

FIRST SUPPLEMENTAL FINANCING AGREEMENT

between

**ECONOMIC DEVELOPMENT AUTHORITY
OF JAMES CITY COUNTY, VIRGINIA**

and

**BOARD OF SUPERVISORS OF
JAMES CITY COUNTY, VIRGINIA,
on behalf of
JAMES CITY COUNTY, VIRGINIA**

Dated as of _____, 2018

NOTE: THIS FIRST SUPPLEMENTAL FINANCING AGREEMENT HAS BEEN ASSIGNED TO, AND IS SUBJECT TO A SECURITY INTEREST IN FAVOR OF, WILMINGTON TRUST, NATIONAL ASSOCIATION, AS TRUSTEE UNDER AN AGREEMENT OF TRUST DATED AS OF JUNE 1, 2016, AS PREVIOUSLY SUPPLEMENTED AND AS FURTHER SUPPLEMENTED BY A SECOND SUPPLEMENTAL AGREEMENT OF TRUST DATED AS OF _____, 2018, WITH THE ECONOMIC DEVELOPMENT AUTHORITY OF JAMES CITY COUNTY, VIRGINIA, AS FURTHER AMENDED OR SUPPLEMENTED FROM TIME TO TIME. INFORMATION CONCERNING SUCH SECURITY INTEREST MAY BE OBTAINED FROM THE TRUSTEE IN RICHMOND, VIRGINIA.

TABLE OF CONTENTS

	Page
Parties.....	1
Recitals.....	1
Granting Clauses.....	2

ARTICLE I

DEFINITIONS AND RULES OF CONSTRUCTION

Section 1.1	Definitions.....	2
Section 1.2	Rules of Construction.	3

ARTICLE II

REPRESENTATIONS

Section 2.1	Representations by Authority.	3
Section 2.2	Representations by County.	4

ARTICLE III

AGREEMENT TO MAKE LOANS AND ISSUE BONDS

Section 3.1	Agreement to Make Loan to Refund Series 2009 Bonds and to Finance the Series 2018 Project.	5
Section 3.2	Agreement to Issue Series 2018 Bonds.	5

ARTICLE IV

PAYMENT OBLIGATIONS

Section 4.1	Amounts Payable.	5
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ARTICLE V

PREPAYMENT AND REDEMPTION

Section 5.1	Prepayment and Redemption.	6
-------------	---------------------------------	---

ARTICLE VI

ARBITRAGE REBATE FUND

Section 6.1	Series 2018 Arbitrage Rebate Fund.	6
Section 6.2	Rebate Requirement.	6
Section 6.3	Calculation and Payment of Series 2018 Rebate Obligation.	6
Section 6.4	Reports by Trustee.	7
Section 6.5	Disposition of Balance in Series 2018 Arbitrage Rebate Fund.	7

ARTICLE VII

MISCELLANEOUS

Section 7.1	Severability.	7
Section 7.2	Successors and Assigns.....	8
Section 7.3	Counterparts.....	8
Section 7.4	Governing Law.	8
Section 7.5	Patriot Act Notice of the Trustee.	8
Signatures.....		9
Receipt		10
Exhibit A - Schedule of Payments		A-1

THIS **FIRST SUPPLEMENTAL FINANCING AGREEMENT** dated as of _____, 2018, by and between the **ECONOMIC DEVELOPMENT AUTHORITY OF JAMES CITY COUNTY, VIRGINIA**, a political subdivision of the Commonwealth of Virginia (the “Authority”), and the **BOARD OF SUPERVISORS OF JAMES CITY COUNTY, VIRGINIA**, on behalf of **JAMES CITY COUNTY, VIRGINIA**, a political subdivision of the Commonwealth of Virginia (the “County”), provides:

W I T N E S S E T H:

WHEREAS, the Authority is a political subdivision of the Commonwealth of Virginia duly created under the Industrial Development and Revenue Bond Act, Chapter 49, Title 15.2, Code of Virginia of 1950, as amended (the “Act”);

