

RESOLUTION NO. 11749-08

A RESOLUTION AUTHORIZING AND DIRECTING THE CITY MANAGER TO EXECUTE AND THE CITY CLERK TO ATTEST, ON BEHALF OF THE CITY OF NEWPORT NEWS, VIRGINIA, THAT CERTAIN AGREEMENT FOR EMERGENCY WATER CONNECTION BY AND BETWEEN THE CITY OF NEWPORT NEWS, VIRGINIA, AND THE JAMES CITY SERVICE AUTHORITY DATED THE 9TH DAY OF DECEMBER, 2008.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Newport News:

1. That it hereby authorizes and directs the City Manager to execute and the City Clerk to attest, on behalf of the City of Newport News, Virginia, that certain Agreement for Emergency Water Connection by and between the City of Newport News, Virginia, and the James City Service Authority dated the 9th day of December, 2008.

2. That a copy of the said Agreement is attached hereto and made a part hereof.

PASSED BY THE COUNCIL OF THE CITY OF NEWPORT NEWS ON DECEMBER 9, 2008

Mabel V. Washington, CMC
City Clerk

Joe S. Frank
Mayor

A true copy, teste:

City Clerk

Agreement for Emergency Water Connection
between
The City of Newport News, Virginia
and
James City Service Authority

This **AGREEMENT** made as of this 9th day of December, 2008, by and between the City of Newport News, a municipal corporation of the Commonwealth of Virginia (the “**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 (“**JCSA**”) (together the “**Parties**”).

WHEREAS, the Lightfoot Water System (the “**System**”) is to be owned and operated by City upon its transfer from York County pursuant to the transfer of Assets and Water Agreement between the County of York and the City of Newport News, dated July 13, 2004; and

WHEREAS, the Parties acknowledge the need for a connection that will provide emergency support water from the JCSA water system to the System (the “**Connection**”); and

WHEREAS, the purpose of the Connection is to provide water to the entire System in the event of a drop in water pressure in the System; and

WHEREAS, the Sentara Williamsburg Hospital receives water service from the System, has agreed to provide an easement to the Parties for the Connection on its property located at 100 Sentara Circle in York County, and to contribute the use of the design it commissioned for the Connection.

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

Article 1 – Definitions

“**Connection**” means the pipelines and appurtenances that allow transfer and metering of water from the JCSA water system into the future City-owned and operated Lightfoot Water System.

“**Lightfoot Water System**” means the water system, supplied by groundwater wells, in the Lightfoot area that serves the subdivisions of Skimino Hills and Banbury Cross and commercial development along Old Mooretown Road, Route 646, and Rochambeau Drive – all located in York County.

“**SCADA**” means Supervisory Control and Data Acquisition, an electronic system for monitoring systems pressures and flows.

Article 2 –City’s Obligations

- 2.1 City shall construct a Connection from JCSA’s waterline in Old Mooretown Road to the System waterline in Sentara Circle. The Connection shall be constructed in accordance with engineering drawings and specifications prepared by AES Consulting Engineers for City, and approved by JCSA.
- 2.2 City shall be responsible for obtaining Virginia Department of Health approval for the construction of the Connection with JCSA assisting as required.
- 2.3 City shall be responsible for obtaining necessary VDOT permits and site plan approvals for the construction of the Connection with JCSA assisting as required.
- 2.4 City shall be responsible for the costs of the final design and construction of the Connection.
- 2.5 City shall correct, or direct the contractor to correct, any deficiencies or deviations from the approved drawings and specifications.
- 2.6 The Connection is for emergency support of the System only. City shall make every effort to correct problems which generate drops in water pressure as soon as possible so that supply by JCSA shall be limited in duration. City shall make every attempt to notify JCSA within 24 hours via telephone of JCSA emergency support connection activation to support the System.
- 2.7 City shall be responsible, now or in the future, for modifications to its water treatment system which may be necessary to ensure the compatibility of City-treated water with that of JCSA-treated water.

Article 3 –JCSA’s Obligations

JCSA shall participate with City in the inspection of the Connection throughout the course of the construction and shall assist City in preparing a punch list of construction deficiencies. JCSA shall allow City to place and maintain equipment in the meter vault to obtain SCADA readings.

Article 4 – Ownership

JCSA shall own and maintain the waterline to the meter, the meter, the meter vault, and any appurtenances therein. City shall own and maintain the waterline from the meter vault to the System, which will include, but not be limited to, a double check valve assembly and a pressure reducing valve.

Article 5 – Charges for JCSA Water

City shall be charged and shall pay for water that passes through the meter at the JCSA non-residential retail rate. JCSA shall bill City on a monthly basis. Invoices shall be paid within

thirty (30) days of receipt. Invoices not paid by the due date shall be subject to a one and one-half percent late fee. System facilities fee, local facilities fee, service connection charge, and account charge shall not be charged for this Connection.

Article 6 – No Authority to Transfer Water

Nothing in this Agreement shall grant City any authority or right to use or transfer water to serve customers outside the System service area.

Article 7 – Term

The term of this Agreement shall be effective from the date of this Agreement until the Parties mutually agree that this Agreement is no longer needed or January 1, 2033, whichever occurs first. Notwithstanding the preceding, this Agreement shall terminate upon the mutual written consent of the governing bodies of the Parties or for a Party's material non-compliance with the provisions of this Agreement. Whether or not an action, or inaction, constitutes material non-compliance shall be determined by the Parties.

Article 8 – Assignment

Except as otherwise mutually agreed to 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

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.

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 – General Provisions

- 11.1 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 this Agreement.
- 11.2 Severability. If any provision of this 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.

- 11.3 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.
- 11.4 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 by the written consent of the governing bodies of the Parties.
- 11.5 Duplicate Originals. This Agreement shall be executed by each Party, with each Party retaining one fully executed original.
- 11.6 Delegation of Authority. Whenever in this Agreement, any approval, consent, notification, or other act is required to be made or taken by the 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 12 – Notice

Except as otherwise provided, any notice required herein shall be delivered in person to the Newport News City Manager 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

**CITY OF NEWPORT NEWS,
VIRGINIA**

**JAMES CITY
SERVICE AUTHORITY**

By: _____
CITY MANAGER

By: _____
CHAIRMAN
BOARD OF DIRECTORS

Attest: _____
CITY CLERK

APPROVED AS TO FORM:



CITY ATTORNEY

APPROVED AS TO FORM:

COUNSEL FOR JAMES CITY
SERVICE AUTHORITY