

AT A REGULAR MEETING OF THE BOARD OF SUPERVISORS OF THE COUNTY OF JAMES CITY, VIRGINIA, HELD ON THE 12TH DAY OF MARCH, NINETEEN HUNDRED NINETY-SIX, AT 5:07 P.M. IN THE COUNTY GOVERNMENT CENTER BOARD ROOM, 101 MOUNTS BAY ROAD, JAMES CITY COUNTY, VIRGINIA.

A. ROLL CALL

David L. Sisk, Chairman, Roberts District
Robert A. Magoon, Jr., Vice Chairman, Jamestown District

Jack D. Edwards, Berkeley District
Perry M. DePue, Powhatan District
Stewart U. Taylor, Stonehouse District
David B. Norman, County Administrator
Frank M. Morton, III, County Attorney

B. WORK SESSION

1. Open Burning

Mr. Richard Miller, Fire Chief, defined open burning and outlined laws and regulations of State and County Code, complaints and response, recommendations and enforcement options.

Mr. Sisk recessed the Board at 5:42 p.m., for a Transportation Improvement District Commission meeting.

Mr. Sisk reconvened the Board into open session at 7:05 p.m.

**C. MINUTES - February 15, 1996, Legislative Day
February 20, 1996, Special Meeting
February 27, 1996, Regular Meeting**

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

Mr. Edwards made a motion to approve the three sets of minutes.

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

D. CONSENT CALENDAR

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

Mr. Sisk asked that Item Nos. 1 and 2 be removed.

Mr. Taylor asked that Item No. 3 be removed.

Mr. Sisk made a motion to approve Item Nos. 4 and 5 on the Consent Calendar.

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

4. Poultry Claim, Ms. Diane C. Owen

RESOLUTION

POULTRY CLAIM

WHEREAS, Diane C. Owen filed a poultry claim dated January 21, 1996, alleging the loss of certain poultry; and

WHEREAS, the Animal Control Warden has investigated the claim and verified the loss of poultry; and

WHEREAS, the value of the poultry destroyed and verified by the Animal Control Warden is estimated to be as follows:

Laying Hens (10)	<u>\$40.00</u>
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NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, authorizes the payment of \$40.00 to Diane C. Owen for poultry destroyed.

5. Expansion of Limited-Term Employment Category Definition

RESOLUTION

EXPANSION OF DEFINITION OF LIMITED-TERM POSITION

WHEREAS, we wish to identify all positions funded by special revenue sources ; and

WHEREAS, such positions may be discontinued if that funding should cease.

NOW, THEREFORE, BE IT RESOLVED by the Board of Supervisors of James City County, Virginia, that we adopt the attached revision to Section 2.3 B. of the Personnel Policies and Procedures Manual.

1. Resolution of Commendation, Lee C. Scruggs

Mr. Sisk made a motion to approve Item Nos. 1 and 2.

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

Mr. Sisk read and presented a resolution to Mr. Lee C. Scruggs, who thanked the Board for the recognition.

RESOLUTION OF COMMENDATION**LEE C. SCRUGGS**

- WHEREAS, College and University Computers, Inc., has been recognized as the top retailing company of 50 private companies in Virginia with explosive revenue growth; and
- WHEREAS, the brightest of these rising business stars are the 1996 Virginia Vanguard Award winners; and
- WHEREAS, Lee C. Scruggs, as founder and President of College and University Computers, Inc., has been recognized by the Governor of the Commonwealth of Virginia for his entrepreneurship; and
- WHEREAS, Lee Scruggs, as a lifetime resident of Williamsburg, has served the community through Friends of the Regional Library, Leadership Historic Triangle and the Williamsburg Chapter of William and Mary Society of Alumni.
- NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby commends Lee C. Scruggs on his personal and professional accomplishments and wishes him continued success.

