

AT A REGULAR MEETING OF THE BOARD OF SUPERVISORS OF THE COUNTY OF JAMES CITY, VIRGINIA, HELD ON THE 7TH DAY OF NOVEMBER, NINETEEN HUNDRED NINETY-FOUR, AT 7:02 P.M. IN THE COUNTY GOVERNMENT CENTER BOARD ROOM, 101 MOUNTS BAY ROAD, JAMES CITY COUNTY, VIRGINIA.

A. ROLL CALL

Perry M. DePue, Chairman, Powhatan District
David L. Sisk, Vice Chairman, Roberts District

Jack D. Edwards, Berkeley District
Robert A. Magoon, Jr., Jamestown District (Absent)
Stewart U. Taylor, Stonehouse District
David B. Norman, County Administrator
Frank M. Morton, III, County Attorney

B. MINUTES - October 10, 1994 - Special Meeting
October 19, 1994 - Regular Meeting

Mr. DePue asked if there were additions or corrections to the minutes.

Mr. Sisk made a motion to approve the two sets of minutes.

On a roll call, the vote was: AYE: Edwards, Taylor, Sisk, DePue (4). NAY: (0).

C. CONSENT CALENDAR

Mr. DePue asked if a Board member wished to remove any item from the Consent Calendar.

Mr. DePue made a motion to approve the Consent Calendar.

On a roll call, the vote was: AYE: Edwards, Taylor, Sisk, DePue (4). NAY: (0).

1. Additional State Allocations - Comprehensive Services Act Administration

RESOLUTION

APPROPRIATION TO THE SOCIAL SERVICES DEPARTMENT

WHEREAS, the State has awarded \$2,750.00 to James City County to administer the Comprehensive Services Act for At-Risk Youth and Families; and

WHEREAS, local matching funds are available in Account No. 007-081-1000.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby authorizes the following appropriation amendments:

Revenues:

Revenues from the Commonwealth \$ 2,750.00

Expenditures:

Salaries - Account No. 007-081-1000 \$(2,250.00)

Administration- Comprehensive Services
Act for At-Risk Youth and Families 5,000.00

\$ 2,750.00

2. Thomas Nelson Community College Proposal Northern Peninsula Campus

RESOLUTION

THOMAS NELSON COMMUNITY COLLEGE - PROPOSED

NORTHERN PENINSULA CAMPUS

WHEREAS, Thomas Nelson Community College (TNCC) is an expanding community resource for students and employees on the Peninsula; and

WHEREAS, the existing campus cannot be expanded due to wetlands and runway operations at nearby Langley Air Force Base; and

WHEREAS, the only existing campus of TNCC is some distance from James City County and has already inspired popular, but limited TNCC offerings, at Lafayette High School; and

WHEREAS, TNCC is requesting legislative authorization to initiate a plan for a second campus in its northern Peninsula jurisdictions.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, supports the plan for a second TNCC campus in the northern Peninsula and endorses the sought-after legislative authorization.

3. Summer Breeze Concert Series

RESOLUTION

PARKS AND RECREATION BUDGET AMENDMENT

SUMMER BREEZE CONCERT SERIES

WHEREAS, the concert series is sponsored jointly with Merchant's Square Association; and

WHEREAS, the continued success of the concert series has created an increased demand for the quality of performances; and

WHEREAS, Merchant's Square has contributed funds to the County which will offset the additional costs of entertainment.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby amends its FY 95 Budget as follows:

Recreation Services:

Revenues:

Merchant's Square Association \$2,200.00

Expenditures:

Operating Expenses (Entertainment) \$2,200.00

4. Dedication of a Street in the Tewning Road Industrial Park

RESOLUTION

DEDICATION OF A STREET IN THE TEWNING ROAD INDUSTRIAL PARK

WHEREAS, the following road in the Tewning Road Industrial Park is shown on a plat recorded in the Clerk's Office of the Circuit Court of James City County and has been constructed to standards equal to the Virginia Department of Transportation's Subdivision Street Requirements as a requisite for acceptance for maintenance as part of the Secondary System of Highways; and

WHEREAS, the Board of Supervisors desires the certain road in Tewning Road Industrial Park to be included in the State Secondary Highway System; and

WHEREAS, the Virginia Department of Transportation's Resident Engineer for James City County has inspected this road and found it acceptable for maintenance.

NOW, THEREFORE, BE IT RESOLVED by the Board of Supervisors of James City County, Virginia, that the Virginia Department of Transportation be, and is hereby respectfully requested, contingent on the above, to include the following road in the Tewning Road Industrial Park, Berkeley Election District, James City County, in the State Secondary Highway System:

- 1. Tewning Road, 50-foot right-of-way
 From: Route 747 (Tewning Road)
 To: T-turnaround
 Distance: 772 feet (0.15 mile)

The unencumbered rights-of-way of 50 feet, along with drainage easements, are guaranteed as evidenced by the following plats of record:

Tewning Road Industrial Park, recorded in Plat Book 37, page 96, dated December 28, 1982, and in Plat Book 59, page 67, dated July 1, 1994.

BE IT FURTHER RESOLVED that this resolution be forwarded to the Resident Engineer of the Virginia Department of Transportation.

Mr. Magoon arrived at 7:07 p.m.

