

AN ORDINANCE *No 85-268-252***ADOPTED OCT 28 1985**

To approve an agreement, entitled: "Second Amendment to Tripartite Agreement", between the City of Richmond, the Counties of Chesterfield, Henrico, and Hanover, and the Capital Region Airport Commission, concerning the admission of the County of Hanover into membership of the Capital Region Airport Commission and modification of the original Tripartite Agreement between the City of Richmond, the County of Henrico and the Capital Region Airport Commission, and the "First Amendment to Tripartite Agreement", executed pursuant to the adoption of Ordinance No. 84-267-240 on November 5, 1984, to reflect admission of the County of Hanover as a member of the Capital Region Airport Commission.

Patron - Mrs. McDaniel

Approved as to form and legality
by City Attorney

1. WHEREAS, the Capital Region Airport Commission was
2. created pursuant to the provisions of Chapter 537 of the
3. Acts of the 1975 General Assembly, was continued in
4. existence pursuant to the provisions of Chapter 380 of the
5. Acts of the 1980 General Assembly, and continues pursuant to
6. the provisions of said Chapter 380 of the 1980 General
7. Assembly, as amended by Chapter 117 of the Acts of the 1985
8. General Assembly (the Enabling Act); and
9. WHEREAS, the City, Henrico and the Commission have
10. heretofore entered into a Deed and Agreement, made as of the
11. 1st day of January, 1976 (the Original Tripartite Agreement)
12. whereby certain property known as the Richard Evelyn Byrd
13. International Airport, now known as Richmond International

1. Airport (Byrd Field), (the Airport) was transferred by the
2. City to the Commission; and

3. WHEREAS, pursuant to Section 5 of the Enabling Act, by
4. resolutions adopted April 11, 1984, by Chesterfield, and on
5. April 24, 1984, by the Commission, Chesterfield joined the
6. Commission; and

7. WHEREAS, on June 25, 1984, the Council of the City of
8. Richmond (Council) adopted Resolution No. 84-R124-121 (the
9. Initial Resolution) approving in principal the plan of
10. financing of the Commission for the issuance by the
11. Commission of its airport revenue bonds and notes (the
12. Obligations) in an amount not to exceed \$30,000,000, the
13. proceeds of such Obligations to be used to finance a portion
14. of the costs of the expansion and modernization of certain
15. airport facilities located at Richard Evelyn Byrd Inter-
16. national Airport (the Airport) in Henrico County, Virginia
17. (the Project); and

18. WHEREAS, the Commission, following receipt of the
19. revised estimates of needs and estimated costs of Project,
20. adopted a revised plan of financing providing for the
21. issuance of Obligations in an amount not to exceed
22. \$34,000,000 in order to finance a portion of the costs of
23. the Project; and

24. WHEREAS, the City of Richmond, by the adoption of
25. Ordinance No. 84-267-240 on November 5, 1984, authorized the

1. execution of a Moral Obligation Contract among the
2. Commission, the City and the Counties of Henrico and
3. Chesterfield in the form as was attached to the draft of
4. said ordinance; and

5. WHEREAS, there has now been presented to the Council of
6. the City of Richmond a document, entitled: "Second Amendment
7. to Tripartite Agreement", by which the Commission and the
8. current political subdivisions constituting the Commission,
9. propose to act favorably upon the application of the County
10. of Hanover to become a member of said Commission, and the
11. "Second Amendment to Tripartite Agreement" will amend the
12. "Tripartite Agreement" and "First Amendment to Tripartite
13. Agreement", to reflect the entry of the County of Hanover
14. into membership in the Commission; NOW, THEREFORE,
15. THE CITY OF RICHMOND HEREBY ORDAINS:

16. § 1. That the "Second Amendment to Tripartite
17. Agreement" be and is hereby approved and the City Manager,
18. Manuel Deese, and the City Clerk, Joseph B. Ivey, for and on
19. behalf of the City, be and are hereby authorized to execute
20. and to exchange executed drafts of the "Second Amendment to
21. Tripartite Agreement" with other parties to the Agreement, a
22. copy of which Agreement is attached to the draft of this
23. ordinance.

24. § 2. This ordinance shall be in force and effect upon
25. adoption.

