

**ALBEMARLE-CHARLOTTESVILLE
REGIONAL JAIL AUTHORITY SERVICE AGREEMENT**

By and Among

THE COUNTY OF ALBEMARLE,

THE COUNTY OF NELSON

and

THE CITY OF CHARLOTTESVILLE

and

**THE ALBEMARLE-CHARLOTTESVILLE
REGIONAL JAIL AUTHORITY**

Initially adopted November 15, 1995

Amended as of March 12, 1998

Further amended as of November 12, 1998

Further Amended as of January 25, 2011



AGREEMENT

THIS AGREEMENT (the "Agreement") is made by and among the COUNTY OF ALBEMARLE, the COUNTY OF NELSON and the CITY OF CHARLOTTESVILLE, all of which are political subdivisions of the Commonwealth of Virginia (collectively the "Member Jurisdictions"), and the ALBEMARLE-CHARLOTTESVILLE REGIONAL JAIL AUTHORITY (the "Authority").

RECITALS

WHEREAS, the Member Jurisdictions are currently operating, through a Regional Jail Board, the Albemarle-Charlottesville Joint Security Complex (the "Security Complex"), which serves as the Jail for both Member Jurisdictions; and

WHEREAS, the Member Jurisdictions intend to authorize and create a regional jail authority, as provided in Chapter 3, Article 3.1 of Title 53.1 of the Code of Virginia, to replace the existing Regional Jail Board and assume its powers and responsibilities for the operation of the Jail; and to enhance public safety and welfare within the region, for the protection of its citizens, by the financing, construction, equipping, maintenance and operation of an addition and improvements for the Jail; and

WHEREAS, to pay the cost of operating the Jail and financing, constructing, equipping, maintaining and operating additions or improvements to the Jail, the Member Jurisdictions agree to pay certain amounts on certain terms as set forth herein;

NOW, THEREFORE, the parties agree as follows:

ARTICLE I Definitions

The capitalized terms in this Agreement have the meanings set forth below unless the context otherwise requires.

"Annual Budget" has the meaning given to such term in Section 4.7.

"Applicable Laws" means 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 Albemarle-Charlottesville Regional Jail Authority, as created in and by this Agreement.

"Authority Default" has the meaning given to such term in Section 9.1.

"Bonds" means revenue bonds issued by the Authority for the design, construction and other costs of the Jail and any additions or improvements thereto.

"Capital Expenses" means all costs, including but not limited to costs for architectural, engineering, planning, legal, financial or other professional services; land acquisition, labor, materials and equipment, contractors' fees, utility connection and building permit fees, capitalized interest, and other charges incurred for demolition, excavation, construction, equipping, paving, or landscaping, incurred or required for building and otherwise completing any addition to the existing Jail, or for building any future replacement for the Jail. Unless the context clearly indicates otherwise, "Capital Expenses" shall also include "Debt Service."

"Debt Service" means the amounts of principal and interest payable by the Authority to retire any bonds, notes or other obligations issued by the Authority. The Member Jurisdictions shall reimburse the Authority for its Debt Service attributable to Capital Expenses, partially through the per diem rate paid by the Member Jurisdictions for their prisoners, and partially through Additional Payments for Debt Service, in accordance with the provisions of Section 5.1 below.

"Expenses" means 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 shall also include debt service payments and other capital expenses, required payments to the Operating Reserve Fund established in Section 5.3, required payments to any debt service reserve established in connection with any Bonds and other reasonable or necessary payments required to comply with debt service coverage requirements imposed in connection with any Bonds in Section 5.3.

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

"Jail" means the existing regional Joint Security Complex located at 1600 Avon Street Extended, Charlottesville, Virginia, together with any additions or improvements constructed and equipped by the Authority at that location or any future replacement for such facility at such other location as may be determined by the Authority in the future.

"Member Jurisdiction" means the County of Albemarle and the City of Charlottesville, each a political subdivision of the Commonwealth of Virginia, and any other political subdivision that may hereafter join the Authority, but excluding any political subdivision that may have withdrawn from the Authority, as provided in Section 6.7 and 6.8.

"Member Jurisdiction Default" has the meaning given to such term in Section 9.2.

"Net Debt Service" means the total annual Debt Service on obligations of the Authority, less any reimbursements for such Debt Service received from the Commonwealth of Virginia.

"Net Operating Expenses" means Operating Expenses reduced by an amount equal to revenue from (i) non-member jurisdictions (including the federal government), (ii) Operating Expenses of the Authority reimbursed by the Commonwealth of Virginia, and (iii) all other non-member revenue.

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

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

"Operating Expenses" means all expenditures for salaries, goods, services, utilities, routine maintenance and other items incurred by the Authority in the daily ownership and operation of the jail, but excludes any Capital Expenses.

"Operating Reserve Fund" means the reserve fund established in Section 5.3.

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

"Prisoner(s)" has the meaning given in such term in Section 4.1.