D. PUBLIC HEARINGS

1. Case No. SUP-25-94. Virginia Natural Gas Pipeline Extension

Mr. Mark J. Bittner, Planner, stated that Mr. John Matthews had applied on behalf of Virginia Natural Gas (VNG) for a special use permit to allow construction of a 16-inch natural gas pipeline extending from the VNG meter located in the Grove section of the County, travels southeastward along a corridor that closely parallels the CSX Railroad and the existing Virginia Power easement and enters the City of Newport News.

He further stated that the pipeline would be constructed within a new 20-foot permanent easement, with an additional new 30-foot easement being acquired for construction purposes at time of construction, and that construction easement would revert to the landowners after construction is complete. He noted the proposed pipeline would be buried a minimum of 3 feet.

Staff determined the proposal with conditions was consistent with the Comprehensive Plan. In concurrence with staff, the Planning Commission unanimously recommended approval with conditions listed in the resolution.

Mr. DePue opened the public hearing.

1. Mr. John Matthews, planning consultant for VNG, stated extension of the pipeline would provide additional reliable energy source for the County and economic development for the entire lower peninsula.

Discussion ensued that compensation to landowners was determined by appraisal of comparable properties and negotiated with appropriate offers.

2. Mr. Ed Oyer, 139 Indian Circle, asked for clarification of the location of the pipeline.

Mr. Matthews addressed Mr. Oyer's request by showing the exact location on a diagram.

Mr. DePue closed the public hearing.

Mr. Sisk made a motion to approve the resolution.

Mr. DePue asked that VNG respect the landowners property by reseeding disturbed areas as quickly as possible and told landowners that if they were unable to reach agreement with VNG, appeals could be made to Circuit Court.

On a roll call, the vote was: AYE: Magoon, Edwards, Taylor, Sisk, DePue (5). NAY: (0).

RESOLUTION

CASE NO. SUP-25-94. VIRGINIA NATURAL GAS PIPELINE EXTENSION

WHEREAS, the Board of Supervisors of James City County has adopted by ordinance specific land uses that shall be subjected to a special use permit process; and

WHEREAS, the Planning Commission of James City County, following its public hearing on October 11, 1994, unanimously recommended approval of Case No. SUP-25-94 to permit a 16-inch natural gas pipeline extension that begins at the existing Virginia Natural Gas meter site in the Grove section of the County, runs along a corridor that closely parallels the CSX Railroad Line and the existing Virginia Power easement, and enters the City of Newport News.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, does hereby approve the issuance of Special Use Permit No. SUP-25-94 as described herein with the following conditions:

1. No land disturbing activities shall occur on property for which easements have not been acquired by Virginia Natural Gas or a right of entry pursuant to condemnation processed. Evidence of this acquisition shall be provided to the Planning Division prior to such activities. This permit is valid only for the route shown on the maps submitted to the County as part of this application. Any deviation from the route must be approved by the Development Review Committee. Any relocation of the proposed main on property other than that identified on the maps submitted as part of this application shall require a new special use permit. Minor realignments of the proposed main located on the same parcel may be accommodated within the site plan review process contained in the James City County Zoning Ordinance then in effect, if the Zoning Administrator determines that no material change or impact will occur as a result.
2. If construction has not commenced on this project within a period of 24 months from the date of issuance of the special use permit, it shall become void.
3. Prior to final site plan approval, the crossing of the Skiffe's Creek Reservoir shall be approved by the City of Newport News Waterworks. The City of Newport News Waterworks Department shall approve any crossings of the existing waterlines located in the existing Virginia Power right-of-way.
4. Where a dwelling on any property along the route of the pipeline is located 150 feet or less from the edge of the permanent easement, the construction easement shall be revegetated with trees that best match the species of trees which were destroyed during the construction of the main. Trees shall be planted in a staggered fashion so as not to look uniform, and shall meet the standards within the landscaping section of the Zoning Ordinance.
5. Construction, operation, and maintenance of the natural gas transmission line shall comply with all local, State, and Federal requirements.
6. The project shall comply with all State erosion and sediment control regulations as specified in the 1992 Virginia Erosion and Sediment Control Handbook.
7. Copies of all State and Federal permits shall be provided as part of the site plan submittal.
8. Crossings of roads and existing utilities shall be coordinated with applicable agencies during the construction of the main.
9. For pipeline construction adjacent to existing development, adequate dust and siltation control measures shall be taken to prevent adverse effects on adjacent property. These

methods are to be shown on the site plan and approved as part of the site plan submittal.

