

HRSD Commission Meeting Agenda  
9:00 a.m. – September 24, 2024

In-person for Commissioners and essential staff at  
1434 Air Rail Avenue, Virginia Beach, VA 23455  
Virginia Initiative Conference Room – 1<sup>st</sup> Floor

Reservations are required to receive a link to the virtual meeting, address the Commission, submit written comments to be read into the minutes or to request accommodations to attend the meeting in-person.

Reservations must be submitted by noon one business day prior to the meeting. Instructions to submit your reservation request are available on the website: <https://www.hrsd.com/meeting-minutes>

<u>No.</u>	<u>Topic</u>	<u>Resource</u>
	Call to Order	Chair
1.	<a href="#">Public Comments Not Related to the Agenda</a>	Secretary
2.	<a href="#">Consent Agenda</a>	Bernas
3.	<a href="#">Surry Force Main and Pump Station-Dominion Power Extension Public Hearing on Determination of Public Need for Easement Acquisition and Easement Acquisition Resolution</a>	Husselbee
4.	<a href="#">Chesapeake-Elizabeth Conveyance to Atlantic Treatment Plant Project Water Quality Improvement Fund Grant Agreement</a>	de Mik
5.	<a href="#">Water Infrastructure and Innovation Act (WIFIA) Tranche 3 Resolution</a>	de Mik
6.	<a href="#">Atlantic Treatment Plant (ATP) Odor and Solids Improvements 2023 Contract Award (&gt;\$200,000) and Combination of CIP Projects</a>	Husselbee
7.	<a href="#">Development Plan 2025 Initial Appropriation and Task Order (&gt;\$200,000)</a>	Husselbee
8.	<a href="#">James River Treatment Plant Primary Clarifier Pipes (1 and 2) Initial Appropriation – Non-Regulatory</a>	Husselbee
9.	<a href="#">Lee Avenue-Wesley Street Horizontal Valve Replacement Additional Appropriation, Contract Award (&gt;\$200,000), and Task Order (&gt;\$200,000)</a>	Husselbee
10.	<a href="#">Williamsburg Treatment Plant Influent and Effluent Pipe Rehabilitation Initial Appropriation – Non-Regulatory</a>	Husselbee
11.	<a href="#">Commission Governance Guidelines Revision</a>	Bernas

<u>No.</u>	<u>Topic</u>	<u>Resource</u>
12.	<a href="#">Conflict of Interest, Ethics and FOIA Training</a>	Bernas
13.	<a href="#">Freedom of Information Act – Access to Public Records Policy Revisions</a>	Bernas
14.	<a href="#">New Business</a>	Bernas
15.	<a href="#">Unfinished Business</a>	Bernas
16.	<a href="#">Commissioner Comments</a>	
17.	<a href="#">Informational Items</a>	Bernas
18.	<a href="#">Closed Meeting</a>	Bernas
19.	<a href="#">Reconvened Meeting</a>	

Next Regular Commission Meeting: October 22, 2024 in Newport News

AGENDA ITEM 1. – September 24, 2024

**Subject:** Public Comments Not Related to Agenda

## AGENDA ITEM 2. – September 24, 2024

**Subject:** Consent Agenda**Recommended Action:** Approve the Consent Agenda.**Brief:** The items listed below are presented on the following pages for Commission action.

- a. Approval of Minutes - The draft minutes of the previous Commission Meeting were distributed electronically prior to the meeting.
- b. Contract Awards (>\$200,000)
  1. [Chesapeake-Elizabeth Treatment Plant Decommissioning](#) \$310,059
  2. [Cybersecurity Software Licensing and Support Services](#) \$1,094,990
  3. [Ingleside Road Pump Station Replacement](#) Contract Award \$2,178,000  
Task Order \$269,224
  4. [Virginia Initiative Plant Incinerator Burner Replacement](#) \$215,965
  5. [Williamsburg Treatment Plant Emissions Monitoring System](#) \$301,310
- c. Contract Change Orders (>25% of original contract value or \$50,000, or whichever is greater)
  1. [Effingham Vault Removal and Force Main Rehabilitation](#) \$31,522
  2. [Sanitary Sewer Replacement 1950 – Part 2](#) \$92,000
- d. Task Orders (>\$200,000)
  1. [Dozier's Corner Pump Station Replacement](#) \$1,053,923
- e. Regulatory Capital Improvement Project – Initial Appropriation <\$10,000,000
  1. [James River Land Improvements – Phase II](#) \$2,589,000
- f. Grant Agreements(<\$200,000 if required by granting agency)
  1. [Boater Education and Pump Out Program](#) \$57,700

# CONSENT AGENDA ITEM 2.b.1. – September 24, 2024

**Subject:** Chesapeake-Elizabeth Treatment Plant Decommissioning  
Contract Award (>\$200,000)

**Recommended Action:** Award a contract to East Coast Abatement Co., Inc. dba East Coast Demolition Inc. in the amount of \$310,059.

**CIP Project:** CE011810

**Regulatory Requirement:** None

Budget	\$11,303,836
Previous Expenditures and Encumbrances	<u>(\$1,415,417)</u>
Available Balance	\$9,888,409

**Type of Procurement:** Competitive Bid

In accordance with HRSD's competitive sealed bidding procedures, the Procurement Department advertised and solicited bids directly from potential bidders. The project was advertised on July 24, 2024, and one bid was received on August 21, 2024 as listed below:

Bidder	Bid Amount
East Coast Abatement Co., Inc. dba East Coast Demolition Inc.	\$310,059

**Engineer's Estimate:** \$309,642

**Project Description:** This project will study and demolish or abandon facilities at the Chesapeake-Elizabeth Treatment Plant (CETP) Site. This project will also look at other potential uses for this site after the plant has been decommissioned. Demolishment or abandonment needed at CETP may include, but is not limited to, aeration tanks, clarifiers, preliminary treatment facility, incinerator building, thickeners, chlorine contact tanks, pump stations, yard piping, and outfalls. Refer to HRSD CETP Wet Weather Storage Facility Conversion Technical Memo for additional information.

**Project Justification:** The Chesapeake-Elizabeth Treatment Plant Feasibility Study completed by HRSD in October 2013 evaluated taking the treatment plant offline and diverting flow to other treatment plants. The study determined that the HRSD interceptor system and remaining treatment plants have the ability to serve the current and projected needs of the South Shore jurisdictions when the Chesapeake-Elizabeth Treatment Plant would be taken offline in 2021. Significant capital and operation and maintenance (O&M) savings from this decision results in a high net present value compared to the former strategy.

**Contract Description:** This contract is for the excavation, removal, and disposal of four underground storage tanks (USTs) at the Chesapeake-Elizabeth Treatment Plant. The tanks being removed include a 20,000 Gallon #2 Fuel Oil Tank, a 1,000 Gallon Gasoline Tank, a 20,000 Gallon Diesel Fuel Tank, and a 550 Gallon Diesel Tank.

**Analysis of Cost:** East Coast Abatement Co., Inc. dba East Coast Demolition Inc's cost is determined to be fair and reasonable based on the competitive bid results compared to the cost estimate conducted by HRSD staff and Tetra Tech.

This work is in accordance with the Commission Adopted Procurement Policy.

<b><u>Schedule:</u></b>	PER	October 2021
	Design	August 2022
	Bid	July 2024
	Construction	October 2024
	Project Completion	November 2024

## CONSENT AGENDA ITEM 2.b.2. – September 24, 2024

**Subject:** Cybersecurity Software Licensing and Support Services  
Contract Award (>\$200,000)

**Recommended Action:** Award a contract to CDW LLC DBA CDW Government LLC in the amount of \$218,998 for one year with four renewal options and an estimated cumulative value of \$1,094,990.

**CIP Project:** AD012500

**Regulatory Requirement:** None

Budget	\$15,500,000
Previous Expenditures and Encumbrances	\$9,962,579
Available Balance	<hr/> \$5,537,421

**Type of Procurement:** Use of Existing Contract Vehicle

**Project Description:** This project will provide for continued licensing and use of CrowdStrike Falcon Complete, enhanced identity threat detection and mobile device protection as part of HRSD's sustainable comprehensive framework for secure computing and data management.

**Project Justification:** The CrowdStrike Falcon Complete software and monitoring services provide critical protection of HRSD networked infrastructure and business data against cybersecurity threats such as ransomware, malware, data exploitation, etc.

**Contract Description:** The proposed contract provides for the continued use of CrowdStrike products and services and the protection they provide.

Upon evaluation of the Fairfax County contract terms and conditions, as a public agency, HRSD is eligible to use the contract awarded to CDW LLC DBA CDW Government LLC.

**Analysis of Cost:** This is an estimated use contract. By utilizing the Fairfax County contract number 4400006325 for Information Technology Hardware, Software, and Related Services, HRSD is receiving approximately seven percent cost savings.

This work is in accordance with the Commission Adopted Procurement Policy.

## CONSENT AGENDA ITEM 2.b.3. – September 24, 2024

**Subject:** Ingleside Road Pump Station Replacement  
Contract Award (>\$200,000), Task Order (>\$200,000)

**Recommended Actions:**

- a. Award a contract to Shaw Construction Corporation in the amount of \$2,178,000.
- b. Approve a task order with Rummel, Klepper & Kahl, LLP (RK&K) in the amount of \$269,224.

**CIP Project:** VP014700**Regulatory Requirement:** Rehab Action Plan Phase 2 (12/31/2025 Completion)

Budget	\$3,810,449
Previous Expenditures and Encumbrances	(\$474,575)
Available Balance	\$3,335,874

<b>Contract Status with Task Orders:</b>	<b>Amount</b>
Original Contract with RK&K	\$0
Total Value of Previous Task Orders	\$468,324
Requested Task Order	\$269,224
Total Value of All Task Orders	\$737,548
Revised Contract Value	\$737,548
Engineering Services as % of Construction	34%

**Type of Procurement:** Competitive Bid

In accordance with HRSD's competitive sealed bidding procedures, the Engineering Department advertised and solicited bids directly from potential bidders. The project was advertised on August 5, 2024, and one bid was received on September 5, 2024, as listed below:

<b>Bidder</b>	<b>Bid Amount</b>
Shaw Construction Corporation	\$2,178,000

**Engineer Estimate:** \$1,709,200

The design engineer, RK&K, evaluated the bid based upon the requirements in the invitation for bid and recommends award to the lowest responsive and responsible bidder, Shaw Construction Corporation, in the amount of \$2,178,000.

**Project Description:** This project will rehabilitate the existing Ingleside Road Pump Station and includes the design and installation of an emergency generator. The attached [map](#) depicts the project location.

**Project Justification:** The existing submersible pump station was constructed in 1976 and has experienced multiple pump failures, electrical issues and is experiencing structural degradation. The project is included in Phase 2 of the U.S. EPA Consent Decree Rehabilitation Action Plan and must be complete by December 31, 2025.

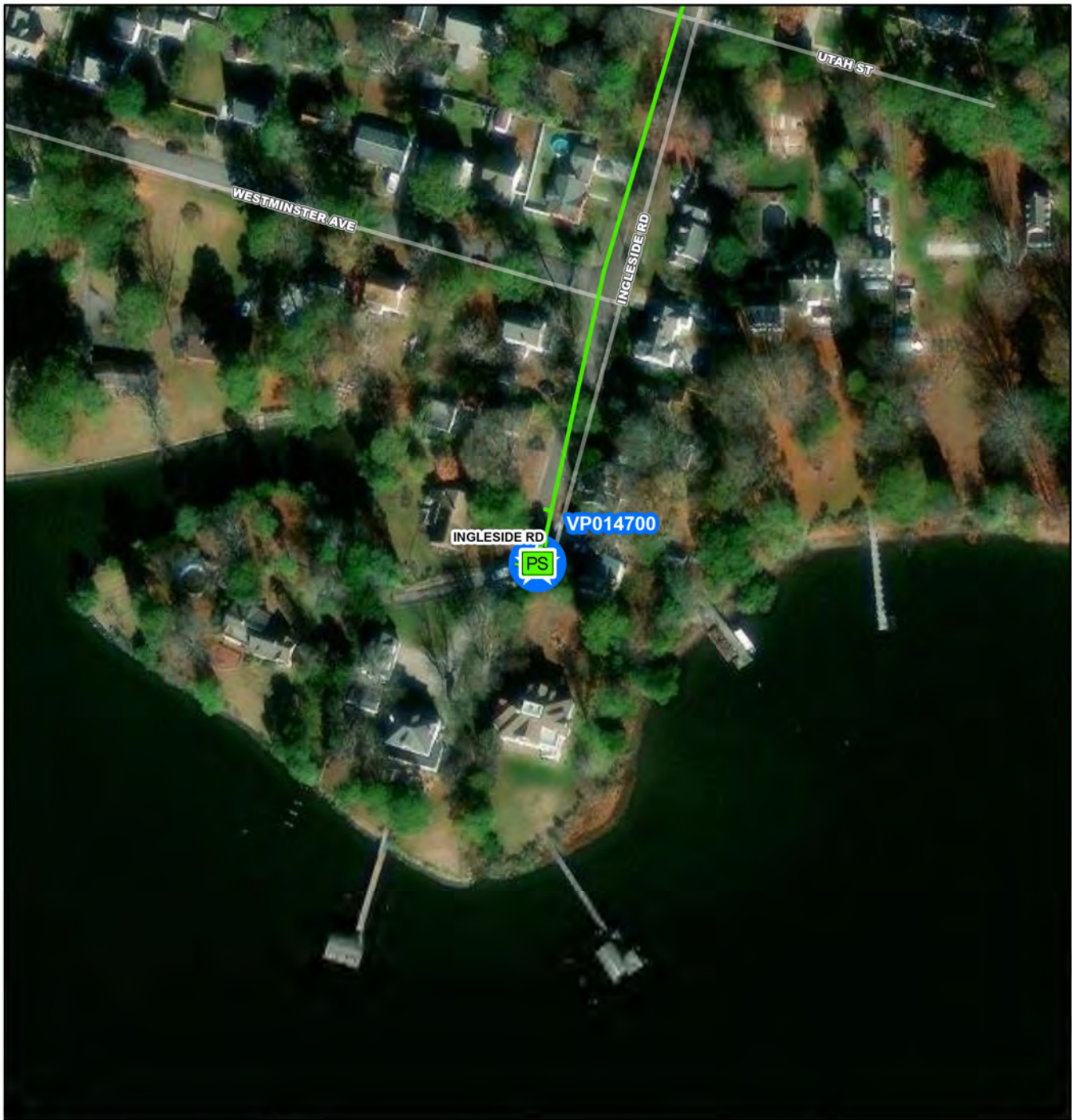


**Contract Description:** This contract is for construction phase services with Shaw Construction Corporation in the amount of \$2,178,000.

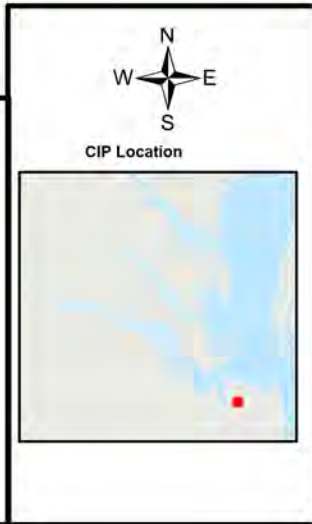
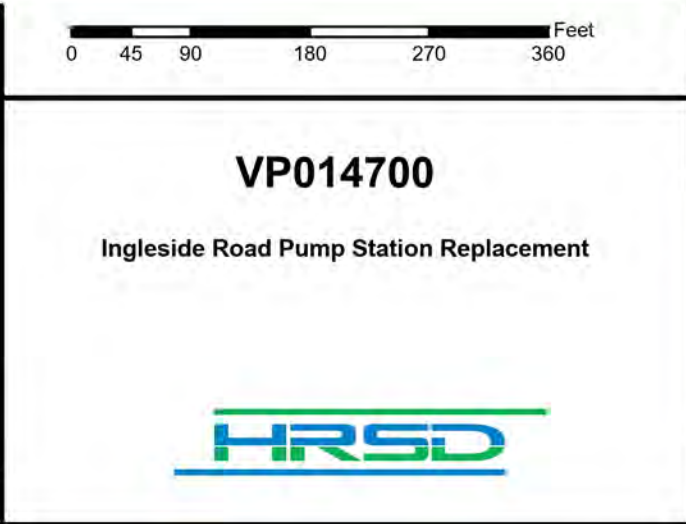
**Task Order Description:** This task order will provide services during construction including contract administration and field engineering and inspection services for the subject project. HRSD and the design engineer, RK&K, negotiated a fee in the amount of \$269,224 based on hourly rates in RK&K's annual services contract for Linear Infrastructure Projects and an estimation of hours required for this effort. The fee proposal is comparable to other projects of similar size and complexity.

**Analysis of Cost:** The cost for the construction contract has been reviewed by RK&K and is 22% over the Engineer's Estimate. Due to the fact that only one bid was received, this indicates the small size and complexity of the work, and this limited number of contractors willing and able to complete this project. RK&K has determined the amount to be reasonable.

<b><u>Schedule:</u></b>	Construction	October 2024
	Project Completion	July 2025



- VP014700**
- Project Interceptor Line
  - Project Interceptor Point
  - Project Pump Station Point
  - Project Area
- Legend**
- CIP Interceptor Point
  - CIP Pump Station Point
  - CIP Interceptor Line
  - CIP Abandonment
  - CIP Project Area
  - HRSD Interceptor Force Main
  - HRSD Interceptor Gravity Main
  - HRSD Treatment Plant
  - HRSD Pressure Reducing Station
  - HRSD Pump Station



## CONSENT AGENDA ITEM 2.b.4. – September 24, 2024

**Subject:** Virginia Initiative Plant Incinerator Burner Replacement  
Contract Award (>\$200,000)

**Recommended Action:** Award a contract to ESC Spectrum Corporation in the amount of \$215,965.

**CIP Project:** VP019100

**Regulatory Requirement:** None

Budget	\$5,330,000
Previous Expenditures and Encumbrances	(\$4,876,711)
Available Balance	<u>\$460,001</u>

**Type of Procurement:** Competitive Bid

In accordance with HRSD's competitive sealed bidding procedures, the Procurement Department advertised and solicited bids directly from potential bidders. The project was advertised on August 15, 2024, and four bids were received on September 5, 2024, as listed below:

Bidder	Bid Amount
ESC Spectrum Corporation	\$215,965
STI CEMS	\$236,650
Air Tox Environmental Company, Inc.	\$242,350
Trace Environmental	\$256,000

**HRSD Estimate:** \$269,140

**Project Description:** VIP's two incinerators contain 46 burners total (23 each). This project will replace 42 old burners with new low NOx North American burners to maintain NOx levels below permit requirements, to meet modern safety standards and improve fuel efficiency. New local control panels at each individual burner and two central control panels on the mezzanine level, conduits, wiring and other ancillary electrical components will bring the system up to current electrical safety standards and will allow control of the burners through the plants Distributed Control System (DCS).

**Project Justification:** The existing Hauck burners and controls are obsolete making it difficult to find replacement parts. The burners are 40 years old, and in some instances, the burner pilots have been unsafe to light-up. The proposed American Burners are reliable with a proven record at HRSD. The specified proposed burners are low-NOx and are necessary for future incinerator compliance. The new burners and controls will increase VIP incinerator capacity from 30 to 36 dry tons per day which is a requirement when the Army Base Treatment Plant incinerator goes off-line.

**Contract Description:** This contract is only for the replacement of 42 incinerator burners with new low NOx North American burners to maintain NOx levels below permit requirements, to meet modern safety standards and improve fuel efficiency at VIP.

**Analysis of Cost:** ESC Spectrum Corporation's cost is determined to be fair and reasonable based on the competitive bid results compared to the cost estimate conducted by HRSD staff.

This work is in accordance with the Commission Adopted Procurement Policy.

<b><u>Schedule:</u></b>	PER	July 2021
	Design	July 2021
	Bid	July 2021
	Construction	July 2021
	Project Completion	September 2024

# CONSENT AGENDA ITEM 2.b.5. – September 24, 2024

**Subject:** Williamsburg Treatment Plant Emissions Monitoring System  
Contract Award (>\$200,000)

**Recommended Action:** Award a contract to ESC Spectrum Corporation in the amount of \$301,310.

**CIP Project:** WB013910

**Regulatory Requirement:** None

Budget	\$650,000
Previous Expenditures and Encumbrances	( <u>\$0</u> )
Available Balance	\$650,000

**Type of Procurement:** Competitive Bid

In accordance with HRSD's competitive sealed bidding procedures, the Procurement Department advertised and solicited bids directly from potential bidders. The project was advertised on August 15, 2024, and four bids were received on September 5, 2024, as listed below:

Bidder	Bid Amount
ESC Spectrum Corporation	\$301,310
STI CEMS	\$313,890
Trace Environmental	\$318,400
Air Tox Environmental Company, Inc.	\$335,950

**HRSD Estimate:** \$344,928

**Project Description:** This project will replace the total hydrocarbon (THC) continuous emissions monitoring (CEM) system. HRSD will be disassembling and removing the old THC CEM system. ESC is responsible for building the new system, installing, and start up with HRSD assistance.

**Project Justification:** The THC CEM system is obsolete and unreliable and is not able to meet regulatory EPA Office of Water's Part 503 Subpart E requirement for monitoring.

**Contract Description:** This contract is for the replacement of the Total Hydrocarbon (THC) Continuous Emissions Monitoring (CEM) System at the Williamsburg Treatment Plant. HRSD will be disassembling and removing the old THC CEM system. ESC Spectrum Corporation is responsible for building the new system, installation, and start up with HRSD assistance.

**Analysis of Cost:** ESC Spectrum Corporation's cost is determined to be fair and reasonable based on the competitive bid results compared to the cost estimate conducted by HRSD staff.

This work is in accordance with the Commission Adopted Procurement Policy.

<b><u>Schedule:</u></b>	PER	July 2024
	Design	July 2024
	Bid	July 2024
	Construction	July 2024
	Project Completion	July 2025

## CONSENT AGENDA ITEM 2.c.1. – September 24, 2024

**Subject:** Effingham Vault Removal and Force Main Rehabilitation  
Contract Change Order (>25% of original contract value or \$50,000)

**Recommended Action:** Approve a change order to the contract with Bridgeman Civil, Inc. in the amount of \$31,522.

**CIP Project:** VP018200

**Regulatory Requirement:** None

Budget	\$4,609,221
Previous Expenditures and Encumbrances	(\$4,528,779)
Available Balance	\$80,442

Contract Status with Change Orders:	Amount	Cumulative % of Contract
Original Contract with Bridgeman	\$2,179,062	
Total Value of Previous Change Orders	\$1,363,810	63%
Requested Change Order	\$31,522	
Total Value of All Change Orders	\$1,395,332	64%
Revised Contract Value	\$3,574,394	

Time (Additional Calendar Days)		59
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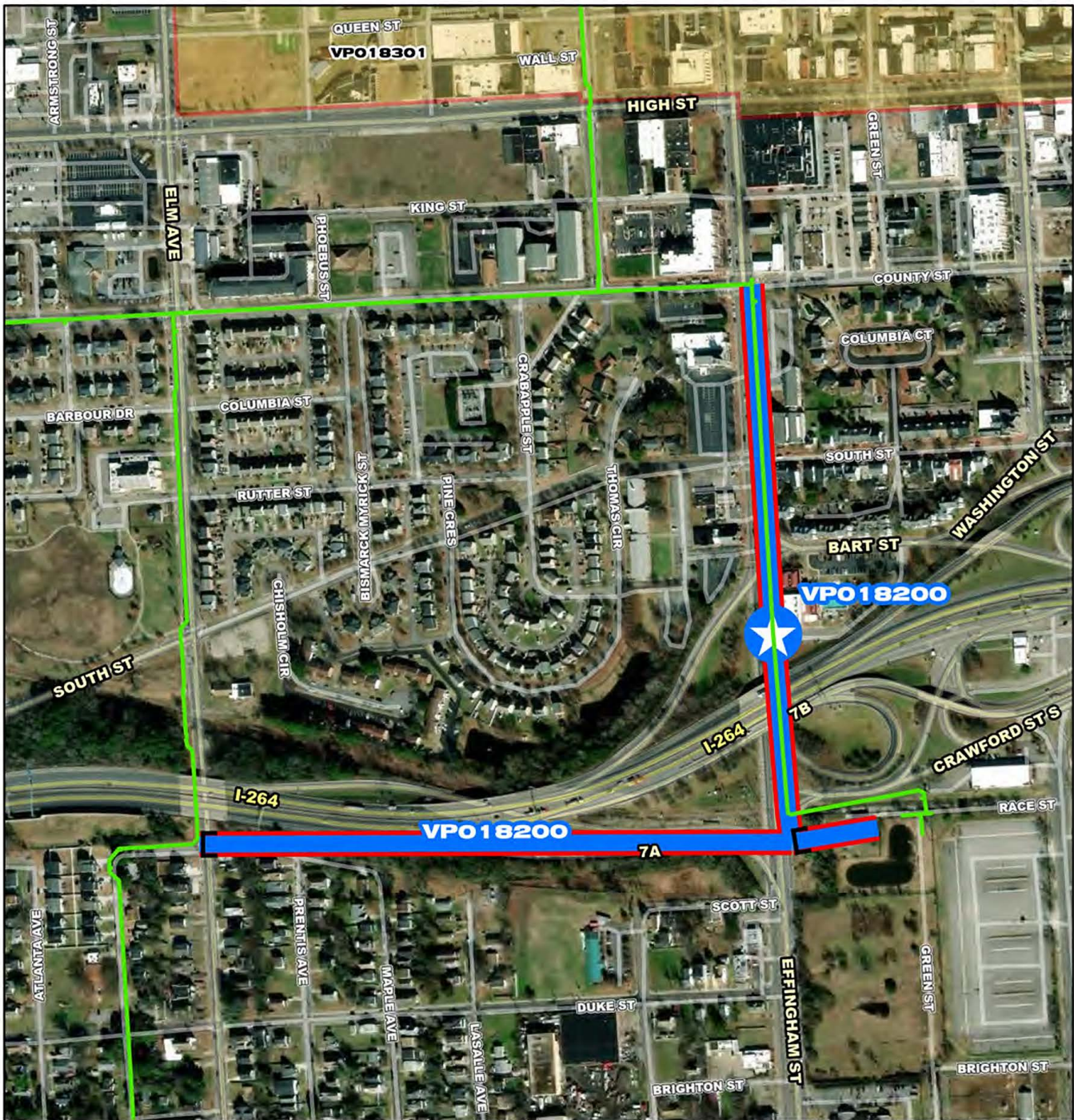
**Project Description:** This project rehabilitated 1,815 linear feet of existing 36-inch prestressed concrete cylinder pipe (PCCP) interceptor force main with a structural cured-in-place pipe (CIPP) lining and removed the vaults. The structural lining extended from a new tee and valve near the Race Street Pump Station northerly toward the intersection of Effingham Street and County Street. The attached [map](#) depicts the project location.