ARTICLE II

Creation of Authority

Section 2.1 Regional Jail Authority. By their approval and execution of this Agreement, the Member Jurisdictions hereby establish a regional jail authority pursuant to Chapter 3, Article 3.1 of Title 53.1 (Sections 53.1-95.2 *et. seq.*) of the Code of Virginia, as amended. The name of the Authority shall be the ALBEMARLE-CHARLOTTESVILLE REGIONAL JAIL AUTHORITY (the "Authority"). The principal office of the Authority shall be located at the Office of the Superintendent of the Albemarle-Charlottesville Joint Security Complex, 1600 Avon Street Extended, Charlottesville, Virginia 22902.

Section 2.2 Board. The powers of the Authority shall be exercised by a Board (the "Board") consisting of four members from each of the Member Jurisdictions, as described below, and one member appointed jointly by the governing bodies of the Member Jurisdictions. The first member from each Member Jurisdiction shall be its duly elected sheriff. The second member from each Member Jurisdiction shall be a currently serving member of the Jurisdiction's governing body appointed by the government body. The third member from each Member Jurisdiction shall be its current county executive, city manager or

other chief executive officer, provided that such officers may designate other staff members to act as their alternates, who, if approved by their respective governing bodies, may attend and vote in place of the chief executives. The fourth member from each Member Jurisdiction shall be any other citizen of that Jurisdiction appointed by its governing body. The Sheriffs' service on the Authority shall be coterminous with their elected terms, and executive officers' terms shall be coterminous with their employment. Other members shall be appointed for three year terms. Members may be removed by their appointing authorities for failure to attend meetings or for other sufficient cause. The membership of the Authority may be increased or decreased by joint agreement of the governing bodies of the Member Jurisdictions, subject to the limits imposed by applicable state statutes.

Upon execution of the Agreement, the current appointees to the Regional Jail Board shall serve as the initial Board of the Authority, and shall continue in such office until their successors are appointed. Such Regional Jail Board members shall be eligible for appointment to full terms as members of the Authority, provided that no person's service (except that of the sheriffs or of any city manager or county executive or county administrator appointed by a Member Jurisdiction) as a member on the Board of the Authority, or combined service on the Authority's Board and the Regional Jail Board, shall exceed three full terms.

Any officer or employee of a Member Jurisdiction, appointed to the Board by that Member Jurisdiction, who ceases to hold office or be employed in the Member Jurisdiction shall likewise vacate his or her seat on the Board, unless reappointed by the governing body of the Member Jurisdiction.

The Board shall establish bylaws governing the election of officers, the conduct and scheduling of meetings and giving notice thereof, and other procedural matters.

Section 2.3 Purpose of Authority. The purpose of the Authority shall be to operate the Jail as set forth in paragraph 2.5 hereof and to finance, design, construct and operate additions to the existing jail facility, subject to all zoning and other legal requirements, as described in Article III of this Agreement. The general scope and nature of such improvements and additions and the estimated cost of designing, financing and constructing same are set forth in Section 3.1. It is anticipated that this Capital Expense will be financed through Notes and/or Bonds issued by the Authority, and that reimbursement of a portion of the annual Debt Service on these Obligations will be paid by the Commonwealth of Virginia.

Section 2.4 Powers of Authority. The Authority shall have all powers as set forth in Chapter 3, Article 3.1 of Title 53.1 (Sections 53.1-95.2 *et. seq.*) of the Code of Virginia, or its successor statutes, as amended from time to time, as well as all other powers conferred by state law upon regional jail authorities, and all powers necessarily and reasonably implied from such expressly granted powers.

Section 2.5 Operation of the Jail and Transfer of Property. Upon the approval of this Agreement, the Authority shall assume full management and control over the operation of

the Jail, and succeed to all rights, privileges and obligations of the Regional Jail Board. The Member Jurisdictions agree to transfer all real and personal property associated with the Jail, including title to any fund balances and accounts receivable, to the Authority at no cost to the Authority, and further agree to execute all necessary deeds or other documents to effect such transfer. Notwithstanding the foregoing, the County of Albemarle shall continue to serve as the fiscal agent for the jail until such time as the Authority acts as its own fiscal manager, either independently or by contract with the City or the County or a private entity, but in any event with the objective of securing these services for the Authority in a streamlined, cost-effective and professional manner. The Authority shall assume this responsibility on or before July 1, 1996, unless the County of Albemarle agrees to an extension of this deadline.

Section 2.5:1 Future disposition of Jail Property. In the event the Authority is to be dissolved or its powers and obligations are to be transferred by operation of law to some other public entity, the Authority shall, if consistent with outstanding bond indentures or other obligations, convey all its real and personal property to such other entity for a consideration of One Dollar. In the even the Authority determines that the real estate and improvements comprising present Jail property are no longer needed for jail purposes, the Authority shall reconvey the same to the County of Albemarle and the City of Charlottesville, or their successors and assigns, as tenants in common.

Section 2.6 Prior Agreement. This Agreement supersedes the regional jail agreement dated October 18, 1977, previously entered into by the Member Jurisdictions. Any provision of such earlier agreement inconsistent with this Agreement shall be of no further effect upon the adoption of this Agreement by all of the parties hereto. The Member Jurisdictions agree to consider amending their existing ordinances, and taking such other actions as may be necessary to reflect the transfer of ownership of and responsibility for the Jail from the Regional Jail Board to the Authority consistent with this Agreement.