2. **Eligibility Worker Appreciation Week, March 17-23-1996**

Mr. Sisk read and presented a resolution to Ms. Vivian Van Holten, who is supervisor of the Eligibility Program. Ms. Van Holten expressed appreciation to the Board.

RESOLUTION**ELIGIBILITY WORKER APPRECIATION WEEK**

- WHEREAS, Virginia's landmark welfare reform legislation has significantly impacted the services provided by local eligibility workers, calling upon them to creatively promote individual self-sufficiency and personal responsibility; and
- WHEREAS, James City County's eligibility workers have been at the forefront of public efforts to meet the need, steadily maintaining a high rate of application processing to ensure that those qualified for social services receive them; and
- WHEREAS, more than 3,000 residents are served monthly through the Food Stamp, Medicaid, and Aid to Families with Dependent Children programs, and depend on the dedication and commitment of eligibility workers who handle their cases in an accurate and timely manner.
- NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, does hereby commend all eligibility workers in James City County for a job well done and recognizes the week of March 17-23, 1996, in James City County as Eligibility Worker Appreciation Week, calling upon all of our citizens to join in acknowledging their public service and contributions.

3. Poultry Claim, Mr. Andrew Rumfelt

Mr. Taylor stated he would support the staff recommendation of \$10 per fowl and made a motion to approve Item No. 3.

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

RESOLUTION

POULTRY CLAIMS

WHEREAS, Andrew Rumfelt filed a poultry claim dated December 13, 1995, alleging the loss of certain poultry; and

WHEREAS, the Animal Control Warden has investigated the claim and verified the loss of poultry; and

WHEREAS, the value of the poultry destroyed and verified by the Animal Control Warden is estimated to be as follows:

Blue Mugs Chickens (5)	\$ 250.00
Albaney Chickens (10)	500.00
Red Quail Chickens (2)	100.00
Sid Taylor Chickens (3)	<u>150.00</u>
	<u>\$1,000.00</u>

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, authorizes the payment of \$200.00 to Andrew Rumfelt for poultry destroyed, the James City County Code limiting payment for such loss to ten dollars (\$10.00) per fowl.

E. PUBLIC HEARINGS

1. Withdrawal of Case Nos. Z-1-95 and SUP-3-95. Williamsburg Honda and Jeep Dealership (Continued from April 17, 1995)

Mr. O. Marvin Sowers, Jr., Director of Planning stated that the applicant, Mr. John Dodson had submitted a letter of withdrawal for the above cases dated February 23, 1996.

Staff accepted withdrawal of the cases.

Mr. Sisk opened and closed the public hearing.

Mr. Morton stated the cases were withdrawn automatically at time of receipt of request.

2. Case No. ZO-2-96. Ordinance Amendment, Chapter 20, Zoning, Adding Buffer and Greenbelt Requirements for Timbering

Without Board objection, Mr. Sisk informed the audience that three minutes would be allotted for each speaker to allow an opportunity to all persons who wished to address the Board.

Mr. Sowers stated that the proposed ordinance would: generally apply to all zoning districts within the primary service area, including A-1 zone and all greenbelt roads; require a 75 foot wide buffer along most public roads; exempt selective timbering operations where timbering is outside required buffers; allow planning director to grant modifications to buffer and tree protection; allow planning director to permit partial timbering within a buffer after considering certain factors; establish a one-stop process for most timbering activities; unresolved problems would be sent to development review committee; and, require tree replacement using substantial nursery stock.

In concurrence with staff, the Planning Commission, by a 5-2 vote, recommended approval of the ordinance.

Mr. Sisk opened the public hearing.

