



FLUVANNA COUNTY BOARD OF SUPERVISORS
REGULAR MEETING AGENDA

Circuit Courtroom, Fluvanna Courts Building
Reconvene from December 04, 2013, 6:00 pm

TAB AGENDA ITEMS

1 - UNFINISHED BUSINESS

Aqua Virginia Proposal – Fred Payne, County Attorney

2 - CLOSED MEETING

TBD

3 – ADJOURN

County Administrator Review

PLEDGE OF ALLEGIANCE

I pledge allegiance to the flag
of the United States of America
and to the Republic for which it stands,
one nation, under God, indivisible,
with liberty and justice for all.

ORDER

1. It shall be the duty of the Chairman to maintain order and decorum at meetings. The Chairman shall speak to points of order in preference to all other members.
2. In maintaining decorum and propriety of conduct, the Chairman shall not be challenged and no debate shall be allowed until after the Chairman declares that order has been restored. In the event the Board wishes to debate the matter of the disorder or the bringing of order; the regular business may be suspended by vote of the Board to discuss the matter.
3. No member or citizen shall be allowed to use abusive language, excessive noise, or in any way incite persons to use such tactics. The Chairman and/or the County Administrator shall be the judge of such breaches, however, the Board may vote to overrule both.
4. When a person engages in such breaches, the Chairman shall order the person's removal from the building, or may order the person to stand silent, or may, if necessary, order the person removed from the County property.

PUBLIC HEARING RULES OF PROCEDURE

1. PURPOSE
 - The purpose of a public hearing is to receive testimony from the public on certain resolutions, ordinances or amendments prior to taking action.
 - A hearing is not a dialogue or debate. Its express purpose is to receive additional facts, comments and opinion on subject items.
2. SPEAKERS
 - Speakers should approach the lectern so they may be visible and audible to the Board.
 - Each speaker should clearly state his/her name and address.
 - All comments should be directed to the Board.
 - All questions should be directed to the Chairman. Members of the Board are not expected to respond to questions, and response to questions shall be made at the Chairman's discretion.
 - Speakers are encouraged to contact staff regarding unresolved concerns or to receive additional information.
 - Speakers with questions are encouraged to call County staff prior to the public hearing.
 - Speakers should be brief and avoid repetition of previously presented comments.
3. ACTION
 - At the conclusion of the public hearing on each item, the Chairman will close the public hearing.
 - The Board will proceed with its deliberation and will act on or formally postpone action on such item prior to proceeding to other agenda items.
 - Further public comment after the public hearing has been closed generally will not be permitted.

**WATER PIPELINE CONSTRUCTION, OPERATION
AND MAINTENANCE AGREEMENT**

**With County Attorney Changes from 9-27-2013
and BOS Changes from 11-20-2013**

CLEAN VERSION

**SEWER PIPELINE CONSTRUCTION, OPERATION
AND MAINTENANCE AGREEMENT**

This SEWER PIPELINE CONSTRUCTION, OPERATION AND MAINTENANCE AGREEMENT (the “Agreement”) is being executed and delivered as of the ____ day of _____ 2013, between the County of Fluvanna, a political subdivision of the Commonwealth of Virginia, (the “County”), and Old Dominion Pipeline Company, LLC a limited liability company organized under the laws of the Commonwealth of Pennsylvania (“ODPC”).

A. Pursuant to Virginia Code §56-575.4(A) of the Public-Private Educational Facilities Infrastructure Act (the “PPEA”), Aqua Virginia, Inc. (“Aqua”) presented the County with a proposal to provide water service (the “Proposal”).

B. By action of the Board of Supervisors of the County taken on July 3, 2012, the County accepted the Proposal presented by Aqua.

C. On September 19, 2012, the Board of Supervisors voted unanimously to move forward with the negotiation of an interim or comprehensive agreement with Aqua to provide the services and matters as set forth in the Proposal.

D. The Proposal and the County’s acceptance thereof anticipated the negotiation of an agreement between Aqua and the County, as well as supporting agreements between the County and Aqua’s affiliates.

E. ODPC is an affiliate of Aqua for purposes of the Proposal that was accepted by the County.

F. In furtherance of the Proposal, the County is retaining the ODPC to construct a force main pipeline for the collection of untreated sewage that will extend approximately 2.8 miles from a point near the intersections of Route 15 and Route 250 to a connection point at an existing wastewater treatment plant (“Point of Discharge”) located at the Fluvanna Correctional Center for Women owned by the Virginia State Department of Corrections (as more particularly defined below, the “Sewer Line”). Construction of the Sewer Line shall include the necessary physical connection at the existing wastewater treatment plant. In connection with its construction of the Sewer Line, the ODPC shall construct and install all necessary pipe, appurtenances and other infrastructure reasonably required to transport sewage collected from County’s Collection System, along the Sewer Line, to the wastewater treatment plant.

G. ODPC will own the facilities it constructs pursuant to this Agreement and will be responsible for the facilities’ design, permitting, construction, operation and maintenance and for financing of all of the foregoing. If tax exempt financing is requested by ODPC in a conduit borrowing through the County's industrial or economic development authority, the County agrees to assist and reasonably cooperate with such financing. Expansions of the ODPC facilities, except as specified herein, shall be owned by County and each person connected to the Collection System shall be a customer of the County. ODPC shall not be responsible to construct, maintain or repair expansions to the Collection System. The Collection System shall

initially consist of a pipeline and metering apparatus that will be used to collect and transport raw sewage to the Point of Discharge.

H. Concurrently with the execution of this Agreement, the County is entering into an agreement (the “Bulk Water Agreement”), whereby Aqua will supply water to County as provided in the Proposal.

NOW THEREFORE, in consideration of the mutual covenants set forth in this Agreement, the parties, intending to be legally bound hereby, agree as follows:

DEFINITIONS

For the purposes of this Agreement, the following words and phrases shall have the following meanings, regardless of whether the spelling is capitalized:

“Agreement” shall mean this Agreement.

“Appropriation” or “Appropriated” shall include the act of approving and setting aside for payment of funds, and the actual payment thereof, to ODPC for the purposes provided in this Agreement.

“Contribute” means to convey without charge or reimbursement and free and clear of any and all liens or encumbrances.

“Cost” or “Entire Cost” shall be deemed to include all planning, development, studies, construction costs, engineering fees, attorneys’ fees, testing expenses, publication costs, financing costs, and miscellaneous costs.

“County’s Collection System” or “Collection System” means the County’s collection system described in the preambles of this Agreement.

“Effective Date” means the date specified in the first paragraph of the first page of this Agreement or, if the parties have not placed a date in such paragraph, the date on which this Agreement is fully executed by both parties.

“Facilities” means the sewer pipeline project and all appurtenant equipment, which shall be owned and operated by ODPC as referenced in Section 2.02 herein.

“Net Book Value” shall be defined as described and calculated pursuant to Exhibit A;

“Point of Discharge” means the meter vault connection to the receiving Waste Water Treatment Plant (“WWTP”).

“Price Index” means the “Consumer Price Index—U.S. City Average for All items for All Urban Consumers (1982-84=100)” (the CPI_U) published monthly in the “Monthly Labor Review” or other publication by the Bureau of Labor Statistics, United States Department of Labor (the Labor Bureau).

“Regulatory Agency” means any unit of governmental authority, whether federal, state, local or other, having jurisdiction concerning water standards, other environmental matters, real estate, zoning, building or otherwise having jurisdiction over the System or any construction contemplated hereunder.

“Regulatory Requirements” mean any and all of the following issued, adopted or required from time to time by any Regulatory Agency: (i) the requirements or provisions of any and all state, federal and local laws, regulations, rules, orders, and ordinances; (ii) permits; and (iii)

Certificate(s) of Public Convenience and Necessity (“CPCN”) or grants of authority to sell utility services.

“SCC” means the State Corporation Commission of the Commonwealth of Virginia.

“Services” mean sewer services provided to the County by ODPC.

“Sewer Project” means the complete sewer pipeline project, including but not limited to the Facilities, to be designed, bid out, and constructed including all engineering, permit fees, easements, right of ways, and associated costs.

“Sewer System” or “System” means the entire sewer system including the Facility’s along with all the subsequent expansions thereof which will be the County’s regulated sewer collection system terminating at the Point of Discharge.

"Utility Agreements" mean the Water Pipeline Construction, Operation and Maintenance Agreement between the County and ODPC, the Sewer Pipeline Construction, Operation and Maintenance Agreement, between the County and ODPC, the Bulk Water Agreement between the County and Aqua, the Water Services Agreement between the County and Aqua, and the Sewer Services Agreement between the County and Aqua.

SECTION 1. EMPLOYMENT OF ODPC; TERM.

1.01. Employment. The County hereby contracts with ODPC to perform the Services (defined below) for the compensation herein stated, and ODPC hereby agrees to perform all such services in accordance with the terms of this Agreement.

1.02. Initial Term. The initial term of this Agreement shall commence on the Effective Date hereof and shall continue for twenty (20) years from the end of the calendar month during which construction is completed as provided at Section 5.02 hereof.

1.03. End of Initial Term. At a minimum of twenty four (24) months prior to the expiration of this Agreement, County must serve written notice by certified mail to ODPC of its intention to either:

(a) renew and/or amend the Agreement for an additional negotiated period; or

(b) purchase the Facilities; or

(c) terminate this Agreement, the County will cease its operation of the System and transfer all of its right, title and interest in, to and under the System to ODPC or its designee, along with all appurtenances thereunto pertaining, including, but not limited to, all easements, licenses, lands, permits, and present and future customer billing collection rights and exclusive service rights for the System.

In the event the Agreement is renewed for an additional 20 year term ODPC’s Fees under Section 8 shall be based upon the remaining un-depreciated value of the Facilities over the renewal term, and the costs of any capital expenditures.

Should the County elect to purchase the Facilities, it shall do so for the remaining net plant value in accordance with the methodology specified in **Exhibit “A”**, and pay the specified sum by wire transfer upon the day of expiration of the Initial Term of this Agreement. If the day of expiration is a weekend, then the date shall be a business day during the preceding week.

Transfer of the Facilities shall be by agreement containing terms and conditions customary for similar transactions, including any regulatory approval required as of the date of transfer.

1.04 Purchase of Facilities Prior to Expiration of Initial Term. County may purchase the Facilities at any time prior to the expiration of the Initial Term by payment of a Purchase Price equal to 150% of the Net Plant Value. Any Deposit and Escrow, along with applicable interest, will be applied as a credit to County toward the Purchase Price. Under such circumstances the Bulk Water Agreement with Aqua shall remain in effect, but subject to the terms and conditions of default contained herein.

SECTION 2. SERVICES TO BE PROVIDED BY ODPC. ODPC shall be responsible for providing the following services to County on the terms and conditions of this Agreement (the "Services"):

2.01 Sewer Line. ODPC shall construct a force main pipeline for the collection and transport of untreated sewage that will extend approximately 2.8 miles from a point near the intersections of Route 15 and Route 250 to a discharge point at the existing wastewater treatment plant located at the Fluvanna Correctional Center for Women owned by the Virginia State Department of Corrections (the "WWTP"), or the sewage collection system associated with the WWTP, and as more particularly shown on **Exhibit "B"** attached to this Agreement (the "Sewer Line"). The physical connection to the WWTP shall be designed and constructed as required by and agreed to by the owner of the WWTP. The actual location and means of constructing the physical connection to the WWTP, the size, capacity, and locations of the point of delivery meter, force mains, other appurtenances and infrastructure shall be as specified in the Final Approved Plans and Specifications ("Approved Plans and Specifications") for this project, or as they may be modified after the initial project is completed as provided for in this Agreement.

The Sewer Line shall be designed to convey an average daily flow of at least 150,000 gallons of sewage per day.

2.02 Ancillary Facilities. In connection with ODPC's construction of the Sewer Line, ODPC shall construct and install:

- (a) A flow meter at the Point of Discharge from the Sewer Line to the WWTP. The Sewer Line shall consist of a single collection trunk line connecting to the flow meter. Any pump stations required to transport sewage after it enters the Sewer Line.

The Sewer Line, the flow meter and the pump stations used to transport sewage through the Sewer Line shall be referred to collectively herein as the "Facilities."

2.03 Expansion of Facilities. In the event the Sewer Line is extended by the County or any third party beyond that shown on Exhibit B, the new infrastructure constructed for such an extension shall be considered part of the Collection System and shall be contributed to and owned by County prior to operation of the extension line. No such extension shall be permitted until plans and specifications for the extension are submitted to and approved by ODPC for a

determination that any such expansion will not adversely impact or require improvements to the Facilities.

2.04. Ownership, Operation & Maintenance. ODPC shall retain ownership of the Facilities and shall be responsible for operating and maintaining the same.

2.05. Financing of the Services. Subject to Section 3.05 below, ODPC shall be responsible for financing the cost of the design, regulatory approvals and construction of the Facilities.

2.06 Easements and Rights of Way. After development of the Plans and the final alignment of the Sewer Line as provided in Section 3.03 and 3.04, County shall obtain such permanent and temporary easements and/or fee simple title to land as are needed to construct the Facilities and operate the System for not less than forty (40) years and shall pay for such costs. ODPC will reimburse County for the expenditures County pays to property owners to obtain such easements and/or land as well as costs for utilizing a realtor to value and negotiate easement agreements, provided that such costs shall have first been reviewed and approved by ODPC in its reasonable judgment. All costs that are reimbursed to County will be included in the Final Costs for the Facilities. All easements shall be granted to County or its assigns and shall include a provision that County's licensees shall have access within the easement. County hereby acknowledges that ODPC shall have an exclusive license to use such easements and rights of way for utility services, and all shall have rights to access portions of the Facilities that are within the easements and that ODPC shall retain those rights until such time as County may purchase the Facilities or convey its ownership rights to ODPC. The County agrees to grant, assign and transfer to ODPC an exclusive license to use all permits, easements, lands or licenses reasonably required or appropriate for the operation, maintenance and use of the System and to provide such instruments or agreements as reasonably necessary to evidence such rights, including, but not limited to those as may be acquired pursuant to Section 2.07.

2.07. Eminent Domain - County acknowledges that the Facilities serve a critical public purpose. Accordingly, County agrees to take a dominant role in acquiring easements for the Facilities through the exercise of its powers of condemnation and eminent domain should ODPC be unable to acquire any easement required for the Facilities. In the event the County must exercise its powers of eminent domain in order to acquire easements and/or land for the Facilities, the County shall do so at its own cost and expense subject to being reimbursed by ODPC; provided, however, the County shall consult with ODPC regarding such costs and expense as may be incurred in connection with the exercise of the County's eminent domain power for ODPC's approval in its reasonable judgment prior to expending or committing to any such cost and expense. ODPC and County acknowledge that the Final Alignment for the Facilities shall be placed to minimize the acquisition of any easements to the extent reasonable, but while also maintaining the hydraulic integrity by avoiding unnecessary bends or configurations that inhibit flow of sewage and materially increase costs.

SECTION 3. DESIGN.

3.01. Commencement and Scope of Design Engineering Activities. ODPC will complete, or cause an engineering firm to complete, preliminary design plans and specifications for the Facilities within approximately 180 days after the Effective Date of this Agreement (the "Proposed Plans and Design Specifications"). ODPC shall consult with County regarding ODPC's selection of the engineering firm, and County shall have the right to accept or reject ODPC's choice. Rejection shall not be unreasonable.

3.02 Assistance - The County shall assist ODPC by participating in the development of plans for the Facilities. In this regard, County shall review engineering plans, permit applications, and other documents developed by ODPC. ODPC shall request County's review and approval on all critical design elements of the Facilities, including the alignment of ODPC Pipeline and any bids for services or supplies. Such assistance shall be provided at no cost to ODPC. The County shall provide prompt reviews and not unreasonably withhold or delay approvals.

3.03 Final Alignment – The Final Alignment of ODPC Pipeline is the final determination of the Parties regarding the exact placement of ODPC Pipeline from the Point of Delivery at the County's Collection System to the Point of Discharge to the WWTP ("Final Alignment"). The Final Alignment shall be mutually agreed upon by ODPC and County and both Parties shall sign the final engineering plans and specifications approved by the Virginia Department of Environmental Quality. In the event a Final Alignment is not agreed upon within thirty (30) months of the Effective Date of this Agreement, this Agreement may be terminated at the sole discretion of ODPC and shall have no further effect. Upon such termination, any and all Deposits made by County shall be refunded to it without reduction, and the parties have no further liability one to the other.

3.04 Final Plans and Specifications – The Approved Plans for the Facilities, which shall be prepared after the Final Alignment is determined, will be approved by both County and ODPC and then bid for construction by ODPC. The Facilities, including all design, permitting and other pre-construction and soft costs, are currently estimated to cost \$900,000.00 (hereinafter, the "Estimated Cost"), which is based on a good faith estimate of known costs verified by ODPC's engineer and contractors. The Parties acknowledge the final costs for the Facilities cannot be determined until all project bids have been received from contractors, the costs for acquiring easements have been confirmed and all permits costs have been determined by permitting authorities. The total sum of all such costs including ODPC's costs to manage the project shall then constitute the Projected Cost. Final Costs for the Facilities shall be determined when construction has been completed and waste water first passes through a Point of Collection into the Sewer Line.

3.05 Proceeding to Construction—If the Projected Cost does not exceed the Estimated Cost by more than 20% of the Estimated Cost, ODPC shall finalize contractual agreements with any successful bidders and proceed with construction of the Facilities.

If the Projected Cost exceeds the Estimated Cost by 20% of the Estimated Cost, ODPC and County must both agree to proceed with construction of the Facilities. The Parties may elect to try redesigning and rebidding the Facilities.

If the County elects not to proceed, it shall reimburse ODPC for all ODPC's costs to cover actual costs incurred, including but not limited to, all ODPC's costs incurred in connection with engineering and related project costs, consultant fees, easement acquisition, permits, contractor document preparation, reasonable attorney's fees, and other expenses ODPC may have incurred for or in connection with this Agreement and through the date that County elected not to proceed. The Deposit shall be applied to the above costs, expenses, and damages of ODPC and the remainder, if any, refunded.

If ODPC elects not to proceed against the County's desire to move forward, ODPC shall be responsible for the third party costs it has incurred as well as its own costs incurred. In addition, ODPC shall reimburse County for all County's costs to cover actual costs incurred, including but not limited to, all County's costs incurred and reasonable staff time expended in connection with engineering and related project costs, consultant fees, easement acquisition, permits, contractor document, reasonable attorney's fees, and other expenses County may have incurred for or in connection with this Agreement and through the date that ODPC elected not to proceed. The Deposit shall be refunded to County without reduction.

If County and ODPC jointly agree not to proceed, the third party costs incurred shall be split evenly. The design of the Facilities must be approved by the Virginia Department of Environmental Quality ("DEQ") and other regulatory agencies. ODPC shall not commence construction without all necessary governmental approvals which shall all be in a form and substance reasonably satisfactory to County and ODPC. ODPC and County acknowledge, all such authorizations, orders, permits, permissions and approvals by the Virginia Department of Health ("VDH"), DEQ, The Virginia State Corporation Commission ("SCC") and any other local, state and federal governmental agencies having jurisdiction over the Facilities, to the extent required under applicable laws, shall also all be in form and substance reasonably satisfactory to County and ODPC. ODPC shall obtain all such approvals, which shall be included in the cost of the Facilities. County shall cooperate with ODPC in seeking all such approvals at County's own cost and expense.

3.06. Approval of Final Design.

(a) ODPC and its designated engineer of record for the project shall work with the County in developing the proposed final design. County shall use its best efforts to provide any reviews and approvals on a timely basis. Upon completion of the Proposed Plans and Design Specifications, ODPC shall submit the same to the County for approval. The County shall have thirty days to notify ODPC of any objection that it has to the Proposed Plans and Design Specifications. If the County does not notify ODPC of its objections within such thirty day period, the County shall be deemed to have approved the Proposed Plans and Design Specifications and thereafter ODPC shall pursue approval of the Proposed Plans and Design Specifications from any governmental entity having jurisdiction over the same. If the County does notify ODPC of its objections to the Proposed Plans and Design Specifications within such thirty day period, ODPC may not proceed until ODPC and the County have resolved the differences that exist between them with respect to such matters by first referring the matter to the Conflict Committee in accordance with the terms of Section 10 hereof.

(b) In the event that any dispute regarding the Proposed Plans and Design Specifications are not resolved by the Conflict Committee, the parties hereto agree that the standard used in any subsequent litigation regarding the propriety of the Proposed Plans and Design Specifications shall be whether or not ODPC has a fair and reasonable basis (in terms of

design and capital costs and operating capability and costs) for its position with respect to any disputed portion of the Proposed Plans and Design Specifications, or has a fair and reasonable basis for an alternative proposal, in which event the court shall approve ODPC's Proposed Plans and Design Specifications. The Proposed Plans and Design Specifications approved by the County and, if required by applicable laws, by VDH, DEQ, SCC and any other local, state and federal governmental agencies shall be referred to herein collectively as the Approved Plans which shall be the basis of the project for bidding. Upon completion of the Approved Plans, and all regulatory approvals, ODPC may proceed with bidding the project the securing of building and other permits necessary for the construction of the Facilities.

3.07 Performance and Payment Bonds. Prior to the commencement of any construction, ODPC shall obtain and deliver to County the following bonds:

a. For those portions of the Agreement requiring the construction of improvements or infrastructure by ODPC, a performance bond in the sum of the Projected Cost of the Facilities conditioned upon the faithful performance of this Agreement in strict conformity with the Approved Plans and conditions of the Agreement.

b. For those portions of the Agreement requiring the construction of improvements or infrastructure by ODPC, a payment bond in the sum of the Projected Cost of the Facilities. The bond shall be for the protection of claimants who have and fulfill contracts to supply labor or materials to ODPC under this Agreement, or to any subcontractors, in furtherance of the work provided for in this Agreement, and shall be conditioned upon the prompt payment for all materials furnished or labor supplied or performed in the furtherance of the work. "Labor or materials" shall include public utility services and reasonable rentals of equipment, but only for periods when the equipment rented is actually used at the site.

c. Each of the bonds shall be executed by one or more surety companies selected by ODPC or its affiliates that are authorized to do business in Virginia.

d. The County reserves the right to waive any such bonds as may be permitted by law.

SECTION 4. CONSTRUCTION AND EQUIPPING.

4.01. ODPC Shall Construct and Equip. ODPC shall cause the Facilities to be constructed in strict accordance with the Approved Plans. ODPC shall perform construction management services itself or through a qualified contractor. ODPC shall cause all contractors (for themselves and their subcontractors) or subcontractors under such construction contracts to waive any and all rights they may have to lien or otherwise encumber the Facilities on account of any work, materials or services rendered or supplied in connection with the construction of the Facilities.

4.02. Construction Period. ODPC shall (i) use its commercially reasonable efforts to complete construction of the Facilities within nine months following the parties' agreement on the Approved Plans and the securing of all permits necessary to commence construction of the same.

4.03. Supervision and Responsibility. Notwithstanding ODPC's right to contract out the construction management and construction of the Facilities pursuant to Section 4.01 above, ODPC shall remain responsible for and warrants to the County that the Facilities shall be constructed in conformance with the Approved Design. The County shall make reasonable inspections of the work to be performed under this Agreement to ensure that ODPC's activities are acceptable to the County in accordance with the provisions of this Agreement.

4.04. Site Conditions. In the event that during construction ODPC or any of its contractors or subcontractors discovers any subsurface physical conditions which are not ordinarily encountered and generally recognized as inhering in works of the character required hereunder, ODPC shall promptly, and before such conditions are disturbed further, notify the County in writing of the same. The County shall be entitled to examine such conditions. Following such examination, the County and ODPC shall mutually determine the impact, if any, such conditions have on the Approved Plans and the impact thereof on the cost of or time required for the performance of any part of the construction of the Facilities and shall, if necessary, equitably adjust the Base Fee and any fixed date to which ODPC is bound to reflect such impact. If the parties cannot agree, the matter shall be referred first to the Conflict Committee for resolution prior to either party resorting to litigation.

4.05. Permits. ODPC shall obtain all permits and other licenses which are required, customary or appropriate in connection with the construction, modification or operation of the Facilities. The County shall cooperate and assist ODPC in submitting applications for all such permits or other licenses and in securing the same. The County also shall cooperate in attempting to accomplish a transfer to ODPC of any of its rights under any permit, license or application for a permit or license necessary for ODPC to perform its obligations hereunder.

4.06 Management of Contractors. ODPC shall obtain and share copies of all progress reports and billing invoices from contractors and suppliers with County and shall make approved payments to contractors in accordance with the terms of the applicable contracts.

4.07 County Notifications. ODPC will provide adequate notice to County of all meetings with contractors, engineers and permitting authorities so as to provide County with a reasonable opportunity to participate.

4.08 Change Orders. ODPC and County, through its Public Works Department, will jointly approve change orders during construction to the Facilities as follows. County shall use its best efforts to provide a response within 2 business days to any change order request. ODPC may approve the change order if the amount is less than ten thousand dollars (\$10,000.00) and County is unable to provide a timely response.

4.09 Maintenance of Records. ODPC shall maintain records regarding ongoing costs for the Facilities and shall make such information available to County in the form of a report at the conclusion of the construction of the Facilities. All records shall be maintained in accordance with Generally Accepted Accounting Principles and the National Association of Regulatory Utility Commissioners (NARUC) system of accounts in effect on the date of this Agreement and

as amended from time to time thereafter. Pursuant to the PPEA, ODPC shall file its financial statements with the County on a periodic basis, but at minimum annually.

4.10. Record Drawings. ODPC shall furnish the County with a complete set of record (as-built) drawings, of the Facilities within one hundred eighty days after Substantial Completion.

4.11 Compliance with Laws. ODPC certifies to the County that ODPC, in performing under this Agreement, will conform to the provisions of the Federal Civil Rights Act of 1964, as amended, as well as the Virginia Fair Employment Act of 1975, as amended. ODPC (hereinafter referred to in this Section as “contractor”) further agrees as follows:

(a) During the performance of this Agreement, the contractor agrees as follows:

(I) The contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the contractor. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

(II) The contractor, in all solicitations or advertisements for employees placed by or on behalf of the contractor, will state that such contractor is an equal opportunity employer.

(III) Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this Section.

(b) The contractor will be encouraged to include the provisions of the foregoing paragraphs I, II and III in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

(c) During the performance of this Agreement, the contractor agrees to (i) provide a drug-free workplace for the contractor’s employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the contractor’s workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the contractor that the contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

SECTION 5. COMPLETION OF FACILITIES

5.01. Testing. The construction period shall include a final mechanical checkout and equipment start-up period for the Facilities. Following ODPC's delivery of the Statement of Completion (defined below) to the County, ODPC shall commence operation of the Facilities.

5.02 Statement of Completion. Upon completion of construction of the Facilities pursuant to the Approved Plans to the point where they are capable of being operated at their design capacity in accordance with all regulatory requirements and following securing all necessary permits and governmental approvals for operation of the Facilities, ODPC shall notify the County of the same by delivering a written statement of completion, certified by ODPC's engineer (the engineer of record's "Statement of Completion"). The Statement of Completion shall also include a statement for the costs for construction of the Facilities through that point. The County may notify ODPC in writing within 15 days of receipt of such Statement of Completion that the facilities are not completed as required under the Approved Plans specifically identifying the issue(s) and ODPC shall have the opportunity to cure such issue(s) within a reasonable time and then issue another Statement of Completion. The earlier of the date that the County accepts the Statement of Completion in writing or has failed to provide notice to ODPC of any issues within the time allowed above shall be the date of Substantial Completion.

SECTION 6. OPERATION AND MAINTENANCE.

6.01. Operation and Maintenance of the Facilities. Following completion of the Facilities and throughout the term hereof ODPC shall be the sole operator of the Facilities throughout the term of this Agreement. As such, it shall be responsible for the following:

(a) ODPC shall mark its main lines through the Miss Utility of Virginia program ("One Call").

(b) ODPC shall maintain and repair the Facilities for the term of the Agreement. ODPC is not responsible for repairs to or improvements necessitated by any approved extensions made by County or third parties.

(c) ODPC shall record the flow meter reading at the Point of Discharge. The type of meter installed will be specified in the Approved Plans. ODPC shall rely on the Point of Discharge meter readings for invoicing volumetric charges through the ODPC pipeline.

(d) ODPC shall operate its Facilities in accordance with applicable regulations as well as the terms and conditions of this Agreement.

(e) The following operational services shall be provided by ODPC during the term of this Agreement:

Routine Operational Duties.

i. Visit and inspect the meter at the Point of Discharge and record the meter reading, the date/time of the visit.

- ii. Conduct semi-annual flushing of the ODPC pipeline and exercise its valves annually.
- iii. Respond to Miss Utility One Call tickets on its underground Facilities.

6.02 Supervision of the O/M Contractor. If ODPC has an O/M Contractor perform ODPC's duties under Section 6.01 hereof, ODPC shall diligently supervise the O/M Contractor so that the operation, repairs and maintenance of the Facilities will be promptly and properly undertaken in a manner consistent with the long term maintenance of the Facilities. ODPC guarantees that the operation and maintenance will be performed in compliance with the terms of this Agreement. Other than its right to enforce the terms of this Agreement and other than as specifically set forth herein, the County shall have no right to control ODPC or the O/M Contractor in the performance by them of their duties hereunder with regard to the operation or maintenance of the Facilities.

6.03 County Obligations. The County shall be responsible for all operations of its Collection System and for all operations of the Sewer Line not identified as being the responsibility of ODPC in section 6.01 in this Agreement. The County shall be responsible for:

(a) Reviewing and approving the design of, and adding all customer taps and for any new metered connections, if any, and service lines to the Collection System, subject to ODPC review and approval;

(b) setting rates for its customers, billing customers for service, and managing customer service until such time as this Agreement is terminated in accordance with the provisions herein;

(c) allocating capacity among customers;

(d) providing a minimum of 4,000 GPD of flow to the WWTP. Sufficient flow is desired to continuously move and prevent settling or septic conditions within the Sewer Pipeline Facilities. Water required to flush the pipeline shall be provided by County at its sole expense. County shall be responsible for all costs and expenses arising from its failure to comply with these obligations;

(e) ensuring influent to the WWTP at the Point of Discharge is compliant with the requirements for specified by DOC for use of the WWTP. County assumes sole and complete responsibility and liability for the quality of the sewer delivered through the Facilities and to the WWTP; and

(f) Maintaining all components of the Collection System.