**Project Justification:** This project addressed an air vent that was discovered to be directly tapped into a reinforced concrete vault. The air vent and vault were installed as part of a Virginia Department of Transportation relocation project in 1956. The condition of the vault was unknown but was suspected to be compromised due to exposure to hydrogen sulfide gas for over 60 years. Due to the location, unknown condition, and Consent Decree requirement to address the air vent, both assets were removed from the force main system.

**Change Order Description and Analysis of Cost:** The construction contract is substantially complete. This final change order includes the cost of abandonment of the portion of RCP left in place between Effingham Street and the Race Street Pump Station and the adjustment between the original estimated bid quantities and the final actual quantities used. The proposed cost is in line with the construction cost index and is comparable to some recent HRSD bid results, and the design engineer recommends approval for the negotiated cost for this work.

**Schedule:** Construction January 2022  
Project Completion June 2024





# VPO 18200

- Project Interceptor Line
- Project Interceptor Point
- Project Pump Station Point
- Project Area

## Legend

- ★ CIP Interceptor Point
- ☆ CIP Pump Station Point
- CIP Interceptor Line
- CIP Abandonment
- CIP Project Area
- HRSD Interceptor Force Main
- HRSD Interceptor Gravity Main
- HRSD Treatment Plant
- HRSD Pressure Reducing Station
- HRSD Pump Station

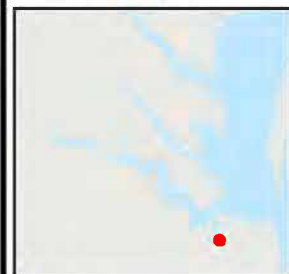
0 155 310 620 930 1,240 Feet

# VPO 18200

## Effingham Vault Removal and Force Main Rehabilitation



CIP Location



## CONSENT AGENDA ITEM 2.c.2. – September 24, 2024

**Subject:** Sanitary Sewer Replacement 1950 – Part 2  
Contract Change Order (>25% of original contract value or \$50,000)

**Recommended Action:** Approve a change order to the contract with Bridgeman Civil, Inc. in the amount of \$92,000.

**CIP Project:** VP014022

**Regulatory Requirement:** Rehab Action Plan Phase 2 (2025 Completion)

Budget	\$24,287,289
Previous Expenditures and Encumbrances	(\$23,804,349)
Available Balance	\$482,940

Contract Status with Change Orders:	Amount	Cumulative % of Contract
Original Contract with Bridgeman Civil	\$17,274,540	
Total Value of Previous Change Orders	\$4,697,986	27.2%
Requested Change Order	\$92,000	
Total Value of All Change Orders	\$4,789,986	27.7%
Revised Contract Value	\$22,064,526	

Time (Additional Calendar Days)		0
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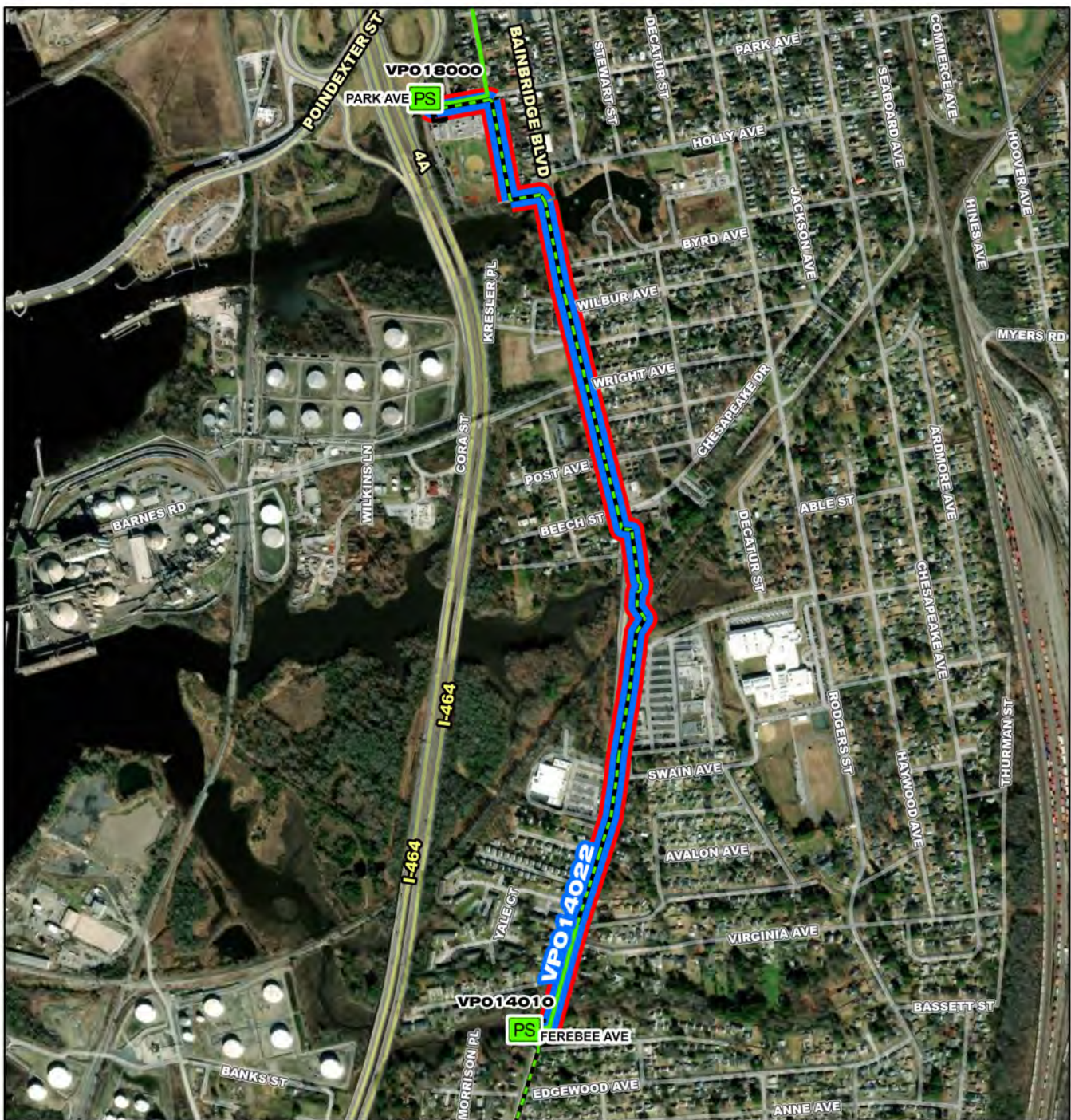
**Project Description:** This project will replace 850 feet of 12-inch cast iron discharge force main, 2,900 feet of 18-inch gravity line, and 2,700 feet of 24-inch gravity line in the South Norfolk area of Chesapeake. In addition, HRSD is partnering with the City of Chesapeake Public Utilities (City) to install 16 laterals and cleanouts on Byrd Avenue. The existing City sewer service is in an alley behind Byrd Avenue and the City has plans to relocate the sewers from the backyard alley to Byrd Avenue. HRSD will be installing a new 30-inch gravity sewer main along Byrd Avenue, and HRSD will install the new City laterals and cleanouts at the edge of the right-of-way. The City has provided a letter of commitment to enter into a cost sharing agreement to reimburse HRSD \$106,400 for the cost of installing the laterals and clean-outs. The attached [map](#) depicts the project location.

**Project Justification:** This project will evaluate and implement the replacement of HRSD force main and gravity sewer between Ferebee Avenue Pump Station and Park Avenue Pump Station.

**Change Order Description and Analysis of Cost:** Bridgeman Civil requested to relocate the City gravity sewer and to realign HRSD's 30-inch gravity line after discovering a potential conflict with an existing City waterline that would prevent the installation of well points for dewatering and the installation of manholes. The design engineer agrees with the planned approach and recommends approval.

<b>Schedule:</b>	Construction	February 2023
	Project Completion	May 2026





**VPO14022**

- Project Interceptor Line
- Project Interceptor Point
- Project Pump Station Point
- Project Area

**Legend**

- CIP Interceptor Point
- CIP Pump Station Point
- CIP Interceptor Line
- CIP Abandonment
- CIP Project Area
- HRSD Interceptor Force Main
- HRSD Interceptor Gravity Main
- HRSD Treatment Plant
- HRSD Pressure Reducing Station
- HRSD Pump Station

0 335 670 1,340 2,010 2,680 Feet

**VPO 14022**

**Sanitary Sewer Replacement 1950  
- Part 2**



**CIP Location**



## CONSENT AGENDA ITEM 2.d.1. – September 24, 2024

**Subject:** Dozier's Corner Pump Station Replacement  
Task Order (>\$200,000)

**Recommended Action:** Approve a task order with Gannett Fleming, Inc. in the amount of \$1,053,923.

**CIP Project:** AT015400

**Regulatory Requirement:** Rehab Action Plan Phase 2 (5/5/2027 Completion)

Budget	\$17,121,868
Previous Expenditures and Encumbrances	(\$204,670)
Available Balance	\$16,917,198

<b>Contract Status with Task Orders:</b>	<b>Amount</b>
Original Contract with Gannett Fleming	\$0
Total Value of Previous Task Orders	\$196,495
Requested Task Order	\$1,053,923
Total Value of All Task Orders	\$1,250,418
Revised Contract Value	\$1,250,418
Engineering Services as % of Construction	10.8%

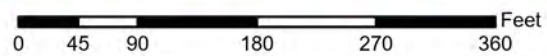
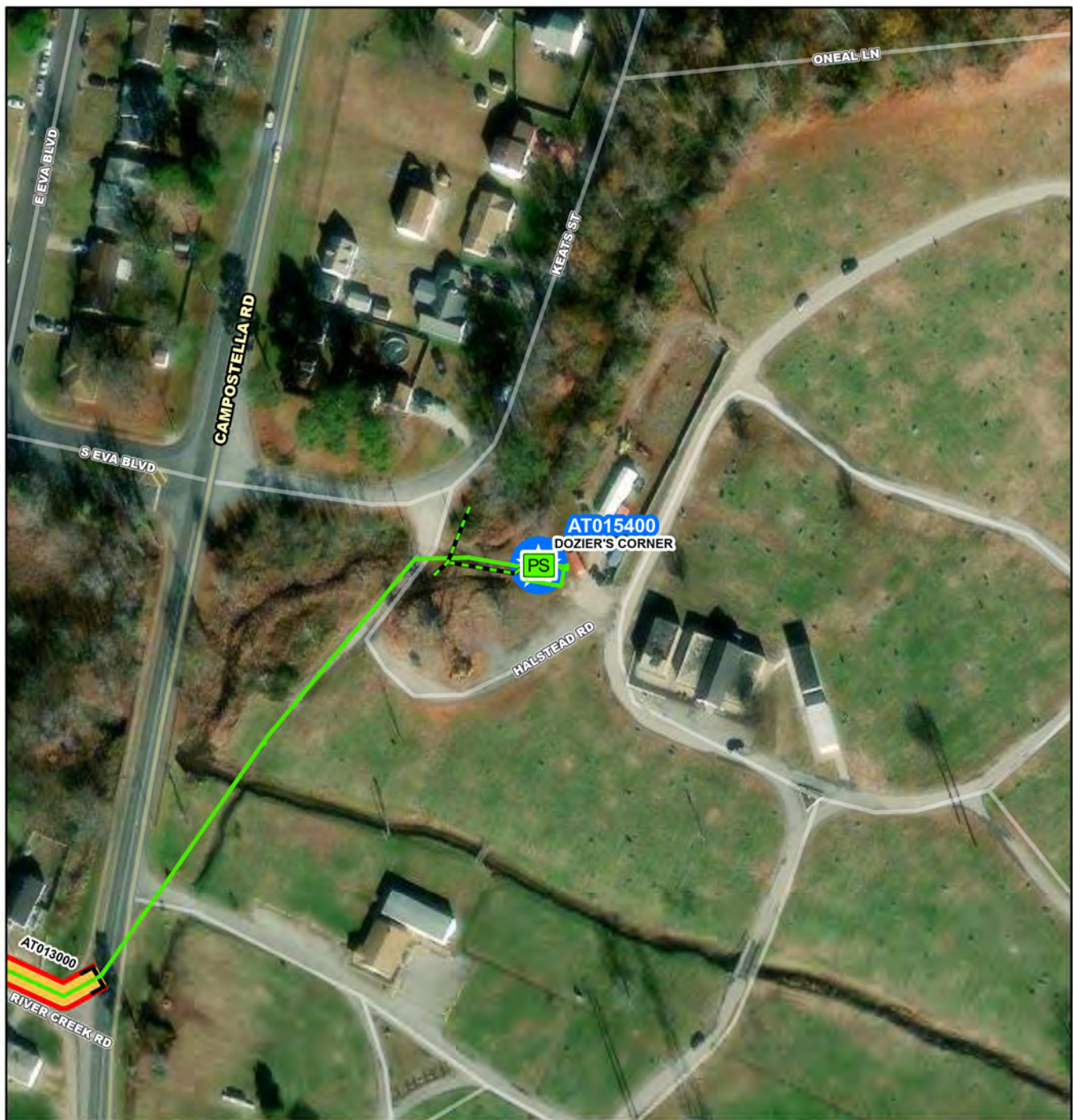
**Project Description:** This project will replace the existing Dozier's Corner Pump Station in a different site due to flooding and being surrounded by a cemetery. This is a Consent Decree Rehabilitation Action Plan Phase II project. The attached [map](#) depicts the project location.

**Project Justification:** The existing pump station needs to be relocated because it is below the 100-year flood plain and is next to a cemetery. The site is too small to install a separate control room in order to protect the electrical equipment.

**Task Order Description and Analysis of Cost:** This task order will provide design and bid phase services in accordance with the approved Preliminary Engineering Report which recommends replacing the facility at an alternative site approximately 50 feet to the east. The cost for this task order is based on hourly rates in Gannett Fleming's annual services contract for General Engineering Services and an estimation of hours required for this effort. The fee proposal is comparable to other projects of similar size and complexity.

<b><u>Schedule:</u></b>	Design	October 2024
	Bid	April 2026
	Construction	June 2026
	Project Completion	June 2028



**AT015400**

## Doziers Corner Pump Station Replacement



## CONSENT AGENDA ITEM 2.e.1. – September 24, 2024

**Subject:** James River Land Improvements – Phase II  
Initial Appropriation - Regulatory Required Capital Improvement Project (<\$10,000,000)

**Recommended Action:** Appropriate total project funding in the amount of \$2,589,000.

**CIP Project:** GN016347

**Regulatory Requirement:** Integrated Plan – SWIFT

**Project Description:** This project includes design and construction of multi-use trails of approximately 3,000 linear feet connecting to existing City of Newport News trails. The project area is located adjacent to HRSD's James River Treatment Plant (JRTP) within the City of Newport News Riverview Farm Park. The project will incorporate multi-use asphalt on grade trail and associated landscaping improvements near the managed aquifer recharge well buildings. The attached [map](#) depicts the project location.

**Project Justification:** HRSD entered into an Agreement with the City of Newport News to purchase approximately 10 acres of land adjacent to the JRTP and receive the required easements for managed aquifer recharge wells, buildings, and related piping. Among the requirements stated in the land purchase Agreement is the commitment by HRSD to design and construct public access trails, which will be operated and maintained by the City of Newport News.

**Funding Description:** The total project cost is estimated to be \$2,589,000 and is based on engineering services from Vanasse Hangen Brustlin, Inc. (VHB) plus an estimate of project construction costs and an approximately 15 percent project contingency.

VHB was awarded a contract in November 2020 to perform the James River Land Improvements – Phase I (GN016344) project. They will continue with engineering services on the individual capital improvement projects identified as part of the JRTP land improvement projects, which supports the land purchase Agreement with the City of Newport News. This preliminary work and associated task order with VHB is projected to be less than the \$200,000 required for Commission action.

<b><u>Schedule:</u></b>	PER	September 2024
	Design	January 2025
	Bid	October 2025
	Construction	January 2026
	Project Completion	February 2027





**GN016347**

- Project Interceptor Line
- Project Interceptor Point
- Project Pump Station Point
- Project Area

**Legend**

- ★ CIP Interceptor Point
- ☆ CIP Pump Station Point
- Project Interceptor Line
- Project Interceptor Point
- Project Pump Station Point
- Project Area
- HRSD Interceptor Force Main
- HRSD Interceptor Gravity Main
- HRSD Treatment Plant
- HRSD Pressure Reducing Station
- HRSD Pump Station

0 140 280 560 840 1,120 Feet

## GN016347

### James River Land Improvements - Phase II

N  
W E  
S

CIP Location

CONSENT AGENDA ITEM 2.f.1. – September 24, 2024

**Subject:** Boater Education and Pump Out Program  
Virginia Department of Health (VDH) Grant Agreement (<\$200,000)

**Recommended Action:** Accept funding in the amount of \$57,700 and approve the terms and conditions of the Sub-Recipient Agreement with VDH for the Boater Education and Pump Out Program, and authorize the General Manager to execute same, substantially as presented, together with such changes, modifications and deletions as the General Manager may deem necessary.

**Agreement Description:** The Boater Education and Pump Out Program has been an established internship at HRSD since 1996 within the Municipal Assistance Program. Its mission is to promote the proper disposal of sewage from boat holding tanks to protect public health and the waterways of Hampton Roads.

The VDH Marina Program receives federal Clean Vessel Act funding from the Sport Fish and Wildlife Restoration Grant. The grant funds are used to educate boaters about the proper and responsible use of marine sanitation devices and the serious health and environmental threat posed by the discharge of sewage in the marine environment. HRSD operates the Program utilizing funding from the grant through VDH. Funding from this [grant](#) will expire on June 30, 2025.



VIRGINIA DEPARTMENT OF HEALTH  
OFFICE OF ENVIRONMENTAL HEALTH SERVICES (OEHS)  
DIVISION OF ONSITE SEWAGE, WATER SERVICES,  
ENVIRONMENTAL ENGINEERING, AND MARINA PROGRAMS  
109 GOVERNOR STREET, 5<sup>th</sup> FLOOR  
RICHMOND, VIRGINIA 23219

**SUBRECIPIENT AGREEMENT**

SUBRECIPIENT AGREEMENT NUMBER: VDH-24-619-0017

- I. **PARTIES TO THE AGREEMENT:** This Subrecipient Agreement is entered into by Hampton Roads Sanitation District, a political subdivision of the Commonwealth of Virginia, whose address is 1460 Air Rail Avenue, Virginia Beach, Virginia 23455 hereinafter called the "Subrecipient" and Commonwealth of Virginia through the Department of Health, Office of Environmental Health Services, Division of Onsite Sewage, Water Services, Environmental Engineering, and Marina Programs, whose business address is 109 Governor Street, 5th Floor, Richmond, Virginia 23219, hereinafter called the "Department."

**WHEREAS** the Department desires to enter into an Agreement with the Subrecipient to provide the scope of services as described herein and;

**WHEREAS** the Subrecipient desires to perform such services;

**THEREFORE**, in consideration of their respective undertakings, the Department and the Subrecipient hereby execute this covenant and agree to the following terms.

- II. **PERIOD OF PERFORMANCE:** From execution date of VDH signature (**allowing backdated invoices beginning July 1, 2024**) on last page through June 30, 2025, with no (0) successive renewal option.
- III. **PURPOSE:** To provide boaters, education on the proper handling and disposal of sanitary waste and the use of pump-out and sanitary waste dump stations.
- IV. **SCOPE OF SERVICES:** The Subrecipient shall furnish all labor, supervision, equipment, tools, parts, supplies, and materials, as necessary, to perform the services as described herein:
- A. The Subrecipient agrees to manage a boater education program to inform boaters about the proper and responsible use of marine sanitation devices and the disposal of sewage from boat holding tanks and portable toilets.



B. The Subrecipient agrees to administer this project according to the Commonwealth of Virginia's *Sewage Regulations, Sanitary Regulations for Marinas and Boat Moorings, and Sewage Handling and Disposal Regulations*.

The Subrecipient agrees to hire, employ, and supervise staff consisting of a supervisor and parttime interns to provide one-on-one educational sessions and pump-out services to boaters and interested individuals at marinas, for "in water events", and boating festivals where recreational boats congregate in large numbers in and around the Hampton Roads coastal area. The Subrecipient will provide these services on weekends and operational holidays year-round from the date of execution to June 30, 2025.

When providing the services specified under this Agreement, the Subrecipient shall not be deemed an "employee" or "agent" of the Virginia Department of Health. The Subrecipient shall act as an independent subrecipient and is responsible for obtaining and maintaining appropriate liability insurance, payment of all FICA, state, and federal taxes, and complying with other similar requirements, which are customary in the industry. In addition, the Subrecipient certifies that they are not an employee, nor do they currently employ employees of the Virginia Department of Health.

The Subrecipient must give credit to the Federal Aid in Sport Fish Restoration program as the source of funding for the Subrecipient's project by using the crediting logo identified in 50 CFR Part 86.75.

As a condition of this grant, the Build America, Buy America Act requirements have been included in the Notice of Award. The Build America, Buy America Act applies to all infrastructure projects, which includes construction, alternation, maintenance, or repair of infrastructure. The Subrecipient may be required to show proof of compliance.

**V. COMPENSATION:** The Department will reimburse the Subrecipient for actual expenditures as a result of services provided under the terms of the basic agreement. Any travel expenses will be reimbursed as per the current, state approved travel regulations available at <https://www.doa.virginia.gov/reference.shtml#CAPP> (Topic# 20335). **Payments may be made for services rendered starting with grant funding period beginning July 1, 2024.**

Contract value: \$57,700.00 with no (0) successive renewal option.

Payments shall be made upon receipt and approval of the Department of required reports for services performed under the terms of this Agreement and invoices and acceptable supporting documentation from the Subrecipient. The reimbursement for services shall be based on the budget and on compliance with activities described in the Subrecipient Agreement submitted by the Subrecipient and approved by the Department. The invoices, with supporting documentation acceptable to the Department, shall include a report of expenditures that are itemized by budgeted line item with quarterly or as needed year- to-date total expenditures per budget category. To be reimbursable, expenditures must adhere to the requirements detailed in the Commonwealth Accounting Policy and

Procedure (CAPP) Manual which may be viewed at this link, <https://www.doa.virginia.gov/reference.shtml#CAPP>, included in the budget for this Agreement,



and, if applicable, in compliance with all federal guidance for the funding provided under this Agreement. Supporting documentation shall include item level description of the purchase. Additional supporting documentation requirements are as follows:

- All Expenditures: a report from the Subrecipient's financial management information system must be provided.
- Personnel: payroll reports from the Subrecipient's financial management information system must be provided.
- Contractual: specific explanations of what expenditures were made, to whom the payment was made, date(s) of payment, and any other relevant information.
- Supplies, Miscellaneous, and Other: listing of the specific items and/or goods for which payment was made.
- Telephone/Mobile: if possible, a copy of the top page of the phone bill related to the request for reimbursement should be provided. If this is not possible, such as in cases where these charges are centrally allocated, an explanation of the charges must be provided.

The Subrecipient shall report the actual program income received and expended during the month or billing period on the invoice billing statement. The revenue and expenses shall be traceable through their financial system of record.

The Subrecipient will bill the Department on a quarterly or as needed basis electronically with supporting documentation. Billing will be due no later than thirty (30) days following the end of each calendar month in which expenses are incurred.

As per state regulations (CAPP Manual topic 20310) it is state policy to pay invoices on the date which payment is due under the terms of a contract, or if such date has not been established, thirty (30) days after receipt of the Subrecipient's invoice by the specified Accounts Payable desk or (30) thirty days after receipt of the goods or services, as specified by the Accounts Payable date-stamped receiving report, whichever is later. Failure by Subrecipient to submit invoices within the prescribed period may forfeit its right to payment from the Department.

Send invoices to: (Non-PHI information only)

[SBSCentralOfficesAP@vdh.virginia.gov](mailto:SBSCentralOfficesAP@vdh.virginia.gov)

(please cc [Margaret.Smigo@vdh.virginia.gov](mailto:Margaret.Smigo@vdh.virginia.gov))

Invoices may be submitted electronically. In order for invoices to be processed as presented for payment, the document must reference the current/active contract number.

Final reconciliation billing for June 2025, along with any overpayments due to the Department, shall be submitted no later than July 31, 2025.

The Subrecipient agrees to ensure that all expenditures made under this Agreement are recorded correctly, are allowable, and are in support of the objectives of this Agreement. The Subrecipient shall ensure that payroll expenditures in support of this Agreement and as specified in this Agreement are charged accurately and that the employees paid under this Agreement submit Time and Effort (T&E) reports. These T & E reports shall be maintained on site for Department review during monitoring visits.

