

ORDINANCE NO. 7891-23

AN ORDINANCE AUTHORIZING AND DIRECTING THE CITY MANAGER TO EXECUTE AND THE CITY CLERK TO ATTEST, ON BEHALF OF THE CITY OF NEWPORT NEWS, VIRGINIA, ANY AND ALL DOCUMENTS NECESSARY TO EFFECTUATE A STORMWATER MANAGEMENT AGREEMENT BY AND AMONG THE COMMONWEALTH OF VIRGINIA, DEPARTMENT OF TRANSPORTATION, THE CITY OF NEWPORT NEWS, VIRGINIA, AND YORK COUNTY, VIRGINIA.

WHEREAS, the City's Waterworks Department has planned the construction of a stormwater management basin on city-owned property having an address of 501 Oriana Road, York County, Virginia (GPIN: R06c-1589-2324), to protect and enhance water quality for the nearby Harwood's Mill Reservoir; and

WHEREAS, the Commonwealth of Virginia, Department of Transportation (VDOT) is planning an expansion of Route 17 in York County, and is required to provide stormwater management facilities related to that project; and

WHEREAS, the City's Waterworks Department has negotiated a Stormwater Management Agreement with the Commonwealth of Virginia, Department of Transportation (VDOT) and York County regarding the construction and maintenance of a stormwater management basin that will meet the needs of both the City and VDOT; and

WHEREAS, pursuant to the terms of the proposed agreement, VDOT will contribute \$150,000 toward the construction of the basin by the City.

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

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, a Stormwater Management Agreement by and among the Commonwealth of Virginia, Department of Transportation, the City of Newport News, Virginia, and York County, Virginia, which substantially conforms to the draft attached hereto and made a part hereof, subject to the review and approval of the City Attorney.

2. That the City Manager is authorized to take such further actions and execute such further documents, including but not limited to deeds, as may be necessary to effectuate the terms of the draft agreement attached hereto, provided that all such documents shall be reviewed and approved by the City Attorney as to form prior to execution.

3. That this ordinance shall be in effect on and after the date of its adoption, May 9, 2023.

ORDINANCE NO. 7891-23

PASSED BY THE COUNCIL OF THE CITY OF NEWPORT NEWS ON MAY 9, 2023

Mabel Washington Jenkins,
MMC City Clerk

Phillip D. Jones
Mayor

A true copy, teste:

City Clerk

This instrument is exempt from recordation taxes and fees pursuant to Virginia Code Section 58.1- 811(A)(3), 58.1-811(C)(5), 58.1-3215, 25.1-418, 42.1-70, 17.1-266 and 17.1-279(E).

**STORMWATER MANAGEMENT AGREEMENT
PROJECT UPC 111787
ROUTE 17 WIDENING IMPROVEMENTS PROJECT YORK COUNTY,
VIRGINIA**

THIS AGREEMENT (“Agreement”), affecting a portion of tax map parcel 23-14J, GPIN R06c-1589-2324, which lies in York County, Virginia, and is owned by the City of Newport News, Virginia, and which is to be recorded with the land records in the Clerk's Office of the Circuit Court of York County, Virginia, is made and entered into as of the date of last execution below, by and among the COMMONWEALTH OF VIRGINIA, DEPARTMENT OF TRANSPORTATION (to be indexed as a Grantee), hereafter called "VDOT", and the CITY OF NEWPORT NEWS, VIRGINIA (to be indexed as Grantor), hereafter called the "City", and YORK COUNTY, VIRGINIA, hereafter called the “County”, and jointly referred to as the "Parties".

RECITALS

WHEREAS, VDOT proposes to improve the capacity of Route 17 from 0.154 miles south of the intersection of Grafton Drive to 0.266 miles south of the intersection of Old York-Hampton Highway (UPC 111787) (those improvements together with other improvements to be constructed by VDOT pursuant to this Agreement are referred to herein as "Route 17 Widening Improvements Project"); and

WHEREAS, VDOT is required by the Virginia Stormwater Management Program (VSMP) Regulations (9 VAC 25-870-10 et seq.) to provide stormwater management facilities on its construction projects; and

WHEREAS, the Route 17 Widening Improvements Project would generally require the construction and perpetual maintenance of a stormwater management facility on the County's property; and

WHEREAS, the City has a stormwater management regional Best Management Practice (BMP) that meets the VSMP Regulations, and has adopted an ordinance implementing such program that addresses post construction stormwater management, codified at Chapter 37.1 of the City of Newport News Code, referred to herein as the "Stormwater Management Ordinance"; and