6.04 Interruptions. County acknowledges that periodic unplanned service interruptions may occur due to main or equipment breaks. County agrees that ODPC is not responsible for any damages resulting from such interruptions, except to the extent that any such interruption shall arise from the negligence or other fault of ODPC.

SECTION 7. CONDITIONS PRECEDENT TO ODPC'S OBLIGATIONS

The County and ODPC agree to the following terms and provisions, all of which shall be conditions precedent to ODPC's obligations and duties under this Agreement:

7.01. Agency Approvals. If required by applicable laws, written approval from VDH, DEQ, SCC and any other local, state and federal governmental agencies having jurisdiction over the Facilities that this Agreement is an approved transaction.

7.02. Pending or Threatened Proceedings. Prior to the initiation of construction, no proceeding shall be pending or threatened before any court or governmental agency in which it is sought to restrain or prohibit or to obtain damages or other relief in connection with this Agreement or the consummation of the transactions contemplated hereby, and no investigation that might eventuate in any such suit, action or proceeding shall be pending or threatened.

7.03. County Proceedings. County shall have furnished ODPC with certified copies of all proceedings of County, including a signed and certified copy of the appropriate document(s) authorizing the transactions hereby contemplated, as ODPC reasonably shall require.

7.04 Service District. The County shall create a service district for the geographic service area served by the System which said geographic area shall not be less than the area which is shown as the Zion Crossroads Community Planning Area on page 55 of the Fluvanna County Comprehensive Plan (2009), including any areas adjacent to the sewer line connecting to the Virginia Department of Corrections (the "Service District"). The area of such district shall remain in existence throughout the term of this Agreement, subject to the amendment thereof by the County from time to time as may be needed to accommodate changes in development patterns and the demand for public sewer services; and, the County shall adopt and maintain throughout the term of this Agreement and any extension thereof a mandatory connection policy for all new residences, industrial users and commercial users that come into existence after the System becomes available for public usage located within such geographic service area that shall require their immediate connection to the System; provided, however, that nothing in this section shall be construed as prohibiting the County from permitting existing sewage disposal systems for existing single-family residences to continue in use for so long as the same shall remain in continuous use to serve such residences.

7.05 Rate Setting. ODPC and the County acknowledge and understand that the rate setting authority for the sewer service rates or fees charged to customers of the System (the "Rate Fees to Customers") is ultimately subject to determination by the County under its operation of the service district, unless and until the System is transferred to ODPC or its designee and becomes regulated by the SCC.

7.06 Comprehensive Plan. The County shall conduct appropriate proceedings in order to make an affirmative determination that the System substantially complies with the County's Comprehensive Plan, either by action of the planning commission and the board of supervisors pursuant to Virginia Code Section 15.2-2232 or by appropriate amendment of such Plan. A final determination that the System substantially complies with the County's Comprehensive Plan shall be a condition precedent to ODPC's obligations under this Agreement.

7.07 Deposit Paid. The County shall have paid to ODPC the Deposit as set forth in Section 8.01(d) below.

7.08 Termination for Failure of Precondition. In the event that this Agreement shall terminate as a result of the failure of any precondition under this Agreement, specifically not limited to those conditions precedent noted supra in Section 7, to ODPC's obligations, and such termination shall not be the proximate result of the fault of either party, any and all Deposits made by County shall be refunded to it without reduction, and the parties shall have no further liability one to the other.

SECTION 8. ODPC'S FEES AND EXPENSE REIMBURSEMENTS.

8.01. Base Fee.

(a) The Base Fee payable by the County to ODPC shall be **Seven Thousand Nine Hundred Eight Dollars (\$7,908.00)** per month throughout the Term of the Agreement. In the event that the Final Cost of the Facilities differs from the Estimated Cost, then the Base Fee shall be adjusted, upward or downward as the case may be, by an amount equal to the percentage by which the Final Cost deviated from the Estimated Cost. Payment to ODPC for the Base Fee and all other payments hereunder shall be by electronic transfer.

(b) In addition to the Base Fee, County shall pay to ODPC an amount equal to **Ten Cents (\$0.10)** per thousand gallons per day for all flow in excess of 4,000 gallons per day (the "Volumetric Flow Charge") as measured at the Point of Discharge. This rate shall be adjusted annually using the Price Index from the Effective Date of this Agreement. The Base Fee and the Excess Flow Charge are referred to herein collectively as the "Service Fee". The Excess Flow Charge shall be added to the Base Fee and included in the monthly invoice from ODPC to the County per subsection (c) below. To the extent ODPC's operation and maintenance expenses increase 5% or more over the amount paid by the County in the preceding year as a result of either new regulatory requirements or from increased costs for outside utility services, outside labor, chemicals, One Call tickets and water sampling and testing during any calendar year, such increased costs shall be reimbursed to ODPC by County as a monthly surcharge spread over the following calendar year. ODPC shall provide the County a minimum of 90 days' notice in the event a surcharge is needed along with justification of the increased operational costs. There shall be no surcharge for increases during the Base Year, defined as the first consecutive 12 month period following the date of Substantial Completion.

(c) The Base Fee and the Volumetric Flow Charge combined shall comprise the Service Fee. The Service Fee, which has been determined based on the linear feet of pipeline provided and the flow and capacity of the System as described above, shall commence accruing from the date of Substantial Completion of the Facilities and shall be payable monthly on or before the last business day of each month (each such date being referred to as a "Payment Date") commencing on the first such date to occur within thirty days after Substantial Completion and following the provision of service to the County, and continuing for the term of this Agreement.

(d) The County shall pay to ODPC a Deposit within seventy (70) days of the Effective Date of this Agreement in the amount of Ninety-Four Thousand Eight-Hundred Ninety-Six Dollars (\$94,896.00), being the amount equivalent to the estimated initial annual Service Fees for the first year of operations (the "Deposit"). The Deposit shall be credited against the payment of the Service Fees due from the County to ODPC during the final year of this Agreement. Interest collected on the Deposit shall also be credited to the said Service Fees. ODPC is required to keep the Deposit, and all accrued interest thereon, in an interest bearing account with a financial institution insured by the FDIC. Once the Final Cost as referred to in sub-section (a) above is determined, the Deposit shall be recomputed upward or downward, as the case may be, according to the adjusted Service Fee; and, the parties shall be entitled to payment from each other with the County being reimbursed the amount of any excess amount of the Deposit that may have been paid in the event the Final Cost is less than the Estimated Cost, or with ODPC being paid additional sums to add to the Deposit in the event that the Final Cost is greater than the Estimated Cost. Any such payments with respect to the adjusted Deposit amount shall be paid one to the other within ninety (90) days of the determination of the Final Cost. The payment of the Deposit by the County shall be subject to appropriation, provided, however, the failure to so appropriate shall be deemed to be a Non-Appropriation Event pursuant to Section 8.06.

(e) County assumes sole and complete responsibility for any rates or fees charged by DOC for use of the WWTP to process sewage delivered through the Sewer Line.

8.02 Repairs and Capital Improvements Following the Base Year. Expenditures for repairs or for capital improvements after the Base Year shall be allocated between the Parties in the following manner:

(a) Capital Improvements - After the Base Year, in the event that ODPC makes improvements to the Facilities due to State or Federal Regulations or because ODPC and County agree to make such improvements then the Service Fee payable pursuant to Section 8.01 above shall be increased by the percentage equal to the percentage resulting from dividing the cost of such new capital improvements by the aggregate total of all prior capital construction costs upon which the prior Service Fee was based. A Capital Improvement shall be any expenditure for new equipment or to extend the life of additional equipment that totals more than Five Hundred Dollars (\$500.00).

(b) Repairs - After the Base Year, in the event that ODPC is required to make repairs of existing facilities, the aggregate of which exceed One Hundred Thousand Dollars (\$100,000.00) in a single calendar year, then the Service Fee payable pursuant to Section 8.01 above shall be increased by the percentage equal to the percentage resulting from dividing the total cost in excess of One Hundred Thousand Dollars (\$100,000.00) of such repairs by the aggregate total of all prior capital construction costs upon which the prior Service Fee was based.

8.03 Books and Records. During the term of this Agreement ODPC shall keep accurate books and records with respect to the operation and maintenance of the Facilities. Such books and records shall include both accounting records and records detailing the physical equipment used in the operation of the Facilities. The records on physical equipment shall contain a list of

all equipment which is part of the Facilities and a separate list of all equipment that is part of the Facilities, and, in each case, shall show all periodic maintenance performed, the date acquired, serial numbers and any other information needed to identify the equipment, and the date of any such equipment is replaced or subject to repair. This information shall be provided annually to the County upon request.

8.04 Payment of Service Fees. ODPC will bill the County on a monthly basis following the provision of service by ODPC. The County agrees to make payment to ODPC within thirty (30) days from the date the bill is mailed or otherwise delivered by ODPC. A past due notice will be mailed by ODPC to the County after thirty (30) days. If payment has not been received after sixty (60) days from the date of the notice, a one percent (1%) per month interest charge, or the maximum amount otherwise allowed by law, will be assessed on the outstanding balance.

8.05 Funding of Escrow. In addition to the Deposit required by Section 8.01(d), the County agrees to include in its monthly payment for services hereunder, an additional 10% of each payment, to be held in escrow by ODPC, with the amount accruing thereunder up to a maximum amount equal to the maximum annual payments for services due hereunder. Such escrow and any interest accrued thereon will be used by ODPC in the event of: (i) non-payment by the County for sums owed to ODPC under this Agreement, including, but not limited to Service Fees and Repairs or Capital Improvements set forth in Section 8.02; or (ii) the County fails to appropriate sufficient funds as specified in Section 8.06 hereunder. Any amounts remaining in the escrow shall then be credited against the payment of the Service Fees due from the County to ODPC during the final two years of this Agreement. Interest collected on the escrowed funds shall also be credited to the said Service Fees. Payment of funds held in escrow shall be in addition to any other payments as may be required hereunder in the event of non-payment or non-appropriation. ODPC is required to keep the escrow funds, and all accrued interest thereon, in an interest bearing account with a financial institution insured by the FDIC.

8.06 Non-Appropriation. All payment obligations of the County under this Agreement shall be considered subject to annual appropriation by the Board of Supervisors of the County. In event that sufficient funds are not appropriated by the Board of Supervisors for the full payment of such obligations, then the County shall be deemed to have terminated this Agreement and shall not be obligated to make such payments beyond the then current fiscal year for which funds have been so appropriated. Upon the occurrence of such non-appropriation (a "Non-Appropriation Event"), the following terms and conditions shall apply to the parties:

(a) County shall, no later than the end of the fiscal year for which payments have been appropriated, deliver possession of the System to ODPC.

(b) From the time of any Non-Appropriation Event, not associated with or caused by a material breach on ODPC's part, ODPC, at its election shall have the right to continue providing sewer service to the County through the System and ODPC shall be paid the Service Fees from such funds as may have been appropriated therefor by the Board of Supervisors.

(c) Upon a Non-Appropriation Event, during the period prior to the delivery of possession of the System to ODPC, ODPC shall have the right, to the extent permitted by law, to

terminate sewer service to any customers using the System provided ODPC first gives written notice of the termination of sewer service to the County at least thirty (30) days prior to any such termination, during which time the County may cure any Non-Appropriation Event by appropriating sufficient funds for its payment obligations to ODPC as provided for in this Agreement and by bringing all such payments current.

(d) County will acknowledge that it is in the public interest to support the expansion of the sewer service territory under Aqua Virginia's certificate of public convenience and necessity (CPCN) to include the Zion Crossroads Community Planning Area and such other areas along the pipeline to be constructed by ODPC as may be sought by Aqua Virginia and approved by the SCC. In this regard, the County acknowledges that ODPC entered into this Agreement in reliance on the County's creation of the Service District and with the understanding there will be a continuation of such district with a geographical size and with sufficient connections and fees to pay the costs incurred for constructing and operating the Facilities.

SECTION 9. DEFAULTS AND REMEDIES.

9.01. Events of Default.

(a) Each of the following will constitute an Event of Default on the part of ODPC:

(i) Institution by or against ODPC of any bankruptcy, insolvency, reorganization, arrangement, debt adjustment, liquidation or receivership proceeding, which, if instituted against ODPC is not dismissed or withdrawn within 60 days after issuance of an order thereunder;

(ii) Failure of ODPC to comply with the provision of Section 14.01 hereof; or

(iii) Failure or refusal by ODPC to perform any of its obligations under this Agreement, which failure continues for a period of thirty days after written notice to ODPC from the County, which period shall be extended if ODPC has commenced a cure of such failure during the thirty day period and is proceeding with due diligence to cure the failure.

(b) Each of the following shall constitute an Event of Default on the part of the County:

(i) Failure by the County to pay the Service Fee when due which failure continues for a period of thirty days;

(ii) Failure by the County to pay any other amounts payable hereunder when due, which failure continues for a period of fifteen days after written notice to the County from ODPC;

(iii) Failure by the County to comply with any other of its obligations under the Agreement, which failure continues for a period of thirty days after written notice to the County from ODPC, which period shall be extended if the County has commenced a

cure of such failure during the thirty day period and is proceeding with due diligence to cure the failure; or

(iv) A default occurring in any of the Utility Agreements.

9.02. Remedies. The provisions set forth in this Agreement shall govern the rights and responsibilities of the County and ODPC upon the termination of this Agreement or in the event of any material default by the County or ODPC or should a Non-Appropriation Event occur that is not cured as stated herein.

(a) Upon the occurrence of an Event of Default by ODPC and so long as such an Event of Default is continuing, the County shall have the following rights and remedies in addition to damages and any other remedies which may be available to it at law or in equity:

(i) The County may withhold payment of the disputed portion of the Service Fee until the Event of Default is cured; or

(ii) In the event that ODPC is in material breach of this Agreement, and ODPC fails to commence to cure such material breach within thirty (30) days of receiving written notice thereof from the County, then the County shall have the right to either (i) cure such breach and ODPC shall be obligated to reimburse the County for the same; or (ii) the County may terminate this Agreement by providing written notice to ODPC, and the parties hereto shall have no further obligations to each other.

(iii)

(b) Upon the occurrence of an Event of Default by the County and so long as such an Event of Default is continuing, in addition to other remedies ODPC shall have the following rights and remedies: ODPC may terminate this and other agreements with the County, including but not limited to the Utility Agreements, by notice in writing to the County; and

(c) if the County fails to pay its obligations under this Agreement, whether under an Event of Default or due to a Non-Appropriation Event, or if any other circumstances result in a termination of the Agreement, then:

(i) the County agrees to transfer all of its right, title and interest in, to and under the System to ODPC or its designee, along with all rights thereof and appurtenances thereunto pertaining, including, but not limited to all easements, licenses, lands, permits, and all present and future customer billings and accounts receivable, and exclusive service rights for the System, and ODPC shall have the right to take control of the System;

(ii) County will continue to acknowledge that it is in the public interest to support the expansion of the Lake Monticello Public Water System service territory under Aqua Virginia's certificate of public convenience and necessity (CPCN) to include the Zion Crossroads Community Planning Area and such other areas along the pipeline to be constructed by ODPC as may be sought by Aqua Virginia and approved by the SCC; and

(iii) In addition to any other permitted applications of the Deposit and escrow funds, ODPC shall be entitled to apply any or all of the Deposit and escrow funds, and any earnings thereon, to cover actual transfer costs, regulatory costs (if any) and reasonable engineering and reasonable attorney fees incurred to satisfy any state, federal or local regulatory requirements incurred in connection with having the System transferred from County to ODPC or its assigns; and (b) to cover actual damages and costs incurred, including but not limited to, all ODPC's costs incurred in connection with engineering and related project costs, consultant fees, easement acquisition, permits, contractor document preparation, reasonable attorney's fees, and other expenses may have been incurred for or in connection with this Agreement; provided, however, County shall remain liable for all such costs that are not covered by the Deposit and the escrowed fund.

9.03 Prevailing Party. If any legal action or other proceeding is brought to enforce the provisions of this Agreement, the prevailing party shall be entitled to recover reasonable attorney's fees and other costs incurred in such action or proceeding, in addition to any other relief to which the prevailing party may be entitled.

SECTION 10. CONFLICT RESOLUTION

Delegation of Authority. Prior to resorting to litigation, ODPC and the County each shall permit the Conflict Committee to resolve, if they are able to do so, disputes and disagreements which arise between ODPC and the County under the terms of this Agreement or as a result of the performance by ODPC of its obligations hereunder. The Conflict Committee shall be composed of one representative of the County, one representative of ODPC and a mutually agreed upon licensed professional engineer selected by the County and ODPC. The parties stipulate and agree that the permissible venue and jurisdiction for the resolution of any and all disputes arising from or out of this Agreement shall be in the Circuit Court of Fluvanna County, Virginia or as permissible by law. All claims against the County shall be subject to the provisions of Title 15.2, Chapter 12, Article 4 (Sec. 15.2-1243, *ff.*) of the Code of Virginia (1950), as amended.

SECTION 11. FORCE MAJEURE.

The respective duties and obligations of the parties hereunder (except the County's obligation to pay ODPC such sums as may become due from time to time for services rendered by it) shall be suspended while and so long as performance thereof is prevented or impeded by civil disturbances, riots, strikes, fire, severe weather, flood, earthquake, earth subsidence or sink holes, hurricanes, governmental action, war acts, acts of God or any other cause similar to the foregoing which is beyond the reasonable control of the party from whom the performance was due; provided, however, that such party is at all times using its best efforts to overcome the impediment.

SECTION 12. DAMAGE OR DESTRUCTION.

12.01. Duty To Repair or Rebuild. If the Facilities are destroyed or damaged, ODPC shall repair or rebuild the Facilities at ODPC's sole cost or expense, whether or not the insurance proceeds, if any, are adequate for the purpose.

SECTION 13. THE COUNTY'S OBLIGATIONS AND REPRESENTATIONS.

13.01. County's Resolution. The County shall authorize the execution of this Agreement by resolution.

13.02. County's Budget and Appropriations. The County intends to include in its budget its payment of its obligations hereunder during the term of this Agreement, or any extension thereof. The County agrees to notify ODPC in the event the Service Fees or other amounts are not adopted in the County budget and appropriated by the Board of Supervisors within 30 days of such consideration by the Board of Supervisors.

SECTION 14. INSURANCE AND INDEMNITY

14.01. ODPC Shall Obtain Insurance. ODPC shall place and maintain with responsible insurance carriers qualified to do business in Virginia the following insurance and shall deliver to the County certificates evidencing such insurance which shall provide thirty days' notice to be given to the County in the event of cancellation:

- (a) Comprehensive General Liability Insurance, all applicable to Personal Injury, Bodily Injury and Property Damage to a combined single limit of \$1,000,000.00 each occurrence.
- (b) Comprehensive Automobile Liability Insurance including owned, hired and non-owned automobiles, Bodily Injury and Property Damage to a combined single limit of \$250,000.00 each occurrence.
- (c) Excess Liability Insurance in following form to the above policies with a combined single limit of \$10,000,000.00 each occurrence.
- (d) Public Liability Insurance to a combined single limit of \$1,000,000.00 per occurrence.
- (e) Worker's compensation insurance in an amount as required under Virginia law.
- (f) Additional Insured. The County shall be named an additional insured on the insurance referred to above.

County acknowledges that the amounts of coverage listed above are sufficient to provide coverage to County for tort liability and for the continuation and completion of ODPC's obligations under this Agreement.

Such policies shall be deemed satisfactory unless County provides written objection within ten (10) days of delivery by ODPC.

In addition, ODPC shall require, and include in any and all subcontracts, that subcontractors obtain and maintain for the duration of the work worker's compensation coverage in the amounts required under Virginia law.

SECTION 15. REPRESENTATIONS AND WARRANTIES

15.01 County hereby represents and warrants to ODPC as follows:

(a) County has the full power and lawful authority to execute and deliver this Agreement and all related agreements and to consummate and perform the transactions contemplated hereby and has duly and validly authorized the execution of this Agreement and all related documents and agreements by all necessary proceedings. This Agreement and all related agreements constitute the valid and binding obligation of County.

(b) This Agreement does not require any further approvals of any other party, does not violate any law, ordinance or regulation, does not conflict with any order or decree, and does not conflict with or result in a breach of any contract, lease or permit to which Fluvanna is a party.

(c) The County has complied with all applicable requirements of the Code of Virginia and the County's regulatory and procedural guidelines in entering into this Agreement, including, but not limited to the requirements of the County's and the Commonwealth of Virginia's PPEA requirements, procedures and guidelines.

15.02 ODPC hereby represents and warrants to County as follows:

(a) Organization. ODPC is a limited liability company organized and validly existing under the laws of the Commonwealth of Pennsylvania, and duly registered in the Commonwealth of Virginia.

(b) Due Authorization; Valid and Binding. ODPC has the full power and lawful authority to execute this Agreement and to consummate and perform the transactions contemplated hereby and has duly and validly authorized the execution of this Agreement by all necessary proceedings. This Agreement constitutes the valid and binding obligations of ODPC.

(c) Financial Ability. ODPC has the financial ability to perform the Services as contemplated hereunder.

SECTION 16. MISCELLANEOUS PROVISIONS.

16.01. Entire Agreement and Amendment. This Agreement, together with the Exhibits hereto, contains the entire understanding among the parties with respect to its subject matter, and supersedes all prior and contemporaneous agreements and understandings; inducements and conditions, express or implied, oral or written except as herein contained. The express terms hereof control and supersede any course of performance or usage of the trade inconsistent with any of the terms hereof. This Agreement (including the Exhibits hereto) may not be modified or

amended other than by an agreement in writing signed by all of the parties hereto, except that certain Exhibits may be attached after the execution hereof following approval by the County as expressly provided herein.

16.02. Indulgences. Neither the failure nor any delay on the part of any party to exercise any right, remedy, power or privilege under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any right, remedy, power or privilege preclude any other or further exercise of the same or of any other right, remedy, power or privilege nor shall any waiver of any right, remedy, power or privilege with respect to any occurrence be construed as a waiver of such right, remedy, power or privilege with respect to any other occurrence. No waiver shall be effective unless it is in writing and is signed by the party asserted to have granted such waiver.

16.03. Controlling Law. This Agreement and all questions relating to its validity, interpretation, performance and enforcement shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia, notwithstanding any Virginia or other conflict-of-law provision to the contrary.

16.04. Notices. All notices, requests, demands and other communications required or permitted under this Agreement shall be in writing and shall be deemed to have been received when delivered against receipt or on the fifth business day following the mailing, by registered or certified mail, postage prepaid, return receipt requested, thereof addressed as set forth below:

(i) If to the County:
Chairman
Fluvanna County Board of Supervisors
Fluvanna County Office Building, Main Street
PO Box 540
Palmyra, VA 22963

With a copy to:

Frederick W. Payne, Esquire
County Attorney
414 East Jefferson Street
Charlottesville, Virginia 22902

(ii) If to ODPC:
Karl M. Kyriess, President
Old Dominion Pipeline Company, LLC
762 West Lancaster Avenue
Bryn Mawr, Pennsylvania 19010

With a copy to:
Christopher P. Luning, Vice President & General Counsel
762 West Lancaster Avenue

Bryn Mawr, Pennsylvania 19010

Any party may change the address to which communications or copies are to be sent by giving notice of such change of address in conformity with the provision of this paragraph for the giving of notice.

16.05. Binding Nature of Agreement; No Assignments. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their successors and assigns, except that no party may assign or transfer its rights or obligations under this Agreement without the prior written consent of the other parties hereto.

16.06. Exhibits and Appendices. All Exhibits and Appendices attached hereto and referred to herein are hereby incorporated by reference into, and made part of, this Agreement at each place where such reference is made.

16.07. Nature of Relationship. The relationship which the parties intend to create under this Agreement is that of principal and independent contractor. Nothing herein is intended or shall be construed to create the relationship of partners, of co-venturers or of employment between the County and ODPC. The County shall not have the right to direct or control the activities or practices of ODPC, except as expressly provided in this Agreement.

16.08. Execution in Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original as against any party whose signature appears hereon, and all of which shall together constitute one and the same instrument. This Agreement shall become binding when one or more counterparts hereof, individually or taken together, shall 'bear the signatures of all of the parties reflected hereon as the signatories.

16.09. Provisions Separable. The provisions of this Agreement and of each section or other subdivision hereof are independent of and separable from each other, and no provision shall be affected or rendered invalid or unenforceable by virtue of the fact that for any reason any other or others of them may be invalid or unenforceable in whole or part or declared so by a court of competent jurisdiction.

16.10. Section and Paragraph Headings. The section and paragraph headings in this Agreement are for convenience of reference only; they form no part of this Agreement and shall not affect its interpretation.

16.11. Gender. Words used herein, regardless of the number and gender specifically used, shall be deemed and construed to include any other number, singular or plural, and any other gender, masculine, feminine or neuter, which the context requires.

16.12. Sections. This Agreement is divided into sections and subdivided into subdivisions. Both the sections and the subdivisions are referred to as "Sections." In construing this Agreement, the word Section should be given the meaning which its context suggests and doubts should be resolved in favor of the broader designation.

16.13. Number of Days. Except as expressly stated to the contrary elsewhere herein, in computing the number of days for purposes of this Agreement, all days shall be counted, including Saturdays, Sundays and legal holidays in Virginia; provided, however, that if the final day of any time period falls on a Saturday, Sunday or legal holiday, then the final day shall be deemed to be the next day which is not a Saturday, Sunday or legal holiday in Virginia.

16.14 Construction of Agreement. It is understood and agreed by County and ODPC that this Agreement shall be construed without regard to any presumption or other rule requiring construction against the party causing this Agreement to be drafted.

16.15 Monitor. The County shall be allowed to monitor the practices of ODPC under this Agreement to ensure that the project is properly constructed and maintained in accordance with the terms specified herein.

16.16 PPEA. Except as otherwise stated herein, this Agreement shall incorporate the duties set for in Chapter 22.1 of the Virginia Public-Private Education Facilities and Infrastructure Act of 2002 (the “Chapter”). In the event that there is any conflict or inconsistency between the terms of this Agreement and the Chapter, the terms of this Agreement shall prevail to the extent permitted by law.

16.17 Nonsubstitution. County agrees that until all amounts are paid to ODPC and/or Aqua under this Agreement and the Utility Agreements, that the County will not allow any of the services provided to the County or the residents, citizens or users under this Agreement to be provided by any other person or entity, private or public, and that it will not agree or contract with or otherwise accept any of such services without the prior written consent of Aqua and ODPC, at their sole discretion.

16.18 Cross Default. If an event of default occurs in any of the Utility Agreements, then such event shall, in turn, automatically create an Event of Default under this Agreement.

16.19. Essential Use. County agrees that the services provided to its residents and businesses under this Agreement are essential governmental services necessary for the health, safety and welfare of the County and its residents and businesses.

16.20. Title to System. County agrees that all property included in the Facilities, and to the extent this Agreement is terminated due to an Event of Default or a Non-Appropriation Event, all property in the System, is or shall be legally owned by and titled in the name of ODPC, or its affiliate, Aqua, and, to the extent appropriate, the County agrees to execute and deliver such instruments and agreements as reasonably required by ODPC to effect such ownership and title and take such actions as may be reasonably necessary or appropriate to obtain such licenses or permits for ODPC or its affiliates to the extent appropriate to own, operate and maintain such Facilities , including, but not limited to, all of those rights, titles and interest referred to in Sections 2.06, 2.07 and 9.02.

IN WITNESS WHEREOF, the following duly authorized representatives have executed this Agreement as of the date first above written.

FLUVANNA COUNTY

By: _____
Chairman
Board of Supervisors

Date: _____

APPROVED AS TO FORM:

County Attorney

OLD DOMINION PIPELINE COMPANY, LLC

By _____

Date: _____

Print Name: _____

Title: _____

EXHIBIT A
Net Plant Value Calculation

Net Plant Value shall be calculated using GAAP and NARUC utility accounting rules which represents the depreciated original cost of the assets, owned and installed by Old Dominion Pipeline Company over the term of the Agreement, also sometimes called the undepreciated value or net book value (NBV), plus other non-unitized costs incurred or awaiting closure in the construction work in progress (CWIP) account which could include non-unitized repair costs, plus Old Dominion Pipeline Company's actual transaction costs associated with the transfer of the Facilities, if any. Equipment installed on Aqua Virginia, Inc.'s property or as part of the regulated system shall become the property of Aqua Virginia, Inc. regardless of whether installed or existing before or during the term of this Agreement.

The weighted average composite depreciation rate utilized to calculate the Net Plant for this Sewer Project will be [1.64%] based on the collection sewers asset category included in the construction phase of this agreement.

Capital improvements to the Facilities pursuant to section 8.02 of this Agreement may include asset categories with varying depreciation rates. Depreciation rates applicable to these additional categories will be determined at that time in accordance with GAAP and NARUC accounting rules.

EXHIBIT B

Concept Drawing, Proposed Sewer Pipeline
[Drawing attached]

**WATER PIPELINE CONSTRUCTION, OPERATION
AND MAINTENANCE AGREEMENT**

**With County Attorney Changes from 9-27-2013
and BOS Changes from 11-20-2013**

WITH TRACK CHANGES ON VERSION

**SEWER PIPELINE CONSTRUCTION, OPERATION
AND MAINTENANCE AGREEMENT**

This SEWER PIPELINE CONSTRUCTION, OPERATION AND MAINTENANCE AGREEMENT (the "Agreement") is being executed and delivered as of the ____ day of _____ 2013, between the County of Fluvanna, a political subdivision of the Commonwealth of Virginia, (the "County"), and Old Dominion Pipeline Company, LLC a limited liability company organized under the laws of the Commonwealth of Pennsylvania ("ODPC").

A. Pursuant to Virginia Code §56-575.4(A) of the Public-Private Educational Facilities Infrastructure Act (the "PPEA"), Aqua Virginia, Inc. ("Aqua") presented the County with a proposal to provide water service (the "Proposal").

B. By action of the Board of Supervisors of the County taken on July 3, 2012, the County accepted the Proposal presented by Aqua.

C. On September 19, 2012, the Board of Supervisors voted unanimously to move forward with the negotiation of an interim or comprehensive agreement with Aqua to provide the services and matters as set forth in the Proposal.

D. The Proposal and the County's acceptance thereof anticipated the negotiation of an agreement between Aqua and the County, as well as supporting agreements between the County and Aqua's affiliates.

