

WATER AGREEMENT

THIS CONTRACT, made this 29th day of September, 1994, by and between the CITY OF RICHMOND, a municipal corporation of the Commonwealth of Virginia ("City"), and the COUNTY OF HENRICO, a political subdivision of the Commonwealth of Virginia ("County"), replaces and supersedes the Water Agreement between the parties dated July 1, 1985.

WITNESSETH:

The parties recognize that they are each potentially capable of providing their independent water supply and distribution systems to adequately serve their respective political subdivisions. It is deemed of mutual benefit by the parties for the County to purchase water from the City. For and in consideration of this and other mutual benefits from the undertakings of the parties, the City and the County covenant and agree, each with the other, as follows:

1. The City will provide water from the City's water distribution system to the County for resale by the County to water customers located within the County. The County may continue to resell to customers in Hanover and Goochland Counties water purchased from the City. The County may also resell water to other customers located outside the County, with the written approval of the City.

2. The City will actively support the County's permit application before the United States Army Corps of Engineers (Corps) and other regulatory agencies to construct a new 55 MGD water treatment plant ("WTP") along the James River. The County will actively support the City's application to the Corps and other regulatory agencies to redevelop the City's canals system and downtown riverfront.

3. The County agrees not to begin operating its WTP before January 1, 2003. However, the County may operate its plant during 2002 for testing purposes providing the water produced for such testing shall in no way diminish the amount of water the County would otherwise purchase from the City during the testing period.

The County agrees to obtain its water exclusively from the City, except for well production, until at least January 1, 2003. From January 1, 2003 through December 31, 2006, the County will purchase a minimum of 35 million ccf from the City. From January 1, 2007 through the term of this Contract, the County will purchase a minimum of 5.8 million ccf annually.

The City will make water available to the County through the year 2002 to meet the County's entire water demands, not met by well water production. The City's commitment hereunder for the period from January 1, 2003 through the remaining term of this Contract will be limited to 20 MGD on any calendar day unless the County and the City agree to a greater volume pursuant to Section 6. Notwithstanding the foregoing, the County may request, for a period of up to six months after the City obtains a rating of 132 MGD for the City's WTP and the City's determination that it can deliver 132 MGD, and the City will agree to deliver, up to 35 MGD on any calendar day after

January 1, 2007. If the County's demands are so increased, the County demands in Exhibit A-1 for the period from January 1, 2007 through the remaining term of this Contract will be increased up to 35 MGD for peak day demands and proportionately up to 40 MGD for peak hour demands and all other peak day and peak hour demands will be increased accordingly.

4(a). There shall be an annual review of the peak day demand projection for the Richmond metropolitan area served by the Richmond and Henrico WTPs. The annual review shall be based on a methodology agreed upon by the jurisdictions to be served and will be conducted by representatives of those jurisdictions.

(b). At the time of the annual review, the jurisdictions shall also review the long-range water needs of the region. Such analysis shall include projections for periods exceeding ten years and alternatives such as long-term storage and water availability outside the region, as appropriate.

(c). Prior to January 1, 2003, the City and the County also will determine whether the service needs of the Richmond metropolitan area served by the Richmond and Henrico WTPs will exceed the capacity of the Richmond WTP. The City shall be responsible for meeting projected service needs, which can include adding capacity at the City WTP, unless the City determines it is unable to meet the additional demands, in which case the City will provide the County with at least four years' advance written notice to accelerate the on-line date of the County WTP, and the County will so accelerate the on-line date. If the City expands its plant beyond 132 MGD in order to meet the County's demands before the on-line date of the Henrico WTP and not at the

County's request, any costs incurred solely for the expansion shall be Joint Costs in the annual cost allocation study only until the County WTP comes on-line. Thereafter, the County shall not be responsible for any of the increased capacity costs unless the County approves such costs in accordance with Section 6, or upon the written agreement of the County and the City. The County will accelerate the on-line date of its plant only if the City and the County so agree, and if the County so accelerates the on-line date of its plant, the dates and obligations in Sections 3 and 5(d) of this Contract shall be accelerated accordingly.

5. The charges for the sale of water to the County under this Contract shall be adjusted annually on a fiscal year basis, which fiscal year shall be from July 1st through the following June 30th. The formula for this adjustment is set forth in paragraphs 5(a) through 5(f) below.