WHEREAS, the City has developed a plan for and shall construct a stormwater management basin that will satisfy the stormwater management water quantity requirements of the original proposed VDOT stormwater management facility for the Route 17 Widening Improvements Project and the stormwater management water quality and quantity requirements of the City's planned development on the City's property, and in doing so shall comply with all applicable federal, state and local requirements (referred to herein as the “Stormwater Management

Basin”); and

WHEREAS, through construction of the City's proposed Stormwater Management Basin, VDOT will realize a cost savings through the elimination of the need to purchase rights-of-way, construction costs and perpetual maintenance costs for VDOT's originally proposed stormwater management facility for the Route 17 Widening Improvements Project; and

WHEREAS, the County supports VDOT's Route 17 Widening Improvements Project, and the City's plan for the construction of the Stormwater Management Basin; and

WHEREAS, all Parties are desirous of providing stormwater management facilities in a manner to ensure the preservation of the surrounding lands and the water quality of the receiving channels; and

WHEREAS, pursuant to Va. Code § 33.2-228, VDOT and the City wish to enter into an agreement to implement the construction of and address the perpetual maintenance for the Stormwater Management Basin as a means to address the stormwater management requirements for the Route 17 Widening Improvements Project.

NOW, THEREFORE, for and in consideration of the premises and mutual covenants herein contained, the Parties hereto now agree as follows:

1. Incorporation of Recitals: The Recitals are hereby incorporated in and shall be construed as substantive elements of this Agreement.

2. The City shall:

- A. Construct the Stormwater Management Basin, as shown on Appendix A, to accommodate the Route 17 Widening Improvements Project to support the impervious area added by this Project. All construction shall be pursuant to and in compliance with VDOT, federal, state and local standards.
- B. Provide VDOT and/or its designee the right of ingress and egress to the Stormwater Management Basin as indicated on Appendix A, for inspection purposes as may be required and determined by VDOT.
- C. Develop all necessary construction documents, i.e., plans, details, summaries, specifications, and special provisions for the Stormwater Management Basin. Plans shall be in accordance with all applicable state and local laws and regulations, including but not limited to the Stormwater Management Ordinance. The City shall be responsible for construction, which includes but is not limited to construction and all environmental permits, construction plans, and the funding for construction of the Stormwater Management Basin.
- D. Complete construction of the Stormwater Management Basin, making it operational on or prior to December 31, 2024.
- E. Provide VDOT with copies of the final construction plans and engineering calculations

- for the Stormwater Management Basin, and the final approval of those plans by the Virginia Department of Environmental Quality (DEQ). Preliminary construction plans and engineering calculations have already been shared with VDOT by the City. Final construction plans and engineering calculations shall be subject to review and approval by VDOT prior to construction of the Stormwater Management Basin, to verify that the final plans and engineering (i) substantially conform with the preliminary plans previously shared, and (ii) have been approved by the DEQ as sufficient to accommodate the Route 17 Widening Improvements Project.
- F. Provide design documentation and assist VDOT, as necessary, in any inquiries from, or communications with, DEQ or others regarding the stormwater management quantity and quality benefit provided by the Stormwater Management Basin for all the stormwater management requirements of the City as well as the completed Route 17 Widening Improvements Project.
 - G. Upon completion of construction of the Stormwater Management Basin, provide perpetual maintenance for the Stormwater Management Basin in a manner no less stringent than that defined by the VSMP Regulations and the Stormwater Management Ordinance, as both may be amended.
 - H. Should the City fail to construct and make operational the Stormwater Management Basin in accordance with the timeline noted in Section 2D of this Agreement, retain the \$150,000 fee paid by VDOT pursuant to Section 3B of this Agreement and dedicate and convey to VDOT, accepting the \$150,000 as full compensation therefor and at no additional cost, an area of right-of-way depicted as the area outlined in green on Appendix A of this Agreement. VDOT will pay the costs of preparing and recording any instruments necessary to effectuate the conveyance. Said area shall be used by VDOT to construct a stormwater management facility to meet the water quality and quantity requirements of the completed Route 17 Widening Improvements Project as prescribed by state and local laws.
 - I. Perform those inspections, regulatory and enforcement duties as set forth in the VSMP Regulations and the Stormwater Management Ordinance, as the same may be amended.