E. ODPC is an affiliate of Aqua for purposes of the Proposal that was accepted by the County.

F. In furtherance of the Proposal, the County is retaining the ODPC to construct a force main pipeline for the collection of untreated sewage that will extend approximately 2.8 miles from a point near the intersections of Route 15 and Route 250 to a connection point at an existing wastewater treatment plant ("Point of Discharge") located at the Fluvanna Correctional Center for Women owned by the Virginia State Department of Corrections (as more particularly defined below, the "Sewer Line"). Construction of the Sewer Line shall include the necessary physical connection at the existing wastewater treatment plant. In connection with its construction of the Sewer Line, the ODPC shall construct and install all necessary pipe, appurtenances and other infrastructure reasonably required to transport sewage collected from County's Collection System, along the Sewer Line, to the wastewater treatment plant.

G. ODPC will own the facilities it constructs pursuant to this Agreement and will be responsible for the facilities' design, permitting, construction, operation and maintenance and for financing of all of the foregoing. If tax exempt financing is requested by ODPC in a conduit borrowing

through the County's industrial or economic development authority, the County agrees to assist and reasonably cooperate with such financing. Expansions of the ODPC facilities, except as specified herein, shall be owned by County and each person connected to the Collection System shall be a customer of the County. ODPC shall not be responsible to construct, maintain or repair expansions to the Collection System. The Collection System shall

initially consist of a pipeline and metering apparatus that will be used to collect and transport raw sewage to the Point of Discharge.

H. Concurrently with the execution of this Agreement, the County is entering into an agreement (the “Bulk Water Agreement”), whereby Aqua will supply water to County as provided in the Proposal.

NOW THEREFORE, in consideration of the mutual covenants set forth in this Agreement, the parties, intending to be legally bound hereby, agree as follows:

DEFINITIONS

For the purposes of this Agreement, the following words and phrases shall have the following meanings, regardless of whether the spelling is capitalized:

“Agreement” shall mean this Agreement.

“Appropriation” or “Appropriated” shall include the act of approving and setting aside for payment of funds, and the actual payment thereof, to ODPC for the purposes provided in this Agreement.

“Contribute” means to convey without charge or reimbursement and free and clear of any and all liens or encumbrances.

“Cost” or “Entire Cost” shall be deemed to include all planning, development, studies, construction costs, engineering fees, attorneys’ fees, testing expenses, publication costs, financing costs, and miscellaneous costs.

“County’s Collection System” or “Collection System” means the County’s collection system described in the preambles of this Agreement.

“Effective Date” means the date specified in the first paragraph of the first page of this Agreement or, if the parties have not placed a date in such paragraph, the date on which this Agreement is fully executed by both parties.

“Facilities” means the sewer pipeline project and all appurtenant equipment, which shall be owned and operated by ODPC as referenced in Section 2.02 herein.

“Net Book Value” shall be defined as described and calculated pursuant to Exhibit A;

“Point of Discharge” means the meter vault connection to the receiving Waste Water Treatment Plant (“WWTP”).

“Price Index” means the “Consumer Price Index—U.S. City Average for All items for All Urban Consumers (1982-84=100)” (the CPI_U) published monthly in the “Monthly Labor Review” or other publication by the Bureau of Labor Statistics, United ~~states~~ States Department of Labor (the Labor Bureau).

“Regulatory Agency” means any unit of governmental authority, whether federal, state, local or other, having jurisdiction concerning water standards, other environmental matters, real estate, zoning, building or otherwise having jurisdiction over the System or any construction contemplated hereunder.

“Regulatory Requirements” mean any and all of the following issued, adopted or required from time to time by any Regulatory Agency: (i) the requirements or provisions of any and all state, federal and local laws, regulations, rules, orders, and ordinances; (ii) permits; and (iii)

Certificate(s) of Public Convenience and Necessity (“CPCN”) or grants of authority to sell utility services.

“SCC” means the State Corporation Commission of the Commonwealth of Virginia.

“Services” mean sewer services provided to the County by ODPC.

“Sewer Project” means the complete sewer pipeline project, including but not limited to the Facilities, to be designed, bid out, and constructed including all engineering, permit fees, easements, right of ways, and associated costs.

“Sewer System” or “System” means the entire sewer system including the Facility’s along with all the subsequent expansions thereof which will be the County’s regulated sewer collection system terminating at the Point of Discharge.

"Utility Agreements" mean the Water Pipeline Construction, Operation and Maintenance Agreement between the County and ODPC, the Sewer Pipeline Construction, Operation and Maintenance Agreement, between the County and ODPC, the Bulk Water Agreement between the County and Aqua, the Water Services Agreement between the County and Aqua, and the Sewer Services Agreement between the County and Aqua.

SECTION 1. EMPLOYMENT OF ODPC; TERM.

1.01. Employment. The County hereby contracts with ODPC to perform the Services (defined below) for the compensation herein stated, and ODPC hereby agrees to perform all such services in accordance with the terms of this Agreement.

1.02. Initial Term. The initial term of this Agreement shall commence on the Effective Date hereof and shall continue for twenty (20) years from the end of the calendar month during which construction is completed as provided at Section 5.02 hereof.

1.03. End of Initial Term. At a minimum of twenty four (24) months prior to the expiration of this Agreement, County must serve written notice by certified mail to ODPC of its intention to either:

- (a) renew and/or amend the Agreement for an additional negotiated period; or
- (b) purchase the Facilities; or
- (c) terminate this Agreement, the County will cease its operation of the System and transfer all of its right, title and interest in, to and under the System to ODPC or its designee, along with all appurtenances thereunto pertaining, including, but not limited to, all easements, licenses, lands, permits, and present and future customer billing collection rights and exclusive service rights for the System.

In the event the Agreement is renewed for an additional 20 year term ODPC’s Fees under Section 8 shall be based upon the remaining un-depreciated value of the Facilities over the renewal term, and the costs of any capital expenditures.

Should the County elect to purchase the Facilities, it shall do so for the remaining net plant value in accordance with the methodology specified in **Exhibit “A”**, and pay the specified sum by wire transfer upon the day of expiration of the Initial Term of this Agreement. If the day of expiration is a weekend, then the date shall be a business day during the preceding week.

Transfer of the Facilities shall be by agreement containing terms and conditions customary for similar transactions, including any regulatory approval required as of the date of transfer.

1.04 Purchase of Facilities Prior to Expiration of Initial Term. County may purchase the Facilities at any time prior to the expiration of the Initial Term by payment of a Purchase Price equal to 150% of the Net Plant Value. Any Deposit and Escrow, along with applicable interest, will be applied as a credit to County toward the Purchase Price. Under such circumstances the Bulk Water Agreement with Aqua shall remain in effect, but subject to the terms and conditions of default contained herein.

SECTION 2. SERVICES TO BE PROVIDED BY ODPC. ODPC shall be responsible for providing the following services to County on the terms and conditions of this Agreement (the “Services”):

2.01 Sewer Line. ODPC shall construct a force main pipeline for the collection and transport of untreated sewage that will extend approximately 2.8 miles from a point near the intersections of Route 15 and Route 250 to a discharge point at the existing wastewater treatment plant located at the Fluvanna Correctional Center for Women owned by the Virginia State Department of Corrections (the “WWTP”), or the sewage collection system associated with the WWTP, and as more particularly shown on **Exhibit “B”** attached to this Agreement (the “Sewer Line”). The physical connection to the WWTP shall be designed and constructed as required by and agreed to by the owner of the WWTP. The actual location and means of constructing the physical connection to the WWTP, the size, capacity, and locations of the point of delivery meter, force mains, other appurtenances and infrastructure shall be as specified in the Final Approved Plans and Specifications (“Approved Plans and Specifications”) for this project, or as they may be modified after the initial project is completed as provided for in this Agreement.

The Sewer Line shall be designed to convey an average daily flow of at least 150,000 gallons of sewage per day.

2.02 Ancillary Facilities. In connection with ODPC’s construction of the Sewer Line, ODPC shall construct and install:

- (a) ~~(a)~~ A flow meter at the Point of Discharge from the Sewer Line to the WWTP. The Sewer Line shall consist of a single collection trunk line connecting to the flow meter. Any pump stations required to transport sewage after it enters the Sewer Line.

The Sewer Line, the flow meter and the pump stations used to transport sewage through the Sewer Line shall be referred to collectively herein as the “Facilities.”

2.03 Expansion of Facilities. In the event the Sewer Line is extended by the County or any third party beyond that shown on Exhibit B, the new infrastructure constructed for such an extension shall be considered part of the Collection System and shall be contributed to and owned by County prior to operation of the extension line. No such extension shall be permitted until plans and specifications for the extension are submitted to and approved by ODPC for a

determination that any such expansion will not adversely impact or require improvements to the Facilities.

2.04. Ownership, Operation & Maintenance. ODPC shall retain ownership of the Facilities and shall be responsible for operating and maintaining the same.

2.05. Financing of the Services. Subject to Section 3.05 below, ODPC shall be responsible for financing the cost of the design, regulatory approvals and construction of the Facilities.

2.06- Easements and Rights of Way. After development of the Plans and the final alignment of the Sewer Line as provided in Section 3.03 and 3.04, County shall obtain such permanent and temporary easements and/or fee simple title to land as are needed to construct the Facilities and operate the System for not less than forty (40) years and shall pay for such costs. ODPC will reimburse County for the expenditures County pays to property owners to obtain such easements and/or land as well as costs for utilizing a realtor to value and negotiate easement agreements, provided that such costs shall have first been reviewed and approved by ODPC ~~in~~ in its reasonable judgment. All costs that are reimbursed to County will be included in the Final Costs for the Facilities. All easements shall be granted to County or its assigns and shall include a provision that ~~County's~~ County's licensees shall have access within the easement. County hereby acknowledges that ODPC shall have an exclusive license to use such easements and rights of way for utility services, and all shall have rights to access portions of the Facilities that are within the easements and that ODPC shall retain those rights until such time as County may purchase the Facilities or convey its ownership rights to ODPC. The County agrees to grant, assign and transfer to ODPC an exclusive license to use all permits, easements, lands or licenses reasonably required or appropriate for the operation, maintenance and use of the System and to provide such instruments or agreements as reasonably necessary to evidence such rights, including, but not limited to those as may be acquired pursuant to Section 2.07.

2.07. Eminent Domain - County acknowledges that the Facilities serve a critical public purpose. Accordingly, County agrees to take a dominant role in acquiring easements for the Facilities through the exercise of its powers of condemnation and eminent domain should ODPC be unable to acquire any easement required for the Facilities. In the event the County must exercise its powers of eminent domain in order to acquire easements and/or land for the Facilities, the County shall do so at its own cost and expense subject to being reimbursed by ODPC; provided, however, the County shall consult with ODPC regarding such costs and expense as may be incurred in connection with the exercise of the ~~County's~~ County's eminent domain power for ~~ODPC's~~ ODPC's approval in its reasonable judgment prior to expending or committing to any such cost and expense. ODPC and County acknowledge that the Final Alignment for the Facilities shall be placed to minimize the acquisition of any easements to the extent reasonable, but while also maintaining the hydraulic integrity by avoiding unnecessary bends or configurations that inhibit flow of sewage and materially increase costs.

SECTION 3. DESIGN.

3.01. Commencement and Scope of Design Engineering Activities. ODPC will complete, or cause an engineering firm to complete, preliminary design plans and specifications for the Facilities within ~~approximately 180~~approximately 180 days after the ~~date~~Effective Date of this Agreement (the ~~“Proposed Plans and Design Specifications”~~”). ODPC shall consult with County regarding ~~ODPC’s~~ODPC’s selection of the engineering firm, and County shall have the right to accept or reject ~~ODPC’s~~ODPC’s choice. Rejection shall not be unreasonable.

3.02 Assistance - The County shall assist ODPC by participating in the development of plans for the Facilities. In this regard, County shall review engineering plans, permit applications, and other documents developed by ODPC. ODPC shall request County’s review and approval on all critical design elements of the Facilities, including the alignment of ODPC Pipeline and any bids for services or supplies. Such assistance shall be provided at no cost to ODPC. The County shall provide prompt reviews and not unreasonably withhold or delay approvals.

3.03 Final Alignment – The Final Alignment of ODPC Pipeline is the final determination of the Parties regarding the exact placement of ODPC Pipeline from the Point of Delivery at the County’s Collection System to the Point of Discharge to the WWTP (“Final Alignment”). The Final Alignment shall be mutually agreed upon by ODPC and County and both Parties shall sign the final engineering plans and specifications approved by the Virginia Department of Environmental Quality. In the event a Final Alignment is not agreed upon within thirty (30) months of the ~~date~~Effective Date of this Agreement, this Agreement may be terminated at the sole discretion of ODPC and shall have no further effect. ~~The County shall then reimburse ODPC for all its costs and expenses associated with any of its project planning, engineering and easement and/or land acquisition efforts up to that point in time.~~ Upon such termination, any and all Deposits made by County shall be refunded to it without reduction, and the parties have no further liability one to the other.

3.04 Final Plans and Specifications – The Approved Plans for the Facilities, which shall be prepared after the Final Alignment is determined, will be approved by both County and ODPC and then bid for construction by ODPC. The Facilities, including all design,

permitting and other pre-construction and soft costs, are currently estimated to cost \$900,000.00 (hereinafter, the “Estimated Cost”), which is based on a good faith estimate of known costs verified by ODPC’s engineer and contractors. The Parties acknowledge the final costs for the Facilities cannot be determined until all project bids have been received from contractors, the costs for acquiring easements have been confirmed and all permits costs have been determined by permitting authorities. The total sum of all such costs including ODPC’s costs to manage the project shall then constitute the Projected Cost. Final Costs for the Facilities shall be determined when construction has been completed and waste water first passes through a Point of Collection into the Sewer Line.

3.05- Proceeding to Construction——If the Projected Cost does not exceed the Estimated Cost by more than 20% of the Estimated Cost, ODPC ~~may~~shall finalize contractual agreements with any successful bidders and proceed with construction of the Facilities.

If the Projected Cost exceeds the Estimated Cost by 20% of the Estimated Cost, ODPC and County must both agree to proceed with construction of the Facilities. The Parties may elect to try redesigning and rebidding the Facilities.

If the County elects not to proceed, it shall reimburse ODPC for all ODPC's costs to cover actual ~~damages and~~ costs incurred, including but not limited to, all ODPC's costs incurred in connection with engineering and related project costs, consultant fees, easement acquisition, permits, contractor document preparation, reasonable attorney's fees, and other expenses ODPC may have incurred for or in connection with this Agreement and through the date that County elected not to proceed. The Deposit shall be applied to the above costs, expenses, and damages of ODPC and the remainder, if any, refunded.

_____ If ODPC elects not to proceed against the County's desire to move forward, ODPC shall be responsible for the third party costs it has incurred as well as its own costs incurred. In addition, ODPC shall reimburse County for all County's costs to cover actual costs incurred, including but not limited to, all County's costs incurred and reasonable staff time expended in connection with engineering and related project costs, consultant fees, easement acquisition, permits, contractor document, reasonable attorney's fees, and other expenses County may have incurred for or in connection with this Agreement and through the date that ODPC elected not to proceed. The Deposit shall be refunded to County without reduction.

If County and ODPC jointly agree not to proceed, the third party costs incurred shall be split evenly. The design of the Facilities must be approved by the Virginia Department of Environmental Quality ("DEQ") and other regulatory agencies. ODPC shall not commence construction without all necessary governmental approvals which shall all be in a form and substance reasonably satisfactory to County and ODPC in its sole discretion. ODPC and County acknowledge, all such authorizations, orders, permits, permissions and approvals by the Virginia Department of Health ("VDH"), DEQ, ~~the~~ The Virginia State Corporation Commission ("SCC") and any other local, state and federal governmental agencies having jurisdiction over the Facilities, to the extent required under applicable laws, shall also all be in form and substance reasonably satisfactory to County and ODPC in its sole discretion. ODPC shall obtain all such approvals, which shall be included in the cost of the Facilities. County shall cooperate with ODPC in seeking all such approvals at County's own cost and expense.

3.06. Approval of Final Design.

(a) _____ ODPC and its designated engineer of record for the project shall work with the County in developing the proposed final design. County shall use its best efforts to provide any reviews and approvals on a timely basis. Upon completion of the Proposed Plans and Design Specifications, ODPC shall submit the same to the County for approval. The County shall have thirty days to notify ODPC of any objection that it has to the Proposed Plans and Design Specifications. If the County does not notify ODPC of its objections within such thirty day period, the County shall be deemed to have approved the Proposed Plans and Design Specifications and thereafter ODPC shall pursue approval of the Proposed Plans and Design Specifications from any governmental entity having jurisdiction over the same. If the County does notify ODPC of its objections to the Proposed Plans and Design Specifications within such thirty day period, ODPC may not proceed until ODPC and the County have resolved the differences that exist between them with respect to such matters by first referring the matter to the Conflict Committee in accordance with the terms of Section 10 hereof. ~~The plans and specifications approved by the DEQ in the form of a construction permit for the project shall be the Approved Plans which shall be the basis of the project for bidding.~~

(b) In the event that any dispute regarding the Proposed Plans and Design Specifications are not resolved by the Conflict Committee, the parties hereto agree that the standard used in any subsequent litigation regarding the propriety of the Proposed Plans and Design Specifications shall be whether or not ODPC has a fair and reasonable basis (in terms of design and capital costs and operating capability and costs) for its position with respect to any disputed portion of the Proposed Plans and Design Specifications, or has a fair and reasonable basis for an alternative proposal, in which event the court shall approve ~~ODPC's~~ ODPC's Proposed Plans and Design Specifications. The Proposed Plans and Design Specifications approved by the County and, if required by applicable laws, by VDH, DEQ, SCC and any other local, state and federal governmental agencies shall be referred to herein collectively as the Approved Plans and Specifications, which shall be the basis of the project for bidding. Upon completion of the Approved Plans, and all regulatory approvals, ODPC may proceed with bidding the project the securing of building and other permits necessary for the construction of the Facilities.

3.07 Performance and Payment Bonds. Prior to the commencement of any construction, ODPC shall obtain and deliver to County the following bonds:

a. For those portions of the Agreement requiring the construction of improvements or infrastructure by ODPC, a performance bond in the sum of the Projected Cost of the Facilities conditioned upon the faithful performance of this Agreement in strict conformity with the Approved Plans and conditions of the Agreement.

b. For those portions of the Agreement requiring the construction of improvements or infrastructure by ODPC, a payment bond in the sum of the Projected Cost of the Facilities. The bond shall be for the protection of claimants who have and fulfill contracts to supply labor or materials to ODPC under this Agreement, or to any subcontractors, in furtherance of the work provided for in this Agreement, and shall be conditioned upon the prompt payment for all materials furnished or labor supplied or performed in the furtherance of the work. "Labor or materials" shall include public utility services and reasonable rentals of equipment, but only for periods when the equipment rented is actually used at the site.

c. Each of the bonds shall be executed by one or more surety companies selected by ODPC or its affiliates that are authorized to do business in Virginia.

d. The County reserves the right to waive any such bonds as may be permitted by law.

SECTION 4. CONSTRUCTION AND EQUIPPING.

4.01. ODPC Shall Construct and Equip. ODPC shall cause the Facilities to be constructed in strict accordance with the Approved Plans. ODPC shall perform construction management services itself or through a qualified contractor. ODPC shall cause all contractors (for themselves and their subcontractors) or subcontractors under such construction contracts to waive any and all rights they may have to lien or otherwise encumber the Facilities on account of any work, materials or services rendered or supplied in connection with the construction of the Facilities.

4.02. Construction Period. ODPC shall (i) use its commercially reasonable efforts to complete construction of the Facilities within nine months following the parties' agreement on the Approved Plans and the securing of all permits necessary to commence construction of the same.

4.03.- Supervision and Responsibility. Notwithstanding ODPC's right to contract out the construction management and construction of the Facilities pursuant to Section 4.01 above, ODPC shall remain responsible for and warrants to the County that the Facilities shall be constructed in conformance with the Approved Design. The County shall ~~be allowed the right to make~~ reasonable inspections of the work to be performed under this Agreement to ensure that ~~ODPC's~~ODPC's activities are acceptable to the County in accordance with the provisions of this Agreement.

4.04. Site Conditions. In the event that during construction ODPC or any of its contractors or subcontractors discovers any subsurface physical conditions which are not ordinarily encountered and generally recognized as inhering in works of the character required hereunder, ODPC shall promptly, and before such conditions are disturbed further, notify the County in writing of the same. The County shall be entitled to examine such conditions. Following such examination, the County and ODPC shall mutually determine the impact, if any, such conditions have on the Approved Plans and the impact thereof on the cost of or time required for the performance of any part of the construction of the Facilities and shall, if necessary, equitably adjust the Base Fee and any fixed date to which ODPC is bound to reflect such impact. If the parties cannot agree, the matter shall be referred first to the Conflict Committee for resolution prior to either party resorting to litigation.

4.05. Permits. ODPC shall obtain all permits and other licenses which are required, customary or appropriate in connection with the construction, modification or operation of the Facilities. The County shall cooperate and assist ODPC in submitting applications for all such permits or other licenses and in securing the same. The County also shall cooperate in

attempting to accomplish a transfer to ODPC of any of its rights under any permit, license or application for a permit or license necessary for ODPC to perform its obligations hereunder.

4.06 Management of Contractors. ODPC shall obtain and share copies of all progress reports and billing invoices from contractors and suppliers with County and shall make approved payments to contractors in accordance with the terms of the applicable contracts.

4.07 County Notifications. ODPC will provide adequate notice to County of all meetings with contractors, engineers and permitting authorities so as to provide County with a reasonable opportunity to participate.

4.08- Change Orders. ODPC and County, through its Public Works Department, will jointly approve change orders during construction to the Facilities as follows. County shall use its best efforts to provide a response within ~~forty-eight (48) hours~~ 2 business days to any change order request. ODPC may approve the change order if the amount is less than ten thousand dollars (\$10,000.00) and County is unable to provide a timely response.

4.09- Maintenance of Records. ODPC shall maintain records regarding ongoing costs for the Facilities and shall make such information available to County in the form of a report at the conclusion of the construction of the Facilities. All records shall be maintained in accordance with Generally Accepted Accounting Principles and the National Association of Regulatory Utility Commissioners (NARUC) system of accounts in effect on the date of this Agreement and as amended from time to time thereafter. Pursuant to the PPEA, ODPC shall file its financial statements with the County on a periodic basis, but at minimum annually.

4.10. Record Drawings. ODPC shall furnish the County with a complete set of record (as-built) drawings, of the Facilities within one hundred eighty days after Substantial Completion.

4.11 Compliance with Laws. ODPC certifies to the County that ODPC, in performing under this Agreement, will conform to the provisions of the Federal Civil Rights Act of 1964, as amended, as well as the Virginia Fair Employment Act of 1975, as amended. ODPC (hereinafter referred to in this Section as “contractor”) further agrees as follows:

(a) During the performance of this Agreement, the contractor agrees as follows:

(I) The contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the contractor. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

(II) The contractor, in all solicitations or advertisements for employees placed by or on behalf of the contractor, will state that such contractor is an equal opportunity employer.

(III) Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this Section.

(b) The contractor will be encouraged to include the provisions of the foregoing paragraphs I, II and III in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

(c) During the performance of this Agreement, the contractor agrees to (i) provide a drug-free workplace for the contractor's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the contractor that the contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

SECTION 5. COMPLETION OF FACILITIES

5.01. Testing. The construction period shall include a final mechanical checkout and equipment start-up period for the Facilities. Following ODPC's delivery of the Statement of Completion (defined below) to the County, ODPC shall commence operation of the Facilities.

5.02- Statement of Completion. Upon completion of construction of the Facilities pursuant to the Approved Plans to the point where they are capable of being operated at their design capacity in accordance with all regulatory requirements and following securing all necessary permits and governmental approvals for operation of the Facilities, ODPC shall notify the County of the same by delivering a written statement of completion, certified by ~~ODPC's~~ ODPC's engineer (the engineer of ~~record's~~ "record's "Statement of Completion"). The Statement of Completion shall also include a statement for the costs for construction of the Facilities through that point. The County may notify ODPC in writing within 15 days of receipt of such Statement of Completion that the facilities are not completed as required under the Approved Plans specifically identifying the issue(s) and ODPC shall have the opportunity to cure such issue(s) within a reasonable time and then issue another Statement of Completion. The earlier of the date that the County accepts the Statement of Completion in writing or has failed to provide notice to ODPC of any issues within the time allowed above shall be the date of Substantial Completion.

SECTION 6. OPERATION AND MAINTENANCE.

6.01. Operation and Maintenance of the Facilities. Following completion of the Facilities and throughout the term hereof ODPC shall be the sole operator of the Facilities throughout the term of this Agreement. As such, it shall be responsible for the following:

(a) ODPC shall mark its main lines through the Miss Utility of Virginia program (“One Call”).

(b) ~~(b)~~ ODPC shall maintain and repair the Facilities for the term of the Agreement. ODPC is not responsible for repairs to or improvements necessitated by any approved extensions made by County or third parties.

(c) ~~(e)~~ ODPC shall record the flow meter reading at the Point of Discharge. The type of meter installed will be specified in the Approved Plans. ODPC shall rely on the Point of Discharge meter readings for invoicing volumetric charges through the ODPC pipeline.

(d) ODPC shall operate its Facilities in accordance with applicable regulations as well as the terms and conditions of this Agreement.

(e) The following operational services shall be provided by ODPC during the term of this Agreement:

Routine Operational Duties.

i. Visit and inspect the meter at the Point of Discharge and record the meter reading, the date/time of the visit.

ii. Conduct semi-annual flushing of the ODPC pipeline and exercise its valves annually.

iii. Respond to Miss Utility One Call tickets on its underground Facilities.

6.02 Supervision of the O/M Contractor. If ODPC has an O/M Contractor perform ODPC's duties under Section 6.01 hereof, ODPC shall diligently supervise the O/M Contractor so that the operation, repairs and maintenance of the Facilities will be promptly and properly undertaken in a manner consistent with the long term maintenance of the Facilities. ODPC guarantees that the operation and maintenance will be performed in compliance with the terms of this Agreement. Other than its right to enforce the terms of this Agreement and other than as specifically set forth herein, the County shall have no right to control ODPC or the O/M Contractor in the performance by them of their duties hereunder with regard to the operation or maintenance of the Facilities.

6.03 County Obligations. The County shall be responsible for all operations of its Collection System and for all operations of the Sewer Line not identified as being the responsibility of ODPC in section 6.01 in this Agreement. The County shall be responsible for:

(a) Reviewing and approving the design of, and adding all customer taps and for any new metered connections, if any, and service lines to the Collection System, subject to ODPC review and approval;

(b) setting rates for its customers, billing customers for service, and managing customer service until such time as this Agreement is terminated in accordance with the provisions herein;

(c) allocating capacity among customers;

(d) providing a minimum of 4,000 GPD of flow to the WWTP. Sufficient flow is desired to continuously move and prevent settling or septic conditions within the Sewer Pipeline Facilities. Water required to flush the pipeline shall be provided by County at its sole expense. County shall be responsible for all costs and expenses arising from its failure to comply with these obligations;

~~comply with these obligations;~~

~~(e)~~ ensuring influent to the WWTP at the Point of Discharge is compliant with the requirements for specified by DOC for use of the WWTP. County assumes sole and complete responsibility and liability for the quality of the sewer delivered through the Facilities and to the WWTP; and

~~(f)~~ Maintaining all components of the ~~'s~~ Collection System; ~~and~~.

6.04 Interruptions. County acknowledges that periodic unplanned service interruptions may occur due to main or equipment breaks. County agrees that ODPC is not responsible for any damages resulting from such interruptions, except to the extent that any such interruption shall arise from the negligence or other fault of ODPC.

SECTION 7. CONDITIONS PRECEDENT TO ODPC'S OBLIGATIONS

The County and ODPC agree to the following terms and provisions, all of which shall be conditions precedent to ODPC's obligations and duties under this Agreement:

7.01. Agency Approvals. If required by applicable laws, written approval from VDH, DEQ, SCC and any other local, state and federal governmental agencies having jurisdiction over the Facilities that this Agreement is an approved transaction.

7.02. Pending or Threatened Proceedings. Prior to the initiation of construction, no proceeding shall be pending or threatened before any court or governmental agency in which it is sought to restrain or prohibit or to obtain damages or other relief in connection with this Agreement or the consummation of the transactions contemplated hereby, and no investigation that might eventuate in any such suit, action or proceeding shall be pending or threatened.

7.03. County Proceedings. County shall have furnished ODPC with certified copies of all proceedings of County, including a signed and certified copy of the appropriate document(s) authorizing the transactions hereby contemplated, as ODPC reasonably shall require.

~~7.04 Department of Corrections Agreement. County shall have entered into an agreement with the Virginia Department of Corrections that is acceptable to ODPC for the treatment of up to approximately 150,000 GPD of raw sewage at the WWTP for a term of not less than twenty years.~~

~~7.05~~ 7.04 Service District. The County shall create a service district for the geographic service area served by the System which said geographic area shall not be less than the area which is shown as the ZionsZion Crossroads Community Planning Area on page 55 of the Fluvanna County Comprehensive Plan (2009), including any areas adjacent to the sewer line connecting to the Virginia Department of Corrections ~~referred to in Sec. 7.04.~~ (the "Service District"). The area of such district shall remain in existence throughout the term of this Agreement, subject to the amendment thereof by the County from time to time as may be needed to accommodate changes

in development patterns and the demand for public ~~water~~sewer services; and, the County shall adopt and maintain throughout the term of this Agreement and any extension thereof a mandatory connection policy for all new residences, industrial users and commercial users that come into existence after the System becomes available for public usage located within such geographic service area that shall require their immediate connection to the System~~;~~; provided, however, that nothing in this section shall be construed as prohibiting the County from permitting existing sewage disposal systems for existing single-family residences to continue in use for so long as the same shall remain in continuous use to serve such residences.

~~7.06~~05 Rate Setting. ODPC and the County acknowledge and understand that the rate setting authority for the sewer service rates or fees charged to customers of the System (the “Rate Fees to Customers”) is ultimately subject to determination by the County under its operation of the service district, unless and until the System is transferred to ODPC or its designee and becomes regulated by the SCC.

~~7.07~~06 Comprehensive Plan. The County shall conduct appropriate proceedings in order to make an affirmative determination that the System substantially complies with the County’s Comprehensive Plan, either by action of the planning commission and the board of supervisors pursuant to Virginia Code Section 15.2-2232 or by appropriate amendment of such Plan. A final determination that the System substantially complies with the County’s Comprehensive Plan shall be a condition precedent to ODPC’s obligations under this Agreement.

~~7.08~~07 Deposit Paid. The County shall have paid to ODPC the Deposit as set forth in Section 8.01(d) below.