1. Mr. M. D. Galbreath, 113 Deerwood Drive, stated that taking privately owned land was abominable.
2. Mr. George Wright, 148 Cooley, President of Historic Route 5 Association, spoke in favor of the ordinance to protect appearance, quality of life and property values.
3. Mr. John B. Hewitt, 132 Jordan's Journey, President of Greater First Colony Homeowners Association, spoke in favor of ordinance to maintain canopy of trees on Greensprings Road.
4. Mr. Robert Harriger, 123 Ferncliff Drive, asked the Board to approve the ordinance to preserve the natural beauty of the County.
5. Mr. R. M. Hazelwood, Jr., 300 Old Stage Road, spoke in opposition to obtaining a timbering permit and loss compensation and the right to cut timber.
6. Mr. William Holcombe, 4705 Lady Slipper Path, spoke in favor in that trees increased land values.
7. Ms. Virginia P. Klapp, 2936 East Island Road, asked the Board to approve the ordinance to counteract the immediate cutting of trees.
8. Mr. George Anderson, 3408 Mallard Creek Run, stated that buffers along roadways offer protection for homeowners.
9. Ms. Ingrid Jahn, 118 Dover Road, stated that trees emit life-giving oxygen needed along roadways to alleviate emission of carbon dioxide by vehicular traffic.
10. Ms. Mary Lee Darling, 111 Berkeley Lane, spoke of the ordinance as a tool for growth management and that the scope and intent were fair and reasonable.
11. Mr. Ron Blackburn, Post Office Box 147, Barhamsville, spoke in favor of compensation for value of overall specified buffers.
12. Mr. Sidney Sheldon, P.O. Box 127, King and Queen Court House, Virginia, 23085, stated the ordinance would be a hardship for property owners, width of entrance should be increased and more than one entrance allowed, do not include boundary buffers and permit procedures, and loss of sales as buyers of timber would go elsewhere.
13. Mr. John E. Hofmeyer, stated owners should be compensated for loss of right to harvest timber.

14. Mr. Norman Hofmeyer, 17100 Tomahund Drive, spoke of a considerable loss of income for timber along four miles of road frontage with a 150 foot setback.
15. Reverend M. O. Smith, 617 Treasure Island Road, quoted "Thou shalt not steal" and stated that the taking of acreage was unjust.
16. Mr. Mark Sexton, 8 Prestwick, spoke of preservation of quality of life and value of land for all.
17. Mr. Phil Richardson, 417 Dogleg Drive, spoke in opposition to usurp owners' control of property.
18. Mr. R. E. Gilley, 227 Gate House Boulevard, spoke in opposition to the ordinance and asked the audience to stand to show opposition; approximately one-half of the audience stood.
19. Mr. Jon Kerner, 715 Autumn Trace, on behalf of the Historic River Lower Conservancy, spoke in support of the ordinance.
20. Mr. Don Hazelwood, Richmond, owner of acreage and as a taxpayer in James City County, spoke in opposition to the ordinance.
21. Mr. H. D. Tooley, 8908 Hicks Island Road, Lanexa, spoke in opposition to the ordinance and stated that owners should have right to cut timber.
22. Mr. Gerald J. Otey, 4079 South Riverside Drive, spoke in opposition to ordinance and taking of acreage without due compensation.
23. Mr. Hank Teague, 118 Gate House Boulevard, stated that trees help the environment and spoke in opposition to the ordinance and lack of compensation for buffer.
24. Mr. Bob Farkas, 140 Old Field Road, stated that 90 percent of timber was sold by sealed bid.
25. Mr. Eugene E. Hunt, 3206 Deerfield Court, spoke in favor of the ordinance to preserve property values.
26. Mr. Steven C. Smith, 5013 Hickory Signpost Road, spoke of early history and liberty for people.
27. Mr. Ed Oyer, 139 Indian Circle, stated owners should not lose acreage for buffers and the Agricultural and Forestal District Commission should control development.
28. Mr. Gene Farley, member of Agricultural and Forestal District Advisory Committee, spoke in support of compensation for land and/or timber.
29. Mr. Grant Olson, 105 Holman Road, stated that trees are important to ecological system, as foliage cleanses the air.
30. Mr. Mike Simerline, Jamestown resident, stated opposition to taking of property and determined consideration should be given to which corridors were scenic or non-scenic.