3. VDOT shall:

- A. Provide the City and the County with the stormwater management water quality and quantity requirements for the Route 17 Widening Improvements Project.
- B. Upon execution of this Agreement, provide the City with the agreed amount for the pro-rated construction fee for Stormwater Management Basin cost sharing, in the amount of One Hundred Fifty Thousand Dollars (\$150,000.00).
- C. Provide nutrient credits for the Route 17 improvement to satisfy water quality requirements for this project.
- D. Obtain any easements and/or permits necessary for the channel running from Route 17 to the Newport News Stormwater Management Basin depicted on Appendix A and be

responsible for constructing and maintaining the same.

- E. Construct the Route 17 Widening Improvements Project substantially in conformity with the plans provided to City by VDOT so as to meet the water quality and quantity information provided by VDOT under Section 3 A of this Agreement.

4. The County shall:

- A. Approve and allow VDOT and City to use the City's property for a Stormwater Management Basin as depicted on Appendix A or in the event that VDOT constructs the stormwater management facility pursuant to Section 1H of this Agreement, approve and allow VDOT to use the property for said facility.
- B. Provide VDOT and/or the City easements and/or permits as necessary for the construction, access, use, and maintenance of the Stormwater Management Basin.

5. Liabilities After Construction:

- A. Upon completion of construction of the Stormwater Management Basin and receipt of payment from VDOT pursuant to Section 3B of this Agreement, the City shall assume responsibility for perpetual maintenance of the Stormwater Management Basin in accordance with the provisions of Section 2G of this Agreement. Upon completion of construction of the Stormwater Management Basin, the City shall cause this Agreement to be recorded in the land records of the Circuit Court of York County. No party shall cause this Agreement to be recorded prior to completion of the Stormwater Management Basin and payment by VDOT.
- B. The City and County understand and agree that VDOT shall not be liable to the City or the County to correct damages arising from improper maintenance of the Stormwater Management Basin or sediment that may enter the basin as a result of the Route 17 Widening Improvements Project, provided that VDOT maintains the Route 17 Improvements pursuant to applicable VDOT standards.
- C. VDOT shall have no maintenance, upkeep or repair responsibility or liability to the City or the County for the Stormwater Management Basin. City shall have no maintenance, upkeep, or repair responsibility or liability for the channel running from Route 17 to the Stormwater Management Basin.

6. Successive Owners: The covenants, duties and obligations set forth in this Agreement shall run with the land and shall be binding upon the City and the City's heirs, personal representatives, successors in interest and assignees.

7. No Third Party Beneficiaries: The Parties expressly do not intend, by execution of this Agreement, to create in the public, or any member thereof, any rights as a third party beneficiary, or to authorize anyone not a party hereto to maintain a suit for any damages pursuant to the terms and provisions of this Agreement. In addition, the Parties understand and agree that this Agreement is not to be construed as an indemnification against third party claims.

8. Severability: If any provision of this Agreement is determined by a court of law of competent jurisdiction to be void or invalid, such provision shall be of no further effect, but the remainder of this Agreement shall not be affected thereby, and shall remain fully enforceable at law and equity.

9. Other Matters; Amendment: Any matter not covered by the provisions of this Agreement shall be carried out as mutually agreed by the Parties; however, no such supplementary agreement shall be effective, nor shall any of the terms and provisions of this Agreement be amended, except when embodied in a writing signed by all Parties.

10. Governing Law: This Agreement shall be governed and construed by the laws of the Commonwealth of Virginia.

11. Interpretation: The paragraph headings used herein are for reference and convenience only and shall not enter into the interpretation hereof. This Agreement may be executed in several counterparts. Whenever herein the singular number is used, the same shall include the plural, and the masculine gender shall include the feminine and neuter genders, and vice versa, as the context shall require.

12. Sovereign Immunity: Nothing in this Agreement shall be considered as a waiver of the sovereign immunity of any of the Parties.

13. Appropriations: Obligations of VDOT pursuant to this Agreement are subject to appropriation by the General Assembly and allocation by the Commonwealth Transportation Board. Obligations of the City pursuant to this Agreement are subject to appropriation by the Newport News City Council.

SIGNATURE PAGES TO FOLLOW

IN WITNESSETH HEREOF, the Parties hereto have caused this Agreement to be duly executed by their respective authorized officers intending it to be effective on the date of last execution below.

CITY OF NEWPORT NEWS, VIRGINIA

City Manager

COMMONWEALTH OF VIRGINIA
CITY OF NEWPORT NEWS, to wit:

The foregoing instrument was acknowledged before me in the jurisdiction aforesaid this ____ day of _____, 2023, by _____, City Manager and he/she has provided proof of identification thereof.

