

**MEMORANDUM OF AGREEMENT
AMONG
JAMES RIVER WATER AUTHORITY,
THE VIRGINIA STATE HISTORIC PRESERVATION OFFICE,
AND
THE NORFOLK DISTRICT, CORPS OF ENGINEERS
REGARDING THE JAMES RIVER WATER SUPPLY PROJECT
JANUARY 2019**

WHEREAS, the James River Water Authority (the Permittee) proposes to construct, operate, and maintain a raw-water intake in Fluvanna County, Virginia to withdraw surface water from the James River, just upstream of its confluence with the Rivanna River, and associated water lines to supply raw water from the James River to the north of Route 6 to meet the water demands of the Counties of Fluvanna and Louisa, to collectively be known as the James River Water Supply Project (the Project), and is depicted on Attachment A; and

WHEREAS, pursuant to Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act, a permit from the U.S. Army Corps of Engineers, Norfolk District (Corps) is required for 195 square feet (0.01 acre) of temporary disturbance to Palustrine Emergent wetlands, 446 square feet (0.01 acre) of temporary disturbance to Palustrine Forested wetlands, 255 square feet (0.01 acre) of permanent conversion from Palustrine Forested wetlands to Palustrine Emergent wetlands, 245 square feet (0.01 acre) of permanent fill to Palustrine Forested wetlands, 1,212 linear feet (1.59 acres) of temporary stream impact, and 104 linear feet (0.08 acre) of permanent stream impact to construct the Project; and

WHEREAS, pursuant to 36 C.F.R. Part 800 (regulations implementing Section 106 of the National Historic Preservation Act of 1966 (NHPA), as amended (54 U.S.C. § 306108)), and 33 C.F.R. Part 325, Appendix C (*Processing of Department of the Army Permits: Procedures for Protection of Historic Places*), the Corps is required to take into account the effects of federally-permitted undertakings on properties included in or eligible for inclusion in the National Register of Historic Places (NRHP) prior to the issuance of a permit for an undertaking and to consult with the Virginia State Historic Preservation Office (SHPO); and

WHEREAS, the Corps, in consultation with the Department of Historic Resources (DHR), which serves as the SHPO in Virginia, has determined that the Area of Potential Effects (APE) for this Project is as follows: The horizontal extent of the APE, which is shown on Attachment B, is the four-acre pump station site, the 4,800-linear foot pipeline alignment, the crossing at the Rivanna River, and one stream and two wetland crossings along an access road. The vertical APE, which is also shown on Attachment B, varies along the pipeline alignment, mostly maintaining a seven-foot depth with increases at the CSX railroad, the Rivanna River, the Colonial Gas pipelines, and the Route 6 crossings. The vertical APE for the pump station site is up to 25 feet below ground surface; and

MEMORANDUM OF AGREEMENT

James River Water Supply Project

Page 2 of 35

WHEREAS, the Permittee has completed the identification of historic properties, and the Corps, in consultation with the SHPO, finds that both the Phase I identification survey and the Phase II evaluation study titled *Phase I and Phase II Cultural Resources Survey and Excavations of the James River Water Authority (JRWA) Intake, Pump Station, and Pipeline Project Located in Fluvanna County, Virginia* (Tyrer, Muir, and Hayes 2018) meet the Secretary of the Interior's *Standards and Guidelines for Archaeological Documentation* (48 FR 44734-37, September 29, 1983); and

WHEREAS, the Corps, in consultation with the SHPO and other consulting parties, has determined that the following architectural resources, as depicted in Attachment B, are within the Project's APE and are listed on or eligible for inclusion in the NRHP: Point of Fork Plantation (DHR Inventory No. 032-0024); Rivanna Canal Navigation Historic District (DHR Inventory No. 032-0036); and James and Kanawha River Canal and Railroad (DHR Inventory No. 032-5124); and

WHEREAS, the Corps, in consultation with the SHPO and other consulting parties, has determined that the following archaeological resources, as depicted in Attachment B, are within the Project's APE: Site 44FV0022, Site 44FV0024, Site 44FV0025, Site 44FV0268, Site 44FV0269, and Site 44FV0270; and

WHEREAS, the Corps, in consultation with the SHPO and other consulting parties, has determined that Site 44FV0022 is eligible for NRHP listing; Sites 44FV0024 and 44FV0268 should be treated as eligible for NRHP listing for the purposes of Section 106 review; and Site 44FV0269 is potentially eligible for NRHP listing; and