The Subrecipient shall maintain supporting documentation for all expenditures made under this Agreement and maintain such documentation for five (5) years as per Government Accountability Office, Office of Management and Budget (GAO/OMB) regulations. Any expenditure recorded after this date will be attributed to the next budget period.

These funds may not be used to pay the salary of an individual at a rate in excess of the Executive Level II salary of the Federal Executive Pay Scale, as per Notice of Award.

**VI. FEDERAL REQUIREMENTS FOR SUBRECIPIENT CONTRACTS:**

FEDERAL AWARD INFORMATION:

Federal Award Identification Number:	<u>F22AP03408</u>
Federal Award Date:	<u>07/01/2022</u>
Amount of Subaward:	<u>\$57,700.00</u>
Subaward Obligation/Action Date:	<u>7/1/2024 through 06/30/2025</u>
Total Amount of Federal Award:	<u>\$828,988.00</u>
Name of Federal Grantor:	<u>Department of the Interior, U.S. Fish and Wildlife Service</u>
CFDA Number and Name:	<u>15.616 – Clean Vessel Act</u>
Research and Development:	Yes: <input type="checkbox"/> No: <input checked="" type="checkbox"/>
Indirect Cost rate for the Federal Award, if included:	<u>N/A</u>
Name of Federal Grantor:	<u>Department of the Interior, U.S. Fish and Wildlife Service</u>
CFDA Number and Name:	<u>15.616 - Clean Vessel Act</u>
Research and Development:	Yes: <input type="checkbox"/> No: <input checked="" type="checkbox"/>
Indirect Cost rate for the Federal Award, if included:	<u>N/A</u>

FEDERAL AWARD RESTRICTIONS: There are general federal cost principles that are applicable to all federal awards. These general principles are outlined in Part 200 – Uniform Administrative Requirements, Cost Principles, and Subpart F. Audit Requirements for Federal awards (2 CFR Section 200.0 – 200.521). The local health districts are required to adhere to these principles while

managing federal grant awards (specifically Subpart E – Cost Principles). The Electronic Code of Federal Regulations can be found at [www.eCFR.gov](http://www.eCFR.gov).

General provisions sections:	200.400 - 200.401
Federal equipment:	200.313
Procurement guidelines:	200.318 - 200.326
Basic considerations sections:	200.402 - 200.411
Direct and indirect (F&A) costs sections:	200.412 - 200.415
Special Considerations for States, Local Governments, and Indian Tribes sections:	200.416 - 200.417
General provisions for selected items of cost sections:	200.420 - 200.475 (with exception of 200.424 and 200.475 as these are more applicable to higher education institutions and other nonprofit organizations)

The Virginia Department of Health, Office of Environmental Health Services, Division of Onsite Sewage, Water Services, Environmental Engineering, and Marina Programs, as a pass-through entity for numerous federal grants, is responsible for ensuring certain activities occur with respect to monitoring of subrecipients. The above requirements include, but are not limited to the following:

Subrecipients receiving more than \$750,000 in federal funds, during the Subrecipient's fiscal year, from any and all sources are required to have a single audit performed in accordance with code §200.501(a). When required, the most recent copy of the audit must be provided to the assigned contract monitor within thirty (30) days of the effective date on this Agreement. If any findings were noted in the audit report, corrective actions taken to fully resolved the finding must be provided. If an audit occurs during the term of this Agreement, a copy of that audit and response to any findings must be provided as well. The Subrecipient must provide a written statement if the organization did not receive more than \$750,000 in federal funds.

FEDERAL FUNDING ACCOUNTABILITY AND TRANSPARENCY ACT (FFATA): Effective October 2010, all entities that plan to apply for and ultimately receive a federal grant/cooperative agreement or receive subawards directly from recipients of those funds shall:

- Be registered in System for Award Management (SAM) prior to submitting an application or plan. The SAM is a web-enabled government wide application that collects, validates, stores, and disseminates business information about the federal government's trading partners in support of the contract award, grants, and the electronic payment processes. SAM information must be updated at least every (twelve) 12 months to remain active (for both grantees and subrecipients),
- Have a Unique Entity Identifier (UEI),
- Provide address for primary Virginia service location including nine-digit zip code,
- Provide executive compensation information for five (5) most highly compensated officers if **all** of the following apply:
  - Organization receives eighty percent (80%) or more of its annual gross revenues in federal awards,
  - Organization receives \$25,000,000 or more in annual gross revenues from federal awards,
  - Executive compensation has not previously been reported to any federal agency through any

other reporting system, if applicable.

CERTIFICATION – CONFLICT OF INTEREST: The Subrecipient warrants that it has fully complied with the *Code of Virginia* State and Local Government Conflict of Interests Act (<http://law.lis.virginia.gov/vacode/title2.2/chapter31/>).

CERTIFICATIONS REGARDING LOBBYING (2 CFR 200.450): By signing this Agreement, the Subrecipient authorized official certifies, to the best of his/her knowledge and belief, that no federal appropriated funds have been paid or will be paid, by or on behalf of the Subrecipient, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement in accordance with 2 CFR 200.450. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or intending to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the Subrecipient shall complete and submit Standard Form -LLL, "Disclosure Form to Report Lobbying," to VDH. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

SUBRECIPIENT MONITORING: The Department will monitor the Subrecipient to evaluate the progress and performance of the program. The Subrecipient shall furnish the Department on request information regarding payments claimed for services under this Agreement. The Department and federal personnel shall be provided access to all program-related records and facilities under reasonable request.

The Subrecipient shall retain all books, accounts, reports, files, and other records relating to the performance of the contract for a period of five (5) years after its completion. All accounting records must be supported by source documentation and retained in order to show for what purpose funds were spent. All such records shall be made available and produced for inspection when required by the Department.

Should an audit by authorized state or federal official result in disallowance of amounts previously paid to the Subrecipient, the Subrecipient shall reimburse the Department upon demand.

TIME AND EFFORT REPORTING: The Subrecipient shall comply with time and effort reporting as required by the federal Office of Management and Budget (OMB) 2 CFR Part 200 Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, and 2 CFR 200.430 Compensation-Personal Services. All employees paid in whole or in part from grant funds should prepare a timesheet indicating the hours worked on each specific project for each pay period. Based on these time sheets and hourly payroll cost for each employee, a statement indicating the distribution of payroll charges should be prepared and placed in the appropriate

files and shall be made available for inspection when required by the Department. The Subrecipient shall retain all books, reports, files, and other records relating to time and effort reporting for a period of five (5) years after completion.

AUDIT OF FINANCIAL RECORDS: The Subrecipient shall comply with the audit and reporting requirements defined by the Federal Office of Management and Budget (OMB) 2 CFR 200 Subpart F. Audit Requirements. The Subrecipient will, if total federal funds expended are \$750,000 or more a year, have a single or program-specific financial statement audit conducted for the annual period in compliance with the General Accounting Office audit standards. If there are no audit findings, a letter indicating no finds shall be submitted. The copy of the portion of the audit findings or the letter indicating no findings shall be sent to the Virginia Department of Health.

If total federal funds expended are less than \$750,000 for a year the Subrecipient must meet the above audit requirements or maintain financial records for such audit that are available for review by appropriate officials of the granting federal agency, pass-through entity, and the General Accounting Office.

APPROPRIATIONS: The Subrecipient acknowledges the understanding that this Agreement is subject to appropriations and constraints by the state or the federal government budget.

SMOKE-FREE ENVIRONMENT: Public Law 103-277, also known as the Pro-Children Act of 1994, requires that smoking not be permitted in any portion of any indoor facility owned or leased or contracted for by an entity and used routinely or regularly for the provision of health, day care, early childhood development services, education or library services to children under the age of eighteen (18), if the services are funded by federal programs either directly or through state or local governments, by federal grant, contract, loan, or loan guarantee. Failure to comply with the provisions of the law may result in the imposition of a civil monetary penalty of up to \$1,000 for each violation and/or the imposition of an administration compliance order on the responsible entity.

SUBCONTRACTS: No portion of the work shall be subcontracted without prior written consent of the purchasing agency. In the event that the Subrecipient desires to subcontract some part of the work specified herein, the Subrecipient shall furnish the Department names, qualifications, and experience of their proposed subrecipients and shall assure compliance with all requirements of the Agreement. Subcontracting with local health districts is not allowed.

INTEGRATION AND MODIFICATION: This Agreement constitutes the entire understanding of the parties as to the matters contained herein. No alteration, amendment or modification of this Agreement shall be effective unless in writing and signed by the duly authorized officials of both the Department and Subrecipient.

PRICE ADJUSTMENT: This is a cost reimbursement Agreement that is negotiated prior to annual renewal each year depending on the approved budget. The Department approved, price adjustment may be allowed at any time during the term of this Agreement.

CONFIDENTIALITY OF PROPRIETARY INFORMATION, DUPLICATION AND DISCLOSURE: The

Subrecipient agrees that proprietary information disclosed by the Department to the Subrecipient for the purpose of a Subrecipient Agreement shall be held in confidence and used only in the performance of the contract. No item designed for or by the Department shall be duplicated or furnished to others without prior written consent. All products and materials including but not limited to papers, data, reports, forms, records, materials, creations, or inventions relating to this Agreement are sole and exclusive property of the Department. All such materials shall be delivered to the Department in usable condition at any time requested by the Department.

DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS (2 CFR 200.213 and 2 CFR 180): By initialing this space [REDACTED] the Subrecipient authorized official certifies, to the best of his/her knowledge and belief that neither the Subrecipient nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction by any federal department or agency, in accordance with 2 CFR 200.213 and 2 CFR 180.

AUDIT AND ACCESS TO RECORDS PER 2 CFR 200.501 - 200.521: By initialing this space [REDACTED], the Subrecipient certifies that it will provide notice of any adverse findings which impact this subaward and will provide access to records as required by parts 2 CFR 200.336, 200.337, and 200.201 as applicable. If the Subrecipient is not subject to the Single Audit Act, then the Subrecipient will provide notice of the completion of any required audits and provide access to such audits upon request.

**VII. METHOD OF PAYMENT:** The Subrecipient will be paid for services rendered upon receipt of a valid invoice by the Department. During the final period (month) of each agreement year, the Subrecipient shall notify the Department of the estimated amount of expenditures for that period as of June 30, 2025. Within thirty (30) days after the end date of the budget period, the Subrecipient shall submit to the Department a final invoice with acceptable supporting documentation. If the estimated invoice exceeds that final invoice, the Subrecipient will return the unspent funds, as well as any interest earned on those funds, to the Department at the time the final invoice and supporting documentation is submitted to the Department. The Subrecipient shall not maintain cash on hand under this Agreement. If renewals are permitted under this Agreement, the Subrecipient and the Department shall negotiate the addition of any unspent allocation to the following year's budget; however, this is generally not permitted. Payment will be made in accordance with the Prompt Payment Act of Virginia.

Invoices, reports, and supporting documentation shall be submitted to: (Non-PHI information only)

Failure of the Subrecipient to submit reports, invoices, and acceptable supporting documentation within the prescribed time frame may forfeit Subrecipient's right to payment from the Department.

In the event the Subrecipient fails to fulfill the requirements set forth in the Scope of Services, the Subrecipient will be asked to submit a plan of corrective action within thirty (30) days, or a time

frame acceptable to both parties. The plan of corrective action will be mutually agreed to prior to implementation.

Invoicing Required Elements

- Required Certifications (2 CFR 200.415). Must include a signature from an authorized official.
- Current expense column (project costs broken down by ledger cost category)
- Cumulative expense column (project costs broken down by ledger cost category)
- Point of contact for invoicing questions (name, email address, phone number)
- Contract number
- Tax ID Number
- Invoice date
- Invoicing period of performance ○ Billing period to be no more frequent than monthly in accordance with 2 CFR 200.305
- Subrecipient point of contact for invoice questions
- Cost sharing amounts if applicable
- Program income amounts if applicable
- Invoice marked “final” if applicable ○ Final invoices shall be submitted no later than thirty (30) days after ending of contract period of performance

Payment will be made in accordance with the Prompt Payment Act of Virginia by check or EDI.

**VIII. TERMS AND CONDITIONS:**

- A. AUDIT:** The Subrecipient shall retain all books, records, and other documents relative to this Agreement for five (5) years after final payment, or until audited by the Commonwealth of Virginia, whichever is sooner. The Department, its authorized agents, and/or state auditors shall have full access to and the right to examine any of said materials during said period.
- B. APPLICABLE LAWS AND COURTS:** This Agreement shall be governed in all respects by the laws of the Commonwealth of Virginia, without regard to its choice of law provisions, and any litigation with respect thereto shall be brought in the circuit courts of the Commonwealth. The Department and the Subrecipient are encouraged to resolve any issues in controversy arising from the award of the contract or any contractual dispute using Alternative Dispute Resolution (ADR) procedures (*Code of Virginia*, § 2.2-4366). ADR procedures are described in Chapter 9 of the *Vendors Manual*. The Subrecipient shall comply with all applicable federal, state, and local laws, rules, and regulations.
- C. AVAILABILITY OF FUNDS:** It is understood and agreed between the parties herein that the Department shall be bound hereunder only to the extent that the legislature has appropriated funds that are legally available or may hereafter become legally available for the purpose of this Agreement.
- D. BACKGROUND CHECKS:**

1. The VDH may require a background check for Subrecipient staff assigned to any resulting agreement. The Subrecipient shall be required to pay for all background checks processed for staff assigned to any agreement resulting from this Agreement at a rate of \$50.00. Fees are on a per background check basis and will be invoiced by VDH Accounting. The Subrecipient employees will be required to complete a form granting authority to release information. The Subrecipient shall allow the VDH access to review Subrecipient staff personnel and employment records.
2. Background investigation results will be reviewed by the Department, and are not releasable to the Subrecipient, however, can be provided to the individual of the investigation upon a written request.
3. In the event agreement award is made prior to completion of background checks, any unfavorable results shall be subject to the terms and conditions of this Agreement.
4. In the event of any staff turnover or staff reassignments, the Subrecipient shall notify the Department and shall submit the appropriate background history questionnaire, authority for release of information and have fingerprints obtained for any proposed new staff member. This shall be in addition to the requirement to provide the required credentials information. The Department may remove any Subrecipient employee that the contract administrator feels threatens the health or safety of staff, security of the facility, or quality of the service provided by the Subrecipient.

**E. CANCELLATION OF AGREEMENT:** The Department reserves the right to cancel and terminate any resulting agreement, in part or in whole, without penalty, upon sixty (60) days written notice to the Subrecipient. In the event the initial contract period is for more than twelve (12) months, the resulting contract may also be terminated by the Subrecipient, without penalty, after the initial twelve (12) months of the contract period upon sixty (60) days written notice to the other party. Any contract cancellation notice shall not relieve the Subrecipient of the obligation to deliver and/or perform on all outstanding orders issued prior to the effective date of cancellation.

**F. CHANGES TO THE AGREEMENT:** The parties may agree in writing to modify the scope of the Subrecipient Agreement. An increase or decrease in the price to the Subrecipient of Agreement resulting from such modification shall be agreed to by the parties as a part of their written Agreement to modify the scope of the Subrecipient of Agreement.

**G. CONFIDENTIALITY OF PROPRIETARY INFORMATION AND PERSONALLY IDENTIFIABLE INFORMATION:** The Subrecipient assures that information and data obtained as to proprietary information and personal facts and circumstances related to patients or clients will be collected and held confidential, during and following the term of this Agreement, and will not be divulged without the individual's and the Department's written consent and only in accordance with federal law or the *Code of Virginia*. Subrecipients who utilize, access, or store proprietary information or personally identifiable information as part of the performance of an agreement are required to safeguard this information and



immediately notify the Department of any breach or suspected breach in the security of such information. Subrecipients shall allow the Department to both participate in the investigation of incidents and exercise control over decisions regarding external reporting. Subrecipients and their employees working on this project may be required to sign a confidentiality statement.

**H. DRUG-FREE WORKPLACE:** Applicable for all contracts/agreements over \$10,000:

During the performance of this Agreement, the Subrecipient agrees to (i) provide a drug-free workplace for the Subrecipient's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the Subrecipient's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the Subrecipient that the Subrecipient maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each Subrecipient or vendor.

For the purposes of this section, "drug-free workplace" means a site for the performance of work done in connection with a specific contract awarded to a subrecipient, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the Agreement.

**I. IMMIGRATION REFORM AND CONTROL ACT OF 1986:** Applicable for all contracts and agreements over \$10,000: By entering into a written agreement with the Commonwealth of Virginia, the Subrecipient certifies that the Subrecipient does not, and shall not during the performance of the contract for goods and services in the Commonwealth, knowingly employ an unauthorized alien as defined in the federal Immigration Reform and Control Act of 1986.

**J. RENEWAL OF AGREEMENT:** This Agreement may not be renewed.

**K. ANTIDISCRIMINATION:** By submitting this Agreement the Subrecipient certifies to the Commonwealth that they will conform to the provisions of the federal Civil Rights Act of 1964, as amended, as well as the Virginia Fair Employment Contracting Act of 1975, as amended, where applicable, the Virginians with Disabilities Act, the Americans with Disabilities Act and § 2.2-4311 of the *Virginia Public Procurement Act (VPPA)*. If the award is made to a faith-based organization, the organization shall not discriminate against any recipient of goods, services, or disbursements made pursuant to the contract on the basis of the recipient's religion, religious belief, refusal to participate in a religious practice, or on the basis of race, age, color, gender or national origin and shall be subject to the same rules as other organizations that contract with public bodies to account for the use of the funds provided; however, if the faith-based organization segregates public funds into

separate accounts, only the accounts and programs funded with public funds shall be subject to audit by the public body. (*Code of Virginia*, § 2.2-4343.1E).

As a governmental entity, the Subrecipient understands and agrees that in every contract or agreement over \$10,000 the provisions in 1. and 2. below apply:

1. During the performance of this Agreement, the Subrecipient agrees as follows:

a. The Subrecipient will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the Subrecipient. The Subrecipient agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

b. The Subrecipient, in all solicitations or advertisements for employees placed by or on behalf of the Subrecipient, will state that such Subrecipient is an equal opportunity employer.

c. Notices, advertisements, and solicitations placed in accordance with federal law, rule, or regulation shall be deemed sufficient for the purpose of meeting the requirements of this section.

d. If the Subrecipient employs more than five (5) employees, the Subrecipient shall (i) provide annual training on the contractor's sexual harassment policy to all supervisors and employees providing services in the Commonwealth, except such supervisors or employees that are required to complete sexual harassment training provided by the Department of Human Resource Management, and (ii) post the contractor's sexual harassment policy in (a) a conspicuous public place in each building located in the Commonwealth that the contractor owns or leases for business purposes and (b) the contractor's employee handbook.

e. The requirements of these provisions 1. and 2. are a material part of the Agreement. If the Subrecipient violates one of these provisions, the Commonwealth may terminate the affected part of this Agreement for breach, or at its option, the whole Agreement. Violation of one of these provisions may also result in debarment from state contracting regardless of whether the specific contract or agreement is terminated.

f. In accordance with Executive Order 61 (2017), a prohibition on discrimination by the contractor, in its employment practices, subcontracting practices, and delivery of goods or services, on the basis of race, sex, color, national origin, religion, sexual orientation, gender identity, age, political affiliation, disability, or veteran status, is hereby incorporated in this Agreement.

2. The Subrecipient will include the provisions of 1. above in every subcontract or purchase order over \$10,000, so that the provisions will be binding upon each subrecipient or vendor.

**L. ANTITRUST:** By entering into an agreement, the Subrecipient conveys, sells, assigns, and transfers to the Commonwealth of Virginia all rights, title, and interest in and to all causes of action it may now have or hereafter acquire under the antitrust laws of the United States and the Commonwealth of Virginia, relating to the particular goods or services purchased or acquired by the Commonwealth of Virginia under said agreement.

**M. PAYMENT:**

1. To Prime Subrecipient:

a. Invoices for items ordered, delivered, and accepted shall be submitted by the Subrecipient directly to the payment address shown on the purchase order/contract. All invoices shall show the state contract number and/or purchase order number; social security number (for individual subrecipients) or the federal employer identification number (for proprietorships, partnerships, and corporations).

b. Any payment terms requiring payment in less than thirty (30) days will be regarded as requiring payment thirty (30) days after invoice or delivery, whichever occurs last. This shall not affect offers of discounts for payment in less than thirty (30) days, however.

c. All goods or services provided under this Agreement or purchase order, that are to be paid for with public funds, shall be billed by the Subrecipient at the Agreement price, regardless of which public agency is being billed.

d. The following shall be deemed to be the date of payment: the date of postmark in all cases where payment is made by mail, or when offset proceedings have been instituted as authorized under the Virginia Debt Collection Act.

e. **Unreasonable Charges.** Under certain emergency procurements and for most time and material purchases, final job costs cannot be accurately determined at the time orders are placed. In such cases, Subrecipients should be put on notice that final payment in full is contingent on a determination of reasonableness with respect to all invoiced charges. Charges which appear to be unreasonable will be resolved in accordance with *Code of Virginia*, § 2.2-4363 and -4364. Upon determining that invoiced charges are not reasonable, the Department shall notify the Subrecipient of defects or improprieties in invoices within fifteen (15) days as required in *Code of Virginia*, § 2.2-4351. The provisions of this section do not relieve a department of its prompt payment obligations with respect to those charges which are not in dispute (*Code of Virginia*, § 2.2-4363).

2. To Subrecipients:

a. Within seven (7) days of the Subrecipient's receipt of payment from the Commonwealth, a Subrecipient awarded an agreement under this solicitation is hereby obligated:

(1) To pay the Subrecipient(s) for the proportionate share of the payment received for work performed by the Subrecipient(s) under the contract; or

(2) To notify the department and the Subrecipient(s), in writing, of the Subrecipient's intention to withhold payment and the reason.

b. The Subrecipient is obligated to pay the subrecipient(s) interest at the rate of one percent (1%) per month (unless otherwise provided under the terms of the Agreement) on all amounts owed by the Subrecipient that remain unpaid seven (7) days following receipt of payment from the Commonwealth, except for amounts withheld as stated in (2) above. The date of mailing of any payment by U. S. Mail is deemed to be payment to the addressee. These provisions apply to each sub-tier Subrecipient performing under the primary Agreement. A subrecipient's obligation to pay an interest charge to a Subrecipient may not be construed to be an obligation of the Commonwealth.

c. Each prime Subrecipient who wins an award in which provision of a SWaM procurement plan is a condition to the award, shall deliver to the contracting department or institution, on or before request for final payment, evidence, and certification of compliance (subject only to insubstantial shortfalls and to shortfalls arising from Subrecipient default) with the SWaM procurement plan. Final payment under the contract or agreement in question may be withheld until such certification is delivered and, if necessary, confirmed by the department or institution, or other appropriate penalties may be assessed in lieu of withholding such payment.

d. The Commonwealth of Virginia encourages Subrecipients to accept electronic and credit card payments.

**N. ASSIGNMENT OF AGREEMENT:** An agreement shall not be assignable by the Subrecipient in whole or in part without the written consent of the Commonwealth.

**O. DEFAULT:** In case of failure to deliver goods or services in accordance with the Agreement terms and conditions, the Commonwealth, after due oral or written notice, may procure them from other sources and hold the Subrecipient responsible for any resulting additional purchase and administrative costs. This remedy shall be in addition to any other remedies which the Commonwealth may have.

**P. INSURANCE:** By accepting funds pursuant to this Agreement, the Subrecipient certifies that it will have the following insurance coverage at the time the Agreement is awarded. For construction contracts, if any subrecipients are involved, the Subrecipient will have

workers' compensation insurance in accordance with §§ 2.2-4332 and 65.2-800 et seq. of the *Code of Virginia*. The bidder or offeror further certifies that the Subrecipient and any subrecipients will maintain this insurance coverage during the entire term of the Agreement and that all insurance coverage will be provided by insurance companies authorized to sell insurance in Virginia by the Virginia State Corporation Commission.

MINIMUM INSURANCE COVERAGES AND LIMITS:

1. Workers' Compensation - Statutory requirements and benefits. Coverage is compulsory for employers of three (3) or more employees, to include the employer. Subrecipients who fail to notify the Commonwealth of increases in the number of employees that change their workers' compensation requirements under the *Code of Virginia* during the course of the contract shall be in noncompliance with the Agreement.
2. Employer's Liability - \$100,000.
3. Commercial General Liability - \$1,000,000 per occurrence and \$2,000,000 in the aggregate. Commercial General Liability is to include bodily injury and property damage, personal injury and advertising injury, products and completed operations coverage. The Department shall be added as an additional insured to the policy by an endorsement.
4. Automobile Liability - \$1,000,000 combined single limit. (Required only if a motor vehicle not owned by the Commonwealth is to be used in the Agreement. Subrecipient must assure that the required coverage is maintained by the Subrecipient (or third-party owner of such motor vehicle).