My commission expires: _____

My registration number is: _____

Notary Public

ATTEST:

APPROVED AS TO FORM:

City Clerk

City Attorney

YORK COUNTY

County Administrator

COMMONWEALTH OF VIRGINIA
YORK COUNTY, to wit:

The foregoing instrument was acknowledged before me in the jurisdiction aforesaid this ____ day of _____, 2023, by _____, County Administrator and he/she has provided proof of identification thereof.

My commission expires: _____

My registration number is: _____

Notary Public

ATTEST:

APPROVED AS TO FORM:

County Clerk

County Attorney

VIRGINIA DEPARTMENT OF TRANSPORTATION

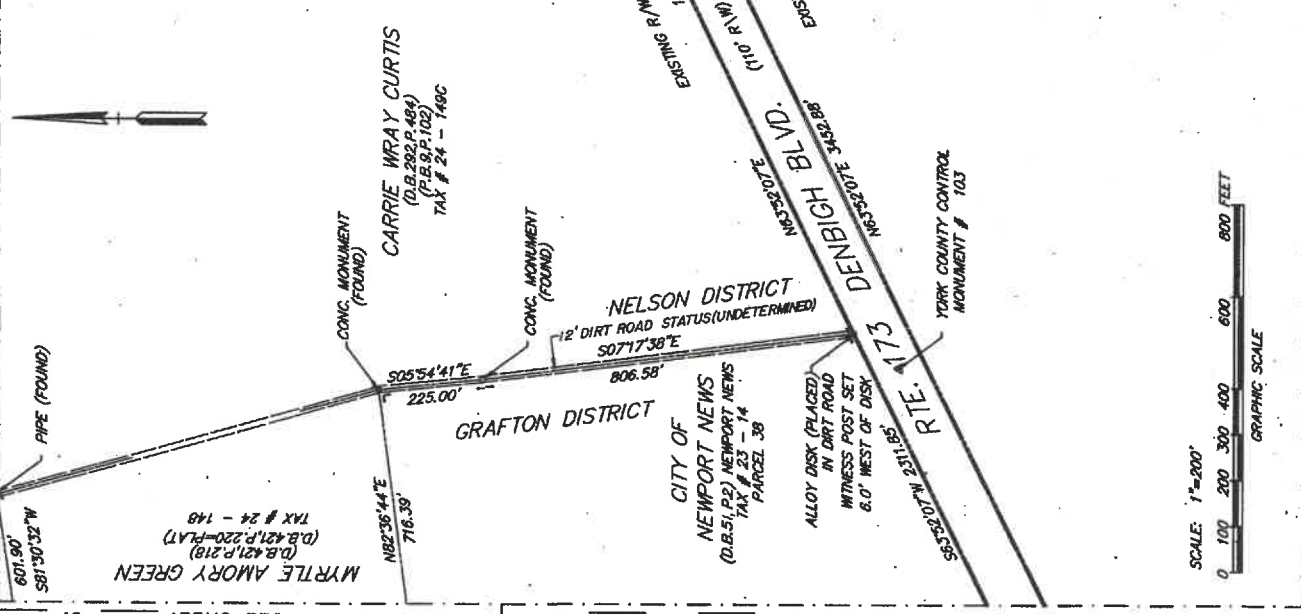
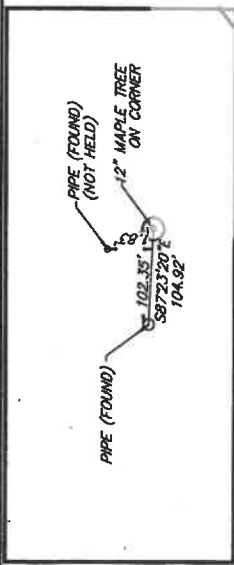
By: _____
Stephen C. Brich, P.E.
Commissioner of Highways

APPENDIX "A"

Exhibit A

MATCH LINE - SEE SHEET 40 OF 63

CURVE TABLE				
NO.	DELTA	RADIUS	ARC TANGENT CHORD	CH. BEARING
4	05°39'18"	5805.58'	572.98'	572.76' N 61°02'28" E



MATCH LINE - SEE SHEET 51 OF 63

MATCH LINE - SEE SHEET 47 OF 63

90-C-11
DWG. NO. 14-1457
PRINT FILE NO. N-8141