

**AN AGREEMENT BETWEEN LOUISA COUNTY, VIRGINIA, FLUVANNA COUNTY,  
VIRGINIA, THE LOUISA COUNTY WATER AUTHORITY, AND THE JAMES RIVER  
WATER AUTHORITY REGARDING THE JAMES RIVER WATER PIPELINE**

**Dated as of October 1, 2013**

## AGREEMENT

This Agreement ("Agreement") is made and entered into this first day of October, 2013, by and between LOUISA COUNTY, VIRGINIA, a political subdivision of the Commonwealth of Virginia with powers vested in its Board of Supervisors ("Louisa"), FLUVANNA COUNTY, VIRGINIA, a political subdivision of the Commonwealth of Virginia with powers vested in its Board of Supervisors ("Fluvanna"), the LOUISA COUNTY WATER AUTHORITY, a political subdivision of the Commonwealth of Virginia and a water authority created under the Virginia Water And Waste Authorities Act with powers vested in its Board of Directors ("LCWA"), and the JAMES RIVER WATER AUTHORITY, a political subdivision of the Commonwealth of Virginia and a water authority created under the Virginia Water and Waste Authorities Act with powers vested in its Board ("JRWA").

WHEREAS, Louisa, Fluvanna, LCWA, and JRWA (each a "Party" and collectively "the Parties") mutually desire to enter into this Agreement for the purpose of delineating their respective rights and duties regarding a water pipeline (the "James River Pipeline" or "Pipeline") from a point on the James River near the Town of Columbia to a point in Louisa County;

WHEREAS, the Parties wish to work cooperatively to provide a reliable public water supply to the citizens of Louisa and Fluvanna Counties;

WHEREAS, the Parties recognize that the current Virginia Department of Environmental Quality ("DEQ") water withdrawal permit held by JRWA for the Brems Bluff area ("the Brems Bluff Permit") should be moved to an area near the Town of Columbia ("the Columbia Permit");

WHEREAS, the planning, design, acquisition of real property, and construction of the James River Pipeline will require, among other things, a great deal of planning, engineering work, and site acquisition;

WHEREAS, the cost of the James River Pipeline may run into the tens of millions of dollars, and bonds may be necessary; and

WHEREAS, LCWA and JRWA have authority to enter this Agreement with one another and with each of the Counties, under Va. Code §§ 15.2-5114(11), 15.2-5115, and 15.2-5147, Fluvanna and Louisa may enter into this agreement pursuant to Va. Code § 15.2-5147 as regarding the authorities, and with each other pursuant to Va. Code § 15.2-2148;

NOW THEREFORE, in consideration of \$10.00, cash in hand paid, as well as the mutual covenants, warranties, and agreements set forth herein, and intending to be legally bound, the Parties agree as follows:

### **1. Covenants Of The Parties**

Subject to the terms and conditions of this Agreement, the Parties mutually covenant and agree that:

1.1 Funding of Property Acquisition, Design, and Construction

(a) *JRWA.*

- i. JRWA agrees to fund, construct, operate, and maintain the James River intake and associated structures, the James River pipeline from the intake facility to a point near Route 6 west or north of the Columbia Community Planning Area (CPA), as the CPA is shown on the Fluvanna County Comprehensive Plan at the date of execution of this Agreement, as well as “T” connections and valves to allow Fluvanna and Louisa/LCWA connection to the JRWA system. The precise location of the point will be determined and agreed by the Parties at a later date based on engineering, planning, legal, and other considerations. JRWA will also bear the cost of the acquisition of all real property rights necessary to build the portion of the James River Pipeline that it will own, as laid out in Section 1.2(a), below.
- ii. JRWA may fund its portion of the cost of the activities set out in Section 1.1(a)(i), above, through any lawful means including by issuance of bonds, through a direct contribution from Fluvanna and Louisa, or charge a connection fee and/or periodic water reservation charge to Fluvanna and Louisa proportional to its flow reservation. The amount of the charge which will be fairly and reasonably calculated to amortize the cost of constructing, operating, and maintaining the portion of the James River Pipeline referenced in Section 1.1(a)(i), above. JRWA is encouraged to apply for grants, gifts, subsidized loans, and other sources of funding.
- iii. The fixed baseline operations and maintenance (“O&M”) costs of JRWA property, incurred in the absence or regardless of flow, will be split evenly between Fluvanna and Louisa/LCWA. The variable O&M costs which can be attributed to water flows will be proportionally split based on actual water flow to each party, regardless of each party’s actual customer location.

(b) *Fluvanna.*

- i. If, after the effective date of this Agreement but prior to the start of final design of the Pipeline, Fluvanna identifies a location on the Louisa portion of the James River Pipeline at which Fluvanna desires to make a “T” connection, Louisa agrees to construct such “T” connection and the necessary increased pipe capacity, including any associated design, construction, and acquisition costs, at no cost to Fluvanna. The precise location of the point will be determined and agreed by the Parties at a later date based on engineering, planning, legal, and other considerations.