<u>Profession/Service</u>	<u>Limits</u>
Accounting	\$1,000,000 per occurrence, \$3,000,000 aggregate
Architecture	\$2,000,000 per occurrence, \$6,000,000 aggregate
Asbestos Design, Inspection or Abatement Contractors	\$1,000,000 per occurrence, \$3,000,000 aggregate
Health Care Practitioner (to include Dentists, Licensed Dental Hygienists, Optometrists, Registered or Licensed Practical Nurses, Pharmacists, Physicians, Podiatrists, Chiropractors, Physical Therapists, Physical Therapist Assistants, Clinical Psychologists, Clinical Social Workers, Professional Counselors, Hospital, or Health Maintenance Organizations)	<i>Code of Virginia</i> §8.01-581-15 <a href="https://law.lis.virginia.gov/vacode/title8.01/chapter21.1/section8.01-581.15/">https://law.lis.virginia.gov/vacode/title8.01/chapter21.1/section8.01-581.15/</a>
Insurance/Risk Management	\$1,000,000 per occurrence, \$3,000,000 aggregate
Landscape/Architecture	\$1,000,000 per occurrence, \$1,000,000 aggregate
Legal	\$1,000,000 per occurrence, \$5,000,000 aggregate
Professional Engineer	\$2,000,000 per occurrence, \$6,000,000 aggregate
Surveying	\$1,000,000 per occurrence, \$1,000,000 aggregate

- Q. NONDISCRIMINATION OF SUBRECIPIENTS:** A subrecipient shall not be discriminated against in the solicitation or award of this Agreement because of race, religion, color, sex, sexual orientation, gender identity, national origin, age, disability, faith-based organizational status, any other basis prohibited by state law relating to discrimination in employment or because the bidder or offeror employs ex-offenders unless the state agency, department, or institution has made a written determination that employing ex-offenders on the specific agreement is not in its best interest. If the award of this Agreement is made to a faith-based organization and an individual, who applies for or receives goods, services, or disbursements provided pursuant to this Agreement objects to the religious character of the faith-based organization from which the individual receives or would receive the goods, services, or disbursements, the public body shall offer the individual, within a reasonable period of time after the date of his objection, access to equivalent goods, services, or disbursements from an alternative provider.
- R. WHISTLEBLOWER PROTECTIONS:** Congress has enacted the whistleblower protection statute 41 U.S.C. Section 4712 to encourage employees to report fraud, waste, and abuse without repercussions. This statute applies to all employees working for subrecipients, grantees, and subgrantees in accordance with this Agreement. All subrecipients, grantees, and subgrantees for federal grants and agreements are required to:
1. Inform their employees in writing of the whistleblower protections under 41 U.S.C. Section 4712 in the predominant native language of the workforce, to include the specific requirements of the statute, and
  2. Include this term and condition in any agreement made with a subrecipient or subgrantee.
- The employees' rights under 41 U.S.C. Section 4712 shall survive termination of this Agreement.
- S. SERVICE ORGANIZATION CONTROLS:** Service Organization Controls (SOC) may be required for this Agreement. Please visit the following link for requirements: [https://www.doa.virginia.gov/reference/CAPP/CAPP\\_Topics/Cardinal/10305.pdf](https://www.doa.virginia.gov/reference/CAPP/CAPP_Topics/Cardinal/10305.pdf)

**CERTIFICATION OF INTERNAL CONTROLS:** The Subrecipient shall have clearly delineated processes and procedures for the internal control of sensitive data and processes, which are any data and processes of which the compromising of confidentiality, integrity, and/or availability could have a material adverse effect on Commonwealth of Virginia interests, the conduct of Department programs, or to the privacy of which individuals are entitled, when such sensitive data or processes are related to the goods and/or services provided pursuant to this Agreement.

The Subrecipient shall provide evidence of compliant and ongoing internal control of sensitive data and processes through a standard methodology, such as but without limitation the American Institute of Certified Public Accountant (AICPA) Service Organization Control (SOC) Reports. The evidence of compliance shall be contained in a report describing the effectiveness of the Subrecipient's internal controls. The most recent version of the report shall be provided to the purchasing office upon request. Trade secrets or proprietary information contained within the report shall not be subject to

public disclosure under the Virginia Freedom of Information Act; however, the Subrecipient must invoke the protection of *Code of Virginia* § 2.2-4342F, in writing, prior to or upon submission of the report, and must identify the data or other materials to be protected and state the reasons why protection is necessary.

If deficiencies in the Subrecipient's internal control processes and procedures are described in the most recent version of the report, the Subrecipient shall automatically submit the report to the purchasing office within a timely manner and shall describe the corrective actions to be put into place by the Subrecipient to remedy the deficiencies. Failure to report and/or repair deficiencies in a timely manner shall be cause for the Commonwealth to make a determination of breach of contract/agreement.

The Subrecipient's obligations for certification of internal controls shall survive and continue after completion of this Agreement unless the Subrecipient certifies the destruction of the sensitive data at the end of the agreement term.

**T. CONTINUITY OF SERVICES:**

- a) The Subrecipient recognizes that the services under this Agreement are vital to the Department and must be continued without interruption and that, upon agreement expiration, a successor, either the Agency or another Subrecipient, may continue them. The Subrecipient agrees:
  - (i) To exercise its best efforts and cooperation to affect an orderly and efficient transition to a successor;
  - (ii) To make all Department owned facilities, equipment, and data available to any successor at an appropriate time prior to the expiration of the Agreement to facilitate transition to successor; and
  - (iii) That the Department contracting officer shall have final authority to resolve disputes related to the transition of the Agreement from the Subrecipient to its successor.
- b) The Subrecipient shall, upon written notice from the contract officer, furnish phase-in/phase-out services for up to ninety (90) days after this Agreement expires and shall negotiate in good faith a plan with the successor to execute the phase-in/phase-out services. This plan shall be subject to the contract officer's approval.
- c) The Subrecipient shall be reimbursed for all reasonable, pre-approved phase-in/phase-out costs (i.e., costs incurred within the agreed period after agreement expiration that result from phase-in, phase-out operations) and a fee (profit) not to exceed a pro rata portion of the fee (profit) under this Agreement. All phase-in/phase-out work fees must be approved by the contract officer in writing prior to commencement of said work.

**U. CIVILITY IN STATE WORKPLACES:** The Subrecipient shall take all reasonable steps to ensure that no individual, while performing work on behalf of the Subrecipient or any

subcontractor in connection with this Agreement (each, a “Contract Worker”), shall engage in 1) harassment (including sexual harassment), bullying, cyber-bullying, or threatening or violent conduct, or 2) discriminatory behavior on the basis of race, sex, color, national origin, religious belief, sexual orientation, gender identity or expression, age, political affiliation, veteran status, or disability.

The Subrecipient shall provide each Contract Worker with a copy of this section and will require Contract Workers to participate in agency training on civility in the state workplace if the Subrecipient’s (and any subcontractor’s) regular mandatory training programs do not already encompass equivalent or greater expectations. Upon request, the Subrecipient shall provide documentation that each Contract Worker has received such training.

For purposes of this section, “state workplace” includes any location, permanent or temporary, where a commonwealth employee performs any work-related duty or is representing his or her agency, as well as surrounding perimeters, parking lots, outside meeting locations, and means of travel to and from these locations. Communications are deemed to occur in a state workplace if the Contract Worker reasonably should know that the phone number, email, or other method of communication is associated with a state workplace or is associated with a person who is a state employee.

The Commonwealth of Virginia may require, at its sole discretion, the removal and replacement of any Contract Worker who the Commonwealth of Virginia reasonably believes to have violated this section.

This section creates obligations solely on the part of the Subrecipient. Employees or other third parties may benefit incidentally from this section and from training materials or other communications distributed on this topic, but the parties to this Agreement intend this section to be enforceable solely by the Department and not by employees or other third parties.

## **IX. CONFIDENTIALITY TERMS AND CONDITIONS:**

- A. DATA PRIVACY:** In accordance with § 2.2-2009 of the *Code of Virginia*, during the performance of this Agreement, Subrecipient is required at all times to comply with all applicable federal and state laws and regulations, including those pertaining to information security and privacy.
- B. CONFIDENTIALITY OF PERSONALLY IDENTIFIABLE INFORMATION:** The Subrecipient assures that information and data obtained as to personal facts and circumstances related to patients or clients will be collected and held confidential, during and following the term of this Agreement, and unless disclosure is required pursuant to court order, subpoena or other regulatory authority, disclosure will not be divulged without the individuals’ and the Department’s written consent, and only in accordance with federal law, including the *HIPAA Privacy Rule* or the *Code of Virginia*.



Subrecipients who utilize, access, or store personally identifiable information (PII), protected health information (PHI), and electronic protected health information (ePHI), in performance of a contract or agreement, and in support of the HIPAA Privacy and Security regulations, are required to safeguard PII and PHI by:

- a. implementing appropriate safeguards to prevent unauthorized use or disclosure of the information, including implementing requirements of the HIPAA Security Rule with regard to ePHI,
- b. ensure that any subcontractors the Subrecipient may engage on its behalf, and will have access to PHI, agrees to the same restrictions and conditions that apply to the business associate with respect to such information, and
- c. immediately notifies the Department of any breach, or suspected breach, in the security of such information.

The Subrecipient shall allow the Department to both participate in the investigation of incidents and exercise control over decisions regarding external reporting. Subrecipients and their employees working on this project may be required to sign a confidentiality statement.

- X. STATUS OF PERSONNEL:** Margaret Smigo, Environmental Health Manager for the Marina Program, has been designated as the Department administrator for this Agreement.

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed intending to be bound thereby. This Subrecipient Agreement becomes effective on the date of the last signature.

<b>HAMPTON ROADS SANITATION DISTRICT:</b>	<b>VIRGINIA DEPARTMENT OF HEALTH:</b>
By:	By:
Title:	Title:
Date:	Date:

Unique Entity Identifier: NLNKLTGGRKZ6  
(Required)

**Note: This public body does not discriminate against faith-based organizations in accordance with the *Code of Virginia*, § 2.2-4343.1 or against a bidder or offeror because of race, religion, color, sex, national origin, age, disability, sexual orientation, gender identity, political affiliation, or veteran status or any other basis prohibited by state law relating to discrimination in employment.**

**FOR COMPLETION BY SUBRECIPIENT:**

Legal Name    Hampton Roads Sanitation District					
City and Zip+4 (ZIP plus four lookup <a href="https://tools.usps.com/go/ZipLookupAction_input">https://tools.usps.com/go/ZipLookupAction_input</a> )					
Is the organization registered in SAM? Information, page 9). To remain active months at <a href="https://www.sam.gov/SAM/">https://www.sam.gov/SAM/</a> .	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%; text-align: center; padding: 5px;"> <input checked="checked" type="checkbox"/> X    YES         </td> <td style="width: 50%; text-align: center; padding: 5px;"> <input type="checkbox"/> NO (If no, see Section VI Federal         </td> </tr> <tr> <td style="padding: 5px;">complete</td> <td style="padding: 5px;">Award the registration and update at least every 12</td> </tr> </table>	<input checked="checked" type="checkbox"/> X    YES	<input type="checkbox"/> NO (If no, see Section VI Federal	complete	Award the registration and update at least every 12
<input checked="checked" type="checkbox"/> X    YES	<input type="checkbox"/> NO (If no, see Section VI Federal				
complete	Award the registration and update at least every 12				
<p>1. In the preceding fiscal year did your organization:</p> <ul style="list-style-type: none"> <li>a. Receive 80% or more of annual gross revenue from federal contracts, subcontracts, grants, loans, subgrants, and/or cooperative agreements; <b>and</b></li> <li>b. \$25,000,000 or more in annual gross revenues from federal contracts, subcontracts, grants, loans, subgrants, and/or cooperative agreements; <b>and</b></li> <li>c. The public does not have access to this information about the compensation of the senior executives of your organization through periodic reports filed under section 13(a) or 15(d) of the Securities and Exchange Act of 1934 (15 U.S.C. §§ 78m(a), 78o(d) or section 6104 of the Internal Revenue Code of 1986.</li> </ul> <p> <input type="checkbox"/> NO  <input type="checkbox"/> YES (The names and total compensation of the top 5 highly compensated officials must be reported to VDH. <i>(Total compensation includes cash and non-cash value earned during the past fiscal year including salary and bonus; awards of stock, stock options and stock appreciation rights; and severance and termination payments, and value of life insurance paid on behalf of the employee, and applicable OMB guidance).</i>)       </p>					

### AGENDA ITEM 3. – September 24, 2024

**Subject:** Surry Force Main and Pump Station-Dominion Power Extension  
Public Hearing on Determination of Public Need for Easement Acquisition and  
Easement Acquisition Resolution

**Recommended Actions:**

- a. Conduct public hearing.
- b. Adopt a Resolution approving the public use determination and directing acquisition by condemnation, or other means, of permanent easements for the Surry Force Main and Pump Station-Dominion Power Extension.

**CIP Project:** SU010400

**Regulatory Requirement:** None

**Project Description:** This project will provide a new 6.7 mile force main and pump station extending from the Surry Nuclear Power Plant to HRSD's Mt. Ray Pump Station. The project will be fully reimbursed through a cost-sharing agreement with Dominion Virginia Power. The attached [map](#) depicts the project location.

**Project Justification:** Dominion has contacted HRSD about abandoning their existing wastewater treatment plant and connecting to HRSD's Surry Interceptor Force Main at the Mount Ray Pump Station. This proposed 6-inch force main will be located along both public and private property along the suggested route. A pump station will be constructed at the Surry Nuclear Power Facility and will be ultimately owned and operated by HRSD. A multi-step cost sharing agreement process will be used to consider the feasibility of this project. Most of the project costs will be covered by Dominion.

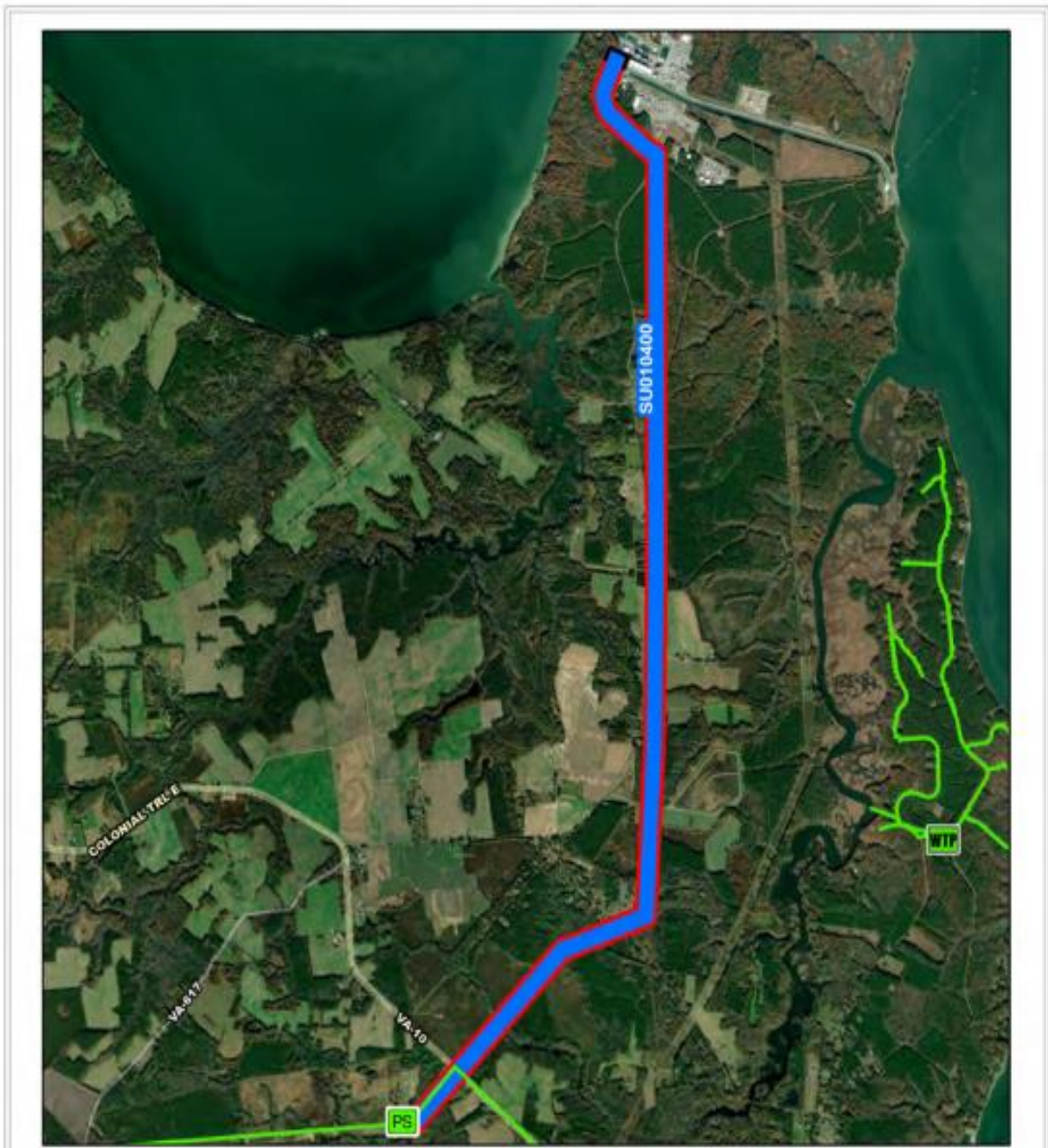
As part of the project, HRSD anticipates a total of 39 temporary and permanent easements; of which 14 remain unresolved.

A public hearing will be held to review the scope of the project, to define the public need of the project and identify the specific impact to the properties where condemnation may be considered and to receive public input. Attempts to purchase the properties from the owners have been unsuccessful. While a purchase is still possible, condemnation will likely be necessary to keep the project on schedule. The attached [Resolution](#) meets the requirements of the Code of Virginia should condemnation be necessary. The resolution has been reviewed by HRSD legal counsel.

**Analysis of Cost:** HRSD utilized appraisals obtained by the Timmons Group to determine market value of each easement/property.

Staff will provide a short overview for the Commission and the public immediately prior to the Public Hearing.

<b><u>Schedule:</u></b>	PER	June 2021
	Design	January 2023
	Bid	September 2025
	Construction	December 2023
	Project Completion	June 2025



**Surry Force Main and Pump Station-Dominion Power Extension -SU010400 – Location Map**



## **RESOLUTION**

***Providing for the acquisition by condemnation, if necessary,  
of parcels and/or easements with respect to  
Surry Force Main and Pump Station-Dominion Power Extension; CIP NO.SU010400***

**WHEREAS**, Hampton Roads Sanitation District (hereinafter "HRSD"), as part of its Capital Improvement Program, is proceeding with the project known as Surry Force Main and Pump Station-Dominion Power Extension Project (CIP No. SU010400) (the "Project"); and

**WHEREAS**, as a part of said Project, HRSD has determined that it is necessary to acquire certain property and easements (the "Property") by condemnation (or other means); and

**WHEREAS**, HRSD provided proper public notice, duly published in newspapers of general circulation in the County of Surry and held a public hearing on this matter at 1434 Air Rail Avenue, Virginia Beach, Virginia on September 24, 2024; and

**WHEREAS**, at the public hearing, HRSD allowed for public input with respect to the proposed condemnation, as well as considered information provided by HRSD staff, and considered whether the proposed use is a public use and whether the acquisition of the said Property by condemnation (or other means) should be authorized by HRSD; and

**WHEREAS**, after holding a public hearing on the matter, HRSD has determined that a public necessity exists for the acquisition of the Property for the Project is in the public interest;

**NOW, THEREFORE, BE IT RESOLVED**, on the 24th day of September, by the HRSD Commission that

1. The Project is approved as a public use, necessary for the construction of said Project within HRSD's system; and said Project is further declared to be in the public interest;
2. The acquisition of the Property by purchase or condemnation is necessary for the installation and operation of said Project and is hereby approved;
3. The Property will be used by HRSD in furtherance of its public functions pursuant to the Virginia Code, and that that the acquisition of the Property for that public use: (i) will serve only public interests which dominate any private gain; (ii) are sought for the primary purpose of serving public interests and not private financial gain, private benefit, or an increase in employment; and (iii) otherwise complies with §1-219.1 of the Virginia Code;
4. HRSD previously has made bona fide efforts to acquire the Property from the landowners, but, to date, those efforts have been ineffectual;

5. HRSD authorizes its staff and counsel, respectively, to take all actions for and on behalf of HRSD which are or may be appropriate or necessary for HRSD to acquire the Property through the exercise of its power of eminent domain, including but not limited to, the filing of any papers or pleadings with the applicable circuit court, and other actions related to the initiation of any legal proceedings necessary or appropriate to acquire the Property by eminent domain, *provided, however*, that nothing in this Resolution shall be construed as preventing the continued negotiation by HRSD, its staff, and/or counsel for the acquisition by purchase or other means of the Property before the initiation of any such eminent domain proceedings; and
6. This resolution shall take effect immediately upon its adoption.

The undersigned further certifies that the foregoing has been properly approved and adopted in accordance with all applicable requirements of the HRSD Commission.

[HRSD Seal]

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Willie Levenston, Jr., Vice-Chair

## AGENDA ITEM 4. – September 24, 2024

**Subject:** Chesapeake-Elizabeth Conveyance to Atlantic Treatment Plant Project  
Water Quality Improvement Fund Grant Agreement

**Recommended Action:** Approve the terms and conditions of the Water Quality Improvement Fund (WQIF) Point Source Grant and Operation and Maintenance Agreement with the Virginia Department of Environmental Quality (DEQ) for the Chesapeake-Elizabeth Conveyance to Atlantic Treatment Plant (ATP) Project and authorize the General Manager to execute same, substantially as presented, together with such changes, modifications and deletions as the General Manager may deem necessary or desirable.

**CIP Projects:**

CIP Number	CIP Name
CE010400	Independence Boulevard Pressure Reducing Station Modifications
CE011820	Chesapeake-Elizabeth Interceptor System Diversion Improvements
CE011821	Elbow Road Pressure Reducing Station (PRS)
CE011822	Providence Road PRS Upgrades and Interconnect Force Main
CE011823	Virginia Beach Boulevard Force Main Phase VI
CE011825	Salem Road Interceptor Force Main (IFM)
CE011826	Providence Road Off-Line Storage Facility
CE011827	Atlantic PRS Reliability Modifications
CE011828	Kempsville PRS Reliability Modifications
CE011829	Laskin Road PRS Reliability Modifications
CE011850	Atlantic Service Area Automated Diversion Facilities Phase I
CE012200	Pine Tree PRS Reliability Modifications
CE012400	Chesapeake-Elizabeth Treatment Plant Influent Force Main Modifications

**Agreement Description:** This agreement between DEQ and HRSD covers costs associated with conveying flow from the Chesapeake-Elizabeth Treatment Plant (CETP) to the ATP. This Grant will be the second conveyance-type WQIF grant HRSD has received. The Grant agreement requires HRSD to (1) continue to operate the conveyance infrastructure to the ATP for 20 years, and (2) annually certify that this project continues to result in a net reduction of total phosphorous, total nitrogen, or nitrogen-containing ammonia discharges. If these conditions are not met, HRSD will be responsible for repaying an unamortized portion of the grant. Staff finds these requirements satisfactory and has processes in place to ensure compliance.

The total value of this program of projects is \$104,368,627. The amount of the conveyance project eligible for grant reimbursement is capped at the lesser cost to upgrade the sending treatment facility (CETP) for advanced nutrient removal or the cost to convey the flow to ATP. In this case, the cost to convey the flow to ATP was the most economical solution and results in an award of 75% of eligible project costs. The total grant award for this project is \$78,276,470.

Improvement projects to ATP that were necessary to receive the flow from the CETP may also be partly eligible for the WQIF grant award. Those projects are still under review by DEQ and will be presented to the Commission at a later date as either an amendment to this grant award or a separate grant agreement. The grant application seeks reimbursement amount for this portion of the program in the amount of \$22,000,000.

The attached [Grant Agreement](#) was reviewed by staff and HRSD legal counsel.



**VIRGINIA WATER QUALITY IMPROVEMENT FUND  
POINT SOURCE GRANT AND  
OPERATION AND MAINTENANCE AGREEMENT  
Contract #440-S-23-04**

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THIS AGREEMENT is made as of this \_\_\_\_ day of \_\_\_\_\_, 2024, by and between the Director of the Virginia Department of Environmental Quality in his official capacity, or his designee (the “Director”), and the Hampton Roads Sanitation District (the “Grantee”).

Pursuant to the Virginia Water Quality Improvement Act of 1997, Chapter 21.1, Title 10.1 of the Code of Virginia (1950), as amended (the “Act”), the General Assembly created the Virginia Water Quality Improvement Fund (the “Fund”). The Director, in coordination with the Director of the Department of Conservation and Recreation, is authorized by the Act to make Water Quality Improvement grants related to point source pollution control, in accordance with guidelines established pursuant to Section 10.1-2129 of the Code, and enter into agreements with grantees under the Act which shall, in accordance with Sections 10.1-2130 and 10.1-2131, provide for the payment of the total amount of the grant and require proper long-term operation, monitoring and maintenance of funded projects.

The Grantee has been approved by the Director to receive a Grant from the Fund subject to the terms and conditions herein to finance seventy-five percent (75%) of the cost of the Eligible Project, which consists of the design and installation of wastewater conveyance infrastructure as described herein. The Grantee will use the Grant to finance that portion of the Eligible Project Costs not being paid for from other sources as set forth in the Total Project Budget in Exhibit B to this Agreement. Such other sources may include, but are not limited to, the Virginia Water Facilities Revolving Fund, Chapter 22, Title 62.1 of the Code of Virginia (1950), as amended.

As required by the Act, this Agreement provides for payment of the Grant, design and construction of the Project, and proper long-term operation, monitoring, and maintenance of the Project. This Agreement is supplemental to the State Water Control Law, Chapter 3.1, Title 62.1 of the Code of Virginia (1950), as amended, and it does not limit in any way the other water quality restoration, protection and enhancement, or enforcement authority of the Director, the State Water Control Board (the “Board”) or the Department of Environmental Quality (the “Department”).

**ARTICLE I  
DEFINITIONS**

1. The capitalized terms contained in this Agreement shall have the meanings set forth below unless the context requires otherwise and any capitalized terms not otherwise defined herein shall have the meaning assigned to such terms in the Act:

(a) “Agreement” means this Virginia Water Quality Improvement Fund Point Source Grant and Operation and Maintenance Agreement between the Director and the Grantee, together with any amendments or supplements hereto.

(b) “Authorized Representative” means any member, official or employee of the Grantee authorized by resolution, ordinance or other official act of the governing body of the Grantee to perform the act or sign the document in question.

