

INTRODUCED: June 27, 2016

A RESOLUTION No. 2016-R049

To withdraw from membership in the Peumansend Creek Regional Jail Authority.

\_\_\_\_\_  
Patron – Mayor Jones  
\_\_\_\_\_

Approved as to form and legality  
by the City Attorney  
\_\_\_\_\_

PUBLIC HEARING: JULY 25 2016 AT 6 P.M.

WHEREAS, the City of Richmond is a member jurisdiction in the Peumansend Creek Regional Jail Authority (the “Authority”) pursuant to the amended Service Agreement (the “Agreement”) dated August 29, 1996; and

WHEREAS, section 5.9 of the Agreement requires that any member jurisdiction that wishes to withdraw from membership in the Authority must do so by resolution or ordinance prior to September 1 of the fiscal year in which the member jurisdiction intends to withdraw; and

WHEREAS, any such withdrawal may only be effective at the end of the fiscal year, defined as the annual accounting period from July 1 of one calendar year to June 30 of the following calendar year; and

AYES:            9            NOES:            0            ABSTAIN: \_\_\_\_\_

ADOPTED:    JULY 25 2016    REJECTED: \_\_\_\_\_    STRICKEN: \_\_\_\_\_

WHEREAS, the City wishes to withdraw and to give notice of its withdrawal from the Authority effective June 30, 2017;

NOW, THEREFORE,

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF RICHMOND:

That the City of Richmond hereby withdraws from membership in the Peumansend Creek Regional Jail Authority effective June 30, 2017.

BE IT FURTHER RESOLVED:

That, by the City Council's adoption of this resolution, the City hereby provides notice of its intent to withdraw from the Authority.

BE IT FURTHER RESOLVED:

That the Chief Administrative Officer is hereby authorized and requested to take all actions necessary to effectuate the City's withdrawal from the Authority.

BE IT FURTHER RESOLVED:

That this resolution shall become effective upon its adoption by the City Council.



# CITY OF RICHMOND

## INTRACITY CORRESPONDENCE



### O&R REQUEST

**DATE:** June 14, 2016 **EDITION:** 1

**TO:** The Honorable Members of City Council

O & R REQUEST

**THROUGH:** The Honorable Dwight C. Jones, Mayor *D.C.J.*

JUN 21 2016  
4-5315

**THROUGH:** Selena Cuffee-Glenn, Chief Administrative Officer *SCG*

Chief Administration Office  
City of Richmond

**THROUGH:** Debra Gardner, Deputy Chief Administrative Officer of Human Services *D Gardner*

**THROUGH:** Lenora Reid, Deputy Chief Administrative Officer/ Chief Financial Officer *LR*

**THROUGH:** Dr. Jay A. Brown, Director of Budget and Strategic Planning *JAB*

**FROM:** Rufus Fleming, Director of Justice Services *R Fleming*

**RE:** Withdrawal of Membership with the Peumansend Creek Regional Authority

**ORD. OR RES. No.** \_\_\_\_\_

**PURPOSE:** To authorize the Chief Administrative Officer to withdraw membership from the Peumansend Creek Regional Authority. Section 5.9 of the Service Agreement, dated August 29, 1996 requires that any member jurisdiction may withdraw from membership in the Authority by resolution or ordinance of its governing body prior to September 1 of the fiscal year in which the member jurisdiction intends to withdraw.

**REASON:** The current daily population at the Richmond Justice Center has consistently declined below the rated capacity of 1,032. This reduction is directly attributed to the Alternatives to Incarceration Initiatives.

**RECOMMENDATION:** The City's Administration recommends adoption of this ordinance.

**BACKGROUND:** In 1996, the City of Richmond, along with several other localities, entered into a service agreement to address jail overcrowding. As a result, the Peumansend Creek Regional Authority was constructed and financed with a 20 year municipal bond, which will be satisfied June 30, 2017. The service agreement permits the City of Richmond to house 100 beds, with an annual obligation in the amount of \$1,042,921 (\$28.57/per inmate per day).

RECEIVED

JUN 22 2016

OFFICE OF CITY ATTORNEY

**FISCAL IMPACT / COST:** The city's annual obligation to provide operating support to the service agreement will be satisfied.

**FISCAL IMPLICATIONS:** The city's annual obligation to provide operating support to the service agreement will be satisfied.

**BUDGET AMENDMENT NECESSARY:** No

**REVENUE TO CITY:** Economies of scale for operations at the current justice center and incorporating the Peumansend Creek population will decrease the population cost per day, per resident.