10. A Phase I Archaeological Study for the entire site shall be submitted to the Director of Planning for his review and approval prior to land disturbance. A treatment plan shall be submitted to and approved by the Director of Planning for all sites in the Phase I study that are recommended for a Phase II evaluation and/or identified as being eligible for inclusion on the National Register of Historic Places. If a Phase II study is undertaken, such a study shall be approved by the Director of Planning and a treatment plan for said sites shall be submitted to and approved by the Director of Planning for sites that are determined to be eligible for inclusion on the National Register of Historic Places and/or those sites that require a Phase III study. If, in the Phase II study, a site is determined eligible for nomination to the National Register of Historic Places and said site is to be preserved in place, the treatment plan shall include nomination of the site to the National Register of Historic Places. If a Phase III study is undertaken for said sites, such studies shall be approved by the Director of Planning prior to land disturbance within the study area. All Phase I, Phase II and Phase III studies shall meet the Virginia Department of Historic Resource's Guidelines for Preparing Archaeological Resource Management Reports and the Secretary of the Interior's Standard and Guidelines for Archaeological Documentation, as applicable, and shall be conducted under the supervision of a qualified archaeologist who meets the qualifications set forth in the Secretary of the Interior's Professional Qualification Standards. All approved treatment plans shall be incorporated into the plan of development for the site, and the clearing, grading or construction activities thereon.
11. Any aboveground facilities shall be considered a building and shall be landscaped in accordance with the landscape section of the Zoning Ordinance.
12. In areas of the construction easement that have been cleared and landscaping is not required as part of Condition 4, seedlings shall be planted in accordance with the State Department of Forestry guidelines and shall be shown on a reforestation plan to be approved by the Planning Director. Alternative materials may be substituted for seedlings, subject to approval by the Planning Director and the State Department of Forestry. The reforestation of this easement shall be completed within 2 years of the clearing of the easement. It shall be the responsibility of Virginia Natural Gas to secure the necessary means to plant on the construction easement after the easement reverts back to the property owner.
13. Virginia Natural Gas shall not object to allowing trails and/or paths to be placed within the 20-foot permanent easement.
14. The proposed main shall be placed at such depth that future road work would not impact it. Any relocation of the main in the future for the Grove Interchange and for improvements and/or relocation of Route 60 shall be the responsibility of Virginia Natural Gas.
15. In any area where the pipeline crosses existing development or agricultural uses, the topsoil shall be removed and stockpiled separate from other soil. When construction is completed, the topsoil shall be restored to its previous location and conditions to the greatest extent practical. In areas where topsoil restoration is not possible, post-construction topsoil conditions shall be reestablished utilizing soil amendments as approved by the Soil Conservation Service.

2. Ordinance Amendment, Chapter 18, Taxation, Article I, in General, Adding Section 18-7, Credit Card Payment

Ms. Betty Pettengill, Treasurer, stated that the proposed ordinance would allow acceptance of payments by use of a credit card. She further stated that an agreement with Discover, the credit card issuer, would provide for a service fee to be charged the customer equal to the amount charged to the County, but not to exceed four percent.

The Board discussed that the information about the option of advance payment of taxes might be included in the FYI newsletter, payment by credit card could be made by telephone, and the December date was set by State code.

Mr. DePue opened the public hearing, and as no one wished to speak, he closed the public hearing.

Mr. Sisk made a motion to approve the ordinance.

On a roll call, the vote was: AYE: Magoon, Edwards, Taylor, Sisk, DePue (5). NAY: (0).

E. BOARD CONSIDERATIONS

1. Bid Award Mid-County Park Parking Lot

Mr. Needham S. Cheely, III, Director of Parks and Recreation, stated that the contract award for the Mid-County Park parking lot would provide parking necessary to meet the requirements established by the Development Review Committee during the recent site plan revision.

He further stated bids were received and the lowest responsive bidder was Perdue Construction, Inc.

Staff recommended approval of the resolution.

Mr. DePue made a motion to approve the resolution.

On a roll call, the vote was: AYE: Magoon, Edwards, Taylor, Sisk, DePue (5). NAY: (0).

RESOLUTION

BID AWARD - MID COUNTY PARK PARKING LOT PROJECT

WHEREAS, The James City County Mid-County Park requires additional parking facilities; and

WHEREAS, the project was competitively bid with Perdue Construction, Inc., submitting the low bid of \$110,707.15; and

WHEREAS, adequate funds are available in the Mid-County Park Capital Project budget for the project.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby authorizes the award of a contract for the construction of parking facilities at Mid-County Park in the amount of \$110,707.15 to Perdue Construction, Inc.

2. Award of Contract for Architectural Services for the Recreation Center Renovation and Expansion

Mr. Cheely stated that the Recreation Center Renovation and Expansion was approved in March, 1994 by bond referendum and twelve proposals were received for the project. Bond, Comet, Westmoreland and Hiner, was selected from a four firm short-list following interviews and reference checks.

Staff recommended approval of the resolution.

Mr. Edwards made a motion to approve the resolution.

On a roll call, the vote was: AYE: Magoon, Edwards, Taylor, Sisk, DePue (5). NAY: (0).

RESOLUTION

CONTRACT AWARD - ARCHITECTURAL SERVICES

FOR THE RECREATION CENTER RENOVATION AND EXPANSION

WHEREAS, the renovation and expansion of the Recreation Center was approved in the March 1, 1994, Bond Referendum; and

WHEREAS, a contract for Architectural Services was competitively negotiated with Bond, Comet, Westmoreland and Hiner in the amount of \$373,400; and

WHEREAS, funds are available in the Parks and Recreation Capital Budget - Recreation Center for the payment of architectural services fees.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby authorizes the award of a contract for the provision of architectural services for the James City/Williamsburg Recreation Center Renovation and Expansion in the amount of \$373,400 to Bond, Comet, Westmoreland and Hiner.

3. Cooperative Agreement for Virginia Peninsula Regional Jail Project

Mr. Sanford B. Wanner, Assistant County Administrator, stated that the Cooperative Agreement was required by State Board of Corrections and had been prepared by the Virginia Peninsula Regional Jail Authority attorney on behalf of the Authority and the Counties of James City and York and the Cities of Poquoson and Williamsburg.

After a lengthy discussion regarding overcrowding, impact on local facilities by State policy, growth in crime rate and population, and future expansion, Mr. DePue made a motion to approve the resolution authorizing execution of the amended Cooperative Agreement.

Mr. Norman commended Mr. Wanner for his expertise, time and effort put forth on this regional effort.