5(a). The charges for water sold to the County after June 30, 1994 until the expiration of the Contract shall be based on the actual cost to the City, as defined below, for the fiscal year in which the sale of water occurred. The actual cost, for purposes of charges, shall be expressed in a two part rate structure consisting of a Capacity Charge per hundred cubic feet (Ccf) per month, based on twenty-four (24) hour demand, and a Commodity Charge per Ccf based on metered use. The capacity charge for billing shall be based on the demand used in the annual cost allocation study. Because the actual cost of the service in any given fiscal year cannot be determined until the close of the accounting books for that period, estimated charges per Ccf will be used until the cost allocation study is completed and the actual cost of service is determined. These

estimated charges shall be based upon the actual cost allocation study for the immediately preceding fiscal year, plus five percent (5%) for estimated increases in cost. A preliminary cost allocation study shall be completed prior to the first day of October of each year and a final cost allocation study shall be completed within thirty (30) days of completion of the City's annual audit during the term of this Contract.

5(b). The determination of actual cost of operating expenses for the City's Water Utility shall include all of the City Water Utility's operating expenses as included in Exhibit A of this Contract. The Directors of Public Utilities for the County and the City may modify the operating expenses to be included in the cost allocation study by mutual written agreement.

In addition, a payment in lieu of the City's real and personal property taxes applicable to the water utility properties within the City shall be considered a part of the actual costs.

The actual cost of service determination shall include a rate of return on rate base. Such rate of return shall be the rate of return charged the City's water customers, but shall not exceed a reasonable and conventional rate of return allowed by the Virginia State Corporation Commission for a comparable investor-owned water utility under usual industry standards.

The total rate base shall be derived from the City's Water Utility and shall include an appropriate share of the Stores and Transportation Utility Capital Accounts, also set forth in the City's "Financial Report" and shall be based upon the average of the amounts recorded (per books) as of the beginning and end of the fiscal year, beginning

with fiscal year ending June 30, 1995, for the respective utility's plant investment less accrued depreciation and contributions, plus working capital, which includes materials and supplies, prepayments and a forty-five (45) day allowance of Operation and Maintenance Expenses, excluding purchased power, for cash working capital.

5(c). The allocation of costs to serve the County shall be based upon the methodology set forth in the revised cost allocation study for the water utility. An updated cost allocation study shall be prepared by the City annually, a copy of which will be furnished to the County. If the study is not found to be mutually acceptable, a review of the study and procedures shall be conducted by the County and City, respectively.

5(d). A cost allocation study for Fiscal Year 1992-93 has been prepared by The Columbia Group dated October 1993, and this mutually agreed-upon report is attached as Exhibit A and made a part hereof. The method used in the revised cost of service determination to distribute and allocate the various costs incurred by the City in providing water service contains the parameters, procedures and principles which have been mutually agreed to by the City and the County. Such methods, parameters, procedures and principles shall be reviewed in detail upon the request of either party, except that such reviews shall be required no more frequently than one each five (5) years unless by agreement of both parties.

For cost allocation purposes for the period running through the fiscal year ending June 30, 2002, the maximum County demands used to develop the allocation factors in the cost allocation study, shall not be less than any of the highest such demands after January 1, 1988.

The cost allocation study for each fiscal year following the fiscal year ending June 30, 2007 shall use the greater of (i) the actual volumes obtained from the City during the year for each allocation factor; or (ii) the volumes for each allocation factor as included in Exhibit A-1.

For each of the fiscal years ending June 30, 2003 and June 30, 2007, two cost allocation studies will be performed. The amount the County shall pay the City for service each fiscal year shall be determined by taking one-half of each of the two studies for the fiscal year and adding the two halves together.

For cost allocation purposes for the fiscal year ending June 30, 2003, the first study shall include the maximum County demands used to develop the allocation factors in the cost allocation study, achieved after January 1, 1988. The second study shall use the actual County peak demands, including peak day, peak hour, and the like, achieved by the County from January 1, 2003 through June 30, 2003.

For cost allocation purposes for the fiscal year ending June 30, 2007, the first study shall use the maximum County peak demands achieved by the County from January 1, 2003 through December 31, 2006. The second study shall use the actual County peak demands, including peak day, peak hour, and the like, achieved by the County from January 1, 2007 through June 30, 2007.

For cost allocation purposes for the three fiscal years ending June 30, 2004 through June 30, 2006, the studies shall use the maximum County peak demands achieved by the County from January 1, 2003 through June 30, 2006.

If the County WTP is placed in service after January 1, 2003, the dates for which the cost allocations studies cited above are to be performed shall be adjusted so that County water demands are allocated to each fiscal year proportionately to the number of months they occur each year, on a basis comparable to the above allocation.