**DESIRED EFFECTIVE DATE:** Upon adoption

**REQUESTED INTRODUCTION DATE:** 6/27/16

**CITY COUNCIL PUBLIC HEARING DATE:** 7/25/16

**REQUESTED AGENDA:** Consent Agenda

**RECOMMENDED COUNCIL COMMITTEE:** Public Safety Committee

**CONSIDERATION BY OTHER GOVERNMENTAL ENTITIES:** None

**AFFECTED AGENCIES:** Department of Budget, Department of Finance, and Justice Services

**RELATIONSHIP TO EXISTING ORD. OR RES.:** Ordinance No. 94-212-204 adopted on October 3, 1994 authorizing the City Manager to enter into the A.P. Hill Regional Jail Authority Service Agreement; Ordinance No. 96-177-166 adopted on June 24, 1996, authorizing the City Manager to enter into the revised Peumansend Creek Regional Jail Service Agreement; and Ordinance No. 2015-30-51 adopted March 9, 2015 enabling members of the authority to better use Peumansend Creek Regional Jail by modifying the restrictions on inmates that can be sent to the jail.

**REQUIRED CHANGES TO WORK PROGRAM(S):** None

**ATTACHMENTS:** Peumansend Creek Regional Jail Service Agreement dated June 24, 1996.

**STAFF:** Dr. Rhonda A. Gilmer, Deputy Director  
Department of Justice Services  
804-646-5410

## SERVICE AGREEMENT

THIS SERVICE AGREEMENT (the "AGREEMENT") is made as of OCTOBER 4, 1994, and amended as of August 29, 1996, by and among the PEUMANSEND CREEK REGIONAL JAIL AUTHORITY (the "AUTHORITY"), the CITY OF ALEXANDRIA, the COUNTY OF ARLINGTON, the COUNTY OF CAROLINE, the COUNTY OF LOUDOUN, the COUNTY OF PRINCE WILLIAM, and the CITY OF RICHMOND (collectively the "Member Jurisdictions") each of which is a political subdivision of the Commonwealth of Virginia as defined by Section 53.1-95.3 of the Code of Virginia (the "Code").

### RECITALS

Public Law 102-25, adopted by the 102d U.S. Congress and signed into law on April 8, 1991, authorized the conveyance of 150 acres of property at Fort A. P. Hill, located in Caroline County, Virginia, (the "Property") to the Caroline County Board of Supervisors on the condition that Caroline County and at least three of the five other jurisdictions named in the legislation enter into a written agreement to establish a governmental entity to construct and operate on the Property a regional correctional facility and to ensure that such governmental entity actually constructs and operates such facility. Public Law 102-484, signed into law on October 23, 1992, made several amendments to the law, including changing the date by which construction must begin to April 1, 1995. Public Law 103-337, Sec. 2822(b) extended this mandatory construction starting date to April 1, 1997.

Pursuant to Section 53.1-95.2 et seq. of the Code, the City of Alexandria on March 10, 1992, the County of Arlington on February 22, 1992, the County of Caroline on March 10, 1992, the County of Loudoun on March 3, 1992, and the County of Prince William on March 10, 1992 each adopted a resolution creating the A. P. Hill Regional Jail Authority (the "Authority") for the purpose of financing the acquisition, construction and equipping of a regional jail facility (the "Jail") to be located on the Property.

In order to provide interim funds to finance design and certain other costs of the Jail, the Authority intends to issue revenue bond anticipation notes or other short term obligations.

In order to provide funds to reimburse the expenses incurred by the Authority in connection with the planning and design of the Jail, to repay the notes and to finance construction and other costs of the Jail, the Authority intends to issue revenue bonds.

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 responsibilities 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.

"Actual Net Expenses" means actual Expenses reduced by an amount equal to the revenue received from all sources other than payments from or charges to the Member Jurisdictions.

"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 Peumansend Creek Regional Jail Authority, formerly the A. P. Hill Regional Jail Authority.

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

"Authority Members" mean those individuals who represent Member Jurisdictions on the Authority, consisting of the Sheriff or the Sheriff's designated alternate from each Member Jurisdiction, and the appointee or designated alternate of the governing body of each Member Jurisdiction.

"Bonds" mean revenue bonds issued by the Authority for the design, construction and other costs of the Jail.

"Capital Member Percentage(s)" means the percentage allocable to each Member Jurisdiction (other than Caroline County) based upon the prisoner capacity guaranteed to such Member as a proportion of total guaranteed prisoner capacity in the Jail as set forth in Section 3.1, excluding capacity guaranteed to Caroline County.

"Chief Executive Officer" means the city manager, county administrator, county executive, county manager or other official exercising comparable authority, of each Member Jurisdiction.

"Core Facilities" mean the initial core capacity of the Jail construction for 700 Prisoners as set forth in Sections 2.1 and 5.1.