On a roll call, the vote was: AYE: Magoon, Edwards, Taylor, Sisk, DePue (5). NAY: (0).

RESOLUTION

COOPERATIVE AGREEMENT FOR VIRGINIA PENINSULA REGIONAL JAIL

WHEREAS, the State Board of Corrections requires a cooperative agreement detailing financial and operational responsibilities among participating localities constructing a regional jail; and

WHEREAS, such a Cooperative Agreement has been developed between the Counties of James City and York and the Cities of Poquoson and Williamsburg for the Virginia Peninsula Regional Jail.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby approves the Cooperative Agreement for the Virginia Peninsula Regional Jail project and authorizes the County Administrator to sign the Cooperative Agreement on behalf of the Board.

F. PUBLIC COMMENT

1. Ms. Ann Lee, 8619 Pocahontas Trail, asked the Board for assistance in correcting an error made on the plat for Morning Star Baptist Church, 9189 Pocahontas Trail, at the time that property was surveyed a few years ago.

Mr. DePue responded that the County would follow-up and Mr. Sisk would contact her.

2. Mr. Ed Oyer, 139 Indian Circle, spoke regarding the role of government and the issuance of taxation.

G. REPORTS OF THE COUNTY ADMINISTRATOR - None

H. BOARD REQUESTS AND DIRECTIVES

Mr. Sisk announced that the Williamsburg Wizards soccer team captured the State championship for the third consecutive year.

Mr. Magoon referenced a memorandum sent to the community developers by Development Management of upcoming discussion of zoning ordinance changes, and requested staff to keep the Board informed also of such changes.

Mr. DePue requested staff to contact appropriate State agencies to express County interest in Eastern State Hospital tract if property was declared surplus.

Mr. DePue asked staff to advise if a trip to Montgomery County, Maryland would be planned if Hampton Roads Sanitation District brought forward an application for a compost plant.

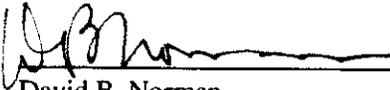
Mr. Magoon commended Mr. Patrick Cherry of the Mapping Division of Real Estate Assessments as an asset to staff on his skill and knowledge of the Geographical Information System.

Mr. DePue urged citizens to vote on November 8, 1994.

Mr. Taylor made a motion to recess until 5:00 p.m., Monday, November 21, 1994, for a work session on the 1995 Legislative Package.

On a roll call, the vote was: AYE: Magoon, Edwards, Taylor, Sisk, DePue (5). NAY: (0).

The Board recessed at 8:42 p.m.



David B. Norman
Clerk to the Board

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NOV 7 1994

ORDINANCE NO. 107A-17

BOARD OF SUPERVISORS
JAMES CITY COUNTY
VIRGINIA

AN ORDINANCE TO AMEND AND REORDAIN CHAPTER 18, TAXATION, ARTICLE I, IN GENERAL,
OF THE CODE OF THE COUNTY OF JAMES CITY, VIRGINIA BY ADDING SECTION 18-7, CREDIT
CARD PAYMENT.

BE IT ORDAINED by the Board of Supervisors of the County of James City, Virginia that Chapter 18, Taxation,
is hereby amended and reordained by adding Section 18-7, Credit Card Payment.

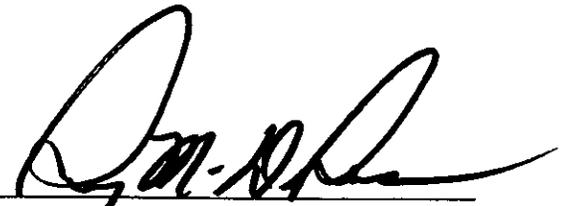
Chapter 18. Taxation

Article I. In General

Section 18-7. Credit card payment

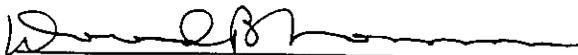
*The Treasurer is authorized to accept payment of any local taxes, fees or other charges due the
County by use of a credit card. Prior to accepting the use of any particular credit card, the Treasurer shall
enter into an agreement with the issuer of such credit card which provides, in part, that the County may
charge a service fee in the amount charged to the County, but in no event in excess of four percent of the
amount paid.*

State Law reference - Code of VA., § 58.1-3013.



Perry M. DePue, Chairman
Board of Supervisors

ATTEST: -



David B. Norman
Clerk to the Board

SUPERVISOR VOTE

MAGOON	AYE
EDWARDS	AYE
TAYLOR	AYE
SISK	AYE
DEPUE	AYE

Adopted by the Board of Supervisors of James City County, Virginia, this 7th day of November, 1994.

COOPERATIVE SERVICE AGREEMENT

THIS COOPERATIVE SERVICE AGREEMENT is made as of November ____, 1994, by and among the VIRGINIA PENINSULA REGIONAL JAIL AUTHORITY (the "AUTHORITY"), the COUNTY OF JAMES CITY, the COUNTY OF YORK, the CITY OF POQUOSON and the CITY OF WILLIAMSBURG; each of which is a political subdivision of the Commonwealth of Virginia.

RECITALS

A. Pursuant to Article 3.1, Title 53.1 of the Code of Virginia, the County of James City, the County of York, the City of Poquoson and the City of Williamsburg (collectively, the "Member Jurisdictions") each adopted resolutions creating the Virginia Peninsula Regional Jail Authority (the "Authority") for the purpose of financing, acquiring, constructing and equipping a regional jail facility, and providing for its ongoing operation and maintenance for the benefit of the Member Jurisdictions.

