

**RESOLUTION NO. 13636-23**

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 FACILITY OWNERSHIP TRANSFER BY AND BETWEEN THE CITY OF NEWPORT NEWS, VIRGINIA, AND HAMPTON ROADS SANITATION DISTRICT DATED THE 23<sup>RD</sup> DAY OF MAY, 2023, FOR THE 46<sup>TH</sup> STREET DIVERSION SEWER REHABILITATION/REPLACEMENT PROJECT.

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 Facility Ownership Transfer by and between the City of Newport News, Virginia, and Hampton Roads Sanitation District dated the 23<sup>rd</sup> day of May, 2023, for the 46<sup>th</sup> Street Diversion Sewer Rehabilitation/Replacement Project.

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 MAY 23, 2023

Mabel Washington Jenkins, MMC  
City Clerk

Phillip D. Jones  
Mayor

A true copy, teste:

City Clerk

**AGREEMENT FOR FACILITY OWNERSHIP TRANSFER**  
**OF THE**  
**HAMPTON ROADS SANITATION DISTRICT**  
**46<sup>TH</sup> STREET DIVERSION SEWER REHABILITATION/REPLACEMENT**  
**(BH014600)**

**TO**  
**CITY OF NEWPORT NEWS**

THIS AGREEMENT FOR FACILITY OWNERSHIP TRANSFER (the "Agreement"), between the CITY OF NEWPORT NEWS ("CITY") and the HAMPTON ROADS SANITATION DISTRICT ("HRSD"), is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ (the "Effective Date").

**RECITALS**

**R:1.** HRSD is constructing its 46<sup>TH</sup> STREET DIVERSION SEWER REHABILITATION/REPLACEMENT project as shown on Exhibit 1 (the "Improvements"); and

**R:2.** The CITY agrees to accept ownership, operations, and maintenance of the Transfer Facilities (the "Transfer Facilities"), included in the Improvements and also shown on Exhibit 1, following final completion of construction under the terms and conditions set forth herein.

**AGREEMENT**

NOW THEREFORE, in consideration of the above provisions and agreements set forth herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

**I. DESIGN OF IMPROVEMENTS**

**A. Plans and Specifications**

1. HRSD will employ Ramboll Americas Engineering Solutions, Inc. ("ENGINEER"), to prepare plans and specifications for the design of the Improvements. A location map showing both the Improvements and the Transfer Facilities is shown on Exhibit 1.
2. HRSD, in coordination with the ENGINEER, will review and approve a set of final plans and specifications for the Improvements (the "Final

Plans and Specifications”).

B. Compliance

All design work shall comply with HRSD’s Design and Construction Standards, latest edition, and the Hampton Roads Planning District Commission Regional Construction Standards, latest edition, and CITY’s Utility Policy and Design and Construction Standards, latest edition. Any changes to the Final Plans and Specifications shall be approved by HRSD.

II. CONSTRUCTION OF IMPROVEMENTS

A The current estimated total cost of the construction of Improvements (the “Improvement Costs”), as more particularly defined by the Final Plans and Specifications and Project Documents (as hereinafter defined) is \$9,419,297.00.

B. Approval of Construction Contract Documents; Contractors; Change Orders

1. Except as otherwise provided in this Agreement, HRSD shall be responsible for preparing, finalizing, and executing any and all front end documents, construction contracts, architectural contracts, engineering contracts, drawings, surveys, bidding documents, bonds, insurance documents, and all amendments, revisions and modifications thereto, relating to the construction of the project (collectively, the “Project Documents”).
2. The contractors and any subcontractors (the “Contractors”) awarded the construction contract by HRSD for the Improvements (the “Construction Contract”) shall be responsible for all necessary permits and approvals necessary for the Improvements
3. HRSD shall acquire all necessary plan approvals and property acquisitions related to the Improvements prior to the award of the Construction Contract.
4. HRSD will review and approve shop drawings related to the Improvements.
5. HRSD will review and approve the scope of work and fee for the construction administration and inspections related to the Improvements.
6. HRSD will review and approve change orders related to the Improvements.