Section 2.7. Addition of Nelson County as Member Jurisdiction.

Effective July 1, 1998, or as soon thereafter as the amended Service Agreement may be executed by all parties, the County of Nelson shall become a Member Jurisdiction, under the following terms and conditions.

(a) Notwithstanding the provisions of Section 2.2, Nelson shall be represented on the Authority's Board by its sheriff and one other person appointed by the governing body of the county. Alternates may be appointed as provided by state law.

(b) Within 30 days following its admission, Nelson shall pay the Authority the sum of Two Hundred Ninety-Two Thousand Dollars (\$292,000.00) as agreed compensation for its share of the equity value of the Authority's existing land and facilities. The Authority shall transfer this amount to Albemarle and Charlottesville in proportion to their respective original contributions to the cost of acquiring, constructing and equipping such land and existing facilities, as nearly as the same can

be determined. In the event of a dispute between Albemarle and Charlottesville about the appropriate distribution the decision of the Authority shall be final.

(c) Until such time as the Authority's expanded facility is Placed in Service, Nelson shall pay the Authority a rate of Fourteen Dollars (\$14.00) per diem to house its prisoners. After the expanded facility is Placed in Service, Nelson shall pay the same Prisoner Per Diem Payments as the other Member Jurisdictions, including both the Operating and Debt Service Components, calculated and paid as set forth in Section 5.1(a). In addition, after the expanded facility is Placed in Service, Nelson shall pay the Additional Payment for Debt Service as required by Section 5.1(b), calculated at the rate of four percent of the Authority's Net Debt Service not included in the Per Diem Charge.

(d) Nelson agrees to commit all of its jail prisoners to the Authority on the basis set forth in Section 4.2, and to be responsible for their transportation as set forth in Section 4.3.

(e) In the event the Authority is dissolved or its powers and obligations are transferred by operation of law, and the Authority's property is reconveyed to the Member Jurisdictions, as contemplated by Section 2.5:1, the Member Jurisdictions' shares of such reconveyed property shall be in direct proportion to their respective capital contributions to the Authority's facilities, including both their initial capital contributions to the existing facility (including Nelson's payment under Section 2.7(b) above), and the respective totals of their payments of the Debt Service Component and Additional Payments for Debt Service under Section 5.1, as nearly as all such amounts can reasonably be determined using available records.

(f) Except as provided in this Section, Nelson shall have the same rights and obligations under the Service Agreement as the other Member Jurisdictions.

ARTICLE III **New Construction**

Section 3.1 Construction of Jail Improvements. The Member Jurisdictions hereby approve expansion of the Jail by construction of a 115-bed addition, together with an intake center, additional program space, updated HVAC system, and other related improvements, which will serve both the existing jail facility and the additional 115 beds. The Board of Corrections has approved a preliminary budget estimate for the entire improvement project of approximately \$13.75 million dollars. Upon approval of this Agreement, the Authority will proceed with the financing, design and construction of this project which shall constitute a Capital Expense as defined in this Agreement, subject to approval by the Member Jurisdictions, of the general construction contract following receipt of bids by the Authority. The Authority further agrees not to incur any other future Obligation to finance any other Capital Expense for any other improvement, expansion or replacement of the Jail without

similar prior approval from the Member Jurisdictions.

Section 3.2 Compliance. The Authority agrees to construct the addition and improvements to the Jail in accordance with the requirements of all Applicable Laws. The Member Jurisdictions agree to provide reasonable assistance to the Authority in complying with any such requirements, and will provide the Authority with any and all information that may be necessary in this regard.

Section 3.3 Agreement to Finance. The Authority agrees to finance the Capital Expenses for the approved addition and improvements, including expenses associated with the financing, through the issuance of revenue bonds. In addition, the Authority may issue revenue bond anticipation notes or other short-term obligations for this purpose.

One-half of eligible Capital Expenses for the approved addition and improvements, or of the Debt Service on such Capital Expenses, is expected to be funded by the Commonwealth of Virginia pursuant to Section 53.1-81 of the Code of Virginia. The Authority agrees to pursue this and any other state or federal reimbursements that may be available to it. In the event the Commonwealth does not agree to fund one-half of the eligible Capital Expenses or of the Debt Service thereon, the Authority shall not proceed to construct the addition or improvements unless further approval is received from each of the Member Jurisdictions.

ARTICLE IV

Provision of Services, Operation and Maintenance

Section 4.1 Acceptance of Prisoners. The Authority will accept Prisoners from each Member Jurisdiction (and to the extent space is available, from other jurisdictions, including the federal government and its agencies) who have been (i) duly arrested for committing a criminal offense and held over pending trial or (ii) duly convicted of committing a criminal offense and sentenced to a term of incarceration by a court having proper jurisdiction (the "Prisoners"). If the Jail is at capacity, as defined by the Authority, the Authority shall be responsible for securing alternative housing for all Prisoners from the Member Jurisdictions. The Authority shall first, however, have a duty to remove all Prisoners other than those from Member Jurisdictions from the Jail.