Second Amendment to Tripartite Agreement

THIS AGREEMENT, made as of this ____ day of October, 1985, by and between the COUNTY OF HANOVER, a political subdivision of the Commonwealth of Virginia (Hanover), the CITY OF RICHMOND, a municipal corporation of the Commonwealth of Virginia (the City), the COUNTY OF HENRICO, a political subdivision of the Commonwealth of Virginia (Henrico), the COUNTY OF CHESTERFIELD, a political subdivision of the Commonwealth of Virginia (Chesterfield), and the CAPITAL REGION AIRPORT COMMISSION, a political subdivision of the Commonwealth of Virginia (the Commission);

W I T N E S S E T H:

WHEREAS, the Commission was created pursuant to the provisions of Chapter 537 of the Acts of the 1975 General Assembly and was continued by Chapter 380 of the Acts of the 1980 General Assembly, as amended, by Chapter 117 of the Acts of the 1985 General Assembly (the Enabling Act);

WHEREAS, the City, Henrico and the Commission have heretofore entered into a Deed and Agreement, made as of the 1st day

of January, 1976 (the Original Tripartite Agreement) whereby certain property known as the Richard Evelyn Byrd International Airport, now known as Richmond International Airport (Byrd Field), (the Airport) was transferred by the City to the Commission; and

WHEREAS, pursuant to Section 5 of the Enabling Act Chesterfield, by resolutions adopted on April 11, 1984 by Chesterfield and on April 24, 1984 by the Commission, joined the Commission; and

WHEREAS, the Commission has commenced an expansion and modernization of the airport facilities at the Airport, including the construction and equipping of second-level passenger boarding concourses, expansion, renovation and equipping of various areas in the existing terminal building, reconstruction of the aircraft apron and certain improvements to the parking and roadway areas (the Project); and

WHEREAS, in order to finance a portion of the costs of the Project the Commission has issued its \$28,600,000 Airport Revenue Bonds, Series of 1984 (the Bonds) and its \$4,120,000 Airport Revenue Note (the Note); and

WHEREAS, prior to the issuance of the Bonds and the Note the Commission determined that in order for the Bonds and the

Note to be sold on an economical basis it would be necessary for the City, Henrico and Chesterfield to agree to assist in providing security for the Bonds, the Note and for certain bonded indebtedness of the City incurred on behalf of the Airport plus accrued interest payable by the City thereon (the Existing Debt) (the Bonds, the Note and the Existing Debt being collectively referred to as the Obligations) by providing a non-binding, but moral obligation to make up certain deficits with respect to the Obligations, and the City, Henrico and Chesterfield determined that it was in their best interests and the best interests of their respective residents to do so; and

WHEREAS, prior to the issuance of the Bonds and the Note the Commission further determined that in order for the Bonds and the Note to be sold on an economical basis, it would be necessary for the City to subordinate the payment of the Existing Debt, upon certain terms, to payments required to be made with respect to the Bonds and the Note, and the City determined that it was in the best interests of the City and of its residents to do so; and

WHEREAS, prior to the issuance of the Bonds and the Note the Commission, the City, Henrico and Chesterfield agreed that it would be necessary to amend the Original Tripartite Agreement in order to (i) assist in providing security for the Obligations and

implement the agreement of the City to subordinate the Existing Debt to payments required to be made with respect to the Bonds and the Note, and (ii) conform certain provisions of the Original Tripartite Agreement to reflect the entry of Chesterfield into the Commission, and to that end the Commission, the City, Henrico and Chesterfield entered into an agreement dated as of December 1, 1984 (the First Amendment to Tripartite Agreement) to provide for the matters described in clauses (i) and (ii) above; and

WHEREAS, the Commission, by Resolution Number 84-6-5 adopted June 26, 1984, authorized its Executive Director to extend an invitation to Hanover to consider membership in the Commission based upon (i) a contribution by Hanover to the Commission of an amount, payable in equal installments over a ten year period, equal to \$3.29 times the population of Hanover, and (ii) the enactment by Hanover of a satisfactory resolution providing for its moral obligation support of the Obligations; and

WHEREAS, the Board of Supervisors of Hanover, by resolution adopted July 10, 1985, expressed its desire to have Hanover join the Commission as a Participating Political Subdivision (as defined in the Enabling Act); and

WHEREAS, the Commission, by Resolution Number 85-7-1 adopted July 30, 1985 and acting pursuant to the Enabling Act, authorized the admission of Hanover as a Participating Political

Subdivision of the Commission upon the adoption of a suitable amendment to the Original Tripartite Agreement and First Amendment to Tripartite Agreement to provide for (i) adding the moral obligation support of Hanover with respect to payment of the Obligations, (ii) evidencing the terms of Hanover's contribution to the Commission, and (iii) conforming the terms of the Original Tripartite Agreement and the First Amendment to Tripartite Agreement to reflect the addition of Hanover as a Participating Political Subdivision of the Commission;

NOW, THEREFORE, for and in consideration of the foregoing premises, the Commission, the City, Henrico, Chesterfield, and Hanover hereby covenant and agree as follows:

1. Except as amended by the First Amendment to Tripartite Agreement and this Second Amendment to Tripartite Agreement, the Original Tripartite Agreement remains unmodified and in full force and effect. Except as amended by this Second Amendment to Tripartite Agreement, the First Amendment to Tripartite Agreement remains unmodified and in full force and effect.