C. Payment of Cost of Improvements

1. The Improvement Costs shall be apportioned among the parties as follows:
  - a. HRSD will administer and be responsible for bearing one hundred percent (100%) of the Improvement Costs.
  - b. Costs associated with any change to the estimated costs or scope of the Improvements shall be as follows:
    - (1) HRSD shall be solely responsible for costs due to a change order requested by HRSD; and
    - (2) City shall be solely responsible for costs due to a change order requested by City, which must be approved in writing by HRSD; and
    - (3) Change orders related to design errors, omissions or changed field conditions shall be the responsibility of HRSD.
2. During the course of construction, HRSD shall compensate the Contractors and other individuals and entities providing materials and/or services related to the Improvements for all Improvement Costs.

D. Operation and Maintenance of the Improvements during and after Construction

1. HRSD shall be responsible for operation and maintenance of the Improvements during construction.
2. CITY shall be responsible for operation and maintenance of the Transfer Facilities upon completion of construction.
3. HRSD and the CITY agree to cooperate and coordinate for the operations and maintenance of any interconnections between the Improvements and the Transfer Facilities.

E. Facility Ownership Transfer

1. Upon construction completion of the Improvements ("Final Construction Completion"), HRSD shall transfer ownership of the following Transfer Facilities to the City:
  - a. Approximately 45 linear feet (LF) of 4-inch PVC sanitary sewer

lateral on 48<sup>th</sup> Street.

- b. Approximately 25 LF of 6-inch PVC sanitary sewer lateral on 46<sup>th</sup> Street.
- c. Approximately 140 LF of 12-inch PVC sanitary sewer on 38<sup>th</sup> Street.
- d. On Washington Avenue, 10 sanitary sewer manholes, approximately 514 LF of 12-inch PVC sanitary sewer, 514 LF of 8-inch PVC sanitary sewer, 32 LF of 4-inch PVC sanitary and associated laterals.
- e. Approximately 235 LF of 24-inch PVC sanitary sewer on West Avenue.
- f. On 33<sup>rd</sup> Street, 2 sanitary sewer manholes, approximately 216 LF of 24-inch PVC sanitary sewer and 12 LF of 12-inch PVC sanitary sewer.
- g. On 31<sup>st</sup> Street, approximately 20 LF of 8-inch PVC sanitary sewer, 420 LF of 2-inch PVC force main, one submersible grinder lift station and associated valve vault.

- 2. Upon notification from HRSD to the City of Final Construction Completion, ownership of the Transfer Facilities shall automatically transfer and vest with the City, and the City will assume ownership, operation and maintenance of the Transfer Facilities. The Parties agree to execute such further documentation or instruments as are necessary to confirm, effect, and memorialize the transfer of the Transfer Facilities from HRSD to the City.

### III. SCHEDULE

The construction is anticipated to begin by August 2022 and be complete by September 2023. If the construction dates listed herein are substantially delayed, HRSD reserves the right to terminate this Agreement.

### IV. OBLIGATIONS OF HRSD AND THE CITY

#### A. Public Meetings

HRSD will be responsible for noticing and holding any public hearings or other open meetings required under applicable law. The parties agree to cooperate reasonably and assist each other in the conduct of such meetings.

B. Bidding of the Improvements

1. HRSD will issue bidding documents for construction of the Improvements. The CITY agrees to provide administrative support during the bidding phase. In particular the CITY shall:
  - a. Attend the preconstruction meeting.
2. HRSD will receive bids for construction of the Improvements. All bids received will be reviewed and approved by HRSD prior to award of the Construction Contract. HRSD shall negotiate in good faith to resolve financial matters with regards to bidding the Improvements. The bidding procedure shall be conducted in accordance with the Virginia Public Procurement Act and the HRSD Procurement Policy.

C. Administration

HRSD shall provide contract administration of the Improvements.

D. Inspection

HRSD shall provide inspection for the Improvements. The inspector(s) shall have the authority to assure the Improvements are constructed in accordance with the Project Documents.

E. Progress Meetings

ENGINEER shall arrange and conduct monthly progress meetings. HRSD and CITY shall attend and participate in these meetings.

F. Deeds and Easements

1. HRSD shall obtain any and all necessary fee simple deeds and/or deeds of easement needed for the Improvements.

G. Correction of Construction Defects in the Improvements or Breach

1. HRSD shall require the Contractors to provide a performance and payment bond for the full amount of the construction of the Improvements. The Construction Contract shall also provide for a warranty of the Contractor's work against construction defects in the Improvements and shall require the Contractor to correct such defects that are reported by HRSD or the CITY within one (1) year of Final Construction Completion. In awarding the Construction Contract, HRSD shall ensure that any such warranty is assignable to the CITY

upon transfer of ownership of the Transfer Facilities in accordance with this Agreement.