Section 4.2 Commitment of Prisoners. Each Member Jurisdiction agrees to offer to commit all of its Prisoners to the custody of the Authority. Each Member Jurisdiction's prisoners shall be defined as those persons being held for offenses committed in that jurisdiction. To encourage compliance with the provisions of this Section, each Member Jurisdiction hereby agrees that it will refuse to pay for the incarceration of any of its Prisoners committed to custody in any jail other than the Jail unless (i) the Jail is full, (ii) the Authority refuses to accept such Prisoner, (iii) commitment of such Prisoner to a correctional facility other than the Jail is ordered by a court of competent jurisdiction or (iv) a court of competent jurisdiction orders the Member Jurisdiction to make such payment.

Section 4.3 Transportation of Prisoners. Unless the Authority agrees otherwise, each Member Jurisdiction shall be responsible for the initial transportation of Prisoners from such Jurisdiction to the Jail for processing into the Jail population, and for transporting its prisoners from the Jail to court appearances and back. The Authority shall be responsible for transporting Prisoners for medical and dental care and other required purposes and for all costs, expenses and security relating to such Prisoners during transportation.

Section 4.4 Operation and Maintenance. The Authority will operate and maintain the Jail in accordance with all other Applicable Laws. The Authority shall be an equal opportunity employer.

Section 4.5 Insurance. The Authority will maintain hazard, liability or such other insurance as may be required by Applicable Law, or which the Authority may deem advisable.

Section 4.6 Annual Report. The Authority will provide to each Member Jurisdiction on or before each October 1 a report showing the activities of the Authority and its revenues, expenditures, and employee compensation schedules and other similar data for the preceding Fiscal Year.

Section 4.7 Annual Budget. The Authority will provide to each Member Jurisdiction on or before dates in the fiscal year specified by the Member Jurisdictions the Authority's preliminary Annual Budget for the next Fiscal Year and its final Annual Budget for the next Fiscal Year. For each Fiscal Year in which the Jail will be in operation, such Annual Budget shall set forth the per diem charge for each Prisoner committed to the Authority by the Member Jurisdictions, and the Additional Payment for Debt Service to be made by each Member Jurisdiction, as well as the projected number of Prisoners from each Member Jurisdiction, all for the next fiscal year. The Authority agrees to set, and revise at least quarterly if necessary, per diem charges and Additional Payments for Debt Service that are sufficient to generate revenue adequate to pay Net Operating Expenses and Net Debt Service, and to fund any required reserves. Within ten days of any such revision the Authority shall notify each member Jurisdiction of the revised charges and payments required. Any such revision will be based on factors affecting the Jail's revenues or expenditures, including but not limited to changes in assumed or actual occupancy levels, operating expenses, State operating or capital cost reimbursement, and any nonpayment by any Member Jurisdiction or other jurisdiction housing prisoners at the Jail. The Authority will promptly provide copies of any amendments to its Annual Budget to each Member Jurisdiction.

Section 4.8 Books and Records. The Authority will maintain proper books of record and account in which property entries shall be made in accordance with general accepted accounting principles for governmental bodies, consistently applied, of all of its business and affairs related to the Jail. As long as the County of Albemarle or some other governmental entity continues to serve as the fiscal agent for the Authority, however, as provided in Section 2.5, the Authority shall be obligated to maintain only those financial records prescribed by the chief financial officer of such fiscal agent, with the fiscal agent maintaining the remaining

necessary records. All books of record and account 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. If and when the Authority assumes full responsibility for its own fiscal management, it shall have an annual audit conducted by an independent outside auditor, with copies being provided to the Member Jurisdictions.

Section 4.9 Majority Required for Authority Decisions. A majority of the members of the Board shall constitute a quorum for the transaction of its business. An affirmative vote of a majority of the full membership of the Board shall be required to adopt the Annual Budget, to amend the per diem charges as set forth in Section 4.7, or to approve the creation of any Obligation or any other contract obligating the Authority for longer than one year. All other decisions of the Board may be made by affirmative vote of a majority of the members present and voting.

ARTICLE V **Payments**

Section 5.1 Payment from Member Jurisdictions.

(a) **Per Diem Prisoner Payments.**

(1) In preparing its Annual Budget, the Authority shall establish a per diem charge for the care, maintenance and subsistence of Prisoners from Member Jurisdictions during the next Fiscal Year. This per diem charge shall consist of two components, including an Operating Component, and a prisoner-based Debt Service Component. The Operating Component shall be calculated to produce revenues that equal the Authority's projected Net Operating Expenses for such Fiscal Year and the Debt Service Component shall be calculated to produce revenues equal to the portion of the Authority's Net Debt Service for such Fiscal Year includable in such per diem charge under the provisions of subsection (c) of this section. Such per diem charge will be adjusted by the Authority periodically as provided in Section 4.7.

(2) The Operating Component shall be invoiced by the Authority to the Member Jurisdictions not later than the 15th day of the month following the month in which the service was provided. The Member Jurisdictions shall pay the amount invoiced not later than the last day of the month in which billed.