- ii. In the event that Fluvanna decides to make additional connections to the James River Pipeline beyond the ones described in Sections 1.1(a)(i) and 1.1(b)(i) above, Fluvanna agrees to pay the incremental increase in costs of design, construction, and property acquisition up to the location of the additional "T" connections, plus the marginal cost of the additional "T" connections over the cost of a straight pipe, to that location.
  - iii. If, after design of the Pipeline has begun, Fluvanna identifies additional locations at which it desires to make a "T" connection to the James River Pipeline, Fluvanna agrees to pay Louisa/LCWA a fair and reasonable periodic reservation fee for the conveyance of the water to that point on the line. The amount of the fee will be fairly and reasonably calculated to amortize the incremental costs of design, construction, and property acquisition and ongoing O&M costs proportional to the flow capacity of the water reserved to Fluvanna.
- (c) *Louisa & LCWA.*
- i. Louisa and LCWA agree to fund, construct, operate, and maintain the James River Pipeline from a point near Route 6 west or north of the Columbia Community Planning Area (CPA), as the CPA is shown on the Fluvanna County Comprehensive Plan at the date of execution of this Agreement (*see* Section 1.1(a), above).
  - ii. Louisa and LCWA agree that they will fund and acquire all real property rights necessary to build the portion of the James River Pipeline that they will own, as laid out in Sections 1.2(a) and (b), below.
- (d) *Route of the Pipeline.* The Parties agree that Attachment A to this Agreement shows the general or approximate location of the James River Pipeline. The specific location will be determined by the Parties in accordance with engineering, planning, legal, and other considerations at a later date. The Party that is contemplated to have responsibility for O&M under this Agreement will have final responsibility for choosing the specific route of the Pipeline. The specific route must substantially conform to the general or approximate location shown on Attachment A unless otherwise specifically agreed by the Parties.

## 1.2 Ownership

- (a) *In General.* The Parties agree that they will each own such real and personal property as they each acquire or construct, subject to the limitations and specific procedures set forth in this subsection.
- (b) *Property of Louisa/LCWA.* All real and personal property to be acquired, constructed, operated, and maintained by either Louisa or LCWA under

this Agreement may be acquired, constructed, operated, maintained, and owned by either Louisa or LCWA under the terms of whatever operating agreement(s) may be operative between them.

### 1.3 Reservation of Capacity

- (a) *In General.* This Agreement contemplates that allocation of water between Fluvanna and Louisa will be in accordance with the needs of each county as established and agreed in the Columbia Permit water withdrawal application and DEQ's summary findings of need regarding the Columbia Permit.
- (b) *Temporary Reallocation.* Raw water capacity may be reallocated on a temporary basis. Costs and terms for such temporary reallocations will be fair and reasonable in accordance with law and will be determined by JRWA on request by any of the Parties.
- (c) *Bulk Purchases.* In lieu of or in addition to the procedures laid out in Section 1.2 above for allocation of ownership of the Pipeline, Fluvanna may purchase raw or finished water from Louisa/LCWA, or Louisa/LCWA may purchase raw or finished water from Fluvanna, at a mutually agreed bulk rate. Such rates will be fair and reasonable in accordance with law and will be determined by JRWA on request by any of the Parties.
- (d) *Future Expansion to Columbia Permit.* Unless otherwise agreed by the Parties, if at any time any Party seeks an expansion of the Columbia Permit, JRWA will make such application and be reimbursed by the Party or Parties seeking an expansion. The expansion in the withdrawal permitted by the Columbia Permit will then be reserved to the Party or Parties seeking the expansion.

### 1.4 Comprehensive Planning, Zoning, and Other Approvals.

- (a) *Fluvanna County Comprehensive Plan.* Fluvanna will take all necessary and legally permissible steps to determine consistency with and/or amend its Comprehensive Plan so as to make the James River Pipeline shown on Attachment A to this Agreement a feature whose general or approximate location, character, and extent are shown on its Comprehensive Plan in accordance with Va. Code Ann. § 15.2-2232 (2012). A determination of substantial conformance or appropriate amendments to the Fluvanna Comprehensive Plan will be completed by November 30, 2013.
- (b) *Fluvanna County Zoning Ordinance.* Fluvanna will take all necessary and legally permissible steps to ensure that the James River Pipeline and its facilities are and remain permitted under its Zoning Ordinance.