(c) “Eligible Project” means the particular wastewater conveyance infrastructure project described in Exhibit A to this Agreement to be designed and constructed by the Grantee with,



among other monies, the Grant, with such changes thereto as may be approved in writing by the Director and the Grantee.

(d) “Eligible Project Costs” means costs of the individual items comprising the Eligible Project as permitted by the Act with such changes thereto as may be approved in writing by the Director and the Grantee.

(e) “Extraordinary Conditions” means unforeseeable or exceptional conditions resulting from causes beyond the reasonable control of the Grantee such as, but not limited to fires, strikes, acts of God, and acts of third parties that singly or in combination cause material breach of this Agreement.

(f) “Facility” means all plants, systems, unit processes, equipment or property related to the Project, and owned, operated, or maintained by the Grantee and used in connection with the treatment of wastewater.

(g) “Grant” means the particular grant described in Section 4.0 of this Agreement, with such changes thereto as may be approved in writing by the Director and the Grantee.

(h) “Monetary Assessment” means a contractual or stipulated penalty as described in Section 10.1-2130 of the Code.

(i) “Preliminary Engineering Proposal” means the engineering report and preliminary plans for the Project as described in 9 VAC 25-790-110, as modified by the final engineering design approved by the Department.

(j) “Total Eligible Project Budget” means the sum of the Eligible Project Costs as set forth in Exhibit B to this Agreement, with such changes thereto as may be approved in writing by the Director and the Grantee.

(k) “Total Project Budget” means the sum of the Eligible Project Costs and any ineligible costs that are solely the responsibility of the Grantee, as set forth in Exhibit B to this Agreement, with such changes thereto as may be approved in writing by the Director and the Grantee.

(l) “Project Engineer” means the Grantee’s engineer who must be a licensed professional engineer registered to do business in Virginia and designated by the Grantee as the Grantee’s engineer for the Project in a written notice to the Department.

(m) “Project Schedule” means the schedule for the Project as set forth in Exhibit C to this Agreement, with such changes thereto as may be approved in writing by the Director and the Grantee.

## **ARTICLE II**

### **SCOPE OF PROJECT**

2. The Grantee will cause the Project to be designed, constructed and placed in operation as described in Exhibit A to this Agreement and ensure the Project results in a net reduction in total phosphorus, total nitrogen, or nitrogen-containing ammonia discharges.

### **ARTICLE III** **SCHEDULE**

3. The Grantee will cause the Eligible Project to be designed, constructed and placed in operation in accordance with the Project Schedule in Exhibit C to this Agreement.

### **ARTICLE IV** **COMPENSATION**

4.0. **Grant Amount.** The total grant award from the Fund under this Agreement is **\$78,276,470.00** and represents the Commonwealth's seventy-five (75%) share of the Total Eligible Project Budget. Any material changes made to the Eligible Project after execution of this Agreement, which alters the Total Eligible Project Budget, will be submitted to the Department for review of grant eligibility. The amount of the grant award set forth herein may be modified from time to time by agreement of the parties to reflect changes to the Eligible Project or the Total Eligible Project Budget.

4.1. **Payment of Grant.** Payment of the Grant is subject to the availability of monies in the Fund allocated to point source pollution control and Section 4.4 herein. Disbursement of the Grant will be in accordance with the payment provisions set forth in Section 4.2 herein and the eligibility determinations made in the Total Project Budget (Exhibit B).

4.2. **Disbursement of Grant Funds.** The Department will disburse the Grant to the Grantee not more frequently than once each calendar month upon receipt by the Department of the following:

(a) A requisition for approval by the Department, signed by the Authorized Representative and containing all receipts, vouchers, statements, invoices or other evidence that costs in the Total Project Budget, including the applicable local share for the portion of the project covered by such requisition, have been incurred or expended and all other information called for by, and otherwise being in the form of, Exhibit D to this Agreement.

(b) If any requisition includes an item for payment for labor, contractors, builders or material men, a certificate must be signed by the Project Engineer stating that such work was actually performed or that such materials, supplies or equipment were actually furnished or installed in or about the construction of the Eligible Project.

Upon receipt of each such requisition and its accompanying certificate(s) and schedule(s), the Director shall request the Comptroller to issue a warrant directing the State Treasurer to disburse the Grant to the Grantee in accordance with such requisition to the extent approved by the Department.

Except as may otherwise be approved by the Department, disbursements shall be held at ninety-five percent (95%) of the total grant amount to ensure satisfactory completion of the Eligible Project. Upon receipt from the Grantee of the certificate specified in Section 4.5, and a final requisition detailing all retainage to which the Grantee is then entitled, the Director, subject to the provisions of this section and Section 4.3 herein, shall request the Comptroller to issue a warrant directing the State Treasurer to disburse to the Grantee the final payment from the Grant.

4.3 **Application of Grant Funds.** The Grantee agrees to apply the Grant solely and exclusively to the reimbursement of Eligible Project Costs.

4.4. **Availability of Funds.** The Director and Grantee recognize that the availability of monies in the Fund allocated to point source pollution control is subject to appropriation by the General

Assembly and allocations made by the Secretary of Natural and Historic Resources, and that at times there may not be sufficient monies in the Fund to permit prompt disbursement of grant funds due and owing the Grantee pursuant to this Agreement. To minimize the potential for such disruption in disbursements of grant funds and in satisfaction of its obligations under the Act, the Department covenants and agrees to (1) manage the allocation of grants from the Fund to ensure full funding of executed grant agreements, (2) forecast the estimated disbursements from the Fund in satisfaction of approved grants and make this forecast publicly available each year for use in the Commonwealth's budgetary process, and (3) promptly disburse to the Grantee any grant funds due and owing the Grantee pursuant to this Agreement when sufficient monies are available in the Fund to make such disbursements. The Department may determine that monies are not sufficient to promptly disburse grant funds when there are competing grant requests. To assist the Department in forecasting estimated disbursements, prior to September 30 of each year the Grantee will provide the Department with a written estimate of its projected expenditures on the Project during the next fiscal year using the same line item cost categories in the Project Budget.

4.5. Agreement to Complete Project. The Grantee agrees to cause the Project to be designed and constructed, as described in Exhibit A to this Agreement, and in accordance with (i) the schedule in Exhibit C to this Agreement and (ii) plans and specifications prepared by the Project Engineer and approved by the Department.

4.6 Notice of Substantial Completion. When the Project has been completed, the Grantee shall promptly deliver to the Department a certificate signed by the Authorized Representative and by the Project Engineer stating (i) that the Project has been completed substantially in accordance with the approved plans and specifications and addenda thereto, and in substantial compliance with all material applicable laws, ordinances, rules, and regulations; (ii) the date of such completion; (iii) that all certificates of occupancy and operation necessary for start-up for the Project have been issued or obtained; and (iv) the amount, if any, to be released for payment of the final Project Costs.

## **ARTICLE V** **PERFORMANCE**

5.0 The Grantee shall ensure that once completed the Project results in a net reduction in total phosphorous, total nitrogen, or nitrogen-containing ammonia discharges.

## **ARTICLE VI** **OPERATION AND MAINTENANCE**

6.0 No later than ninety (90) days after issuance of a Certificate to Operate for the Project, the Grantee shall submit to the Department, for review and approval, an operation and maintenance manual for the Project. As required by the Grantee's VPDES permit, the Facility shall be operated and maintained in a manner consistent with the operation and maintenance manual as approved by the Department.

## **ARTICLE VII** **MONITORING AND REPORTING**

7.0. Reporting. Beginning with the Project's first full calendar year of operation and each year thereafter, the Grantee will submit to the Department a certificate documenting that the Project remains in operation and that the Project maintains a net reduction in total phosphorus, total nitrogen or nitrogen containing ammonia discharges on or before February 1 of each year.

## **ARTICLE VI**

### **MATERIAL BREACH**

8.0. Material Breach. Any failure or omission by the Grantee to perform its obligations under this Agreement, unless excused by the Department, is a material breach.

8.1. Notice of Material Breach. If at any time the Grantee determines that it is unable to perform its obligations under this Agreement, the Grantee shall promptly provide written notification to the Department. This notification shall include a statement of the reasons it is unable to perform, any actions to be taken to secure future performance and an estimate of the time necessary to do so.

8.2. Monetary Assessments for Breach. In no event shall total Monetary Assessments pursuant to this Agreement exceed (i) \$6,277,773.00 annually or (ii) \$125,555,460.00 during the life of this Agreement. Monetary Assessments will be paid into the State Treasury and credited to the Fund. The Director's right to collect Monetary Assessments does not affect in any way the Director's right to secure specific performance of this Agreement using such other legal remedies as may otherwise be available. Within 90 days of receipt of written demand from the Director, the Grantee shall pay the following Monetary Assessments for the corresponding material breaches of this Agreement unless the Grantee asserts a defense pursuant to the requirements of Section 8.3 herein.

(a) For noncompliance with the obligation to ensure that the Project results in a net reduction in total phosphorous, total nitrogen, or nitrogen-containing ammonia discharges, an assessment in the amount of \$6,277,773.00 for each year of noncompliance.

(b) For noncompliance with any deadline in Exhibit C to this Agreement, Article VII of this Agreement, or the failure to submit the operations and maintenance manual in accordance with Article VI of this Agreement, an assessment in the amount of \$500 per day for the first 10 days of noncompliance, and \$1,000 for each day of noncompliance thereafter. Noncompliance with interim deadlines shall be excused where the Grantee complies with the final deadline in Exhibit C to this Agreement.

(c) For noncompliance with the obligation to operate and maintain the Project in a manner consistent with the manual pursuant to Article VI of this Agreement, an assessment in the amount of \$1,000 for each day of noncompliance.

8.3 Extraordinary Conditions.

(a) The Grantee may assert and it shall be a defense to any action by the Director to collect a Monetary Assessment or otherwise secure performance of this Agreement that the alleged non-performance was due to Extraordinary Conditions, provided that the Grantee:

(1) takes reasonable measures to effect a cure or to minimize any non-performance with the Agreement, and

(2) provides written notification to the Department of the occurrence of Extraordinary Conditions, together with an explanation of the events or circumstances contributing to such Extraordinary Conditions, no later than 5 days after the discovery of the Extraordinary Conditions and the resulting impacts on performance.

(b) If the Department disagrees that the events or circumstances described by the Grantee constitute Extraordinary Conditions, the Department must provide the Grantee with a written

objection within sixty (60) days of Grantee's notice under paragraph 8.3(a)(2), together with an explanation of the basis for its objection.

8.4 Resolution and Remedy. If no resolution is reached by the parties, the Director or Department may immediately pursue any remedy available at law or equity. In any such action, the Grantee shall have the burden of proving that the alleged noncompliance was due to Extraordinary Conditions. In addition to any other remedy that may be available to the Director or the Department, the Director or Department may bring an action in the Circuit Court of the City of Richmond to enforce this Agreement by injunction or mandamus or stipulated penalties or to recover part or all of the grant funds. No such remedy of the Director or Department shall be deemed to be exclusive or to stop any other such remedy or the bringing of an action to enforce this Agreement. The Grantee agrees to venue to any such action in the Circuit Court of the City of Richmond. The Grantee further agrees that, in light of the public purpose of this Project, any failure of the Grantee to perform its duties under this Agreement and any failure of the Project to meet the requirements of this Agreement or the requirements of any permit that may be issued by the Board regarding the Project constitutes irreparable harm to the Commonwealth for which the Director or Department lacks an adequate remedy at law.

## **ARTICLE IX**

### **GENERAL PROVISIONS**

9.0. Effect of the Agreement on Virginia Pollutant Discharge Elimination System (VPDES) Permit. This Agreement shall not be deemed to relieve the Grantee of its obligations to comply with the terms of its VPDES permit issued by the Board or Department.

9.1. Disclaimer. Nothing in this Agreement shall be construed as authority for either party to make commitments which will bind the other party beyond the covenants contained herein.

9.2. Non-Waiver. No waiver by the Director of any one or more defaults by the Grantee in the performance of any provision of this Agreement shall operate or be construed as a waiver of any future default or defaults of whatever character.

9.3. Integration and Modification. This Agreement constitutes the entire Agreement between the Grantee and the Director. No alteration, amendment or modification of the provisions of this Agreement shall be effective unless reduced to writing, signed by both the parties and attached hereto. The Department and the Grantee shall confer within six months after each reissuance of the Grantee's VPDES permit for the purpose of determining whether this Agreement should be modified or terminated. This Agreement may be modified by agreement of the parties for any purpose, provided that any significant modification to this Agreement must be preceded by public notice of such modification.

9.4. Collateral Agreements. Where there exists any inconsistency between this Agreement and other provisions of collateral contractual agreements which are made a part of this Agreement by reference, the provisions of this Agreement shall control.

9.5. Non-Discrimination. In the performance of this Agreement, the Grantee warrants that it will not discriminate against any employee, or other person, on account of race, color, sex, religious creed, ancestry, age, national origin or other non-job related factors. The Grantee agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination clause.

9.6. Conflict of Interest. The Grantee warrants that it has fully complied with the Virginia Conflict of Interest Act as it may apply to this Agreement.

9.7. Applicable Laws. This Agreement shall be governed in all respects whether as to validity, construction, capacity, performance or otherwise, by the laws of the Commonwealth of Virginia. The Grantee further agrees to comply with all laws and regulations applicable to the Grantee's performance of its obligations pursuant to this Agreement.

9.8. Records Availability. The Grantee agrees to maintain complete and accurate books and records of the Project Costs, and further, to retain all books, records, and other documents relative to this Agreement for three (3) years after final payment. The Department, its authorized agents, and/or State auditors will have full access to and the right to examine any of said materials during said period. Additionally, the Department and/or its representatives will have the right to access work sites during normal business hours, after reasonable notice to the Grantee, for the purpose of ensuring that the provisions of this Agreement are properly carried out.

9.9. Severability. Each paragraph and provision of this Agreement is severable from the entire Agreement; and if any provision is declared invalid, the remaining provisions shall nevertheless remain in effect.

9.10. Eligible Project to be Technically Sound. The Grantee agrees that all projects will be undertaken and completed in a manner that is technically sound, meaning that they must meet design and construction methods and use materials that are approved, codified, recognized, fall under standard or acceptable levels of practice, or otherwise are determined to be generally acceptable by the design and construction industry.

9.11. Notices. All notices given hereunder shall be in writing and shall be sent by United States certified mail, return receipt requested, postage prepaid, and shall be deemed to have been received at the earliest of: (a) the date of actual receipt of such notice by the addressee, (b) the date of the actual delivery of the notice to the address of the addressee set forth below, or (c) five (5) days after the sender deposits it in the mail properly addressed. All notices required or permitted to be served upon either party hereunder shall be directed to:

Department: Virginia Department of Environmental Quality  
CWFAP  
P.O. Box 1105  
Richmond, VA 23218  
Attn: WQIF Program Manager

Grantee: Hampton Roads Sanitation District  
1434 Air Rail Avenue  
Virginia Beach, VA 23455  
Attn: Jay Bernas, P.E.

9.12. Successors and Assigns Bound. This Agreement shall extend to and be binding upon the parties hereto, and their respective legal representatives, successors, and assigns.

9.13. Exhibits. All exhibits to this Agreement are incorporated herein by reference.

9.14. Termination. This Agreement shall terminate 20 years after the Agreement is executed by both parties or by an earlier date by agreement of the parties; provided, however, that except for termination for cause due to Material Breach, the Director's obligation under Section 4.1 herein to pay the Grant amount shall survive termination if such amount has not been paid in full as of the termination date.

**ARTICLE X**  
**COUNTERPARTS**

10.1. This Agreement may be executed in any number of Counterparts, each of which shall be an original and all of which together shall constitute but one and the same instrument.

WITNESS the following signatures, all duly authorized.

**VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY**

By: \_\_\_\_\_  
Michael S. Rolband, PE, PWD, PWS Emeritus, Director

Date: \_\_\_\_\_

**GRANTEE'S AUTHORIZED REPRESENTATIVE**

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

Date: \_\_\_\_\_

**EXHIBIT A**  
**PROJECT DESCRIPTION**

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Grantee: Hampton Roads Sanitation District

Grant: #440-S-23-04

This project consists of closure of the Chesapeake-Elizabeth Treatment Plant (CETP) and conveyance of flow to the Atlantic Treatment Plant (ATP) with additional interceptor infrastructure. A total of 13 eligible project components were constructed to achieve the overall project goal. The diversion was implemented, the project was completed, CETP was taken offline December 15, 2021, and DEQ approved the Closure Plan on November 14, 2022. By taking the Chesapeake Elizabeth Treatment Plant offline and diverting flows to the Atlantic Treatment Plant, approximately 1.5 million pounds of Total Nitrogen and 50,000 pounds of Total Phosphorous were removed from the Lower James River Basin.



**EXHIBIT B**  
**TOTAL PROJECT BUDGET**

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Grantee: Hampton Roads Sanitation District

Grant: #440-S-23-04

The following budget reflects the completed costs associated with eligible project components.

<b>Cost Category / Project Name</b>	<b>Total Project Cost</b>	<b>WQIF Eligible Project Cost</b>	<b>WQIF Cost Share %</b>	<b>WQIF Grant Amount</b>
CETP Conveyance to ATP Project	\$184,433,916.00	\$104,368,627.00	75.00%	\$78,276,470.00
<b>TOTALS</b>	<b>\$184,433,916.00</b>	<b>\$104,368,627.00</b>		<b>\$78,276,470.00</b>

**EXHIBIT C**  
**PROJECT SCHEDULE**

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Grantee: Hampton Roads Sanitation District

Grant: #440-S-23-04

The Grantee began diverting flow in December 2021 and completed the overall project in December 2022. Approved CTCs and CTOs were received for the various eligible project components as indicated in the table below:

<b>Project Component</b>	<b>Activity</b>	<b>Date/Duration</b>
Elbow Road Pressure Reducing Station (PRS)	Certificate to Construct Certificate to Operate	January 2020 May 2022
Providence Road PRS Upgrades and Interconnect Force Main	Certificate to Construct Certificate to Operate	December 2018 July 2021
Virginia Beach Boulevard Force Main Phase VI	Certificate to Construct Certificate to Operate	June 2019 January 2022
Providence Road Off-Line Storage Facility	Certificate to Construct Certificate to Operate	October 2019 October 2021
Overall CETP to ATP project	Project Start Date Closure Plan Approved Project Completion Date	June 2016 November 2022 December 2022

**EXHIBIT D**  
**REQUISITION FOR REIMBURSEMENT**  
(To be on Grantee's Letterhead)

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Department of Environmental Quality  
Clean Water Financing and Assistance Program  
P.O. Box 1105  
Richmond, VA 23218  
Attn.: WQIF Program Manager

RE:    **Virginia Water Quality Improvement Fund Grant**  
      WQIF Contract #440-S-23-04

Dear Program Manager:

      This requisition, Number \_\_\_\_\_, is submitted in connection with the referenced Grant Agreement between the Director of the Virginia Department of Environmental Quality and the [insert name of the Grantee]. The effective date of the grant agreement is [insert date of grant agreement].

      Unless otherwise defined in this requisition, all capitalized terms used herein shall have the meaning set forth in Article I of the Grant Agreement. The undersigned Authorized Representative of the Grantee hereby requests disbursement of grant proceeds under the Grant Agreement in the amount of \$\_\_\_\_\_ for the purposes of payment of the Eligible Project Costs as set forth on Schedule I attached hereto.

      Copies of invoices relating to the items for which payment is requested are attached.

      The undersigned certifies that the amounts requested by this requisition will be applied solely and exclusively to the reimbursement of the Grantee for the payment of Eligible Project Costs.

      This requisition includes (if applicable) an accompanying Certificate of the Project Engineer as to the performance of the work.

Sincerely,

\_\_\_\_\_  
(Authorized Representative of the Grantee)

\_\_\_\_\_  
Date

Attachments

**SCHEDULE 1**  
**VIRGINIA WATER QUALITY IMPROVEMENT FUND**  
**FORM TO ACCOMPANY REQUEST FOR REIMBURSEMENT**

SCHEDULE 1  
VIRGINIA WATER QUALITY IMPROVEMENT FUND  
FORM TO ACCOMPANY REQUEST FOR DISBURSEMENT

Requisition # \_\_\_\_\_

Grantee: Hampton Roads Sanitation District

GRANT #440-S-23-04

CERTIFYING SIGNATURE: \_\_\_\_\_

TITLE: \_\_\_\_\_ DATE: \_\_\_\_\_

Cost Category	Total Project Cost	WQIF Eligible Project Cost	WQIF Cost Share (75%)	Previous Grant Disbursements	Total Expenditures This Period	Grant Disbursement This Period	Grant Balance
CETP Conveyance to ATP Project	\$184,433,916.00	\$104,368,627.00	\$78,276,470.00	\$0.00	\$0.00	\$0.00	\$78,276,470.00
TOTALS:	\$184,433,916.00	\$104,368,627.00	\$78,276,470.00	\$0.00	\$0.00	\$0.00	\$78,276,470.00

Total Grant Amount:	\$78,276,470.00
Previous Grant Disbursements:	\$0.00
This Grant Request:	\$0.00
Total Grant Requested to Date:	\$0.00
Grant Proceeds Remaining:	\$78,276,470.00

CERTIFICATE OF THE PROJECT ENGINEER  
FORM TO ACCOMPANY REQUEST FOR REIMBURSEMENT

Grantee: Hampton Roads Sanitation District

Grant: #440-S-23-04

This Certificate is submitted in connection with Requisition Number \_\_\_\_\_, dated \_\_\_\_\_, 20\_\_, submitted by the [insert name of the Grantee] (the "Grantee") to the Virginia Department of Environmental Quality. Capitalized terms used herein shall have the same meanings set forth in Article I of the Grant Agreement referred to in the Requisition.

The undersigned Project Engineer for \_\_\_\_\_ hereby certifies that insofar as the amounts covered by this Requisition include payments for labor or to contractors, builders or material men, such work was actually performed or such materials, supplies, or equipment were actually furnished to or installed in the Project.

\_\_\_\_\_  
(Project Engineer)

\_\_\_\_\_  
(Date)

**EXHIBIT E**  
**FORMULA FOR CALCULATING MONETARY ASSESSMENT**  
**IN THE EVENT OF EARLY TERMINATION**

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Grantee: Hampton Roads Sanitation District

Grant: #440-S-23-04

Early termination in the operation of the conveyance project shall result in a monetary penalty using the formula below.

$$MA = CYR \times AnPay$$

where:

MA	=	Monetary Assessment
CYR	=	Contract Years Remaining
AnPay	=	Annual payment on grant; assumes principal payments amortized over 20 years and an interest rate of 5%. Using these assumed values leads to a “cost recovery factor” of 0.0802. The “cost recovery factor” times the grant amount yields the annual payment penalty amount.

**Values used for Grant #440-S-23-04:**

Total grant for conveyance project	= \$78,276,470
Useful Service Life	= 20 years
Interest Rate	= 5%

**Calculated (assumes grant 100% paid):**

Expected performance	= 20 years
AnPay	= \$6,277,773

## AGENDA ITEM 5. – September 24, 2024

**Subject:** Water Infrastructure and Innovation Act (WIFIA) Tranche 3 Resolution

**Recommended Action:** Approve the terms and conditions of the resolution authorizing the issuance of a subordinate wastewater bond, not to exceed \$268,087,870 in principal amount for the purpose of providing funds, with other available money, to pay the costs of the implementation of Tranche 3 Project as set forth in the WIFIA Master Financing Agreement (MFA), fixing the principal installment maturity dates, the interest rate, the redemption provisions and certain other details of the bond; directing the authentication and delivery of the bond; authorizing the execution of a financing agreement with the Environmental Protection Agency (EPA) and authorize the General Manager to execute same, substantially as presented, together with such changes, modifications and deletions as the General Manager may deem necessary.

**Brief:** The WIFIA program was designed to accelerate investment in our nation's water infrastructure by providing long-term, low-cost supplemental loans for regionally and nationally significant projects. The WIFIA loans allow borrowers to lock-in a rate equivalent to the US Treasury rate at closing. Similar to the Virginia Clean Water Revolving Loans, WIFIA loan requirements may increase total project costs as they require Davis-Bacon wages, American Iron and Steel and involve federal environmental reviews.

The attached [resolution](#) for the third tranche of Sustainable Water Initiative For Tomorrow (SWIFT) projects funded through the WIFIA MFA is scheduled to close on September 30, 2024. The loan is set at a not-to-exceed amount of \$268,087,870. The interest rate will be set at closing. We estimate the rate will be around 4.1 percent or less for 34 years.

This tranche of WIFIA funding will cover the cost of SWIFT program construction in fiscal year 2026. Closing the Tranche 3 loan now provides HRSD with optionality to adjust to market conditions while seeking the lowest cost of capital. Staff will monitor market conditions and, when funding needs arise, either draw from the Tranche 3 loan, refinance the loan prior to drawing funds, or issue revenue bonds in lieu of utilizing WIFIA financing. The current estimated savings of utilizing the Tranche 3 WIFIA funds, over revenue bonds, is \$24 million over the life of the loan. The total savings of the WIFIA financing program is estimated at \$266 million.

Closing the Tranche 3 now, versus waiting until the funds are needed, is a low-cost option that provides an effective hedge against future interest rate fluctuations. If interest rates increase post-closing, HRSD will benefit from having the current locked-in rate or, if determined to be more advantageous, issue revenue bonds as was done earlier this year. If interest rates decrease post-closing, HRSD has the option to refinance the Tranche 3 loan as long as we have not used any of the loan proceeds and the refinancing results in an appropriate level of savings as determined by the WIFIA Program Administrator.

These documents have been reviewed by HRSD bond counsel, general counsel, and Environmental Protection Agency (EPA) counsel.