WHEREAS, the Corps, in consultation with the SHPO and other consulting parties, has determined that the Project will have an adverse effect on architectural resources, as indicated in Attachment B, the Rivanna Canal Navigation Historic District; the James and Kanawha River Canal and Railroad; and archaeological Sites 44FV0022, 44FV0024, and 44FV0268; and

WHEREAS, the Corps is responsible for government-to-government consultation with the Indian Tribes and pursuant to Section 101(d)(6)(B) of the NHPA, 36 C.F.R. § 800.2(c)(2)(ii), the American Indian Religious Freedom Act (42 USC 1996; AIRFA), Executive Order 13175, and Section 3(c) of the Native American Graves Protection and Repatriation Act (25 USC 7 3001-13; NAGPRA); and

WHEREAS, the Corps has formally invited the following Federally-recognized Indian Tribes to participate in the Section 106 consultation in June 2017: the Absentee-Shawnee Tribe; the Catawba Indian Nation; the Delaware Nation; the Delaware Tribe of Indians; and the Pamunkey Indian Tribe. The Delaware Nation and the Pamunkey Indian Tribes elected to participate and are therefore invited to be concurring parties to this Memorandum of Agreement (Agreement) pursuant to 36 C.F.R. § 800.6(c)(3); and

MEMORANDUM OF AGREEMENT

James River Water Supply Project

Page 3 of 35

WHEREAS, the Corps has formally invited the following Indian Tribes, which were State-recognized at the time of the June 2017 invitation and which received Federal recognition in January 2018, to participate in the Section 106 consultation: the Chickahominy Indian Tribe; the Chickahominy Tribe, Eastern Division; the Upper Mattaponi Indian Tribe; the Rappahannock Tribe; the Monacan Indian Nation; and the Nansemond Indian Tribe. The Rappahannock Tribe and the Upper Mattaponi Tribe agreed to participate in this consultation and therefore are invited to be invited to be concurring parties to this Agreement pursuant to 36 C.F.R. § 800.6(c)(3). The Monacan Indian Nation elected to participate and assumes responsibilities under this Agreement, and is therefore invited to be a signatory pursuant to 36 C.F.R. §§ 800.6(c)(2)(ii) and (c)(2)(iii); and

WHEREAS, the Corps has formally invited the following State-recognized Indian Tribes to participate in the Section 106 consultation in June 2017: the Cheroenhaka (Nottoway) Indian Tribe; the Mattaponi Tribe; the Nottoway Indian Tribe of Virginia; the Patowomeck Indian Tribe of Virginia. None of these State-recognized Indian Tribes elected to participate; and

WHEREAS, the Corps has invited the Permittee to participate in this consultation and to sign this Agreement as an invited signatory pursuant to 36 C.F.R. § 800.6(c)(2)(iii); and

WHEREAS, the Corps has invited Fluvanna County and Louisa County to participate in this consultation and to sign this Agreement as concurring parties pursuant to 36 C.F.R. § 800.6(c)(3); and

WHEREAS, the Corps has consulted with the Fluvanna County Historical Society, Preservation Virginia, Virginia Canals and Navigation Society, Barbara Seay, George Bialkowski, and Pete Gillam, regarding the effects of the Project on historic properties and has therefore invited them to sign this Agreement as concurring parties pursuant to 36 C.F.R. § 800.6(c)(3); and

WHEREAS, the Corps, in accordance with 36 C.F.R. § 800.6(a)(1), has notified the Advisory Council on Historic Preservation (ACHP) of this Agreement and invited the Council to participate as a signatory. The ACHP has declined to participate; and

WHEREAS, the Corps issued a public notice on May 31, 2018, to allow public comments and received one comment; and

WHEREAS, pursuant to 36 C.F.R. § 800.6(c)(1)(i), the Corps and SHPO are required signatories to execute this Agreement.

NOW THEREFORE, as satisfaction of the Corps' Section 106 responsibilities to take into account the effects of an undertaking requiring a Corps permit on historic properties, the Permittee, the SHPO, and the Corps agree that the Project shall be completed in accordance with the stipulations established in this Agreement:

STIPULATIONS

The Corps, in coordination with the Permittee, shall ensure that the Project is carried out in accordance with the following stipulations in order to take into account the effect of the Project on historic properties:

