

AT A REGULAR MEETING OF THE BOARD OF DIRECTORS OF THE JAMES CITY SERVICE AUTHORITY, JAMES CITY COUNTY, VIRGINIA, HELD ON THE 28TH DAY OF JANUARY, 2003, AT 7:00 P.M. IN THE COUNTY GOVERNMENT CENTER BOARD ROOM, 101 MOUNTS BAY ROAD, JAMES CITY COUNTY, VIRGINIA.

A. ROLL CALL

Michael J. Brown, Chairman
John J. McGlennon, Vice Chairman
Jay T. Harrison, Sr.
James G. Kennedy
Bruce C. Goodson

Sanford B. Wanner, Secretary
Frank M. Morton, III, County Attorney
Larry M. Foster, General Manager

B. CONSENT CALENDAR

Mr. Harrison made a motion to adopt the items on the Consent Calendar.

The motion passed by a unanimous voice vote.

1. Minutes – January 2, 2003, Organizational Meeting
2. Lease Agreement – City of Williamsburg – Communication Equipment

RESOLUTION

LEASE AGREEMENT - CITY OF WILLIAMSBURG - COMMUNICATION EQUIPMENT

WHEREAS, the City of Williamsburg desires to locate public safety equipment on the James City Service Authority's elevated water storage tank located adjacent to the James City/Williamsburg Community Center; and

WHEREAS, a lease has been prepared establishing the terms for the communication equipment to be located on the water tank.

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of the James City Service Authority, James City County, Virginia, authorizes the General Manager to sign the lease agreement with the City of Williamsburg allowing for the installation of the public safety communication equipment to be installed on the elevated water storage facility located adjacent to the Community Center.

3. Award of Bid – Lift Station 6 Series Electrical Upgrades

RESOLUTION

AWARD OF BID – LIFT STATION 6 SERIES ELECTRICAL UPGRADES

WHEREAS, the plans and specifications have been advertised and competitively bid for the Lift Station 6 Series Electrical Upgrades; and

WHEREAS, seven firms submitted bids, with M&W Construction submitting the low bid of \$311,370; and

WHEREAS, the bid is within budget, funds are available, and M&W Construction has been determined capable of performing the work associated with the project.

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of the James City Service Authority, James City County, Virginia, awards the contract for the Lift Station 6 Series Electrical Upgrades to M&W Construction in the amount of \$311,370.

4. Utility Participation Agreement – Scott's Pond

UTILITY PARTICIPATION AGREEMENT

SCOTTS POND, L.L.C. - SCOTTS POND

WHEREAS, in accordance with the Regulations Governing Utility Service, Scotts Pond, L.L.C., and the James City Service Authority (JCSA) have agreed to increase the capacity of a sewerage pumping station serving the Scotts Pond development to improve the overall JCSA sewer system and to provide for future system needs; and

WHEREAS, a developer is only required to install water and sewer infrastructure of adequate size to meet the needs of their development; and

WHEREAS, Scotts Pond, L.L.C., and the JCSA have agreed on a reimbursement of \$46,399 to compensate Scotts Pond, L.L.C., for providing the additional facility capacity that will allow the JCSA to eliminate an existing pumping station.

NOW, THEREFORE, BE IT RESOLVED that the Board of Directors of the James City Service Authority, James City County, Virginia, will reimburse Scotts Pond, L.L.C., \$46,399 for increasing the capacity of the water and sewer facilities serving the Scotts Pond development to improve the overall and future integrity of the JCSA water and sewer system.

RESOLUTION

UTILITY PARTICIPATION AGREEMENT - SCOTTS POND

WHEREAS, the James City Service Authority (JCSA) staff identified the opportunity to increase the capacity of the sewerage pumping station for the Scotts Pond development to provide for its integration into the JCSA infrastructure, improve the overall system, and eliminate an existing pumping station; and

WHEREAS, the Regulations Governing Utility Service allow the JCSA to enter into a Utility Participation Agreement with a developer to provide the terms for reimbursing the incremental costs to increase the size of the water and sewer infrastructure over that needed to serve the development alone; and

WHEREAS, staff and Scotts Pond, L.L.C., the developer, have agreed on the amount of reimbursement necessary to compensate Henderson, Inc., for the additional expenses incurred to increase the size of its sewerage pumping station over that needed to serve the Scotts Pond development.