**Attachments:**

- Resolution
- 12<sup>th</sup> Supplemental Trust Agreement
- Tranche 3 Term Sheet
- Amended Master Financing Agreement
- Tranche 3 Loan Agreement
- Amended and Restated Intercreditor Agreement

**Hampton Roads Sanitation District  
Resolution of  
September 24, 2024**

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**HAMPTON ROADS SANITATION DISTRICT COMMISSION**

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**RESOLUTION  
AUTHORIZING THE ISSUANCE AND AWARD OF  
A HAMPTON ROADS SANITATION DISTRICT  
WASTEWATER REVENUE BOND**

**Adopted September 24, 2024**

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Resolution

**RESOLUTION AUTHORIZING THE ISSUANCE AND  
AWARD OF A HAMPTON ROADS SANITATION DISTRICT  
WASTEWATER REVENUE BOND.**

**WHEREAS**, the Hampton Roads Sanitation District (the “District”) was duly created under and pursuant to Chapter 407 of the Acts of Assembly of Virginia of 1940, and the Hampton Roads Sanitation District Commission (the “Commission”), created by said Chapter 407, is the governing body of the District;

**WHEREAS**, by virtue of Chapter 66 of the Acts of Assembly of Virginia of 1960, as amended (the “Act”), the Commission is authorized and empowered, among other things:

(a) to construct, improve, extend, enlarge, reconstruct, maintain, equip, repair and operate a wastewater treatment system or systems, either within or without or partly within and partly without the corporate limits of the District;

(b) to issue, at one time or from time to time, revenue bonds, notes or other obligations of the District payable solely from the special funds provided under the authority of the Act and pledged for their payment, for the purpose of paying the cost of a wastewater treatment system or systems and extensions and additions thereto, and providing funds for any other authorized purpose of the Commission; and

(c) to fix, revise, charge and collect rates, fees and other charges for the use of, and for the services and facilities furnished or to be furnished by, any such wastewater treatment system;

**WHEREAS**, as provided by the Act, the District is constituted a political subdivision of the Commonwealth of Virginia and established as a governmental instrumentality to provide for the public health and welfare;

**WHEREAS**, the Commission has previously authorized the execution and delivery of a Trust Agreement, dated as of October 1, 2011 (the “Original Trust Agreement”), as amended and restated as of March 1, 2016, as amended, and as amended and restated as of July 1, 2024, and effective on July 16, 2024, and as further amended and supplemented (as so amended, restated and supplemented, the “Trust Agreement”), each by and between the District and The Bank of New York Mellon Trust Company, N.A., as successor trustee (in such capacity, the “Trustee”), to provide for the issuance of Bonds (as defined in the Trust Agreement) and indebtedness secured on a parity with such Bonds, payable from the Net Revenues (as defined in the Trust Agreement) of the District;

**WHEREAS**, the Congress of the United States of America enacted the Water Infrastructure Finance and Innovation Act, as amended by Section 1445 of the Fixing America’s Surface Transportation Act of 2015, as further amended by Section 5008 of the Water Infrastructure Improvements For the Nation Act of 2016 and by Section 4201 of America’s Water Infrastructure Act of 2018 (collectively, as the same may be amended from time to time, the “WIFIA Act”), which is codified as 33 U.S.C. §§ 3901-3915;

**WHEREAS**, the WIFIA Act authorizes the United States Environmental Protection Agency, an agency of the United States of America, acting by and through the Administrator of the Environmental Protection Agency (the “WIFIA Lender”) to enter into agreements to provide financial assistance with one or more eligible entities to make secured loans with appropriate security features to finance a portion of the eligible costs of projects eligible for assistance;

**WHEREAS**, the District has determined to undertake its Sustainable Water Initiative for Tomorrow (SWIFT) Program (the “SWIFT Program”) at a total cost currently estimated to be \$2,955,135,183 and has requested financial assistance from the WIFIA Lender in a total amount currently estimated to be \$1,322,713,055 to pay a portion of the eligible costs of the projects under the SWIFT Program, which assistance is expected to be allocated across multiple loan tranches;

**WHEREAS**, on September 28, 2020, the District, acting by and through the Commission, and the WIFIA Lender, entered into that certain WIFIA Master Agreement (the “WIFIA Master Agreement”), pursuant to which the WIFIA Lender agreed to make funding available to the District for a portion of the eligible project costs of the projects under the SWIFT Program;

**WHEREAS**, the WIFIA Lender and the Commission desire to amend and restate the WIFIA Master Agreement to reflect certain conforming changes to the recent amendment and restatement of the Trust Agreement and to make certain other certain amendments;

**WHEREAS**, the District, acting by and through the Commission, and the WIFIA Lender desire to (a) execute that certain WIFIA Loan Term Sheet dated the date of execution and delivery thereof (the “WIFIA Tranche 3 Term Sheet”), and (b) enter into that certain WIFIA Loan Agreement, dated the date of execution and delivery thereof (the “WIFIA Tranche 3 Loan Agreement”), both addressing the terms by which the WIFIA Lender will make a loan to the District in an aggregate amount equal to the principal advances thereunder up to \$268,087,870 to pay a portion of the eligible costs related to the Sustainable Water Initiative for Tomorrow (SWIFT) – Tranche 3 Project (the “Tranche 3 Project”);

**WHEREAS**, the Commission has determined to provide for the issuance under the Trust Agreement at this time of a revenue bond of the District (the “Tranche 3 Bond”) in the form of a draw-down bond, in an amount equal to the aggregate amount of principal advances made thereunder up to \$268,087,870 to evidence the District’s payment obligation to the WIFIA Lender, in its capacity as the Holder, for amounts drawn, from time to time, under the WIFIA Tranche 3 Loan Agreement;

**WHEREAS**, the Commission desires to amend and restate the Intercreditor Agreement dated as of September 28, 2020 (the “Intercreditor Agreement”), by and among the District, the Trustee and the Virginia Resources Authority, to reflect certain conforming changes to the recent amendment and restatement of the Trust Agreement;

**WHEREAS**, there have been presented at this meeting draft copies of the following documents relating to the issuance and sale of the Tranche 3 Bond and the financing of the Tranche 3 Project:

(a) an amended and restated Master WIFIA Agreement (the “Amended and Restated Master WIFIA Agreement”);

(b) a Twelfth Supplemental Trust Agreement (the “Supplemental Agreement”), by and between the District and the Trustee, supplementing the Trust Agreement and relating to the Tranche 3 Bond;

(c) the WIFIA Tranche 3 Term Sheet;

(d) the WIFIA Tranche 3 Loan Agreement, which is subject to the terms of the WIFIA Master Agreement; and

(e) an amended and restated Intercreditor Agreement (the “Amended and Restated Intercreditor Agreement”);

**Now, Therefore, the HAMPTON ROADS SANITATION DISTRICT COMMISSION DOES HEREBY RESOLVE, as follows:**

**Section 1. Definitions.** Capitalized words and terms used in this Resolution and not defined herein shall have the same meanings in this Resolution as such words and terms are given in the Trust Agreement and the Supplemental Agreement.

**Section 2. Authorization of Bond.** In order to provide funds required to finance a portion of the eligible costs of the Tranche 3 Project and pay certain expenses incurred in connection with the Tranche 3 Bond by the District and pursuant to the authority granted to it by the Act, the Commission hereby authorizes the issuance of a Hampton Roads Sanitation District Wastewater Revenue Bond (Federally Taxable), in a principal amount equal to the aggregate amount of principal advances made thereunder up to Two Hundred Sixty-Eight Million Eighty-Seven Thousand Eight Hundred Seventy and 00/100 Dollars (\$268,087,870.00), subject to adjustment as described below, dated as of such date, designated with such an appropriate series designation for the calendar year in which issued, payable in installments in such amounts and on such dates in such years not later than forty (40) years from the date of its issuance, and bearing interest at such rate set forth on such Tranche 3 Bond, on a federally taxable basis, all as determined by the District Representatives (as hereinafter defined), any of whom may act, and in accordance with the Supplemental Agreement.

The Commission hereby determines that the issuance of the Tranche 3 Bond in accordance with the terms authorized above will be in the best interests of the District.

The Tranche 3 Bond shall be issued as a single, registered bond, in an initial denomination of \$268,087,870 and shall be numbered R-1. Payments of principal of and interest on the Tranche 3 Bond shall be made by the District or the Trustee to the registered owner of the Tranche 3 Bond in such manner as is set forth in the Trust Agreement and Section 8(c) of the WIFIA Master Agreement.

**Section 3. Method of Sale.** The Tranche 3 Bond shall be issued, sold and awarded to the WIFIA Lender pursuant to the terms of this resolution, the WIFIA Tranche 3 Loan Agreement and the Supplemental Agreement.

**Section 4. Redemption.** The Tranche 3 Bond shall be subject to optional redemption prior to maturity as set forth in the Supplemental Agreement.

**Section 5. Application of Bond Proceeds.** The proceeds of the Tranche 3 Bond shall be applied as provided in Article III of the Supplemental Agreement.

**Section 6. Authorization of Basic Documents.** The forms, terms and provisions of each of the Amended and Restated Master WIFIA Agreement, the Supplemental Agreement, the WIFIA Tranche 3 Term Sheet, the WIFIA Tranche 3 Loan Agreement and the Amended and Restated Intercreditor Agreement (together, the “Basic Documents”) are hereby approved in all respects, and the District Representatives are hereby authorized and directed to execute and deliver the Basic Documents in substantially the forms presented to this meeting, or as otherwise provided by this Resolution, together with such updates, changes, modifications and deletions as such District Representatives, with the advice of counsel, may deem necessary or desirable; such execution and delivery shall be conclusive evidence of the approval and authorization thereof by the District.

**Section 7. Execution of Bond.** The form of the Tranche 3 Bond set forth in the Supplemental Agreement is hereby approved in all respects, and the Chair or Vice Chair and the Secretary or any Assistant Secretary of the Commission are hereby authorized and directed to execute, by manual or facsimile signature, as provided in such form of the Tranche 3 Bond, and to deliver to the Bond Registrar for authentication on behalf of the District, the Tranche 3 Bond in definitive form, with such updates, changes, modifications and deletions as they, with the advice of counsel, may deem necessary or desirable and consistent with the Amended and Restated Trust Agreement and the Supplemental Agreement; such execution and delivery shall be conclusive evidence of the approval and authorization thereof by the District.

**Section 8. Authorization and Delivery of the Tranche 3 Bond.** Upon execution in the form and manner set forth in the Trust Agreement, the Tranche 3 Bond and the Supplemental Agreement shall be deposited with the Bond Registrar for authentication, and the Bond Registrar is hereby authorized and directed to authenticate such Tranche 3 Bond and, upon the due and valid execution of the Basic Documents, the Trustee shall cause the Bond Registrar to deliver the Tranche 3 Bond to the WIFIA Lender, in accordance with and subject to the provisions of Section 209 of the Trust Agreement and Section 2.1 of the Supplemental Agreement.

**Section 9. District Representatives.** The Chair of the Commission, Vice Chair of the Commission, General Manager/Chief Executive Officer and the Deputy General Manager/Chief Financial Officer are each hereby appointed a “District Representative” within the meaning of such term under the Trust Agreement, with full power to carry out the duties set forth therein. Any one or more of the District Representatives may act for and on behalf of the District.

**Section 10. Further Actions.** The District Representatives are each authorized and directed (without limitation except as may be expressly set forth herein) to take such action and to execute and deliver any such documents, certificates, undertakings, agreements or other instruments as they, with the advice of counsel, may deem necessary or desirable to effectuate the transactions contemplated by the Basic Documents and the Trust Agreement.

**Section 11. Certificates of District Representative(s).** Each District Representative may execute a certificate or certificates evidencing the determinations made or other actions

carried out pursuant to the authority granted in this Resolution, and any such certificate shall be conclusive evidence of the actions or determinations as stated therein.

**Section 12. Ratification of Prior Acts.** The actions heretofore taken by the District Representatives in connection with the proposed issuance of the Tranche 3 Bond are hereby ratified.

**Section 13. Sunset Provision.** The Tranche 3 Bond may not be issued pursuant to the authority provided by this Resolution after June 30, 2025.

**Rate Schedule.** Incorporated herein the same as if set forth verbatim herein is the “Rate Schedule, Fiscal Year 2025” for the use of, and for the services and facilities furnished or to be furnished by, the wastewater disposal system or systems and the wastewater improvements, for which the Tranche 3 Bond is to be issued. Such schedule appears in full on the District’s website, [www.hrsd.com](http://www.hrsd.com).

**Section 14. Effective Date.** This Resolution shall take effect immediately upon its passage.

[END OF RESOLUTION]

**Adopted by the Hampton Roads Sanitation District Commission on September 24, 2024.**

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Willie Levenston, Jr., Vice Chair

**TWELFTH SUPPLEMENTAL TRUST AGREEMENT**

**by and between**

**HAMPTON ROADS SANITATION DISTRICT**

**and**

**THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A.,  
as Trustee**

**Dated as of \_\_\_\_\_, 2024**

**Securing**

**Maximum Principal Amount of**

**\$268,087,870.00**

**Wastewater Revenue Bond  
Series 2024C  
(Federally Taxable)**

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#### EXHIBIT A – FORM OF 2024C Bond

**THIS TWELFTH SUPPLEMENTAL TRUST AGREEMENT**, dated for convenience of reference as of \_\_\_\_\_, 2024 (this “**Supplemental Trust Agreement**”), by and between

**HAMPTON ROADS SANITATION DISTRICT,**

a political subdivision of the Commonwealth of Virginia, by Hampton Roads Sanitation District Commission, the governing body of said District, and

**THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A.,**

a national banking association duly incorporated and validly existing under the laws of the United States of America and having a Corporate Trust Office in Pittsburgh, Pennsylvania, which is authorized under such laws to exercise trust powers and is subject to examination by federal authority (said banking corporation and any bank or trust company becoming successor Trustee under this Supplemental Trust Agreement being hereinafter sometimes called the “**Trustee**”), supplements the Trust Agreement, dated as of October 1, 2011 (the “**Original Trust Agreement**”), as amended and restated as of March 1, 2016, as amended, and as further amended and restated as of July 1, 2024, and effective on July 16, 2024 (the “**Amended and Restated Trust Agreement**”), between the District and The Bank of New York Mellon Trust Company, N.A. (the Amended and Restated Trust Agreement, as amended and supplemented from time to time, the “**Trust Agreement**”),

**WITNESSETH:**

**WHEREAS**, the Hampton Roads Sanitation District (the “**District**”) was duly created under and pursuant to Chapter 407 of the Acts of Assembly of Virginia of 1940, and the Hampton Roads Sanitation District Commission (the “**Commission**”), created by said Chapter 407, is the governing body of the District; and

**WHEREAS**, by virtue of Chapter 66 of the Acts of Assembly of Virginia of 1960, as amended (said Chapter 66 as so amended being hereinafter sometimes called the “**Enabling Act**”), the Commission is authorized and empowered, among other things:

(a) to construct, improve, extend, enlarge, reconstruct, maintain, equip, repair and operate a wastewater treatment system or systems, either within or without or partly within and partly without the corporate limits of the District,

(b) to issue, at one time or from time to time, revenue bonds, notes or other obligations of the District payable solely from the special funds provided under the authority of the Enabling Act and pledged for their payment, for the purpose of refunding the outstanding bonds, including the payment of any redemption premium thereon, paying the cost of a wastewater treatment system or systems and extensions and additions thereto, and providing funds for any other authorized purpose of the Commission, and

(c) to fix, revise, charge and collect rates, fees and other charges for the use of, and for the services and facilities furnished or to be furnished by, any such wastewater treatment system; and

**WHEREAS**, the District has applied for financial assistance from the United States Environmental Protection Agency, an agency of the United States of America, acting by and through the Administrator of the Environmental Protection Agency (the “**WIFIA Lender**”) in order to finance eligible projects which qualify for financing under the Water Infrastructure Finance and Innovation Act, as amended by Section 1445 of the Fixing America’s Surface Transportation Act of 2015, as further amended by Section 5008 of the Water Infrastructure Improvements for the Nation Act of 2016 and by Section 4201 of America’s Water Infrastructure Act of 2018; and

**WHEREAS**, the District, acting by and through the Commission, and the WIFIA Lender entered into that certain WIFIA Master Agreement, dated as of September 28, 2020, as amended and restated as of \_\_\_\_\_, 2024<sup>1</sup> (the “**WIFIA Master Agreement**”), pursuant to which the District may request certain loans for eligible projects under a master program; and

**WHEREAS**, the District, acting by and through the Commission, and the WIFIA Lender desire to enter into that certain WIFIA Loan Agreement, dated as of the date of execution and delivery thereof (the “**WIFIA 2024 Loan Agreement**”), pursuant to which the WIFIA Lender will make a loan to the District in the form of principal advances in an aggregate amount up to \$268,087,870.00 (the “**WIFIA Loan**”) to pay a portion of the eligible costs related to the Sustainable Water Initiative for Tomorrow (SWIFT) – Tranche 3 Project (as further described in the WIFIA 2024 Loan Agreement, the “**Project**”); and

**WHEREAS**, the Commission has determined to provide for the issuance under the Trust Agreement at this time of a revenue bond of the District (the “**2024C Bond**”) in the form of a draw-down bond, in a principal amount equal to the aggregate amount of draws thereunder up to Two Hundred Sixty-Eight Million Eighty-Seven Thousand Eight Hundred Seventy Dollars (\$268,087,870.00), to evidence the District’s payment obligation to the WIFIA Lender, in its capacity as the Holder of the 2024C Bond, for amounts drawn, from time to time, under the WIFIA 2024 Loan Agreement; and

**WHEREAS**, the District is entering into this Supplemental Trust Agreement for the purpose of fixing the details of the 2024C Bond; and

**WHEREAS**, the Trustee has accepted the trusts created by this Supplemental Trust Agreement and in evidence thereof has joined in the execution hereof;

**NOW, THEREFORE, THIS SUPPLEMENTAL TRUST AGREEMENT WITNESSETH:** that in consideration of the premises, of the acceptance by the Trustee of the trusts hereby created, and of the purchase and acceptance of the 2024C Bond by the Holder (as defined in the Trust Agreement) thereof, and also for and in consideration of the sum of One Dollar in hand paid by the Trustee at or before the execution and delivery of this Supplemental Trust Agreement, and for other good and valuable consideration, the receipt whereof is hereby acknowledged, and for the purpose of fixing and declaring the terms and conditions upon which the 2024C Bond is to be issued, authenticated, delivered, secured and accepted by all persons who shall from time to time be or become the Holder thereof, and to secure the payment of the 2024C

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<sup>1</sup> NTD: Modify as appropriate if Amendment No. 1 is incorporated in the Amended and Restated Master or stands alone.

Bond under this Supplemental Trust Agreement and the interest thereon according to its tenor, purport and effect, and to secure the performance and observance of all the covenants, agreements and conditions, express or implied, therein and herein contained, the Commission has executed and delivered this Supplemental Trust Agreement in the name of and on behalf of the District, and has agreed and covenanted, and does hereby agree and covenant, with the Trustee and with the Holder, from time to time, of the 2024C Bond, or any part thereof, as follows:

(end of Preamble)

## ARTICLE I

### DEFINITIONS

**Section 1.1 Meaning of Words and Terms.** In addition to words and terms defined in the Trust Agreement, which words and terms are used herein as therein defined, or elsewhere in this Supplemental Trust Agreement, the following words and terms as used in this Supplemental Trust Agreement shall have the following meanings, unless some other meaning is plainly intended.

**“2024C Bond”** has the meaning ascribed to such term in the recitals hereto.

**“Amended and Restated Trust Agreement”** has the meaning ascribed to such term in the preamble hereto.

**“Commission”** has the meaning ascribed to such term in the recitals hereto.

**“Default Rate”** means an interest rate equal to the sum of (a) the applicable interest rate on the 2024C Bond *plus* (b) two hundred (200) basis points, but in no event greater than the maximum interest rate permitted by law.

**“District”** has the meaning ascribed to such term in the recitals hereto.

**“Electronic Means”** means, e-mail, secure electronic transmission containing applicable authorization codes, passwords or authentication keys issued by the Trustee, or another method or system specified by the Trustee as available for use in connection with its services under this Supplemental Trust Agreement.

**“Enabling Act”** has the meaning ascribed to such term in the recitals hereto.

**“First Payment Date”** means the January 1 or July 1 immediately following the Initial Disbursement Date with respect to the WIFIA Loan.

**“Instructions”** has the meaning ascribed to such term in Section 6.1.

**“Interest Payment Date”** means each January 1 and July 1, commencing on the First Payment Date.

**“Maximum Principal Amount”** means \$268,087,870.00.

**“Original Trust Agreement”** has the meaning ascribed to such term in the preamble hereto.

**“Outstanding WIFIA Loan Balance”** means the aggregate principal amount of the WIFIA Loan drawn by the District, *minus* the aggregate principal amount of the WIFIA Loan repaid by the District, as determined in accordance with Section 8(d) of the WIFIA Master Agreement.

**“Payment Date”** means each Interest Payment Date and each Principal Payment Date.

**“Principal Payment Date”** means January 1, 2039, July 1, 2046, and each January 1 and July 1 thereafter until the final maturity date of January 1, 2059, unless adjusted in accordance with the WIFIA 2024 Loan Agreement.

**“Project”** has the meaning ascribed to such term in the recitals hereto.

**“Substantial Completion”** means the stage at which the Project is able to perform the functions for which it was designed.

**“Substantial Completion Date”** means the date on which the District certifies to the WIFIA Lender, with evidence satisfactory to the WIFIA Lender, that Substantial Completion for the Project has occurred.

**“Trust Agreement”** has the meaning ascribed to such term in the preamble hereto.

**“Trustee”** has the meaning ascribed to such term in the preamble hereto.

**“WIFIA 2024 Loan Agreement”** has the meaning ascribed to such term in the recitals hereto.

**“WIFIA Lender”** has the meaning ascribed to such term in the recitals hereto.

**“WIFIA Loan”** has the meaning ascribed to such term in the recitals hereto.

**“WIFIA Master Agreement”** has the meaning ascribed to such term in the recitals hereto.

**Section 1.2 Rules of Construction.** This Supplemental Trust Agreement shall have the same rules of construction as are provided for the Trust Agreement in its Section 102. Any provision of this Supplemental Trust Agreement referring to actions to be taken by the District shall be deemed to refer to the Commission to the extent that the Enabling Act authorizes the Commission to take such action instead of the District.

(end of Article I)

## ARTICLE II

### DETAILS OF THE 2024C Bond

#### Section 2.1 Details of 2024C Bond.

(a) The 2024C Bond shall be issued in accordance with and secured by the Trust Agreement, including in particular the provisions of Section 209 of the Trust Agreement, as supplemented by this Supplemental Agreement, as a Current Interest Bond, in a principal amount not to exceed the Maximum Principal Amount, for the purposes set forth in Section 209 of the Trust Agreement and the Preamble of this Supplemental Trust Agreement. The 2024C Bond shall be issued as a single, registered bond, shall be dated its date of delivery, shall be designated the “Hampton Roads Sanitation District (Virginia) Wastewater Revenue Bond, Series 2024C (Federally Taxable),” shall be numbered R-1, and shall be issued in substantially the form set forth in Exhibit A hereto.

(b) Upon the written request of the District, the Bond Registrar shall authenticate and deliver the 2024C Bond as a draw-down bond to the WIFIA Lender in the Maximum Principal Amount.

(c) Interest on the 2024C Bond shall accrue and be computed on the Outstanding WIFIA Loan Balance from time to time at the rate set forth in the 2024C Bond on the basis of a three hundred sixty (360) day year comprised of twelve (12) thirty (30) day months; provided that upon the occurrence of an event of default under Section 17(a) of the WIFIA Master Agreement, interest on the 2024C Bond shall be computed on the Outstanding WIFIA Loan Balance at the Default Rate in accordance with the provisions of Section 6 of the WIFIA Master Agreement.

(d) Payments due on the 2024C Bond shall be made as follows: (i) semi-annual payments of interest on each Interest Payment Date, (ii) payments of principal on each Principal Payment Date, and (iii) payments of any other amounts on each other date on which payment thereof is required to be made under the WIFIA Master Agreement or under the WIFIA 2024 Loan Agreement; provided in the case of each of the payments referenced in the preceding clauses (i), (ii) and (iii), such payments are made in accordance with the WIFIA Master Agreement and the WIFIA 2024 Loan Agreement.

(e) Any payment in respect of the 2024C Bond shall be treated as a payment in respect of the WIFIA Loan, and any prepayment of principal in respect of the WIFIA Loan shall be treated as a redemption in respect of the 2024C Bond.

(f) Any adjustments or revisions to the loan amortization schedule set forth in Exhibit B to the WIFIA 2024 Loan Agreement shall be deemed to update the amortization schedule attached as Schedule A to the 2024C Bond *mutatis mutandis*.

(g) The provisions for the manner and place of payment of the 2024C Bond shall be in accordance with Section 8(c) of the WIFIA Master Agreement, including the wire instructions set forth in Schedule IV thereof, as the same may be modified in writing from time to time by the WIFIA Lender.



(h) In accordance with the provisions of Section 502 of the Trust Agreement, the District shall make payments directly to the Trustee for deposit to the Bond Fund established in the Trust Agreement in amounts sufficient to pay, when due, the principal of and interest on the 2024C Bond.

(i) In accordance with the provisions of Section 503 and, if applicable, Section 504 of the Trust Agreement, the Trustee shall make payments, when due, of principal of and interest on the 2024C Bond from the funds on deposit in the Bond Fund established in the Trust Agreement.

**Section 2.2 Optional Prepayment.** From any available moneys, the District may, at its option, prepay the 2024C Bond, in whole or in part (and, if in part, the amounts thereof to be prepaid shall be determined by the District; provided that such prepayments shall be in principal amounts of at least \$1,000,000 or any integral multiple of \$1.00 in excess thereof), without penalty or premium, in accordance with Section 9 of the WIFIA Master Agreement and Section 9 of the WIFIA 2024 Loan Agreement.