WHEREAS, the Authority is authorized to exercise all the powers set forth in the Act, which include, among other things, the powers to make loans to, among others, a county in furtherance of the Act, to finance or refinance and lease facilities for use by, among others, a county, to issue its revenue bonds, notes and other obligations from time to time for such purposes and to pledge all or any part of its revenues and receipts derived from payments received by the Authority in connection with its loans or from the leasing by the Authority of such facilities or from any source, as security for the payment of principal of and interest on any such obligations;

WHEREAS, the County desires to undertake a program of financing and refinancing the acquisition, construction and equipping of various public facilities that the County determines to undertake from time to time;

WHEREAS, in furtherance of the purposes of the Act, the County has requested the Authority to undertake one or more series of Projects (as defined in the Financing Agreement, as hereinafter defined), and the Authority has determined to issue from time to time pursuant to the terms of an Agreement of Trust dated as of June 1, 2016, between the Authority and Wilmington Trust, National Association, Richmond, Virginia, as trustee (the “Trustee”), as previously supplemented and as further supplemented by a Second Supplemental Agreement of Trust dated as of _____, 2018, between the Authority and the Trustee (collectively, the “Agreement of Trust”), its public facility revenue bonds and to loan the proceeds thereof to the County to finance and refinance costs incurred in connection with such Projects and costs of issuing such bonds;

WHEREAS, in furtherance of the purposes of the Act, the Authority and the County have entered into a Financing Agreement dated as of June 1, 2016 (the “Master Financing Agreement”), pursuant to which the Authority has agreed to loan from time to time such proceeds to the County and the County has agreed to repay such loans, subject to appropriation by the County Board of Supervisors from time to time of sufficient moneys for such purpose;

WHEREAS, within the limitations and in compliance with the Agreement of Trust, the County has requested the Authority to issue a series of Bonds in the aggregate principal amount of \$ _____ (the “Series 2018 Bonds”) and to loan such proceeds to the County (a) to refund the outstanding principal balance of the Series 2009 Bonds (as hereinafter defined), (b) to finance the cost of the Series 2018 Project (as hereinafter defined), [including to pay as desired interest on the Series 2018 Bonds up to one year following completion of the Series 2018 Project,] and

(c) to pay the financing and issuance costs related thereto, all pursuant to the terms of this First Supplemental Financing Agreement; and

WHEREAS, all acts, conditions and things required by law to happen, exist and be performed precedent to and in connection with the execution of and entering into this First Supplemental Financing Agreement have happened, exist and have been performed in regular and due time and in form and manner as required by law, and the parties hereto are now duly empowered to execute and enter into this First Supplemental Financing Agreement;

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter contained and other valuable consideration, the parties hereto covenant and agree as follows:

ARTICLE I

DEFINITIONS AND RULES OF CONSTRUCTION

Section 1.1 Definitions.

Unless otherwise defined in this First Supplemental Financing Agreement, all words used herein shall have the meanings assigned to such terms in the Agreement of Trust or the Master Financing Agreement. The following words as used in this First Supplemental Financing Agreement shall have the following meanings unless a different meaning clearly appears from the context:

“Agreement of Trust” shall mean the Master Trust Agreement together with all supplemental agreements entered into by the Authority and the Trustee from time to time.

“Basic Agreements” shall mean the Agreement of Trust and the Financing Agreement.

“Financing Agreement” shall mean the Master Financing Agreement, as previously supplemented and as further supplemented by this First Supplemental Financing Agreement.

“First Supplemental Financing Agreement” shall mean this First Supplemental Financing Agreement dated as of _____, 2018, between the Authority and the County, which supplements the Master Financing Agreement, including any supplements, amendments or modifications to this First Supplemental Financing Agreement.

“Master Financing Agreement” shall mean the Financing Agreement dated as of June 1, 2016, between the Authority and the County.

“Master Trust Agreement” shall mean the Agreement of Trust dated as of June 1, 2016, between the Authority and the Trustee.

“Rebate Amount” shall mean the amount due under the rebate obligations of the Code.

