

A G E N D A

JAMES CITY COUNTY BOARD OF DIRECTORS

READING FILE

March 25, 2008

FOR YOUR INFORMATION

1. Project Development Agreement for Long-Term Water Supply

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**Project Development Agreement For
Long Term Water Supply Between**

The City of Newport News, Virginia and the James City Service Authority

This AGREEMENT made this 25th day of March, 2008, by and between the City of Newport News, a municipal corporation of the Commonwealth of Virginia (hereinafter referred to as "City"), and the James City Service Authority, a public body politic and corporate of the Commonwealth of Virginia, pursuant to the Virginia Water and Waste Authorities Act (hereinafter referred to as "JCSA").

WHEREAS, as a participant in the Regional Raw Water Study Group, JCSA has supported the permitting and preliminary studies necessary to implement the King William Reservoir Project ("the Project"); and

WHEREAS, permits for the Project have been issued by state and federal agencies and City is now proceeding to implement the Project; and

WHEREAS, JCSA desires to purchase the equivalent of a twenty percent share of the raw water safe yield, as now defined, of the Project; and

WHEREAS, City has conducted preliminary engineering and hydrologic studies for the Project which will supply raw water to the Virginia Peninsula Region including JCSA service area through 2050; and

WHEREAS, JCSA does not have the facilities to treat raw water received from City and desires City to treat said raw water provided by City; and

WHEREAS, the parties acknowledge that the JCSA's existing groundwater permits will not provide sufficient capacity to serve the needs of JCSA's customers by the time King William Reservoir is projected to be in service (approximately 2020); and

WHEREAS, City is willing to supplement JCSA's existing groundwater supply until the King William Reservoir is in service and thereafter to provide a defined quantity of Treated Water to JCSA from an alternate source should the Project not be completed.

NOW THEREFORE, in consideration of the mutual undertakings, promises and agreements herein contained, it is mutually agreed as follows:

Article 1 – Definitions

- 1.0 Agreement
Means this Project Development Agreement for Long Term Water Supply Between The City of Newport News and The James City Service Authority, and any renewal thereof.
- 1.1 Alternate Water Source
Means raw water supply sources, other than the Project, identified by City to supplement raw water supply in the event that the Project is cancelled.
- 1.2 Annual Fixed O & M
Means annual or recurrent costs incurred by City for the operation and maintenance of the Project, whether water is pumped through the pipelines or not, including but not limited to: permitting requirements, reservoir treatment, watershed maintenance and protection, shad hatchery stockings, endowments related to Mattaponi Watershed, initial reservoir filling, materials, manpower costs, monitoring and reporting costs, repairs, security, right-of-way fees, landscaping, costs related to removal of obstacles, rent payments, real property taxes paid in lieu of rent payments as well as bond issue costs and interest incurred by City in connection with a bond issue/sale by City for land acquisitions made under the King William County Interim Project Financing Agreement dated _____, 2008, tax payments on real property and improvements, payments in lieu of taxes, and other payments pertaining to the Project paid by City to New Kent and King William Counties. Annual Fixed O & M excludes: Project management costs, principal and interest payments on Project debt and depreciation of Project assets.
- In the event of uncertainty as to the inclusion in Annual Fixed O & M of a particular cost, the parties agree that reference may be made for guidance to the most recent edition of Government Accounting, Auditing, and Financial Reporting as published by the Government Finance Officer's Association, and as supplemented by any official statements of the Government Accounting Standards Board.
- 1.3 Annual Variable O & M
Means annual costs incurred by City for the maintenance and operation of the Project that fluctuate based on the amount of water pumped to and from the King William Reservoir through pipelines including but not limited to: electricity, maintenance of pumps and consumables relating to pumping equipment.
- 1.4 County
Means the County of James City, Virginia.

- 1.5 Fiscal Year
Means the twelve-month period which begins on July 1 and ends on June 30.
- 1.6 MGD
Means million gallons per day.
- 1.7 Project
Means the whole of the facilities, rights and interests to be designed, constructed, acquired, and used for the purpose of withdrawing water from the Mattaponi River, transporting and storing it in the King William Reservoir, and transporting it again to Diascund Reservoir and the City's raw water supply systems.
- 1.8 Project Safe Yield
Means the difference between the amount of raw water that can be provided during a drought event by City's Waterworks system utilizing the completed Project less the amount of raw water that can be provided during a drought without the Project, and as of the date of this Agreement, is projected to be 20 million gallons per day for the Virginia Peninsula region.
- 1.9 Safe Yield Share
Means the portion of the Project Safe Yield that is available to JCSA and shall be 4 MGD of Treated Water, which is 20% of Project Safe Yield. Safe Yield Share shall be a minimum of 4 MGD of Treated Water measured as a yearly average.
- 1.10 Treated Water
Means water that has been treated at one of City's water treatment plants and provided to JCSA at specified delivery locations. Each specified location will include a water meter to record actual volume of water provided by City to JCSA.