B. The Authority and the Member Jurisdictions desire to enter into this Agreement to provide for payments by each Member Jurisdiction to the Authority for services to be rendered to the Member Jurisdictions by the Authority, including the design, construction and operation of the Jail, and to set forth certain other obligations of the parties.

In consideration of the foregoing, the Authority and the Member Jurisdictions each agree as follows:

ARTICLE I
Definitions

The capitalized terms in this Agreement have the meanings

set forth below unless the context otherwise requires.

"Annual Budget" has the meaning given to such term in Section 3.7.

"Applicable Laws" mean all applicable laws, ordinances, 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, state, county, municipal, regional, foreign or other governmental body, instrumentality, agency or authority.

"Authority" means the Virginia Peninsula Regional Jail Authority.

"Authority Default" has the meaning given to such term in Section 8.1.

"Bonds" means revenue bonds issued by the Authority for the design, site acquisition, construction, equipping, financing and other costs of the Jail.

"Fiscal Year" means the annual accounting period from July 1 of one year to June 30 of the following year.

"Jail" means the Virginia Peninsula Regional Jail as constructed and equipped by the Authority and located in the County of James City together with any additions, or improvements thereto.

"Member Jurisdiction" means the County of James City, the County of York, the City of Poquoson and the City of Williamsburg, each a political subdivision of the Commonwealth of Virginia, and each other political subdivision joining the Authority but excluding any political subdivision that may have

set forth below unless the context otherwise requires.

"Annual Budget" has the meaning given to such term in Section 3.7.

"Applicable Laws" mean all applicable laws, ordinances, 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, state, county, municipal, regional, foreign or other governmental body, instrumentality, agency or authority.

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"Fiscal Year" means the annual accounting period from July 1 of one year to June 30 of the following year.

"Jail" means the Virginia Peninsula Regional Jail as constructed and equipped by the Authority and located in the County of James City together with any additions, or improvements thereto.

"Member Jurisdiction" means the County of James City, the County of York, the City of Poquoson and the City of Williamsburg, each a political subdivision of the Commonwealth of Virginia, and each other political subdivision joining the

Authority but excluding any political subdivision that may have withdrawn from the Authority, as provided in Sections 5.7 and 5.8.

"Member Jurisdiction Default" has the meaning given to such term in Section 8.2.

"Net Expenses" means the amount by which the Authority's expenses exceed its anticipated revenue from sources other than Member Jurisdictions, including per diem Prisoner charges from other jurisdictions and State operating reimbursements, and shall include debt service costs and expenditures necessary to fund or replenish required debt service reserve funds and the Operating Reserve Fund required pursuant to Section 4.3 of this Agreement.

"Operating Reserve Fund" means the reserve fund established in Section 4.3.

"Notes" means bond anticipation notes issued by the Authority.

"Per Diem Charge" means the uniform daily charge to Member Jurisdictions for each Prisoner as set forth in Section 4.1.

"Placed in Service" means the first day on which the Jail has been certified by the appropriate authority of the Commonwealth to accept Prisoners.

"Planning Study" means the feasibility study and conceptual design for the Jail prepared by Daniel, Mann, Johnson and Mendenhall dated June 3, 1993.

"Prisoner(s)" has the meaning given to such term in Section 3.1.

ARTICLE II
Construction and Financing

Section 2.1. Construction of Jail. The Authority agrees to construct and equip the Jail substantially in accordance with the Planning Study.

Section 2.2. Permits. The Authority will construct the Jail in accordance with the requirements of all Applicable Laws and the rules and regulations of the Virginia Board of Corrections. The Member Jurisdictions agree to provide reasonable assistance to the Authority in complying with any such requirements, and will provide the Authority with any and all information that may be necessary in this regard.

Section 2.3. Costs of Jail; Agreement to Finance. The construction cost of the Jail is estimated to be approximately \$27,881,783.00. One-half of the eligible construction costs, now estimated to be approximately \$12,341,000.00, is expected to be reimbursed by the Commonwealth of Virginia upon completion of construction. The Authority intends to finance the cost of the Jail, including expenses associated with the financing, through the issuance of Bonds. In addition, the Authority may issue Notes or other short-term obligations to finance certain preliminary costs on an interim basis. After the effective date of this Agreement, the Authority may immediately proceed to arrange such financing, incur such obligations and commence final design and construction of the Jail.

ARTICLE III
Provisions of Services, Operation and Maintenance

Section 3.1. Acceptance of Prisoners. Immediately after the Jail is Placed in Service, the Authority will accept Prisoners from each Member Jurisdiction (and to the extent space is available, from other jurisdictions, including the federal government and its agencies) who have been (i) duly arrested for committing a criminal offense and held over pending trial or (ii) duly convicted of committing a criminal offense and sentenced to a term of incarceration by a court having proper jurisdiction (the "Prisoners"). At a minimum, the Authority agrees to accept and be solely responsible for the confinement in the Jail, or in a facility approved for such purpose under the Applicable Laws, of at least the following number of Prisoners from each Member Jurisdiction:

<u>JURISDICTION</u>	<u>GUARANTEED PRISONER BEDS</u>
James City	122
York	98
Poquoson	29
Williamsburg	41

The Authority shall exercise its best efforts to keep the Jail full of Prisoners at all times. Prisoners of Member Jurisdictions shall be given a preference over those of non-members; however, to the extent space is available, the Authority will endeavor to accept Prisoners from other jurisdictions. In the event that 290 Prisoners have been committed to the Authority by Member Jurisdictions and one or more Member Jurisdictions have

committed fewer Prisoners to the Authority than the number of Prisoners that the Authority is required to accept from such Jurisdiction, the Authority will accept additional Prisoners from such Jurisdiction and ratably reduce the number of Prisoners from Member Jurisdictions having excess Prisoners in the Jail. The Authority shall be responsible for placing Prisoners who can not be housed at the Jail into other facilities.