5(e). After the actual cost allocation study has been prepared each year and the cost of service per Ccf for capacity and commodity is determined, the total amount of water sold to the County by the City's Water Utility for the previous fiscal year and the total amount paid by the County shall be ascertained. The actual allocated cost of service per Ccf shall be used to compute what the County should have paid for all water purchased from the City for the entire fiscal year. If the actual payments exceed what the County should have paid under the actual cost of service per Ccf, then the County shall be reimbursed for such excess payment within thirty (30) days after completion of the cost allocation study or receive credit for such excess payment on the next invoice, whichever is earlier. If the County paid less than what it should have for all water purchased, then the County shall pay the difference within thirty (30) days of presentation of an invoice for such difference.

5(f). The City shall maintain separate continuous property and general accounting records of the costs directly assigned to the County and such other records as are necessary to implement the actual cost of service study. Such records shall be available for review by the County.

6. The County shall provide the City, annually, on or before May 1, the projected peak-hour and peak-day water requirements at each and every metering point for the

next ten (10) calendar years. Should additional metering points be established, the projected peak-hour and peak-day will be estimated as mutually agreed upon by the City and the County.

In the event that the County's projected requirements, overall or at any delivery point, exceed the capacity of any of the City's Water Utility facilities to deliver the projected increase in the County's requirements, as determined by the City, the City will, within ninety (90) days of receipt of the projection, advise the County of the scope and estimated cost of the capital improvements directly assignable to the County that are required to provide the projected increase in the County's requirements.

The County will be permitted to undertake capital improvements on its system or other means to reduce the projected peak-hour and peak-day requirements to the City's existing capabilities and will advise the City within the following ninety (90) days as to whether or not the County will do so. Upon receipt of County approval, the City will undertake the necessary capital improvements at its expense, and such costs will be assigned to the County.

The City will incur no liability to the County in the event that the County withholds its approval and the City fails to supply the increase in the County's requirements. The City shall have a reasonable time in which to enlarge or modify its distribution and plant facilities to meet increases in the County's requirements.

7. The quality and pressure of water delivered to the County under this Contract shall be that furnished City customers in the area from the main or mains from which the water is taken by the County at the metering point or points and at the time of

delivery, and it shall meet the minimum requirements of the Commonwealth of Virginia Water Works Regulations for public water supplies.

8. The County will cause to be constructed, maintained, repaired and operated in the County such water pumping stations, reservoirs and/or mains and connections thereto as are necessary to provide water service in the County under this Contract. The plans and specifications therefor and the materials used in the construction, maintenance, repair and operation thereof shall meet the minimum requirements of the Commonwealth of Virginia Water Works Regulations.

9. The City shall have the right to inspect all work done in connection with the construction, maintenance, repair and operation of the water facilities constructed or provided in the County under the provisions of paragraph 8 of this Contract and connected with the City's water distribution system, to determine whether such work is done in accordance with the provisions of paragraph 8 of this Contract, and the County will take any additional actions reasonably necessary to permit such inspection to be made.

10. Title to water facilities in the County constructed or provided by the County or caused to be constructed or provided the County under the provisions of paragraph 8 of this Contract shall vest and remain vested in the County in fee simple.

11. The City will not sell water to customers in the County without the approval of the County; however, the City will be permitted to continue service to existing customers in the County until such time as the County elects to provide service under the provisions of paragraph 13 below.

12. Except to meet projected increases in the County's peak-day and peak-hour requirements as permitted by paragraph 6, the County, insofar as it may legally do so, will not permit any person, association, firm or corporation to supply water for use on any premises or property in the County nor permit any person, association, firm or corporation to use the streets, roads, highways, alleys or other public ways or places in the County for the construction, maintenance and operation of a water distribution system or systems without the approval of the City.

13. Whenever the County desires to sell or distribute water to any resident or occupant of premises or property in the County being supplied by the City with water, the County shall have the right to do so with the approval of the City on the condition that the County will thereafter sell or distribute water to such resident or occupant, and the contract in force between the City and such resident or occupant shall be terminated by the City.

14. Whenever the County decides to distribute water in the County where the City owns a water main or mains and serves one or more consumers in the County, the County shall have the right, subject to the approval of the City, to take over the main or mains for operation, maintenance, repair, replacement and enlargement, and such facilities may be sold by the City to the County if mutually agreeable to maintain operating efficiencies; otherwise, the title to the main or mains shall remain vested in the City. However, if such main is extended by the County or caused to be extended by the County, title to such extension shall vest in the County.