(3) The Debt Service Component shall be invoiced quarterly by the Authority and shall be payable no later than the last day of the first month of each quarter beginning in July 1999 (or such earlier or later date as to which debt service on the Authority's Bonds and Notes has been capitalized). To facilitate the successful financing of the Jail, the Member Jurisdictions agree to advance their ratable shares of the Debt Service

Component as budgeted by the Authority in accordance with the percentages established annually as set forth in this Section, notwithstanding the actual number of Prisoners committed or expected to be committed to the Jail, subject to later adjustment to reflect actual use of the Jail as provided in paragraph (a)(3.1) of this section.

(3.1) The Debt Service Component percentages shall be adjusted each Fiscal Year to approximate the actual proportionate use of the Jail by the Member Jurisdictions as of the end of the immediately preceding calendar year; provided, however, the percentages to be paid by Albemarle County and the City of Charlottesville shall at no time equal in the aggregate less than one hundred percent (100%) of the Debt Service Component payment for the Fiscal Year in question, and provided further that the advance payment of the Debt Service component requested from Albemarle and Charlottesville for each quarter shall reflect a credit (applied in proportion to their respective usages) for the amounts actually received from other Member Jurisdictions, if any, during the preceding quarter.

(4) If not paid when due, the Per Diem Charge and Additional Payments for Debt Service provided in subsection (b) below shall bear interest at the rate established under Section 11-62.10 of the Code of Virginia until paid; provided, however, that this provision shall not apply in instances where applicable law prescribes some other due date or late payment charge.

(5) Within sixty (60) days of the end of the each Fiscal Year, the Authority shall adjust the Debt Service Component for each member Jurisdiction to reflect the amount each Member should have paid during such year based upon actual proportionate use of the Jail and compare it to the amount paid by each Member. Any Member Jurisdiction that has underpaid shall be billed by the Authority for the amount of the shortfall. Any Member Jurisdiction that has overpaid shall be entitled to a credit in the amount of such overpayment to be applied against the next Debt Service component payment due from such Member; provided, however, no Member shall be entitled to a full credit until such time as the Authority has receive payment of all underpaid amounts. In the event the Authority receives a portion but not all of the payments due for underpaid bills, the Authority shall apply the amount received ratably as a partial credit to Members that overpaid.

b. Additional Payment for Debt Service.

In addition to the Per Diem Charges for their respective prisoners, Albemarle and Charlottesville each shall pay, in equal shares, an amount sufficient in the aggregate to fund 100% of that portion of the Authority's Net Debt Service not being included in the Authority's Per Diem Charge as provided in subsection (c) of this section. Any other Member Jurisdiction shall likewise pay a percentage of such portion of Net Debt Service not included in the Per Diem Charge, with such percentage being established at the time the additional Member Jurisdiction joins the Authority. These Additional Payments for Debt Service shall be paid by

the Member Jurisdictions quarterly on the same schedule as the Debt Service Component of the Per Diem Charge becomes due, provided that the Additional Payment for Debt Service requested from Albemarle and Charlottesville for each quarter shall reflect a credit (applied in equal shares) for the amounts of such Additional Payments for Debt Service actually received from other Member Jurisdictions, if any, during the preceding quarter.

(c) Method for Allocating Debt Service Costs.

The Authority's Net Debt Service costs shall be allocated between the Debt Service Component of the per diem rate charged to the Member Jurisdictions and the Additional Payments for Debt Service in the following manner:

(1) Upon the awarding of a contract or contracts for construction of any addition or improvements to the Jail or replacement for the Jail, the chief administrative officers of the Member Jurisdictions shall determine the relative proportions of the total projected Capital Expenses for such project that are attributable respectively to (i) the construction or improvement of cells or other prisoner housing areas and (ii) the construction or improvement of administrative, program and support areas. The relative proportions of Capital Expenses for these two categories shall be expressed as percentages. In the event the chief administrative officers are unable to agree on this allocation, the dispute shall be resolved by majority vote of all members of the Authority, whose determination shall be binding.

(2) Collection of the Authority's Net Debt Service for the project shall then be accomplished through the Debt Service Component of the Per Diem Charge and the Additional Payment for Debt Service in the same proportions, so that the Net Debt Service attributable to cells or prisoner housing space is collected through the Per Diem Charge, and the Net Debt Service for other parts of the project is collected from the Member Jurisdictions in equal shares. For example, if 65% of the total Capital Expense is determined to be attributable to the cells and prisoner housing areas, then the Per Diem Charge for Member Jurisdictions shall be calculated to include 65% of the annual Net Debt Service, with the remaining 35% of the Net Debt Service being collected equally from the Member Jurisdictions through the Additional Charges for Debt Service.

(d) Payment for Costs of Discontinued Capital Project.

If for any reason any capital project previously approved by the Member Jurisdictions is not constructed, the Member Jurisdictions shall reimburse the Authority, in shares determined as provided in paragraph (b) of this section, for any Capital Expenses the Authority has already incurred in connection with such discontinued project; provided, however, that the payment required by any Member Jurisdiction under this subsection will be subject to the appropriation of funds for such purpose of the governing body of the Member Jurisdiction.