"Expenses" mean all expenses which may reasonably be determined by the Authority to be attributable directly or indirectly to the ownership or operation of the Jail and payable as operating expenses in accordance with generally accepted accounting principles and state law and shall also include debt service payments and other capital costs, required payments to the Operating Reserve Fund established in Section 4.3, required payments to any debt service reserve established in connection with any Obligation and other reasonable or necessary payments required to comply with covenants imposed by any Obligations.

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

"Jail" means the Peumansend Creek Regional Jail, as constructed and equipped by the Authority, together with any additions or improvements thereto.

"Member Jurisdictions" mean the political subdivisions of the City of Alexandria, the County of Arlington, the County of Caroline, the County of Loudoun, the County of Prince William and the City of Richmond, each a political subdivision of the Commonwealth of Virginia, and any other political entity joining the Authority subsequent to the execution of this Agreement, but excluding any political subdivision that may have withdrawn from the Authority, as provided in Sections 5.9.

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

"Notes" means revenue or bond anticipation notes or other short term obligations issued by the Authority.

"Obligations" means the Notes or Bonds or other debt issued by the Authority.

"Operating Member Percentage(s)" means the percentage allocable to each Member Jurisdiction based upon the prisoner capacity guaranteed to such Member as a proportion of total guaranteed prisoner capacity in the Jail as set forth in Section 3.1.

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

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

"Pre-opening Obligation Expense(s) means the interest expense, reserve fund replenishment expense, principal repayment expense and any other expense of the Authority related to any Obligation issued for the Jail which becomes due and payable before the Jail is Placed in Service; provided, however, that any such expense shall not include expenditures for which payment has been funded (i.e., capitalized) from proceeds of any obligation.

"Prisoner(s)" means those persons who qualify under the A. P. Hill Inmate Selection Criteria and who are not disqualified under Section 3.1.

"Projected Net Expenses" means estimated Expenses reduced by an amount equal to revenue received from the Commonwealth of Virginia for operations of the Jail, including the Commonwealth's portion of Prisoner per diem payments.

"Superintendent" means the employee of the Authority responsible for the operation of the Jail as set forth in Section 53.1-95.2 et. seq. of the Code of Virginia.

## **ARTICLE II** **Construction and Financing**

Section 2.1. **Construction of Jail.** Contingent upon the lease of the Property to the Authority and the securing of all necessary permits, including any necessary zoning approval, and contingent on the Board of Corrections and General Assembly's initial approval to reimburse at least 50% of the eligible costs of construction, except as otherwise provided by law, the Authority will construct a jail for approximately 336 Prisoners (the "Initial Construction") on the Property. Core facilities will be built for 700 Prisoners in order to provide for expansion. In the event the Board of Corrections and General Assembly do not initially agree to reimburse the eligible construction cost as specified above, the Member Jurisdictions shall have no obligations hereunder (except as provided by Section 4.6). It is understood and agreed by all Member Jurisdictions that contingent upon receiving a valid, binding commitment from one or more Member Jurisdictions to pay for the additional space, securing all necessary permits, and the Commonwealth's agreement to reimburse the reimbursable portion of eligible costs of construction, it is the intent to open space for the second construction for up to 364 Prisoners not later than 24 months after the Jail is Placed in Service; provided that no Member Jurisdiction shall be guaranteed a greater proportion of the expansion of up to 700 beds than allocated to the Member Jurisdiction in the Initial Construction, as set forth in Section 3.1 of this Agreement.

Section 2.2. **Permits.** The Authority will construct the Jail in accordance with the requirements of all Applicable Laws.



The Member Jurisdictions will use their best efforts to assist the Authority in complying with any such requirements and to 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 \$29,072,525. The Authority plans to finance the cost of the Jail through the issuance of revenue bonds or through a combination of revenue bonds and direct appropriations from the Member Jurisdictions.

Section 2.4. Lease of Property and Other Considerations.

A. Upon conveyance of the Property to Caroline County, Virginia from the U.S. Department of the Army, Caroline County will lease the Property to the Authority for the Jail for so long as the Property is used for such purpose. The consideration for the lease of the Property to the Authority will be a lump sum payment to Caroline County of Two Hundred Fifty Thousand Dollars (\$250,000.00) due on the first day of the month following the date the Jail is Placed in Service, and an annual payment commencing one year thereafter of Fifty Thousand Dollars (\$50,000.00) for a term of five years. Thereafter the lease of the Property shall continue in effect for so long as the Property is used for the Jail for the annual lease payment of One Dollar (\$1.00). Caroline County shall not be responsible for the capital cost of the three (3) guaranteed prisoner beds set forth in Section 3.1.

B. The Authority shall pay to the volunteer fire service and volunteer rescue service of Caroline County a flat fee of \$150.00 for each service call to the Jail. This amount shall be re-examined and negotiated by Caroline County and the Authority every two years, but shall not be less than \$150.00 for each service call.

