

## **TEMPORARY EASEMENT AGREEMENT**

This **TEMPORARY EASEMENT AGREEMENT** (“Easement Agreement”), is made as of this \_\_\_\_\_ day of \_\_\_\_\_, 2025, by and between **CITY OF CHARLOTTESVILLE, VIRGINIA**, a municipal corporation in the Commonwealth of Virginia, its successors and assigns, as grantor (“City”), and **THE RIVANNA WATER AND SEWER AUTHORITY**, a public body politic and corporate, as grantee (“RWSA”); (collectively, “Parties;” individually, “Party”).

### **RECITALS:**

**WHEREAS**, the City, the Albemarle County Service Authority, and RWSA adopted the Community Water Supply Plan in 2012 (“Plan”); and

**WHEREAS**, a critical component of the Plan is the completion of the expansion of Ragged Mountain Reservoir from pool elevation 671 feet above mean sea level to 683 feet above mean sea level (“Additional Pool Level”); and

**WHEREAS**, as RWSA proceeds with the Additional Pool Level project as described in the “First Amendment to Ragged Mountain Dam Project Agreement,” attached hereto as Exhibit “A,” RWSA’s design engineer has determined that an expanded blanket drain system shall be constructed; and

**WHEREAS**, RWSA’s design engineer has determined that a portion of TMP 75-62, owned by the City, and shown on Sheet 22 of “Ragged Mountain Dam Reservoir Raise” by Schnabel Engineering, LLC, dated February 2025, attached hereto as Exhibit “B,” is suitable for excavation of borrow fill (“Borrow Area”) needed for the aforementioned blanket drain system; and

**WHEREAS**, in connection with the expanded blanket drain system project (“Project”), the City and RWSA agree that it will benefit the Project to grant RWSA certain easement rights to the aforesaid Borrow Area subject to the terms and conditions provided in this Easement Agreement.

**NOW, THEREFORE**, for and in consideration of the foregoing premises, the mutual agreement of the Parties hereto, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

**1. Recitals.** The above recitals are true and correct and are incorporated herein by this reference.

**2. Grant and Use of Temporary Access Easement.** The City does hereby give, grant, and convey unto RWSA (and its successors and assigns), the following exclusive temporary access easement to the borrow area (collectively, “Easement Area”) throughout the Term for use related to the Project:

A. All disturbance related to the Borrow Area will remain within the limits of disturbance as identified in Exhibit "B". Prior to construction, representatives from the City, RWSA, and RWSA's contractor shall meet to review the current condition of the Borrow Area and all requirements identified herein.

B. RWSA shall be responsible for securing and complying with all necessary permits. As part of the permitting and construction process, the City hereby authorizes Albemarle County and its employees, agents, consultants, representatives, and independent contractors (collectively the "County Representatives") the right of ingress to and egress from TMP 75-62, for the purpose of planning, inspecting and ensuring compliance of the erosion and sedimentation control measures of the approved Albemarle County Water Protection Ordinance (WPO) Plan WPO-2025-00019. Further, the City hereby authorizes the County Representatives the right to enter TMP 75-62 for the purpose of performing any necessary work or maintenance under WPO-2025-00019. Such authorization of right to enter in no way obligates the County Representatives to perform any necessary work, maintenance or other activities in accordance with WPO-2025-00019.

C. RWSA agrees to remove borrow soil for use for the Project in a proper and careful manner, to the lines and grades shown in Exhibit "B." Any necessary deviations in grading will be communicated in writing to the City as soon as it is practical so the changes can be properly coordinated.

D. Per Exhibit "B", RWSA agrees to perform the necessary grading within the Borrow Area to facilitate future parking lot expansion. Surfacing of the parking lot expansion shall be performed by the City at a later date. RWSA agrees to seed the parking lot expansion with seed mixtures as specified by the City, or gravel the parking lot per City specifications.

E. RWSA will invite City representatives to attend the pre-construction conference with RWSA's contractor, as well as monthly meetings, as desired. In addition, RWSA will provide periodic updates on the status of the borrow area and parking expansion.

F. In recognition of the longstanding partnership between the City and RWSA, RWSA agrees to perform the parking lot expansion at no cost to the City. The City hereby agrees to allow RWSA use of the Borrow Area at no cost to RWSA.

G. It shall be noted that RWSA is also in the process of constructing its Ragged Mountain Reservoir to Observatory Water Treatment Plant Raw Water Pipeline through this corridor. The City hereby agrees to not surface or allow use of the future expanded parking area, until this portion of the pipeline has been constructed.