Article 2 – Term

- 2.1 The initial term of this Agreement shall run from March 25, 2008 until January 1, 2050, at which time this Agreement shall be automatically renewed for additional terms of twenty-five (25) years each upon the terms and conditions established in this Agreement which may be modified by the governing bodies of the parties at the time of each renewal. Notwithstanding the preceding, this Agreement shall terminate upon the mutual consent of the governing bodies of the parties or for material noncompliance by a party.

Article 3 – Payment for, and Delivery of, Treated Water

- 3.1 Delivery of Treated Water by City. Estimated on-line date for the Project is 2020 and City has determined it has available raw water capacity until the Project is completed. In recognition of JCSA's long-term commitment and support of the Project, City commits to provide JCSA with Treated Water from existing raw water supplies previously identified to be in an amount of 4 MGD, measured as a yearly average, in advance of raw water being available from the Project. Delivery of Treated Water hereunder is in addition to JCSA's groundwater capacity and is not a replacement for such capacity. Whether or not the Project is completed, 4 MGD will continue to be made available to JCSA subject to the provisions of this Agreement. For regional water supply planning purposes JCSA's groundwater supply will be considered to be its primary source of water. JCSA, in its discretion, may utilize either Treated Water received hereunder, or its groundwater, to meet the supply demands of its customers.
- 3.1.1 Peak Delivery of Treated Water by City. JCSA may periodically receive up to 5.7 MGD of Treated Water on a monthly average calculated on a 30-day rolling average and periodically receive up to 6.5 MGD of Treated Water on a daily basis, so long as the average amount of Treated Water provided does not exceed 4 MGD in a calendar year, or 5 MGD when provisions of Article 3.1.2 apply.
- 3.1.2 Delivery of Available Additional Treated Water. Notwithstanding Article 3.1, and subject to Article 3.3 of this Agreement, JCSA may receive up to 5 MGD of Treated Water in a calendar year or that portion of a calendar year upon written notice to City, if the useable reservoir capacity of the City's raw water system is at or above the typical drawdown cycle as shown on the Drought Tracking Chart (Figure 3.8 or its successor) in the then current Water Conservation Management Plan prepared by Newport News Waterworks. The Drought Tracking Chart will be revised from time to time by City based on system and climatic changes and the most current Drought Tracking Chart will be relied upon to allow the increase in amount of water that can be taken without penalty. Additional Treated Water provided under this Article 3.1.2 may also be curtailed in the event of significant system failure or other emergency. Provision of additional Treated Water provided under this Article 3.1.2 will be subject to the other provisions of this Agreement. The penalty in Article 3.1.3 of this Agreement will not apply to the delivery of available additional Treated Water. City will provide written explanation to JCSA if additional Treated Water cannot be provided or must be curtailed. Treated Water charges,

the cost of which JCSA will be required to pay under Article 3.2 of this Agreement, will be incurred for all water delivered, including additional Treated Water hereunder.

3.1.3 Penalty for Exceeding Maximum Delivery Rate. In addition, JCSA will pay City for consumption exceeding the agreed upon maximum delivery rate of Treated Water in any calendar year, a penalty of 1.5 times the consumption rate that City charges its retail commercial customers for Treated Water.

3.2 Water Treatment by City. JCSA desires to have City's Waterworks system deliver all Treated Water. The cost of water treatment will be in addition to the payment of JCSA's Safe Yield Share under Article 4 of this Agreement and shall be paid by JCSA to City in the following amount:

3.2.1 Cost of Water Treatment. JCSA may receive Treated Water by paying to City, City's cost of treatment at metered system interconnections, with the Cost of Treatment being \$0.70 per 1,000 gallons of water. Beginning July 1, 2009, cost of Treated Water will be increased annually based upon the procedures defined in Article 3.2.2. of this Agreement. JCSA will be billed monthly based on meter consumption measured at system interconnections.

3.2.2 Treated Water cost is based on the average operating cost to provide treated drinking water and includes cost of labor, chemicals, power, and equipment associated with the delivery of untreated water to the treatment plants and treatment of the water and delivery to the metered connections. Cost will be recalculated for every Fiscal Year and the recalculated charges will be provided to JCSA by January 1 for the upcoming Fiscal Year. Charges will be based on unit costs per 1000 gallons.