Mr. Sisk closed the public hearing.

After discussion, the Board agreed to hold a work session at 4:30 p.m., Monday, March 18, 1996, in Building C Board Room, County Government Center for further discussion of issues.

Mr. Sisk recessed the Board for a break at 9:27 p.m.

Mr. Sisk reconvened the Board at 9:35 p.m.

3. Case No. Z-6-95. Powhatan Enterprises, Inc., (Continued from February 27, 1996)

Mr. Allen J. Murphy, Jr., Principal Planner, stated that the applicant had requested deferral of this case to the March 12, 1996, Board of Supervisors' meeting to allow time for further discussion.

Staff concurred with the request and recommended the public hearing be continued to the March 26, 1996, meeting.

Mr. Sisk opened the public hearing, no one wished to speak, and he continued the public hearing until the March 26, 1996, meeting.

F. BOARD CONSIDERATIONS

1. Case No. SUP-30-95. Governor's Shoppes (Deferred from February 27, 1996)

Mr. Murphy stated that this case was deferred at the March 12, 1996, Board of Supervisors' meeting and reiterated that Alvin P. Anderson had applied on behalf of Cap Care Group, Inc., for a special use permit to allow an outlet shopping center of approximately 274,000 square feet with three out parcels on 53.44 acres zoned B-1, General Business, with proffers, located at 6590 Richmond Road, further identified as Parcel No. (1-35) on James City County Real Estate Tax Map No. (24-3).

Mr. Murphy further stated that a meeting was held on traffic issues and Board discussion followed that level of service could be measured by time based or electronic equipment and was not contingent on type of equipment chosen.

Mr. DePue made a motion to approve the amended resolution.

Mr. DePue suggested staff do a traffic study on Richmond Road for County information and use and provide the Board with base line traffic numbers on Richmond Road in vicinity of the Pottery Factory.

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

RESOLUTION

CASE NO. SUP-30-95. GOVERNOR'S SHOPPES

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

WHEREAS, the Planning Commission of James City County, following its public hearing on February 5, 1996, unanimously recommended approval of Case No. SUP-30-95 to permit the construction of a shopping center as described herein with outparcels at 6590 Richmond Road on property identified as Parcel No. (1-35) on James City County Real Estate Tax Map No. (24-3).

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-30-95 as described herein with the following conditions:

1. This permit shall allow the development of a shopping center of 280,000 square feet of gross leasable area and the development of out parcels along the Richmond Road frontage generally as shown on the master plan for Governor's Shoppes drawn by AES Consulting Engineers dated October 31, 1995 (master plan).
2. The design, construction materials, detailing and colors of development on the three out parcels shall be consistent with the design, construction materials, detailing and colors used for the shopping center as approved by the Director of Planning. All elevations of areas designated "out parcel" and "future expansion" visible from a public road shall be consistent with the design, construction materials, detailing and colors of the front facade of the shopping center.
3. A unified landscape treatment shall be applied to the entire development, including out parcels, and such treatment plan shall be approved by the Planning Director. Sufficient information shall be submitted with each plan of development to allow the Planning Director determine whether individual projects conform with the overall unified landscape treatment.
4. The number of entrances on Richmond Road shall be limited to those shown on the master plan. The eastern most entrance shall be a right-in/right-out facility. Access for the out parcels shall be internal to the site. Reciprocal cross access easements shall be provided for secondary access to and from Richmond Road to Parcel Nos. (1-36), (1-37), (1-37A), (1-62), and (1-38) on James City County Real Estate Tax Map No. (24-3) through designated perimeter traffic aisles within the parking lot of the shopping center.
5. To the extent reasonably practical and consistent with the traffic improvements hereinafter specified, the row of four oak trees along Richmond Road shall be preserved as part of the landscaping plan submitted with development plans.
6. The following entrance and road improvements shall be installed to VDOT standards and specifications prior to the issuance of any permanent Certificate of Occupancy for the Shopping Center:
 - a. A traffic signal at the main entrance (crossover one as shown on the traffic study submitted with this application).
 - b. Construction of double left-turn lanes on westbound Richmond Road at crossover one.
 - c. Construction of a third through/right-turn lane on eastbound Richmond Road along the entire property frontage.
 - d. Construction of three exit lanes, two entrance lanes, and landscape median at the main entrance at crossover one.
 - e. Construction of an eastbound left-turn lane at Crossover 1 as necessary to accommodate a traffic signal.
 - f. Modifications to crossover pavement to accommodate improvements listed herein.