(e) **Additional Payments to Cover Debt Service Shortfalls.**

After the issuance of the Bonds, if the Authority lacks sufficient funds to pay scheduled debt service on the Notes, the Authority will promptly notify the Member Jurisdictions of the amount of such insufficiency. Upon such notification, the Member Jurisdictions each agree to pay, subject to the conditions contained in this paragraph, a portion of such deficit equal to its Debt Service Component percentage then in effect pursuant to Section 5.1(a)(3). Any such payment under this paragraph will be subject to the appropriation of funds by the governing body of each Member Jurisdiction and shall constitute a moral, non-binding payment obligation. The obligations of the Members under this paragraph shall expire only upon the payment of the Notes. In no event shall the obligation of any Member Jurisdiction under this paragraph (e) or the immediately preceding paragraph (d) be deemed to constitute a debt within the meaning of the Constitution of Virginia.

Section 5.2 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 from the state, federal government, and other states or localities; 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 5.1 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 30 days after receipt of the Authority's periodic billing for such charges and if not paid when due shall bear interest at such rate as the Authority shall establish until paid; provided, however, that this provision shall not apply in instances where applicable law prescribes some other due date or late payment charge.

Section 5.3 Operating Reserve Fund. The Authority agrees to provide for an Operating Reserve Fund in each of its Annual Budgets in an amount equal to not less than 90 days of its projected Annual Budget for each year, less debt service. The Operating Reserve Fund will be established as a separate account and will be used to cover periods of revenue shortfall when the Authority's revenues are not sufficient to cover its Operating Expenses or Debt Service.

Section 5.4 Commonwealth Reimbursement Grants. Any funds that the Authority receives from the Commonwealth of Virginia as reimbursement for Debt Service or other Capital Expenses incurred by the Authority for constructing additions or improvements to the Jail or any replacement Jail will be applied as required by the terms of the Indenture for any Obligations issued to fund such projects.

Section 5.5 Limitation of Liability. The only obligations of the Member Jurisdictions to pay for the establishment, operation or maintenance of the Jail arise out of this Agreement. No such payment responsibility shall constitute a debt of any Member Jurisdiction within the meaning of any constitutional or statutory limitation.

ARTICLE VI
Additional Agreements

Section 6.1 Sale or Other Conveyance. The Authority will not sell, lease, sublease, assign, convey or otherwise voluntarily dispose of the Jail unless all Notes, Bonds, and other Obligations incurred by the Authority have been or will be paid or deemed defeased in accordance with the agreements under which they were issued.

Section 6.2 Further Documents and Data. The parties to this Agreement will execute and deliver all documents and perform all further acts that may be reasonably necessary to perform the obligations and consummate the transactions contemplated by this Agreement.

Section 6.3 Right to Access. Each Member Jurisdiction will have reasonable access to the Jail and its records in order to monitor the Authority's compliance with the terms of this Agreement.

Section 6.4 Confidentiality. The Authority will maintain all records and files on the Prisoners on a confidential basis in accordance with all Applicable Laws. Each Member Jurisdiction will maintain the confidential nature of all records and files relating to the Prisoners of other Member Jurisdictions in accordance with all Applicable Laws.

Section 6.5 Notification. The Authority will promptly furnish to each Member Jurisdiction a copy of any notice or order of any governmental authority asserting that the Authority or the Jail is not in compliance in any material respect with any Applicable Law.

Section 6.6 Tax-Exemption Covenant.

(a) The Authority intends to issue its 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.

(b) Pursuant to Section 15c2-12(b) of regulations issued by the Securities and Exchange Commission, the Authority and the Member Jurisdictions will be required to agree with the owners of the Bonds, for as long as the bonds 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 Bonds. The particulars of this ongoing disclosure requirement will be set forth in the Indenture and in a continuing disclosure agreement for the Bonds. Each Member Jurisdiction agrees to execute and deliver a continuing disclosure agreement and to cooperate with the

Authority in fulfilling this requirement, including providing the Authority with timely notice of the occurrence of any of the specified events which are material to its operations.

Section 6.7 Additional Members. Any city, county or town in Virginia may, with the approval of its governing body and with the consent of all of the Member Jurisdictions, join and participate in the Authority under such additional terms and conditions for membership as may be prescribed by the Member Jurisdictions.

Section 6.8 Withdrawal of Membership. Any Member Jurisdiction may withdraw from membership in the Authority by resolution or ordinance of its governing body; however, no Member Jurisdiction shall be permitted to withdraw from the Authority as long as any Obligations of the Authority are outstanding except by unanimous vote of all Member Jurisdictions. No Member Jurisdiction withdrawing without unanimous consent of the other Member Jurisdiction(s) shall be entitled to any reimbursement for its equity in the Jail.

Section 6.9 Change in Independent Status of City. The parties acknowledge that the obligations of the City of Charlottesville under this Agreement presume Charlottesville's continued existence as an independent city. If Charlottesville ceases to be an independent city and becomes a town or other governmental unit that is part of Albemarle County, Charlottesville's obligations under this agreement shall be subject to modification in one of three (3) ways: (a) as prescribed by then-applicable state statutes for such towns or the governmental unit; or (b) as ordered by a court of competent jurisdiction; or (c) as determined by agreement of the parties.