2. The Parties understand that pursuant to this Agreement, HRSD may enter into Project Documents with Contractors or other third parties who will perform work for the benefit of the CITY. In the event of the threatened or actual breach of any such Project Document by any such Contractor or third party, the Parties agree that at the request of the Party benefited by the Project Document, the Parties will work together to exercise any and all of the rights, powers and privileges conferred by the Project Documents to remedy such breach in as full and ample manner as is permitted thereunder; provided, however, nothing herein contained shall be deemed to impose upon the Party who is benefited by the Project Document any liability for the performance of any obligation of the Project Document to which they are not a party. To the extent the exercises of any such rights, powers, or privileges shall generate costs or expenses, including but not limited to attorney's fees, those costs shall be borne by the Party requesting the enforcement or other action under the Project Document. If both Parties wish to initiate enforcement or other action, the costs thereof shall be shared equally, or as otherwise agreed by the Parties.

H. Construction Record Drawings

ENGINEER shall provide HRSD and the CITY approved construction record drawings in accordance with HRSD's Design and Construction Standards, latest edition, Hampton Roads Planning District Commission Regional Construction Standards, latest edition, and CITY's Utility Policy and Design and Construction Standards, latest edition.

V. GENERAL PROVISIONS

- A. Governing Law. This Agreement shall be governed as to all matters whether of validity, interpretations, obligations, performance or otherwise exclusively by the laws of the Commonwealth of Virginia, and all questions arising with respect thereto shall be determined in accordance with such laws. Regardless of where actually delivered and accepted, this Agreement shall be deemed to have been delivered and accepted by the parties in the Commonwealth of Virginia.
- B. Termination. This Agreement may be terminated by the CITY or HRSD (i) without cause upon written notice to the other party; (ii) with cause in the event that the other party materially breaches this Agreement and such breach is not cured within sixty (60) days of the defaulting party's receipt of written notice of such breach from the non-defaulting party; or (iii) by mutual

agreement of the CITY and HRSD. Anything herein or elsewhere to the contrary notwithstanding, any such termination of this Agreement shall not relieve the parties of their obligation to pay all of the Improvement Costs incurred prior to termination, whether or not those amounts are due and payable as of the termination date. Furthermore, in the event of termination without cause, the terminating party shall reimburse the non-terminating party for its reasonable, out-of-pocket costs incurred with regard to the Project through the date of termination.

- C. Notice. Any notice, communication or request under this Agreement shall be provided in writing by either (a) a nationally recognized overnight delivery service (next business day service), (b) electronic mail with confirmation of receipt, or (c) hand-delivery, if the receipt of the same is evidenced by the signature of the addressee or authorized agent, to CITY and to HRSD at the respective addresses herein shown, unless this Agreement is modified in writing to reflect other addresses:

For: HRSD  
General Manager  
1434 Air Rail Avenue  
Virginia Beach, VA 23455  
Telephone: (757) 318-4335  
Email: generalmanager@hrsd.com

With Copy to:  
Robyn H. Hansen, Esquire  
Sands Anderson PC  
263 McLaws Circle, Suite 205  
Williamsburg, VA 23185  
Telephone: (757) 276-8243  
Email: rhansen@sandsanderson.com

For: City of Newport News  
Director of Engineering  
2400 Washington Avenue, 8th Floor  
Newport News, Virginia 23607  
Telephone: (757) 933-2311

With Copy to:  
City Attorney  
2400 Washington Avenue, 9th Floor  
Newport News, Virginia 23607  
Telephone: (757) 926-8416



