

# SERVICE AGREEMENT

**THIS SERVICE AGREEMENT** (this “Agreement”), made and entered into as of April 1<sup>st</sup>, 2015, by and among the **JAMES RIVER WATER AUTHORITY** (the “Authority”), and the **COUNTY OF FLUVANNA, VIRGINIA**, and the **COUNTY OF LOUISA, VIRGINIA** (the “Counties” or individually the “County”).

## RECITALS:

**WHEREAS**, the Authority is a public body politic and corporate created in 2009 upon agreement of the governing bodies of the Counties, and in accordance with the Virginia Water and Waste Authorities Act, Virginia Code § 15.2-5100, et seq. (the “Act”), for the purpose of servicing the water needs of the Counties; and

**WHEREAS**, the County of Fluvanna, Virginia and the County of Louisa, Virginia are counties and political subdivisions of the Commonwealth of Virginia (the “Commonwealth”);

**WHEREAS**, the Counties entered into a Memorandum of Understanding executed on March 30, 2004 stating their mutual intention to enter into a formal contract for the development of a joint water supply and service utilizing the James River (the “MOU”); and

**WHEREAS**, the Authority, the Counties and the Louisa County Water Authority (“LCWA”) entered into an agreement (the “2013 Interjurisdictional Agreement”) dated October 1, 2013 to reflect the desire to move the James River intake from Bremo Bluff to Columbia, Virginia and to set forth the parties’ respective rights and duties with respect to a James River Pipeline Project; and

**WHEREAS**, the Authority and the Counties desire to enter into this Agreement to provide for, among other things, the development of a System for the supply of raw water by the Authority to the Counties, the sale of raw water by the Authority to the Counties, the allocation of the Authority’s capacity to the Counties and the method for fixing and collecting rates and charges for the use by the Counties of the Authority’s water system.

**NOW, THEREFORE**, in consideration of the premises and the mutual covenants and agreements herein contained, the parties hereto agree as follows:

## ARTICLE I DEFINITIONS

“**Bond Fund**” shall mean the Bond Fund established in the Trust Agreement.

“**Bonds**” shall mean, collectively, any series of bonds, notes, debt, capital leases or other obligations issued by the Authority.

“**Capital Costs**” shall mean the debt service payments required to pay any Bonds issued by the Authority and other capital improvement costs, including required payments to the

Operating Fund, required payments to the Debt Service Reserve Fund, and required payments to any Bond Fund.

**“Consulting Engineer”** shall mean the Consulting Engineer retained by the Authority s referenced in the Trust Agreement.

**“Debt Service Reserve Fund”** shall mean the Debt Service Reserve Fund established in the Trust Agreement.

**“Fiscal Year”** shall mean in respect to the Authority the twelve months beginning on July 1 and ending on June 30, or such other twelve month period as may be determined by the Authority.

**“Fixed Operating and Maintenance Costs”** shall mean any Operating and Maintenance Costs that are incurred by the Authority in the absence of or regardless of the amount of System water flow to the Counties.

**“Gross Revenues”** shall mean all moneys received by the Authority in connection with or as a result of its ownership or operation of the System.

**“MGD”** shall mean million gallons per 24 hour day.

**“Month” or “Monthly”** shall mean calendar month, unless this Agreement specifies otherwise.

**“Operating and Maintenance Costs”** shall mean all current expenses directly or indirectly attributable to the ownership or operation of the System, including, without intending to limit or restrict any proper definition of such expenses under any applicable laws or generally accepted accounting principles, reasonable and necessary usual expenses of administration, operation, maintenance and repair, costs for billing and collecting the rates, fees and charges for the use of or the services furnished by the System, insurance and surety bond premiums and other charges and fees necessary for the maintenance of adequate insurance coverage for the Authority and the System, legal, engineering and auditing expense, expenses and compensation of the Trustee, and other current expenses of the Authority required to be paid by law or under the Trust Agreement, but shall not include Capital Costs.