2. Except as provided in paragraph 4 of this Second Amendment to Tripartite Agreement, the First Amendment to Tripartite Agreement is hereby amended to provide that the term "Localities" as used therein shall henceforth mean and be

construed to mean the City, Henrico, Chesterfield and Hanover, collectively. Hanover hereby adopts and approves all of the terms of the First Amendment to Tripartite Agreement, as amended hereby, to the same extent as if it had been an original party thereto, including without limitation, the provision by Hanover of its non-binding, but moral obligation support with respect to payment of the Obligations, in the manner and to the extent described in the First Amendment to Tripartite Agreement, as amended hereby. The City, Henrico, and Chesterfield each ratify and confirm the terms of the First Amendment to Tripartite Agreement, as amended hereby, including, without limitation, their respective moral obligation support with respect to payment of the Obligations and the City's subordination of the Existing Debt, all in the manner and to the extent described in the First Amendment to Tripartite Agreement, as amended hereby.

3. The First Amendment to Tripartite Agreement is hereby amended specifically as follows:

(a) The second sentence of Paragraph 1(c) is hereby amended to read as follows:

Beginning in 1986, all monies received from Henrico, Chesterfield and Hanover, as hereinafter described, for the purpose of making up a deficit in any Existing Debt Repayment Amount shall be used by the Commission or its designee as soon as possible after receipt thereof to make payment of Henrico's, Chesterfield's and Hanover's Pro Rata Shares, as hereinafter defined, of any such deficit.

(b) Paragraphs 4(a) and 4(b) are hereby amended to read as follows:

4. (a) The submission by the Commission of each Annual Schedule to the chief administrative officers of Henrico, Chesterfield and Hanover shall constitute urgent requests by the Commission to the Board of Supervisors of Henrico, of Chesterfield and of Hanover, respectively, for an appropriation for the upcoming Governmental Fiscal Year of the sum of the following amounts taken from such Annual Schedule:

(i) their respective Pro Rata Shares of the Debt Service Reserve Deficiency;

(ii) their respective Pro Rata Shares of the Reserve Note Debt Service;

(iii) their respective Pro Rata Shares of the Estimated Note Deficit;

(iv) their respective Pro Rata Shares of any Back Interest; and

(v) their respective Pro Rata Shares of the Existing Debt Deficiency.

(b) For the purpose of assuring that the Commission's annual requests (as evidenced by the Annual Schedules) for appropriations may be considered by their respective Boards of Supervisors, the chief administrative officers of Henrico, Chesterfield and Hanover shall include the sum of the foregoing amounts in their respective proposed budgets submitted to their respective Boards of Supervisors for each Governmental Fiscal Year so long as any of the Obligations remain outstanding.

(c) Paragraph 6(b) is hereby amended to read as follows:

(b) As soon as possible after July 1 of each Governmental Fiscal Year, but not later than July 15 thereof, each of Henrico, Chesterfield and Hanover shall, from its appropriation made for such purpose, pay to the Commission or its designee its Pro Rata Share of the Existing Debt Deficiency.

(d) The second and third sentences of Paragraph 9 are hereby amended to read as follows:

The City further agrees that it shall forgive, extinguish and forever release its claim against the Commission for the City's Pro Rata Share of any annual Existing Debt Deficiency if and to the extent all of Henrico, Chesterfield and Hanover appropriate and pay their respective Pro Rata Shares of such Existing Debt Deficiency as provided in paragraphs 4 and 6 above. In the event any of Henrico, Chesterfield or Hanover or all of them should fail to appropriate and pay to the Commission or its designee its full Pro Rata Share of any annual Existing Debt Deficiency, then the City's Pro Rata Share of such annual Existing Debt Deficiency plus the amount which any or all of Henrico, Chesterfield and Hanover shall fail to appropriate and pay of their respective Pro Rata Shares of such annual Existing Debt Deficiency shall not be extinguished, but shall be continued as an obligation of the Commission and added as a new final payment after the then previously last scheduled payment on the Existing Debt.