- 7. Prior to the issuance of any permanent Certificate of Occupancy for the shopping center, the applicant shall, at its sole cost and expense, cause to be installed a time based coordinator as part of the traffic signal at Crossover 1. In addition, the applicant shall, within 30 days of a request from VDOT, pay to VDOT its pro rata share (pro rata based on the number of signals included) of any VDOT electronically interconnected traffic signal coordination project that includes Crossover 1 committed for construction by VDOT by the end of December 2000.
- 8. The applicant shall comply with Scenario 2 in the conclusions section of the Drainage Report prepared by AES Consulting Engineers and dated January 10, 1995. The pond provided shall be sized in accordance with James City County 10-point BMP guidelines and the release rates mentioned in the Drainage Report.
- 9. If construction on the project has not commenced within 36 months from the date of issuance of the special use permit, it shall become void. Commencement of construction shall be defined as the excavation, approved inspection of footings, and pouring of footings for any commercial buildings allowed under this permit.

2. James City/Williamsburg Recreation Center Renovation and Expansion Contract Award

Mr. Needham S. Cheely, III, Director of Parks and Recreation, stated that the renovation and expansion included development of a gymnasium, indoor jog/walk track, fitness area, dance/exercise room, family locker rooms, expanded lobby, teen and senior lounges, child care, arts and crafts room, multipurpose rooms, and space for a wellness partnership.

Mr. Cheely further stated that bid awards were received with the low and responsive bid from O. K. James Construction, Inc., for \$4,568,000. He stated that the project required a transfer of funds to fully fund the entire project and allow necessary repairs to the pool HVAC.

Staff recommended approval of the award contract and budget adjustments as show in the resolution.

Mr. Sisk made a motion to approve the resolution.

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

RESOLUTION

JAMES CITY/WILLIAMSBURG RECREATION CENTER

RENOVATION AND EXPANSION CONTRACT AWARD

WHEREAS, the citizens of James City County endorsed the sale of Bonds to fund renovation and expansion of facilities in the James City/Williamsburg Recreation Center; and

WHEREAS, the project was competitively bid with O. K. James Construction, Inc., submitting the low bid of \$4,568,000; and

WHEREAS, adequate funds are available in the Capital Budget to cover the cost of 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 renovation and expansion of the James City/Williamsburg Recreation Center in the amount of \$4,568,000 to O. K. James Construction, Inc.

BE IT FURTHER RESOLVED that the Capital budget be amended, as follows:

Revenue:

Sale of Property \$330,000

Expenditures:

Recreation Center \$550,000

District Park (220,000)

\$330,000

3. Newport News/James City County Memorandum of Understanding Regarding the King William Reservoir Project

Mr. Sanford B. Wanner, Assistant County Administrator, stated that the Board had approved participation in expansion of King William Reservoir Project and directed staff to support the City of Newport News efforts to obtain permits and develop an agreement for Board consideration. He further stated that the Memorandum of Understanding had been approved by Newport News.

Staff recommended approval of the resolution authorizing execution of the agreement.

The Board commended Mr. Wanner for his efforts in developing the agreement.

Mr. Magoon requested staff to do a press release immediately on the Newport News/James City County Memorandum of Understanding on King William Reservoir Project and to educate public on steps taken to reach agreement.