NOW, THEREFORE, BE IT RESOLVED that the Board of Directors of the James City Service Authority, James City County, Virginia, authorizes its Chairman to sign a Utility Participation Agreement with Scotts Pond, L.L.C., providing the terms of reimbursement of \$46,399 in additional costs incurred to increase the size of the sewerage pumping station serving the Scotts Pond development as requested by the JCSA staff.

5. Setting A Public Hearing – FY04 Utility Rates

RESOLUTION

SETTING A PUBLIC HEARING - FY 04 UTILITY RATES

WHEREAS, the Board of Directors of the James City Service Authority desires to set a Public Hearing for proposed utility rate changes to the Regulations Governing Utility Service.

NOW, THEREFORE, BE IT RESOLVED that the Board of Directors of the James City Service Authority, James City County, Virginia, will hold a Public Hearing on April 8, 2003, and requests staff to review Section 32, General Rate Policy and Rate Schedule, Regulations Governing Utility Service, and make changes to the rates, fees, and charges which are summarized below and will become effective July 1, 2003, if adopted.

1. Residential Water Retail Service Rate (Inverted-Block Rate):

| | <u>Current Rate</u> | <u>Proposed Rate</u> |
|--------------------------------------|---|----------------------|
| <u>1st Block</u> | | |
| Less than 15,000 gallons per quarter | \$2.30 per 1,000 gallons (\$1.72 per 100 cubic feet) | No Change |

2nd Block

| | | |
|---|--|-----------|
| More than 15,000 gallons but less than 25,000 30,000 gallons per quarter | \$2.60 per 1,000 gallons (\$1.945 per 100 cubic feet) | No Change |
|---|--|-----------|

3rd Block

| | | |
|--|---|---|
| More than 25,000 30,000 gallons per quarter | \$6.00 per 1,000 gallons (\$4.49 per 100 cubic feet) | \$7.45 per 1,000 gallons (\$5.57 per 100 cubic feet) |
|--|---|---|

2. Nonresidential Water Retail Service Rate:

| | | |
|------------------|--|-----------|
| <u>Flat Rate</u> | \$2.60 per 1,000 gallons (\$1.945 per 100 cubic feet) | No Change |
|------------------|--|-----------|

3. Sewer Retail Service Rate:

| | | |
|------------------|---|---|
| <u>Flat Rate</u> | \$2.30 per 1,000 gallons (\$1.72 per 100 cubic feet) | \$2.50 per 1,000 gallons (\$1.87 per 100 cubic feet) |
|------------------|---|---|

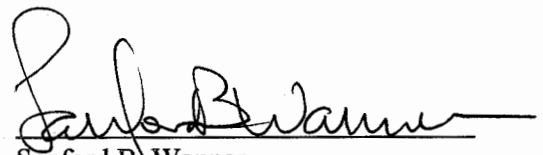
D. BOARD REQUESTS AND DIRECTIVES

Mr. Kennedy inquired about the progress of the water tanks located near the intersection of Route 199 and Route 321 (Monticello Avenue).

Mr. Foster stated that the tanks would be ready to retain water on April 1 although the landscaping and other ascetic work will not be completed by the June time frame.

E. ADJOURNMENT

Mr. Brown adjourned the Board at 7:39 p.m.



Sanford B. Wanner
Clerk to the Board

LEASE AGREEMENT

THIS LEASE AGREEMENT, dated November 7, 2002 by and between the **JAMES CITY SERVICE AUTHORITY**, a political subdivision of the Commonwealth of Virginia, ("AUTHORITY") and the **CITY OF WILLIAMSBURG**, a Virginia municipal corporation, ("CITY").