- (c) *Local Permits.* JRWA and Louisa/LCWA will obtain construction permits for their portions of the intake, supporting structures, and the James River Pipeline and will make all reasonable efforts to restore all property to its condition prior to the construction or maintenance of the Pipeline.
- (d) *Conservation Easements and Agricultural & Forestal Districts.* To the extent the James River Pipeline passes through an area that is subject to a County conservation easement or an agricultural and forestal district, all Parties agree to take all necessary and legally permissible steps necessary to permit the Pipeline in said area or district.
- (e) *Consent to Use of Property and Power of Eminent Domain.* By executing this Agreement, Fluvanna authorizes JRWA and LCWA to establish, construct, use and maintain the facilities contemplated in this Agreement, and to use the power of eminent domain within its jurisdiction for the purposes contemplated in this Agreement, as required by Va. Code Ann. § 15.2-5114(6) (2012).

1.5 Cooperation on State and Federal Regulatory Approvals.

- (a) *Withdrawal Permit.* JRWA agrees that it will apply for, and pay all costs associated with acquiring, the Columbia Permit. The Parties mutually agree that in pursuit of such permit, JRWA may relinquish the Breemo Bluff Permit. The Parties agree to take all reasonable and legally permissible steps to support JRWA's application.
- (b) *State Board of Health.* The Parties mutually agree to take all necessary and legally permissible steps to obtain the permit from the State Board of Health required by Va. Code Ann. § 32.1-172 (2011).
- (c) *Further Cooperation.* The Parties mutually agree to take all necessary and legally permissible steps to obtain any other local, state, or federal approvals necessary for the James River Pipeline and related facilities.

1.6 Litigation Cooperation.

- (a) *Third Parties.* Notwithstanding anything to the contrary contained in this Agreement, if any action or proceeding by any third party is instituted or threatened to be instituted challenging any transaction or action contemplated by this Agreement, the Parties will mutually use their reasonable best efforts to (i) contest, resist, or resolve any such proceeding or action and (ii) have vacated, lifted, reversed, or overturned any injunction adverse to the Parties or any one thereof resulting from such proceeding or action.
- (b) *Eminent Domain.* The Parties agree that they will mutually use all necessary and legally permissible means for the acquisition of property,

including, but not limited to, easement rights as contemplated in this Agreement at the lowest reasonable price.

- (c) *Obtaining Permits.* If litigation becomes reasonably necessary in order to obtain any of the permits necessary for the objects contemplated in this Agreement, the Parties will mutually use their reasonable best efforts and take all necessary and legally permissible steps to prosecute such litigation to a successful conclusion.

## 2. Representations And Warranties.

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Each of the Parties represents and warranties to the other Parties as follows:

- (a) *Organization in Good Standing.* Each of the Parties is a political subdivision of the Commonwealth duly organized, validly existing, and in good standing under the laws of the Commonwealth of Virginia. In particular, and without limitation, Fluvanna, Louisa, and JRWA stipulate and agree that the rights and obligations of the Parties set forth in this Agreement are consistent with JRWA's purpose and powers as set forth in Paragraph 4 of its Articles of Incorporation.
- (b) *Authorization and Enforceability.* Each of the Parties has the full power and lawful authority, through its governing body, to execute this Agreement and perform its obligations contemplated herein and has duly and validly authorized the execution of this Agreement.

This Agreement constitutes the legal, valid, and binding obligation of each of the Parties, enforceable against each of the Parties in accordance with its terms, except as such enforceability may be limited by applicable laws relating to bankruptcy, insolvency, fraudulent conveyance, reorganization, or affecting creditor's rights generally.

- (c) *Noncontravention.* The Parties' performance of the obligations contemplated by this Agreement will not (i) require any further approvals or consents from any third party other than those approvals or consents mandated by law, ordinance, or regulation in effect as of the date of this Agreement; (ii) violate any law, ordinance, or regulation; or (iii) conflict with or result in a breach of, or constitute a default under, any contract, lease, permit, or other agreement or commitment to which any of the Parties is a party; except where the approvals, consents, violations, or conflicts would have no effect on the ability of any Party to fully consummate all terms of this Agreement.
- (d) *Budgets.* Each of the Parties is responsible for keeping its own budgets relating to this Agreement.

**3. Termination.**

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3.1 This Agreement may be terminated only as follows:

- (a) By mutual written consent of all Parties;
- (b) By any Party, if any state or federal approval necessary to its performance under the terms of this Agreement is refused by a final decision not subject to appeal following diligent pursuit thereof; or
- (c) By any Party, upon a material breach by any other Party of any covenant, warranty, representation, agreement, or provisions of this Agreement that has not been (i) cured within 30 days after a non-breaching Party gives written notices of said breach to the breaching Party; or (ii) waived by the non-breaching Party.

3.2 The effect of termination of this Agreement will be as follows:

- (a) Each Party's right of termination under Section 3.1 of this Agreement is in addition to any other rights it may have under this Agreement or otherwise, and the exercise of a right of termination will not be an election of remedies.
- (b) If this Agreement is terminated pursuant to Section 3.1 of this Agreement, all further obligations of the Parties under this Agreement will terminate.