ARTICLE VII

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 7.1 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 and delivered this Agreement.

Section 7.2 Authority. The Authority has all requisite authority under the Act to execute and deliver and perform its obligations under this Agreement and is not a party of 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 7.3 Non-Contravention. The execution and delivery of this Agreement by the Authority and the consummation of the transactions contemplated in it will not conflict with or result in a breach of or constitute a default under or violate any of the terms, conditions or

provisions of the Act, 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 7.4 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 7.5 Approvals. Except for approvals that may be expressly required by this Agreement, or by the Virginia Board of Corrections, the Authority does not require the consent or approval of any governmental body to carry out the terms of this Agreement.

ARTICLE VIII
Representations, Warranties and Covenants
of Member Jurisdictions

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

Section 8.1 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 8.2 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 8.3 Non-Contravention. The execution and delivery of this Agreement by each Member Jurisdiction and the consummation of the transactions contemplated in it will not conflict with or result in a breach of or constitute a default under or violate any of the terms, conditions or provisions of any charter, resolution or ordinance, any material indenture, contract or agreement or arrangement to which it is a party or by which any of its properties are bound, or any Applicable Law by which it is bound.

Section 8.4 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 IX
Defaults and Remedies

Section 9.1 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").

- (a) failure of the Authority to pay principal of or interest when due on any Notes, Bonds or other temporary or permanent financing for the Jail issued or obtained by the Authority pursuant to this Agreement;
- (b) if the Authority is for any reason rendered incapable of performing any of its material obligations under this Agreement;
- (c) 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;
- (d) 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;
- (e) 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 bonds of the Authority; or
- (f) 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 9.2 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").

- (a) failure of any Member Jurisdiction to make payments of per diem Prisoner charges when due;

(b) if any Member Jurisdiction shall for any reason be rendered incapable of fulfilling its obligations under this Agreement; or

(c) if 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

(d) if 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 9.3 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 the Act and this Agreement or to enjoin any acts in violation of the Act or this Agreement.

Section 9.4 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 the Act and this Agreement or to enjoin any acts in violation of the Act or this Agreement.

Section 9.5 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 X **Miscellaneous**

Section 10.1 Severability of Invalid Provisions. If any clause, provision or section of this Agreement is held to be illegal or invalid by any court, the invalidity of the clause, provision or section will not affect any of the remaining clauses, provisions or sections, and this Agreement will be construed and enforced as if the illegal or invalid clause, provision or

section has not been contained in it.

Section 10.2 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 first class United States mail to the following persons and addresses or to such other persons and addresses as any of such persons may from time to time specify in writing.

If to the Authority:

Chairman
Albemarle-Charlottesville Regional Jail Authority
1600 Avon Street Extended
Charlottesville, VA 22901

If to Albemarle County:

County Executive
Albemarle County Office Building
401 McIntire Road
Charlottesville, VA 22902-4596

If to City of Charlottesville:

City Manager
P.O. Box 911
Charlottesville, VA 22902

If to Nelson County:

County Administrator
P.O. Box 336
Lovington, VA 22949

Section 10.3 Execution of Agreement. A sufficient number of copies for each party approving this Agreement, each of which shall be deemed to be an original having identical legal effect, shall be executed by the parties, this being copy number 3.

Section 10.4 Governing Law. This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the Commonwealth of Virginia.

Section. 10.5 Amendments. This Agreement may be changed or amended only with

the consent of the Authority and each Member Jurisdiction. No such change or amendment may be made which will affect adversely the prompt payment when due of all monies 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 10.6 Effective Date of Agreement. As to the creation of the Authority, this Agreement will be effective from the date of its approval by each of the Member Jurisdictions. As to all other matters, it shall be effective upon subsequent approval by the Board of the Authority. The financial provisions of this Agreement shall be implemented on a schedule agreed upon by the chief financial officers of the Member Jurisdictions, but in no event later than July 1, 1996.

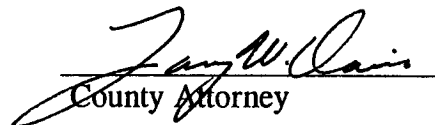
Section 10.7 Waiver. Any waiver by any party of its rights under this Agreement must be in writing, and will not be deemed a waiver with respect to any matter not specifically covered. Nothing in this Agreement authorizes the waiver of any Member Jurisdiction's obligation to make payments when due of all 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 by their duly authorized officers on the dates indicated.