I. TREATMENT OF ARCHEOLOGICAL SITES AND ARCHITECTURAL RESOURCES

- A. The Permittee developed a proposed treatment plan to mitigate the Project's adverse effects to architectural resources Rivanna Canal Navigation Historic District (DHR Inventory No. 032-0036) and James and Kanawha River Canal and Railroad (DHR Inventory No. 032-5124), and archaeological Sites 44FV0022, 44FV0024, and 44FV0268. Copies of the treatment plan were provided by the Corps to the SHPO and all consulting parties for review and comment on August 27, 2018. Within twelve (12) months of execution of this Agreement, the Permittee shall revise the treatment plan in response to the comments received and provide copies of the revised treatment plan to the Corps, the SHPO, and other consulting parties for review and comment. The draft treatment plan(s) shall be consistent with the *Secretary of the Interior's Standards and Guidelines for Archaeological Documentation* (48 FR 44734-37, September 29, 1983) and the SHPO's *Guidelines for Conducting Historic Resources Survey in Virginia (Guidelines)* (September 2017) and shall take into account the ACHP's publications, *Recommended Approach for Consultation on Recovery of Significant Information from Archeological Sites* (1999; rev. 2003) and *Section 106 Archaeology Guidance* (June 2007) or subsequent revisions or replacements to these documents. The Corps, the SHPO and other consulting parties shall have fifteen (15) calendar days to provide any additional comments to the Corps.
- B. The Corps shall take timely comments into consideration before making a decision on the treatment plan. No ground-disturbing activity may commence within the boundaries of the historic properties referenced in Stipulation I.A and Site 44FV0269 until (1) the SHPO has concurred with the treatment plan or has not objected within the comment period stated in Stipulation I.A, and (2) the Corps has provided written approval of the treatment plan. The Permittee shall be responsible for implementing the approved treatment plan.
- C. The Parties understand that any data recovery specified in the approved treatment plan may be implemented in phases for each respective architectural resource or archaeological site concurrently with construction activities in other areas of this linear project. Except as otherwise provided in the approved treatment plan, the Permittee shall ensure that all required data recovery is completed for an architectural resource or archaeological site prior to engaging in any construction activities that could affect that archaeological site or architectural resource. Nothing in this Agreement prohibits construction activities from proceeding (1) in areas outside the boundaries of any resource or site covered by the treatment plan

MEMORANDUM OF AGREEMENT

James River Water Supply Project

Page 5 of 35

- or (2) within the boundaries of any such resource or site if data recovery for that respective resource or site has been completed.
- D. For each respective resource or site covered by the treatment plan, the Permittee shall notify the Corps, SHPO, and the other consulting parties in writing once the fieldwork portion of the archaeological evaluation or data recovery is complete and provide all consulting parties a brief management summary so that a site visit may be scheduled, if requested. The notification and management summary may cover one or more sites, as appropriate, notwithstanding that fieldwork may be ongoing at other sites. Upon written acceptance of a management summary by the Corps and the SHPO, Project construction activities may proceed at the site or sites covered by the management summary while the technical report is in preparation. No project activities may proceed at Site 44FV0269 until the NRHP eligibility of the resource has been determined and any data recovery has been completed, if warranted. If the Corps and/or SHPO provide no written notice accepting or objecting to a management summary within fifteen (15) days of its submission, the Permittee may assume acceptance.
- E. No later than thirty (30) days after the submission of the management summary for Site 44FV0022, Site 44FV0024, Site 44FV0268, or Site 44FV0269 (if applicable), whichever is submitted last, the Permittee shall contact the Monacan Indian Nation in writing to schedule a time to attend a meeting of the Tribal Council in Amherst, Virginia. On the mutually agreed upon date, the Permittee shall send one or more representatives to (1) brief the Tribal Council on discoveries and progress of archeological work on the Project, (2) make note of any questions, suggestions, or recommendations from the Tribal Council to share with the Permittee, and (3) discuss a plan for further tribal input and involvement in the development of the report required by Stipulation I.G. Such plan shall include, at a minimum, an opportunity for the Tribal Council's representatives to review and provide input on preliminary drafts of the report and other public information materials that may be identified in the approved treatment plan. The Permittee shall make a good faith effort to ensure that the report and any public information materials incorporate the views and opinions of the Monacan Indian Nation on issues that pertain to the tribe's heritage and history.
- F. The Permittee has, and continues to, evaluate opportunities to further minimize the area of disturbance necessary to complete the Project. The parties acknowledge that reducing the area of construction-related excavation within the boundaries of an adversely affected archaeological site is a form of minimization consistent with 36 C.F.R. § 800.6. Should the Permittee substantially reduce the area of construction-related excavation within the boundaries of an archaeological site, it may propose a modification of the approved treatment plan. The proposal shall be submitted to the Corps with copies to the SHPO and all consulting parties. Parties may provide comments to the Corps within thirty (30) days of receipt. The Corps will take timely comments into consideration before making a decision on the treatment plan modification. If the Corps provides no written notice accepting or

MEMORANDUM OF AGREEMENT

James River Water Supply Project

Page 6 of 35

objecting to the proposed modification within fifteen (15) days of the close of the comment period, the Permittee may assume acceptance.