7.08 Termination for Failure of Precondition. In the event that this Agreement shall terminate as a result of the failure of any precondition under this Agreement, specifically not limited to those conditions precedent noted supra in Section 7, to ODPC’s obligations, and such termination shall not be the proximate result of the fault of either party, any and all Deposits made by County shall be refunded to it without reduction, and the parties shall have no further liability one to the other.

SECTION 8. ODPC’S FEES AND EXPENSE REIMBURSEMENTS.

8.01. Base Fee.

~~(a)~~ ~~(a)~~ The Base Fee payable by the County to ODPC shall be **Seven Thousand Nine Hundred Eight Dollars (\$7,908.00)** per month throughout the Term of the Agreement. In the event that the Final Cost of the Facilities differs from the Estimated Cost, then the Base Fee shall be adjusted, upward or downward as the case may be, by an amount equal to the percentage by which the Final Cost deviated from the Estimated Cost. Payment to ODPC for the Base Fee and all other payments hereunder shall be by electronic transfer.

~~(b)~~ ~~(b)~~ In addition to the Base Fee, County shall pay to ODPC an amount equal to **Ten Cents (\$0.10)** per thousand gallons per day for all flow in excess of 4,000 gallons per day (the ~~“Volumetric Flow Charge”~~) as measured at the Point of Discharge. This rate shall be

adjusted annually using the Price Index from the Effective Date of this Agreement. The Base Fee and the Excess Flow Charge are referred to herein collectively as the ~~“Service Fee”~~. The Excess Flow Charge shall be added to the Base Fee and included in the monthly invoice from ODPC to the County per subsection (c) below. To the extent ~~ODPC’s~~ ODPC’s operation and maintenance expenses increase 5% or more over the amount paid by the County in the preceding year as a result of either new regulatory requirements or from increased costs for outside utility services, outside labor, chemicals, One Call tickets and water sampling and testing during any calendar year, such increased costs shall be reimbursed to ODPC by County as a monthly surcharge spread over the following calendar year. ODPC shall provide the County a minimum of 90 ~~days~~ days’ notice in the event a surcharge is needed along with justification of the increased operational costs. There shall be no surcharge for increases during the Base Year ~~-,~~ defined as the first consecutive 12 month period following the date of Substantial Completion.

(c) ~~(e)~~ The Base Fee and the Volumetric Flow Charge combined shall comprise the Service Fee. The Service Fee, which has been determined based on the linear feet of pipeline provided and the flow and capacity of the System as described above, shall commence accruing from the date of Substantial Completion of the Facilities and shall be payable monthly on or before the last business day of each month (each such date being referred to as a “Payment Date”) commencing on the first such date to occur within thirty days after Substantial Completion and following the provision of service to the County, and continuing for the term of this Agreement.

(d) ~~(d)~~ The County shall pay to ODPC a Deposit within ~~forty five (45)~~ seventy (70) days of the Effective Date of this Agreement in the amount of Ninety-Four Thousand Eight-Hundred Ninety-Six Dollars (\$94,896.00), being the amount equivalent to the estimated initial annual Service Fees for the first year of operations (the ~~“Deposit”~~). The Deposit shall be credited against the payment of the Service Fees due from the County to ODPC during the final year of this Agreement. ~~Such interest, if any, as may be~~ Interest collected on the Deposit shall also be credited to the said Service Fees. ODPC is required to keep the Deposit, and all accrued interest thereon, in an interest bearing account with a financial institution insured by the FDIC. Once the Final Cost as referred to in sub-section (a) above is determined, the Deposit shall be recomputed upward or downward, as the case may be, according to the adjusted Service Fee; and, the parties shall be entitled to payment from each other with the County being reimbursed the amount of any excess amount of the Deposit that may have been paid in the event the Final Cost is less than the Estimated Cost, or with ODPC being paid additional sums to add to the Deposit in the event that the Final Cost is greater than the Estimated Cost. Any such payments with respect to the adjusted Deposit amount shall be paid one to the other within ninety (90) days of the determination of the Final Cost. The payment of the Deposit by the County shall be subject to appropriation, provided, however, the failure to so appropriate shall be deemed to be a Non-Appropriation Event pursuant to Section 8.06.

(e) ~~(e)~~ County assumes sole and complete responsibility for any rates or fees charged by DOC for use of the WWTP to process sewage delivered through the Sewer Line.

~~(d) Any taxes, permits, licenses, fees, or any other expenses (“County Fees”) charged by the County to ODPC or its affiliates in relation to this Agreement shall be billed to the County as an incremental charge in addition to the Service Fee.~~

8.02 Repairs and Capital Improvements Following the Base Year. Expenditures for repairs or for capital improvements after the Base Year shall be allocated between the Parties in the following manner:

(a) Capital Improvements - After the Base Year, in the event that ODPC makes improvements to the Facilities due to State or Federal Regulations or because ODPC and County agree to make such improvements then the Service Fee payable pursuant to Section 8.01 above shall be increased by the percentage equal to the percentage resulting from dividing the cost of such new capital improvements by the aggregate total of all prior capital construction costs upon which the prior Service Fee was based. A Capital Improvement shall be

any expenditure for new equipment or to extend the life of additional equipment that totals more than Five Hundred Dollars (\$500.00).

(b) Repairs - After the Base Year, in the event that ODPC is required to make repairs of existing facilities, the aggregate of which exceed One Hundred Thousand Dollars (\$100,000.00) in a single calendar year, then the Service Fee payable pursuant to Section 8.01 above shall be increased by the percentage equal to the percentage resulting from dividing the total cost in excess of One Hundred Thousand Dollars (\$100,000.00) of such repairs by the aggregate total of all prior capital construction costs upon which the prior Service Fee was based.

8.03 Books and Records. During the term of this Agreement ODPC shall keep accurate books and records with respect to the operation and maintenance of the Facilities. Such books and records shall include both accounting records and records detailing the physical equipment used in the operation of the Facilities. The records on physical equipment shall contain a list of all equipment which is part of the Facilities and a separate list of all equipment that is part of the Facilities, and, in each case, shall show all periodic maintenance performed, the date acquired, serial numbers and any other information needed to identify the equipment, and the date of any such equipment is replaced or subject to repair. This information shall be provided annually to the County upon request.

8.04 Payment of Service Fees. ODPC will bill the County on a monthly basis following the provision of service by ODPC. The County agrees to make payment to ODPC within thirty (30) days from the date the bill is mailed or otherwise delivered by ODPC. A past due notice will be mailed by ODPC to the County after thirty (30) days. If payment has not been received after sixty (60) days from the date of the notice, a one percent (1%) per month interest charge, or the maximum amount otherwise allowed by law, will be assessed on the outstanding balance.

8.05- Funding of Escrow. In addition to the Deposit required by Section 8.01(d), the County agrees to include in its monthly payment for services hereunder, an additional 10% of each payment, to be held in escrow by ODPC, with the amount accruing thereunder up to a maximum amount equal to the maximum annual payments for services due hereunder. Such escrow and any interest accrued thereon will be used by ODPC in the event of: ~~1~~(i) non-payment by the County for sums owed to ODPC under this Agreement, including, but not limited to Service Fees and Repairs or Capital Improvements set forth in Section 8.02~~;~~ or ~~2~~(ii) the County fails to appropriate sufficient funds as specified in Section

8.06 hereunder. Any amounts remaining in the escrow shall then be credited against the payment of the Service Fees due from the County to ODPC during the final two years of this Agreement. ~~Such interest, if any, as may be~~ Interest collected on the escrowed funds shall also be credited to the said Service Fees. Payment of funds held in escrow shall be in addition to any other payments as may be required hereunder in the event of non-payment or non-appropriation. ODPC is required to keep the escrow funds, and all accrued interest thereon, in an interest bearing account with a financial institution insured by the FDIC.

8.06- Non-Appropriation. All payment obligations of the County ~~for Service Fees~~ under this Agreement shall be considered subject to annual appropriation by the Board of Supervisors of the County. In event that sufficient funds are not appropriated by the Board of Supervisors for the full payment of such ~~Service Fees~~ obligations, then the County shall be deemed to have terminated this Agreement and shall not be obligated to make such payments beyond the then current fiscal year for which funds have been so appropriated. Upon the occurrence of such non-appropriation (a “Non-Appropriation Event”), the following terms and conditions shall apply to the parties:

~~for which funds have been so appropriated. Upon the occurrence of such non appropriation (a "Non-Appropriation Event"), the following terms and conditions shall apply to the parties:~~

(a) County shall, no later than the end of the fiscal year for which payments have been appropriated, deliver possession of the System to ODPC.

(b) ~~From the time of any Non-Appropriation Event, or in the event of a termination or nullification of this Agreement for any reason~~ not associated with or caused by a material breach on ODPC's part, ODPC, at its election, shall have the right to continue providing sewer service to the County through the System and ODPC shall be paid the Service Fees from ~~the Deposit and escrowed funds, and any earnings thereon, until such time as the Deposit and escrowed funds are exhausted.~~ such funds as may have been appropriated therefor by the Board of Supervisors.

(c) Upon a Non-Appropriation Event, during the period prior to the delivery of possession of the System to ODPC, ODPC shall have the right, to the extent permitted by law, to terminate sewer service to any customers using the System provided ODPC first gives written notice of the termination of sewer service to the County at least thirty (30) days prior to any such termination, during which time the County may cure any Non-Appropriation Event by appropriating sufficient funds for its payment obligations to ODPC as provided for in this Agreement and by bringing all such payments current.

(d) County will acknowledge that it is in the public interest to support the expansion of the sewer service territory under Aqua Virginia's certificate of public convenience and necessity (CPCN) to include the Zion Crossroads Community Planning Area and such other areas along the pipeline to be constructed by ODPC as may be sought by Aqua Virginia and approved by the SCC. In this regard, the County acknowledges that ODPC entered into this Agreement in reliance on the County's creation of the Service District and with the understanding there will be a continuation of such district with a geographical size and with sufficient connections and fees to pay the costs incurred for constructing and operating the Facilities.

SECTION 9. DEFAULTS AND REMEDIES.

9.01. Events of Default.

(a) Each of the following will constitute an Event of Default on the part of ODPC:

(i) Institution by or against ODPC of any bankruptcy, insolvency, reorganization, arrangement, debt adjustment, liquidation or receivership proceeding,
which, if instituted against ODPC is not dismissed or withdrawn within 60 days after issuance of an order thereunder;

(ii) Failure of ODPC to comply with the provision of Section 14.01 hereof; or

(iii) Failure or refusal by ODPC to perform any of its obligations under this Agreement, which failure continues for a period of thirty days after written notice to ODPC from the County, which period shall be extended if ODPC has commenced a cure

of such failure during the thirty day period and is proceeding with due diligence to cure the failure.

(b) Each of the following shall constitute an Event of Default on the part of the County:

(i) Failure by the County to pay the Service Fee when due which failure continues for a period of thirty days;

(ii) ~~Failure~~ Failure by the County to pay any other amounts payable hereunder when due, which failure continues for a period of fifteen days after written notice to the County from ODPC; ~~or~~

(iii) ~~Failure~~ Failure by the County to comply with any other of its obligations under the Agreement, which failure continues for a period of thirty days after written notice to the County from ODPC, which period shall be extended if the County has commenced a cure of such failure during the thirty day period and is proceeding with due diligence to cure the failure; or

~~(iv) Provided, however, the failure to pay due to a Non-Appropriation Event shall not be considered an Event of Default but, provided further, that the failure to comply with the terms of this Agreement regarding a Non-Appropriation Event as specified Section 8.06 shall be an Event of Default.~~

~~(iv)~~ (iv) A default occurring in any of the Utility Agreements.

9.02. Remedies. The provisions set forth in this Agreement shall govern the rights and responsibilities of the County and ODPC upon the termination of this Agreement or in the event of any material default by the County or ODPC or should a Non-Appropriation Event occur that is not cured as stated herein.

(a) Upon the occurrence of an Event of Default by ODPC and so long as such an Event of Default is continuing, the County shall have the following rights and remedies in addition to damages and any other remedies which may be available to it at law or in equity:

(i) The County may withhold payment of the disputed portion of the Service Fee until the Event of Default is cured; or

(ii) ~~(ii)~~ (ii) In the event that ODPC is in material breach of this Agreement, and ODPC fails to commence to cure such material breach within thirty (30) days of receiving written notice thereof from the County, then the County shall have the right to either (i) cure such breach, after which and ODPC shall be obligated to reimburse the breach, and ODPC's engineering and consultant expenses and related costs, and County for the reasonable value of same; or (ii) the System as ODPC may have constructed or installed pursuant to this Agreement prior to the breach. Thereupon, either party County may terminate this Agreement by providing written notice to the other ODPC, and the parties hereto shall have no further obligations to each other.

(iii)

(b) Upon the occurrence of an Event of Default by the County and so long as such an Event of Default is continuing, in addition to other remedies ODPC shall have the following rights and remedies: ODPC may terminate this and other agreements with the County, including but not limited to the Utility Agreements, by notice in writing to the County, ~~in which case the County shall reimburse ODPC for all costs to cover actual damages and costs incurred, including but not limited to, all ODPC's costs incurred in connection with engineering and related project costs, consultant fees, easement acquisition, permits, contractor document preparation, reasonable attorney's fees and other expenses ODPC may have been incurred for or in connection with this Agreement; and~~; and

(c-) if the County fails to pay its obligations under this Agreement, whether ~~in~~ under an Event of Default or due to a Non-Appropriation Event, or if any other circumstances result in a termination of the Agreement, then:

(i) the County agrees to transfer all of its right, title and interest in, to and under the System to ODPC or its designee, along with all rights thereof and appurtenances thereunto pertaining, including, but not limited to all easements, licenses, lands, permits, and all present and future customer billings and accounts receivable, and exclusive service rights for the System, and ODPC shall have the right to take control of the System;

(ii) County will continue to acknowledge that it is in the public interest to support the expansion of the Lake Monticello Public Water System service territory under Aqua Virginia's certificate of public convenience and necessity (CPCN) to include the Zion Crossroads Community Planning Area and such other areas along the pipeline to be constructed by ODPC as may be sought by Aqua Virginia and approved by the SCC; and

(iii)-__ In addition to any other permitted applications of the Deposit and escrow funds, ODPC shall be entitled to apply any or all of the Deposit and escrow funds, and any earnings thereon, to cover actual transfer costs, regulatory costs (if any) and reasonable engineering and reasonable attorney fees incurred to satisfy any state, federal or local regulatory requirements incurred in connection with having the System transferred from County to ODPC or its assigns; and (b) to cover actual damages and costs incurred, including but not limited to, all ODPC's costs incurred in connection with engineering and related project costs, consultant fees, easement acquisition, permits, contractor document preparation, reasonable attorney's fees, and other expenses ~~ODPC~~ may have been incurred for or in connection with this Agreement; provided, however, County shall remain liable for all such costs that are not covered by the Deposit and the escrowed fund.

~~(iv) ODPC may compel the County to reimburse it for ODPC's costs that are not included in sub-section (iii) immediately preceding that are incurred in the preparation and planning of this proposal and Agreement.~~

9.03 Prevailing Party. If any legal action or other proceeding is brought to enforce the provisions of this Agreement, the prevailing party shall be entitled to recover reasonable

attorney's fees and other costs incurred in such action or proceeding, in addition to any other relief to which the prevailing party may be entitled.

SECTION 10. ~~CONFLICT RESOLUTION.~~

Delegation of Authority. Prior to resorting to litigation, ODPC and the County each shall permit the Conflict Committee to resolve, if they are able to do so, disputes and disagreements which arise between ODPC and the County under the terms of this Agreement or as a result of the performance by ODPC of its obligations hereunder. The Conflict Committee shall be composed of one representative of the County, one representative of ODPC and a mutually agreed upon licensed professional engineer selected by the County and ODPC. ~~The County and ODPC agree to share equally the costs of such professional engineer.~~ The parties stipulate and agree that the permissible venue and jurisdiction for the resolution of any and all disputes arising from or out of this Agreement ~~may shall~~ be in ~~either the circuit court~~ Circuit Court of Fluvanna County, Virginia or ~~in~~ as permissible by law. All claims against the United States Federal District Court for County shall be subject to the Western District provisions of Title 15.2, Chapter 12, Article 4 (Sec. 15.2-1243, ff.) of the Code of Virginia, Charlottesville Division. (1950), as amended.

SECTION 11. FORCE MAJEURE.

The respective duties and obligations of the parties hereunder (except the County's obligation to pay ODPC such sums as may become due from time to time for services rendered by it) shall be suspended while and so long as performance thereof is prevented or impeded by civil disturbances, riots, strikes, fire, severe weather, flood, earthquake, earth subsidence or sink holes, hurricanes, governmental action, war acts, acts of God or any other cause similar to the foregoing which is beyond the reasonable control of the party from whom the performance was due; provided, however, that such party is at all times using its best efforts to overcome the impediment.

SECTION 12. DAMAGE OR DESTRUCTION.

12.01. Duty To Repair or Rebuild. If the Facilities are destroyed or damaged, ODPC shall repair or rebuild the Facilities at ODPC's sole cost or expense, whether or not the insurance proceeds, if any, are adequate for the purpose.

SECTION 13. THE COUNTY'S OBLIGATIONS ~~AND REPRESENTATIONS.~~

13.01. County's Resolution. The County shall authorize the execution of this Agreement by resolution.

13.02. ~~County's~~ County's Budget and Appropriations. The County intends to include in its budget ~~for its payment of the Service Fee~~ its obligations hereunder during the term of this Agreement, or any extension thereof ~~as follows: The Board of Supervisors by this Agreement hereby annually directs the County Administrator and any other budgeting official for the County to include in the County's budget to be presented to the Board of Supervisors for each fiscal year, the Service Fees expected to be due for the following fiscal year and, if any additional amounts~~

~~are due hereunder, then also to present to the Board of Supervisors a supplement to the County budget for such additional amounts due hereunder, for consideration by the Board of Supervisors within 60 days of such submission.~~ The County agrees to notify ODPC in the event the Service Fees or other amounts are not adopted in the County budget and appropriated by the Board of Supervisors within 30 days of such consideration by the Board of Supervisors.

SECTION 14. INSURANCE AND INDEMNITY

14.01. ODPC Shall Obtain Insurance. ODPC shall place and maintain with responsible insurance carriers qualified to do business in Virginia the following insurance and shall deliver to the County certificates evidencing such insurance which shall provide thirty days' notice to be given to the County in the event of cancellation:

(a) ~~(a)~~ Comprehensive General Liability Insurance, all applicable to Personal Injury, Bodily Injury and Property Damage to a combined single limit of \$1,000,000.00 each occurrence.

(b) ~~(b)~~ Comprehensive Automobile Liability Insurance including owned, hired and non-owned automobiles, Bodily Injury and Property Damage to a combined single limit of \$250,000.00 each occurrence.

(c) ~~(e)~~ Excess Liability Insurance in following form to the above policies with a combined single limit of \$10,000,000.00 each occurrence.

~~(d)~~ (d) Public Liability Insurance to a combined single limit of \$1,000,000.00 per occurrence.

(e) Worker's compensation insurance in an amount as required under Virginia law.

(f) Additional Insured. The County shall be named an additional insured on the insurance referred to above.

County acknowledges that the amounts of coverage listed above are sufficient to provide coverage to County for tort liability and for the continuation and completion of ~~ODPC's~~ ODPC's obligations under this Agreement.

Such policies shall be deemed satisfactory unless County provides written objection within ten (10) days of delivery by ODPC.

In addition, ODPC shall require, and include in any and all subcontracts, that subcontractors obtain and maintain for the duration of the work worker's compensation coverage in the amounts required under Virginia law.

SECTION 15. REPRESENTATIONS AND WARRANTIES

15.01 County hereby represents and warrants to ODPC as follows:

(a) County has the full power and lawful authority to execute and deliver this Agreement and all related agreements and to consummate and perform the transactions contemplated hereby and has duly and validly authorized the execution of this Agreement and all related documents and agreements by all necessary proceedings. This Agreement and all related agreements constitute the valid and binding obligation of County.

(b) This Agreement does not require any further approvals of any other party, does not violate any law, ordinance or regulation, does not conflict with any order or decree, and does not conflict with or result in a breach of any contract, lease or permit to which Fluvanna is a party.

(c) The County has complied with all applicable requirements of the Code of Virginia and the County's regulatory and procedural guidelines in entering into this Agreement, including, but not limited to the requirements of the County's and the Commonwealth of Virginia's PPEA requirements, procedures and guidelines.

~~PPEA procedures and guidelines.~~

15.02 ODPC hereby represents and warrants to County as follows:

(a) Organization. ODPC is a limited liability company organized and validly existing under the laws of the Commonwealth of Pennsylvania, and duly registered in the Commonwealth of Virginia.

(b) Due Authorization; Valid and Binding. ODPC has the full power and lawful authority to execute this Agreement and to consummate and perform the transactions contemplated hereby and has duly and validly authorized the execution of this Agreement by all necessary proceedings. This Agreement constitutes the valid and binding obligations of ODPC.

(c) Financial Ability. ODPC has the financial ability to perform the Services as contemplated hereunder.

SECTION 16. MISCELLANEOUS PROVISIONS.

16.01. Entire Agreement and Amendment. This Agreement, together with the Exhibits hereto, contains the entire understanding among the parties with respect to its subject matter, and supersedes all prior and contemporaneous agreements and understandings; inducements and conditions, express or implied, oral or written except as herein contained. The express terms hereof control and supersede any course of performance or usage of the trade inconsistent with any of the terms hereof. This Agreement (including the Exhibits hereto) may not be modified or amended other than by an agreement in writing signed by all of the parties hereto, except that certain Exhibits may be attached after the execution hereof following approval by the County as expressly provided herein.

16.02. Indulgences. Neither the failure nor any delay on the part of any party to exercise any right, remedy, power or privilege under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any right, remedy, power or privilege preclude any other or further exercise of the same or of any other right, remedy, power or privilege nor shall any

waiver of any right, remedy, power or privilege with respect to any occurrence be construed as a waiver of such right, remedy, power or privilege with respect to any other occurrence. No waiver shall be effective unless it is in writing and is signed by the party asserted to have granted such waiver.

16.03. Controlling Law. This Agreement and all questions relating to its validity, interpretation, performance and enforcement shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia, notwithstanding any Virginia or other conflict-of-law provision to the contrary.

16.04. Notices. All notices, requests, demands and other communications required or permitted under this Agreement shall be in writing and shall be deemed to have been received when delivered against receipt or on the fifth business day following the mailing, by registered or certified mail, postage prepaid, return receipt requested, thereof addressed as set forth below:

(i) If to the County:
Chairman
Fluvanna County Board of Supervisors
Fluvanna County Office Building, Main Street
PO Box 540
Palmyra, VA 22963

With a copy to:

Frederick W. Payne, Esquire
County Attorney
414 East Jefferson Street
Charlottesville, Virginia 22902

(ii) If to ODPC:
Karl M. Kyriess, President
Old Dominion Pipeline Company, LLC
762 West Lancaster Avenue
Bryn Mawr, Pennsylvania 19010

With a copy to:
Christopher P. Luning, Vice President & General Counsel
762 West Lancaster Avenue
Bryn Mawr, Pennsylvania 19010

Any party may change the address to which communications or copies are to be sent by giving notice of such change of address in conformity with the provision of this paragraph for the giving of notice.

16.05. Binding Nature of Agreement; No Assignments. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their successors and assigns, except that no

party may assign or transfer its rights or obligations under this Agreement without the prior written consent of the other parties hereto.

16.06. Exhibits and Appendices. All Exhibits and Appendices attached hereto and referred to herein are hereby incorporated by reference into, and made part of, this Agreement at each place where such reference is made.

16.07. Nature of Relationship. The relationship which the parties intend to create under this Agreement is that of principal and independent contractor. Nothing herein is intended or shall be construed to create the relationship of partners, of co-venturers or of employment between the County and ODPC. The County shall not have the right to direct or control the activities or practices of ODPC, except as expressly provided in this Agreement.

16.08. Execution in Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original as against any party whose signature appears hereon, and all of which shall together constitute one and the same instrument. This Agreement shall become binding when one or more counterparts hereof, individually or taken together, shall 'bear the signatures of all of the parties reflected hereon as the signatories.

16.09. Provisions Separable. The provisions of this Agreement and of each section or other subdivision hereof are independent of and separable from each other, and no provision shall be affected or rendered invalid or unenforceable by virtue of the fact that for any reason any other or others of them may be invalid or unenforceable in whole or part or declared so by a court of competent jurisdiction.

16.10. Section and Paragraph Headings. The section and paragraph headings in this Agreement are for convenience of reference only; they form no part of this Agreement and shall not affect its interpretation.

16.11. Gender. Words used herein, regardless of the number and gender specifically used, shall be deemed and construed to include any other number, singular or plural, and any other gender, masculine, feminine or neuter, which the context requires.

16.12. Sections. This Agreement is divided into sections and subdivided into subdivisions. Both the sections and the subdivisions are referred to as "Sections." In construing this Agreement, the word Section should be given the meaning which its context suggests and doubts should be resolved in favor of the broader designation.

16.13. Number of Days. Except as expressly stated to the contrary elsewhere herein, in computing the number of days for purposes of this Agreement, all days shall be counted, including Saturdays, Sundays and legal holidays in Virginia; provided, however, that if the final day of any time period falls on a Saturday, Sunday or legal holiday, then the final day shall be deemed to be the next day which is not a Saturday, Sunday or legal holiday in Virginia.

16.14 Construction of Agreement. It is understood and agreed by County and ODPC that this Agreement shall be construed without regard to any presumption or other rule requiring construction against the party causing this Agreement to be drafted.

16.15 Monitor. The County shall be allowed to monitor the practices of ODPC under this Agreement to ensure that the project is properly constructed and maintained in accordance with the terms specified herein.

16.16 PPEA. Except as otherwise stated herein, this Agreement shall incorporate the duties set for in Chapter 22.1 of the Virginia Public-Private Education Facilities and Infrastructure Act of 2002 (the “Chapter”). In the event that there is any conflict or inconsistency between the terms of this Agreement and the Chapter, the terms of this Agreement shall prevail to the extent permitted by law.

16.17 ~~Nonsubstitution~~.Nonsubstitution. County agrees that until all amounts are paid to ODPC and/or Aqua under this Agreement and the Utility Agreements, that the County will not allow any of the services provided to the County or the residents, citizens or users under this Agreement to be provided by any other person or entity, private or public, and that it will not agree or contract with or otherwise accept any of such services without the prior written consent of Aqua and ODPC, at their sole discretion.

16.18 Cross Default. If an event of default occurs in any of the Utility Agreements, then such event shall, in turn, automatically create an Event of Default under this Agreement.

16.19. Essential Use. County agrees that the services provided to its residents and businesses under this Agreement are essential governmental services necessary for the health, safety and welfare of the County and its residents and businesses.

16.20. Title to System. County agrees that all property included in the Facilities, and to the extent this Agreement is terminated due to an Event of Default or a Non-Appropriation Event, all property in the System, is or shall be legally owned by and titled in the name of ODPC, or its affiliate, Aqua, and, to the extent appropriate, the County agrees to execute and deliver such instruments and agreements as reasonably required by ODPC to effect such ownership and title and take such actions as may be reasonably necessary or appropriate to obtain such licenses or permits for ODPC or its affiliates to the extent appropriate to own, operate and maintain such Facilities , including, but not limited to, all of those rights, titles and interest referred to in Sections 2.06, 2.07 and 9.02.

IN WITNESS WHEREOF, the ~~parties~~ following duly authorized representatives have executed this Agreement as of the date first above written.

FLUVANNA COUNTY

By: _____ Date: _____
~~Shaun V. Kenny~~, Chairman
Board of Supervisors

APPROVED AS TO FORM:

County Attorney

OLD DOMINION PIPELINE COMPANY, LLC

ATTEST:

~~By:~~ By: _____ Date: _____
By _____

Print Name: _____

Title: _____

EXHIBIT A
Net Plant Value Calculation

Net Plant Value shall be calculated using GAAP and NARUC utility accounting rules which represents the depreciated original cost of the assets, owned and installed by Old Dominion Pipeline Company over the term of the Agreement, also sometimes called the undepreciated value or net book value (NBV), plus other non-unitized costs incurred or awaiting closure in the construction work in progress (CWIP) account which could include non-unitized repair costs, plus Old Dominion Pipeline Company's actual transaction costs associated with the transfer of the Facilities, if any. Equipment installed on Aqua Virginia, Inc.'s property or as part of the regulated system shall become the property of Aqua Virginia, Inc. regardless of whether installed or existing before or during the term of this Agreement.

The weighted average composite depreciation rate utilized to calculate the Net Plant for this Sewer Project will be [1.64%] based on the collection sewers asset category included in the construction phase of this agreement.

Capital improvements to the Facilities pursuant to section 8.02 of this Agreement may include asset categories with varying depreciation rates. Depreciation rates applicable to these additional categories will be determined at that time in accordance with GAAP and NARUC accounting rules.

EXHIBIT B

Concept Drawing, Proposed Sewer Pipeline
[Drawing attached]

**SEWER PIPELINE CONSTRUCTION, OPERATION
AND MAINTENANCE AGREEMENT**

**With County Attorney Changes from 9-27-2013
and BOS Changes from 11-20-2013**

CLEAN VERSION

**WATER PIPELINE CONSTRUCTION, OPERATION
AND MAINTENANCE AGREEMENT**

This WATER PIPELINE CONSTRUCTION, OPERATION AND MAINTENANCE AGREEMENT (the “Agreement”) is being executed and delivered as of the ____ day of _____ 2013, between the County of Fluvanna, a political subdivision of the Commonwealth of Virginia, (the “County”), and Old Dominion Pipeline Company, LLC, a limited liability company organized under the laws of the Commonwealth of Pennsylvania (“ODPC”).

A. Pursuant to Virginia Code §56-575.4(A) of the Public-Private Educational Facilities Infrastructure Act (the “PPEA”), Aqua Virginia, Inc. (“Aqua”) presented the County with a proposal to provide water service (the “Proposal”).

B. By action of the Board of Supervisors of the County taken on July 3, 2012, the County accepted the Proposal presented by Aqua.

C. On September 19, 2012, the Board of Supervisors voted unanimously to move forward with the negotiation of an interim or comprehensive agreement with Aqua to provide the services and matters as set forth in the Proposal.

D. The Proposal and the County’s acceptance thereof anticipated the negotiation of an agreement between Aqua and the County, as well as supporting agreements between the County and Aqua’s affiliates.