WHEREAS, AUTHORITY is the owner of certain real property designated as the Longhill Road - Community Center Water Tank, (the "Water Tank"), located in the County of James City; and

WHEREAS, CITY desires to lease from AUTHORITY (i) certain space on AUTHORITY'S Water Tank for the purpose of placing and operating CITY'S Public Safety communication equipment, and (ii) ground space for the placement of an equipment cabinet; and

WHEREAS, Section 15.2-1800 B of the Code of Virginia (1950), as amended allows one public body to lease to another without holding a public hearing as would otherwise be required by such Code Section; and

WHEREAS, AUTHORITY and CITY are satisfied that the herein provided lease fulfills a valid public purpose;

NOW THEREFORE, in consideration of the agreements herein contained and of the mutual benefits to the parties hereto, AUTHORITY and CITY covenant and agree as follows:

1. LEASED PREMISES

(a) AUTHORITY hereby leases to CITY and CITY hereby leases from AUTHORITY certain space on AUTHORITY'S Water Tank and a 10' non-exclusive utility easement ("Premises") for placing and operating CITY'S wireless communication antennas, and for the construction, installation, maintenance and operation of an equipment cabinet and communications equipment ("Facilities").

(b) The Lease is conditioned upon approval of plans and specifications for the placement of the Facilities as required by AUTHORITY. No antenna(s) shall be placed nor construction or modification of Facilities shall proceed until CITY has submitted plans to AUTHORITY and AUTHORITY has approved in writing such plans.

(c) CITY shall have the non-exclusive right to construct, maintain and operate its

Facilities to provide communications services, which construction, maintenance and operation shall be at CITY'S sole cost and expense.

(d) CITY'S ability to use the Premises is contingent upon CITY, at its sole cost and expense, obtaining and maintaining all certificates, permits, licenses and other approvals required by any federal, state, or local authority for construction and use of the Facilities ("Approvals").

(e) CITY shall immediately notify AUTHORITY in the event that (i) any application for an Approval is denied, including all final appeals of such denial; (ii) an approval is canceled, expires, lapses or is otherwise terminated for any reason; or (iii) any radio frequency propagation tests are found to be unsatisfactory so that CITY will be unable to use the Premises for its intended purposes. In such an event, this Lease shall terminate with no further obligation on either party except for CITY'S obligation to remove the Facilities, if installed, from the Premises should Authority so request.

2. TERM; TERMINATIONS

(a) The term of this lease shall be for a period of five (5) years commencing on February 1, 2003 and continuing until midnight on January 31, 2008 ("Initial Term"). Subject to CITY'S right to terminate this Lease as hereinafter provided in subparagraph (b) below and further subject to AUTHORITY'S rights to terminate this Lease by giving 180 day written notice of revocation and to AUTHORITY'S rights of termination due to CITY'S default, this Lease may be renewed for three additional successive five (5) year terms.

(b) CITY may terminate this Lease at any time by giving at least sixty (60) days written notice to AUTHORITY of intent to terminate. Within ninety (90) days of the effective date of any termination, CITY shall remove the Facilities from the Premises if so requested by AUTHORITY; in the absence of such a request, the Facilities shall remain.

3. RENT

(a) No rent shall be payable by CITY to AUTHORITY under this Lease.

4. REMOVAL/RELOCATION OF FACILITIES

(a) AUTHORITY reserves the right to require CITY to remove or change the location of CITY'S Antenna(s) on the Water Tank if CITY'S operations affect the operation of or the provision of service to the Water Tank or to accommodate the AUTHORITY'S

AUTHORITY'S communications equipment. CITY shall relocate or remove its Facilities within sixty (60) days of receipt of written notice by AUTHORITY.