**Section 2.3 Prepayment Notice.** The District shall send notice of any prepayment of the 2024C Bond to the WIFIA Lender not less than ten (10) days or more than thirty (30) days prior to the date set for prepayment, unless otherwise agreed by the WIFIA Lender. Such notice shall identify the principal amount to be prepaid and the date for such prepayment. At any time between delivery of such written notice and the applicable optional prepayment, the District may, without penalty or premium, rescind the announced optional prepayment by further written notice to the WIFIA Lender. The failure by the District to make any optional prepayment shall not constitute a breach or default under the Trust Agreement, the WIFIA Master Agreement or the WIFIA 2024 Loan Agreement. Upon making any prepayment, the District shall promptly give notice of the same to the Trustee.

**Section 2.4 Cancellation.** Upon the payment or prepayment of the 2024C Bond in full in immediately available funds, the WIFIA Lender shall surrender the 2024C Bond to the Trustee, and the Trustee shall cancel the 2024C Bond upon surrender thereof.

**Section 2.5 Mandatory Prepayment.** The 2024C Bond is subject to acceleration and mandatory prepayment on the terms and conditions set forth in Section 803 of the Trust Agreement and Section 9(a) of the WIFIA Master Agreement, respectively.

**Section 2.6 WIFIA Lender Consent Required for Defeasance.** Notwithstanding the provisions of Section 1201 of the Trust Agreement, the 2024C Bond may not be defeased before its maturity or redemption date without the prior written consent of and upon the terms set by the WIFIA Lender.

(end of Article II)

## **ARTICLE III**

### **APPLICATION OF THE PROCEEDS OF THE 2024C Bond**

#### **Section 3.1 Application of the Proceeds of the 2024C Bond.**

(a) The proceeds of all principal advances under the 2024C Bond shall be requisitioned as and when needed from the WIFIA Lender in accordance with Section 4 of the WIFIA Master Agreement and Section 4 of the WIFIA 2024 Loan Agreement. Such proceeds shall be used to pay, or reimburse the District for, Eligible Project Costs (as defined in the WIFIA Master Agreement); provided that such costs shall also constitute, for purposes of the Trust Agreement, Issuance Costs of the 2024C Bond or Capital Improvement Program Costs related to the Project. Such proceeds, as and when requisitioned, shall be disbursed directly by the WIFIA Lender to the District, and no deposit shall be required to the Issuance Fund or the Construction Fund established under the Trust Agreement.

(b) No proceeds of the 2024C Bond or other funds of the District shall be deposited in the Debt Service Reserve Fund established in the Trust Agreement upon delivery of the 2024C Bond. If the District shall hereafter elect to fund such Debt Service Reserve Fund, the provisions of Section 504 of the Trust Agreement shall control.

(end of Article III)

## ARTICLE IV

### RELEASE

**Section 4.1 Release of this Supplemental Trust Agreement.** When (a) the 2024C Bond secured hereby shall have become due and payable in accordance with its terms or otherwise as provided in this Supplemental Trust Agreement and the whole amount of the principal and the interest so due and payable upon the 2024C Bond shall have been paid in full in immediately available funds, and (b) sufficient funds shall also have been provided or provision made for paying all other obligations payable hereunder by the District, then and in that case the right, title and interest of the Trustee in the funds and accounts mentioned in this Supplemental Trust Agreement shall thereupon cease, determine and become void and, on demand of the District and upon being furnished with an opinion, in form and substance satisfactory to the Trustee, of counsel approved by the Trustee, to the effect that all conditions precedent to the release of this Supplemental Trust Agreement and the payment of the 2024C Bond have been satisfied, the Trustee shall release this Supplemental Trust Agreement and shall execute such documents to evidence such release as may reasonably be required by the District and, subject to the provisions of the Trust Agreement, shall turn over to the District any surplus in, and all balances remaining in, all funds and accounts related to the 2024C Bond. Otherwise, this Supplemental Trust Agreement shall be, continue and remain in full force and effect.

(end of Article IV)

## ARTICLE V

### ADDITIONAL COVENANTS RELATED TO WIFIA LENDER

**Section 5.1 Application of Proceeds Received from the VRA.** Any proceeds received by the Trustee from the VRA pursuant to the terms of that certain Intercreditor Agreement, dated as of September 28, 2020, as amended and restated as of \_\_\_\_\_, 2024, by and among the District, the Trustee and the VRA, shall be applied by the Trustee promptly, on a *pro rata* basis among all of the Bonds in accordance with the provisions of Section 805(a) of the Trust Agreement.

**Section 5.2 Additional Restriction on the Incurrence of Additional Indebtedness.** The District covenants that, for purposes of demonstrating compliance with Section 704 of the Trust Agreement (Limitations on Indebtedness), clause (iv) of Section 704(a) of the Trust Agreement shall be deemed not to apply during the Master Availability Period (as defined in the WIFIA Master Agreement) or while there are Outstanding any Bonds (including the 2024C Bond) held by the WIFIA Lender.

**Section 5.3 Modifications to this Article V.** Notwithstanding anything to the contrary in Section 1102 of the Trust Agreement or any other provision of the Trust Agreement or this Supplemental Trust Agreement, neither Section 5.1 above nor Section 5.2 above shall be modified without the prior written consent of the WIFIA Lender.

(end of Article V)

## ARTICLE VI

### MISCELLANEOUS

**Section 6.1 Manner of Giving Notice.** All notices, demands and requests to be given to or made hereunder by the District or the Trustee shall be given or made in writing and shall be deemed to be properly given or made if sent by United States registered mail, return receipt requested, postage prepaid, addressed as follows:

(a) As to the District—

Hampton Roads Sanitation District  
1434 Air Rail Avenue  
Virginia Beach, Virginia 23455  
Attention: General Manager/Chief Executive Officer

(b) As to the Trustee—

The Bank of New York Mellon Trust Company, N.A.  
500 Ross Street, 12<sup>th</sup> Floor  
Pittsburgh, Pennsylvania 15262  
Attention: Corporate Trust Department

(c) As to the Bond Registrar—

The Bank of New York Mellon Trust Company, N.A.  
500 Ross Street, 12<sup>th</sup> Floor  
Pittsburgh, Pennsylvania 15262  
Attention: Corporate Trust Department

Any such notice, demand or request may also be transmitted to the appropriate above-mentioned party by telecopy or telephone and shall be deemed to be properly given or made at the time of such transmission if, and only if, such transmission of notice shall be confirmed in writing and sent as specified above.

The Trustee agrees to accept and act upon instructions or directions, including funds transfer instructions (“**Instructions**”), pursuant to the Trust Agreement or any other document reasonably relating to the 2024C Bond sent by the District by Electronic Means, provided, however, that the District shall provide to the Trustee an incumbency certificate listing designated persons with the authority to provide such Instructions and containing specimen signatures of such designated persons, which incumbency certificate shall be amended whenever a person is to be added or deleted from the listing. If the District elects to give the Trustee Instructions by Electronic Means and the Trustee, in its discretion, elects to act upon such Instructions, the Trustee’s understanding of such Instructions shall be deemed controlling. The District understands and agrees that the Trustee cannot determine the identity of the actual sender of such Instructions and that the Trustee shall conclusively presume that directions that purport to have been sent by a designated person listed on the incumbency certificate provided to the Trustee have been sent by such designated person. The District shall be responsible for ensuring that only designated persons

transmit such Instructions to the Trustee and that the District and all designated persons are solely responsible to safeguard the use and confidentiality of applicable user and authorization codes, passwords or authentication keys upon receipt by the District. The Trustee shall not be liable for any losses, costs or expenses arising directly or indirectly from the Trustee's reliance upon and compliance with such Instructions notwithstanding such Instructions conflict or are inconsistent with a subsequent written Instruction. The District agrees (i) to assume all risks arising out of the use of such Electronic Means to submit Instructions to the Trustee, including without limitation the risk of the Trustee acting on unauthorized Instructions, and the risk of interception and misuse by third parties; (ii) that it is fully informed of the protections and risks associated with the various methods of transmitting Instructions to the Trustee and that there may be more secure methods of transmitting Instructions than the method(s) selected by the District; (iii) that the security procedures (if any) to be followed in connection with its transmission of Instructions provide to it a commercially reasonable degree of protection in light of its particular needs and circumstances; and (iv) to notify the Trustee immediately upon learning of any compromise or unauthorized use of the security procedures.

Any of such addresses may be changed at any time upon written notice of such change sent by United States registered mail, postage prepaid, to the other parties by the party effecting the change.

All documents received by the Trustee under the provisions of this Supplemental Trust Agreement, or photographic copies thereof, shall be retained in its possession until this Supplemental Trust Agreement shall be released under the provisions of Section 4.1 of this Supplemental Trust Agreement, subject at all reasonable times to the inspection of the District and any Holder and the agents and representatives thereof.

**Section 6.2 Substitute Mailing.** If, because of the temporary or permanent suspension of postal service, the District or the Trustee shall be unable to mail any notice required to be given by the provisions of this Supplemental Trust Agreement, the District or the Trustee shall give notice in such other manner as in the judgment of the District or the Trustee shall most effectively approximate mailing (but, if by unsecured facsimile or electronic transmission, then in compliance with and subject to the provisions of Section 6.1 above) and the giving of notice in such manner shall for all purposes of this Supplemental Trust Agreement be deemed to be in compliance with the requirement for the mailing thereof.

**Section 6.3 Parties, Bond Registrar and the Holder of 2024C Bond Alone Have Rights under Trust Agreement.** Except as herein otherwise expressly provided, nothing in this Supplemental Trust Agreement, express or implied, is intended or shall be construed to confer upon any person, firm or corporation, other than the Trustee, the Bond Registrar, the District and the Holder of the 2024C Bond, any right, remedy or claim, legal or equitable, under or by reason of this Supplemental Trust Agreement or any provision being intended to be and being for the sole and exclusive benefit of the Trustee, the District, the Bond Registrar and the Holder of the 2024C Bond.

**Section 6.4 Effect of Partial Invalidity.** In case any one or more of the provisions of this Supplemental Trust Agreement or the 2024C Bond shall for any reason be held to be illegal or invalid, such illegality or invalidity shall not affect any other provisions of this Supplemental

Trust Agreement or the 2024C Bond, but this Supplemental Trust Agreement and the 2024C Bond shall be construed and enforced as if such illegal or invalid provisions had not been contained therein. In case any covenant, stipulation, obligation or agreement contained in the 2024C Bond or this Supplemental Trust Agreement shall for any reason be held to be in violation of law, then such covenant, stipulation, obligation or agreement shall be deemed to be the covenant, stipulation, obligation or agreement of the Commission or the District to the full extent permitted by law.

**Section 6.5 Effect of Covenants; Governing Law.** All covenants, stipulations, obligations and agreements of the District contained in this Supplemental Trust Agreement shall be deemed to be covenants, stipulations, obligations and agreements of the District to the full extent permitted by the Constitution and laws of the Commonwealth of Virginia. This Supplemental Trust Agreement shall be governed by the laws of the Commonwealth of Virginia without regard to choice of law principles.

**Section 6.6 No Recourse Against Members, Officers or Employees of Commission or District.** No recourse under, or upon, any statement, obligation, covenant, or agreement contained in this Supplemental Trust Agreement, or in the 2024C Bond hereby secured, or in any document or certification whatsoever, or under any judgment obtained against the Commission or the District or by the enforcement of any assessment or by any legal or equitable proceeding by virtue of any constitution or statute or otherwise or under any circumstances, shall be had against any member, officer or employee, as such, of the Commission or the District, either directly or through the Commission or the District, respectively, or otherwise, for the payment for or to, the Commission or the District or any receiver of either of them, or for, or to, any Holder or otherwise, of any sum that may be due and unpaid upon the 2024C Bond. Any and all personal liability of every nature, whether at common law or in equity or by statute or by constitution or otherwise, of any such member, officer or employee, as such, to respond by reason of any act or omission on his or her part or otherwise, for the payment for, or to, the Commission or the District or any receiver of either of them, or for, or to, any Holder or otherwise, of any sum that may remain due and unpaid upon the 2024C Bond hereby secured, is hereby expressly waived and released as an express condition of, and in consideration for, the execution of this Supplemental Trust Agreement and the issuance of the 2024C Bond.

**Section 6.7 Legal Holidays.** In any case where a Payment Date is not a Business Day, then payment of such principal and interest need not be made on such date but may be made on the next succeeding Business Day with the same force and effect as if made on such Payment Date, and in the case of such payment, no interest shall accrue for the period from and after such date.

**Section 6.8 Multiple Counterparts.** This Supplemental Trust Agreement may be executed in multiple counterparts, each of which shall be regarded for all purposes as an original, and such counterparts shall constitute but one and the same instrument.

**Section 6.9 Headings.** Any heading preceding the text of the several articles hereof, and any table of contents or marginal notes appended to copies hereof, shall be solely for convenience of reference and shall not constitute a part of this Supplemental Trust Agreement, nor shall they affect its meaning, construction or effect.



**Section 6.10 Further Authority.** The officers of the Commission or the District, attorneys, engineers and other agents or employees of the Commission or the District are hereby authorized to do all acts and things required of them by this Supplemental Trust Agreement and the Trust Agreement for the full, punctual and complete performance of all of the terms, covenants and agreements contained in the 2024C Bond and this Supplemental Trust Agreement.

(end of Article VI)

**IN WITNESS WHEREOF**, the Hampton Roads Sanitation District has caused these presents to be signed in its name and on its behalf and attested by its duly authorized officers and to evidence its acceptance of the trusts hereby created, the Trustee has caused these presents to be signed in its name and on behalf by its duly authorized officer, all as of the [\_\_\_\_\_] day of [\_\_\_\_], 2024.

**HAMPTON ROADS SANITATION  
DISTRICT**

(Seal)

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

Steven G. de Mik

Deputy General Manager/Chief Financial Officer  
Hampton Roads Sanitation District Commission

Attest:

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

Secretary

Hampton Roads Sanitation District  
Commission

**THE BANK OF NEW YORK MELLON  
TRUST COMPANY, N.A., as Trustee**

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

Authorized Officer

## FORM OF 2024C Bond

*Interest on this bond is not excludable from the gross income of the registered owner hereof for federal income tax purposes.*

No. R-1

**HAMPTON ROADS SANITATION DISTRICT  
(VIRGINIA)  
WASTEWATER REVENUE BOND,  
SERIES 2024C  
(FEDERALLY TAXABLE)**

<b><u>Maturity</u> <u>Date</u></b>	<b><u>Interest</u> <u>Rate</u></b>	<b><u>Dated</u></b>	<b><u>CUSIP</u></b>
[January 1, 2059]	_____	_____, 2024	409327 ____

**Registered Owner: UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

**Maximum Principal Amount: TWO HUNDRED SIXTY-EIGHT MILLION EIGHTY-SEVEN THOUSAND EIGHT HUNDRED SEVENTY AND 00/100 DOLLARS (\$268,087,870.00)**

Hampton Roads Sanitation District (the “District”), a political subdivision of the Commonwealth of Virginia, by the Hampton Roads Sanitation District Commission (the “Commission”), the Commission of the District, for value received, promises to pay, but solely from the sources and in the manner hereinafter provided, to the registered owner named above, acting by and through the Administrator of the Environmental Protection Agency or its assigns (the “WIFIA Lender”), the lesser of (x) the Maximum Principal Amount set forth above and (y) the aggregate unpaid principal amount of all disbursements (the “Disbursements”) made by the WIFIA Lender (such lesser amount being hereinafter referred to as the “Outstanding Principal Sum”), together with accrued and unpaid interest (including, if applicable, interest at the Default Rate in accordance with that certain WIFIA Loan Agreement, dated as of \_\_\_\_\_, 2024, by and between the WIFIA Lender and the District (the “WIFIA 2024 Loan Agreement”)), on the Outstanding Principal Sum and all fees, costs and other amounts payable in connection therewith, all as more fully described in the WIFIA 2024 Loan Agreement. The principal hereof shall be payable in the manner and at the place provided in the WIFIA 2024 Loan Agreement in accordance with Exhibit B (WIFIA Debt Service) to the WIFIA 2024 Loan Agreement, as revised from time to time in accordance with the WIFIA 2024 Loan Agreement and that certain WIFIA Master

Agreement, dated as of September 28, 2020, as amended and restated as of \_\_\_\_\_, 2024,<sup>2</sup> by and between the WIFIA Lender and the District (the “WIFIA Master Agreement”), until paid in full (which Exhibit B, as modified from time to time in accordance with the terms of the WIFIA 2024 Loan Agreement and the WIFIA Master Agreement, is incorporated in and is a part of this Bond). The WIFIA Lender is hereby authorized to modify the loan amortization schedule included in Exhibit B to the WIFIA 2024 Loan Agreement from time to time in accordance with the terms of the WIFIA Master Agreement and the WIFIA 2024 Loan Agreement to reflect the amount of each disbursement made thereunder and the date and amount of principal or interest paid by the District thereunder. Any adjustments or revisions to the loan amortization schedule included in Exhibit B to the WIFIA 2024 Loan Agreement shall be deemed to update the amortization schedule attached as Schedule A hereto *mutatis mutandis*. Absent manifest error, the WIFIA Lender’s determination of such matters as set forth on Exhibit B to the WIFIA 2024 Loan Agreement shall be conclusive evidence thereof; provided, however, that neither the failure to make any such recordation nor any error in such recordation shall affect in any manner the District’s obligations hereunder or under any other WIFIA Loan Document (as defined in the WIFIA Master Agreement).

Payments on this Bond are to be made in accordance with Section 8(c) (Payment of Principal and Interest – Manner of Payment) and Section 31 (Notices) of the WIFIA Master Agreement as the same become due. Principal of and interest on this Bond shall be paid in funds available on or before the due date and in any lawful coin or currency of the United States of America that at the date of payment is legal tender for the payment of public and private debts.

Interest on this Bond shall accrue and be computed on the Outstanding WIFIA Loan Balance from time to time at the interest rate stated above, on the basis of a three hundred sixty (360) day year comprised of twelve (12) thirty (30) day months; provided that upon the occurrence of any event of default under Section 17(a) of the WIFIA Master Agreement, interest on this Bond shall be computed on the Outstanding WIFIA Loan Balance at the Default Rate in accordance with the provisions of Section 6 of the WIFIA Master Agreement.

This Bond is issued under a trust agreement, dated as of October 1, 2011, between the District and The Bank of New York Mellon Trust Company, N.A., Pittsburgh, Pennsylvania, as Trustee (said banking corporation and any bank or successor trustee under the Trust Agreement being hereinafter referred to as the “Trustee”), as amended and restated as of March 1, 2016, as amended, as further amended and restated as of July 1, 2024, and effective on July 16, 2024, as the same may be amended and supplemented from time to time (the “Trust Agreement”), including pursuant to the Twelfth Supplemental Trust Agreement dated as of \_\_\_\_\_, 2024 (the “Twelfth Supplemental Agreement”). The Bond is being issued for the purpose of providing funds, together with other available funds, (i) to finance a portion of the eligible costs of the Project and (ii) to pay a portion of the expenses incurred in connection with the issuance of this Bond by the District. Reference is made to the WIFIA Master Agreement and the WIFIA 2024 Loan Agreement for further terms and conditions relating to the obligations of the District hereunder and thereunder, which terms and conditions shall for all purposes have the same effect as if fully set forth herein. All capitalized terms used in this Bond and not otherwise defined herein shall

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<sup>2</sup> NTD: Modify as appropriate if Amendment No. 1 is incorporated in the Amended and Restated Master or stands alone.

have the meanings set forth in the Twelfth Supplemental Agreement, or if not defined therein, in the Trust Agreement.

This Bond may be prepaid at the option of the District in whole or in part (and, if in part, the principal installments and amounts thereof to be prepaid are to be determined in accordance with the WIFIA 2024 Loan Agreement; provided that such prepayments shall be in principal amounts of at least \$1,000,000 or any integral multiple of \$1 in excess thereof), from time to time, but not more than once in any Fiscal Year, without penalty or premium, by paying to the WIFIA Lender all or part of the principal amount of this Bond in accordance with the WIFIA 2024 Loan Agreement.

This Bond shall be subject to mandatory prepayment on the terms and conditions set forth in the WIFIA Master Agreement, the WIFIA 2024 Loan Agreement and the Trust Agreement.

This Bond is issued and the Trust Agreement was made and entered into under and pursuant to the Constitution and laws of the Commonwealth of Virginia, and particularly in conformity with the provisions, restrictions and limitations of Chapter 66 of the Acts of Assembly of Virginia of 1960, as amended.

The District has agreed to perform, observe and comply with certain covenants, conditions and agreements set forth in the Trust Agreement. The District may incur additional indebtedness, including bonds and other indebtedness secured by the Trust Agreement on a pari passu basis with this Bond for the purposes, under the terms and conditions, and to the extent described therein and in the WIFIA Master Agreement.

This Bond is a special obligation of the District and is payable solely from Net Revenues derived by the District from its Wastewater System and the money attributable to proceeds of the Bond and the income from the investment thereof and not from any other fund or source. This Bond shall not be deemed to constitute a debt, or a pledge of the faith and credit, of the Commonwealth of Virginia or of any county, city, town or political subdivision thereof. The issuance of this Bond shall not directly or indirectly or contingently obligate the Commonwealth of Virginia or any county, city, town or political subdivision thereof to levy or to pledge any form of taxation whatever therefor.

This Bond is issued as a fully registered Bond. The transfer of this Bond is registrable by the registered owner hereof in person or by his attorney or legal representative at the Corporate Trust Office of the Bond Registrar for the delivery of the Bond, but only in the manner and subject to the limitations and conditions provided in the Trust Agreement and upon surrender and cancellation of this Bond. Upon any such registration of transfer, the District shall execute and the Bond Registrar shall authenticate and deliver in exchange for this Bond a new Bond, registered in the name of the transferee, in a principal amount equal to the then outstanding principal amount of this Bond, of the same series and maturity and bearing interest at the same rate.

The Holder of this Bond shall have no right to enforce the provisions of the Trust Agreement or to institute action to enforce the covenants therein, or to take any action with respect to any event of default under the Trust Agreement, or to institute, appear in or defend any suit or other proceeding with respect thereto, except as provided in the Trust Agreement and except that

the Holder of this Bond may institute action to enforce the payment of the principal of or the interest on this Bond. Any delay on the part of the Holder of this Bond in exercising any right hereunder shall not operate as a waiver of any such right, and any waiver granted with respect to one default shall not operate as a waiver in the event of any subsequent default.

Upon the occurrence of certain events, and on the conditions, in the manner and with the effect set forth in the Trust Agreement, the Outstanding principal amount of this Bond and all other Bonds then Outstanding under the Trust Agreement may become or may be declared due and payable before the stated maturities thereof, together with the interest accrued thereon.

Modifications or alterations of the Trust Agreement or any trust agreement supplemental thereto may be made only to the extent and in the circumstances permitted by the Trust Agreement.

This Bond shall be governed by the laws of the Commonwealth of Virginia without regard to choice of law principles.

All acts, conditions and things required to happen, exist and be performed precedent to and in the issuance of this Bond and the execution of the Trust Agreement have happened, exist and have been performed as so required.

Neither the members, officers or employees of the Commission or the District, nor any person executing this Bond, is liable personally hereon or subject to any personal liability or accountability by reason of issuance hereof.

This Bond shall not be valid or become obligatory for any purpose or be entitled to any benefit or security under the Trust Agreement until it shall have been authenticated by the execution by the Bond Registrar of the certificate of authentication endorsed hereon.

**IN WITNESS WHEREOF**, the Hampton Roads Sanitation District has caused this Bond to be executed in its name and on its behalf with the [facsimile] signatures of the Chair and the Secretary of the Hampton Roads Sanitation District Commission and [ a facsimile of] the official seal of said Commission to be impressed hereon and this Bond to be dated the Dated Date.

**HAMPTON ROADS SANITATION DISTRICT**

By \_\_\_\_\_  
Chair  
Hampton Roads Sanitation District Commission

By \_\_\_\_\_  
Secretary  
Hampton Roads Sanitation District Commission

[Seal]



## **CERTIFICATE OF AUTHENTICATION**

Date of authentication: \_\_\_\_\_

This Bond is a Bond issued under the provisions of the within-mentioned Trust Agreement.

**THE BANK OF NEW YORK MELLON  
TRUST COMPANY, N.A.,**  
as Bond Registrar

By \_\_\_\_\_  
Authorized Signatory

**[FORM OF ASSIGNMENT]**

FOR VALUE RECEIVED the undersigned hereby sells, assigns and transfers unto

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_  
[Please Print or Typewrite Name and Address of Transferee]

the within Bond and all rights thereunder, and hereby irrevocably constitutes and appoints \_\_\_\_\_ attorney to register the transfer of the within Bond on the books kept for registration thereof, with full power of substitution in the premises.

Date: \_\_\_\_\_

Signature Guaranteed:

\_\_\_\_\_  
NOTICE: Signature(s) must be guaranteed by an institution which is a participant in the Securities Transfer Agent Medallion Program (STAMP) or similar program.

\_\_\_\_\_  
NOTICE: The signature to this assignment must correspond with the name as it appears upon the face of the within Bond in every particular, without alteration or enlargement or any change whatever.