3.3 Water Use Restrictions. If conditions such as drought or other emergencies cause the federal government, Commonwealth of Virginia, or City to impose or enact water use restrictions on its water system customers, then JCSA and its customers (when the JCSA is receiving water pursuant to this Agreement) will also be subject to the same restrictions which will be imposed and enforced by JCSA. Notwithstanding the above, such water use restrictions do not preclude JCSA or County from imposing more stringent water restrictions than those imposed by City. The amount of Treated Water that is provided to JCSA, at the metered system interconnections, may be reduced in accordance with City's tiered reduction targets of 5% for Tier 2, 10% for Tier 3, and 15% for Tier 4, if deemed necessary by City. These targets are found in the Water Conservation Management Plan, 2006 Update, prepared by Newport News Waterworks, November 2006, which Plan may

be amended at City's sole discretion. JCSA shall be notified of any pending amendment to the tiered reduction targets and given an opportunity to comment.

- 3.4 Location of Water Delivery. Locations for delivery of Treated Water will be at specified locations to be determined based on engineering modeling and water quality studies jointly conducted by City and JCSA. Initial specified locations include existing interconnection on Rt. 199 at Mounts Bay Road and a location in the Lightfoot area near County's boundary with York County.
- 3.5 Time of Treated Water Delivery. Subject to confirmation by computer hydraulic modeling, up to 3 MGD of Treated Water may be delivered to the Mounts Bay Road location. City will make every effort to provide a delivery location in the Lightfoot area by 2015.
- 3.6 Effect of Drought or Emergency. During periods of restricted water availability caused by drought or other unusual or emergency conditions, JCSA's unit cost for the Treated Water provided in accordance with Article 3.2 of this Agreement and JCSA's cost and payment obligations as defined in Articles 4 and 5 of this Agreement will not be modified in the event of any restricted water availability.
- 3.7 JCSA Prohibited From Reselling City Water. JCSA shall not resell any Treated Water received under this Agreement to any county, city, town, authority, or political subdivision of the Commonwealth of Virginia, nor resell through individual customer connections outside of the County, the City of Williamsburg, and upper York County, without written consent of City.

Article 4 - Cost of Water Distribution System Improvements

- 4.1 The cost of pipeline(s) to be installed which are required to provide Treated Water to JCSA at specified water delivery locations, including those locations described in Article 3.4 of this Agreement will be shared by City and JCSA based upon the hydraulic capacity required for each party.
- 4.2 Responsibility for Water System Improvements. If JCSA determines or agrees that City Treated Water distribution system improvements are required due to JCSA's increased needs, including but not limited to water storage tanks, water meters and water system booster pumping stations needed to interconnect systems and provide Treated Water to JCSA, and City concurs, these improvements will be designed and constructed by City in consultation with JCSA. JCSA shall pay all costs for the design and construction and for future maintenance and upgrades. City shall own such distribution system improvements. If said distribution system

improvements benefit both City and JCSA, cost for the design and construction and future maintenance and upgrades will be shared by City and JCSA based on hydraulic capacity required for each party. Itemized bills for costs incurred by City hereunder shall be provided to JCSA. Payment shall be due within sixty (60) days, unless otherwise agreed by City and JCSA.

Article 5 – Cost and Payment for JCSA’s Safe Yield Share

- 5.1 Cost of Safe Yield Share. JCSA agrees to begin purchasing its right to receive a Safe Yield Share in the Project, or an Alternate Water Source should the Project not go forward, as follows:
- 5.1.1 Payment by JCSA shall include two \$25 million payments to City. The first payment of \$25 million shall be paid no later than January 1, 2009. The amount of the second payment of \$25 million will be adjusted by the change in the Engineering News Record Building Cost Index (BCI). The base or reference BCI will be set based on the BCI for the month of January 2008. The second payment shall be calculated based on the increase from the base or reference BCI to the BCI of the month prior to the month the payment is made. The second payment will be due no later than June 30, 2019. Alternate arrangements to finance the second payment may be made by mutual agreement of the parties and the governing body of City.
- 5.1.2 In the event that the second payment under Article 5.1.1 of this Agreement is not paid by JCSA by June 30, 2019, or if City is notified of JCSA’s intent not to make the second payment, JCSA’s safe yield share shall be immediately reduced to 2 MGD of Treated Water, resulting in the total delivery of Treated Water under this Agreement to 2 MGD, on a yearly average, calculated per calendar year. Delivery by City to JCSA of available additional Treated Water under Article 3.1.2 shall also cease. JCSA’s payment of Annual Fixed O & M costs and Variable O & M costs, hereinafter referred to as “Variable and Fixed O & M,” will be reduced in future years by fifty percent (50%). In addition, JCSA’s responsibility for payment of the capital costs referred to in Article 5.1.3 shall be ten percent (10%).
- 5.1.3 It is the intent of the parties that the payments made by JCSA in accordance with Article 5.1.1 for Safe Yield Share are one-time payments, and cover all renewals of this Agreement. However, notwithstanding the preceding sentence, capital costs for improvement or replacement of Project facilities or Alternate Water Source facilities that are necessary after the completion of the