15. The County will furnish to the City, on request, such information as may be required by it which will permit the accurate recordation of the location of the main or mains and connections thereto constructed or provided by the County.

16. The City will provide, install and maintain a meter at each point of delivery of water to the County under this Contract, and the quantity of all water delivered to the County at each point shall be measured through the meter. The costs and expenses associated with such metering facilities shall be included in the appropriate parts of the cost allocation study.

The Directors of Public Utilities for the County and the City shall establish the delivery and metering points by mutual written agreement. The maximum demand ratios, as established by combination commodity and demand meters at these or other locations in the future, will be used to determine the total demands for all water sales to be billed the County and will be used for cost allocation purposes.

17. The City shall read all meters monthly. The County shall have the right to read such meters simultaneously with the City for the purpose of verifying the accuracy of the readings made by the City. The County at its own option and expense shall have the right to test and verify the accuracy of such meters in the presence of the City's appropriate representatives.

18. The City shall render to the County each month as soon as practicable a bill for water delivered to the County through all meters after each monthly reading thereof. The County will pay the amount of the bill to the City within thirty (30) days after its receipt. Such bill shall itemize the readings for each such meter. Monthly billings will

be based on the estimated charges described in paragraphs 5 and 16. Such billings will be adjusted annually to reflect actual costs as also described in paragraph 5.

19. The City shall have the right to extend its water lines in the roads, streets, highways, alleys, or other public ways or places or part thereof of the County to connect sections or parts of the City's water distribution system or to serve other political subdivisions and authorities of the Commonwealth of Virginia or customers located therein. The County will provide all necessary approvals for any such City water main construction, performed in conformity with this Agreement, on the same basis as any other entities which require street access and any other County approvals. The City shall fully restore any County street, road, highway, alley or other public way or place or part thereof disturbed by such construction, extension or repair of the City systems in accordance with the County's specifications or agreements with the City in effect at the time of such construction. The City will furnish to the County, on request, such information as may be reasonably required by it to allow the accurate recordation of the location of the water main(s).

20. At any time the County constructs or reconstructs a water main or the City constructs or reconstructs a gas main in the County and at the same time the other party is constructing or reconstructing its gas or water main as the case may be, then each may join together and use a common trench and in so doing each shall pay one-half of the cost of excavating and backfilling the trench and restoring and replacing the street, road, highway, alley or other public way or place, or part thereof, including paving disturbed on account of such construction or reconstruction.

21. Neither the City nor the County shall be liable in damages to the other for any act, omission, or circumstances occasioned by or in consequence of any acts of God, strikes, lockouts, acts of the public enemy, wars, blockades, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, storms, floods, washouts, arrests, and restraints of rules and people, civil disturbances, explosions, breakage or accident to machinery or lines of pipe, the binding order of any court or governmental authority which has been resisted in good faith by all reasonable legal means, and any other cause, whether of the kind herein enumerated or otherwise, not reasonably within the control of the party claiming suspension and which by the exercise of due diligence such party is unable to prevent or overcome. Failure to prevent or settle any strike or strikes shall not be considered to be a matter within the control of the party claiming suspension. Such causes or contingencies affecting the performance hereunder by either the City or the County, however, shall not relieve it of liability in the event of its concurring negligence or in the event of its failure to use due diligence to remedy the situation and to remove the cause in an adequate manner and with all reasonable dispatch, nor shall such causes or contingencies affecting such performance relieve either party from its obligations to make payment of amounts then due hereunder in respect of water theretofore delivered.

22. The County shall maintain during the life of this Contract such personal and bodily injury liability and property damage liability insurance or documentable self-insurance as shall protect it from claims for damages for personal or bodily injury,

including death, as well as from claims for property damage, which may arise from alleged negligence of the County in the distribution of water supplied by the City.

23. The County shall not during the term of this Contract impose, levy or collect a tax of any type whatsoever upon the business, property and facilities of the City located within the County which are used for the purposes of carrying out the City obligations and privileges under this Contract, provided that this provision shall not apply to consumer taxes levied by the County.

24. The City and County covenant and agree each with the other that this Contract shall be in full force and effect until July 1, 2040 and shall continue in force thereafter until terminated by either the Manager of the City or the Manager of the County giving to the other five (5) years' written notice to that effect. The City and County covenant and agree each with the other that if this Contract is terminated by the County, the County will reimburse the City for the original cost less accumulated depreciation of the facilities set forth in Schedules 1 and 9 of Exhibit A of this Agreement, additional facilities that have been constructed pursuant to paragraph 6, and facilities allocated to serve the County provided such facilities are not required by the City. The value of joint use facilities allocated to serve the County is approximately \$27,173,311 and direct cost/contract facilities constructed to serve the County is approximately \$7,421,444 as of June 30, 1993. If this contract is terminated by the City, there shall be no reimbursement from the County to the City for any facilities constructed to serve the County.