(e) The second sentence of Paragraph 15 is hereby amended to read as follows:

Paragraphs 1 and 14 of the Original Tripartite Agreement are hereby amended, effective from the date of this Second Amendment to Tripartite Agreement, to read as follows:

"1. It is expressly understood and agreed to by the parties to this deed and agreement that the Commission shall not convey, sell or otherwise dispose of any real estate conveyed to the Commission by the City without the prior written consent of the City, Henrico County, Chesterfield County and Hanover County."

"14. In addition to the undertakings of the City, Henrico County, Chesterfield County and Hanover County contained in paragraphs 1 through 13 of the First Amendment to this deed and agreement, as amended by the Second Amendment thereto, the City, Henrico County, Chesterfield County and Hanover County hereby covenant and agree that they shall pay to the Commission their pro-rata share of the amount by which capital expenditures and operating expenses of the Commission exceed revenues, in accordance with budgets approved by the participating jurisdictions and to the extent that appropriations have been authorized by the participating jurisdictions."

4. Inasmuch as the Commission has already issued its Bonds and Note as of the date of this Second Amendment to Tripartite Agreement, the term "Localities," as used in paragraph 14 of the First Amendment to Tripartite Agreement to describe those jurisdictions whose consent to such issuance was required by Section 103(k) of the Internal Revenue Code of 1954, as amended, and Section 15 of the Enabling Act, does not apply to Hanover.

5. Hanover hereby agrees to pay to the Commission, subject to annual appropriations, a membership contribution in the total amount of \$172,067, payable \$17,206.70 per annum for ten (10) consecutive years (calculated on the basis of \$3.29

times the most recent Tayloe Murphy Institute population figures for Hanover). By Hanover's making the foregoing agreement for a membership contribution and by its adopting, executing and delivering this Second Amendment to Tripartite Agreement, the Commission, acting pursuant to Section 5 of the Enabling Act, hereby finds that Hanover had made satisfactory financial arrangements to join the Commission, and Hanover is hereby declared to be a Participating Political Subdivision of the Commission, effective as of the date of the Commission's resolution adopting this Second Amendment to Tripartite Agreement.

IN WITNESS WHEREOF, the County of Hanover has caused its name to be subscribed hereunto by its Chairman of the Board of Supervisors and its seal to be hereto affixed and attested by its Clerk of the Board of Supervisors, they being authorized to do so by a resolution adopted by the Board of Supervisors of the County of Hanover, on the ____ day of October, 1985; and the City of Richmond has caused its name to be subscribed hereunto by its City Manager and its seal to be hereto affixed and attested by its City Clerk, they being duly authorized so to do by Ordinance _____ adopted by the Council of the City of Richmond, on the ____ day of October, 1985; and the County of Henrico has caused its name to be subscribed hereunto by its County Manager and its seal to be hereto affixed and attested by its Clerk of the Board

of Supervisors, they being duly authorized so to do by a resolution designated as Agenda Item _____, adopted by the Board of Supervisors of the County of Henrico, on the ____ day of October, 1985; and the County of Chesterfield has caused its name to be subscribed hereunto by its County Administrator and its seal to be hereto affixed and attested by its Deputy Clerk of the Board of Supervisors, they being duly authorized so to do by resolution adopted by the Board of Supervisors of the County of Chesterfield, on the ____ day of October, 1985; and the Commission has caused its name to be subscribed by its Executive Director and its seal to be affixed and attested by its Secretary, they being duly authorized so to do by resolution of the Commission adopted on the ____ day of October, 1985.

ATTEST:

COUNTY OF HANOVER

[SEAL]

By _____
Clerk of the Board of
Supervisors

By _____
Chairman of the Board of
Supervisors

ATTEST:

CITY OF RICHMOND

[SEAL]

By _____
City Clerk

By _____
City Manager

ATTEST:

COUNTY OF HENRICO

[SEAL]

By _____
Clerk of the Board of
Supervisors

By _____
County Manager

ATTEST:

COUNTY OF CHESTERFIELD

[SEAL]

By _____
Deputy Clerk of the Board
of Supervisors

By _____
County Administrator

ATTEST:

CAPITAL REGION AIRPORT
COMMISSION

[SEAL]

By _____
Secretary

By _____
Executive Director

ORDINANCE OR RESOLUTION SUMMARY
CITY OF RICHMOND, VIRGINIA

Resolution Ordinance No. 85-268	Subject
Requested by City Manager	Capital Region Airport Commission Agreement.
Received City Manager's Office --	
Summarized 10/18/85	

SUMMARY

This Ordinance would approve an agreement between the City of Richmond and the Counties of Henrico, Chesterfield and Hanover concerning the admission of Hanover County into membership of the Capital Region Airport Commission.

COUNCIL ACTION

On Docket 10/28/85
Amended
Adopted
Rejected