“Rebate Amount Certificate” shall mean a certificate prepared or approved, at the expense of the County, by an independent certified public accountant or a firm of independent certified public accounts or rebate specialist of recognized standing setting forth the Rebate Amount determined to be due to the United States of America as of the applicable fifth

anniversary date (under the Treasury Regulations) of the issuance of the Series 2018 Bonds, or as of the final payment date of the Series 2018 Bonds, and the computation thereof.

“Second Supplemental Trust Agreement” shall mean the Second Supplemental Agreement of Trust dated as of _____, 2018, between the Authority and the Trustee, which supplements the Agreement of Trust.

“Series 2009 Bonds” shall mean the \$14,935,000 Taxable Lease Revenue Bonds (County Government Project), Series 2009 Build America Bonds, issued by the Authority.

“Series 2018 Arbitrage Rebate Fund” shall mean the fund established in Section 6.1.

“Series 2018 Bonds” shall mean the Authority’s \$_____ Public Facility Revenue and Refunding Bonds (County Government Projects), Series 2018, authorized to be issued pursuant to the Second Supplemental Trust Agreement.

“Series 2018 Project” shall have the meaning assigned to such term by the Second Supplemental Trust Agreement.

Section 1.2 Rules of Construction.

The following rules shall apply to the construction of this First Supplemental Financing Agreement unless the context otherwise requires:

(a) Words importing the singular number shall include the plural number and vice versa.

(b) Words importing the redemption or calling for redemption of Series 2018 Bonds shall not be deemed to refer to or connote the payment of Series 2018 Bonds at their stated maturity.

(c) Unless otherwise indicated, all references herein to particular Articles or Sections are references to Articles or Sections of this First Supplemental Financing Agreement.

(d) The headings herein and the Table of Contents herein are solely for convenience of reference and shall not constitute a part of this First Supplemental Financing Agreement and shall not affect its meaning, construction or effect.

(e) All references herein to payment of Series 2018 Bonds are references to payment of principal of and premium, if any, and interest on the Series 2018 Bonds.

ARTICLE II

REPRESENTATIONS

Section 2.1 Representations by Authority.

The Authority makes the following representations:

(a) The Authority is a political subdivision of the Commonwealth of Virginia duly created under the Act;

(b) Pursuant to the Act, the Authority has full power and authority to enter into the Basic Agreements and to perform the transactions contemplated thereby and to carry out its obligations thereunder and, by proper action, has duly authorized, executed and delivered the Basic Agreements;

(c) The execution, delivery and compliance by the Authority with the terms and conditions of the Basic Agreements will not conflict with or constitute or result in a default under or violation of (1) any existing law, rule or regulation applicable to the Authority or (2) any trust agreement, mortgage, deed of trust, lien, lease, contract, note, order, judgment, decree or other agreement, instrument or other restriction of any kind to which the Authority or any of its assets is subject;

(d) No further approval, consent or withholding of objection on the part of any regulatory body or any official, federal, state or local, is required in connection with the execution or delivery of or compliance by the Authority with the terms and conditions of the Basic Agreements, except that no representation is made as to the applicability of any federal or state securities laws; and

(e) There is no litigation at law or in equity or any proceeding before any governmental agency involving the Authority pending or, to the knowledge of the Authority, threatened with respect to (1) the creation and existence of the Authority, (2) its authority to execute and deliver the Basic Agreements, (3) the validity or enforceability of the Basic Agreements or the Authority's performance of its obligations thereunder, (4) the title of any officer of the Authority executing the Basic Agreements or (5) the ability of the Authority to issue and sell its bonds.

Section 2.2 Representations by County.