Section 3.2. Commitment of Prisoners. After the Jail is Placed in Service, until final payment of any Notes, Bonds or other temporary or permanent financing for the construction of the Jail issued or obtained by the Authority pursuant to this Agreement, each Member Jurisdiction agrees to commit all of its Prisoners to the custody of the Authority.

Section 3.3. Transportation of Prisoners. Unless the Authority agrees otherwise, each Member Jurisdiction shall be responsible for the initial transportation of Prisoners from such Jurisdiction to the Jail for processing into the Jail population. Thereafter, the Authority shall be responsible for transporting Prisoners to and from the Jail and for all costs, expenses and security relating to such Prisoners during transportation.

Section 3.4. Operating and Maintenance. The Authority will operate and maintain the Jail in accordance with the rules and regulations of the Virginia Board of Corrections and all other Applicable Laws. The Authority shall be an equal opportunity employer.

Section 3.5. Insurance. The Authority will maintain

hazard, liability or such other insurance as may be required by Applicable Law or which the Authority may deem advisable to protect the interest of the Authority and its Member Jurisdictions.

Section 3.6. Annual Report. The Authority will provide to each Member Jurisdiction on or before each January 1 a report showing the activities and the revenues, expenditures, and employee compensation schedules and other similar data of the Authority for the preceding Fiscal Year, including its audited financial statements.

Section 3.7. Annual Budget. The Authority will provide to each Member Jurisdiction on or before each January 1 the Authority's Preliminary Annual Budget for the next Fiscal Year and on or before each March 1 its final Annual Budget for the next Fiscal Year. For each Fiscal Year in which the Jail will be in operation, such Annual Budget shall set the Per Diem Charge for each Prisoner committed to the Authority by Member Jurisdictions. The Authority agrees to set and revise from time to time as necessary the Per Diem Charge so that it is sufficient to generate revenue adequate to pay Net Expenses and to fund any required reserves. The Authority will promptly provide copies of any amendments to its Annual Budget to each Member Jurisdiction.

Section 3.8. Books and Records; Fiscal Agent. The Authority will maintain proper books of record and account in which proper entries shall be made in accordance with generally accepted accounting principles for governmental bodies,

consistently applied, of all of its business and affairs related to the Jail. The books and records of account of the Authority shall be audited annually by a firm of independent public accountants selected by the Authority. The Authority may contract with one of its Member Jurisdictions for the Member Jurisdiction to serve as fiscal agent for the Authority. All books of record and account and documents in the Authority's (or its fiscal agent's) possession relating to the Jail shall at all reasonable times be open to inspection by such agents or employees of the Member Jurisdictions as they may designate.

Section 3.9. Preliminary Responsibilities. Before the Jail is Placed in Service, the Authority will be responsible for (i) the final design, construction and equipping of the Jail, (ii) the employment or procurement and equipping of the Jail, (iii) the adoption of rules, regulations, policies and guidelines for the operation and maintenance of the Jail, not inconsistent with the standards of the Virginia Board of Corrections, and (iv) the arrangements for financing the Jail.

ARTICLE IV **Payments**

Section 4.1. Payments from Member Jurisdictions.

(a) Per Diem Charge. In its Annual Budget, the Authority shall establish the Per Diem Charge or charges, as the case may be, for the care, maintenance and subsistence of Prisoners from Member Jurisdictions during the next Fiscal Year equal to the Authority's projected Net Expenses divided by the product of (a) the number of inmate beds in the Jail times (b)

the projected occupancy rate of Member Jurisdictions times (c) 365 or 366 calendar days, as appropriate. The Per Diem Charges may be adjusted as necessary by the Authority.

Each Member Jurisdiction shall pay to the Authority the applicable Per Diem Charge for each Prisoner committed to the Jail by that Member Jurisdiction. The Authority shall invoice the Per Diem Charges due from each Member Jurisdiction on a monthly basis. The Per Diem Charges shall be due and payable to the Authority no later than the fifteenth day of the month following the month in which the charge was incurred and if not paid when due shall bear interest at the rate of 3/4% per month until paid; provided, however, that this provision shall not apply in instances where state law prescribes some other due date or late payment charge.

(b) Payment of Preliminary Costs. Each Member Jurisdiction agrees to contribute or advance to the Authority, at the request of the Authority, on a quarterly basis unless otherwise agreed by all Member Jurisdictions, and in accordance with the allocation set forth below, sufficient funds to pay preliminary costs of the Jail before the issuance of Notes or Bonds for such purpose and to provide initial operating funds for the first two months of operation of the Jail. If for any reason the Jail is not constructed or Placed in Service, the Member Jurisdictions shall reimburse the Authority for all expenses not previously paid by the Member Jurisdictions, pursuant to the following allocation:

<u>JURISDICTION</u>	<u>PERCENTAGE OF PRELIMINARY COSTS</u>
James City	42%
York	34%
Poquoson	10%
Williamsburg	14%

The payments required by any Member Jurisdiction under this Section shall be subject to the appropriation of funds for such purpose by the governing body of the Member Jurisdiction. All expenses incurred by the Authority prior to the effective date of this Agreement are hereby authorized and approved by the Member Jurisdictions.