C. Three years after the Jail is Placed In Service, Caroline County and the Authority shall enter into an agreement for compensation to Caroline County for documented direct services provided to the Authority by Caroline County agencies, including court services, sheriff's workload, and other county governmental workload. This agreement shall be updated every second year thereafter by mutual agreement of the Authority and Caroline County. Caroline County's share of the general administrative workload of membership in the Authority shall not be considered a direct service to be included in this compensation. The amount of compensation shall be offset by the documented positive economic impact of the Jail within the County beginning with the design and construction phase of the Jail. If Caroline County and the Authority are unable to agree on either the additional costs or economic benefits of the Jail, this dispute shall be mediated by a mutually agreeable third party.

C. Three years after the jail is placed in service, Carolina County and the Authority shall enter into an agreement for compensation to Carolina County for documented direct services provided to the Authority by Carolina County agencies, including court services, sheriff's workload, and other county governmental workload. This agreement shall be updated every second year thereafter by mutual agreement of the Authority and Carolina County. Carolina County's share of the general administrative workload of membership in the Authority shall not be considered a direct service to be included in this compensation. The amount of compensation shall be offset by the documented positive economic impact of the jail within the County beginning with the design and construction phase of the jail. If Carolina County and the Authority are unable to agree on either the additional costs or economic benefits of the jail, this dispute shall be mediated by a mutually agreeable third party.

B. The Authority shall pay to the volunteer fire service and volunteer rescue service of Carolina County a flat fee of \$150.00 for each service call to the jail. This amount shall be re-examined and negotiated by Carolina County and the Authority every two years, but shall not be less than \$150.00 for each service call.

A. Upon conveyance of the property to Carolina County, Virginia from the U.S. Department of the Army, Carolina County will lease the property to the Authority for the jail for so long as the property is used for such purpose. The consideration for the lease of the property to the Authority will be a lump sum payment to Carolina County of two hundred fifty thousand dollars (\$250,000.00) due on the first day of the month following the date the jail is placed in service, and an annual payment commencing one year thereafter of fifty thousand dollars (\$50,000.00) for a term of five years. Thereafter the lease of the property shall continue in effect for so long as the property is used for the jail for the annual lease payment of one dollar (\$1.00). Carolina County shall not be responsible for the capital cost of the three (3) guaranteed prisoner beds set forth in Section 3.1.

**Section 2.4. Lease of Property and Other Considerations.**

The Member Jurisdictions will use their best efforts to assist the Authority in complying with any such requirements and to 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 \$29,072,525. The Authority plans to finance the cost of the jail through the issuance of revenue bonds or through a combination of revenue bonds and direct appropriations from the Member Jurisdictions.

D. If the Authority, in its sole discretion, decides at any time that the site of the Jail is not, nor will in the future be, needed for a regional jail, the Authority shall terminate its lease of the land with Caroline County; provided that such termination of lease shall not occur prior to the defeasance of any and all Authority bonds that require continued operation of the Jail. Subject to the conditions of this section, the Authority shall support the efforts of Caroline County in seeking a change in the federal legislation governing the transfer of the Property to Caroline County, so that the Property may be owned by Caroline County after Jail operations are terminated.

### ARTICLE III

#### Provision of Services, Operation and Maintenance

Section 3.1. Acceptance of Prisoners. It is understood by the Member Jurisdictions that the Jail facility and its operating programming is not designed for, or intended to house, prisoners requiring a high level of security. In recognition of this design and program constraint, it is agreed by each Member Jurisdiction that no individuals currently charged with, or ever convicted of, the crimes of murder, rape, armed robbery, sexual assault or kidnaping, or who have a history of violent escape from a correctional institution, will be selected for assigning or assigned to the Jail. This understanding and agreement is fundamental to this Agreement and may only be changed pursuant to the provisions of Section 9.5 of this Agreement. 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 the District of Columbia with the approval of Caroline County as provided in Public Law 102-484). The Superintendent may refuse to accept, or may order the Member Jurisdiction to return to that jurisdiction, any person who, in the reasonable opinion of the Superintendent does not meet the definition of Prisoner. At a minimum, the Authority will accept and be solely responsible for the confinement in the Jail of at least the following number of Prisoners from each Member Jurisdiction:

JURISDICTION	GUARANTEED PRISONER BEDS
Alexandria	50
Arlington	60
Caroline	3
Loudoun	40
Prince William	75
Richmond	100
Additional Beds	8

*Always have  
additional beds*

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. In the event that the Jail is at capacity with Prisoners 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 Member Jurisdiction as set forth in the above chart, the Authority shall accept the additional Prisoner(s) from such Member Jurisdiction and ratably reduce the number of Prisoners from Member Jurisdictions having excess Prisoners in the Jail.