- G. The Permittee shall prepare a report (following the requirements for preparation and review of reports in Stipulation VII) of the results of the treatment plan investigations within one (1) year of the notification that fieldwork for all sites has been completed. When the final report has been approved by the Corps, the Permittee shall provide one (1) copy of that document, comb-bound and on acid-free paper and one electronic copy in Adobe® Portable Document Format (.pdf) to the SHPO; and one (1) copy to each of the other consulting parties in a format of their choosing. Reports provided to consulting parties shall be subject to Stipulation IV.A.

II. ARCHEOLOGICAL EVALUATION OF SITE 44FV0269

- A. The Permittee shall conduct an archeological evaluation of Site 44FV0269, including Phase II archeological testing, to facilitate a determination of the site's eligibility for inclusion on the NRHP.
- B. A technical report shall be completed and submitted to the Corps, VDHR, and the consulting parties for review. The report shall detail the results of the archeological testing and laboratory analyses conducted for Site 44FV0269 and will supplement information on the site in the *Phase I and Phase II Cultural Resources Survey and Excavation Report* (April 2018). The report shall conform to the standards in the *Archeology and Historic Preservation: Secretary of the Interior's Standards and Guidelines* (48 FR 44716-44742, September 29, 1983) and the VDHR's *Guidelines for Historic Resources Survey in Virginia* (2011 and as amended or revised).
- C. If Site 44FV0269 is determined eligible and will be adversely affected by the Project, the Permittee shall prepare a treatment plan for the site. The treatment plan shall conform to the standards and be subject to the review and approval process outlined in Stipulations I.A and I.B.

III. AVOIDANCE OF ADVERSE EFFECTS TO SITES 44FV0025 AND 44FV0270

- A. The Permittee shall avoid all activities that will adversely affect Sites 44FV0025 and 44FV0270.
- B. To ensure that adverse effects to Sites 44FV0025 and 44FV0270 are avoided, the Permittee shall refrain from any ground-disturbing activities that extend beyond the roadway and pipeline easements. The limits of disturbance and additional avoidance measures to be implemented for these sites are depicted on Attachment C.

IV. PROTECTION OF SENSITIVE INFORMATION AND RESOURCES

A. Handling of Confidential Information

The Corps in consultation with the SHPO and the consulting parties has determined that certain information should be withheld from public disclosure during the Section 106 review and implementation process as the release of information about a historic property's location, character, or ownership might risk harm to the property, result in an invasion of privacy, or impede the use of a traditional religious site by practitioners in accordance with 36 C.F.R. § 800.11(c) and Section 304 of the NHPA. In consultation with and/or as directed by the Corps and SHPO, the Permittee shall implement reasonable measures to ensure confidentiality to the extent permitted by law.

B. Protection of Historic Properties During Archaeological Investigation

The Permittee shall appropriately secure historic properties during all phases of archeological investigations associated with the Project to protect them from vandalism and looting by taking necessary and prudent precautions to ensure the security of all on-site equipment, artifacts, personnel, and property.

C. Archeological Monitoring

The Permittee shall conduct archeological monitoring in accordance with the Monitoring Plan appended hereto as Attachment D.

D. Tribal Visitation, Monitoring, and Participation in Data Recovery

Upon request, members of the Monacan Indian Nation may visit the Project during periods of ongoing data recovery activity. Members wishing to visit the site shall notify the Permittee in writing at least forty-eight (48) hours in advance of the planned visit. Tribal members visiting the Project site must follow any reasonable instructions from the Permittee necessary to protect the health and safety of the visitors and other persons working on the active construction site including, but not limited to, receiving a safety briefing before entering the Project site and wearing any suitable personal protective equipment (e.g., work boots, hard hat), which will be provided to visitors.

Upon request, a member of the Monacan Indian Nation, at least 18 years of age, may participate in data recovery for the Project as an intern to the Permittee's archaeologist. Such member shall execute any necessary waivers and forms and abide by any other instructions as may be reasonable and customary for archeological interns. The intern shall be provided a stipend of \$15.00 per hour (up to 40 hours per week) to cover his or her expenses. The period of the internship shall be two weeks, but this period may be shortened or extended upon mutual agreement of the intern and archaeologist.