E. ODPC is an affiliate of Aqua for purposes of the Proposal that was accepted by the County.

F. In furtherance of the Proposal, the County is retaining ODPC to construct a potable water pipeline that will extend approximately 8.5 miles from the Lake Monticello Water System to a location situated near the intersection of Route 15 and Route 250 (as more particularly defined below, the “Water Line”). In connection with its construction of the Water Line, ODPC shall construct and install all necessary pumps, storage tanks, meters, flushing hydrants and any other infrastructure reasonably required to supply water along the Water Line.

G. ODPC will own the facilities it constructs pursuant to this Agreement and will be responsible for the facilities’ design, permitting, construction, operation and maintenance and for financing of all of the foregoing. If tax exempt financing is requested by ODPC in a conduit borrowing through the County's industrial or economic development authority, the County agrees to assist and reasonably cooperate with such financing.

H. Concurrently with the execution of this Agreement, the County is entering into an agreement (the “Bulk Water Agreement”), whereby Aqua will supply water along the Water Line to the County for distribution to certain of County’s customers as provided in the Proposal.

NOW THEREFORE, in consideration of the mutual covenants set forth in this Agreement, the parties, intending to be legally bound hereby, agree as follows:

DEFINITIONS

For the purposes of this Agreement, the following words and phrases shall have the following meanings, regardless of whether the spelling is capitalized:

“Agreement” shall mean this Agreement.

“Appropriation” or “Appropriated” shall include the act of approving and setting aside for payment of funds, and the actual payment thereof, to ODPC for the purposes provided in this Agreement.

“Aqua” means Aqua Virginia, Inc.

“Aqua’s Water System” – the system owned and/or operated by Aqua Virginia, Inc. for the production and distribution of Potable Water to customers of Aqua, said system being located on Aqua’s side of the Point of Delivery and including all the Potable Water meters and related appurtenances located at the Point of Delivery. Aqua’s Water System includes the existing Lake Monticello Water Treatment Plant and distribution system as well as any equipment installed on to Aqua Virginia, Inc.’s property as part of this Agreement.

“Contribute” means to convey without charge or reimbursement and free and clear of any and all liens or encumbrances.

“Cost” or “Entire Cost” shall be deemed to include all planning, development, studies, construction costs, engineering fees, attorneys’ fees, testing expenses, publication costs, financing costs, and miscellaneous costs.

“Effective Date” means the date specified in the first paragraph of the first page of this Agreement or, if the parties have not placed a date in such paragraph, the date on which this Agreement is fully executed by both parties.

“Facilities” means the water pipeline project, tank, pumps, and all equipment owned and operated by ODPC as referenced in Section 2.02 herein under the terms and conditions of this Agreement.

“Net Book Value” shall be defined as described and calculated pursuant to Exhibit A;

“Point of Delivery” means the meter vault connection to Aqua’s Water System owned by Aqua, which includes the tap to the existing main, the piping from the tap to the meter vault, and the meter valves in the vault (meter box). Water shall be deemed to be delivered to the County when it is delivered to the water meter and title shall pass from Aqua to the County, and to be in the possession of the County when the water passes through the water meter.

“Potable Water” means water for human consumption which is compliant with applicable Federal, state and local standards for drinking water.

“Price Index” means the “Consumer Price Index—U.S. City Average for All items for All Urban Consumers (1982-84=100)” (the CPI_U) published monthly in the “Monthly Labor Review” or other publication by the Bureau of Labor Statistics, United States Department of Labor (the Labor Bureau).

“Regulatory Agency” means any unit of governmental authority, whether federal, state, local or other, having jurisdiction concerning water standards, other environmental matters, real estate, zoning, building or otherwise having jurisdiction over the Zion Crossroads Public Water System Pipeline and Related Appurtenances, Aqua’s Water System, easements or any construction contemplated hereunder.

“Regulatory Requirements” mean any and all of the following issued, adopted or required from time to time by any Regulatory Agency: (i) the requirements or provisions of any and all state, federal and local laws, regulations, rules, orders, and ordinances; (ii) permits; and (iii) CPCN(s) or grants of authority to sell water.

“SCC” means the State Corporation Commission of the Commonwealth of Virginia.

“Services” mean services provided to the County hereunder by ODPC.

"Utility Agreements" mean the Water Pipeline Construction, Operation and Maintenance Agreement between the County and ODPC, the Sewer Pipeline Construction, Operation and Maintenance Agreement, between the County and ODPC, the Bulk Water Agreement between the County and Aqua, the Water Services Agreement between the County and Aqua, and the Sewer Services Agreement between the County and Aqua.

“Water Project” means the complete water pipeline project, including but not limited to the Facilities, to be designed, bid out, and constructed including all tanks, pumps, engineering, permit fees, easements, right of ways, and associated costs.

“Water System” or “System” means the entire potable water system, including the Facilities, along with all the subsequent expansions thereof which will be the County’s regulated waterworks commencing at the Point of Delivery.

SECTION 1. EMPLOYMENT OF ODPC; TERM.

1.01. Employment. The County hereby contracts with ODPC to perform the Services (defined below) for the compensation herein stated, and ODPC hereby agrees to perform all such services in accordance with the terms of this Agreement.

1.02. Initial Term. The initial term of this Agreement shall commence on the Effective Date hereof and shall continue for twenty (20) years from the end of the calendar month during which construction is completed as provided at Section 5.02 hereof.

1.03. End of Initial Term. At a minimum of twenty four months (24) months prior to the expiration of this Agreement, County must serve written notice by certified mail to ODPC of its intention to either:

- (a) renew and/or amend the Agreement for an additional negotiated period; or
- (b) purchase the Facilities; or
- (c) not renew this Agreement, whereupon at the completion of the initial term the County will cease its operation of the System and transfer all of its right, title and interest in, to and under the System to ODPC or its designee, along with all appurtenances thereunto pertaining, including, but not limited to, all easements, licenses, lands, permits, and present and future customer billing collection rights and exclusive service rights for the System.

In the event the Agreement is renewed for an additional 20 year term, ODPC’s Fees under Section 8 shall be based upon the remaining un-depreciated value of the Facilities over the renewal term, and the costs of any capital expenditures.

Should the County elect to purchase the Facilities, it shall do so for the remaining net plant value in accordance with the methodology specified in **Exhibit “A”**, and pay the specified sum by wire transfer upon the day of expiration of the Initial Term of this Agreement. If the day of expiration

is a weekend, then the date shall be a business day during the preceding week. Transfer of the Facilities shall be by agreement containing terms and conditions customary for similar transactions, including any regulatory approvals required as of the date of transfer.

1.04 Purchase of Facilities Prior to Expiration of Initial Term. County may purchase the Facilities at any time prior to the expiration of the Initial Term by payment of a Purchase Price equal to 150% of the Net Plant Value. Any Deposit and Escrow, along with applicable interest, will be applied as a credit to County toward the Purchase Price. Under such circumstances the Bulk Water Agreement with Aqua shall remain in effect but subject to the terms and conditions of default contained therein.

SECTION 2. SERVICES TO BE PROVIDED BY ODPC.

ODPC shall be responsible for providing the following services to County on the terms and conditions of this Agreement (the “Services”):

2.01 Water Line. ODPC shall construct a potable water pipeline capable of providing up to 500,000 gallons per day that will extend approximately 8.5 miles from the Point of Delivery from the Lake Monticello Water System (the “WS”) to a location situated near the intersection of Route 15 and Route 250 as shown on **Exhibit “B”** (the “Water Line”). **Exhibit “C”** shows the proposed hydraulic grade line (“HGL”). The actual size, capacity, and locations of the point of delivery meter, water mains, water tank, booster pumps, flow rates and pressures shall be as specified in the final approved plans and specifications (“Approved Plans”) for this project, or as they may be modified after the initial project is completed as provided for in this Agreement. The ODPC Facility constructed shall be designed to provide 1) 1,500 GPM of minimum peak flow for one hour, 2) a minimum 200,000 gallons of storage, 3) a minimum twelve (12) inch diameter water mains, 4) minimum of 35 PSI of normal operating pressure, and 5) a minimum continuous flow rate of 450 GPM, unless indicated otherwise in the Approved Plans and Specifications approved by ODPC and County.

2.02 Ancillary Facilities. In connection with ODPC’s construction of the Water Line, ODPC shall construct and install:

(a) all pumps required for the transport of water from the WTP to any point along the Water Line as of the completion of initial construction, it being understood that ODPC shall have no obligation to install booster pumps or other facilities required to extend service to County’s customers following completion of construction of the Facilities;

(b) the storage tank, the approximate location of which is shown on Exhibit B; and

(c) meters, flushing hydrants and any other infrastructure reasonably required to supply water along the Water Line.

All of the foregoing, including the Water Line shall be referred to collectively herein as the “Facilities.”

2.03 Expansion of Facilities. In the event the Water Line is extended by any third party beyond that shown on Exhibit B, the new infrastructure constructed for such an extension shall be contributed to and owned by County prior to the delivery of any water provided hereunder to

the extension. No such extension shall be permitted until plans and specifications for the extension are submitted to and approved by ODPC for a determination that any such expansion will not adversely impact the Facilities.

2.04. Ownership, Operation & Maintenance. ODPC shall retain ownership of the Facilities and shall be responsible for operating and maintaining the same.

2.05. Financing of the Services. ODPC shall be responsible for financing the cost of the construction of the Facilities, provided however, that if ODPC determines that the cost of the Services exceeds the estimated cost of the services of \$9,061,340.00 (the "Estimated Cost") by more than 20%, ODPC may terminate this Agreement in writing to the County, at which point the parties shall have no further obligations hereunder.

2.06 Easements and Rights of Way. After development of the Approved Plans and the final alignment of the pipeline as provided in Section 3.03 and 3.04, County shall obtain such permanent and temporary easements and/or fee simple title to land as are needed to construct the Facilities and operate the System for not less than forty (40) years and shall pay for such costs. ODPC will reimburse County for the expenditures County pays to property owners to obtain such easements and/or land as well as costs for utilizing a realtor to value and negotiate easement agreements, provided that such costs shall have first been reviewed and approved by ODPC in its reasonable judgment. All costs that are reimbursed to County will be included in the Final Costs for the Facilities. All easements shall be granted to County or its assigns and shall include a provision that County's licensees shall have access within the easement. County hereby acknowledges that ODPC shall have an exclusive license to use such easements and rights of way for utility services and shall have rights to access portions of the Facilities that are within the easements and that ODPC shall retain those rights until such time as County may purchase the Facilities or convey its ownership rights to ODPC. The County agrees to grant, assign and transfer to ODPC an exclusive license to use all permits, easements, lands or licenses reasonably required or appropriate for the operation, maintenance and use of the System and to provide such instruments or agreements as reasonably necessary to evidence such rights, including, but not limited to those as may be acquired pursuant to Section 2.07.

2.07. Eminent Domain - County acknowledges that the Facilities serve a critical public purpose. Accordingly, County agrees to take a dominant role in acquiring easements for the Facilities through the exercise of its powers of condemnation and eminent domain should ODPC be unable to acquire any easement required for the Facilities. In the event the County must exercise its powers of eminent domain in order to acquire easements and/or land for the Facilities, the County shall do so at its own cost and expense subject to being reimbursed by ODPC; provided, however, the County shall consult with ODPC regarding such costs and expense as may be incurred in connection with the exercise of the County's eminent domain power for ODPC's approval in its reasonable judgment prior to expending or committing to any such cost and expense. ODPC and County acknowledge that the Final Alignment for the Facilities shall be placed to minimize the acquisition of any easements to the extent reasonable, but while also maintaining the hydraulic integrity by avoiding unnecessary bends or configurations that inhibit flow of water and materially increase costs.

SECTION 3. DESIGN.

3.01. Commencement and Scope of Design Engineering Activities. ODPC will complete, or cause an engineering firm to complete, preliminary design plans and specifications for the Facilities within approximately 180 days after the Effective Date of this Agreement (the "Proposed Plan and Design Specifications"). ODPC shall consult with County regarding ODPC's selection of the engineering firm, and County shall have the right to accept or reject ODPC's choice. Rejection shall not be unreasonable.

3.02 Assistance - The County shall assist ODPC by participating in the development of plans for the Facilities. In this regard, County shall review engineering plans, permit applications, and other documents developed by ODPC. ODPC shall request County's review and approval on all critical design elements of the Facilities, including the alignment of ODPC Pipeline and any bids for services or supplies. Such assistance shall be provided at no cost to ODPC. The County shall provide prompt reviews and not unreasonably withhold or delay approvals.

3.03 Final Alignment – The Final Alignment of ODPC Pipeline is the final determination of the Parties regarding the exact placement of ODPC Pipeline from the Point of Delivery with the Monticello System to the terminal point of the Facilities ("Final Alignment"). The Final Alignment shall be mutually agreed upon by ODPC and County and both Parties shall sign the final engineering plans and specifications approved by the Virginia Department of Health. In the event a Final Alignment is not agreed upon within thirty (30) months of the Effective Date of this Agreement, this Agreement may be terminated at the sole discretion of ODPC and shall have no further effect. Upon such termination, any and all Deposits made by County shall be refunded to it without reduction, and the parties have no further liability one to the other.

3.04 Final Plans and Specifications – The Approved Plans for the Facilities, which shall be prepared after the Final Alignment is determined, will be approved by both County, ODPC, and Aqua and then bid for construction by ODPC. The Facilities, including all design, permitting and other pre-construction and soft costs, are currently estimated to cost \$9,061,340.00 (hereinafter, the "Estimated Cost"), which is based on a good faith estimate of known costs verified by ODPC's engineer and contractors. The Parties acknowledge the final costs for the Facilities cannot be determined until all project bids have been received from contractors, the costs for acquiring easements have been confirmed and all permits costs have been determined by permitting authorities. The total sum of all such costs including ODPC's costs to manage the project shall then constitute the Projected Cost. Final Costs for the Facilities shall be determined when construction has been completed and water first passes through a Point of Distribution into the Water Line.

3.05 Proceeding to Construction—If the Projected Cost does not exceed the Estimated Cost by more than 20% of the Estimated Cost, ODPC shall finalize contractual agreements with any successful bidders and proceed with construction of the Facilities.

If the Projected Cost exceeds the Estimated Cost by 20% of the Estimated Cost, ODPC and County must both agree to proceed with construction of the Facilities. The Parties may elect to try redesigning and rebidding the Facilities.

If the County elects not to proceed, it shall reimburse ODPC for all ODPC's costs to cover actual costs incurred, including but not limited to, all ODPC's costs incurred in connection with engineering and related project costs, consultant fees, easement acquisition, permits, contractor document preparation, reasonable attorney's fees, and other expenses ODPC may have incurred for or in connection with this Agreement and through the date that County elected not to proceed. The Deposit shall be applied to the above costs, expenses, and damages of ODPC and the remainder, if any, refunded.

If ODPC elects not to proceed against the County's desire to move forward, ODPC shall be responsible for the third party costs it has incurred as well as its own costs incurred. In addition, ODPC shall reimburse County for all County's costs to cover actual costs incurred, including but not limited to, all County's costs incurred and reasonable staff time expended in connection with engineering and related project costs, consultant fees, easement acquisition, permits, contractor document, reasonable attorney's fees, and other expenses County may have incurred for or in connection with this Agreement and through the date that ODPC elected not to proceed. The Deposit shall be refunded to County without reduction.

If County and ODPC jointly agree not to proceed, the third party costs incurred shall be split evenly. The design of the Facilities must be approved by the Virginia Department of Environmental Quality ("DEQ") and other regulatory agencies. ODPC shall not commence construction without all necessary governmental approvals which shall all be in a form and substance reasonably satisfactory to County and ODPC. ODPC and County acknowledge, all such authorizations, orders, permits, permissions and approvals by the Virginia Department of Health ("VDH"), DEQ, The Virginia State Corporation Commission ("SCC") and any other local, state and federal governmental agencies having jurisdiction over the Facilities, to the extent required under applicable laws, shall also all be in form and substance reasonably satisfactory to County and ODPC. ODPC shall obtain all such approvals, which shall be included in the cost of the Facilities. County shall cooperate with ODPC in seeking all such approvals at County's own cost and expense.

3.06. Approval of Final Design.

(a) ODPC and its designated engineer of record for the project shall work with the County in developing the proposed final design. County shall use its best efforts to provide any reviews and approvals in on a timely basis. Upon completion of the Proposed Plans and Design Specifications, ODPC shall submit the same to the County for approval. The County shall have thirty days to notify ODPC of any objection that it has to the Proposed Plans and Design Specifications. If the County does not notify ODPC of its objections within such thirty -day period, the County shall be deemed to have approved the Proposed Plans and Design Specifications and thereafter ODPC shall pursue approval of the Proposed Plans and Design Specifications from any governmental entity having jurisdiction over the same. If the County does notify ODPC of its objections to the Proposed Plans and Design Specifications within such

thirty day period, ODPC may not proceed until ODPC and the County have resolved the differences that exist between them with respect to such matters by first referring the matter to the Conflict Committee in accordance with the terms of Section 10 hereof.

(b) In the event that any dispute regarding the Proposed Plans and Design Specifications are not resolved by the Conflict Committee, the parties hereto agree that the standard used in any subsequent litigation regarding the propriety of the Proposed Plans and Design Specifications shall be whether or not ODPC has a fair and reasonable basis (in terms of design and capital costs and operating capability and costs) for its position with respect to any disputed portion of the Proposed Plans and Design Specifications, or has a fair and reasonable basis for an alternative proposal, in which event the court shall approve ODPC's Proposed Plans and Design Specifications. The Proposed Design Specifications approved by the County and by the VDH, DEQ, SCC and any other local, state and federal governmental agencies shall be referred to herein collectively as the Approved Plans which shall be the basis of the project for bidding. Upon completion of the regulatory approvals, ODPC may proceed with bidding the project and the securing of building or miscellaneous permits necessary for the construction of the Facilities.

3.07 Performance and Payment Bonds. Prior to the commencement of any construction, ODPC shall obtain and deliver to County the following bonds:

a. For those portions of the Agreement requiring the construction of improvements or infrastructure by ODPC, a performance bond in the sum of the Projected Cost of the Facilities conditioned upon the faithful performance of this Agreement in strict conformity with the Approved Plans and conditions of the Agreement.

b. For those portions of the Agreement requiring the construction of improvements or infrastructure by ODPC, a payment bond in the sum of the Projected Cost of the Facilities. The bond shall be for the protection of claimants who have and fulfill contracts to supply labor or materials to ODPC under this Agreement, or to any subcontractors, in furtherance of the work provided for in this Agreement, and shall be conditioned upon the prompt payment for all materials furnished or labor supplied or performed in the furtherance of the work. "Labor or materials" shall include public utility services and reasonable rentals of equipment, but only for periods when the equipment rented is actually used at the site.

c. Each of the bonds shall be executed by one or more surety companies selected by ODPC or its affiliates that are authorized to do business in Virginia.

d. The County reserves the right to waive any such bonds as may be permitted by law.

SECTION 4. CONSTRUCTION AND EQUIPPING.

4.01. ODPC Shall Construct and Equip. ODPC shall cause the Facilities to be constructed in strict accordance with the Approved Plans. ODPC shall perform construction management services itself or through a qualified contractor. ODPC shall cause all contractors (for themselves and their subcontractors) or subcontractors under such construction contracts to waive any and

all rights they may have to lien or otherwise encumber the Facilities on account of any work, materials or services rendered or supplied in connection with the construction of the Facilities.

4.02. Construction Period. ODPC shall (i) use its commercially reasonable efforts to complete construction of the Facilities within nine months following the parties' agreement on the Approved Plans and the securing of all permits necessary to commence construction of the same.

4.03 Supervision and Responsibility. Notwithstanding ODPC's right to contract out the construction management and construction of the Facilities pursuant to Section 4.01 above, ODPC shall remain responsible for and warrants to the County that the Facilities shall be constructed in conformance with the Approved Design. The County shall make reasonable inspections of the work to be performed under this Agreement to ensure that ODPC's activities are acceptable to the County in accordance with the provisions of this Agreement.

4.04. Site Conditions. In the event that during construction ODPC or any of its contractors or subcontractors discovers any subsurface physical conditions which are not ordinarily encountered and generally recognized as inhering in works of the character required hereunder, ODPC shall promptly, and before such conditions are disturbed further, notify the County in writing of the same. The County shall be entitled to examine such conditions. Following such examination, the County and ODPC shall mutually determine the impact, if any, such conditions have on the Approved Plans and the impact thereof on the cost of or time required for the performance of any part of the construction of the Facilities and shall, if necessary, equitably adjust the Service Fee and any fixed date to which ODPC is bound to reflect such impact. If the parties cannot agree, the matter shall be referred first to the Conflict Committee for resolution prior to either party resorting to litigation.

4.05. Permits. ODPC shall obtain all permits and other licenses which are required, customary or appropriate in connection with the construction or modification of the Facilities. The County shall cooperate and assist ODPC in submitting applications for all such permits or other licenses and in securing the same. The County also shall cooperate in attempting to accomplish a transfer to ODPC of any of its rights under any permit, license or application for a permit or license necessary for ODPC to perform its obligations hereunder.

4.06 Management of Contractors. ODPC shall obtain and share copies of all progress reports and billing invoices from contractors and suppliers with County and shall make approved payments to contractors in accordance with the terms of the applicable contracts.

4.07 County Notifications. ODPC will provide adequate notice to County of all meetings with contractors, engineers and permitting authorities so as to provide County with a reasonable opportunity to participate.

4.08 Change Orders. ODPC and County, through its Public Works Department, will jointly approve change orders during construction to the Facilities as follows. County shall use its best efforts to provide a response within 2 business days to any change order request. ODPC

may approve the change order if the amount is less than ten thousand dollars (\$10,000.00) and County is unable to provide a timely response.

4.09 Maintenance of Records. ODPC shall maintain records regarding ongoing costs for the Facilities and shall make such information available to County in the form of a report at the conclusion of the construction of the Facilities. All records shall be maintained in accordance with Generally Accepted Accounting Principles and the National Association of Regulatory Utility Commissioners (NARUC) system of accounts in effect on the date of this Agreement and as amended from time to time thereafter. Pursuant to the PPEA, ODPC shall file its financial statements with the County on a periodic basis, but at minimum annually.

4.10. Record Drawings. ODPC shall furnish the County with a complete set of record (as-built) drawings, of the Facilities within one hundred eighty days after Substantial Completion.

4.11 Compliance with Laws. ODPC certifies to the County that ODPC, in performing under this Agreement, will conform to the provisions of the Federal Civil Rights Act of 1964, as amended, as well as the Virginia Fair Employment Act of 1975, as amended. ODPC (hereinafter referred to in this Section as “contractor”) further agrees as follows:

(a) During the performance of this Agreement, the contractor agrees as follows:

(I) The contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the contractor. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

(II) The contractor, in all solicitations or advertisements for employees placed by or on behalf of the contractor, will state that such contractor is an equal opportunity employer.

(III) Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this Section.

(b) The contractor will be encouraged to include the provisions of the foregoing paragraphs I, II and III in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

(c) During the performance of this Agreement, the contractor agrees to (i) provide a drug-free workplace for the contractor’s employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the contractor’s workplace and specifying the actions that will be

taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the contractor that the contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

SECTION 5. COMPLETION OF FACILITIES

5.01. Testing. The construction period shall include a final mechanical checkout and equipment start-up period for the Facilities. Following ODPC's delivery of the Statement of Completion (defined below) to the County, ODPC shall commence operation of the Facilities.

5.02 Statement of Completion. Upon completion of construction of the Facilities pursuant to the Approved Plans to the point where they are capable of being operated at their intended design capacity in accordance with all regulatory requirements and following securing all necessary permits and governmental approvals for operation of the Facilities, ODPC shall notify the County of the same by delivering a written statement of completion, certified by ODPC's engineer (the engineer of record's "Statement of Completion"). The Statement of Completion shall also include a statement for the costs for construction of the Facilities through that point. The County may notify ODPC in writing within 15 days of receipt of such Statement of Completion that the facilities are not completed as required under the Approved Plans specifically identifying the issue(s) and ODPC shall have the opportunity to cure such issue(s) within a reasonable time and then issue another Statement of Completion. The earlier of the date that the County accepts the Statement of Completion in writing or has failed to provide notice to ODPC of any issues within the time allowed above shall be the date of Substantial Completion.

SECTION 6. OPERATION AND MAINTENANCE.

6.01. Operation and Maintenance of the Facilities. Following completion of the Facilities and throughout the term hereof ODPC shall be the sole operator of its pipeline throughout the term of this Agreement. As such, it shall be responsible for the following:

(a) ODPC shall be the sole operator of the booster pump station and tank control system throughout the term of the Agreement. Operations shall include regular weekly inspections of all pumping equipment, controls, electrical, and mechanical systems maintenance and repair, all in accordance with the manufacturer's recommendations for the specified equipment. ODPC shall also conduct, in conjunction with County, an annual flow test at any booster pump that is part of the Facilities.

(b) ODPC shall mark its main lines through the Miss Utility of Virginia program ("One Call").

(c) ODPC shall maintain the water main, tank, and booster pump system installed by ODPC under this Agreement for the term of the Agreement including all main breaks on its line as well as repairs and upgrades to the pump station and tank facility. ODPC is not responsible for repairs on extensions to the system that are owned by the County.

(d) ODPC shall record the master meter reading at the Point of Delivery each week along with any meter readings obtained by Aqua. The type of meter installed will be specified in the Approved Plans. ODPC shall rely on the water purveyor's meter readings for invoicing volumetric charges through the ODPC pipeline.

(e) Providing all repairs and maintenance for the Facilities on a timely basis, including leaks and any repairs necessitated by emergencies with the Facilities.

(f) ODPC shall operate its Facilities in accordance with the terms and conditions of this Agreement.

(g) The following operational services shall be provided by ODPC during the term of this Agreement:

i. Visit and inspect the pump station.

ii. Visit and inspect the meter at the Point of Delivery and record the reading for the System, the date/time of the visit, and all/any available customer meter readings monthly.

iii. Inspect meter vault equipment for any unusual operating conditions occurring since last visit.

iv. Test and record results of treated water for free chlorine at the storage tank and at the Point of Delivery each week.

v. Conduct twice a year flushing of the ODPC pipeline and exercise its valves provided that County retains responsibility for the payment of any fees for water utilized during flushing. Additional flushing may be requested by County which would be performed by ODPC as an additional charge to County.

6.02 Supervision of the O/M Contractor. If ODPC has an O/M Contractor perform ODPC's duties under Section 6.01 hereof, ODPC shall diligently supervise the O/M Contractor so that the operation, repairs and maintenance of the Facilities will be promptly and properly undertaken in a manner consistent with the long term maintenance of the Facilities. ODPC guarantees that the operation and maintenance will be performed in compliance with the terms of this Agreement. Other than its right to enforce the terms of this Agreement and other than as specifically set forth herein, the County shall have no right to control ODPC or the O/M Contractor in the performance by them of their duties hereunder with regard to the operation or maintenance of the Facilities.

6.03 County Obligations Following Completion. The County shall be responsible for all operations of its Water System not identified in section 6.01 in this Agreement. The County shall be responsible for the following:

(a) Reviewing and approving the design of, and adding all customer taps and for any new metered connections and service lines, subject to ODPC review and approval;

(b) setting rates for customers, billing customers for service, and managing customer service;

(c) allocating capacity among customers;

(d) accepting a minimum of 90,000 GPD from the Water Project. County acknowledges that its failure to withdraw 90,000 GPD may adversely impact water quality throughout the Water Project including the storage tank. In this regard, County shall either: a) flush an amount of water, at terminal line points which will result in the withdrawal of sufficient water to maintain water quality in the County's Water system; or b) obtain sufficient water customers that result in sufficient usage on the line to maintain water quality. County shall be responsible for all costs and expenses arising from its failure to comply with these obligations;

(e) ensuring water quality that is compliant with all state and federal water quality requirements throughout the County Water System. ODPC will utilize its expertise to assist the County with water quality requirements in the Facilities.

(f) Maintaining components of the County Water System that are not included within the ODPC Facilities; and

(g) Obtaining such operational permits as may be required by Regulatory Agencies having authority over the Water System.

6.04 Interruptions. County acknowledges that periodic unplanned service interruptions may occur due to main or equipment breaks. County agrees that ODPC is not responsible for any damages resulting from such interruptions, except to the extent that any such interruption shall arise from the negligence or other fault of ODPC.

6.05. Water from Other Sources. If County obtains water from any source other than ODPC, ODPC makes no representation that the treated water ODPC delivers to County will properly mix with water that County obtains from other sources. ODPC must approve any source addition or interconnection with another waterworks. County assumes all responsibility and liability for any combining or mixing of water delivered by ODPC that is combined or mixed with water from County's other sources. ODPC's sole responsibility is to provide to County water of a quality that meets state and federal drinking water standards at the Point(s) of Delivery and through its pipeline. Outside of ODPC's pipeline, County shall be solely responsible for meeting state and federal drinking water quality standards.

SECTION 7. CONDITIONS PRECEDENT TO ODPC'S OBLIGATIONS

The County and ODPC agree to the following terms and provisions, all of which shall be conditions precedent to ODPC's obligations and duties under this Agreement:

7.01. Agency Approvals. Written approval from VDH, DEQ, SCC and any other local, state and federal governmental agencies having jurisdiction over the Facilities that this Agreement is an approved transaction.

7.02. Pending or Threatened Proceedings. Prior to the initiation of construction, no proceeding shall be pending or threatened before any court or governmental agency in which it is sought to restrain or prohibit or to obtain damages or other relief in connection with this Agreement or the consummation of the transactions contemplated hereby, and no investigation that might eventuate in any such suit, action or proceeding shall be pending or threatened.

7.03. County Proceedings. County shall have furnished ODPC with certified copies of all proceedings of County, including a signed and certified copy of the appropriate document(s) authorizing the transactions hereby contemplated, as ODPC reasonably shall require.

7.04 Property Owner User Agreements. The County shall have obtained written agreements, acceptable to ODPC, from a minimum of thirty (30) property owners along the main water pipeline of the Water Project who will have agreed to connect to the Water Project for water service (the “Property Owner User Agreements”) and that the aggregate volume of water usage for the thirty (30) property owners shall not be less than fifteen thousand gallons per day (15,000 gpd). In the event of a Non-Appropriation Event, these agreements, upon ODPC’s request, shall be assigned by the County to ODPC or its designee.