**Section 3.2. Responsibility for Prisoner Selection.** The Authority agrees to establish within, and make a part of its Bylaws an "A. P. Hill Inmate Selection Criteria." The "A. P. Hill Inmate Selection Criteria" can only be modified in accordance with Section 3.10 of this Agreement, subject to the limitations of Section 3.1. Each Member Jurisdiction shall be responsible for determining which of its prisoners meets the "A. P. Hill Inmate Selection Criteria" and are to be committed to the Jail. The Authority shall have no responsibility with respect to such decision, subject to the Superintendent's right of refusal in Section 3.1. The Authority will establish a procedure in its By-laws for any Member Jurisdiction to appeal a decision of the Superintendent relating to rejection or acceptance of a Prisoner. Except for its agreement to accept and care for Prisoners who meet the inmate selection criteria hereunder, the Authority shall not be responsible in any way for local jail operations of the Member Jurisdictions.

**Section 3.3. Transportation of Prisoners.** Unless the Authority agrees otherwise, each Member Jurisdiction shall be responsible for the transportation of all Prisoners from that

jurisdiction to and from the Jail, for whatever reason.

**Section 3.4. Operation and Maintenance.** The Authority will operate and maintain the Jail in accordance with the provisions of the Applicable Laws and the rules and regulations of the Virginia Board of Corrections.

**Section 3.5. Insurance.** The Authority will maintain hazard, liability and such other insurance as may be required by Applicable Law or which the Authority may deem advisable.

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

**Section 3.7. Annual Budget.** The Authority will provide to each Member Jurisdiction on or before each September 15 the Authority's preliminary Annual Budget for the next Fiscal Year and on or before each October 30 its final Annual Budget for the next Fiscal Year.

**Section 3.8. Books and Records.** 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. All books of record and account and documents in the Authority'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 of administrators and staff, (iii) the adoption of rules, regulations, policies and guidelines for the operation and maintenance of the Jail, not inconsistent with standards of the Virginia Board of Corrections, and (iv) the arrangements for financing the Jail.

**Section 3.10. Majority Required for Authority Decisions.** All questions relating to the Jail or to this Agreement, except expansion of the Jail facility beyond 700 beds, or adoption or modification of the Inmate Selection Criteria, which are submitted to the Authority for decision shall be determined by a majority vote of those members of the Authority Board present at any meeting, assuming a quorum is present. Any decision relating to the expansion of the Jail facility beyond 700 beds, or adoption or modification of the Inmate Selection Criteria shall be determined by a two-thirds vote of the members of the

Authority Board present at any meeting, assuming a quorum is present.

ARTICLE IV  
Payments

Section 4.1. Payments from Member Jurisdictions.

(a) Fees and Charges.

(1) Authority shall establish in its Annual Budget before the Jail is Placed in Service a charge for payment of the Authority's Pre-Opening Obligation Expenses due in the next Fiscal Year. Such charge shall be determined for each Member Jurisdiction, other than Caroline County which shall be exempt from such charge, by multiplying the total Pre-Opening Obligation Expense for such Fiscal Year by each Member's Capital Member Percentage, subject to adjustment as set forth in paragraph (a)(3) of this Section for any full or partial prepayments.

(2) The Authority shall establish in its Annual Budget, beginning with the Annual Budget for the Fiscal Year that the Jail is Placed in Service, a per diem charge for the care, maintenance and subsistence of Prisoners from Member Jurisdictions equal to the Authority's Projected Net Expenses. The per diem charge shall consist of a uniform operating component and a debt service component for each series of Obligations of the Authority and shall be assessed against all Member Jurisdictions; provided, however, Caroline County shall not be assessed the debt service component of such charge. The debt service component shall be determined by multiplying the total amount required to pay debt service, replenish reserve funds, pay credit enhancement fees and such other expenses on or related to such Obligations during such Fiscal Year times the applicable Capital Member Percentage, subject to adjustment as set forth in paragraph (a) (3) of this Section for any full or partial repayments. The operating component will be determined for each Member Jurisdiction by multiplying Projected Net Expenses (excluding debt service and related payments on Obligations but including any required deposits to a repair or replacement reserve fund related to such Obligations) for such Fiscal Year by the applicable Operating Member Percentage.

(3) Any Member Jurisdiction may prepay all or a portion of its capital contribution for the construction of the Jail and for any subsequent expansion, improvement, addition, renovation, repair or replacement of the Jail to be financed through the issuance of Obligations. The Authority shall adjust the debt service component of the charge for any series of Obligations for which any Member Jurisdiction has prepaid all or a portion of its capital contribution by reallocating the Capital Member

Percentages among all Member Jurisdictions which have not prepaid in full their capital contributions, taking into account in reallocating such percentages any partial prepayments. Any Member Jurisdiction which has prepaid in full its capital contribution for a series of Obligations shall not be required to pay any portion of the debt service component related to such series of Obligations, except in the case of a Member payment default resulting in an adjustment to Member charges as set forth in paragraph (a)(4) of this Section. Partial prepayments will be applied by the Authority as directed by the Member Jurisdiction making such partial payment.