(b) In the event that AUTHORITY may require maintenance or painting work to be performed on AUTHORITY'S Water Tank which requires the temporary relocation of CITY'S Facilities (the "Relocation"), CITY hereby agrees to the Relocation provided that AUTHORITY provides CITY with ninety (90) days prior written notice of the required Relocation. In such case CITY shall temporarily relocate the Facilities to another location on the property mutually agreeable to both parties. All costs and expenses associated with the Relocation shall be the sole responsibility of CITY.

(c) AUTHORITY reserves the right to upgrade or improve the communication equipment (including the installation of new equipment) (the "Upgrade"), installed upon AUTHORITY'S Water Tank. CITY, during the implementation of the Upgrade, shall not cause interference with the operation of AUTHORITY'S equipment or that of others located on the Water Tank, or authorized frequency spectrum and/or signal strength of same. In the event CITY'S equipment or operations cause such interference with equipment installed prior to the date of this Agreement owned by others, AUTHORITY reserves the right, with at least one hundred eighty (180) days prior written notice, to require CITY to change the location or remove CITY'S Facilities from AUTHORITY'S Water Tank. CITY shall relocate or remove the Facilities by the end of the one hundred eighty (180) days notice as requested by AUTHORITY at CITY'S expense.

5. IMPROVEMENTS

All installations, modifications or relocation of Facilities shall be subject to AUTHORITY'S approval.

6. ACCESS AND UTILITIES

(a) AUTHORITY hereby grants to CITY a non-exclusive license, for the term hereof for ingress, egress, and access over and across the Water Tank premises in order to construct, install, maintain, modify, replace, operate and service the Facilities twenty-four (24) hours a day, seven (7) days a week and to bring utilities across the premises in order to service the Facilities. CITY shall pay all costs and charges for utilities and services necessary to install, maintain and operate the Facilities. CITY shall cause a separate electric meter to be installed for CITY'S use at CITY'S expense. CITY shall obtain and pay the cost of such telephone connections as it may require. AUTHORITY will cooperate with CITY in CITY'S

efforts to obtain utility services to serve CITY'S Facilities.

(b) CITY shall have access to its Facilities twenty-four (24) hours a day, seven (7) days a week for reasonable routine inspections and emergency purposes; provided that for reasonable routine inspections CITY shall notify AUTHORITY not less than twenty-four (24) hours in advance and as soon as practicable for emergencies. Both AUTHORITY and CITY shall provide to the other the names and phone numbers of their authorized employees for access and notification as provided for in this Section.

7. CITY'S COVENANTS

CITY covenants during the Term and any renewal that the Facilities and all installation, operation and maintenance associated therewith shall:

(a) In no way damage AUTHORITY'S or any other lessee's property situate on or pertaining to Water Tank or any other structure or accessories thereto. If damage occurs due to CITY'S use as permitted in this Lease, then CITY shall be liable for repair or reimbursement of cost of said repair.

(b) Not interfere with the operation of AUTHORITY'S or any other lessee's authorized frequency spectrum, signal strength or equipment installed on the Water Tank as of the Commencement Date. In the event there is interference, CITY shall at its sole cost and expense immediately take all steps necessary to eliminate the interference including, if required, cutting off power to the objectionable Facilities. If CITY cannot eliminate the interference, CITY shall remove the objectionable Facilities within thirty (30) days of written notice to do so. In the event AUTHORITY leases space on the Water Tank to other lessees after the Commencement Date, then upon the initial installation of the facilities of such other lessees, CITY shall not thereafter modify its Facilities in such a manner as to cause interference with the facilities of such subsequent lessees as first installed.

(c) Not interfere with the maintenance of AUTHORITY'S Water Tank or any other lessee's facilities.

(d) Keep the Facilities in a state of repair reasonably acceptable to AUTHORITY.

(e) Identify the Facilities with metal tags fastened securely to its bracket on the Water Tank and to each transmission line.

(f) Comply with all applicable rules and regulations of the Federal Communications Commission ("FCC") and all federal, state and local laws governing CITY'S use of the Premises.