Section 4.2. Payments from Other Jurisdictions. Within the limits allowed by law, the Authority shall establish a per diem charge or charges for the care, maintenance and subsistence of Prisoners from non-member jurisdictions, including the state and federal government; provided, however, that in no event shall such charge or charges be less than the Per Diem Charge for Member Jurisdiction established by the Authority for the same period pursuant to Section 4.2 of this Agreement. Such non-member per diem Prisoner charges shall be due and payable to the Authority from non-member jurisdictions having Prisoners in the Jail no later than the fifteenth day of the month next following the month in which the charge was incurred and if not paid when due shall bear interest at the rate of 1% per month until paid; provided, however, that this provision shall not apply in instances where state law prescribes some other due date or late

payment charge.

Section 4.3. Operating Reserve Fund. When the Jail is Placed in Service, the Authority agrees to provide for an Operating Reserve Fund in each of its Annual Budgets in an amount equal to 6.5% of its projected Annual Budget for each year. The Operating Reserve Fund will be established as a separate account and will be used to cover periods of revenue shortfall when the Authority's revenues are not sufficient to cover its net operating expenses.

Section 4.4. Commonwealth Reimbursement Grants. Any funds that the Authority receives from the Commonwealth of Virginia as reimbursement for the cost of constructing the Jail will be applied immediately to the payment of the Notes or Bonds.

Section 4.5. Limitation of Liability. The only obligation of the Member Jurisdictions to pay for the establishment, operation or maintenance of the Jail arises out of this Agreement. No such payment responsibility shall constitute a debt of any Member Jurisdiction within the meaning of any constitutional or statutory limitation.

ARTICLE V **Additional Agreements**

Section 5.1. Sale or Other Conveyance. The Authority will not sell, lease, sublease, assign, convey or otherwise voluntarily dispose of the Jail or any interest in the Jail unless the Notes, Bonds and any other debt incurred by the Authority have been or will be paid or deemed defeased in

accordance with the agreements pursuant to which they were issued.

Section 5.2. Further Documents and Data. The parties to this Agreement will execute and deliver all documents and perform all further acts that may be reasonably necessary to perform the obligations and consummate the transactions contemplated by this Agreement.

Section 5.3. Right to Access. Each Member Jurisdiction will have reasonable access to the Jail in order to monitor the Authority's compliance with the terms of this Agreement.

Section 5.4. Confidentiality. The Authority will maintain all records and files on the Prisoners on a confidential basis in accordance with all Applicable Laws. Each Member Jurisdiction will maintain the confidential nature of all records and files relating to the Prisoners of other Member Jurisdictions in accordance with all Applicable Laws.

Section 5.5. Notification. The Authority will promptly furnish to each Member Jurisdiction a copy of any notice or order of any governmental authority asserting that the Authority or the Jail is not in compliance in any material respect with any Applicable law.

Section 5.6. Tax-Exemption Covenant. The Authority intends to issue the Notes and Bonds in a manner such that their interest is excludable from gross income for Federal income tax purposes under Section 103(a) and related provisions of the Internal Revenue Code of 1986, as amended, and applicable rules and

regulations. The Authority and each Member Jurisdiction agree that after the Notes and Bonds have been issued they will not take any action or omit to take any action which would adversely affect such exclusion.

Section 5.7. Additional Members. Any city or county in Virginia may, with the approval of its governing body and with the consent of all the Member Jurisdictions, join and participate in the Authority under such additional terms and conditions for membership as may be prescribed by the Authority.

Section 5.8. Withdrawal of Membership. Once obligations have been entered into by the Authority and remain outstanding no Member Jurisdiction may withdraw from the Authority, without the unanimous approval of the remaining Member Jurisdictions.

Section 5.9. Preferential Hiring. Qualified employees of any of the correctional departments of the sheriff's of any Member Jurisdiction shall be given preferred consideration for employment at the Jail by the Authority, subject to the employment policies and procedures adopted by the Authority.

ARTICLE VI

Representations, Warranties and Covenants of Authority

In addition to the covenants in other Articles of this Agreement, the Authority represents, warrants and covenants as follows:

Section 6.1. Organization, Authorization and Validity. The Authority is 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

enforceable against the Authority in accordance with its terms.

Section 6.1. Authority. The Authority 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 the Authority would prevent or materially and adversely affect the Authority's ability to perform the terms of this Agreement.

Section 6.3. 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 resolutions creating the Authority, 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 or the Jail is bound.

Section 6.4. 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 under this Agreement.

Section 6.5. Approvals. Except for approvals that may be required by the Virginia Board of Corrections and any approvals that may be required for reimbursements from the Commonwealth of

Virginia, the Authority does not require the consent or approval of any governmental body to carry out the terms of this Agreement.

ARTICLES VII
Representations, Warranties and Covenants of Member
Jurisdictions

Each Member Jurisdiction represents, warrants and covenants for itself as follows:

Section 7.1. Organization, Authorization and Validity. Each Member Jurisdiction is a political subdivision of the Commonwealth duly organized and validly existing under the laws of the Commonwealth, and each has duly authorized, executed and delivered this Agreement. The Agreement is a valid, legal and binding agreement enforceable against each Member Jurisdiction in accordance with its terms.