(4) The Authority shall notify all Member Jurisdictions not later than 30 days after any payment due date if a Member Jurisdiction fails to pay any charge when due, and shall pursue with diligence the collection of such past due amount. The notice shall include a statement of the Authority's intention to adjust the remaining payments due during the Fiscal Year (and thereafter if such default is not cured) from all non-defaulting Members and shall state the amount of the adjusted charge. The adjustment shall be based upon a reallocation of Capital Member Percentages and Operating Member Percentages to all non-defaulting Members. No adjustments in charges for Pre-Opening Obligation Expenses or for the debt service component of the per diem charge shall be assessed to Caroline County. Upon payment in full of the amount in arrears by the defaulting Member Jurisdiction the Authority shall readjust Member charges to predefault levels and credit all non-defaulting Members in the appropriate amount for any excess payments previously made at the default adjusted rate. The Authority shall make other adjustments as may be necessary to the per diem charge during the Fiscal Year to meet Expenses and to comply with any covenants entered into in connection with any Obligations.

(5) Revenue received from all sources other than the Member Jurisdictions shall be used to pay Expenses.

(6) The Member Jurisdictions agree to pay the capital component of the per diem charge based upon the Capital Member Percentages (with appropriate adjustments for prepayments) and the operating component of such charge based upon the Operating Member Percentages notwithstanding the actual number of Prisoners committed to the Jail, subject to year-end adjustment as set forth below. Charges from each Member Jurisdiction for each Fiscal Year shall be due and payable to the Authority on a quarterly basis commencing in July of each year and the payment for such quarter shall be due and payable to the Authority no later than the fifteenth day of the first month of each quarter and if not paid when due shall bear interest at the rate of 3/4% per month until paid unless otherwise provided by law.

(7) A Member Jurisdiction's charge shall be reduced if the

cover its Actual Net Expenses.

**Section 4.4. 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. Except for the payment of per diem charges for Prisoners who have been actually committed to the Jail, the obligation of each Member Jurisdiction to make the payments required by Section 4.1 for services shall be subject to and contingent upon appropriations being made for such purpose by the Member Jurisdiction's governing body. No such payment for future responsibility shall constitute a debt of any Member Jurisdiction within the meaning of any constitutional or statutory limitation. Nothing in this Section or Agreement shall constitute a pledge of the full faith and credit of any Member Jurisdiction under any provision of its Charter or the Constitution of Virginia.

**Section 4.5. Agreement to Commit Prisoners.** For as long as the obligations are outstanding, and to the extent authorized by law, each Member Jurisdiction (other than Caroline County to the extent it has an agreement with the Pamunkey Regional Jail Authority and the City of Alexandria to the extent it has an agreement with the Arlington County Detention Facility) agrees to commit its Prisoners to the Jail, except in the event of an emergency requiring incarceration of a Prisoner in a facility closer in proximity than the Jail or if otherwise directed by court order; provided, however, that a Member Jurisdiction that has been permitted to withdraw from the Authority in accordance with Section 5.9 of this Agreement shall no longer be required by this Section to commit its Prisoners to the Jail. Nothing in this Section or this Agreement shall preclude a Member Jurisdiction from using its own jail facility, or a jail facility in which the Member Jurisdiction has an ownership interest, for the commitment of Prisoners, provided that any Member desiring to use such other jail facility has made all payments required to be made by such member under this Agreement.

**Section 4.6 Payment of Preliminary Costs.** If for any reason the Jail is not constructed, the Member Jurisdictions shall reimburse the Authority for all expenses not previously paid by the Member Jurisdictions pursuant to the percentage of total Prisoners shown for each Member Jurisdiction in the chart in Section 3.1 with a ratable sharing of the additional beds; provided, however, that the payment required by any Member Jurisdiction will be subject to the appropriation of funds for such purpose by the governing body of the Member Jurisdiction.

**Section 4.7 Agreement to Seek Appropriations.** In each Fiscal Year for at least as long as any Obligations are outstanding, the Chief Executive Officer of each Member Jurisdiction is hereby directed by its City Council or Board of



Member Jurisdiction does not use all of its guaranteed beds during the fiscal year and other Member Jurisdictions use more than their number of guaranteed beds for the fiscal year or beds are used by non-Member jurisdictions in excess of the number of unallocated beds. The amount of the reduction for each Member Jurisdiction shall be determined by multiplying the amount of excess revenue from the Member Jurisdictions and non-member Jurisdictions for that fiscal year based on the Member Jurisdiction per diem (to the extent such amount is over and above the income attributable to the unallocated beds) by the ratio each Member Jurisdiction's shortfall in their guaranteed beds bears to the total shortfall of guaranteed beds from the Member Jurisdictions).