**3. Reservation of Rights.** Subject to the exclusive rights created herein, the City expressly reserves (to itself, its successors and assigns) the right to use, or by virtue of additional licenses, rights-of-way, reservations or easements, any and all portions of the area upon, above, or under the Easement Area (in City's reasonable discretion) for any purpose whatsoever not inconsistent with the rights or purposes herein granted, including, but not limited to, the right of

ingress and egress over and across the Easement Area onto any adjacent or contiguous property; provided, such right does not unreasonably interfere with RWSA's Easement hereunder.

As part of the permitting and construction process, the City hereby authorizes Albemarle County and its employees, agents, consultants, representatives, and independent contractors (collectively the "County Representatives") the right of ingress to and egress from TMP 75-62, for the purpose of planning, inspecting and ensuring compliance of the erosion and sedimentation control measures of the approved Albemarle County Water Protection Ordinance (WPO) Plan WPO-2025-00019. Further, the City hereby authorizes the County Representatives the right to enter TMP 75-62 for the purpose of performing any necessary work or maintenance under WPO-2025-00019. Such authorization of right to enter in no way obligates the County Representatives to perform any necessary work, maintenance or other activities in accordance with WPO-2025-00019.

**4. Reserved.**

**5. Term.** RWSA acknowledges that this Easement Agreement, and RWSA's rights in and to the Easement granted herein, shall immediately terminate, expire, and be deemed null and void upon the earlier of:

- (i) completion of the Project; or
- (ii) termination of this Easement.

**6. Covenants of RWSA.** RWSA (and its successors, assigns, agents, invitees, and employees) shall:

A. Not interfere with or prevent the normal use and maintenance by City of the Easement Area (if any), or City's adjacent property, provided City's right to use the Easement Area shall be subject to the terms and conditions set forth above;

B. Not intentionally interfere with any existing or hereafter granted license, easement, reservation, or right-of-way upon, above, over, through, under or across the Easement Area, so long as such license, easement, reservation or right-of-way does not unreasonably interfere with RWSA's Easement hereunder; and

C. Exercise diligent good faith efforts to always comply and in all respects with all applicable law.

D. RWSA shall also obtain, maintain and comply with all applicable permits (if any) in connection with RWSA's use of the Easement Area. RWSA shall not, by any act or omission, render the City liable for any violation thereof.

**7. Liens.** To the extent allowable under Virginia law, RWSA shall not act (or fail to act) in a way which permits any lien to be filed against the Easement Area for any labor or materials

in connection with work of any character performed or claimed to have been performed on the Easement Area at the direction or sufferance of RWSA or its assigns. To the extent any such lien is filed against such Easement Area prior to completion of the Project, without the prior written consent of City, RWSA shall cause the same to be removed by bonding over or otherwise satisfying such lien within thirty (30) days of such lien being filed, and if RWSA fails to do so, City shall have the right (but not the obligation) to cause the removal of the same and charge RWSA for all of the actual out-of-pocket costs and fees incurred by City in connection with such lien removal, together with interest accruing thereon at an annual rate of interest as allowed under the Virginia Code, until City's receipt of full payment therefor.

**8. Breach by RWSA.** If RWSA materially breaches any provision of this Easement Agreement and fails to cure any such breach within thirty (30) days after written notice thereof is given by City (or, with respect to any such breach the nature of which cannot reasonably be cured within such thirty (30) day period, RWSA fails to commence such cure within such thirty (30) day period and to thereafter diligently prosecute such cure to completion), in addition to any other right or remedy available to City at law or in equity, City shall have the right, but not the obligation, to cure any such breach or to terminate this Easement Agreement (subject, in all cases, to the rights of RWSA to cure a default or breach hereunder). RWSA shall reimburse City for any and all out-of-pocket costs incurred by City to exercise its rights hereunder upon demand, together with interest accruing thereon at an annual rate of interest as set forth in the Virginia Code, until City's receipt of full payment therefor.

**9. Condition of Easement Area.** RWSA acknowledges that RWSA:

(i) Has physically inspected the Easement Area; and

(ii) accepts the Easement Area "AS IS" and "WHERE IS" with full knowledge of the conditions thereof and subject to all existing easements, rights-of-ways, covenants, encumbrances, liens, and restrictions of record. City makes no representations, statements, warranties or agreements to RWSA in connection with this Easement Area, including, without limitation, the nature of title (if any) granted herein, except as may be expressly represented or warranted to in the Comprehensive Agreement. RWSA's use of the Easement Area is at its own risk and City shall have no liability or obligation for or with respect to any loss or damage to any of RWSA's improvements within the Easement Area, except as may otherwise be expressly provided hereunder.

**10. Miscellaneous.**

**A. Modification.** This Easement Agreement may not be modified or amended in any respect except by a written agreement executed by or on behalf of the Parties hereto, in the same manner as executed herein.