7.05 Service District. As a condition precedent to ODPC’s obligations in this Agreement, the County shall create a service district for the geographic service area served by the System which said geographic area shall be generally similar to the area which is shown as the Zion Crossroads Community Planning Area on page 55 of the Fluvanna County Comprehensive Plan (2009), together with areas adjacent to the waterline between Lake Monticello and the Fluvanna Women’s Correctional Facility (the “Service District”). The area of such district shall remain in existence throughout the term of this Agreement, subject to the amendment thereof by the County from time to time as may be needed to accommodate changes in development patterns and the demand for public water services; and, the County shall adopt and maintain throughout the term of this Agreement and any extension thereof a mandatory connection policy for all new residences, industrial users and commercial users that come into existence after the System becomes available for public usage located within such geographic service area that shall require their immediate connection to the System; provided, however, that nothing in this paragraph shall be construed as prohibiting the County from permitting existing water sources for existing single family residences to continue in use for so long as the same shall remain in continuous use to serve such residences.

7.06 Rate Setting. ODPC and the County acknowledge and understand that the rate setting authority for the water service rates or fees charged to customers of the System (the “Rate Fees to Customers”) is ultimately subject to determination by the County under its operation of the service district, unless and until the System is transferred to ODPC or its designee and becomes regulated by the SCC.

7.07 Comprehensive Plan. The County shall conduct appropriate proceedings in order to make an affirmative determination that the System substantially complies with the County's Comprehensive Plan, either by action of the planning commission and the board of supervisors pursuant to Virginia Code Section 15.2-2232 or by appropriate amendment of such Plan. A final determination that the System substantially complies with the County's Comprehensive Plan shall be a condition precedent to ODPC's obligations under this Agreement.

7.08 Deposit Paid. The County shall have paid to ODPC the Deposit as set forth in Section 8.01(c) below.

7.09 Termination for Failure of Precondition. In the event that this Agreement shall terminate as a result of the failure of any precondition under this Agreement, specifically not limited to those conditions precedent noted supra in Section 7, to ODPC's obligations, and such termination shall not be the proximate result of the fault of either party, any and all Deposits made by County shall be refunded to it without reduction, and the parties shall have no further liability one to the other.

SECTION 8. ODPC'S FEES AND EXPENSE REIMBURSEMENTS.

8.01 Service Fee.

(a) The Service fee payable by the County to ODPC shall be payable monthly in the amount of Sixty Seven Thousand Eight Hundred Thirty Three Dollars (\$67,833.00) per month for the first year during the Term following the date of the Engineer of Record's Statement of Completion (Substantial Completion) (the "Base Year"). In the event that the Final Cost of the Facilities differs from the Estimated Cost, then the Base Year's Service Fee shall be adjusted, upward or downward as the case may be, by an amount equal to the percentage by which the Final Cost deviated from the Estimated Cost. Payment to ODPC for the Service Fee and all other payments hereunder shall be by electronic transfer.

(b) The Service Fee shall commence accruing from the date of Substantial Completion of the Facilities and shall be payable monthly on or before the last business day of each month (each such date being referred to as a "Payment Date") commencing on the first such date to occur within thirty days after Substantial Completion and following the provision of service to the County, and continuing for the term of this Agreement.

(c) The County shall pay to ODPC a Deposit within seventy (70) days of the Effective Date of this Agreement in the amount of Eight-Hundred Thirteen-Thousand Nine-Hundred Ninety-Six Dollars (\$813,996.00), being the amount equivalent to the estimated initial annual Service Fees for the first year of operations (the "Deposit"). The Deposit shall be credited against the payment of the Service Fees due from the County to ODPC during the final year of this Agreement. Interest collected on the Deposit shall also be credited to the said Service Fees. ODPC is required to keep the Deposit, and all accrued interest thereon, in an interest bearing account with a financial institution insured by the FDIC.

Once the Final Cost as referred to in sub-section (a) above is determined, the Deposit shall be recomputed upward or downward, as the case may be, according to the adjusted Service Fee;

and, the parties shall be entitled to payment from each other with the County being reimbursed the amount of any excess amount of the Deposit that may have been paid in the event the Final Cost is less than the Estimated Cost, or with ODPC being paid additional sums to add to the Deposit in the event that the Final Cost is greater than the Estimated Cost. Any such payments with respect to the adjusted Deposit amount shall be paid one to the other within ninety (90) days of the determination of the Final Cost.

The payment of the Deposit by the County shall be subject to appropriation, provided, however, the failure to so appropriate shall be deemed to be a Non-Appropriation Event pursuant to Section 8.07.

8.02. Volumetric Charge and Surcharge. In addition to the Service Fee, the County shall pay ODPC a monthly (the "Volumetric Charge") charge in arrears calculated as 3.5% of the bulk rate for water supply charged by Aqua (or its successor) to the County for water passing through the initial Point of Delivery at the Lake Monticello WTP, provided, that the minimum Volumetric Charge shall be based upon presumed volume of 90,000 gallons per day. By means of illustration, the current pro forma for the transaction contemplated by this Agreement would result in a current annual Volumetric Charge of \$3,400.00 at Aqua's current rates for 90,000 gallons per day. To the extent ODPC's operation and maintenance expenses increase 5% or more over the amount paid by the County in the preceding year as a result of either new regulatory requirements or from increased costs for outside utility services, outside labor, chemicals, One Call tickets and water sampling and testing during any calendar year, such increased costs shall be reimbursed to ODPC by County as a monthly surcharge spread over the following calendar year. ODPC shall provide the County a minimum of 90 days notice in the event a surcharge is needed along with justification of the increased operational costs. There shall be no surcharge for increases during the Base Year.

8.03 Repairs and Capital Improvements Following the Base Year. Expenditures for repairs or for capital improvements after the Base Year shall be allocated between the Parties in the following manner:

(a) Capital Improvements - After the Base Year, in the event that ODPC makes improvements to the Facilities due to State or Federal Regulations or because ODPC and County agree to make such improvements then the Service Fee payable pursuant to Section 8.01 above shall be increased by the percentage equal to the percentage resulting from dividing the cost of such new capital improvements by the aggregate total of all prior capital construction costs upon which the prior Service Fee was based. A Capital Improvement shall be any expenditure for new equipment or to extend the life of additional equipment that totals more than Five Hundred Dollars (\$500.00).

(b) Repairs - After the Base Year, in the event that ODPC is required to make repairs of existing facilities, the aggregate of which exceed One Hundred Thousand Dollars (\$100,000.00) in a single calendar year, then the Service Fee payable pursuant to Section 8.01 above shall be increased by the percentage equal to the percentage resulting from dividing the total cost in excess of One Hundred Thousand Dollars (\$100,000.00) of such repairs by the aggregate total of all prior capital construction costs upon which the prior Service Fee was based.

8.04 Books and Records. During the term of this Agreement ODPC shall keep accurate books and records with respect to the operation and maintenance of the Facilities. Such books and records shall include both accounting records and records detailing the physical equipment used in the operation of the Facilities. The records on physical equipment shall contain a list of all equipment which is part of the Facilities, and shall show all periodic maintenance performed, the date acquired, serial numbers and any other information needed to identify the equipment, and the date of any such equipment is replaced or subject to repair. This information shall be provided annually to County upon request.

8.05 Payment of Service Fees: ODPC will bill the County on a monthly basis following the provision of service by ODPC. The County agrees to make payment to ODPC within thirty (30) days from the date the bill is mailed or otherwise delivered by ODPC. A past due notice will be mailed by ODPC to the County after thirty (30) days. If payment has not been received after sixty (60) days from the date of the notice, a one percent (1%) per month interest charge, or the maximum amount otherwise allowed by law, will be assessed on the outstanding balance.

8.06 Funding of Escrow. In addition to the deposit required by Section 8.01(c), the County agrees to include in its monthly payment for services hereunder an additional ten percent (10%) of each payment, to be held in escrow by ODPC, with the amount accruing thereunder up to a maximum amount equal to the maximum annual payments for services due hereunder. Such escrow and any interest accrued thereon will be payable to ODPC in the event of: 1) non-payment by the County for sums owed to ODPC under this Agreement, including, but not limited to Service Fees and Repairs or Capital Improvements set forth in Section 8.03; or 2) the County fails to appropriate sufficient funds as specified in Section 8.07 hereunder.. Any amounts remaining in the escrow shall then be credited against the payment of the Service Fees due from the County to ODPC during the final two years of this Agreement. Interest collected on the escrowed funds shall also be credited to the said Service Fees. Payment of funds held in escrow shall be in addition to any other payments as may be required hereunder in the event of non-payment or non-appropriation. ODPC is required to keep the escrow funds, and all accrued interest thereon, in an interest bearing account with a financial institution insured by the FDIC.

8.07 Non-Appropriation. All payment obligations of the County under this Agreement shall be considered subject to annual appropriation by the Board of Supervisors of the County. In event that sufficient funds are not appropriated by the Board of Supervisors for the full payment of such obligations, then the County shall be deemed to have terminated this Agreement and shall not be obligated to make such payments beyond the then current fiscal year for which funds have been so appropriated. Upon the occurrence of such partial appropriation or non-appropriation (a "Non-Appropriation Event"), the following terms and conditions shall apply to the parties:

(a) County shall, no later than the end of the fiscal year for which payments have been appropriated, deliver possession of the System to ODPC.

(b) From the time of any Non-Appropriation Event, not associated with or caused by a material breach on ODPC's part, ODPC, at its election shall have the right to continue

providing water service to the County through the System and ODPC shall be paid the Service Fees from such funds as may have been appropriated therefor by the Board of Supervisors.

(c) Upon a Non-Appropriation Event, during the period prior to the delivery of possession of the System to ODPC, ODPC shall have the right, to the extent permitted by law, to terminate the delivery water service to any customers using the System provided that ODPC first gives written notice of termination of water service to the County at least thirty (30) days prior to any such termination, during which time the County may cure any Non-Appropriation Event by appropriating sufficient funds for its payment obligations of ODPC as provided for in this Agreement and by bringing all such payments current.

(d) County will acknowledge that it is in the public interest to support the expansion of the Lake Monticello Public Water System service territory under Aqua Virginia's certificate of public convenience and necessity (CPCN) to include the Zion Crossroads Community Planning Area and such other areas along the pipeline to be constructed by ODPC as may be sought by Aqua Virginia and approved by the SCC. In this regard, the County acknowledges that ODPC entered into this Agreement in reliance on the County's creation of the Service District and with the understanding there will be a continuation of such district with a geographical size and with sufficient connections and fees to pay the costs incurred for constructing and operating the Facilities.

SECTION 9. DEFAULTS AND REMEDIES.

9.01. Events of Default.

(a) Each of the following will constitute an Event of Default on the part of ODPC:

(i) Institution by or against ODPC of any bankruptcy, insolvency, reorganization, arrangement, debt adjustment, liquidation or receivership proceeding, which, if instituted against ODPC is not dismissed or withdrawn within 60 days after issuance of an order thereunder;

(ii) Failure of ODPC to comply with the provision of Section 14.01 hereof; or

(iii) Failure or refusal by ODPC to perform any of its obligations under this Agreement, which failure continues for a period of thirty days after written notice to ODPC from the County, which period shall be extended if ODPC has commenced a cure of such failure during the thirty day period and is proceeding with due diligence to cure the failure.

(b) Each of the following shall constitute an Event of Default on the part of the County:

(i) Failure by the County to pay the Service Fee when due which failure continues for a period of thirty days;

(ii) Failure by the County to pay any other amounts payable hereunder when due, which failure continues for a period of fifteen days after written notice to the County from ODPC; or

(iii) Failure by the County to comply with any other of its obligations under the Agreement, which failure continues for a period of thirty days after written notice to the County from ODPC, which period shall be extended if the County has commenced a cure of such failure during the thirty day period and is proceeding with due diligence to cure the failure;

(iv) A default occurring in any of the Utility Agreements.

Notwithstanding the foregoing, the failure to pay due to a Non-Appropriation Event shall not be considered an Event of Default hereunder.

9.02. Remedies. The provisions set forth in this Agreement shall govern the rights and responsibilities of the County and ODPC upon the termination of this Agreement or in the event of any material default by the County or ODPC or should a Non-Appropriation Event occur that is not cured as stated herein.

(a) Upon the occurrence of an Event of Default by ODPC and so long as such an Event of Default is continuing, the County shall have the following rights and remedies in addition to damages and any other remedies which may be available to it at law or in equity:

(i) The County may withhold payment of the disputed portion of the Service Fee until the Event of Default is cured; or

(ii) In the event that ODPC is in material breach of this Agreement, and ODPC fails to commence to cure such material breach within thirty (30) days of receiving written notice thereof from the County, then the County shall have the right to either (i) cure such breach and ODPC shall be obligated to reimburse the County for the same; or (ii) the County may terminate this Agreement by providing written notice to ODPC, and the parties hereto shall have no further obligations to each other.

(b) Upon the occurrence of an Event of Default by the County and so long as such an Event of Default is continuing, in addition to other remedies ODPC shall have the following rights and remedies: ODPC may terminate this and other agreements with the County, including but not limited to the Utility Agreements, by notice in writing to the County; and

(c) if the County fails to pay its obligations under this Agreement, whether in under an Event of Default or due to a Non-Appropriation Event, or if any other circumstances result in a termination of the Agreement, then:

(i) the County agrees to transfer all of its right, title and interest in, to and under the System to ODPC or its designee, along with all rights thereof and appurtenances thereunto pertaining, including, but not limited to all easements, licenses, lands, permits,

and all present and future customer billings and accounts receivable, and exclusive service rights for the System, and ODPC shall have the right to take control of the System;

(ii) County will continue to acknowledge that it is in the public interest to support the expansion of the Lake Monticello Public Water System service territory under Aqua Virginia's certificate of public convenience and necessity (CPCN) to include the Zion Crossroads Community Planning Area and such other areas along the pipeline to be constructed by ODPC as may be sought by Aqua Virginia and approved by the SCC;

(iii) In addition to any other permitted applications of the Deposit and escrow funds, ODPC shall be entitled to apply any or all of the Deposit and escrow funds, and any earnings thereon, to cover actual transfer costs, regulatory costs (if any) and reasonable engineering and reasonable attorney fees incurred to satisfy any state, federal or local regulatory requirements incurred in connection with having the System transferred from County to ODPC or its assigns; and (b) to cover actual damages and costs incurred, including but not limited to, all ODPC's costs incurred in connection with engineering and related project costs, consultant fees, easement acquisition, permits, contractor document preparation, reasonable attorney's fees, and other expenses ODPC may have been incurred for or in connection with this Agreement; provided, however, County shall remain liable for all such costs that are not covered by the Deposit and the escrowed fund.

9.03 Prevailing Party. If any legal action or other proceeding is brought to enforce the provisions of this Agreement, the prevailing party shall be entitled to recover reasonable attorney's fees and other costs incurred in such action or proceeding, in addition to any other relief to which the prevailing party may be entitled.

SECTION 10. CONFLICT RESOLUTION.

Delegation of Authority. Prior to resorting to litigation, ODPC and the County each shall permit the Conflict Committee to resolve, if they are able to do so, disputes and disagreements which arise between ODPC and the County under the terms of this Agreement or as a result of the performance by ODPC of its obligations hereunder. The Conflict Committee shall be composed of one representative of the County, one representative of ODPC and a mutually agreed upon licensed professional engineer selected by the County and ODPC. The parties stipulate and agree that the permissible venue and jurisdiction for the resolution of any and all disputes arising from or out of this Agreement shall be in the Circuit Court of Fluvanna County, Virginia or as permissible by law. All claims against the County shall be subject to the provisions of Title 15.2, Chapter 12, Article 4 (Sec. 15.2-1243, *ff.*) of the Code of Virginia (1950), as amended.

SECTION 11. FORCE MAJEURE.

The respective duties and obligations of the parties hereunder (except the County's obligation to pay ODPC such sums as may become due from time to time for services rendered

by it) shall be suspended while and so long as performance thereof is prevented or impeded by civil disturbances, riots, strikes, fire, severe weather, governmental action, war acts, acts of God or any other cause similar to the foregoing which is beyond the reasonable control of the party from whom the performance was due; provided, however, that such party is at all times using its best efforts to overcome the impediment.

SECTION 12. DAMAGE OR DESTRUCTION.

12.01. Duty To Repair or Rebuild. If the Facilities are destroyed or damaged, ODPC shall repair or rebuild the Facilities at ODPC's sole cost or expense, whether or not the insurance proceeds, if any, are adequate for the purpose.

SECTION 13. THE COUNTY'S OBLIGATIONS. AND REPRESENTATIONS.

13.01. County's Resolution. The County shall authorize the execution of this Agreement by resolution.

13.02. County's Budget and Appropriations. The County intends to include in its budget its payment of its obligations hereunder during the term of this Agreement, or any extension thereof. The County agrees to notify ODPC in the event the Service Fees or other amounts are not adopted in the County budget and appropriated by the Board of Supervisors within 30 days of such consideration by the Board of Supervisors.

SECTION 14. INSURANCE AND INDEMNITY

14.01. ODPC Shall Obtain Insurance. ODPC shall place and maintain with responsible insurance carriers qualified to do business in Virginia the following insurance and shall deliver to the County certificates evidencing such insurance which shall provide thirty days' notice to be given to the County in the event of cancellation:

- (a) Comprehensive General Liability Insurance, all applicable to Personal Injury, Bodily Injury and Property Damage to a combined single limit of \$1,000,000.00 each occurrence.
- (b) Comprehensive Automobile Liability Insurance including owned, hired and non-owned automobiles, Bodily Injury and Property Damage to a combined single limit of \$250,000.00 each occurrence.
- (c) Excess Liability Insurance in following form to the above policies with a combined single limit of \$10,000,000.00 each occurrence.
- (d) Public Liability Insurance to a combined single limit of \$1,000,000.00 per occurrence.
- (e) Worker's compensation insurance in an amount as required under Virginia law.

(f) Additional Insured. The County shall be named an additional insured on the insurance referred to above.

County acknowledges that the amounts of coverage listed above are sufficient to provide coverage to County for tort liability and for the continuation and completion of ODPC's obligations under this Agreement.

Such policies shall be deemed satisfactory unless County provides written objection within ten (10) days of delivery by ODPC.

In addition, ODPC shall require, and include in any and all subcontracts, that subcontractors obtain and maintain for the duration of the work worker's compensation coverage in the amounts required under Virginia law.

SECTION 15. REPRESENTATIONS AND WARRANTIES

15.01. County hereby represents and warrants to ODPC as follows:

(a) County has the full power and lawful authority to execute and deliver this Agreement and all related agreements and to consummate and perform the transactions contemplated hereby and has duly and validly authorized the execution of this Agreement and all related documents and agreements by all necessary proceedings. This Agreement and all related agreements constitute the valid and binding obligation of County.

(b) This Agreement does not require any further approvals of any other party, does not violate any law, ordinance or regulation, does not conflict with any order or decree, and does not conflict with or result in a breach of any contract, lease or permit to which Fluvanna is a party.

(c) The County has complied with all applicable requirements of the Code of Virginia and the County's regulatory and procedural guidelines in entering into this Agreement, including, but not limited to the requirements of the County's and the Commonwealth of Virginia's PPEA requirements, procedures and guidelines.

15.02. ODPC hereby represents and warrants to County as follows:

(a) Organization. ODPC is a limited liability company duly organized and validly existing under the laws of the Commonwealth of Pennsylvania, and duly registered in the Commonwealth of Virginia.

(b) Due Authorization; Valid and Binding. ODPC has the full power and lawful authority to execute this Agreement and to consummate and perform the transactions contemplated hereby and has duly and validly authorized the execution of this Agreement by all necessary proceedings. This Agreement constitutes the valid and binding obligations of ODPC.

(c) Financial Ability. ODPC has the financial ability to perform the Services as contemplated hereunder.

SECTION 16. MISCELLANEOUS PROVISIONS.

16.01. Entire Agreement and Amendment. This Agreement, together with the Exhibits hereto, contains the entire understanding among the parties with respect to its subject matter, and supersedes all prior and contemporaneous agreements and understandings; inducements and conditions, express or implied, oral or written except as herein contained. The express terms hereof control and supersede any course of performance or usage of the trade inconsistent with any of the terms hereof. This Agreement (including the Exhibits hereto) may not be modified or amended other than by an agreement in writing signed by all of the parties hereto, except that certain Exhibits may be attached after the execution hereof following approval by the County as expressly provided herein.

16.02. Indulgences. Neither the failure nor any delay on the part of any party to exercise any right, remedy, power or privilege under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any right, remedy, power or privilege preclude any other or further exercise of the same or of any other right, remedy, power or privilege nor shall any waiver of any right, remedy, power or privilege with respect to any occurrence be construed as a waiver of such right, remedy, power or privilege with respect to any other occurrence. No waiver shall be effective unless it is in writing and is signed by the party asserted to have granted such waiver.

16.03. Controlling Law. This Agreement and all questions relating to its validity, interpretation, performance and enforcement shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia, notwithstanding any Virginia or other conflict-of-law provision to the contrary.

16.04. Notices. All notices, requests, demands and other communications required or permitted under this Agreement shall be in writing and shall be deemed to have been received when delivered against receipt or on the fifth business day following the mailing, by registered or certified mail, postage prepaid, return receipt requested, thereof addressed as set forth below:

(i) If to the County:
Chairman
Fluvanna County Board of Supervisors
Fluvanna County Office Building, Main Street
PO Box 540
Palmyra, VA 22963

With copy to:

Frederick W. Payne, Esquire
County Attorney
414 East Jefferson Street
Charlottesville, Virginia 22902

(ii) If to ODPC:
Karl M. Kyriss, President
Old Dominion Pipeline Company, LLC
762 West Lancaster Avenue
Bryn Mawr, Pennsylvania 19010

With a copy to:
Christopher P. Luning, Vice President & General Counsel
762 West Lancaster Avenue
Bryn Mawr, Pennsylvania 19010

Any party may change the address to which communications or copies are to be sent by giving notice of such change of address in conformity with the provision of this paragraph for the giving of notice.

16.05. Binding Nature of Agreement; No Assignments. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their successors and assigns, except that no party may assign or transfer its rights or obligations under this Agreement without the prior written consent of the other parties hereto.

16.06. Exhibits and Appendices. All Exhibits and Appendices attached hereto and referred to herein are hereby incorporated by reference into, and made part of, this Agreement at each place where such reference is made.

16.07. Nature of Relationship. The relationship which the parties intend to create under this Agreement is that of principal and independent contractor. Nothing herein is intended or shall be construed to create the relationship of partners, of co-venturers or of employment between the County and ODPC. The County shall not have the right to direct or control the activities or practices of ODPC, except as expressly provided in this Agreement.

16.08. Execution in Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original as against any party whose signature appears hereon, and all of which shall together constitute one and the same instrument. This Agreement shall become binding when one or more counterparts hereof, individually or taken together, shall bear the signatures of all of the parties reflected hereon as the signatories.

16.09. Provisions Separable. The provisions of this Agreement and of each section or other subdivision hereof are independent of and separable from each other, and no provision shall be affected or rendered invalid or unenforceable by virtue of the fact that for any reason any other or others of them may be invalid or unenforceable in whole or part or declared so by a court of competent jurisdiction.

16.10. Section and Paragraph Headings. The section and paragraph headings in this Agreement are for convenience of reference only; they form no part of this Agreement and shall not affect its interpretation.

16.11. Gender. Words used herein, regardless of the number and gender specifically used, shall be deemed and construed to include any other number, singular or plural, and any other gender, masculine, feminine or neuter, which the context requires.

16.12. Sections. This Agreement is divided into sections and subdivided into subdivisions. Both the sections and the subdivisions are referred to as "Sections." In construing this Agreement, the word Section should be given the meaning which its context suggests and doubts should be resolved in favor of the broader designation.

16.13. Number of Days. Except as expressly stated to the contrary elsewhere herein, in computing the number of days for purposes of this Agreement, all days shall be counted, including Saturdays, Sundays and legal holidays in Virginia; provided, however, that if the final day of any time period falls on a Saturday, Sunday or legal holiday, then the final day shall be deemed to be the next day which is not a Saturday, Sunday or legal holiday in Virginia.

16.14. Monitor. The County shall be allowed to monitor the practices of ODPC under this Agreement to ensure that the project is properly constructed and maintained in accordance with the terms specified herein.

16.15. PPEA. Except as otherwise stated herein, this Agreement shall incorporate the duties set for in Chapter 22.1 of the Virginia Public-Private Education Facilities and Infrastructure Act of 2002 (the "Chapter"). In the event that there is any conflict or inconsistency between the terms of this Agreement and the Chapter, the terms of this Agreement shall prevail to the extent permitted by law.

16.16. Nonsubstitution. County agrees that until all amounts are paid to ODPC and/or Aqua under this Agreement and the Utility Agreements, that the County will not allow any of the services provided to the County or the residents, citizens or users under this Agreement to be provided by any other person or entity, private or public, and that it will not agree or contract with or otherwise accept any of such services without the prior written consent of Aqua and ODPC, at their sole discretion.

16.17. Cross Default. If an event of default occurs in any of the Utility Agreements, then such event shall, in turn, automatically create an Event of Default under this Agreement.

16.18. Essential Use. County agrees that the services provided to its residents and businesses under this Agreement are essential governmental services necessary for the health, safety and welfare of the County and its residents and businesses.

16.19. Title to System. County agrees that all property included in the Facilities, and to the extent this Agreement is terminated due to an Event of Default or a Non-Appropriation Event, all property in the System, is or shall be legally owned by and titled in the name of ODPC, or its affiliate, Aqua, and, to the extent appropriate, the County agrees to execute and deliver such instruments and agreements as reasonably required by ODPC to effect such ownership and title and take such actions as may be reasonably necessary or appropriate to obtain such licenses or permits for ODPC or its affiliates to the extent appropriate to own,

operate or maintain such Facilities, including, but not limited to, all of those rights, titles and interest referred to in Sections 2.06, 2.07 and 9.02.

[Signature page follows]

IN WITNESS WHEREOF, the duly authorized representatives have executed this Agreement as of the date first above written.

FLUVANNA COUNTY

By: _____
Chairman
Board of Supervisors

Date: _____

APPROVED AS TO FORM:

County Attorney

OLD DOMINION PIPELINE COMPANY, LLC

By: _____

Date: _____

Print Name: _____

Title: _____

EXHIBIT A

Net Plant Value Calculation

Net Plant Value shall be calculated using GAAP and NARUC utility accounting rules which represents the depreciated original cost of the assets, owned and installed by Old Dominion Pipeline Company over the term of the Agreement, also sometimes called the undepreciated value or net book value (NBV), not including any assets located on Aqua Virginia, Inc.'s property such as water mains, point of delivery meter and vault, backflow prevention assembly, pumps, tanks, treatment equipment, or any other equipment which shall be installed on Aqua's property during the term of this Agreement, plus other non-unitized costs incurred or awaiting closure in the construction work in progress (CWIP) account which could include non-unitized repair costs, plus Old Dominion Pipeline Company's actual transaction costs associated with the transfer of the Facilities, if any. Equipment installed on Aqua Virginia, Inc.'s property or as part of the regulated system shall become the property of Aqua Virginia, Inc. regardless of whether installed or existing before or during the term of this Agreement.

The weighted average composite depreciation rate utilized to calculate the Net Plant for this Water Project will be 2.13% based on the asset categories included in the construction phase of this agreement.

Capital improvements to the Facilities pursuant to section 8.02 of this Agreement may include asset categories with varying depreciation rates. Depreciation rates applicable to these additional categories will be determined at that time in accordance with GAAP and NARUC accounting rules.

EXHIBIT B

Attached: Concept Drawing, Proposed Pipeline Route from Aqua's Water System to Zion Crossroads

EXHIBIT C

Attached: Concept Drawing, Proposed Hydraulic Grade Line of Pipeline

**SEWER PIPELINE CONSTRUCTION, OPERATION
AND MAINTENANCE AGREEMENT**

**With County Attorney Changes from 9-27-2013
and BOS Changes from 11-20-2013**

WITH TRACK CHANGES ON VERSION

WATER PIPELINE CONSTRUCTION, OPERATION AND MAINTENANCE AGREEMENT

This WATER PIPELINE CONSTRUCTION, OPERATION AND MAINTENANCE AGREEMENT (the “Agreement”) is being executed and delivered as of the ____ day of _____ 2013, between the County of Fluvanna, a political subdivision of the Commonwealth of Virginia, (the “County”), and Old Dominion Pipeline Company, LLC, a limited liability company organized under the laws of the Commonwealth of Pennsylvania (“ODPC”).

A. Pursuant to Virginia Code §56-575.4(A) of the Public-Private Educational Facilities Infrastructure Act (the “PPEA”), Aqua Virginia, Inc. (“Aqua”) presented the County with a proposal to provide water service (the “Proposal”).

B. By action of the Board of Supervisors of the County taken on July 3, 2012, the County accepted the Proposal presented by Aqua.

C. On September 19, 2012, the Board of Supervisors voted unanimously to move forward with the negotiation of an interim or comprehensive agreement with Aqua to provide the services and matters as set forth in the Proposal.

D. The Proposal and the County’s acceptance thereof anticipated the negotiation of an agreement between Aqua and the County, as well as supporting agreements between the County and Aqua’s affiliates.

E. ODPC is an affiliate of Aqua for purposes of the Proposal that was accepted by the County. _____

F. In furtherance of the Proposal, the County is retaining ODPC to construct a potable water pipeline that will extend approximately 8.5 miles from the Lake Monticello Water System to a location situated near the intersection of Route 15 and Route 250 (as more particularly defined below, the “Water Line”). In connection with its construction of the Water Line, ODPC shall construct and install all necessary pumps, storage tanks, meters, flushing hydrants and any other infrastructure reasonably required to supply water along the Water Line.

G. ODPC will own the facilities it constructs pursuant to this Agreement and will be responsible for the facilities’ design, permitting, construction, operation and maintenance and for financing of all of the foregoing. If tax exempt financing is requested by ODPC in a conduit borrowing through the County's industrial or economic development authority, the County agrees to assist and reasonably cooperate with such financing.

H. Concurrently with the execution of this Agreement, the County is entering into an agreement (the “Bulk Water Agreement”), whereby Aqua will supply water along the Water Line to the County for distribution to certain of County’s customers as provided in the Proposal.

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NOW THEREFORE, in consideration of the mutual covenants set forth in this Agreement, the parties, intending to be legally bound hereby, agree as follows:

DEFINITIONS

For the purposes of this Agreement, the following words and phrases shall have the following meanings, regardless of whether the spelling is capitalized:

“Agreement” shall mean this Agreement.

“Appropriation” or “Appropriated” shall include the act of approving and setting aside for payment of funds, and the actual payment thereof, to ODPC for the purposes provided in this Agreement.

“Aqua” means Aqua Virginia, Inc.