25. The City and County agree to fully support and abide by the regional James River Management Plan to ensure the environmental integrity of the James River and the critical minimum flows for the Richmond Canal projects. The City and County will seek to secure oversight of the plan by the Virginia Department of Environmental Quality or some other appropriate and mutually agreed upon State agency.

26. The City agrees to conduct a comprehensive study, subject to peer review, to determine the ability of the City's WTP to treat 132 to 150 MGD and to meet projected requirements of the Safe Drinking Water Act. The study will be completed by December 31, 1994.

27. In consideration of the County's promises in this agreement, Richmond agrees to convey 80 MGD of Richmond's water rights in the James River to Henrico. Richmond agrees not to oppose Henrico's application for withdrawal of up to 55 MGD for its Water Treatment Plant. Richmond agrees that it will not oppose Henrico's application for withdrawal of other amounts of water sufficient to treat up to 80 MGD of potable water in Henrico's Water Treatment Plant so long as the County's withdrawal is in conformance with the River Management Plan.

28. The County agrees that once its WTP comes on-line, it will reimburse the City for 50 percent of the annual operating and maintenance expenses incurred by the City in the operation and maintenance of Boshers Dam.

29. Waiver. No failure or delay on the part of either party in exercising any of its rights and remedies hereunder or otherwise shall constitute a waiver of such rights and remedies.

30. **Modifications.** No modification of this Agreement shall be effective unless made in writing and executed by both parties.

31. **Severability.** The invalidity or unenforceability of any particular provision of this Agreement shall not affect other provisions, and this Agreement shall be construed in all respects as if such invalid or unenforceable provision were omitted.

32. **Authorities.** The City and County each represents and warrants for itself as follows as of the date of this contract:

- (a) It has the power to enter into this contract and the transactions contemplated hereunder and to perform the obligations hereunder according to the terms of this contract.
- (b) It has duly taken all actions and obtained all consents necessary to enable it to enter into this contract and to perform its obligations hereunder and to be bound hereby.
- (c) The person or persons executing or attesting the execution of this contract on behalf of each party has or have been duly authorized and empowered to so execute and attest.
- (d) The execution of this contract on behalf of the party will bind and obligate the party to the extent provided by the terms hereof, and each party represents and warrants that it has no legal basis to avoid any of its obligations hereunder nor will it seek to avoid any such obligations.

(e) Each party acknowledges that the representations and warranties it makes within this agreement are relied upon by the other party in entering into this contract.

(f) This contract is a continuing services agreement for the provision of water whereby the County agrees to pay for water service when rendered by the City.

(g) The charges payable under this contract shall not be deemed to create or constitute an indebtedness or a pledge of the full faith and credit of the Commonwealth of Virginia or of any political subdivision thereof, including the County, for purposes of any constitutional or statutory limitation.

By signing their names below, the persons executing or attesting the execution of this contract represent and warrant that they are duly authorized and empowered to so execute and attest.

IN WITNESS WHEREOF, the City has caused its name to be hereunto signed by its City Manager, and its seal to be hereunto affixed and attested by its Clerk, said action being authorized by Ordinance No. 94-220-199 adopted by the Council of the City of Richmond on the 26th day of September, 1994, and the County has caused its name to be hereunto signed by its County Manager, and its seal to be hereunto affixed and attested by its Clerk, the said action being authorized by a resolution adopted at a duly called meeting of the Henrico County Board of Supervisors on the 28th day of September, 1994.

WITNESS the following signatures and seals:

SEAL

CITY OF RICHMOND, VIRGINIA

By *Robert C. Bell*
City Manager

ATTEST

Mildred B. Smith
Asst. City Clerk

APPROVED AS TO FORM:

Michael J. [Signature]
Asst. City Attorney

COUNTY OF HENRICO

By *[Signature]*
County Manager

ATTEST

Martha A. Jorner
Clerk

APPROVED AS TO FORM:

Joseph P. Rappan, Jr.
County Attorney

Execution authorized
by Board minute
412-94
Date 9-28-94
Initials m-j
APPROVED
Substance: [Signature]
Form: [Signature]
Signature: [Signature]

a:\Water.k2: updated 9/14/94