**B. No Assignment; Binding on Successors and Assigns.** Except and unless the same is assigned by RWSA in accordance with the terms thereof, RWSA may not assign or otherwise transfer this Easement Agreement, or any of its rights and obligations hereunder, in whole or in

part, without the prior written consent of City, which consent shall not be unreasonably withheld, conditioned or delayed.

**C. Interpretation and Governing Law.** This Easement Agreement shall be governed by and construed under the laws of the Commonwealth of Virginia. Should any provision of this Easement Agreement require judicial interpretation, the Parties hereby agree and stipulate that the court interpreting or considering the same shall not apply the presumption that the terms hereof shall be more strictly construed against a Party by reason of any rule or conclusion of law that a document should be construed more strictly against the Party who itself or through its agents prepared the same, it being agreed that all Parties hereto have participated in the preparation of this Easement Agreement and that each Party had full opportunity to consult legal counsel of its choice before its execution of this Easement Agreement.

**D. Counterparts.** This Easement Agreement may be executed in counterparts; each of which shall be deemed to be an original and all of which shall together constitute one and the same instrument.

**E. Waivers.** The Parties shall have the right by notice in writing to the other Parties to waive any of the provisions of this Easement Agreement that are for the sole benefit of the waiving Party. Any failure of a Party to insist upon strict compliance with any of the terms and conditions of this Easement Agreement shall not be construed as a waiver of such terms and conditions or of the right of such Party to insist at any time thereafter upon such strict compliance.

**F. Headings.** The descriptive headings in this Easement Agreement are inserted for convenience only and do not constitute a part of this Easement Agreement.

**G. Third Parties.** No person shall be deemed to be a third-party beneficiary of this easement agreement or any portion hereof.

**H. Jury Trial.** All signatories hereto waive the right to trial by jury in connection with any litigation arising in respect of this easement agreement or the transactions contemplated hereby.

**I. Definition of City.** Whenever the term, the “City” is used in this Easement Agreement, unless the term is followed by, “in its governmental capacity,” “in its regulatory capacity,” or words of similar import, the term means, “City, in its proprietary capacity.”

**J. Construction and Interpretation of Easement Agreement.** This Easement Agreement has been fully reviewed and approved by the Parties hereto and their respective counsel. Accordingly, in interpreting this Easement Agreement, no weight shall be placed upon which Party hereto or its counsel drafted the provisions being interpreted. Section headings are for convenience only and shall not be considered in construing this Easement Agreement.

The following words and phrases as used throughout this Easement Agreement shall be construed as follows, unless otherwise modified:

- (i) "At any time" shall be construed as "at any time or from time to time;"
- (ii) "Any" shall be construed as "any and all;"
- (iii) "Including" shall be construed as "including but not limited to;"
- (iv) "Will" and "Shall" shall each be construed as mandatory; and
- (v) The word "In" with respect to an easement granted or reserved shall mean, as the context may require, "in," "to," "on," "over," "within," "through," "upon," "across," "under," and any one or more of the foregoing.

**K. No Public Rights Created.** Nothing herein shall create or be construed to create any rights in or for the benefit of the general public in or to the Easement Area or the Easement granted hereby, and there shall be no public dedication.

**L. Severability.** Each paragraph, subparagraph, part, term, and provision of this Easement Agreement shall be considered severable, and if; for any reason, any paragraph, term or provision is herein determined to be invalid or contrary to or in conflict with any existing or future law or regulation of a court or agency having valid jurisdiction, such shall not impair the operation or effect the remaining portions, paragraphs, terms and provisions of this Easement Agreement, and the latter will be given full force and effect and will bind the parties hereto; and said invalid paragraphs, terms or provisions shall be deemed not to be part of this Easement Agreement.

**IN WITNESS WHEREOF,** the Parties hereto have executed this Easement Agreement in duplicate the day and year first above written.

**CITY**

**CITY OF CHARLOTTESVILLE, VIRGINIA**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**Approved as to Form:**

\_\_\_\_\_  
Sau Chan  
Deputy City Attorney

COMMONWEALTH OF VIRGINIA; CITY OF CHARLOTTESVILLE

On \_\_\_\_\_, 2025, before me, the undersigned, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature

on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

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Notary Public

My commission expires: \_\_\_\_\_

[Notarial Seal]

**RIVANNA WATER AND SEWER AUTHORITY**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

COMMONWEALTH OF VIRGINIA; CITY/COUNTY OF \_\_\_\_\_

On \_\_\_\_\_, 2025, before me, the undersigned, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

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Notary Public

My commission expires: \_\_\_\_\_ [Notarial Seal]