(g) Upon expiration of this Lease, remove all its Facilities from the Premises and restore the Premises to its condition as of the Commencement Date of this Lease, except for the normal wear and tear and damage from the elements. In the event CITY has not removed the Facilities within sixty (60) days of the time of expiration or earlier termination of this Lease, AUTHORITY shall have the right to remove and store the Facilities, at CITY'S sole expense, and CITY shall reimburse AUTHORITY for such expenses upon demand. If AUTHORITY removes the Facilities, AUTHORITY shall not be responsible for any damage to the Facilities during the removal and storage thereof. If CITY fails to reimburse AUTHORITY in full for all removal and storage costs and all unpaid rents and other amounts due hereunder and take possession of such Facilities within sixty (60) days of AUTHORITY'S written notice to CITY then such Facilities shall be deemed abandoned and AUTHORITY may make such disposition thereof as AUTHORITY shall deem appropriate. AUTHORITY shall apply all proceeds from disposition against any monies remaining due hereunder from CITY including all costs of disposition. Should disposition proceeds exceed monies owed to AUTHORITY under this Lease, AUTHORITY shall, nevertheless, be entitled to retain all of such proceeds.

8. AUTHORITY'S COVENANTS

AUTHORITY covenants that during the Initial Term or any renewal of this Lease that it will:

- (a) Maintain the Premises in a reasonably safe condition.
- (b) Except as otherwise set forth in the Lease, take no unnecessary action which would adversely affect the CITY'S proposed use of the Premises.
- (c) AUTHORITY shall include in any subsequent lease agreement provisions that prohibit any person installing equipment on the Water Tank after the installation of the CITY'S Facilities on the Water Tank ("Subsequent CITY") from interfering with the operation of CITY'S Facilities.

9. COMPLIANCE WITH LAWS

CITY shall be responsible for constructing and maintaining the Facilities in compliance with all marking and lighting requirements which may be required by the Federal Aviation Administration ("FAA"), the FCC and any other governmental entity, department or agency.

10. ASSIGNMENT OR SUBLETTING; NO LIENS

(a) CITY shall not assign, convey, sublet or transfer its interest in this Lease without first obtaining AUTHORITY'S prior written approval.

(b) CITY shall keep the Property, the Premises and the Facilities free from any liens arising from any work performed, materials furnished or obligations incurred by or at the request of CITY. All persons either contracting with CITY or furnishing or rendering labor and materials to CITY shall be notified in writing by CITY that they must look only to CITY for payment for any labor or materials. If any lien is filed against AUTHORITY'S property, the Premises or the Facilities as a result of any acts or omissions of CITY, its employees, agents or contractors, CITY shall discharge it within fifteen (15) days after CITY learns that the lien has been filed.

11. INSURANCE: RISK OF LOSS

(a) Insurance. Prior to installation of the Facilities and having access to the Premises and at all times during the term of this Lease, CITY shall provide proof of insurance, as outlined below, satisfactory to AUTHORITY, and maintain the coverage's specified below during the term hereof and until all Facilities are removed from the Premises following expiration or earlier termination of this Lease General Liability Insurance in a Combined Single Limit of at least \$1,000,000 each Occurrence.

(b) Additional Insured. AUTHORITY shall be named as additional insured on such General Liability policy. Additionally, CITY shall obtain a waiver of subrogation from its insurers on such policy. CITY may satisfy this requirement by obtaining appropriate endorsements to any master or blanket policy of insurance CITY may maintain. No policy may be canceled or subject to reduction of coverage without prior notice to AUTHORITY.

(c) Risk of Loss. Notwithstanding anything herein to the contrary, CITY shall bear the risk of loss of or damage to the Facilities during construction and the term

of this Lease. In the event the Water Tank or other portions of the Premises are destroyed or so damaged as to be unusable, either party shall be entitled to elect to cancel and terminate this Lease.

(d) Removal of Facilities. CITY'S obligation to provide the insurance coverages set forth in this Section 11 shall survive the expiration or earlier termination of this Lease but only until the CITY'S Facilities are removed from the Premises and the Premises is restored to its condition as of the Commencement Date of the Lease.