V. REPORTING REQUIREMENTS

- A. Upon the completion of all stipulations to this Agreement, the Permittee shall provide to the Corps, the SHPO, and other consulting parties a signed memorandum documenting that the Permittee has fulfilled all its responsibilities under this Agreement.
- B. The Corps, the SHPO, and other consulting parties shall provide the Permittee with concurring and/or objecting opinions within fifteen (15) days of receipt of a signed memorandum documenting that the Permittee has fulfilled all its responsibilities under this Agreement. Any objections will be addressed through the Dispute Resolution process outlined in Stipulation XI.
- C. Should any party fail to provide an opinion within that period, the Permittee may assume that the party has no objections and that all responsibilities under the Agreement have been fulfilled.

VI. PROFESSIONAL QUALIFICATIONS

All archaeological and/or architectural work carried out pursuant to this Agreement shall be conducted by or under the direct supervision of an individual or individuals who meets, at a minimum, the Secretary of the Interior's *Professional Qualifications Standards* (48 FR 44738-9, September 29, 1983) in the appropriate discipline.

VII. PREPARATION AND REVIEW OF DOCUMENTS

- A. Except as otherwise stated elsewhere in the stipulations, the Permittee shall submit all technical reports and treatment plans to the Corps (one (1) copy) and the SHPO (one (1) hard copy and one (1) electronic copy in Adobe® Portable Document Format (.pdf)) and to other consulting parties (one (1) Copy) for thirty (30)-day review and comment. The Permittee shall address all comments received within thirty (30) days of confirmed receipt in the revised technical report/documentation. Following written approval by the Corps, the Permittee shall provide one (1) copy of all final reports, comb-bound and on acid-free paper, and one (1) electronic copy in Adobe® Portable Document Format (.pdf) to the SHPO and one (1) copy (.pdf or hardcopy) to the Corps, and one (1) copy to other consulting parties in a format of their choosing.
- B. All technical reports prepared pursuant to this Agreement shall be consistent with the federal standards titled *Archeology and Historic Preservation: Secretary of the Interior's Standards and Guidelines* (48 FR 44716-44742, September 29, 1983) and the SHPO's *Guidelines*, or any subsequent revisions or replacements of these documents.
- C. All architectural and landscape studies resulting from this Agreement shall be consistent with pertinent standards and guidelines of the Secretary of the Interior,

MEMORANDUM OF AGREEMENT

James River Water Supply Project

Page 9 of 35

including as applicable the Secretary's *Standards and Guidelines for Historical Documentation* (48 FR 44728-30) and for *Architectural and Engineering Documentation* (48 FR 44730-34).

- D. The SHPO and other consulting parties agree to provide comments on all technical reports and other documentation arising from this Agreement within thirty (30) calendar days of receipt. If no comments are received from the SHPO or other consulting parties within the single thirty (30)-day review period, the Permittee may assume the non-responding party has no comments.

VIII. CURATION AND DISPOSITION OF ARCHAEOLOGICAL MATERIALS

- A. The Permittee shall document the return of all archaeological materials (except human remains, funerary objects, sacred objects, and objects of cultural patrimony) collected during inventory and evaluation studies and treatment measures conducted for the Project on private lands to the individual landowners, unless the landowners agree to the donation of artifacts to repositories designated in accordance with this Stipulation VIII. In its discussions with landowners, the Permittee shall make a good faith effort to ensure that all materials and records resulting from archaeological investigations related to this Project are curated in a manner consistent with 36 C.F.R. § 79. Artifacts recovered from land owned by Permittee, which includes portions of Site 44FV0022, shall be deposited for curation in accordance with this Stipulation VIII.
- B. Subject to Stipulations VIII.A and VIII.C, within thirty (30) days of the Corps' approval of the final technical report referenced in Stipulation I.G, the Permittee shall deposit all archaeological materials and appropriate field and research notes, maps, drawings and photographic records collected as a result of archeological investigations arising from this Agreement (with the exception of human skeletal remains and associated funerary objects) and cover the cost for permanent curation with DHR, which meets the requirements in 36 C.F.R. 79, *Curation of Federally Owned and Administered Archeological Collections*. The Permittee shall provide the Corps with a copy of the curation agreement as evidence of its compliance with this stipulation. All such items shall be made available to educational institutions and individual scholars for appropriate exhibit and/or research under the operating policies of the selected repository.
- C. If specified in the approved treatment plan, an alternative repository or repositories may be substituted for DHR for the purposes of Stipulation VIII.B.