(8) Within 90 days following the end of each fiscal year, the Authority shall determine the charge to each Member Jurisdiction during such year based upon the number of Prisoners actually committed from each such jurisdiction during such year. The Authority shall compare each Member Jurisdiction's charge based on actual Prisoners to the charge as determined in Section 4.1 (A3). Member Jurisdictions which have underpaid shall be so notified and shall pay the difference between the underpaid amount and the amount due to the Authority in one lump sum within 45 days of receipt of notice. Member Jurisdictions which have overpaid will be credited for such overpayment for the subsequent quarter's payment for guaranteed beds, provided the Authority has received all payments from Member Jurisdictions who have underpaid.

**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 and the District of Columbia; provided, however, that in no event shall such charge or charges be less than the per diem charge for Member Jurisdictions established by the Authority for the same period pursuant to Section 4.1 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 unless otherwise provided by law.

**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 not less than 60 days of its projected Annual Budget (exclusive of the Operating Reserve Fund less debt service) 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

Supervisors, as the case may be, to include in such Member Jurisdiction's Annual Budget for such year the amount as determined by the Authority to be the charge to such Member Jurisdiction for Pre-opening Obligation Expenses and Projected Net Expenses. The Chief Executive Officer of each Member Jurisdiction is hereby further directed by its City Council or Board of Supervisors, as the case may be, promptly to seek an appropriation from the City Council or Board of Supervisors, as the case may be, to pay any amount determined by the Authority to be owed to the Authority based on the Authority's Fiscal Year-end reconciliation of Projected Net Expenses to Actual Net Expenses. All amounts appropriated for payment to the Authority shall be promptly paid to the Authority within the time frames specified in this Agreement for payment.

#### **ARTICLE V. Additional Agreements**

**Section 5.1. Expansion of Jail.** The Authority agrees not to expand the Jail beyond 700 beds without the agreement of two-thirds of the governing bodies of the then participating Member Jurisdictions. If the Jail is expanded, and if one or more Member Jurisdictions do not desire to guarantee additional beds, the Member Jurisdictions not participating in the expansion shall not be charged capital costs relative to that expansion, but shall also not be entitled to any additional beds in the expansion.

Upon an expansion of the Jail beyond the original 336 beds being put into service, the per diem rate shall be recomputed spreading the fixed costs of the core facilities over the increased number of beds. All Member Jurisdictions, including Member Jurisdictions not participating in the expansion, shall enjoy the benefit of the recomputed per diem rate in proportion to the number of beds they have guaranteed.

**Section 5.2. Sale or Other Conveyance.** The Authority will not sell, lease, sublease, 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 paid or deemed defeased in accordance with the agreements pursuant to which they were issued and there is written approval of the Caroline County Board of Supervisors. Nothing in this provision shall interfere with the ability of the Authority to fill unallocated beds and/or allocated but unused beds in the Jail in accordance with responsibility of the Authority to keep the Jail full of Prisoners to the extent possible, pursuant to Section 3.1 of this Agreement. Notwithstanding the first sentence of this Section, to the extent that (i) space is available and the Authority has been unable to fill such space with Prisoners from other jurisdictions, (ii) such uses will not be inconsistent with the Authority's use of other portions of the Jail as a correctional facility, and (iii) revenues (including any

permitted credits) are not otherwise expected to be sufficient to pay Expenses, the Authority shall seek to lease or otherwise make space in the Jail available to other political subdivisions, departments, institutions or agencies of the Commonwealth to provide for the public safety and welfare.

**Section 5.3. 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 5.3:1 Continuing Disclosure.** Pursuant to Section 15c2-12(b) of regulations issued by the Securities and Exchange Commission, the Authority and the Member Jurisdictions may be required to agree with the owners of the Obligations, for as long as the Obligations are outstanding, to supply certain national securities information repositories (1) annually, certain financial and statistical information, and (2) periodically, notification of certain specified material events affecting the Authority, the Member Jurisdictions and the Obligations. The particulars of this ongoing disclosure requirement will be set forth in the indenture and in a continuing disclosure agreement for the Obligations. The Chief Executive Officer of each Member Jurisdiction, is hereby authorized and directed by its City Council or Board of Supervisors, as the case may be, if so required to execute and deliver such a continuing disclosure agreement and to cooperate with the Authority in fulfilling such continuing disclosure requirements, including providing the Authority with timely notice of the occurrence of any of the specified events which are material to the Member Jurisdiction's obligations.