“Aqua’s Water System” – the system owned and/or operated by Aqua Virginia, Inc. for the production and distribution of Potable Water to customers of Aqua, said system being located on Aqua’s side of the Point of Delivery and including all the Potable Water meters and related appurtenances located at the Point of Delivery. Aqua’s Water System includes the existing Lake Monticello Water Treatment Plant and distribution system as well as any equipment installed on to Aqua Virginia, Inc.’s property as part of this Agreement.

“Contribute” means to convey without charge or reimbursement and free and clear of any and all liens or encumbrances.

“Cost” or “Entire Cost” shall be deemed to include all planning, development, studies, construction costs, engineering fees, attorneys’ fees, testing expenses, publication costs, financing costs, and miscellaneous costs.

“Effective Date” means the date specified in the first paragraph of the first page of this Agreement or, if the parties have not placed a date in such paragraph, the date on which this Agreement is fully executed by both parties.

“Facilities” means the water pipeline project, tank, pumps, and all equipment owned and operated by ODPC as referenced in Section 2.02 herein under the terms and conditions of this Agreement.

“Net Book Value” shall be defined as described and calculated pursuant to Exhibit A;

“Point of Delivery” means the meter vault connection to Aqua’s Water System owned by Aqua, which includes the tap to the existing main, the piping from the tap to the meter vault, and the meter valves in the vault (meter box). Water shall be deemed to be delivered to the County when it is delivered to the water meter and title shall pass from Aqua to the County, and to be in the possession of the County when the water passes through the water meter. 3

“Potable Water” means water for human consumption which is compliant with applicable Federal, state and local standards for drinking water.

“Price Index” means the “Consumer Price Index—U.S. City Average for All items for All Urban Consumers (1982-84=100)” (the CPI_U) published monthly in the “Monthly Labor Review” or other publication by the Bureau of Labor Statistics, United ~~states~~States Department of Labor (the Labor Bureau).

“Regulatory Agency” means any unit of governmental authority, whether federal, state, local or other, having jurisdiction concerning water standards, other environmental matters, real estate, zoning, building or otherwise having jurisdiction over the Zion Crossroads Public Water System

Pipeline and Related Appurtenances, Aqua's Water System, easements or any construction contemplated hereunder.

"Regulatory Requirements" mean any and all of the following issued, adopted or required from time to time by any Regulatory Agency: (i) the requirements or provisions of any and all state, federal and local laws, regulations, rules, orders, and ordinances; (ii) permits; and (iii) CPCN(s) or grants of authority to sell water.

"SCC" means the State Corporation Commission of the Commonwealth of Virginia.

"Services" mean services provided to the County hereunder by ODPC.

"Utility Agreements" mean the Water Pipeline Construction, Operation and Maintenance Agreement between the County and ODPC, the Sewer Pipeline Construction, Operation and Maintenance Agreement, between the County and ODPC, the Bulk Water Agreement between the County and Aqua, the Water Services Agreement between the County and Aqua, and the Sewer Services Agreement between the County and Aqua.

"Water Project" means the complete water pipeline project, including but not limited to the Facilities, to be designed, bid out, and constructed including all tanks, pumps, engineering, permit fees, easements, right of ways, and associated costs.

"Water System" or "System" means the entire potable water system, including the Facilities, along with all the subsequent expansions thereof which will be the County's regulated waterworks commencing at the Point of Delivery.

SECTION 1. EMPLOYMENT OF ODPC; TERM.

1.01. Employment. The County hereby contracts with ODPC to perform the Services (defined below) for the compensation herein stated, and ODPC hereby agrees to perform all such services in accordance with the terms of this Agreement. 4

1.02. Initial Term. The initial term of this Agreement shall commence on the Effective Date hereof and shall continue for twenty (20) years from the end of the calendar month during which construction is completed as provided at Section 5.02 hereof.

1.03. End of Initial Term. At a minimum of twenty four months (24) months prior to the expiration of this Agreement, County must serve written notice by certified mail to ODPC of its intention to either:

(a) renew and/or amend the Agreement for an additional negotiated period; or

(b) purchase the Facilities; or

(c) not renew this Agreement, whereupon at the completion of the initial term the County will cease its operation of the System and transfer all of its right, title and interest in, to and under the System to ODPC or its designee, along with all appurtenances thereunto pertaining, including, but not limited to, all easements, licenses, lands, permits, and present and future customer billing collection rights and exclusive service rights for the System.

In the event the Agreement is renewed for an additional 20 year term, ODPC's Fees under Section 8 shall be based upon the remaining un-depreciated value of the Facilities over the renewal term, and the costs of any capital expenditures.

Should the County elect to purchase the Facilities, it shall do so for the remaining net plant value in accordance with the methodology specified in **Exhibit “A”**, and pay the specified sum by wire transfer upon the day of expiration of the Initial Term of this Agreement. If the day of expiration is a weekend, then the date shall be a business day during the preceding week. Transfer of the Facilities shall be by agreement containing terms and conditions customary for similar transactions, including any regulatory approvals required as of the date of transfer.

1.04 Purchase of Facilities Prior to Expiration of Initial Term. County may purchase the Facilities at any time prior to the expiration of the Initial Term by payment of a Purchase Price equal to 150% of the Net Plant Value. Any Deposit and Escrow, along with applicable interest, will be applied as a credit to County toward the Purchase Price. Under such circumstances the Bulk Water Agreement with Aqua shall remain in effect but subject to the terms and conditions of default contained therein.

SECTION 2. SERVICES TO BE PROVIDED BY ODPC.

ODPC shall be responsible for providing the following services to County on the terms and conditions of this Agreement (the “Services”):

2.01 Water Line. ODPC shall construct a potable water pipeline capable of providing up to 500,000 gallons per day that will extend approximately 8.5 miles from the Point of Delivery from the Lake Monticello Water System (the “WS”) to a location situated near the intersection of Route 15 and Route 250 as shown on **Exhibit “B”** (the “Water Line”). **Exhibit “C”** shows the proposed hydraulic grade line (“HGL”). The actual size, capacity, and locations of the point of delivery meter, water mains, water tank, booster pumps, flow rates and pressures §

shall be as specified in the final approved plans and specifications (“Approved Plans”) for this project, or as they may be modified after the initial project is completed as provided for in this Agreement. The ODPC Facility constructed shall be designed to provide 1) 1,500 GPM of minimum peak flow for one hour, 2) a minimum 200,000 gallons of storage, 3) a minimum twelve (12) inch diameter water mains, 4) minimum of 35 PSI of normal operating pressure, and 5) a minimum continuous flow rate of 450 GPM, unless indicated otherwise in the Approved Plans and Specifications approved by ODPC and County.

2.02 Ancillary Facilities. In connection with ODPC’s construction of the Water Line, ODPC shall construct and install:

- (a) all pumps required for the transport of water from the WTP to any point along the Water Line as of the completion of initial construction, it being understood that ODPC shall have no obligation to install booster pumps or other facilities required to extend service to County’s customers following completion of construction of the Facilities;
- (b) the storage tank, the approximate location of which is shown on Exhibit B; and
- (c) meters, flushing hydrants and any other infrastructure reasonably required to supply water along the Water Line.

All of the foregoing, including the Water Line shall be referred to collectively herein as the “Facilities.”

2.03 Expansion of Facilities. In the event the Water Line is extended by any third party beyond that shown on Exhibit B, the new infrastructure constructed for such an extension shall be contributed to and owned by County prior to the delivery of any water provided hereunder to the extension. No such extension shall be permitted until plans and specifications for the extension are submitted to and approved by ODPC for a determination that any such expansion will not adversely impact the Facilities.

2.04. Ownership, Operation & Maintenance. ODPC shall retain ownership of the Facilities and shall be responsible for operating and maintaining the same.

2.05. Financing of the Services. ODPC shall be responsible for financing the cost of the construction of the Facilities, provided however, that if ODPC determines that the cost of the Services exceeds the estimated cost of the services of \$9,061,340.00 (the “Estimated Cost”) by more than 20%, ODPC may terminate this Agreement in writing to the County, at which point the parties shall have no further obligations hereunder.

2.06. Easements and Rights of Way. After development of the Approved Plans and the final alignment of the pipeline as provided in Section 3.03 and 3.04, County shall obtain such permanent and temporary easements and/or fee simple title to land as are needed to construct the Facilities and operate the System for not less than forty (40) years and shall pay for such costs. ODPC will reimburse County for the expenditures County pays to property owners to obtain such easements and/or land as well as costs for utilizing a realtor to value and negotiate easement agreements, provided that such costs shall have first been reviewed and approved by ~~6~~

~~ODPC~~; in its reasonable judgment. All costs that are reimbursed to County will be included in the Final Costs for the Facilities. All easements shall be granted to County or its assigns and shall include a provision that ~~County's~~ County's licensees shall have access within the easement. County hereby acknowledges that ODPC shall have an exclusive license to use such easements and rights of way for utility services and shall have rights to access portions of the Facilities that are within the easements and that ODPC shall retain those rights until such time as County may purchase the Facilities or convey its ownership rights to ODPC. The County agrees to grant, assign and transfer to ODPC an exclusive license to use all permits, easements, lands or licenses reasonably required or appropriate for the operation, maintenance and use of the System and to provide such instruments or agreements as reasonably necessary to evidence such rights, including, but not limited to those as may be acquired pursuant to Section 2.07.

2.07. Eminent Domain - County acknowledges that the Facilities serve a critical public purpose. Accordingly, County agrees to take a dominant role in acquiring easements for the Facilities through the exercise of its powers of condemnation and eminent domain should ODPC be unable to acquire any easement required for the Facilities. In the event the County must exercise its powers of eminent domain in order to acquire easements and/or land for the Facilities, the County shall do so at its own cost and expense subject to being reimbursed by

ODPC; provided, however, the County shall consult with ODPC regarding such costs and expense as may be incurred in connection with the exercise of the ~~County's~~ County's eminent domain power for ~~ODPC's~~ ODPC's approval in its reasonable judgment prior to expending or committing to any such cost and expense. ODPC and County acknowledge that the Final Alignment for the Facilities shall be placed to minimize the acquisition of any easements to the extent reasonable, but while also maintaining the hydraulic integrity by avoiding unnecessary bends or configurations that inhibit flow of water and materially increase costs.

SECTION 3. DESIGN.

3.01. Commencement and Scope of Design Engineering Activities. ODPC will complete, or cause an engineering firm to complete, preliminary design plans and specifications for the Facilities within ~~approximately 180~~ approximately 180 days after the ~~date~~ Effective Date of this Agreement (the ~~"Proposed Plan and Design Specifications";~~ "). ODPC shall consult with County regarding ~~ODPC's~~ ODPC's selection of the engineering firm, and County shall have the right to accept or reject ~~ODPC's~~ ODPC's choice. Rejection shall not be unreasonable.

3.02 Assistance - The County shall assist ODPC by participating in the development of plans for the Facilities. In this regard, County shall review engineering plans, permit applications, and other documents developed by ODPC. ODPC shall request County's review and approval on all critical design elements of the Facilities, including the alignment of ODPC Pipeline and any bids for services or supplies. Such assistance shall be provided at no cost to ODPC. The County shall provide prompt reviews and not unreasonably withhold or delay approvals.

3.03 Final Alignment – The Final Alignment of ODPC Pipeline is the final determination of the Parties regarding the exact placement of ODPC Pipeline from the Point of Delivery with the Monticello System to the terminal point of the Facilities: ~~(“Final Alignment”)~~ (“Final Alignment”). The Final Alignment shall be mutually agreed upon by ODPC and County and both Parties shall sign the final ~~7~~

engineering plans and specifications approved by the Virginia Department of Health. In the event a Final Alignment is not agreed upon within thirty ~~months~~ (30) months of the ~~date~~ Effective Date of this Agreement, this Agreement may be terminated at the sole discretion of ODPC and shall expire and have no further effect. The Upon such termination, any and all Deposits made by County shall then reimburse ODPC for all its costs and expenses associated with any of its project planning, engineering be refunded to it without reduction, and easement and/or land acquisition efforts up to that point in time. the parties have no further liability one to the other.

3.04 Final Plans and Specifications – The Approved Plans for the Facilities, which shall be prepared after the Final Alignment is determined, will be approved by both County, ODPC, and Aqua and then bid for construction by ODPC. The Facilities, including all design, permitting and other pre-construction and soft costs, are currently estimated to cost \$9,061,340.00 (hereinafter, the “Estimated Cost”), which is based on a good faith estimate of known costs verified by ODPC's engineer and contractors. The Parties acknowledge the final costs for the Facilities cannot be determined until all project bids have been received from contractors, the

costs for acquiring easements have been confirmed and all permits costs have been determined by permitting authorities. The total sum of all such costs including ODPC's costs to manage the project shall then constitute the Projected Cost. Final Costs for the Facilities shall be determined when construction has been completed and water first passes through a Point of Distribution into the Water Line.

3.05. Proceeding to Construction—If the Projected Cost does not exceed the Estimated Cost by more than 20% of the Estimated Cost, ODPC ~~may~~shall finalize contractual agreements with any successful bidders and proceed with construction of the Facilities.

If the Projected Cost exceeds the Estimated Cost by 20% of the Estimated Cost, ODPC and County must both agree to proceed with construction of the Facilities. ~~The parties~~Parties may elect to try redesigning and ~~re-bidding~~rebidding the Facilities.

If the County elects not to proceed, it shall reimburse ODPC for all ODPC's costs to cover actual ~~damages and~~ costs incurred, including but not limited to, all ODPC's costs incurred in connection with engineering and related project costs, consultant fees, easement acquisition, permits, contractor document preparation, reasonable attorney's fees, and other expenses ODPC may have incurred for or in connection with this Agreement and through the date that County elected not to proceed. The Deposit shall be applied to the above costs, expenses, and damages of ODPC and the remainder, if any, refunded.

If ODPC elects not to proceed against the County's desire to move forward, ODPC shall be responsible for the third party costs it has incurred as well as its own costs incurred. In addition, ODPC shall reimburse County for all County's costs to cover actual costs incurred, including but not limited to, all County's costs incurred and reasonable staff time expended in connection with engineering and related project costs, consultant fees, easement acquisition, permits, contractor document, reasonable attorney's fees, and other expenses County may have incurred for or in connection with this Agreement and through the date that ODPC elected not to proceed. The Deposit shall be refunded to County without reduction.

If County and ODPC jointly agree not to proceed, the third party costs incurred shall be split evenly. The design of the Facilities must be approved by the Virginia Department of ~~Health~~ ("VDH") Environmental Quality ("DEQ") and other regulatory agencies. ODPC shall not commence construction without all necessary governmental approvals which shall all be in a form and substance reasonably satisfactory to County and ODPC ~~in its sole discretion.~~ ODPC and County acknowledge, all such authorizations, orders, permits, permissions and approvals by the ~~VDH, the~~ Virginia Department of ~~Environmental Quality~~ ("Health ("VDH"), DEQ"), ~~the~~, The Virginia State Corporation Commission ("SCC") and any other local, state and federal governmental agencies having jurisdiction over the Facilities, to the extent required under applicable laws, shall also all be in form and substance reasonably satisfactory to County and ODPC ~~in its sole discretion.~~ ODPC shall obtain all such approvals, which shall be included in the cost of the Facilities. County shall cooperate with ODPC in seeking all such approvals at County's own cost and expense.~~8~~

3.06. Approval of Final Design.

(a) ___ ODPC and its designated engineer of record for the project shall work with the County in developing the proposed final design. _County shall use its best efforts to provide any reviews and approvals in on a timely basis. Upon completion of the Proposed Plans and Design Specifications, ODPC shall submit the same to the County for approval. The County shall have thirty days to notify ODPC of any objection that it has to the Proposed Plans and Design Specifications. If the County does not notify ODPC of its objections within such thirty _day period, the County shall be deemed to have approved the Proposed Plans and Design Specifications and thereafter ODPC shall pursue approval of the Proposed Plans and Design Specifications from any governmental entity having jurisdiction over the same. If the County does notify ODPC of its objections to the Proposed Plans and Design Specifications within such thirty day period, ODPC may not proceed until ODPC and the County have resolved the differences that exist between them with respect to such matters by first referring the matter to the Conflict Committee in accordance with the terms of Section 10 hereof. ~~The plans and specifications approved by the VDH in the form of a construction permit for the project shall be the Approved Plans for the Facilities which shall be the basis of the project for bidding.~~

(b)-___ In the event that any dispute regarding the Proposed Plans and Design Specifications are not resolved by the Conflict Committee, the parties hereto agree that the standard used in any subsequent litigation regarding the propriety of the Proposed Plans and Design Specifications shall be whether or not ODPC has a fair and reasonable basis (in terms of design and capital costs and operating capability and costs) for its position with respect to any disputed portion of the Proposed Plans and Design Specifications, or has a fair and reasonable basis for an alternative proposal, in which event the court shall approve ~~ODPC's~~ODPC's Proposed Plans and Design Specifications. The Proposed Design Specifications approved by the County and by the VDH, DEQ, SCC and any other local, state and federal governmental agencies shall be referred to herein collectively as the Approved Plans- which shall be the basis of the project for bidding. Upon completion of the regulatory approvals, ODPC may proceed with bidding the project and the securing of building or miscellaneous permits necessary for the construction of the Facilities.

3.07 Performance and Payment Bonds. Prior to the commencement of any construction, ODPC shall obtain and deliver to County the following bonds:

a. For those portions of the Agreement requiring the construction of improvements or infrastructure by ODPC, a performance bond in the sum of the Projected Cost of the Facilities conditioned upon the faithful performance of this Agreement in strict conformity with the Approved Plans and conditions of the Agreement.

b. For those portions of the Agreement requiring the construction of improvements or infrastructure by ODPC, a payment bond in the sum of the Projected Cost of the Facilities. The bond shall be for the protection of claimants who have and fulfill contracts to supply labor or materials to ODPC under this Agreement, or to any subcontractors, in furtherance of the work provided for in this Agreement, and shall be conditioned upon the prompt payment for all materials furnished or labor supplied or performed in

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the furtherance of the work. "Labor or materials" shall include public utility services and reasonable rentals of equipment, but only for periods when the equipment rented is actually used at the site.

c. Each of the bonds shall be executed by one or more surety companies selected by ODPC or its affiliates that are authorized to do business in Virginia.

d. The County reserves the right to waive any such bonds as may be permitted by law.

SECTION 4. CONSTRUCTION AND EQUIPPING.

4.01. ODPC Shall Construct and Equip. ODPC shall cause the Facilities to be constructed in strict accordance with the Approved Plans. ODPC shall perform construction management services itself or through a qualified contractor. ODPC shall cause all contractors (for themselves and their subcontractors) or subcontractors under such construction contracts to waive any and all rights they may have to lien or otherwise encumber the Facilities on account of any work, materials or services rendered or supplied in connection with the construction of the Facilities.

4.02. Construction Period. ODPC shall (i) use its commercially reasonable efforts to complete construction of the Facilities within nine months following the parties' agreement on the Approved Plans and the securing of all permits necessary to commence construction of the same.

4.03- Supervision and Responsibility. Notwithstanding ODPC's right to contract out the construction management and construction of the Facilities pursuant to Section 4.01 above, ODPC shall remain responsible for and warrants to the County that the Facilities shall be constructed in conformance with the Approved Design. The County shall ~~be allowed the right to make~~ reasonable inspections of the work to be performed under this Agreement to ensure that ~~ODPC's~~ ODPC's activities are acceptable to the County in accordance with the provisions of this Agreement.

4.04. Site Conditions. In the event that during construction ODPC or any of its contractors or subcontractors discovers any subsurface physical conditions which are not ordinarily encountered and generally recognized as inhering in works of the character required hereunder, ODPC shall promptly, and before such conditions are disturbed further, notify the County in writing of the same. The County shall be entitled to examine such conditions. Following such examination, the County and ODPC shall mutually determine the impact, if any, such conditions have on the Approved Plans and the impact thereof on the cost of or time required for the performance of any part of the construction of the Facilities and shall, if necessary, equitably adjust the Service Fee and any fixed date to which ODPC is bound to reflect such impact. If the parties cannot agree, the matter shall be referred first to the Conflict Committee for resolution prior to either party resorting to litigation.

4.05. Permits. ODPC shall obtain all permits and other licenses which are required, customary or appropriate in connection with the construction or modification of the

Facilities. The County shall cooperate and assist ODPC in submitting applications for all such ~~to~~

permits or other licenses and in securing the same. The County also shall cooperate in attempting to accomplish a transfer to ODPC of any of its rights under any permit, license or application for a permit or license necessary for ODPC to perform its obligations hereunder.

4.06 Management of Contractors. ODPC shall obtain and share copies of all progress reports and billing invoices from contractors and suppliers with County and shall make approved payments to contractors in accordance with the terms of the applicable contracts.

4.07 County Notifications. ODPC will provide adequate notice to County of all meetings with contractors, engineers and permitting authorities so as to provide County with a reasonable opportunity to participate.

4.08- Change Orders. ODPC and County, through its Public Works Department, will jointly approve change orders during construction to the Facilities as follows. County shall use its best efforts to provide a response within ~~forty-eight (48) hours~~ 2 business days to any change order request. ODPC may approve the change order if the amount is less than ten thousand dollars (\$10,000.00) and County is unable to provide a timely response.

4.09 Maintenance of Records. ODPC shall maintain records regarding ongoing costs for the Facilities and shall make such information available to County in the form of a report at the conclusion of the construction of the Facilities. All records shall be maintained in accordance with Generally Accepted Accounting Principles and the National Association of Regulatory Utility Commissioners (NARUC) system of accounts in effect on the date of this Agreement and as amended from time to time thereafter. Pursuant to the PPEA, ODPC shall file its financial statements with the County on a periodic basis, but at minimum annually.

4.10. Record Drawings. ODPC shall furnish the County with a complete set of record (as-built) drawings, of the Facilities within one hundred eighty days after Substantial Completion.

4.11 Compliance with Laws. ODPC certifies to the County that ODPC, in performing under this Agreement, will conform to the provisions of the Federal Civil Rights Act of 1964, as amended, as well as the Virginia Fair Employment Act of 1975, as amended. ODPC (hereinafter referred to in this Section as “contractor”) further agrees as follows:

(a) During the performance of this Agreement, the contractor agrees as follows:

(I) The contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the contractor. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

(II) The contractor, in all solicitations or advertisements for employees placed by or on behalf of the contractor, will state that such contractor is an equal opportunity employer. ++

(III) Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this Section.

(b) The contractor will be encouraged to include the provisions of the foregoing paragraphs I, II and III in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

(c) During the performance of this Agreement, the contractor agrees to (i) provide a drug-free workplace for the contractor's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the contractor that the contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

SECTION 5. COMPLETION OF FACILITIES

5.01. Testing. The construction period shall include a final mechanical checkout and equipment start-up period for the Facilities. Following ODPC's delivery of the Statement of Completion (defined below) to the County, ODPC shall commence operation of the Facilities.

5.02- Statement of Completion. Upon completion of construction of the Facilities pursuant to the Approved Plans to the point where they are capable of being operated at their intended design capacity in accordance with all regulatory requirements and following securing all necessary permits and governmental approvals for operation of the Facilities, ODPC shall notify the County of the same by delivering a written statement of completion, certified by ~~ODPC's~~ODPC's engineer (the engineer of ~~record's~~ "record's "Statement of Completion"). The Statement of Completion shall also include a statement for the costs for construction of the Facilities through that point. The County may notify ODPC in writing within 15 days of receipt of such Statement of Completion that the facilities are not completed as required under the Approved Plans specifically identifying the issue(s) and ODPC shall have the opportunity to cure such issue(s) within a reasonable time and then issue another Statement of Completion. The earlier of the date that the County accepts the Statement of Completion in writing or has failed to provide notice to ODPC of any issues within the time allowed above shall be the date of Substantial Completion.

SECTION 6. OPERATION AND MAINTENANCE.

6.01. Operation and Maintenance of the Facilities. Following completion of the Facilities and throughout the term hereof ODPC shall be the sole operator of its pipeline throughout the term of this Agreement. As such, it shall be responsible for the following:

(a) ~~(a)~~ ODPC shall be the sole operator of the booster pump station and tank control system throughout the term of the Agreement. Operations shall include regular weekly inspections of all pumping equipment, controls, electrical, and mechanical systems maintenance and repair, all in accordance with the manufacturer's recommendations for the specified equipment. ODPC shall also conduct, in conjunction with County, an annual flow test at any booster pump that is part of the Facilities.

~~12~~

(b) ODPC shall mark its main lines through the Miss Utility of Virginia program ("One Call").

(c) ODPC shall maintain the water main, tank, and booster pump system installed by ODPC under this Agreement for the term of the Agreement including all main breaks on its line as well as repairs and upgrades to the pump station and tank facility. ODPC is not responsible for repairs on extensions to the system that are owned by the County.

(d) ODPC shall record the master meter reading at the Point of Delivery each week along with any meter readings obtained by Aqua. The type of meter installed will be specified in the Approved Plans. ODPC shall rely on the water purveyor's meter readings for invoicing volumetric charges through the ODPC pipeline.

(e) Providing all repairs and maintenance for the Facilities on a timely basis, including leaks and any repairs necessitated by emergencies with the Facilities.

(f) ODPC shall operate its Facilities in accordance with the terms and conditions of this Agreement.

(g) The following operational services shall be provided by ODPC during the term of this Agreement:

i. Visit and inspect the pump station.

ii. Visit and inspect the meter at the Point of Delivery and record the reading for the System, the date/time of the visit, and all/any available customer meter readings monthly.

iii. Inspect meter vault equipment for any unusual operating conditions occurring since last visit.

iv. Test and record results of treated water for free chlorine at the storage tank and at the Point of Delivery each week.

v. Conduct twice a year flushing of the ODPC pipeline and exercise its valves provided that County retains responsibility for the payment of any fees for water utilized during flushing. Additional flushing may be requested by County which would be performed by ODPC as an additional charge to County.

6.02 Supervision of the O/M Contractor. If ODPC has an O/M Contractor perform ODPC's duties under Section 6.01 hereof, ODPC shall diligently supervise the O/M Contractor so that the operation, repairs and maintenance of the Facilities will be promptly and properly undertaken in a manner consistent with the long term maintenance of the Facilities. ODPC guarantees that the operation and maintenance will be performed in compliance with the terms of this Agreement. Other than its right to enforce the terms of this Agreement and other than as specifically set forth herein, the County shall have no right to control ODPC or the O/M Contractor in the performance by them of their duties hereunder with regard to the operation or maintenance of the Facilities. ~~13~~

6.03 County Obligations Following Completion. The County shall be responsible for all operations of its Water System not identified in section 6.01 in this Agreement. The County shall be responsible for the following:

(a) Reviewing and approving the design of, and adding all customer taps and for any new metered connections and service lines, subject to ODPC review and approval;

(b) setting rates for customers, billing customers for service, and managing customer service;

(c) allocating capacity among customers;

(d) accepting a minimum of 90,000 GPD from the Water Project. County acknowledges that its failure to withdraw 90,000 GPD may adversely impact water quality throughout the Water Project including the storage tank. In this regard, County shall either: a) flush an amount of water, at terminal line points which will result in the withdrawal of sufficient water to maintain water quality in the County's Water system; or b) obtain sufficient water customers that result in sufficient usage on the line to maintain water quality. County shall be responsible for all costs and expenses arising from its failure to comply with these obligations;

(e) ensuring water quality that is compliant with all state and federal water quality requirements throughout the County Water System. ODPC will utilize its expertise to assist the County with water quality requirements in the Facilities.

(f) Maintaining components of the County Water System that are not included within the ODPC Facilities; and

(g) Obtaining such operational permits as may be required by Regulatory Agencies having authority over the Water System.

6.04. Interruptions. County acknowledges that periodic unplanned service interruptions may occur due to main or equipment breaks. County agrees that ODPC is not responsible for any damages resulting from such interruptions, except to the extent that any such interruption shall arise from the negligence or other fault of ODPC.

6.05. Water from Other Sources. If County obtains water from any source other than ODPC, ODPC makes no representation that the treated water ODPC delivers to County will properly mix with water that County obtains from other sources. ODPC must approve any source addition or interconnection with another waterworks. County assumes all responsibility and liability for any combining or mixing of water delivered by ODPC that is combined or mixed with water from County's other sources. ODPC's sole responsibility is to provide to County water of a quality that meets state and federal drinking water standards at the Point(s) of Delivery and through its pipeline. Outside of ODPC's pipeline, County shall be solely responsible for meeting state and federal drinking water quality standards.⁺⁴

SECTION 7. CONDITIONS PRECEDENT TO ODPC'S OBLIGATIONS

The County and ODPC agree to the following terms and provisions, all of which shall be conditions precedent to ODPC's obligations and duties under this Agreement:

7.01. Agency Approvals. Written approval from VDH, DEQ, SCC and any other local, state and federal governmental agencies having jurisdiction over the Facilities that this Agreement is an approved transaction.

7.02. Pending or ~~Threaten~~Threatened Proceedings. Prior to the initiation of construction, no proceeding shall be pending or threatened before any court or governmental agency in which it is sought to restrain or prohibit or to obtain damages or other relief in connection with this Agreement or the consummation of the transactions contemplated hereby, and no investigation that might eventuate in any such suit, action or proceeding shall be pending or threatened.

7.03. County Proceedings. County shall have furnished ODPC with certified copies of all proceedings of County, including a signed and certified copy of the appropriate document(s) authorizing the transactions hereby contemplated, as ODPC reasonably shall require.

7.04 Property Owner User Agreements. The County shall have obtained written agreements, acceptable to ODPC, from a minimum of thirty (30) property owners along the main water pipeline of the Water Project who will have agreed to connect to the Water Project for water service (the “Property Owner User Agreements”) ~~from property owners along the System and that shall be committed to use an~~ the aggregate ~~water~~ volume of water usage for the thirty (30) property owners shall not be less than ~~one hundred twenty~~ fifteen thousand gallons per day (~~120~~ 15,000 gpd). ~~The terms and provisions of the Property Owner User Agreements and the location, size, and proximity of the subject properties to the System and the viability of the prospective user to utilize its water capacity shall be acceptable to ODPC.~~ In the event of a Non-Appropriation Event, ~~an Event of Default, or any other circumstances that result in a termination of the Agreement, any or all of such Property Owner User Agreements~~ these agreements, upon ODPC’s request, shall be assigned by the County to ODPC or its designee.