Mr. Edwards made a motion to approve the resolution.

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

RESOLUTION

NEWPORT NEWS/JAMES CITY COUNTY MEMORANDUM OF UNDERSTANDING

REGARDING THE KING WILLIAM RESERVOIR PROJECT

WHEREAS, the City of Newport News and the County of James City desire to cooperate to secure new surface water supplies for the region.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, does hereby approve the attached Memorandum of Understanding regarding the King William Reservoir Project and authorizes the County Administrator to sign the Agreement.

4. Shrink/Swell Soils Task Force Comments

Mr. Bernard M. Farmer, Jr., Director of Code Compliance, stated that the Shrink/Swell Soils Task Force had addressed Board questions.

Board and staff discussed testing for small detached structures with clarification of habitable or occupiable space.

Mr. Edwards made a motion to approve the resolution.

On a roll call, the vote was: AYE: Magoon, Edwards, Sisk (3). NAY: Taylor, DePue (2).

Mr. Edwards made a motion to reconsider the vote.

On a roll call, the vote was: AYE: Taylor, DePue, Edwards, Sisk (4). NAY: Magoon (1).

Mr. Sisk deferred the case until the March 26, 1996, Board of Supervisors' meeting to allow time for staff to respond to policy questions on detached structures including structure size thresholds.

G. PUBLIC COMMENT

1. Mr. Ed Baker, 146 Indian Circle, requested a traffic signal at Route 60 East and Plantation Drive for the safety of children crossing the road to the James River Elementary School.

2. Mr. Clyde Hoey, Executive Director, Virginia Peninsula Chamber of Commerce, asked the Board to consider continued support for the Virginia Peninsula Chamber of Commerce effort on the Peninsula during budget discussions.

3. Mr. Ed Oyer, 139 Indian Circle, spoke of a newspaper article announcing that Newport News had scrapped the composting facility proposed for Ft. Eustis for fear of odor problems. He commended the Board for being first to deny the composting facility.

H. REPORTS OF THE COUNTY ADMINISTRATOR - None

I. BOARD REQUESTS AND DIRECTIVES

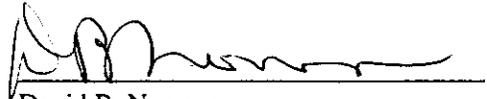
Mr. Magoon expressed pleasure of distributing articles from national architect magazines recognizing the Town Plan and Courthouse design competitions.

Mr. Sisk announced community meetings for the Comprehensive Plan update review to be held Wednesday, March 13, 1996, from 7 - 10 p.m. at James River Community Center and Wednesday, March 20, 1996, from 7 - 10 p.m. at Toano Middle School.

Mr. Sisk made a motion to recess until 4:30 p.m., Monday, March 18, 1996, for a work session on Buffer and Greenbelt Requirement on Timbering Activities.

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

The Board recessed at 11:08 p.m.

A handwritten signature in black ink, appearing to read "D. Norman", written over a horizontal line.

David B. Norman
Clerk to the Board

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CHAPTER 2EMPLOYMENT PRACTICESSection 2.1 Policy

It is and shall continue to be the policy of James City County to provide employment on an equal opportunity basis to all, and to administer its employment practices without regard to race, religion, national origin, physical handicap, age, or sex.

Section 2.2 Appointing Authority

The Board of Supervisors delegates to the County Administrator the responsibility for recruitment, selection, and appointment of employees within the guidelines of the approved budget.