IX. POST-REVIEW DISCOVERIES

- A. The Permittee shall ensure that the following provision is included in all construction contracts: "If previously unidentified historic properties or unanticipated effects to historic properties are discovered during construction, the construction contractor shall immediately halt all activity within a one hundred

MEMORANDUM OF AGREEMENT

James River Water Supply Project

Page 10 of 35

- (100) foot radius of the discovery, notify the James River Water Authority of the discovery and implement interim measures to protect the discovery from looting and vandalism.”
- B. Immediately upon receipt of a notification required by the contract provision described in Stipulation IX.A., the Permittee shall:
1. Inspect the construction site to determine the extent of the discovery and ensure that construction activities have halted;
 2. Clearly mark the area of the discovery;
 3. Implement additional measures, as appropriate, to minimize risk to the discovery from looting and vandalism;
 4. Have a professional archeologist inspect the construction site to determine the extent of the discovery and provide recommendations regarding its NRHP eligibility and treatment; and
 5. Notify the Corps, the SHPO, and other consulting parties of the discovery and describe the measures that have been implemented to comply with this Stipulation.
- C. Upon receipt of the information required in Stipulation IX.B.5., the Corps shall provide the Permittee, the SHPO, and other consulting parties with its assessment of the NRHP eligibility of the discovery and the measures proposed to avoid or resolve any adverse effects within five (5) business days. In making its evaluation, the Corps, in consultation with the SHPO, may assume the discovery to be NRHP eligible for the purposes of Section 106 pursuant to 36 C.F.R. § 800.13(c). If the Permittee, the SHPO, and other consulting parties wish to respond to the Corps' assessment, they must do so within forty-eight (48) hours of receipt.
- D. The Corps shall take into account the SHPO's and other consulting parties' recommendations on eligibility and treatment of the discovery and determine which actions, if any, are appropriate for the Permittee to take with regard to the discovery. The Corps shall notify and provide documentation to the Permittee regarding any such appropriate actions that are required within forty-eight (48) hours of receipt. The Permittee must comply with the required actions and provide the Corps, the SHPO, and consulting parties with a report on the actions when implemented.
- E. Construction activities may proceed in the area of the discovery when the Corps has determined that implementation of the actions undertaken to address the discovery pursuant to Stipulation IX.D are complete.

MEMORANDUM OF AGREEMENT

James River Water Supply Project

Page 11 of 35

X. HUMAN REMAINS

- A. The Permittee shall make all reasonable efforts to avoid disturbing gravesites, including those containing Native American human remains and associated funerary artifacts. The Permittee shall treat all human remains in a manner consistent with the ACHP's *Policy Statement Regarding Treatment of Burial Sites, Human Remains and Funerary Objects* (February 23, 2007; <http://www.achp.gov/docs/hrpolicy0207.pdf>).
- B. Prior to commencing construction, the Permittee shall obtain a permit from the SHPO for the removal of human remains in accordance with Regulations Governing Permits for the Archaeological Removal of Human Remains (17 Va. Admin. Code 5-20). A copy of the permit shall be provided to the Corps for the purpose of implementing Stipulations X.E and X.F. The Permittee shall ensure that any removed human skeletal remains and associated funerary objects encountered during the course of actions taken as a result of this Agreement shall be treated in accordance with the permit, if applicable.
- D. The Permittee shall make a good faith effort to ensure that the general public is excluded from viewing any Native American burial site or associated funerary artifacts. The consulting parties to this Agreement shall release no photographs of any Native American burial site or associated funerary artifacts to the press or general public.
- E. The Corps shall notify the appropriate Federally-recognized Tribe(s), and/or appropriate State-recognized tribal leaders when Native American burials, human skeletal remains, or funerary artifacts are encountered on the Project, prior to any analysis or recovery. The Permittee shall deliver any removed Native American human skeletal remains and associated funerary artifacts recovered pursuant to this Agreement to the appropriate tribe to be reinterred. The disposition of any other human skeletal remains and associated funerary artifacts shall be governed as specified in any permit issued by the SHPO or any order of the local court authorizing their removal. The Permittee will be responsible for all reasonable costs associated with treatment of human remains and associated funerary objects.
- F. If there is any conflict or inconsistency between the requirements of Stipulation X.E and the terms, conditions, or processes specified in the burial permit referenced in Stipulation X.B, the permit shall control.

XI. DISPUTE RESOLUTION

- A. Should any party to this Agreement object in writing to the Corps regarding any action carried out or proposed with respect to any undertakings covered by this Agreement or to implementation of this Agreement, the Corps shall consult with the objecting party to resolve the objection.