**“Operating Fund”** shall mean the Operating Fund established in the Trust Agreement.

**“Replacement Fund”** shall mean the Replacement Fund established in the Trust Agreement.

**“System”** shall mean the raw water intake, raw water pump station, booster pump stations, raw water storage facilities, raw water pipelines and all associated appurtenances necessary for a complete and functional installation, all plants, systems, facilities, equipment or property owned, operated or maintained by the Authority and used in connection with the supply, storage or distribution of raw water, including, without limitation, dams, water supply systems,

water distribution systems, reservoirs, wells, intakes, mains, laterals, pumping stations, standpipes, filtration plants, purification plants, hydrants, meters, valves and equipment and apparatus, all properties, rights, easements and franchises relating thereto. The raw water intake and raw water pump station shall be constructed along the James River in the vicinity of the Town of Columbia in the County of Fluvanna. The raw water pipeline shall proceed northward from the intake facility to a point near Route 6 and the Columbia Community Planning Area (“CPA”), as the CPA is shown on the Fluvanna County Comprehensive Plan as of the date of the execution of this Agreement, and shall include “T” connections and valves to allow the Counties to connect to the System. Booster pump stations, raw water storage facilities and associated appurtenances shall be constructed as required along the pipeline route on Authority owned and/or leased property.

“**Trust Agreement**” shall mean the Agreement of Trust, or any similar agreement, if any, between the Authority and the Trustee designated therein, entered into for the purpose of allowing the Authority to issue Bonds, as supplemented and amended from time to time.

“**Trustee**” shall mean the Trustee or its successor serving as such under the Trust Agreement.

“**Variable Operating and Maintenance Costs**” shall mean any Operating and Maintenance Costs that are incurred by the Authority attributable to the amount of water flowing from the System to each County.

## **ARTICLE II CONSTRUCTION, OPERATION AND FINANCING OF RAW WATER INTAKE SYSTEM**

**Section 2.1 Agreement to Construct.** The Authority, subject to obtaining financing therefor, agrees to construct and operate the System.

**Section 2.2 Agreement to Finance.** The Authority anticipates financing the costs of designing, constructing, and equipping the System, including expenses associated with the financing, as well as the acquisition of property, through the issuance of Bonds. Any issuance of Bonds by the Authority shall require the approval of the governing bodies of each County.

## **ARTICLE III PROVISION OF SERVICES**

### **Section 3.1 Supply of Raw Water**

(a) The Counties, subject to subsection (c), shall each have an allocation of 50% of the raw water provided by the System.

(b) The Authority shall use its best efforts to remain in a position to furnish raw water as herein provided to the Counties, but its obligation shall be limited to the amount of raw water available.

(c) A County may temporarily or permanently reallocate any portion of its allocated capacity to the other County on such terms as may be mutually agreeable. The County shall give the Authority written notice of any such transfer and the Authority shall change the capacity allocations on its books and records. However, these reallocations shall not alter the obligations of each County unless agreed to by the parties.

(d) The Authority will not sell raw water to any governmental entity, person, firm, or corporation that is not a party to this Agreement without the prior approval of the Counties.

(e) Notwithstanding any other provisions of this Agreement, a County may assign its capacity allocation to anyone without consent of the other County or the Authority.

(f) The raw water allocation above shall supersede the provisions of the 2013 Interjurisdictional Agreement contained in Paragraph 1.3(a) therein.

### **Section 3.2 Purchase of Raw Water.**

(a) Each County shall have the right to purchase from the Authority raw water for use and/or for resale up to their respective allocation.

(b) In the event the Authority is unable to furnish all of the raw water required under this Agreement, each County shall have the right to construct, acquire, utilize, purchase, procure or take water from any facilities other than the System constructed by the Authority.

### **Section 3.3 Expansion of System.**

(a) Either County may request an expansion of the capacity of the System and issue bonds to finance the cost of such expansion. The County requesting such an expansion shall be solely responsible for all capital costs of the expansion, and shall promptly reimburse the Authority for any additional costs incurred by the Authority occasioned by the construction necessary for such an expansion as such costs are incurred. The County requesting such an expansion shall be allocated the entire additional capacity created through the expansion.