Section 7.2. Authority. Each Member Jurisdiction 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.

Section 7.3. Non-Contravention. The execution and delivery of this Agreement by each Member Jurisdiction 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.

Section 7.4. Litigation. No Member Jurisdiction 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.

ARTICLE VIII
Defaults and Remedies

Section 8.1. Default by Authority. The occurrence of any one or more of the following events will constitute an "Event of Default" by the Authority ("Authority Default"):

- (i) failure of the Authority to pay principal of or interest when due on any Notes, Bonds or other temporary or permanent financing for the Jail issued or obtained by the Authority pursuant to this Agreement;
- (ii) if the Authority is for any reason rendered incapable of performing any of its material obligations under this Agreement;
- (iii) the Authority makes an assignment of all or a portion of its obligations under this Agreement without the prior consent of the Member Jurisdictions;
- (iv) The Authority defaults on any of its material obligations under any agreement pursuant to which any

Note, Bonds or other temporary or permanent financing for the Jail is issued or obtained by the Authority pursuant to this Agreement and such default is not cured within the applicable cure period;

(v) 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 federal or state statute now or hereafter enacted, if the claims of such creditors are under any circumstances payable from the funds of the Authority; or

(vi) the Authority defaults in the due and punctual performance of any other of the covenants, conditions, agreements and provisions contained in this Agreement, and the default continues for thirty days after written notice specifying the default and requiring it to be remedied has been given to the Authority by any Member Jurisdiction.

Section 8.2. Default by Member Jurisdictions. The occurrence of any one or more of the following events will constitute an "Event of Default" by any Member Jurisdiction ("Member Jurisdiction Default"):

- (i) failure of any Member Jurisdiction to make payments of Per Diem Charges when due;
- (ii) any Member Jurisdiction shall for any reason be

rendered incapable of fulfilling its obligations under this Agreement; or

(iii) any proceeding is instituted, with the consent or acquiescence of any Member Jurisdiction, for the purpose of effecting a composition between such Member Jurisdiction and its creditors or for the purpose of adjusting the claims of such creditors pursuant to any federal or state statute now or hereafter enacted, if the claims of such creditors are under any circumstances payable from the funds of such Member Jurisdiction; or

(iv) any Member Jurisdiction defaults in the due and punctual performance of any of the other covenants, conditions, agreements and provisions contained in this Agreement, and the default continues for thirty days after written notice specifying the default and requiring it to be remedied has been given to such Member Jurisdiction by the Authority.

Section 8.3. Remedies of Member Jurisdictions. Upon the occurrence of an Authority Default, any Member Jurisdiction, after giving notice of such Authority Default to all parties, may bring suit by mandamus or other appropriate proceeding to require the Authority to perform its duties under this Agreement or to enjoin any acts in violation of this Agreement.

Section 8.4. Remedies of Authority. Upon the occurrence of a Member Jurisdiction Default, the Authority, after giving notice

of such Member Jurisdiction Default to all parties, may bring suit by mandamus or other appropriate proceeding to require the Member Jurisdiction to perform its duties under this Agreement or to enjoin any acts in violation of this Agreement.

Section 8.5. 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 at law, in equity or by statute.

ARTICLE IX
Miscellaneous

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, 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 and shall be effective when delivered in person or sent in the United States mail, postage prepaid, to the following persons and addresses or to such other persons and addresses as any of such persons may from time to time specify in writing.

If to the Authority:

Chairman

Virginia Peninsula Regional Jail Authority
 101 Mounts Bay Road
 Williamsburg, Virginia 23185

If to James City:

County Administrator
 Post Office Box 8784
 Williamsburg, Virginia 23187

If to York:

County Administrator
 Post Office Box 532
 Yorktown, Virginia 23690

If to Poquoson:

City Manager
 830 Poquoson Avenue
 Poquoson, Virginia 23662

If to Williamsburg:

City Manager
 401 Lafayette Street
 Williamsburg, Virginia 23185

Section 9.3. Execution of Agreement. This Agreement may be executed in counterparts, each of which shall be deemed to be an original having identical legal effect.

Section 9.4. Governing Law. This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the Commonwealth of Virginia.

Section 9.5. Amendments. This Agreement may be changed or amended only with the consent of the Authority and each Member Jurisdiction. After the issuance of Notes or Bonds, 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 Notes, Bonds or other temporary

or permanent financing for the Jail is issued or obtained by the Authority.

Section 9.6. Effective Date of Agreement. This Agreement will be effective from the date of its execution and delivery by all of the Member Jurisdictions and the Authority.

Section 9.7. Waiver. 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 Member Jurisdiction's obligation to make payments when due of all monies required to be paid by the Member Jurisdictions under the terms of this Agreement.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the date above written.

VIRGINIA PENINSULA REGIONAL JAIL AUTHORITY

BY: *[Signature]*
CHAIRMAN

COUNTY OF JAMES CITY

BY: *[Signature]*
COUNTY ADMINISTRATOR

*Approved as to form:
William H. Henderson
County Attorney
14 NOV 94*

COUNTY OF YORK

BY: *[Signature]*
COUNTY ADMINISTRATOR

CITY OF POQUOSON

BY: *[Signature]*
CITY MANAGER

CITY OF WILLIAMSBURG

BY: *[Signature]*
CITY MANAGER