The County makes the following representations:

(a) The County is a political subdivision of the Commonwealth of Virginia;

(b) The County has full power and authority to enter into the Basic Agreements to which it is a party and to perform the transactions contemplated thereby and to carry out its obligations thereunder and, by proper action, has duly authorized, executed and delivered the Basic Agreements;

(c) The County is not in default in the payment of the principal of or interest on any of its indebtedness for borrowed money and is not in default under any instrument under or subject to which any indebtedness for borrowed money has been incurred, and no event has occurred and is continuing that, with the lapse of time or the giving of notice, or both, would constitute or result in an event of default thereunder;

(d) The County is not in default under or in violation of, and the execution, delivery and compliance by the County with the terms and conditions of the Basic Agreements to which it is a party will not conflict with or constitute or result in a default under or violation of, (1) any existing law, rule or regulation applicable to the County or (2) any trust agreement, mortgage, deed of trust, lien, lease, contract, note, order, judgment, decree or other agreement, instrument or restriction of any kind to which the County or any of its assets is subject, and no event has

occurred and is continuing that, with the lapse of time or the giving of notice, or both, would constitute or result in such a default or violation;

(e) No further approval, consent or withholding of objection on the part of any regulatory body or any official, federal, state or local, is required in connection with the execution or delivery of or compliance by the County with the terms and conditions of the Basic Agreements to which it is a party; and

(f) There is no litigation at law or in equity or any proceeding before any governmental agency involving the County pending or, to the knowledge of the County, threatened with respect to (1) the authority of the County to execute and deliver the Basic Agreements to which it is a party, (2) the validity or enforceability of the Basic Agreements or the County's performance of its obligations thereunder, (3) the title of any officer of the County executing the Basic Agreements or (4) the ability of the County to undertake with the Authority to refund the outstanding balance of the Series 2009 Bonds and to finance the Series 2018 Project.

ARTICLE III

AGREEMENT TO MAKE LOANS AND ISSUE BONDS

Section 3.1 Agreement to Make Loan to Refund Series 2009 Bonds and to Finance the Series 2018 Project.

The Authority hereby agrees to make, but solely from the proceeds of the Series 2018 Bonds, and the County hereby agrees to accept, a loan to refund the outstanding principal balance of the Series 2009 Bonds and to finance the Costs of the Series 2018 Project. Subject to the limitation of Section 4.4 of the Master Financing Agreement, the County agrees to make all Basic Payments and Additional Payments when and as the same shall become due and payable to repay such loan.

Section 3.2 Agreement to Issue Series 2018 Bonds.

In order to provide funds for making the loan described in Section 3.1, the Authority shall contemporaneously with the execution and delivery hereof proceed with the issuance and sale of the Series 2018 Bonds bearing interest, maturing and having the other terms and provisions set forth in the Agreement of Trust.

ARTICLE IV

PAYMENT OBLIGATIONS

Section 4.1 Amounts Payable.

The Master Financing Agreement is hereby amended to replace in its entirety the Exhibit A attached thereto with the new schedule of payments attached hereto as Exhibit A. Pursuant to Article IV of the Master Financing Agreement and subject specifically to the limitation of Section 4.4 thereof, the County shall pay to the Authority or its assignee, the Basic Payments specified in Exhibit A attached. The Basic Payments shall be payable without notice or demand at the designated corporate trust office of the Trustee.

ARTICLE V

PREPAYMENT AND REDEMPTION

Section 5.1 Prepayment and Redemption.

The County shall have the option to prepay any Basic Payment at the times and in the amounts as necessary to exercise its option to cause the Series 2018 Bonds to be redeemed as set forth in such Series 2018 Bonds. Such prepayments of Basic Payments shall be made at the times and in the amounts as necessary to accomplish the optional redemption of the Series 2018 Bonds as set forth in Section 2.301 of the Second Supplemental Trust Agreement. The Series 2018 Bonds shall be prepaid or redeemed in the manner and at the times set forth in Article III of the Second Supplemental Trust Agreement. Upon the exercise of such option, the County shall also pay as Additional Payments, the amounts necessary to pay the premium, if any, due on such Series 2018 Bonds on the date or dates of their redemption.

The County shall give the Trustee notice of any redemption of such Series 2018 Bonds at least five days prior to the latest date that notice of redemption may be given pursuant to Section 402 of the Master Trust Agreement, such notice to the Trustee to specify the redemption date, the principal amount of Series 2018 Bonds to be redeemed, the premium, if any, and the section of the Agreement of Trust pursuant to which such redemption is to be made.