MEMORANDUM OF AGREEMENT

James River Water Supply Project

Page 12 of 35

- B. If after initiating such consultation, the Corps determines that the objection cannot be resolved through consultation, the Corps shall forward all documentation relevant to the objection to the ACHP, including the proposed response to the objection.
- C. Within thirty (30) days after receipt of all pertinent documentation, the ACHP shall exercise one (1) of the following options:
 - 1. Advise the Corps that the ACHP concurs with the Corps' proposed response to the objection, whereupon the Corps will respond to the objection accordingly;
 - 2. Provide the Corps with recommendations, which the Corps shall take into account in reaching a final decision regarding its response to the objection; or
 - 3. Notify the Corps that the objection will be referred for comment pursuant to 36 C.F.R. § 800.7(a)(4) and proceed to refer the objection and comment. The Corps shall take the resulting comment into account in accordance with 36 C.F.R § 800.7(c)(4) and Section 110(l) of the NHPA.
- D. Should the ACHP not exercise one of the above options within thirty (30) days after receipt of all pertinent documentation, the Corps may assume the ACHP's concurrence to its proposed response to the objection.
- E. The Corps shall take into account any ACHP recommendation or comment provided in accordance with this stipulation with reference only to the subject of the objection; the Corps' responsibility to carry out the actions under this Agreement, for which it is otherwise responsible, and that are not the subjects of the objections, shall remain unchanged.
- F. At any time during implementation of the measures stipulated in this Agreement, should an objection pertaining to this Agreement be raised by a member of the public, the Corps shall notify the parties to this Agreement and take the objection into account, consulting with the objector, and, should the objector so request, with any of the parties to this Agreement to consider the objection.

XII. AMENDMENTS AND TERMINATION

- A. Any signatory party to this Agreement may propose to the Corps that the Agreement be amended, whereupon the Corps shall consult with the other parties to this Agreement to consider such an amendment. All signatories to the Agreement must agree to the proposed amendment in accordance with 36 C.F.R. § 800.6(c)(7).
- B. The Permittee, upon completion of Stipulations I, II, III, IV, V, VII, VIII, IX, and X and all ground-disturbing activities associated with construction of the Project,

MEMORANDUM OF AGREEMENT

James River Water Supply Project

Page 13 of 35

may request from the Corps, and the other required signatories to this Agreement that the Agreement be terminated.

- C. If the Permittee decides it will not proceed with the Project, it shall so notify the Corps, the SHPO, and the other consulting parties and this Agreement shall become null and void.
- D. If the Permittee determines that it cannot implement the terms of this Agreement, or if the Corps or SHPO determines that the Agreement is not being properly implemented, the Permittee, the Corps, or the SHPO may propose to the other parties to this Agreement that it be amended or terminated.
- E. This Agreement may be terminated by any signatory to the Agreement in accordance with the procedures described in 36 C.F.R. § 800.6(c)(8). Termination shall include the submission of a technical report or other documentation by the Permittee on any work done up to and including the date of termination. If the Corps is unable to execute another Agreement following termination, the Corps may choose to modify, suspend, or revoke the Department of the Army permit as provided by 33 C.F.R. § 325.7.

XIII. COORDINATION WITH OTHER FEDERAL REVIEWS

In the event that the Permittee applies for additional federal funding or approvals for the Project and the undertaking remains unchanged, such funding or approving agency may comply with Section 106 by agreeing in writing to the terms of this Agreement and notifying and consulting with SHPO and ACHP. Any necessary modifications will be considered in accordance with Stipulation XII, Amendments.

XIV. DURATION OF AGREEMENT

Unless terminated in accordance with Stipulation XII, this Agreement shall continue in full force and effect until five (5) years on after the date of the last required signatory party signature. The Permittee shall fulfill the requirements of this Agreement prior to and in conjunction with the work authorized by the Department of the Army permit. All obligations under this Agreement must be complete before expiration of this Agreement. At any time in the six (6)-month period prior to expiration of this Agreement, the Corps may request the signatory parties to consider an extension or modification of this Agreement. No extension or modification will be effective unless all parties to the Agreement have agreed to it in writing.

XV. MISCELLANEOUS PROVISIONS

- A. In accordance with 36 C.F.R. § 800.6(c)(1), this Agreement shall be effective on the date it has been signed by all required signatory parties.