COUNTY OF ALBEMARLE

APPROVED AS TO FORM:

By 
County Executive

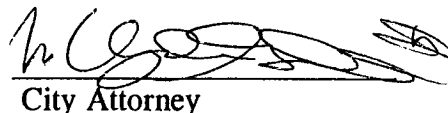

County Attorney

Original Approval Date: November 1, 1995
Amendments Approved: February 12, 1998
Nelson Amendments Approved: November 4, 1998

CITY OF CHARLOTTESVILLE

APPROVED AS TO FORM:

By 
City Manager


City Attorney

Original Approval Date: November 6, 1995

Amendments Approved: March 2, 1998
Nelson Amendments Approved: October 19, 1998

COUNTY OF NELSON

APPROVED AS TO FORM:

By Stephen A. Post Margaret D. Nonner
County Administrator County Attorney

Approved as Amended to Include Nelson County: October 13, 1998

**ALBEMARLE-CHARLOTTESVILLE REGIONAL
JAIL AUTHORITY**

By Michael E. Sumner

Original Approval Date: November 15, 1995
Amendments Approved: March 12, 1998
Nelson Amendments Approved: NOVEMBER 12, 1998

**A RESOLUTION
TO AMEND SECTION 5.3 OF THE SERVICE AGREEMENT FOR
THE ALBEMARLE-CHARLOTTESVILLE REGIONAL JAIL**

WHEREAS, the City of Charlottesville and the Counties of Albemarle and Nelson (the "Member Jurisdictions") have previously established the Albemarle-Charlottesville Regional Jail Authority, and adopted an agreement (the "Service Agreement") that established their respective rights and obligations regarding the financing, construction and operation of the regional jail serving their jurisdictions; and

WHEREAS, since its initial adoption, Section 5.3 of the Service Agreement has included a provision, intended to provide assurance to the bank that provided the financing for construction of the jail, that the Jail Authority would maintain an Operating Reserve Fund equal to 90 days, or twenty-five percent, of its annual operating budget; and

WHEREAS, over the ensuing decade, the amount in the Operating Reserve Fund has increased, and the unpaid balance of the Jail Authority's indebtedness has decreased; and

WHEREAS, SunTrust Bank, the holder of the current revenue note representing that outstanding indebtedness, has advised the Jail Authority that the note does not require the maintenance of the Operating Reserve Fund, and that SunTrust does not object to a reduction of the balance in the Operating Reserve Fund; and

WHEREAS, the Jail Authority has determined that certain major security system components in the jail have reached the end of their useful life, and need to be replaced; and

WHEREAS, the Jail Authority and the Member Jurisdictions have determined that the most prudent and cost-effective way to pay for the security system replacement is to withdraw the required amount, not to exceed \$850,000.00, from the Operating Reserve Fund; and

WHEREAS, the Jail Authority and the Member Jurisdictions wish to amend the Service Agreement to allow that withdrawal, thereby reducing the Operating Reserve Fund to twenty percent of the current Annual Budget, and to provide a method for approval of future withdrawals; now therefore, be it

Resolved by the Boards of Supervisors of Albemarle, and Nelson Counties and the Council of the City of Charlottesville, with the concurrence of the Albemarle-Charlottesville Regional Jail Authority, that

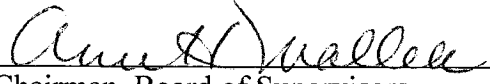
1. Section 5.3 of the Service Agreement is amended and readopted as follows:

Section 5.3 Operating Reserve Fund. The Authority agrees to provide for an Operating Reserve Fund in each of its Annual Budgets in an amount equal to not less than ~~90 days~~ twenty percent of its projected Annual Budget for each year, less debt service. The Operating Reserve Fund will be established as a separate account and will be used to cover periods of revenue shortfall when the Authority's revenues are not sufficient to cover its Operating Expenses or Debt Service, or in such other instances as may be approved by the Authority and concurred in by the chief administrative officers of all member jurisdictions. If such withdrawals reduce the Operating Reserve Fund below twenty percent of the Annual Budget, the Authority shall adopt a plan to restore it to that level over a period not to exceed three fiscal years.

2. The chief administrative officers of the Member Jurisdictions and the Jail Authority are authorized to sign a conformed copy of the Service Agreement incorporating this amendment.

IN WITNESS WHEREOF, the governing bodies of the Counties of Albemarle and Nelson, and the City of Charlottesville have authorized and caused this Resolution to be approved and their respective seals to be affixed hereto and attested by their respective clerks.

COUNTY OF ALBEMARLE, VIRGINIA


Chairman, Board of Supervisors

1-4-11
Date

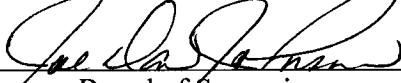
ATTEST:


Clerk to the Board

APPROVED AS TO FORM:


County Attorney

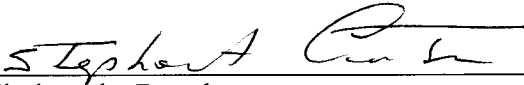
COUNTY OF NELSON, VIRGINIA



Chairman, Board of Supervisors

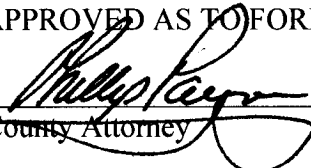
January 25, 2011
Date

ATTEST:



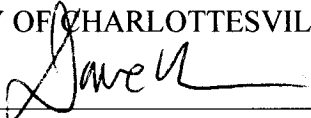
Clerk to the Board

APPROVED AS TO FORM:



County Attorney

CITY OF CHARLOTTESVILLE, VIRGINIA



Mayor

1-6-2011
Date

ATTEST:



Clerk to the Council

APPROVED AS TO FORM:



City Attorney