ARTICLE VI

ARBITRAGE REBATE FUND

Section 6.1 Series 2018 Arbitrage Rebate Fund.

There is hereby established the James City County, Virginia, Series 2018, Public Facility Revenue Bond Arbitrage Rebate Fund (the "Series 2018 Arbitrage Rebate Fund") to be held by or on behalf of the County. Subject to the limitation in Section 4.4 of the Master Financing Agreement, the County shall deposit moneys in the Series 2018 Arbitrage Rebate Fund from time to time for payment of the Rebate Amount. The County may establish separate accounts in the Series 2018 Arbitrage Rebate Fund for such payments.

Section 6.2 Rebate Requirement.

Except with respect to earnings on funds and accounts qualifying for exceptions to the rebate requirement of Section 148 of the Code, the County shall pay, but solely from amounts in the Series 2018 Arbitrage Rebate Fund, the Rebate Amount to the United States of America, as and when due, in accordance with Section 148(f) of the Code, as provided in this Article, and shall retain records of all such determinations until six years after payment of the Series 2018 Bonds.

Section 6.3 Calculation and Payment of Series 2018 Rebate Obligation.

(a) The County selects _____ as the end of the bond year with respect to the Series 2018 Bonds pursuant to Treasury Regulation Section 1.148-1. The County acknowledges that the first bond year will be short.

(b) Not later than 30 days after each fifth anniversary date of the issuance of the Series 2018 Bonds, the County shall deliver to the Authority and the Trustee a Rebate Amount Certificate, and the County shall pay from legally available funds to the United States of America an amount equal to not less than 90% of the Rebate Amount set forth in such Rebate Amount Certificate.

(c) Not later than 45 days after final payment of the Series 2018 Bonds, the County shall deliver to the Authority and the Trustee a final Rebate Amount Certificate, and the County shall pay from legally available funds to the United States of America the amount, if any, by which 100% of the Rebate Amount set forth in such Rebate Amount Certificate exceeds the aggregate of all payments theretofore made pursuant to subsection (b).

(d) Notwithstanding any provision of this Article to the contrary, no such calculation or payment shall be made if the County receives and delivers to the Authority and the Trustee an opinion of Bond Counsel to the effect that (1) such payment is not required under the Code in order to prevent the Series 2018 Bonds from becoming “arbitrage bonds” within the meaning of Section 148 of the Code or (2) such payment should be calculated and paid on some alternative basis under the Code, and the County complies with such alternative basis.

(e) The Authority covenants that, if so requested by the County, it shall execute any form required to be signed by an issuer of tax-exempt bonds in connection with the payment of any Rebate Amount (including Internal Revenue Service Form 8038-T) based on information supplied to the Authority by the County. The County shall supply all information required to be stated on such form and shall prepare such form. Except for the execution and delivery of such form upon timely presentation by the County, the Authority shall have no responsibility for such form or the information stated thereon.

Section 6.4 Reports by Trustee.

The Trustee shall provide the County within 30 days after each ____ and within 30 days after the final payment of the Series 2018 Bonds with such reports and information with respect to earnings of amounts held under the Agreement of Trust as may be reasonably requested by the County in order to comply with the provisions of this Article.

Section 6.5 Disposition of Balance in Series 2018 Arbitrage Rebate Fund.

After each payment required in Section 6.3 is made and any additional amount necessary to pay the full rebate obligation is retained, the remaining amount in the Series 2018 Arbitrage Rebate Fund shall be retained by the County and used for any lawful purpose.

ARTICLE VII

MISCELLANEOUS

Section 7.1 Severability.

If any provision of this First Supplemental Financing Agreement shall be held invalid by any court of competent jurisdiction, such holding shall not invalidate any other provision hereof.

Section 7.2 Successors and Assigns.

This First Supplemental Financing Agreement shall be binding upon, inure to the benefit of and be enforceable by the parties and their respective successors and assigns.

Section 7.3 Counterparts.

This First Supplemental Financing 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.

Section 7.4 Governing Law.

This First Supplemental Financing Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia.

Section 7.5 Patriot Act Notice of the Trustee.

