when due of all moneys required to be paid by the Participating Member under the terms of this Agreement.

IN WITNESS WHEREOF, see the following signatures:

Signatures on following pages...
Southside Network Authority:

By: __________________________

Name: _________________________

Its: ____________________________

Date: __________________________

A teste:

______________________________

Secretary, Board of Directors

Signatures continue on next page...
City of Chesapeake, Virginia:

By: ________________________________

Name: ________________________________

Its: ________________________________

Date: ________________________________

A teste:

_______________________________

Clerk, City Council

Signatures continue on next page...
City of Norfolk, Virginia:

By: __________________________

Name: ________________________

Its: __________________________

Date: _________________________

A teste:

______________________________

Clerk, City Council

Signatures continue on next page...
Southside Regional Connectivity Ring
Project Participation Agreement

City of Portsmouth, Virginia:

By: _______________________________

Name: ____________________________

Its: _______________________________

Date: ______________________________

A tesque:

_______________________________

Clerk, City Council

Signature continue on next page...
City of Suffolk, Virginia:

By: ________________________________

Name: ________________________________

Its: ________________________________

Date: ________________________________

A teste:

_____________________________________
Clerk, City Council

Signatures continue on next page...
City of Virginia Beach, Virginia:

By: 

Name: 

Its: 

Date: 

A teste: 

Clerk, City Council
Appendix A

[To be supplied by A/E]
Appendix B

- Reliable and secure backhaul communications connectivity to support the needs of public safety entities and national security institutions.

- Availability of dark fiber for internal governmental needs of the Participating Members.

- Provide bandwidth to support growing educational needs (e.g., virtual classrooms).

- Provide affordable access to underserved and unserved citizens to address the residential Digital Divide. (Affordability/availability of service to low- and moderate-income households and households with poor credit.)

- Attract new enterprises with high-paying jobs to the region (i.e., Biomed, cyber security, corporate headquarters, and financial services), and in particular the Participating Members.

- Enable strategic partnerships between commercial providers leveraging subsea cables and data centers and anchor institutions such as colleges, universities, hospitals, the Commonwealth of Virginia, and the armed forces.

- Expedited service availability or arrangements to benefit economic development prospects or other community development needs.

- Provide competitive and non-discriminatory access to middle-mile fiber to promote investment by commercial providers in innovative and competitively priced last-mile broadband services – the Project is not to be used exclusively for the Authority and its members, rather it must be available to facilitate competitive delivery of broadband services on an open access basis.

- Expand accessibility to subsea cables and related localized commercial data center infrastructure.

- Support broadband needs of business incubators, technology innovators, product accelerators, and data centers.

- Foster an ecosystem for low-cost internet service providers to meet demand for affordable internet to address the business Digital Divide.

- Expand advanced technology business creation and retain newly educated/skilled workforce.

- Such other and further matters as may be reasonably related to the Project.
AGENDA: January 5, 2022, Regular Session

ITEM: Resolution – A resolution establishing the Comprehensive Plan Steering Committee

Attached for your consideration is a resolution establishing the Comprehensive Plan Steering Committee. As mentioned at the September 10, 2021, City Council Retreat, the City is embarking on an update to the 2035 Comprehensive Plan as required by Section 15.2-2230 of the Code of Virginia. The Comprehensive Plan is a 20-year plan for the City, which guides City staff, the public, the development community, City Council, and the Planning Commission in decisions related to development, redevelopment, and public services. Specific elements of this plan will include policy statements related to growth, housing, transportation, public facilities and services, and preservation of natural and cultural resources.

To assist Staff in updating the 2035 Comprehensive Plan, representatives from a cross-section of community interests are necessary to keep the Comprehensive Plan update process manageable and measurable and to ensure that the Plan serves the needs of the City’s residents and businesses. The representatives making up the Comprehensive Plan Steering Committee are proposed to include, at a minimum, members from City Council, the Planning Commission, the Economic Development Authority, the Suffolk Division of the Hampton Roads Chamber of Commerce, the Historic Landmarks Commission, the Suffolk Redevelopment and Housing Authority, Suffolk Public Schools, the Hampton Roads Transportation Planning Organization, the Great Dismal Swamp Wildlife Refuge, the Nansemond River Preservation Alliance, the Suffolk Agricultural Committee, the Coastal Virginia Building Industry Association, the Hampton Roads Realtors Association, the Hampton Roads Association of Commercial Real Estate, the Western Tidewater Water Authority, and a representative from each of the seven (7) voting boroughs in the City of Suffolk. Additional Comprehensive Plan Steering Committee members may be appointed as necessary by City Council as representatives of other organizations.

It is anticipated that the Comprehensive Plan Steering Committee’s term will begin on March 2, 2022 and will conclude when the Comprehensive Plan is adopted by City Council. While the Steering Committee’s first six months will be devoted to branding and preparing for citizen engagement, the Committee is intended to be a working group with the following responsibilities:

- Officially represent the residents in the planning process.
- Provide guidance and direction to the staff and consultants at crucial steps in the process.
- Act as spokespersons for the effort.
- Serve as hosts at public events during the process.
- Identify volunteers for action committees (if needed) and provide direction to those committees as their work takes place.
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- Recruit volunteers to assist with conducting outreach and facilitation at public meetings.
- Volunteer to facilitate at public meetings.
- Disseminate information during the planning process through their individual networks.
- Help present the plan for adoption before appropriate adopting bodies.
- Serve as stewards of the plan once it is adopted.