7.05 Service District. As a condition precedent to ODPC’s obligations in this Agreement, the County shall create a service district for the geographic service area served by the System which said geographic area shall be generally similar to the area which is shown as the Zion Crossroads Community Planning Area on page 55 of the Fluvanna County Comprehensive Plan (2009), together with areas adjacent to the waterline between Lake Monticello and the Fluvanna Women’s Correctional Facility: (the “Service District”). The area of such district shall remain in existence throughout the term of this Agreement, subject to the amendment thereof by the County from time to time as may be needed to accommodate changes in development patterns and the demand for public water services; and, the County shall adopt and maintain throughout the term of this Agreement and any extension thereof a mandatory connection policy for all new residences, industrial users and commercial users that come into existence after the System becomes available for public usage located within such geographic service area that shall require their immediate connection to the System. ~~15~~; provided, however, that nothing in this paragraph shall be construed as prohibiting the County from permitting existing water sources for existing single family residences to continue in use for so long as the same shall remain in continuous use to serve such residences.

7.06 Rate Setting. ODPC and the County acknowledge and understand that the rate setting authority for the water service rates or fees charged to customers of the System (the “Rate Fees to Customers”) is ultimately subject to determination by the County under its operation of the service district, unless and until the System is transferred to ODPC or its designee and becomes regulated by the SCC.

7.07 Comprehensive Plan. The County shall conduct appropriate proceedings in order to make an affirmative determination that the System substantially complies with the County’s Comprehensive Plan, either by action of the planning commission and the board of supervisors pursuant to Virginia Code Section 15.2-2232 or by appropriate amendment of such Plan. A final determination that the System substantially complies with the County’s Comprehensive Plan shall be a condition precedent to ODPC’s obligations under this Agreement.

7.08 Deposit Paid. The County shall have paid to ODPC the Deposit as set forth in Section 8.01(c) below.

7.09 Termination for Failure of Precondition. In the event that this Agreement shall terminate as a result of the failure of any precondition under this Agreement, specifically not limited to those conditions precedent noted supra in Section 7, to ODPC's obligations, and such termination shall not be the proximate result of the fault of either party, any and all Deposits made by County shall be refunded to it without reduction, and the parties shall have no further liability one to the other.

SECTION 8. ODPC'S FEES AND EXPENSE REIMBURSEMENTS.

8.01- Service Fee.

(a)- The Service Fee payable by the County to ODPC shall be ~~an annual amount of Eight Hundred Thirteen Thousand Nine Hundred Ninety Six Dollars (\$813,996.00)~~ payable monthly in the amount of Sixty Seven Thousand Eight Hundred Thirty Three Dollars (\$67,833.00) per month for the first year during the Term following the date of the Engineer of Record's Statement of Completion (Substantial Completion) (the "Base Year"). In the event that the Final Cost of the Facilities differs from the Estimated Cost, then the Base Year's Service Fee shall be adjusted, upward or downward as the case may be, by an amount equal to the percentage by which the Final Cost deviated from the Estimated Cost. Payment to ODPC for the Service Fee and all other payments hereunder shall be by electronic transfer.

(b) The Service Fee shall commence accruing from the date of Substantial Completion of the Facilities and shall be payable monthly on or before the last business day of each month (each such date being referred to as a "Payment Date") commencing on the first such date to occur within thirty days after Substantial Completion and following the provision of service to the County, and continuing for the term of this Agreement.

(c)- The County shall pay to ODPC a Deposit within ~~forty five (45)~~ seventy (70) days of the Effective Date of this Agreement in the amount of Eight-Hundred Thirteen-Thousand Nine-Hundred Ninety-Six Dollars (\$813,996.00), being the amount equivalent to the estimated initial annual Service Fees for the first year of operations (the "Deposit"). The Deposit shall be credited against the payment of the Service Fees due from the County to ODPC during the final year of this Agreement. ~~Such interest, if any, as may be~~ Interest collected on the Deposit shall also be credited to the said Service Fees. ~~16- ODPC is required to keep the Deposit, and all accrued interest thereon, in an interest bearing account with a financial institution insured by the FDIC.~~

Once the Final Cost as referred to in sub-section (a) above is determined, the Deposit shall be recomputed upward or downward, as the case may be, according to the adjusted Service Fee; and, the parties shall be entitled to payment from each other with the County being reimbursed the amount of any excess amount of the Deposit that may have been paid in the event the Final Cost is less than the Estimated Cost, or with ODPC being paid additional sums to add to the Deposit in the event that the Final Cost is greater than the Estimated Cost. Any such payments with respect to the adjusted Deposit amount shall be paid one to the other within ninety (90) days of the determination of the Final Cost.

The payment of the Deposit by the County shall be subject to appropriation, provided, however, the failure to so appropriate shall be deemed to be a Non-Appropriation Event pursuant to Section 8.07.

~~(d) Any taxes, permits, licenses, fees, or any other expenses (“County Fees”) charged by the County to ODPC or its affiliates in relation to this Agreement shall be billed to the County as an incremental charge in addition to the Service Fee.~~

8.02. Volumetric Charge and Surcharge. In addition to the Service Fee, the County shall pay ODPC a monthly (the “Volumetric Charge”) charge in arrears calculated as 3.5% of the bulk rate for water supply charged by Aqua (or its successor) to the County for water passing through the initial Point of Delivery at the Lake Monticello WTP, provided, that the minimum Volumetric Charge shall be based upon presumed volume of 90,000 gallons per day. By means of illustration, the current pro forma for the transaction contemplated by this Agreement would result in a current annual Volumetric Charge of \$3,400.00 at Aqua’s current rates for 90,000 gallons per day. To the extent ODPC’s operation and maintenance expenses increase 5% or more over the amount paid by the County in the preceding year as a result of either new regulatory requirements or from increased costs for outside utility services, outside labor, chemicals, One Call tickets and water sampling and testing during any calendar year, such increased costs shall be reimbursed to ODPC by County as a monthly surcharge spread over the following calendar year. ODPC shall provide the County a minimum of 90 days notice in the event a surcharge is needed along with justification of the increased operational costs. There shall be no surcharge for increases during the Base Year.

8.03 Repairs and Capital Improvements Following the Base Year. Expenditures for repairs or for capital improvements after the Base Year shall be allocated between the Parties in the following manner:

(a) Capital Improvements - After the Base Year, in the event that ODPC makes improvements to the Facilities due to State or Federal Regulations or because ODPC and County agree to make such improvements then the Service Fee payable pursuant to Section 8.01 above shall be increased by the percentage equal to the percentage resulting from dividing the cost of such new capital improvements by the aggregate total of all prior capital construction costs upon which the prior Service Fee was based. A Capital Improvement shall be any expenditure for new equipment or to extend the life of additional equipment that totals more than Five Hundred Dollars (\$500.00). ~~17~~

(b) Repairs - After the Base Year, in the event that ODPC is required to make repairs of existing facilities, the aggregate of which exceed One Hundred Thousand Dollars (\$100,000.00) in a single calendar year, then the Service Fee payable pursuant to Section 8.01 above shall be increased by the percentage equal to the percentage resulting from dividing the total cost in excess of One Hundred Thousand Dollars (\$100,000.00) of such repairs by the aggregate total of all prior capital construction costs upon which the prior Service Fee was based.

8.04 Books and Records. During the term of this Agreement ODPC shall keep accurate books and records with respect to the operation and maintenance of the Facilities. Such books and records shall include both accounting records and records detailing the physical equipment used in the operation of the Facilities. The records on physical equipment shall contain a list of

all equipment which is part of the Facilities, and shall show all periodic maintenance performed, the date acquired, serial numbers and any other information needed to identify the equipment, and the date of any such equipment is replaced or subject to repair. This information shall be provided annually to County upon request.

8.05 Payment of Service Fees: ODPC will bill the County on a monthly basis following the provision of service by ODPC. The County agrees to make payment to ODPC within thirty (30) days from the date the bill is mailed or otherwise delivered by ODPC. A past due notice will be mailed by ODPC to the County after thirty (30) days. If payment has not been received after sixty (60) days from the date of the notice, a one percent (1%) per month interest charge, or the maximum amount otherwise allowed by law, will be assessed on the outstanding balance.

8.06 Funding of Escrow. In addition to the deposit required by Section 8.01(c), the County agrees to include in its monthly payment for services hereunder an additional ten percent (10%) of each payment, to be held in escrow by ODPC, with the amount accruing thereunder up to a maximum amount equal to the maximum annual payments for services due hereunder. Such escrow and any interest accrued thereon will be payable to ODPC in the event of: 1) non-payment by the County for sums owed to ODPC under this Agreement, including, but not limited to Service Fees and Repairs or Capital Improvements set forth in Section 8.03; or 2) the County fails to appropriate sufficient funds as specified in Section 8.07 hereunder.. Any amounts remaining in the escrow shall then be credited against the payment of the Service Fees due from the County to ODPC during the final two years of this Agreement. ~~Such interest, if any, as may be~~Interest collected on the escrowed funds shall also be credited to the said Service Fees. Payment of funds held in escrow shall be in addition to any other payments as may be required hereunder in the event of non-payment or non-appropriation. ODPC is required to keep the escrow funds, and all accrued interest thereon, in an interest bearing account with a financial institution insured by the FDIC.

8.07- Non-Appropriation.

~~(a)~~ (a) All payment obligations of the County ~~for Service Fees under this Agreement~~ shall be considered subject to annual appropriation by the Board of Supervisors of the County. ~~In the~~ event that sufficient funds are not appropriated by the Board of Supervisors for the full payment of such ~~Service Fees obligations~~, then the County shall be deemed to have terminated this Agreement and shall not be obligated to make such payments beyond the then current fiscal year for which funds have been so appropriated. Upon the occurrence of such partial appropriation or non-appropriation (a “Non-Appropriation Event”), the following terms and conditions shall apply to the parties: ~~18~~

(i)a) County shall, no later than the end of the fiscal year for which payments have been appropriated, deliver possession of the System to ODPC.

(ii)b) From the time of any Non-Appropriation Event, ~~or in the event of a termination or nullification of this Agreement for any reason~~ not associated with or caused by a material breach on ODPC’s part, ODPC, at its election, shall have the right to continue providing water service to the County through the System and ODPC shall be paid the Service Fees from ~~the Deposit and~~

~~escrowed funds, and any earnings thereon, until such time as the Deposit and escrowed funds are exhausted.~~ such funds as may have been appropriated therefor by the Board of Supervisors.

(bc) Upon a Non-Appropriation Event, during the period prior to the delivery of possession of the System to ODPC, ODPC shall have the right, to the extent permitted by law, to terminate the delivery water service to any customers using the System provided that ODPC first gives written notice of termination of water service to the County at least thirty (30) days prior to any such termination, during which time the County may cure any Non-Appropriation Event by appropriating sufficient funds for its payment obligations of ODPC as provided for in this Agreement and by bringing all such payments current.

(ed) County will acknowledge that it is in the public interest to support the expansion of the Lake Monticello Public Water System service territory under Aqua Virginia's certificate of public convenience and necessity (CPCN) to include the Zion Crossroads Community Planning Area and such other areas along the pipeline to be constructed by ODPC as may be sought by Aqua Virginia and approved by the SCC. In this regard, the County acknowledges that ODPC entered into this Agreement in reliance on the County's creation of the Service District and with the understanding there will be a continuation of such district with a geographical size and with sufficient connections and fees to pay the costs incurred for constructing and operating the Facilities.

SECTION 9. DEFAULTS AND REMEDIES.

9.01. Events of Default.

(a) Each of the following will constitute an Event of Default on the part of ODPC:

(i) Institution by or against ODPC of any bankruptcy, insolvency, reorganization, arrangement, debt adjustment, liquidation or receivership proceeding, which, if instituted against ODPC is not dismissed or withdrawn within 60 days after issuance of an order thereunder;

(ii) Failure of ODPC to comply with the provision of Section 14.01 hereof; or

(iii) Failure or refusal by ODPC to perform any of its obligations under this Agreement, which failure continues for a period of thirty days after written notice to ODPC from the County, which period shall be extended if ODPC has commenced a ~~19~~

cure of such failure during the thirty day period and is proceeding with due diligence to cure the failure.

(b) Each of the following shall constitute an Event of Default on the part of the County:

(i) Failure by the County to pay the Service Fee when due which failure continues for a period of thirty days;

(ii) Failure by the County to pay any other amounts payable hereunder when due, which failure continues for a period of fifteen days after written notice to the County from ODPC; or

(iii) Failure by the County to comply with any other of its obligations under the Agreement, which failure continues for a period of thirty days after written notice to the County from ODPC, which period shall be extended if the County has commenced a cure of such failure during the thirty day period and is proceeding with due diligence to cure the failure;

(iv) ~~Provided, however~~ A default occurring in any of the Utility Agreements.

Notwithstanding the foregoing, the failure to pay due to a Non-Appropriation Event shall not be considered an Event of Default ~~but, provided further, that the failure to comply with the terms of this Agreement regarding a Non-Appropriation Event as specified Section 8.07 shall be an Event of Default.~~

~~(v) A default occurring in any of the Utility Agreements.~~ hereunder.

9.02. Remedies. The provisions set forth in this Agreement shall govern the rights and responsibilities of the County and ODPC upon the termination of this Agreement or in the event of any material default by the County or ODPC or should a Non-Appropriation Event occur that is not cured as stated herein.

(a) Upon the occurrence of an Event of Default by ODPC and so long as such an Event of Default is continuing, the County shall have the following rights and remedies in addition to damages and any other remedies which may be available to it at law or in equity:

(i) ~~(i)~~ The County may withhold payment of the disputed portion of the Service Fee until the Event of Default is cured; or

~~(ii)~~

In the event that ODPC is in material breach of this Agreement, and ODPC fails to commence to cure such material breach within thirty (30) days of receiving written notice thereof from the County, then the County shall have the right to either (i) cure such breach, after which and ODPC shall be paid for all services, labor, materials, overhead and profit realized immediately prior obligated to reimburse the breach, and ODPC's engineering and consultant expenses and related costs, and County for the reasonable value of same; or (ii) the System as ODPC may have constructed or installed pursuant to this Agreement prior to the breach. Thereupon, either party County may terminate 20

(ii) this Agreement by providing written notice to ~~the other~~ ODPC, and the parties hereto shall have no further obligations to each other.

(b) Upon the occurrence of an Event of Default by the County and so long as such an Event of Default is continuing, in addition to other remedies ODPC shall have the following rights and remedies: ODPC may terminate this and other agreements with the County, including but not limited to the Utility Agreements, by notice in writing to the County, ~~in which case the County shall reimburse ODPC for all costs to cover actual damages and costs incurred, including but~~

~~not limited to, all ODPC's costs incurred in connection with engineering and related project costs, consultant fees, easement acquisition, permits, contractor document preparation, reasonable attorney's fees and other expenses ODPC may have been incurred for or in connection with this Agreement; and; and~~

(c) if the County fails to pay its obligations under this Agreement, whether in under an Event of Default or due to a Non-Appropriation Event, or if any other circumstances result in a termination of the Agreement, then:

(i) the County agrees to transfer all of its right, title and interest in, to and under the System to ODPC or its designee, along with all rights thereof and appurtenances thereunto pertaining, including, but not limited to all easements, licenses, lands, permits, and all present and future customer billings and accounts receivable, and exclusive service rights for the System, and ODPC shall have the right to take control of the System;

(ii) County will continue to acknowledge that it is in the public interest to support the expansion of the Lake Monticello Public Water System service territory under Aqua Virginia's certificate of public convenience and necessity (CPCN) to include the Zion Crossroads Community Planning Area and such other areas along the pipeline to be constructed by ODPC as may be sought by Aqua Virginia and approved by the SCC;

(iii) In addition to any other permitted applications of the Deposit and escrow funds, ODPC shall be entitled to apply any or all of the Deposit and escrow funds, and any earnings thereon, to cover actual transfer costs, regulatory costs (if any) and reasonable engineering and reasonable attorney fees incurred to satisfy any state, federal or local regulatory requirements incurred in connection with having the System transferred from County to ODPC or its assigns; and (b) to cover actual damages and costs incurred, including but not limited to, all ~~ODPC's~~ODPC's costs incurred in connection with engineering and related project costs, consultant fees, easement acquisition, permits, contractor document preparation, reasonable ~~attorney's~~attorney's fees, and other expenses ODPC may have been incurred for or in connection with this Agreement; provided, however, County shall remain liable for all such costs that are not covered by the Deposit and the escrowed fund.

~~(iv) ODPC may compel the County to reimburse it for ODPC's costs that are not included in sub-section (iii) immediately preceding that are incurred in the preparation and planning of this proposal and Agreement. 21~~

9.03 Prevailing Party. If any legal action or other proceeding is brought to enforce the provisions of this Agreement, the prevailing party shall be entitled to recover reasonable attorney's fees and other costs incurred in such action or proceeding, in addition to any other relief to which the prevailing party may be entitled.

SECTION 10. CONFLICT RESOLUTION.

Delegation of Authority. Prior to resorting to litigation, ODPC and the County each shall permit the Conflict Committee to resolve, if they are able to do so, disputes and disagreements which arise between ODPC and the County under the terms of this Agreement or as a result of the performance by ODPC of its obligations hereunder. The Conflict Committee shall be composed of one representative of the County, one representative of ODPC and a mutually agreed upon licensed professional engineer selected by the County and ODPC. ~~The County and ODPC agree to share equally the costs of such professional engineer.~~ The parties stipulate and agree that the permissible venue and jurisdiction for the resolution of any and all disputes arising from or out of this Agreement ~~may shall~~ be in ~~either the circuit court~~ Circuit Court of Fluvanna County, Virginia or ~~in as permissible by law.~~ All claims against the United States Federal District Court for County shall be subject to the Western District provisions of Title 15.2, Chapter 12, Article 4 (Sec. 15.2-1243, ff.) of the Code of Virginia, Charlottesville Division (1950), as amended.

SECTION 11. FORCE MAJEURE.

The respective duties and obligations of the parties hereunder (except the County's obligation to pay ODPC such sums as may become due from time to time for services rendered by it) shall be suspended while and so long as performance thereof is prevented or impeded by civil disturbances, riots, strikes, fire, severe weather, governmental action, war acts, acts of God or any other cause similar to the foregoing which is beyond the reasonable control of the party from whom the performance was due; provided, however, that such party is at all times using its best efforts to overcome the impediment.

SECTION 12. DAMAGE OR DESTRUCTION.

12.01. Duty To Repair or Rebuild. If the Facilities are destroyed or damaged, ODPC shall repair or rebuild the Facilities at ODPC's sole cost or expense, whether or not the insurance proceeds, if any, are adequate for the purpose.

SECTION 13. THE COUNTY'S OBLIGATIONS. AND REPRESENTATIONS.

13.01. ~~County's~~ County's Resolution. ~~_____~~ The County shall authorize the execution of this Agreement by resolution.

13.02. ~~County's~~ County's Budget and Appropriations. The County intends to include in its budget ~~for its payment of the Service Fee~~ its obligations hereunder during the term of this Agreement, or any extension thereof ~~as follows: The Board of Supervisors by this Agreement hereby annually directs the County Administrator and any other budgeting official for the County to include in the County's budget to be presented to the Board of Supervisors for each fiscal year, the Service Fees expected to be due for the following fiscal year and, if any additional amounts are due hereunder, 22~~

~~then also to present to the Board of Supervisors a supplement to the County budget for such additional amounts due hereunder, for consideration by the Board of Supervisors within 60 days of such submission.~~ The County agrees to notify ODPC in the event the Service Fees or other

amounts are not adopted in the County budget and appropriated by the Board of Supervisors within 30 days of such consideration by the Board of Supervisors.

SECTION 14. INSURANCE AND INDEMNITY

14.01. ODPC Shall Obtain Insurance. ODPC shall place and maintain with responsible insurance carriers qualified to do business in Virginia the following insurance and shall deliver to the County certificates evidencing such insurance which shall provide thirty days' notice to be given to the County in the event of cancellation:

(a) ~~(a)~~ Comprehensive General Liability Insurance, all applicable to Personal Injury, Bodily Injury and Property Damage to a combined single limit of \$1,000,000.00 each occurrence.

(b) ~~(b)~~ Comprehensive Automobile Liability Insurance including owned, hired and non-owned automobiles, Bodily Injury and Property Damage to a combined single limit of \$250,000.00 each occurrence.

(c) ~~(c)~~ Excess Liability Insurance in following form to the above policies with a combined single limit of \$10,000,000.00 each occurrence.

~~(d)~~ (d) Public Liability Insurance to a combined single limit of \$1,000,000.00 per occurrence.

(e) Worker's compensation insurance in an amount as required under Virginia law.

(f) Additional Insured. The County shall be named an additional insured on the insurance referred to above.

County acknowledges that the amounts of coverage listed above are sufficient to provide coverage to County for tort liability and for the continuation and completion of ~~ODPC's~~ ODPC's obligations under this Agreement.

Such policies shall be deemed satisfactory unless County provides written objection within ten (10) days of delivery by ODPC.

In addition, ODPC shall require, and include in any and all subcontracts, that subcontractors obtain and maintain for the duration of the work worker's compensation coverage in the amounts required under Virginia law.

SECTION 15. REPRESENTATIONS AND WARRANTIES

15.01. County hereby represents and warrants to ODPC as follows:

(a) County has the full power and lawful authority to execute and deliver this Agreement and all related agreements and to consummate and perform the transactions contemplated hereby

and has duly and validly authorized the execution of this Agreement and all related documents and agreements by all necessary proceedings. This Agreement and all related agreements constitute the valid and binding obligation of County.

(b) This Agreement does not require any further approvals of any other party, does not violate any law, ordinance or regulation, does not conflict with any order or decree, and does not conflict with or result in a breach of any contract, lease or permit to which Fluvanna is a party. ~~23~~

(c) The County has complied with all applicable requirements of the Code of Virginia and the County's regulatory and procedural guidelines in entering into this Agreement, including, but not limited to the requirements of the County's and the Commonwealth of Virginia's PPEA requirements, procedures and guidelines.

15.02. ODPC hereby represents and warrants to County as follows:

(a) Organization. ODPC is a limited liability company duly organized and validly existing under the laws of the Commonwealth of Pennsylvania, and duly registered in the Commonwealth of Virginia.

(b) Due Authorization; Valid and Binding. ODPC has the full power and lawful authority to execute this Agreement and to consummate and perform the transactions contemplated hereby and has duly and validly authorized the execution of this Agreement by all necessary proceedings. This Agreement constitutes the valid and binding obligations of ODPC.

(c) Financial Ability. ODPC has the financial ability to perform the Services as contemplated hereunder.

SECTION 16. MISCELLANEOUS PROVISIONS.

16.01. Entire Agreement and Amendment. This Agreement, together with the Exhibits hereto, contains the entire understanding among the parties with respect to its subject matter, and supersedes all prior and contemporaneous agreements and understandings; inducements and conditions, express or implied, oral or written except as herein contained. The express terms hereof control and supersede any course of performance or usage of the trade inconsistent with any of the terms hereof. This Agreement (including the Exhibits hereto) may not be modified or amended other than by an agreement in writing signed by all of the parties hereto, except that certain Exhibits may be attached after the execution hereof following approval by the County as expressly provided herein.

16.02. Indulgences. Neither the failure nor any delay on the part of any party to exercise any right, remedy, power or privilege under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any right, remedy, power or privilege preclude any other or further exercise of the same or of any other right, remedy, power or privilege nor shall any waiver of any right, remedy, power or privilege with respect to any occurrence be construed as a waiver of such right, remedy, power or privilege with respect to any other occurrence. No waiver

shall be effective unless it is in writing and is signed by the party asserted to have granted such waiver.

16.03. Controlling Law. This Agreement and all questions relating to its validity, interpretation, performance and enforcement shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia, notwithstanding any Virginia or other conflict-of-law provision to the contrary. 24

16.04. Notices. All notices, requests, demands and other communications required or permitted under this Agreement shall be in writing and shall be deemed to have been received when delivered against receipt or on the fifth business day following the mailing, by registered or certified mail, postage prepaid, return receipt requested, thereof addressed as set forth below:

(i) If to the County:
Chairman
Fluvanna County Board of Supervisors
Fluvanna County Office Building, Main Street
PO Box 540
Palmyra, VA 22963

With copy to:

Frederick W. Payne, Esquire
County Attorney
414 East Jefferson Street
Charlottesville, Virginia 22902

(ii) If to ODPC:
Karl M. Kyriss, President
Old Dominion Pipeline Company, LLC
762 West Lancaster Avenue
Bryn Mawr, Pennsylvania 19010

With a copy to:
Christopher P. Luning, Vice President & General Counsel
762 West Lancaster Avenue
Bryn Mawr, Pennsylvania 19010

Any party may change the address to which communications or copies are to be sent by giving notice of such change of address in conformity with the provision of this paragraph for the giving of notice.

16.05. Binding Nature of Agreement; No Assignments. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their successors and assigns, except that no party may assign or transfer its rights or obligations under this Agreement without the prior written consent of the other parties hereto.

16.06. Exhibits and Appendices. All Exhibits and Appendices attached hereto and referred to herein are hereby incorporated by reference into, and made part of, this Agreement at each place where such reference is made.

16.07. Nature of Relationship. The relationship which the parties intend to create under this Agreement is that of principal and independent contractor. Nothing herein is intended or shall be construed to create the relationship of partners, of co-venturers or of employment between the County and ODPC. The County shall not have the right to direct or control the activities or practices of ODPC, except as expressly provided in this Agreement.

16.08. Execution in Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original as against any party ~~25~~

whose signature appears hereon, and all of which shall together constitute one and the same instrument. This Agreement shall become binding when one or more counterparts hereof, individually or taken together, shall 'bear the signatures of all of the parties reflected hereon as the signatories.

16.09. Provisions Separable. The provisions of this Agreement and of each section or other subdivision hereof are independent of and separable from each other, and no provision shall be affected or rendered invalid or unenforceable by virtue of the fact that for any reason any other or others of them may be invalid or unenforceable in whole or part or declared so by a court of competent jurisdiction.

16.10. Section and Paragraph Headings. The section and paragraph headings in this Agreement are for convenience of reference only; they form no part of this Agreement and shall not affect its interpretation.

16.11. Gender. Words used herein, regardless of the number and gender specifically used, shall be deemed and construed to include any other number, singular or plural, and any other gender, masculine, feminine or neuter, which the context requires.

16.12. Sections. This Agreement is divided into sections and subdivided into subdivisions. Both the sections and the subdivisions are referred to as "Sections." In construing this Agreement, the word Section should be given the meaning which its context suggests and doubts should be resolved in favor of the broader designation.

16.13. Number of Days. Except as expressly stated to the contrary elsewhere herein, in computing the number of days for purposes of this Agreement, all days shall be counted, including Saturdays, Sundays and legal holidays in Virginia; provided, however, that if the final day of any time period falls on a Saturday, Sunday or legal holiday, then the final day shall be deemed to be the next day which is not a Saturday, Sunday or legal holiday in Virginia.

16.14 Monitor. The County shall be allowed to monitor the practices of ODPC under this Agreement to ensure that the project is properly constructed and maintained in accordance with the terms specified herein.

16.15 PPEA. Except as otherwise stated herein, this Agreement shall incorporate the duties set for in Chapter 22.1 of the Virginia Public-Private Education Facilities and Infrastructure Act of 2002 (the “Chapter”). In the event that there is any conflict or inconsistency between the terms of this Agreement and the Chapter, the terms of this Agreement shall prevail to the extent permitted by law.

16.16. Nonsubstitution. County agrees that until all amounts are paid to ODPC and/or Aqua under this Agreement and the Utility Agreements, that the County will not allow any of the services provided to the County or the residents, citizens or users under this Agreement to be provided by any other person or entity, private or public, and that it will not agree or contract with or otherwise accept any of such services without the prior written consent of Aqua and ODPC, at their sole discretion. 26

16.17. Cross Default. If an event of default occurs in any of the Utility Agreements, then such event shall, in turn, automatically create an Event of Default under this Agreement.

16.18. Essential Use. County agrees that the services provided to its residents and businesses under this Agreement are essential governmental services necessary for the health, safety and welfare of the County and its residents and businesses.

16.19. Title to System. County agrees that all property included in the Facilities, and to the extent this Agreement is terminated due to an Event of Default or a Non-Appropriation Event, all property in the System, is or shall be legally owned by and titled in the name of ODPC, or its affiliate, Aqua, and, to the extent appropriate, the County agrees to execute and deliver such instruments and agreements as reasonably required by ODPC to effect such ownership and title and take such actions as may be reasonably necessary or appropriate to obtain such licenses or permits for ODPC or its affiliates to the extent appropriate to own, operate or maintain such Facilities, including, but not limited to, all of those rights, titles and interest referred to in Sections 2.06, 2.07 and 9.02.

[Signature page follows-27]

IN WITNESS WHEREOF, the ~~parties~~ duly authorized representatives have executed this Agreement as of the date first above written.

FLUVANNA COUNTY

By: _____ Date: _____

~~Shaun V. Kenny~~, Chairman
Board of Supervisors

APPROVED AS TO FORM:

County Attorney

OLD DOMINION PIPELINE COMPANY, LLC. ~~ATTEST:~~

~~By: By:~~

By: _____ Date: _____

Print Name: _____

Title: _____

EXHIBIT A

Net Plant Value Calculation

Net Plant Value shall be calculated using GAAP and NARUC utility accounting rules which represents the depreciated original cost of the assets, owned and installed by Old Dominion Pipeline Company over the term of the Agreement, also sometimes called the undepreciated value or net book value (NBV), not including any assets located on Aqua Virginia, Inc.'s property such as water mains, point of delivery meter and vault, backflow prevention assembly, pumps, tanks, treatment equipment, or any other equipment which shall be installed on Aqua's property during the term of this Agreement, plus other non-unitized costs incurred or awaiting closure in the construction work in progress (CWIP) account which could include non-unitized repair costs, plus Old Dominion Pipeline Company's actual transaction costs associated with the transfer of the Facilities, if any. Equipment installed on Aqua Virginia, Inc.'s property or as part of the regulated system shall become the property of Aqua Virginia, Inc. regardless of whether installed or existing before or during the term of this Agreement.

The weighted average composite depreciation rate utilized to calculate the Net Plant for this Water Project will be 2.13% based on the asset categories included in the construction phase of this agreement.

Capital improvements to the Facilities pursuant to section 8.02 of this Agreement may include asset categories with varying depreciation rates. Depreciation rates applicable to these additional categories will be determined at that time in accordance with GAAP and NARUC accounting rules.

EXHIBIT B

Attached: Concept Drawing, Proposed Pipeline Route from Aqua's Water System to Zion Crossroads

EXHIBIT C

Attached: Concept Drawing, Proposed Hydraulic Grade Line of Pipeline