**Section 5.4. 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 5.5. 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 5.6. 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 5.7. 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 5.8. Additional Members.** Any eligible political entity in Virginia may, with the approval of its governing body and with the consent of the governing bodies of each of the then participating Member Jurisdictions, join and participate in the Authority under such additional terms and conditions for membership as may be prescribed by the Authority. By approving this Agreement, the Member Jurisdictions agree to allow the City of Richmond to become a member of the Authority with the same membership status as the present members. Richmond agrees to pay \$65,000.00 to reimburse the other Member Jurisdictions for expenses incurred as of June 30, 1994 plus one-fifth of expenses incurred between June 30, 1994 and the date of this Agreement.

**Section 5.9. Withdrawal of Membership.** Any Member Jurisdiction may withdraw from membership in the Authority by resolution or ordinance of its governing body; however, once Obligations have been entered into by the Authority no Member Jurisdiction may withdraw from the Authority until all such obligations have been fully satisfied except by unanimous vote of all members of the Authority. Written Notice of Withdrawal must be given to the Authority and the remaining Member Jurisdictions prior to September 1 of the fiscal year in which the Member Jurisdiction intends to withdraw. Withdrawal may only be effective at the end of a fiscal year. Upon withdrawal, the Member Jurisdiction shall not be entitled to any payment from the Authority unless agreed to by the remaining Member Jurisdictions. The remaining Member Jurisdictions will reallocate the withdrawing Member Jurisdictions' guaranteed beds.

#### **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.

**Section 6.2 Authority.** The Authority has all requisite authority under the Code 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 do 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 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 or as otherwise provided herein, the Authority does not require the consent or approval of any governmental body to carry out the terms of this Agreement.

## ARTICLE 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.

**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 do 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) if the Authority fails 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) if 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) if 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) if 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) if 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 Prisoner 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. The Authority may also refuse to accept or seek the removal of, through any legal process, Prisoners from the Member Jurisdiction in default.

**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 had 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 by United States mail, postage prepaid, to the following persons at their normal addresses.

**If to the Authority:**

Chairman

Peumansend Creek Regional Jail Authority

P.O. Box 1460

Bowling Green, Virginia 22427

**If to a Member Jurisdiction:**

The Chief Executive Officer of the Member Jurisdiction.

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

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

**Section 9.5. Amendments.** This Agreement may be changed or amended only with the consent of the Authority and the governing body of each Member Jurisdiction. No such change or amendment may be made which will affect adversely the prompt payment when due of all moneys required to be paid by the Member Jurisdictions under the terms of this Agreement, and no such change or amendment shall be effective which would cause a violation of any provision of any resolution, indenture or agreement pursuant to which any Notes, Bonds or other temporary or permanent financing for the Jail is issued or obtained by the Authority.



Section 9.6. Bylaws. The Authority may adopt and amend such bylaws for the operation of the Authority that it deems appropriate and which are consistent with this Agreement.

Section 9.7. Effective Date of Agreement. This amended Agreement will be effective from the date of its approval by the last of the Member Jurisdictions' governing bodies to approve it. Pending such approval the original Agreement shall remain in full force and effect.

Section 9.8. 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 moneys 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.

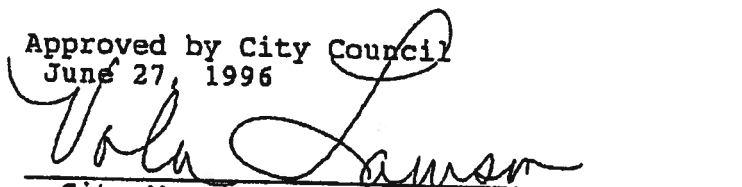
**PEUMANSEND CREEK REGIONAL JAIL AUTHORITY**

Approved by the Authority  
August 29, 1996

  
Chairman


**CITY OF ALEXANDRIA**

Approved by City Council  
June 27, 1996

  
City Manager

**COUNTY OF ARLINGTON**

Approved by the County Board  
June 29, 1996

  
County Manager

APPROVED AS TO FORM

  
ASSISTANT CITY ATTORNEY

COUNTY OF CAROLINE

Approved by the Board of Supervisors  
July 9, 1996

Thomas C. Hiley  
County Administrator

COUNTY OF LOUDOUN

Approved by Board of Supervisors  
July 3, 1996

[Signature]  
County Administrator

COUNTY OF PRINCE WILLIAM

Approved by the Board of Supervisors  
June 25, 1996

[Signature]  
County Executive

CITY OF RICHMOND

Approved by City Council  
June 24, 1996

Robert C. Bell  
City Manager

APPROVED AS TO FORM  
COUNTY ATTORNEY  
Joseph D. Howard Jr.  
DATE: Feb. 4, 1997

APPROVED AS TO FORM

John A. Rupp  
City Attorney

rcw  
C:\perjw.agt  
A:\aphrja\6sraqt.rdl