Project or an Alternate Water Source in order to: 1) comply with law or regulations, or 2) maintain the Safe Yield Share or operability of the Project or Alternate Water Source, will be the responsibility of JCSA in the amount of twenty percent (20%) of the capital cost. Notification of planned capital projects along with cost estimates should be provided to the JCSA as much in advance as possible, but no later than September 1 to allow appropriate time to incorporate the amount into the ensuing year's budget. JCSA should be notified immediately and provided cost estimates as soon as available, for any emergency related capital project that must be addressed outside the budget cycle.

5.1.4 Variable and Fixed O & M Costs. Variable and Fixed O & M costs will be due and payable by JCSA to City annually by September 1 for the immediately preceding Fiscal Year's actual Variable and Fixed O & M costs and will be based on JCSA's Safe Yield Share and will continue to be due after completion of the Project. JCSA's first payment will be due and payable September 1, 2008 and will include JCSA's share of Fiscal Year 2008 Variable and Fixed O & M costs. Should the Project be cancelled, Variable and Fixed O & M costs will continue to be payable by JCSA provided such costs were incurred and paid by City for the Project, even if incurred after Project cancellation. Furthermore, Variable and Fixed O & M costs shall be determined by mutual agreement of City and JCSA based upon the Variable and Fixed O & M costs of an Alternate Water Source.

5.1.5 Late Fees. Any sum payable by JCSA under this Agreement, including cost of water treatment, not received by City when due, will be subject to a late charge of one and one-half (1-1/2) percent per month of the overdue amount. Any late payments shall be first applied towards any late charges due.

5.1.6 Payment. All sums payable under this Agreement unless otherwise agreed, shall be made payable to the City of Newport News, and delivered to City's Director of Public Utilities at its business office. All payments shall be received by City within thirty (30) days of the invoice date, except where a specific due date for payment is provided for in this Agreement.

Article 6 – Termination of Agreement

6.1 Termination. This Agreement may be terminated by the mutual consent of the governing bodies of the parties by an agreement executed on behalf of the governing bodies. This Agreement may also be terminated in the event of material noncompliance, provided that the procedure below is

followed to ensure compliance and the non-complying party does not timely cure the noncompliance. In the event of material noncompliance, the non-breaching party shall, prior to exercising any rights or remedies against the alleged breaching party, provide written notice identifying with specificity the nature of the material noncompliance with this Agreement. The party receiving the notice shall have thirty (30) days from receipt to cure or respond to the alleged material noncompliance, unless a longer period is mutually agreed by the parties. In the event the party receiving notice disagrees with the alleged material noncompliance, such party shall respond within the 30-day period specifying the reasons it believes it is in compliance with the terms of this Agreement. If the party fails to cure any acknowledged noncompliance within the 30-day period or such longer period as agreed to by the parties, then the non-breaching party may send notice that this Agreement shall terminate in seven (7) days unless the material noncompliance is cured within the seven (7) days. Should the parties disagree over the alleged material noncompliance, they may mutually agree to mediate or arbitrate the dispute. In addition, either party may file an action with the Circuit Court seeking any legal or equitable remedies, including but not limited to, money, an injunction, declaratory judgment or specific performance. In the discretion of the Circuit Court, the prevailing party may recover its reasonable costs and attorneys fees incurred in enforcing this Agreement.

Article 7– Accounts, Audits, Records and Reports

- 7.1 Accounts and Records of City. City agrees to keep proper financial and operating records and books of accounts pursuant to law, and in accordance with generally accepted accounting principals pertaining to City’s performance of its obligations under this Agreement.
- 7.2 Records to be Provided to JCSA. City shall supply JCSA upon request with the following:
- 7.2.1 A copy of City’s published financial report;
 - 7.2.2 A copy of the results of any audit of the financial affairs, operating records and books of account relating to the Project commissioned by City within 90 days of receiving such audit results; and
 - 7.2.3 A written projection of Variable and Fixed O & M costs and other costs for the upcoming Fiscal Year by January 1 of each year.