**4. Remedies.**

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4.1 Specific Performance.

- (a) The Parties agree that irreparable damage would occur in the event that any of the provisions of this Agreement is not performed in accordance with its specific terms or is otherwise breached.
- (b) The Parties agree that, in the event that there is a disagreement between them regarding compliance with the terms and conditions of this Agreement, prior to filing any suit the disagreement will be submitted by the Parties to a neutral mediator for at least 60 days for assistance in reaching a resolution of the disagreement satisfactory to all Parties.
- (c) Each Party agrees that, in the event of any breach or threatened breach by any other Party of any covenant, warranty, or obligation contained in this agreement, the non-breaching Parties will be entitled (in addition to any other remedy that may be available, whether in law or equity) to seek and obtain (i) a decree or order of specific performance to enforce the observation and performance of such covenant, warranty, or obligation, and (ii) an injunction restraining such breach or threatened breach.

5. Miscellaneous.

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- 5.1 Entire Agreement. This Agreement constitutes the entire agreement between the Parties concerning its subject matter and supersedes all prior oral or written agreements, understandings, representations, and warranties, as well as courses of dealing among the Parties.
- 5.2 Amendment. This Agreement may be amended or modified only by a writing executed by all Parties.
- 5.3 Extension or Waiver of Performance. The Parties may jointly extend the time or waive the performance of any of the obligations of any other, waive any inaccuracies in the warranties or representations made by the other, or waive inaccuracy with any of the covenants, conditions, or agreements contained in this Agreement, provided that any such extension or waiver must be in writing and signed by all other Parties in the case of a waiver, or by all Parties in the case of an extension.
- 5.4 Assignment or Delegation. No Party shall assign, delegate, or otherwise transfer any of its duties, rights, or obligations under this Agreement without the prior written consent of all other Parties.
- 5.5 Successors and Assigns; Binding Effect. This Agreement is binding on, and inures to the benefit of, the Parties and their respective successors and permitted assigns.
- 5.6 Governing Law. This Agreement is to be governed and construed under the laws of the Commonwealth of Virginia.
- 5.7 Notices. All notices provided in this Agreement must be in writing, and may be delivered in person; sent by U.S. registered and certified mail, return receipt requested; or sent by Federal Express or other nationally-recognized overnight courier from which a receipt may be obtained to the chief administrative officer and chief legal counsel of each of the other Parties.
- 5.8 Construction. In the event of any ambiguity or question of intent or interpretation arises, this Agreement will be construed as if drafted jointly by the Parties, and no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of the authorship of any of the provisions of this Agreement.

Any reference to any federal, state, local, or foreign statute shall be deemed to refer to all statutes, rules, and regulations referenced therein or promulgated thereunder, unless the context requires otherwise.

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, as the context may require. The word "including" means included, without limitation.

- 5.9 Remedies. The remedies afforded in this Agreement are cumulative to each other and to all other remedies provided by law.
- 5.10 Time of the Essence. Where a specific date or time is stated in this Agreement, time is of the essence of this Agreement.
- 5.11 Waiver. Except as otherwise provided herein, no delay of or omission in the exercise of any right, power or remedy accruing to any Party as a result of any breach or default by any other Party under this Agreement will impair any such right, power, or remedy; nor shall it be construed as a waiver of or acquiescence in such breach or default, or any similar breach or default occurring later; nor shall any waiver of a single breach or default be deemed a waiver of any other breach or default occurring before or after the waiver.
- 5.12 Jurisdiction and Venue. Each Party irrevocably submits to the exclusive jurisdiction of the Circuit Courts for Louisa County and Fluvanna County, at the option of the plaintiff in such suit, and the appellate courts therefrom, for the purposes of any suit or action arising out of this Agreement.
- 5.13 Third-Party Beneficiaries. Nothing herein expressed or implied is intended or should be construed to confer on or give to any person other than the Parties any rights or remedies under or by reason of this Agreement.
- 5.14 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original copy of this Agreement and all of which, when taken together, shall be deemed to constitute one and the same agreement.

[Signatures Appear on Next Page]

FOR LOUISA COUNTY, VIRGINIA:

[Signature] Date: Oct 1, 2013  
Chairman, Board of Supervisors

FOR FLUVANNA COUNTY, VIRGINIA:

[Signature] Date: 02 Oct 2013  
Chairman, Board of Supervisors

FOR THE LOUISA COUNTY WATER  
AUTHORITY:

[Signature] Date: 10.9.13  
Chairman, Board of Directors

FOR THE JAMES RIVER WATER  
AUTHORITY:

[Signature] Date: 15 Oct 13  
Chairman, Board of Directors