MEMORANDUM OF AGREEMENT

James River Water Supply Project

Page 14 of 35

- B. This Agreement may be executed in counterparts, with a separate page for each signatory. The Corps will ensure that each signatory party is provided with a copy of the fully executed Agreement.
- C. Execution of this Agreement by the Corps and the SHPO and its submission to the ACHP in accordance with 36 C.F.R. § 800.6(b)(1)(iv), shall, pursuant to 36 C.F.R. § 800.6(c), be considered to be an agreement pursuant to the regulations issued by the ACHP for the purposes of Section 110(l) of the NHPA.
- D. Execution and submission of this Agreement, and implementation of its terms, evidence that the Corps has afforded the ACHP an opportunity to comment on the proposed undertaking and its effect on historic properties and that the Corps has taken into account the effect of the Project on historic properties.
- E. Compliance with the terms and provisions of this Agreement shall be required as a condition to the permit which the Corps may issue to the Permittee for the Project. Failure by the Permittee to comply with such terms and provisions will constitute a violation of the permit, and the Corps may seek all available remedies for such violations, including enforcement. Failure by the Corps to pursue any such violation is NOT a waiver of the Corps' right or authority to do so in the future.
- F. Electronic mail (email) may serve as official correspondence method for all communications regarding this Agreement and its provisions. See Attachment E for a list of contacts and email addresses. Contact information in Attachment E may be updated as needed without an amendment to this Agreement. It is the responsibility of each signatory consulting or concurring party to immediately inform the Corps of any change in name, address, email address, or phone number of any point-of-contact. The Corps will forward this information to all signatories and concurring parties by email.

MEMORANDUM OF AGREEMENT

James River Water Supply Project

Page 15 of 35

SIGNATORY:

NORFOLK DISTRICT, U. S. ARMY CORPS OF ENGINEERS

By: _____

William T. Walker

Chief, Regulatory Branch

Date: _____

MEMORANDUM OF AGREEMENT

James River Water Supply Project

Page 16 of 35

SIGNATORY:

VIRGINIA STATE HISTORIC PRESERVATION OFFICER

By: _____

Julie V. Langan

Director, Virginia Department of

Historic Resources

Date: _____

SIGNATORY:
MONACAN INDIAN NATION

Date: _____

Name: _____

Title: _____

SIGNATORY:
JAMES RIVER WATER AUTHORITY

Date: _____

Name: _____

Title: _____

CONCURRING PARTY:
DELAWARE INDIAN NATION

Date: _____

Name: _____

Title: _____

CONCURRING PARTY:
PAMUNKEY INDIAN TRIBE

Date: _____

Name: _____

Title: _____

CONCURRING PARTY:
RAPPAHANNOCK TRIBE

Date: _____

Name: _____

Title: _____

CONCURRING PARTY:
UPPER MATTAPONI TRIBE

Date: _____

Name: _____

Title: _____

CONCURRING PARTY:
LOUISA COUNTY, VIRGINIA

Date: _____

Name: _____

Title: _____

CONCURRING PARTY:
FLUVANNA COUNTY, VIRGINIA

Date: _____

Name: _____

Title: _____

CONCURRING PARTY:
PRESERVATION VIRGINIA

Date: _____

Name: _____

Title: _____

MEMORANDUM OF AGREEMENT

James River Water Supply Project

Page 26 of 35

CONCURRING PARTY:

FLUVANNA COUNTY HISTORICAL SOCIETY

Date: _____

Name: _____

Title: _____

MEMORANDUM OF AGREEMENT
James River Water Supply Project
Page 27 of 35

CONCURRING PARTY:
BARBARA SEAY

By: _____

Date: _____

MEMORANDUM OF AGREEMENT
James River Water Supply Project
Page 28 of 35

CONCURRING PARTY:
GEORGE BIALKOWSKI

By: _____

Date: _____

MEMORANDUM OF AGREEMENT
James River Water Supply Project
Page 29 of 35

CONCURRING PARTY:
PETER GILLAM

By: _____

Date: _____

**MEMORANDUM OF AGREEMENT
AMONG
JAMES RIVER WATER AUTHORITY,
THE VIRGINIA STATE HISTORIC PRESERVATION OFFICE,
AND
THE NORFOLK DISTRICT, CORPS OF ENGINEERS
REGARDING THE JAMES RIVER WATER SUPPLY PROJECT
NOVEMBER 2018**

ATTACHMENTS

ATTACHMENT A

PROJECT OVERVIEW MAP

ATTACHMENT B

**MAPS DEPICTING
AREAS OF POTENTIAL EFFECTS**

ATTACHMENT C

**AVOIDANCE PLAN FOR
SITES 44FV0025 AND 44FV0270**

ATTACHMENT D

MONITORING PLAN

ATTACHMENT E

CONTACT INFORMATION