Article 8 – Assignment

- 8.1 Except as otherwise agreed in writing by the governing bodies of the parties, neither party to this Agreement shall transfer or assign this Agreement or any rights acquired hereunder.

Article 9 – Authority to Execute

- 9.1 The parties to this Agreement mutually represent and warrant that they are fully authorized to enter into this Agreement, and the person executing this Agreement has full authority to do so.

Article 10 – Force Majeure, etc.

- 10.1 In the event that either party hereto shall be delayed or hindered in, or prevented from, the performance of any act required hereunder, by reason of riots, insurrection, labor disputes, war, natural and man-made disasters, or other reason of like nature, not the fault of the party delayed in performing such act, or by court order or other operation of law, then performance of such act shall be excused for the period of the delay and, in that event, the period for the performing of such act shall be extended for a period equivalent to the period of such delay.

Article 11 – Support for the Project

- 11.1 Support for the Project. The governing body of JCSA will continue to support state and federal permit renewals and support final design efforts and local permits.

Article 12 – General Provisions

- 12.1 Governing Law. This Agreement shall be construed and enforced in accordance with the laws of the Commonwealth of Virginia. Neither party shall be deemed the drafter of the Agreement.
- 12.2 Severability. If any provision of the Agreement or the application thereof to any person or circumstance shall to any extent be invalid or unenforceable, the remainder of this Agreement, or the application of such provision to persons or circumstances other than those to which it is invalid or unenforceable, shall not be affected hereby, and each provision of this Agreement shall be valid and be enforced to the full extent permitted by law.
- 12.3 Headings. The titles and article headings are inserted only for convenience and in no way are to be construed as a limitation on the scope of the provision to which they refer.

- 12.4 Entire Agreement. This Agreement constitutes the entire agreement between the parties, and there are no other contemporaneous agreements, oral or written, and this Agreement may not be supplemented, altered, modified, or otherwise amended in any way except in writing, and approved by the governing bodies of the parties.
- 12.5 Duplicate originals of the Agreement shall be executed by each party, with each party retaining one fully executed original.
- 12.6 Delegation of Authority. Whenever in this Agreement, any approval, consent, notification, or other act is required to be made or taken by City or JCSA, or by a party or by the parties, such approval, consent, notification, or act may be made or taken by the Newport News City Manager or his designee on behalf of City, and by the General Manager of JCSA on behalf of JCSA, unless otherwise stated in this Agreement, or unless the context of the specific provision requires action by the governing body of a party.

Article 13 – Notice

- 13.1 Except as otherwise provided, any notice required herein shall be delivered in person to the City Manager of City or the General Manager of JCSA, or be mailed to them by certified mail, return receipt requested, or by overnight delivery service for which a receipt is provided, as follows, or to such addresses as either party may subsequently specify in writing to the other:

A. To City:

City Manager
City of Newport News
2400 Washington Avenue
Newport News, Virginia 23607

With a copy to:
Director, Department of Public Utilities
700 Town Center Drive, Suite 500
Newport News, Virginia 23607

B. To JCSA:

General Manager
James City Service Authority
101 Mounts Bay Road
Williamsburg, Virginia 23187

With a copy to:
JCSA Counsel
P.O. Box 8784
Williamsburg, VA 23187

Article 14 - Cancellation of Project

14.1 Should the Project be cancelled, City and JCSA agree to be bound by the provisions of this Agreement, and City will provide to JCSA 4 MGD of Treated Water at the designated locations for the consideration stated therein, and JCSA will comply with its obligations under this Agreement.

Article 15 – Termination of Prior Agreement and Memorandum of Understanding

15.1 This Agreement supersedes and replaces the Agreement between City and the JCSA for water service, dated February 13, 2001, and sets forth the basis for JCSA's and the County's receipt of Treated Water from City.

CITY OF NEWPORT NEWS

JAMES CITY
SERVICE AUTHORITY

By: _____
CITY MANAGER

By: _____
CHAIRMAN, BOARD OF
DIRECTORS

Attest: _____
CITY CLERK

APPROVED AS TO FORM:

APPROVED AS TO FORM:

CITY ATTORNEY

COUNSEL FOR JAMES CITY
SERVICE AUTHORITY