(b) If both of the Counties simultaneously request an expansion of the capacity of the System, the provision of this subsection shall apply to each in proportion to the capacities each has requested. Following completion of an expansion, any resulting increases in routine Operating Expenses shall be paid for by the Counties according to their proportional interest in the System as provided for in Article IV.

(c) The Authority must approve any such expansion.

## **ARTICLE IV PAYMENTS**

### **Section 4.1 Payments for Variable Operating and Maintenance Costs**

The Variable Operating and Maintenance Costs which can be attributed to water flows shall be proportionally split between the Counties based on actual water flow to each Party. The Authority will invoice each County on the tenth day of each month for its proportionate share of the Variable Operating and Maintenance Costs based on actual usage during the previous month. Within 90 days after the end of each Fiscal Year, the payments from each County for Variable Operating and Maintenance Costs shall be adjusted to account for any excess or deficit in the amount of Variable Operating and Maintenance Costs actually paid by the County during such Fiscal Year. Each County that has paid Variable Operating and Maintenance Costs to the Authority in an amount less than its share of total Variable Operating and Maintenance Costs shall promptly pay to the Authority for deposit directly into the Operating Fund from any funds legally available to it on a subject to appropriation basis the amount of such deficit. If a County has paid Variable Operating and Maintenance Costs in excess of its share of total Variable Operating and Maintenance Costs for the Fiscal Year, then the Authority shall credit such County with the amount of the excess against future Variable Operating and Maintenance Costs becoming due under Section 4.1 of this Agreement.

### **Section 4.2 Payments for Fixed Operating and Maintenance Costs and Bonds**

(a) The Fixed Operating and Maintenance Costs incurred in the absence or regardless of flow, and the monthly debt service charges for Bonds issued by the Authority for purposes of constructing the Authority's System, improving or repairing the System or refunding any outstanding series of Bonds issued for such purpose, shall be divided evenly between Counties.

(b) The Authority will invoice each County on the tenth day of each month for its half of the Fixed Operating and Maintenance Costs for the previous month. The Counties each shall pay, on a subject to appropriation basis, to the Authority, at least ten (10) days in advance of each payment date on any series of Bonds, their half of the monthly debt service charges sufficient to pay when due the principal of, premium, if any, and interest on the Bonds and provision for any reserves therefor. All such monthly debt service charges shall be calculated based on the period of the debt service payment by the Authority. For example, if the Authority is obligated to make semiannual payments on a debt, the corresponding advance Monthly debt service charges payable by each County concerning that debt shall be one-sixth of each County's share of the semiannual payment.

### **Section 4.3 Annual Reserve Payments**

On the first day of each Fiscal Year, the Authority shall bill to each County, and each County agrees to pay to the Authority, its proportionate share (as determined pursuant to Section 6.4) of an Operating and Maintenance reserve payment equal to sixty (60) days of its projected Annual Budget less Capital Costs and the funds on hand in the operating fund.

**Section 4.4 Invoices**

Except as otherwise provided in this Agreement, on the tenth day of each Month, the Authority shall prepare and submit invoices to the Counties for payment of all charges and surcharges payable to the Authority by the Counties hereunder. The Counties shall pay the amount invoiced within 30 days after receipt of such invoice. Failure to pay in full any uncontested amounts within 30 days of the date of receipt shall cause the County to be liable for interest on the unpaid amount at a rate of one (1) point above the prime interest rate announced from time to time by the bank with which the Authority maintains its primary banking relationship.

**Section 4.5 Payment Disputes**

If any County disputes any portion of the charges billed to it by the Authority, it shall so notify the Authority within 10 days of receipt of the invoice. If the payment dispute is unresolved within 30 days of the date of the County's receipt of the invoice, the County shall be liable for interest on the unpaid amount at a rate of one (1) point above the prime interest rate announced from time to time by the bank with which the Authority maintains its primary banking relationship if the amount in question is determined to have been appropriately billed to the County. The Authority may make such other rules as it deems appropriate for resolution of payment disputes.