Section 2.3 Employment Categories

- A. Permanent position - A permanent position is one established by the Board, funded in the budget, and projected to continue indefinitely unless the Board shall eliminate it. A permanent position may be either a full-time or a part-time position.
- B. Limited-term position - A limited term position is one established by the Board of Supervisors, funded under a special revenue source other than the operating general fund or James City Service Authority revenues, and projected to continue subject to the continuation of the respective program. In the event such funding should cease, the positions so affected shall have no guarantee of general County funding. A limited term position may be either a full-time or a part-time position.
- C. Temporary position - A temporary position is one established by the Board of Supervisors or the County Administrator to perform a specific function, such as a special project or to substitute for a permanent employee, with the term of employment depending on the continuing need for the function being performed. A temporary position may be either a full-time or a part-time position. A temporary position shall be maintained for no more than 12 months, although the position may be renewed by the Board of Supervisors or the County Administrator. Temporary employees may be discharged at the will of the County Administrator, without cause or hearing.
- D. On-call position - An on-call position is one established by the Board of Supervisors or the County Administrator to serve the County on an as-needed basis to provide necessary public service. Employees in on-call positions may be discharged at the will of the County Administrator, without cause or hearing.

Newport News/James City County
Memorandum of Understanding

THIS MEMORANDUM OF UNDERSTANDING, made this 27th day of February, 1996, by and between the COUNTY OF JAMES CITY, a political subdivision in the Commonwealth of Virginia, ("County") and the CITY OF NEWPORT NEWS, VIRGINIA, a municipal corporation, ("City").

WHEREAS, County has identified the need for up to an additional four (4) million gallons of water per day to meet the County's water demands in areas of the County outside of the current Newport News Waterworks retail service area through 2040; and

WHEREAS, City and County desire to cooperate to secure new surface water supplies for the region; and

WHEREAS, City, in conjunction with the Regional Raw Water Study Group, has filed an application with the U. S. Army Corps of Engineers for a permit to construct a water supply reservoir in King William County on Cohoke Mill Creek; and

WHEREAS, if a King William Reservoir Project of sufficient yield can be permitted and constructed in a timely manner, County desires to obtain the rights to up to a four (4) million gallon per day supply of raw water from this project; and

WHEREAS, City owns and operates a system of water supply reservoirs within James City County, and City and County desire to cooperate to ensure appropriate protection of these reservoir watersheds;

NOW, THEREFORE, the County of James City and the City of Newport News do hereby mutually agree as follows:

A. County's Support for the King William Reservoir Project:

County agrees to cooperate with and support City and the Regional Raw Water Study Group in their efforts to obtain state and federal permits required to construct a water supply impoundment on Cohoke Mill Creek, to allow associated river withdrawals, and to construct transmission pipelines for the movement of water to and from the reservoir.

B. Reservation of Water:

Subject to the receipt of the necessary federal, state, and local permits for construction of a reservoir on Cohoke Mill Creek and a river pump station on the Mattaponi River which generates a total treated water safe yield capacity of no less than 29 million gallons per day, City shall reserve for the exclusive use of County a 2 million gallon per day supply of raw water. This 2 million gallon per day supply shall be for the use of County to meet the water demands of its citizens in areas of the county outside of the current Newport News direct Waterworks retail service area.

City shall offer to County the right-of-first refusal for up to 2 million gallons per day of additional raw water supply from any future enhancement of the safe yield of the King William Reservoir whether through a second river pumpover or by some other means. County, in addition to the aforementioned reservation of rights for up to 4 million gallons of raw water per day from the King William

Reservoir, shall have the option of participating on a proportional basis in any future expansion of project capacity beyond a treated water safe yield capacity of 36 million gallons per day upon such terms and conditions as shall be agreed upon at that time.

C. Future Project Development Agreement:

It is the intention of City and County within twelve (12) months of the issuance by the U. S. Army Corps of Engineers of a Section 404 permit for the construction of the King William Reservoir and associated Mattaponi River pumping station to enter into a Project Development Agreement setting out the terms and conditions upon which City and County shall cooperatively pursue the design, construction and operation of the King William Reservoir. The provisions of this Project Development Agreement shall be consistent with and shall not interfere with City's obligations under its project development agreement with King William County. It is understood that City shall own and operate project facilities and shall guarantee through a contract the delivery of water to County at whatever location County shall designate. County shall bear the cost of any special purpose infrastructure required to transport the water to its designated location. The term of such Project Development Agreement shall be concurrent with the term of City's King William County Project Development Agreement, which is for fifty (50) years and is subject to automatic renewal for an unlimited number of additional twenty-five (25) year terms.