- D. Assignment. No party may assign its rights under this Agreement without the prior written consent of the other party.
- E. Amendment. This Agreement may be amended only by a written instrument duly executed by the parties.
- F. Severability. If any provision of this Agreement or the application thereof to any circumstance shall be determined to be invalid, illegal or unenforceable to any extent, the remainder of this Agreement and the application thereof shall not be affected and shall continue to be valid, in effect and enforceable to the fullest extent permitted by law.
- G. Insurance. HRSD and the CITY have the right to review and approve insurance coverage in the various insurance categories that HRSD and the CITY deem necessary to be carried by the Contractor or any other parties to this Agreement. Proof of insurance shall be provided at the request of HRSD or the CITY and the insurance coverage shall be maintained during the term of this Agreement.
- H. Term of Agreement. The term of the Agreement will commence on the date the Agreement is entered into and be completed when each party has completely performed its obligations hereunder.
- I. Force Majeure. No Party shall be responsible for its failure to fulfill an obligation pursuant to this Agreement to the extent that such failure is due to acts of God; labor strikes; war or terrorism; epidemics/pandemics; fires; floods; the actions of a third party; lockouts; strikes, freight embargos, and unusually severe weather or delays of subcontractors due to such causes. A Party experiencing a force majeure event that prevents fulfillment of a material obligation hereunder shall (a) give the other Party prompt written notice describing the particulars of the event; (b) suspend performance only to the extent and for the duration that is reasonably required by the force majeure event; (c) use reasonable efforts to overcome or mitigate the effects of such occurrence; and (d) promptly resume performance of the affected obligation if and when such Party is able to do so.
- J. Waiver. No waiver of breach of any term or provision of this Agreement shall be construed to be, or shall constitute, a waiver of any other breach of this Agreement. No waiver shall be binding unless in writing and signed by the parties waiving the breach. The failure of any party to seek redress for violation of or to insist upon the strict performance of any covenant or condition of this Agreement shall not prevent a subsequent act, which would have originally constituted a violation, from having the effect of an original violation. The rights and remedies provided by this Agreement are

cumulative and the use of any one right or remedy by any party shall not preclude or waive the right to use any or all other remedies. Such rights and remedies are given in addition to any other rights the parties may have by law, statute, ordinance or otherwise.

- K. Integration. This Agreement constitutes the entire understanding among the parties. No provision of this Agreement may be waived, modified or amended except by an instrument signed by the party against whom the enforcement of such waiver, modification or amendment is sought.
- L. Authority. CITY and HRSD both warrant that they have permission and authority derived under their respective corporate Charters and Enabling Acts to execute and undertake this Agreement. This Agreement shall apply to, and be binding upon both Parties, their elected officials, officers, agents, employees, successors, and assigns, to the maximum extent permitted by law.
- M. Compliance with Law. Each Party warrants that it has complied with all aspects of applicable federal, state, and local law in entering this Agreement and further warrants that it shall comply with all applicable federal, state, and local laws in the performance of this Agreement.
- N. Binding Effect. This Agreement shall inure to the benefit of the Parties and shall, to the maximum extent permitted by law, be binding on the Parties and their successors and assigns.
- O. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original as against any Party whose signature appears thereon, and all of which shall together constitute one and the same instrument. A signature affixed or delivered electronically will be considered an original.

***Signature pages follow***

**IN WITNESS WHEREOF**, the Hampton Roads Sanitation District (HRSD) Commission has caused this Agreement to be signed on its behalf by its General Manager in accordance with authorization granted at its regular meeting held on \_\_\_\_\_, 20\_\_.

**HAMPTON ROADS SANITATION DISTRICT**

By \_\_\_\_\_  
Jay A. Bernas, PE, General Manager

COMMONWEALTH OF VIRGINIA,  
CITY OF VIRGINIA BEACH, to-wit:

The foregoing Agreement was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2023, by Jay A. Bernas, PE, HRSD General Manager.

\_\_\_\_\_  
Notary Public

My commission expires:

Registration No.:

**IN WITNESS WHEREOF**, the City of Newport News (CITY) has caused this Agreement to be signed by the City Manager on its behalf pursuant to Resolution adopted by the City Council on \_\_\_\_\_, 2023.

**CITY OF NEWPORT NEWS**

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

Name: Cynthia D. Rohlf

Title: City Manager

Attest:

\_\_\_\_\_  
City Clerk

Approved as to Form:

\_\_\_\_\_  
City Attorney

COMMONWEALTH OF VIRGINIA,  
CITY OF NEWPORT NEWS, to-wit:

The foregoing Agreement was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2023, by Cynthia D. Rohlf, City Manager, and Mabel Washington Jenkins, City Clerk.