**Section 4.6 Payment from Participating Jurisdictions**

Each County agrees to promptly pay from any funds legally available to it on a subject to appropriation basis, all amounts required by this Agreement. Each County hereby directs its County Administrator to include in each annual budget submitted to the governing body of his or her County or in an amendment thereto, sufficient funds to cover the County's payment obligations required by this Agreement. If at any time the revenues available to the Authority shall be insufficient to pay in a timely fashion any of the Fixed Operating and Maintenance Costs, Variable Operating and Maintenance Costs, or Capital Costs, the Authority shall notify each County of the amount of such insufficiency and the County Administrator of the County shall request a supplemental appropriation from the governing body of the County for its share of the amount necessary to make such payment. Nothing in this Agreement shall be deemed to constitute a pledge of the faith and credit or the taxing power of either County. The obligations herein of each County are independent and no County shall have any obligation to pay any amounts owed to the Authority by any other County.

**ARTICLE V  
METERS**

**Section 5.1 Installation of Meters**

In order to permit the delivery to the Participating Jurisdictions of raw water sold to each County, the Authority shall permit the Counties or an authority created under the Act by the County to connect its system with the raw water supply mains maintained by the Authority, the

specific location of such connection to be designated by the Authority in a location or locations not inconsistent with the 2013 Interjurisdictional Agreement and reasonably acceptable to the Counties. The volume of raw water delivered to such County shall be determined by a meter or meters installed by the Authority.

**Section 5.2 Failure of Meters to Register**

In the event the meter or meters so installed shall fail to register correctly the flow of raw water for any period of time, the amount of raw water supplied by the Authority shall be determined by the average daily consumption of raw water over a period of 30 days preceding the date when such meter or meters failed to register the correct flow.

**ARTICLE VI  
ANNUAL BUDGET**

**Section 6.1 Budget Request and Adoption of Annual Budget**

By February 1st each year, the Authority shall submit its budget request to the Counties for the operation of the System for the ensuing Fiscal Year, which shall be called the Annual Budget. The Annual Budget shall be adopted by June 30 of each year.

**Section 6.2 Report of Consulting Engineer and Estimate of Water Usage**

Prior to making its budget request and preparing the Annual Budget, the Authority shall obtain a report from an engineer giving advice and making recommendations as to the proper maintenance, repair and operation of the Authority's System, including any capital expenditures, during the ensuing Fiscal Year and estimating the amount necessary for such purposes. In addition each County shall give the Authority an estimate of total water usage during the ensuing Fiscal Year.

**Section 6.3 Details of Annual Budget**

The budget request and Annual Budget shall be prepared in such manner as to show in reasonable detail all rates, fees and other charges to be derived by the Authority to pay, in the ensuing Fiscal Year (i) all Operating Expenses expected to be incurred in connection with the ownership or operation of the Authority's System, (ii) any amount required to be paid, if any, into the Replacement Fund, (iii) the amount of principal of a premium, if any, and interest on the Bonds, that shall become due, including any amount necessary to be paid into the Debt Service Reserve Fund to restore the balance therein to the amount of the Debt Service Reserve, and (iv) any other lawful costs and expenses the Authority deems necessary or desirable.

**Section 6.4 Amendments to Annual Budget**

The Authority may amend the Annual Budget at any time during the Fiscal Year.

**Section 6.5 Delay in Adoption of Annual Budget**

**Section 6.5 Delay in Adoption of Annual Budget**

If for any reason an Annual Budget has not been adopted within the time required by Section 6.1 of this Article VI, the last previously adopted Annual Budget will be deemed to provide for and regulate and control expenditures during such Fiscal Year until an Annual Budget for such Fiscal Year has been adopted.