Once the resolution is adopted, a representative member for each organization, noted in the resolution, shall be appointed by the City Manager.

RECOMMENDATION:

Adopt the resolution.

ATTACHMENTS:

Resolution
RESOLUTION NUMBER ____________________________

A RESOLUTION ESTABLISHING THE COMPREHENSIVE PLAN STEERING COMMITTEE

WHEREAS, Section 15.2-2223 of the Code of Virginia requires the local planning commission to prepare and recommend a comprehensive plan for the physical development of the territory within its jurisdiction to the local government body; and,

WHEREAS, every governing body shall adopt a comprehensive plan for the territory under its jurisdiction; and,

WHEREAS, the comprehensive plan shall be made with the purpose of guiding and accomplishing a coordinated, adjusted and harmonious development of the territory which will, in accordance with present and probable future needs and resources, best promote the health, safety, morals, order, convenience, prosperity and general welfare of the inhabitants, including the elderly and persons with disabilities; and,

WHEREAS, Section 15.2-2230 of the Code of Virginia requires that at least once every five years the comprehensive plan shall be reviewed by the local planning commission to determine whether it is advisable to amend the plan; and,

WHEREAS, the Planning Commission of the City of Suffolk, Virginia, has initiated the review and update of the 2035 Comprehensive Plan for the City of Suffolk, Virginia; and,

WHEREAS, it is the desire of the City Council of the City of Suffolk, Virginia to improve the overall process of the review and update of the 2035 Comprehensive Plan; and,

WHEREAS, a Comprehensive Plan Steering Committee, made up of representatives from a cross section of various development interests having an interest in the review and update of the Comprehensive Plan, would assist in keeping the process manageable and measurable; and,

WHEREAS, the Comprehensive Plan Steering Committee may, at the request of the Planning Commission, provide advice on matters pertaining to the review and update of the Comprehensive Plan.

NOW THEREFORE, BE IT RESOLVED by the City Council of the City of Suffolk, Virginia, there is established a Comprehensive Plan Steering Committee, who will serve without compensation, for the purpose to provide advice on matters pertaining to the review and update of the Comprehensive Plan, as requested to do from time to time, by the Planning Commission of the City of Suffolk, Virginia.

BE IT FURTHER RESOLVED the Comprehensive Plan Steering Committee be composed of a minimum of twenty-two (22) members in total represented by at least one (1) member each from the following: the City Council, the Planning Commission, the Economic Development Authority, the Suffolk Division of the Hampton Roads Chamber of Commerce, the Historic Landmarks Commission, the Suffolk Redevelopment and Housing Authority, Suffolk
Public Schools, the Hampton Roads Transportation Planning Organization, the Great Dismal Swamp Wildlife Refuge, the Nansemond River Preservation Alliance, the Suffolk Agricultural Committee, the Coastal Virginia Building Industry Association, the Hampton Roads Realtors Association, the Hampton Roads Association of Commercial Real Estate, the Western Tidewater Water Authority, and a representative from each of the seven (7) voting boroughs in the City of Suffolk. Additional Comprehensive Plan Steering Committee members may be appointed as necessary by City Council as representatives of other organizations.

BE IT FURTHER RESOLVED the members of the Comprehensive Plan Steering Committee shall be appointed by the City Manager.

BE IT FURTHER RESOLVED the time and place for regular and special meetings of the Comprehensive Plan Steering Committee shall be designated by the Chairperson and all meetings shall be open to the public.

BE IT FURTHER RESOLVED the Director of Planning and Community Development shall work closely with the Comprehensive Plan Steering Committee and inform the Committee of interests, needs, objectives, progress, and other matters of importance to the Committee’s purpose. The Director of Planning and Community Development shall act as the Comprehensive Plan Steering Committee’s liaison between the Committee and the Planning Commission and City Council.

BE IT FURTHER RESOLVED the term of the Comprehensive Plan Steering Committee shall begin on March 2, 2022, and shall conclude at the time an updated comprehensive plan is adopted by City Council. The City Council shall have the authority to shorten and lengthen the term of the Comprehensive Plan Steering Committee, and, at its discretion, remove any member at any time and appoint a successor.

BE IT FURTHER RESOLVED that the Comprehensive Plan Steering Committee, or any member, shall not have any authority to make representation or commitment on the behalf of the Comprehensive Plan Steering Committee, the Planning Commission, or the City Council.

BE IT FURTHER RESOLVED the Comprehensive Plan Steering Committee shall not have any authority to enter into any contract or incur any obligation on behalf of the City of Suffolk.

BE IT FURTHER RESOLVED the City Manager be, and is hereby, authorized and directed to do all things necessary to put into action this Comprehensive Plan Steering Committee.

This resolution shall be effective upon its adoption and shall not be published or codified.

READ AND ADOPTED: __________________

TESTE: __________________

Erika S. Dawley, City Clerk
Approved as to Form:

[Signature]

William E. Hutchings, Jr., City Attorney
Staff Reports
A motion to schedule a City Council Work Session, for Wednesday, January 19, 2022, at 4:00 p.m., unless cancelled
Non-Agenda Speakers
New Business
Announcements and Comments