D. Allocation of Project Development Costs:

Under the Project Development Agreement to be entered into in accordance with Section C., County shall share in project development costs on a pro rata basis

equivalent to County's water reservation as a proportion of the total permitted project safe yield less the host jurisdiction allocations of three (3) million gallons per day of raw water to King William County, one (1) million gallons per day to New Kent County, and any additional host jurisdiction allocations to which City may subsequently agree in order to secure local approvals. The project development costs shall include planning, permitting, land acquisition, legal expenses, design services, wetland mitigation, and construction costs associated with the common facilities to withdraw, store, and transmit water to City's existing raw water system. County shall receive a credit against these project development costs for all contributions made by County while a member of the Regional Raw Water Study Group, and \$750,000 expended by County, related to the prior identification and documentation of the feasibility and environmental impacts of the Ware Creek Reservoir alternative. City shall amortize these project development costs over a period of thirty (30) years and shall bill County for its net annual share in equal quarterly installment payments. County shall be responsible for the full capital costs of any project facilities required solely for the delivery and treatment of its reserved water. The time when such payments shall begin and end shall be established in the Project Development Agreement.

E. Operational and Maintenance Expenses:

City and County recognize that certain on-going expenses will be associated with the operation of project facilities and the delivery of water to County. These expenses include the operation, maintenance and replacement of the reservoir, pumping and pipeline facilities, the maintenance of wetland mitigation areas and taxes or other host jurisdiction payments. These operating and maintenance expenses shall be pro rated to project participants on the same basis as

development costs. County shall be responsible for the full operating and maintenance expenses of any project facilities required solely for the delivery of its reserved water.

F. Exchange of Technical Information:

City shall make available to County, upon request, all engineering and technical information generated by staff and consultants for the purpose of obtaining permits for the King William Reservoir Project. County agrees to provide City, upon request, any technical information regarding its water system and water demands as may be necessary or useful for permitting and design purposes. City agrees to perform and initially pay for any studies or analyses of County's water situation which may be needed for permitting purposes although such expenses shall be considered project development costs to be allocated in accordance with Section D.

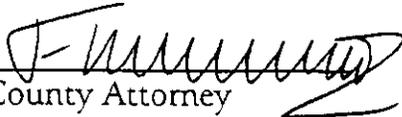
G. Watershed Protection for City Reservoirs

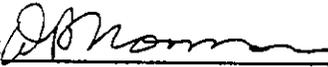
City owns and operates three reservoirs on Diascund Creek, Little Creek and Skiffe's Creek, respectively, which have watershed areas within County. In recognition of the importance of maintaining the water quality in these supply reservoirs, County agrees to adopt, within twenty-four (24) months of execution of this Memorandum, a Reservoir Protection Overlay District for the watersheds of each of the three reservoirs. The purpose and intent of establishing the Overlay District is to impose special requirements in addition to and in conjunction with the regulations of the principal Zoning Districts in which the water supply reservoirs are located and other County ordinances to minimize

degradation of these water supply reservoirs as a result of operating or the accidental malfunctioning of the use of land or its appurtenances within the drainage areas of such water sources.

APPROVED AS TO FORM:

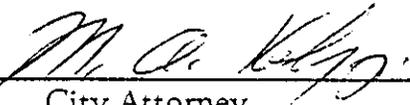
JAMES CITY COUNTY

By: 
County Attorney

By: 
County Administrator

APPROVED AS TO FORM:

CITY OF NEWPORT NEWS

By: 
City Attorney

By: 
City Manager

ATTEST:

By: 
City Clerk

kdk1297a