**ARTICLE VII  
MISCELLANEOUS**

**Section 7.1 Sale or Transfer of System**

Each County agrees not to sell, transfer or dispose of its water system unless:

- (a) The transferee agrees to comply with the terms of this Agreement to the extent applicable to raw water delivered by the Authority;
- (b) The transferee agrees to fix and collect rates and charges sufficient to satisfy the obligation of the transferring County under Article IV above, to the extent such County does not fix and collect such rate and charges; and
- (c) The transferee agrees to make payments to the Authority required to be made by the transferring County to the extent such payments are not made by the County.
- (d) In addition, each County agrees not to sell, transfer or dispose of more than five percent (5%) of the book value of its water system in any one year (excluding obsolete, unnecessary or unused parts of its water system unless:
  - (i) such transfer is to another governmental unit within the meaning of Section 141 of the Internal Revenue Code of 1986, as amended; and
  - (ii) the sale, transfer or other disposal is approved by the Authority.
- (e) Notwithstanding the foregoing, no such sale, transfer or disposition shall release the transferring County from any obligation or liability under this Agreement or affect any County agreement or understanding between the County and the transferee.

**Section 7.2 Amendments**

This Agreement may be changed or modified only with the consent of the Authority and each of the Counties. Such modification may be requested by any party, in which event a joint meeting of such governing bodies shall be held not less than 90 days after giving such notice, at which joint meeting the requested changes or modifications shall be considered and discussed. No such change or modification may be made which will affect adversely the prompt payment when due of all moneys required to be paid, by each of the Counties under the terms of this

Agreement and no such change shall be effective that would cause a violation of any provision of the resolution authorizing or the indenture securing the bonds.

**Section 7.3 Compliance with Laws**

This Agreement shall be subject to all valid rules, regulations and laws applicable hereto passed or promulgated by the United States of America, the Commonwealth, or any governmental body or agency having lawful jurisdiction or any authorized representative or agency of any of them.

**Section 7.4 Distribution Upon Dissolution**

At such time as it shall become necessary to determine the respective interests of the Counties in the assets of the Authority for the purpose of distributing or otherwise disposing of the same, unless otherwise required under Section 15.2-5109 of the Act, the interest of each County shall be in the ratio that the capacity of the System allocated to such County at such time bears to the entire capacity of the System.

**Section 7.5 Rates Charged by Participating Jurisdictions**

Nothing in this Agreement shall in any way affect the rights and obligations of the Counties to charge such rates as it may determine for the use of water and other facilities and services supplied by its System, as now existing or hereafter extended and enlarged.

**Section 7.6 Audit of Authority Books and Records**

The Authority agrees to have made an annual audit of the books and records of the Authority and to deliver to each of the Counties a copy of the annual audit within 10 days after receiving the annual audit.

**Section 7.7 Term of Agreement**

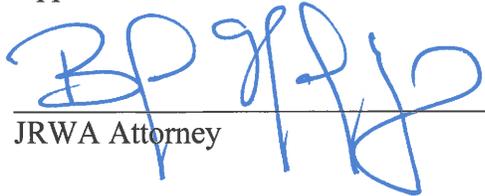
This Agreement shall continue in force and effect for a period from the date hereof and for so long as the Authority shall remain in existence.

IN WITNESS WHEREOF, the parties caused this Service Agreement to be signed by their respective officers thereunto duly authorized, and this Agreement to be dated as of the date and year first above written.

**JAMES RIVER WATER AUTHORITY**

By:   
Chairman

Approved as to Form

  
JRWA Attorney

**COUNTY OF FLUVANNA, VIRGINIA**

By:   
Chair, Board of Supervisors

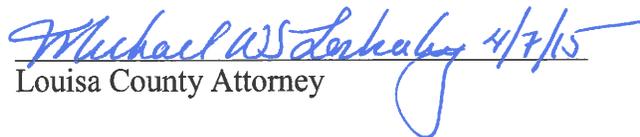
Approved as to Form

  
Fluvanna County Attorney

**COUNTY OF LOUISA, VIRGINIA**

By:   
Chair, Board of Supervisors

Approved as to Form

 4/7/15  
Louisa County Attorney