\_\_\_\_\_  
Notary Public

My commission expires:

Registration No.:

**Exhibit 1 - Improvements Detailed Description / Location Map**

# Exhibit 1

## 46th Street Diversion Sewer Rehabilitation/Replacement Facility Ownership Transfer: Asset Identification



**LEGEND**

**HRSD Infrastructure**

**Transfer Facilities**



Imagery ©2022 Google, Map data ©2022

*The vision of HRSD is that future generations will inherit clean waterways and be able to keep them clean.*

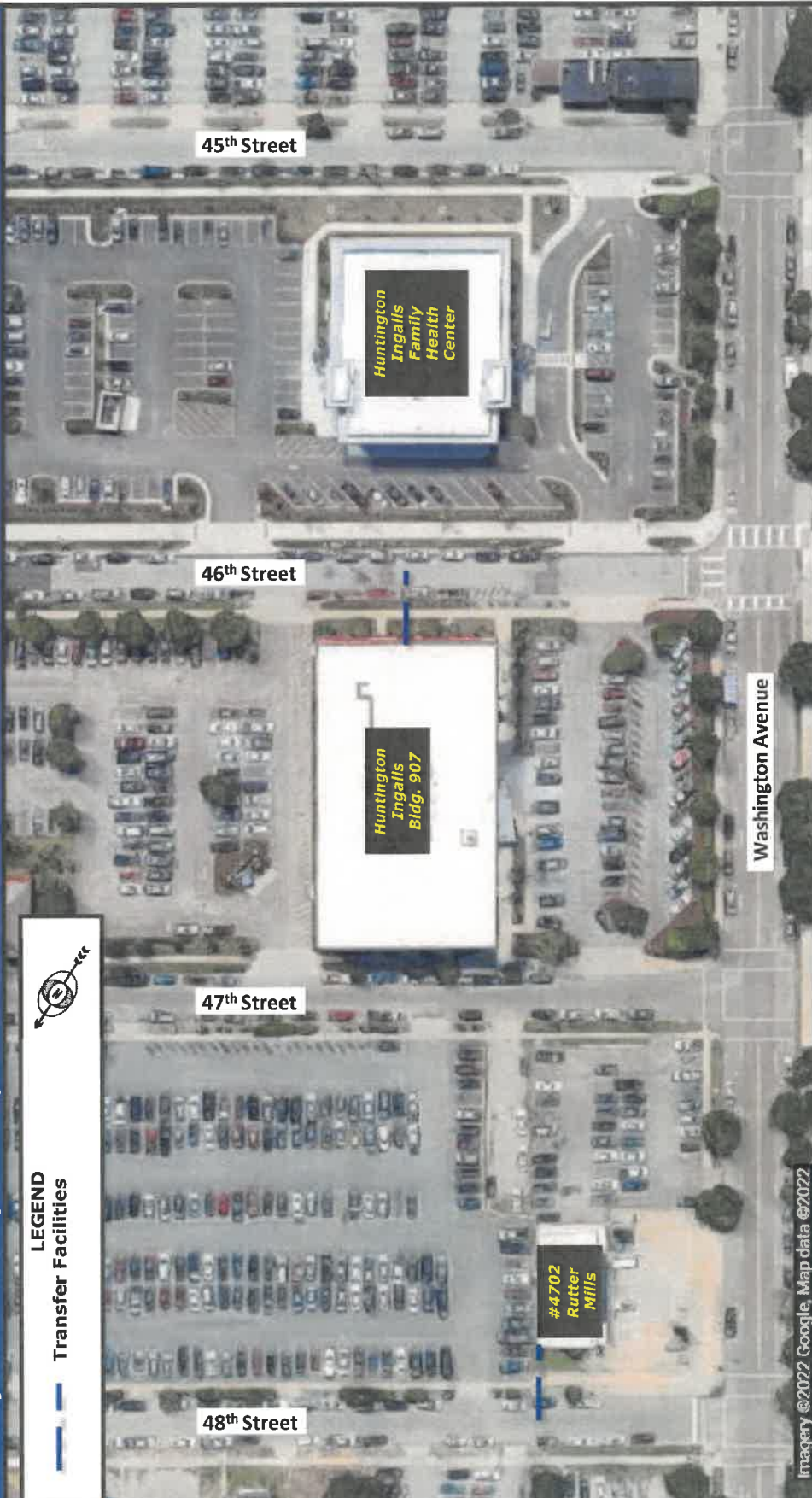
# Exhibit 1

## 46th Street Diversion Sewer Rehabilitation/Replacement Facility Ownership Transfer: Asset Identification



**LEGEND**

Transfer Facilities



*The vision of HRSD is that future generations will inherit clean waterways and be able to keep them clean.*