(e) Insurance Increases. CITY shall pay the cost of any increase to AUTHORITY'S liability insurance currently in place as of the Commencement Date of this Lease provided that the increase to AUTHORITY'S policy is a direct result of the installation of the Facilities on the Property.

12. DEFAULT

Each of the following shall be considered a default by the CITY:

The failure to cure, within thirty (30) days after receipt of AUTHORITY'S written notice of the breach of any term herein, except for promises relating to interference as set forth in Section 7(b) above; which must be cured immediately.

Upon default by CITY under this Lease, in addition to all other remedies provided at law or in equity, AUTHORITY may, at its option elect to remove all of the Facilities, without notice and without being guilty or liable in any manner for trespass, thereby terminating this Lease, and store the Facilities at CITY'S expense, payable upon demand by AUTHORITY. The provisions of Section 7 (g) shall apply in event of such removal.

13. ENTIRETY

This writing constitutes the entire agreement and understanding between AUTHORITY and CITY and any modification hereof must, in order to be effective, be in writing, signed by authorized representatives of each party.

14. WAIVER

Failure or delay on the part of either party to exercise any right, power, privilege or remedy hereunder shall not operate as a waiver thereof; nor shall any

single or partial exercise of any right under this Lease preclude any other or further exercise thereof or the exercise of any other right.

15. NOTICE

All notices hereunder shall be deemed validly given if sent by certified mail, return receipt requested, or with a nationally recognized courier which provides notice of receipt, postage fully prepaid, addressed as follows, or to such other addresses as may be given from either party in writing to the other:

AUTHORITY: General Manager, James City Service Authority
County of James City
101-E Mounts Bay Road
Williamsburg, VA 23185-6569

CITY: City of Williamsburg
City Manager
401 Lafayette Street
Williamsburg, Virginia 23185-3651

16. HEADINGS

Section headings in this Lease are included for the convenience of reference only and shall not constitute a part of this Lease for any other purpose.

17. COUNTERPARTS

This Lease may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute but one instrument.

18. SEVERABILITY

If any term, covenant, condition or provision of this Lease or any application hereof shall, to any extent, be invalid or unenforceable, the remainder of this Lease shall not be affected thereby, and shall be valid and enforceable to the fullest extent permitted by law.

Witness the following signatures and seals:

AUTHORITY: JAMES CITY SERVICE AUTHORITY

BY: *Larry M. Foster*
LARRY M. FOSTER
General Manager

CITY: CITY OF WILLIAMSBURG

BY: *J. C. Tuttle*
JACKSON C. TUTTLE, II
City Manager

COMMONWEALTH OF VIRGINIA
City/County of Williamsburg, to-wit:

I, B. Keith Letchworth, a Notary Public in and for the City/County and State aforesaid, do hereby certify that this day personally appeared before me in my jurisdiction aforesaid LARRY M. FOSTER, General Manager for **JAMES CITY SERVICE AUTHORITY**, whose name is signed to the foregoing writing dated Nov. 7, 2002, and acknowledged the same before me.

Given under my hand January 29th 200³.

B. Keith Letchworth

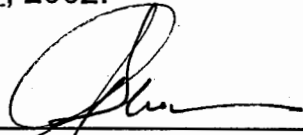
NOTARY PUBLIC

My commission expires: July 31, 2004

COMMONWEALTH OF VIRGINIA
City of Williamsburg, to wit:

I, Gerry S. WALTON, a Notary Public in and for the City and State aforesaid, do hereby certify that this day personally appeared before me in my jurisdiction aforesaid JACKSON C. TUTTLE, II, City Manager for the **CITY OF WILLIAMSBURG**, whose name is signed to the foregoing writing dated 11/7, 2002, and acknowledged the same before me.

Given under my hand November 7, 2002.



Notary Public

My commission expires: February 28, 2006

G:\wpwin8\city\REALPROP\LEASES\Lease FROM JCSA for Water Tower communications space 9 3 02.wpd