To help the government fight the funding of terrorism and money laundering activities, federal law requires all financial institutions to obtain, verify and record information that identifies each person who opens an account. Accordingly, the Trustee will require documentation from each non-individual person such as a business entity, a charity, a trust or any other legal entity verifying the formation as a legal entity. The Trustee may also request identifying information to sufficiently verify the identities of individuals claiming authority to represent the entity.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the parties have caused this First Supplemental Financing Agreement to be duly executed as of the date first above written, by their duly authorized representatives.

**ECONOMIC DEVELOPMENT AUTHORITY
OF JAMES CITY COUNTY, VIRGINIA**

By: _____
Chairman

**BOARD OF SUPERVISORS OF JAMES CITY
COUNTY, VIRGINIA, ON BEHALF OF
JAMES CITY COUNTY, VIRGINIA**

By: _____
County Administrator

Seen and agreed to:

WILMINGTON TRUST, NATIONAL ASSOCIATION,
as Trustee

By: _____
Vice President

RECEIPT OF TRUSTEE

Receipt of the foregoing original counterpart of the First Supplemental Financing Agreement dated as of _____, 2018, between the Economic Development Authority of James City County, Virginia, and the Board of Supervisors of James City County, Virginia, on behalf of James City County, Virginia, is hereby acknowledged.

**WILMINGTON TRUST,
NATIONAL ASSOCIATION, as Trustee**

By: _____
Vice President

EXHIBIT A**Series 2016 Bonds**

Payment Date	Principal Component	Interest Component	Total
12/1/2016		\$ 473,406.22	\$ 473,406.22
06/1/2017	\$ 915,000	441,518.75	1,356,518.75
12/1/2017		427,793.75	427,793.75
06/1/2018	975,000	427,793.75	1,402,793.75
12/1/2018		413,168.75	413,168.75
06/1/2019	1,000,000	413,168.75	1,413,168.75
12/1/2019		398,168.75	398,168.75
06/1/2020	1,035,000	398,168.75	1,433,168.75
12/1/2020		382,643.75	382,643.75
06/1/2021	1,065,000	382,643.75	1,447,643.75
12/1/2021		356,018.75	356,018.75
06/1/2022	1,115,000	356,018.75	1,471,018.75
12/1/2022		328,143.75	328,143.75
06/1/2023	1,170,000	328,143.75	1,498,143.75
12/1/2023		310,593.75	310,593.75
06/1/2024	1,205,000	310,593.75	1,515,593.75
12/1/2024		280,468.75	280,468.75
06/1/2025	1,270,000	280,468.75	1,550,468.75
12/1/2025		248,718.75	248,718.75
06/1/2026	1,330,000	248,718.75	1,578,718.75
12/1/2026		215,468.75	215,468.75
06/1/2027	1,400,000	215,468.75	1,615,468.75
12/1/2027		201,468.75	201,468.75
06/1/2028	1,425,000	201,468.75	1,626,468.75
12/1/2028		187,218.75	187,218.75
06/1/2029	1,455,000	187,218.75	1,642,218.75
12/1/2029		170,850.00	170,850.00
06/1/2030	1,485,000	170,850.00	1,655,850.00
12/1/2030		148,575.00	148,575.00
06/1/2031	1,530,000	148,575.00	1,678,575.00
12/1/2031		125,625.00	125,625.00
06/1/2032	1,575,000	125,625.00	1,700,625.00
12/1/2032		102,000.00	102,000.00
06/1/2033	1,625,000	102,000.00	1,727,000.00
12/1/2033		77,625.00	77,625.00
06/1/2034	1,675,000	77,625.00	1,752,625.00
12/1/2034		52,500.00	52,500.00
06/1/2035	1,725,000	52,500.00	1,777,500.00
12/1/2035		26,625.00	26,625.00
06/1/2036	1,775,000	26,625.00	1,801,625.00
	\$26,750,000	\$9,822,274.97	\$36,572,274.97

Series 2018 Bonds

Date	Principal	Interest	Total
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Total Debt Service – Series 2016 and 2018 Bonds