**SCHEDULE A**

**Amortization Schedule**

[To be attached]

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

[●], 2024

Hampton Roads Sanitation District  
1434 Air Rail Avenue  
Virginia Beach, VA 23455

RE: WIFIA Loan Term Sheet for the Sustainable Water Initiative for Tomorrow (SWIFT) –  
Tranche 3 Project with Hampton Roads Sanitation District (WIFIA Project No.  
N19153VA)

Ladies and Gentlemen:

This WIFIA Loan Term Sheet (this “**Term Sheet**”) constitutes the agreement of the United States Environmental Protection Agency, acting by and through the Administrator of the Environmental Protection Agency (hereinafter, the “**USEPA**”) to provide financing for the above-referenced project (as further described below, the “**Project**”) in the form of a secured loan (the “**WIFIA Loan**”), pursuant to the Water Infrastructure Finance and Innovation Act (“**WIFIA**”), § 5021 *et seq.* of Public Law 113-121 (as amended and as may be further amended from time to time, the “**Act**”), codified as 33 U.S.C. §§ 3901-3915, subject in all respects to (i) the terms and conditions contained herein, (ii) the terms and conditions contained in that certain WIFIA Master Agreement, dated as of September 28, 2020, as amended as of [●], 2024, by and between the WIFIA Lender (as defined below) and the Borrower (as defined below) (the “**WIFIA Master Agreement**”), and (iii) the execution and delivery of the WIFIA loan agreement with respect to the Project to be entered into on or after the date hereof (the “**WIFIA Loan Agreement**”) on terms and conditions acceptable to USEPA contained therein. Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the WIFIA Loan Agreement or, if not defined therein, the WIFIA Master Agreement.

USEPA’s agreement to provide WIFIA credit assistance to the Project is based upon the application for credit assistance of the Borrower submitted on March 27, 2020 and supplemented on May 20, 2024 and the supplemental information and documents, including the base case financial model, provided to USEPA. This Term Sheet is an agreement of USEPA only to the terms specified herein, which may be modified or supplemented by USEPA in its discretion at any time and from time to time during the course of its due diligence and credit approval process.

By executing this Term Sheet, the Borrower confirms its agreement to reimburse USEPA for any and all fees and expenses that USEPA incurs for legal counsel, financial advice, and other consultants in connection with the evaluation of the Project and the negotiation and preparation of the WIFIA Loan Agreement and related documents (whether or not any such agreement is ultimately executed).

This Term Sheet shall be governed by the federal laws of the United States of America if and to the extent such federal laws are applicable, and the internal laws of the Commonwealth of Virginia, if and to the extent such federal laws are not applicable.

### INDICATIVE TERMS OF THE WIFIA LOAN

WIFIA LENDER	United States Environmental Protection Agency, an agency of the United States of America, acting by and through the Administrator of the Environmental Protection Agency (the “ <b>WIFIA Lender</b> ”).
BORROWER	Hampton Roads Sanitation District, a political subdivision of the Commonwealth of Virginia (the “ <b>Borrower</b> ”).
PROJECT	The “ <b>Project</b> ” means the Borrower’s Sustainable Water Initiative for Tomorrow (SWIFT) – Tranche 3 Project, located at various locations within the Borrower’s service area, as further described in Schedule III ( <i>Project</i> ) to the WIFIA Loan Agreement.
WIFIA LOAN AMOUNT	A maximum principal amount (sum of disbursements) not to exceed \$268,087,870; <u>provided</u> that (a) the maximum principal amount of the WIFIA Loan, together with the amount of any other credit assistance provided under the Act, shall not exceed forty-nine percent (49%) of reasonably anticipated Eligible Project Costs for the Project, (b) the total federal assistance for the Project, including the maximum principal amount of the WIFIA Loan and all federal grants, shall not exceed eighty percent (80%) of Total Project Costs for the Project, and (c) such amount does not include any interest that may be capitalized in accordance with the WIFIA Loan Agreement and added to the principal amount of the WIFIA Loan.
INTEREST RATE	<p>The WIFIA Loan shall bear interest at a fixed rate, calculated by adding one basis point (0.01%) to the rate of securities of a similar maturity (based on the weighted-average life of the WIFIA Loan) as published, on the execution date of the WIFIA Loan Agreement, in the United States Treasury Bureau of the Fiscal Service’s daily rate table for State and Local Government Series (SLGS) securities.</p> <p>Interest shall accrue and be computed on the Outstanding WIFIA Loan Balance on the basis of a 360-day year of twelve (12) thirty (30) day months.</p> <p>The WIFIA Loan shall also bear default interest at a rate of two hundred (200) basis points above the otherwise applicable interest rate, at such times and upon such terms as provided in the WIFIA Master Agreement.</p>
PAYMENT DATES	Principal of the WIFIA Loan shall be repaid in semi-annual installments on January 1 and July 1 of each year.

	<p>Interest on the WIFIA Loan shall be paid in arrears on January 1 and July 1 of each year, beginning on the First Payment Date with respect to the WIFIA Loan.</p> <p>The debt service payment commencement date shall in no event be later than five (5) years after the Substantial Completion Date of the Project.</p>
FINAL MATURITY DATE	The earlier of (a) January 1, 2059 and (b) the Principal Payment Date immediately preceding the date that is thirty-five (35) years following the Substantial Completion Date.
PROJECTED SUBSTANTIAL COMPLETION DATE	March 30, 2029.
DEDICATED SOURCE OF REPAYMENT	<p>The dedicated source of repayment for the WIFIA Loan shall be Net Revenues (as defined below) in accordance with the terms of the Trust Agreement and the WIFIA Master Agreement.</p> <p><b>“Net Revenues”</b> means all revenues received by the Borrower from its Wastewater System less Operating Expenses, <u>provided</u> that Net Revenues shall not include any Transition Charge.</p> <p><b>“Operating Expenses”</b> means those current expenses paid by the Borrower that may be required to pay the cost of maintaining, repairing and operating the Wastewater System, including reasonable and necessary usual expenses of administration, operation, maintenance and repair, costs for billing and collecting the rates, fees and other charges for the use of or the services furnished by the Wastewater System, insurance premiums, credit enhancement and liquidity support fees, legal, engineering, auditing and financial advisory expenses, expenses and compensation of the Trustee, and deposits into a self-insurance program. Operating Expenses shall exclude allowance for depreciation and amortization and expenditures for extraordinary maintenance or repair or improvements. Operating Expenses shall also exclude expenses for improvements that will not be owned by the Borrower but which will, in the reasonable determination of the Commission, as evidenced by a resolution thereof, maintain or improve the integrity of the Wastewater System.</p>
SECURITY AND LIEN PRIORITY	<p>The Borrower’s obligation to repay the WIFIA Loan shall be evidenced by the WIFIA Bond, which shall constitute a “Bond” issued under and as defined in the Trust Agreement.</p> <p>The WIFIA Bond shall constitute a special obligation of the Borrower payable solely from the Net Revenues and other funds pledged to secure Bonds issued under the Trust Agreement. Such other funds shall consist of all money and securities held by the</p>

	<p>Trustee in the Bond Fund and in the Debt Service Reserve Fund (if and to the extent funded) and, if applicable to the WIFIA Loan until applied in payment of any item of the Issuance Costs or Capital Improvement Program Costs in accordance with Section 403 (<i>Requisitions from Issuance Fund and Construction Fund</i>) of the Trust Agreement, all money and securities in the Issuance Fund and the Construction Fund. Pursuant to the Trust Agreement, prompt payment of the principal of and interest on the Parity Obligations (including the WIFIA Bond) is secured by a lien on the Net Revenues and such other funds.</p> <p>The lien on revenues and funds securing Bonds issued under the Trust Agreement (including the WIFIA Bond) shall be (a) <i>pari passu</i> in right of payment and right of security to the lien in favor of the other Senior Obligations, and (b) senior in right of payment and right of security to the lien in favor of the Subordinate Obligations.</p>
FLOW OF FUNDS	<p>For purposes of Bonds issued under the Trust Agreement (including the WIFIA Bond), the Trustee shall apply the amounts received as Net Revenues in accordance with the requirements specified in Section 502 (<i>Payments and Funds Received</i>) of the Trust Agreement (the “<b>Flow of Funds</b>”).</p> <p>As of the WIFIA Loan Agreement Effective Date, the Flow of Funds provides, <i>inter alia</i>, that payments shall be due and payable as follows:</p> <ul style="list-style-type: none"> <li>(a) to the credit of the Bond Fund, on the Business Day next preceding each Interest Payment Date, an amount equal to the interest payable on the Bonds on such Interest Payment Date;</li> <li>(b) to the credit of the Bond Fund, on the Business Day next preceding each Principal Payment Date, an amount equal to the principal of the Bonds due on such Principal Payment Date; and</li> <li>(c) any amount that may from time to time be required to enable the Borrower to pay the principal of and interest due on Bonds upon acceleration.</li> </ul> <p>Each payment shall be equal to the sum of the amounts specified above in paragraphs (a) to (c), inclusive.</p>
PREPAYMENT	<p>Any proceeds received by the Trustee from the VRA pursuant to the terms of the VRA Intercreditor Agreement shall be applied, on a <i>pro rata</i> basis with any other Bonds (based on the then outstanding principal balance thereof), to the payment or prepayment of such Bonds (including the WIFIA Bond) in immediately available funds. The proceeds of any such partial</p>

	<p>prepayment of the WIFIA Bond shall be applied in accordance with the WIFIA Master Agreement.</p> <p>The Borrower may optionally prepay the WIFIA Loan in whole or in part, from time to time, but not more than once during any Borrower Fiscal Year, without penalty or premium; <u>provided</u> that any such prepayment shall be made on a Payment Date unless otherwise agreed by the WIFIA Lender and in a minimum principal amount of \$1,000,000 or any integral multiple of \$1.00 in excess thereof, and otherwise in accordance with the WIFIA Loan Agreement; <u>provided further</u> that the WIFIA Loan may be prepaid in full at any time without penalty.</p>
RATE COVENANT	<p>The Borrower shall comply with the requirements specified in Section 705 (<i>Rate Covenant</i>) of the Trust Agreement (such requirements, the “<b>Rate Covenant</b>”).</p> <p>As of the WIFIA Loan Agreement Effective Date, the Rate Covenant provides, <i>inter alia</i>, that the Borrower shall fix and collect rates, fees and other charges for the use of and for services furnished or to be furnished by the Wastewater System, and will from time to time revise such rates, fees and other charges so that in each Borrower Fiscal Year the Net Revenues will equal at least one hundred twenty percent (120%) of the Principal and Interest Requirements (as defined in the Trust Agreement). If, for any reason, the Net Revenues are insufficient to satisfy the foregoing covenant, the Borrower shall within one hundred twenty (120) days adjust and increase its rates, fees and other charges (to the extent permitted by, and following the procedure required by, the Enabling Act (as defined in the Trust Agreement)), or reduce its operating and maintenance expenses so as to provide sufficient Net Revenues to satisfy such requirement.</p>
ADDITIONAL INDEBTEDNESS	<p>The Borrower shall not create, incur or suffer to exist (a) any Indebtedness the payments of which are senior or prior in right to the payment by the Borrower of any Bond outstanding under the Trust Agreement (including the WIFIA Bond) or (b) any Indebtedness with respect to the Master Program that is secured by a dedicated revenue source other than Net Revenues.</p> <p>The Borrower shall not issue or incur any Additional Senior Obligations (including the Obligations under each WIFIA loan agreement under the Master Program) except in accordance with all applicable requirements and conditions set forth in Section 704 (<i>Limitations on Indebtedness</i>) of the Trust Agreement; <u>provided</u> that clause (iv) of Section 704(a) of the Trust Agreement shall be deemed not to apply during the Master Availability Period or while there are Outstanding any Bonds (including the WIFIA Bond) held by the WIFIA Lender.</p>



RESTRICTED PAYMENTS AND TRANSFERS	The Borrower shall not permit Net Revenues, or any funds in any of the Funds and Accounts, to be paid or transferred or otherwise applied for purposes that would violate the terms of the Trust Agreement or the Enabling Act.
WIFIA LOAN DOCUMENTATION	The WIFIA Loan shall be subject to the preparation, execution and delivery of the WIFIA Loan Agreement, the WIFIA Bond and any other loan documentation required by the WIFIA Lender in connection therewith, in each case acceptable to the WIFIA Lender and the Borrower, which will contain certain conditions precedent, representations and warranties, affirmative and negative covenants, events of default, and other provisions as agreed between the WIFIA Lender and the Borrower, in each case in accordance with the terms of the WIFIA Master Agreement.
GOVERNING LAW	Federal laws of the United States of America, if and to the extent such federal laws are applicable, and the internal laws of the Commonwealth of Virginia, if and to the extent such federal laws are not applicable.
COUNTERPARTS	This Term Sheet, and any amendments, waivers, consents or supplements hereto may be executed in any number of counterparts and by the parties hereto in separate counterparts, each of which when so executed and delivered shall be deemed an original, but all such counterparts together shall constitute but one and the same instrument. Signature pages may be detached from multiple separate counterparts and attached to a single counterpart so that all signature pages are physically attached to the same document. Electronic delivery of an executed counterpart of a signature page shall be effective as delivery of an original executed counterpart.

*[Signature pages follow]*

If the foregoing terms are acceptable, please countersign this letter in the space indicated below.

Sincerely,

**UNITED STATES ENVIRONMENTAL  
PROTECTION AGENCY**, acting by and  
through the Administrator of the United States  
Environmental Protection Agency

By: \_\_\_\_\_  
Name: Michael S. Regan  
Title: Administrator

ACKNOWLEDGED AND AGREED:

**HAMPTON ROADS SANITATION DISTRICT,**  
by its authorized representative

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

**UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
WIFIA MASTER AGREEMENT**

**with**

**HAMPTON ROADS SANITATION DISTRICT**

**for the**

**HRSD MASTER PROGRAM FOR WASTEWATER SYSTEM IMPROVEMENTS**

**Dated as of September 28, 2020,  
as Amended and Restated as of \_\_\_\_\_, 2024**

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## WIFIA MASTER AGREEMENT

**THIS WIFIA MASTER AGREEMENT** (this “**Agreement**”), dated as of \_\_\_\_\_, 2024, (i) is by and between **HAMPTON ROADS SANITATION DISTRICT**, a political subdivision of the Commonwealth of Virginia (the “**Commonwealth**”), with an address at 1434 Air Rail Avenue, Virginia Beach, VA 23455 (the “**Borrower**”), acting by and through the **HAMPTON ROADS SANITATION DISTRICT COMMISSION**, the governing body of the Borrower (the “**Commission**”), and the **UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**, an agency of the United States of America, acting by and through the Administrator of the Environmental Protection Agency (the “**Administrator**”), with an address at 1200 Pennsylvania Avenue NW, Washington, DC 20460 (the “**WIFIA Lender**”), and (ii) amends and restates the WIFIA Master Agreement, dated as of September 28, 2020 (the “**Original Agreement**”), by and between the Borrower and the WIFIA Lender.

### RECITALS:

WHEREAS, the Congress of the United States of America enacted the Water Infrastructure Finance and Innovation Act, as amended by Section 1445 of the Fixing America’s Surface Transportation Act of 2015, as further amended by Section 5008 of the Water Infrastructure Improvements For the Nation Act of 2016 and by Section 4201 of America’s Water Infrastructure Act of 2018 (collectively, as the same may be amended from time to time, the “**Act**” or “**WIFIA**”), which is codified as 33 U.S.C. §§ 3901-3914;

WHEREAS, the Act authorizes the WIFIA Lender to enter into agreements to provide financial assistance with one or more eligible entities to make secured loans with appropriate security features to finance a portion of the eligible costs of projects eligible for assistance;

WHEREAS, the Borrower submitted an application for WIFIA financial assistance on March 27, 2020 (the “**Application**”);

WHEREAS, the Borrower has proposed the development and construction of multiple Projects (as defined herein) with respect to the Wastewater System (as defined herein), and desires to obtain WIFIA financial assistance for each Project;

WHEREAS, the Borrower and the WIFIA Lender are entering into this Agreement to set forth certain common terms and conditions applicable to each prospective WIFIA financing;

WHEREAS, the Borrower will request, from time to time, that the WIFIA Lender make a WIFIA Loan (as defined herein) to be used to pay a portion of the Eligible Project Costs (as defined herein) for each Project;

WHEREAS, subject to the terms and conditions set forth herein and in each WIFIA Loan Agreement (as defined herein) and the Act, the WIFIA Lender proposes to make funding available to the Borrower for a portion of the Eligible Project Costs of each Project through the purchase of a WIFIA Bond (as defined herein) to be issued by the Borrower for each Project;



WHEREAS, the WIFIA Lender entered into the Original Agreement in reliance upon, among other things, the information and representations of the Borrower set forth in the Application and the supporting information provided by the Borrower; and

WHEREAS, the Borrower has amended and restated the Subordinate Trust Agreement (as defined in the Original Agreement) in order to reflect the discharge and defeasance of the Senior Trust Agreement (as defined in the Original Agreement), and the Borrower and the WIFIA Lender desire to amend and restate the Original Agreement to reflect the amendment and restatement of the Subordinate Trust Agreement.

NOW, THEREFORE, the premises being as stated above, and for good and valuable consideration, the receipt and sufficiency of which are acknowledged to be adequate, and intending to be legally bound hereby, it is hereby mutually agreed by and between the Borrower and the WIFIA Lender as follows:

## ARTICLE I DEFINITIONS AND INTERPRETATION

Section 1     Definitions. Unless the context otherwise requires, capitalized terms used in this Agreement shall have the meanings set forth below in this Section 1 or as otherwise defined in this Agreement. Any term used in this Agreement that is defined by reference to any other agreement shall continue to have the meaning specified in such agreement, whether or not such agreement remains in effect.

“**Act**” means the Act as defined in the recitals hereto.

“**Additional Bonds**” has the meaning provided in the Trust Agreement.

“**Additional Construction Contract**” means, with respect to each Project, each Construction Contract entered into after the applicable WIFIA Loan Agreement Effective Date.

“**Additional Senior Obligations**” means any Senior Obligations issued or incurred after the Amendment Effective Date.

“**Administrator**” has the meaning provided in the preamble hereto.

“**Aggregate Master Program Amount**” means one billion three hundred twenty-two million seven hundred thirteen thousand fifty-four Dollars (\$1,322,713,054).

“**Agreement**” has the meaning provided in the preamble hereto.

“**Amendment Effective Date**” means the date of this Agreement.

“**Anticipated WIFIA Loan Disbursement Schedule**” has, for each WIFIA Loan, the meaning provided in Section 1 (*Definitions*) of the applicable WIFIA Loan Agreement.

**“Anti-Corruption Laws”** means all laws, rules and regulations of any Governmental Authority with jurisdiction over the Borrower from time to time concerning or relating to bribery or corruption.

**“Anti-Money Laundering Laws”** means all U.S. and other applicable laws, rules and regulations of any Governmental Authority with jurisdiction over the Borrower from time to time concerning or related to anti-money laundering, including but not limited to those contained in the Bank Secrecy Act and the Patriot Act.

**“Application”** has the meaning provided in the recitals hereto.

**“Bank Secrecy Act”** means the Bank Secrecy Act of 1970, as amended, and the regulations promulgated thereunder.

**“Bankruptcy Related Event”** means, with respect to the Borrower, (a) an involuntary proceeding shall be commenced or an involuntary petition shall be filed seeking (i) liquidation, reorganization or other relief in respect of the Borrower or any of its debts, or of a substantial part of the assets thereof, under any Insolvency Laws, or (ii) the appointment of a receiver, trustee, liquidator, custodian, sequestrator, conservator or similar official for the Borrower or for a substantial part of the assets thereof and, in any case referred to in the foregoing subclauses (i) and (ii), such proceeding or petition shall continue undismissed for sixty (60) days or an order or decree approving or ordering any of the foregoing shall be entered; (b) the Borrower shall (i) apply for or consent to the appointment of a receiver, trustee, liquidator, custodian, sequestrator, conservator or similar official therefor or for a substantial part of the assets thereof, (ii) generally not be paying its debts as they become due unless such debts are the subject of a bona fide dispute, or become unable to pay its debts generally as they become due, (iii) fail to make a payment of WIFIA Debt Service in accordance with the provisions of Section 8 (Payment of Principal and Interest) and such failure is not cured within thirty (30) days following notification by the WIFIA Lender of failure to make such payment, (iv) make a general assignment for the benefit of creditors, (v) consent to the institution of, or fail to contest in a timely and appropriate manner, any proceeding or petition with respect to it described in clause (a) of this definition, (vi) commence a voluntary proceeding under any Insolvency Law, or file a voluntary petition seeking liquidation, reorganization, an arrangement with creditors or an order for relief, in each case under any Insolvency Law, (vii) file an answer admitting the material allegations of a petition filed against it in any proceeding referred to in the foregoing subclauses (i) through (v), inclusive, of this clause (b), or (viii) take any action for the purpose of effecting any of the foregoing, including seeking approval or legislative enactment by any Governmental Authority to authorize commencement of a voluntary proceeding under any Insolvency Law; (c) (i) the Trustee shall commence a process pursuant to which all or a substantial part of the Pledged Collateral may be sold or otherwise disposed of in a public or private sale or disposition pursuant to a foreclosure of the Liens thereon securing any Indebtedness, or (ii) the Trustee shall commence a process pursuant to which all or a substantial part of the Pledged Collateral may be sold or otherwise disposed of pursuant to a sale or disposition of such Pledged Collateral in lieu of foreclosure; or (d) any receiver, trustee, liquidator, custodian, sequestrator, conservator or similar official with respect to the Borrower shall transfer, pursuant to directions issued by any holder of Bonds, funds on deposit in any of the Funds and Accounts upon the occurrence and during the continuation of an Event of Default under this Agreement or an event of default under any Trust Document for application to the prepayment

or repayment of any principal amount of the Indebtedness other than in accordance with the provisions of this Agreement and the Trust Documents.

**“Base Case Financial Model”** means a financial model prepared by the Borrower forecasting the capital costs of the Wastewater System (including the Master Program) and the rates, revenues, operating expenses and major maintenance requirements of the Wastewater System for a period of at least ten (10) years from the date of such Base Case Financial Model, and based upon assumptions and methodology provided by the Borrower and acceptable to the WIFIA Lender as of the Effective Date, which model shall be provided to the WIFIA Lender as a fully functional Microsoft Excel-based financial model or such other format requested by the WIFIA Lender.

**“Bond Fund”** means the Hampton Roads Sanitation District (Virginia) Bond Fund created and so designated by Section 501 (*Establishment of Funds*) of the Trust Agreement.

**“Bonds”** means the Existing Bonds (including the WIFIA Bonds existing on the Amendment Effective Date) and any Additional Bonds (including the WIFIA Bonds issued after the Amendment Effective Date) issued by the Borrower subsequent to the issuance of and on parity with the Existing Bonds under Section 209 (*Terms and Conditions for Incurrence of Additional Senior Obligations*) of the Trust Agreement, including Bonds issued in exchange for other such Bonds pursuant to Section 205 (*Exchange of Bonds*) of the Trust Agreement or in replacement for mutilated, destroyed, stolen or lost Bonds pursuant to Section 211 (*Mutilated, Destroyed, Stolen or Lost Bonds*) of the Trust Agreement.

**“Borrower”** has the meaning provided in the preamble hereto.

**“Borrower Fiscal Year”** means (a) as of the Effective Date, a fiscal year of the Borrower commencing on July 1 of any calendar year and ending on June 30 of the immediately succeeding calendar year or (b) such other fiscal year as the Borrower may hereafter adopt after giving thirty (30) days’ prior written notice to the WIFIA Lender in accordance with Section 15(f) (*Negative Covenants – Fiscal Year*).

**“Borrower’s Authorized Representative”** means any District Representative (for purposes of the Trust Agreement) who shall also be designated as such pursuant to Section 21 (*Borrower’s Authorized Representative*).

**“Business Day”** means any day other than a Saturday, a Sunday or a day on which offices of the Government or the Commonwealth are authorized to be closed or on which commercial banks are authorized or required by law, regulation or executive order to be closed in New York, New York, Virginia Beach, Virginia, or in the jurisdiction in which the Corporate Trust Office (as defined in the Trust Agreement) of the Trustee is located.

**“Capital Improvement Program Costs”** means and includes all items of cost that may be paid from the proceeds of Indebtedness of the Borrower including the items referred to in Section 402 (*Construction Fund*) of the Trust Agreement.

**“Capitalized Interest Period”** means, with respect to each WIFIA Loan Agreement, if applicable, the period from (and including) the applicable WIFIA Loan Agreement Effective Date

to (but excluding) the date that is six (6) months prior to the applicable First Payment Date, subject to earlier termination as set forth in Section 8(a)(iii) (Payment of Principal and Interest – Payment of WIFIA Debt Service).

“**Closing Certificate**” has the meaning provided in Section 11(a)(viii) (*Conditions Precedent – Conditions Precedent to Effectiveness of this Agreement*).

“**Commission**” has the meaning provided in the preamble hereto.

“**Commonwealth**” has the meaning provided in the preamble hereto.

“**Congress**” means the Congress of the United States of America.

“**Construction Contract**” means, with respect to any Project, any prime contract entered into by the Borrower with respect to such Project that involves any construction activity (such as demolition, site preparation, civil works construction, installation, remediation, refurbishment, rehabilitation, or removal and replacement services). For the avoidance of doubt, “Construction Contract” shall include each Existing Construction Contract for the relevant Project and, upon the effectiveness thereof, each Additional Construction Contract for such Project.

“**Construction Contractor**” means any Person (other than the Borrower) that is a party to a Construction Contract.

“**Construction Fund**” means the Hampton Roads Sanitation District (Virginia) Construction Fund created and so designated by Section 402 (*Construction Fund*) of the Trust Agreement.

“**Construction Period**” means, with respect to each WIFIA Loan Agreement, the period from the applicable WIFIA Loan Agreement Effective Date through the applicable Substantial Completion Date.

“**Construction Period Servicing Fee**” has the meaning provided in Section 10(a)(ii) (*Fees and Expenses*) and, for each WIFIA Loan, shall be in the amount specified in Section 10(a)(ii) (*Fees and Expenses*) of the applicable WIFIA Loan Agreement and paid in accordance with Section 10(a)(ii) and Section 10(b) (*Fees and Expenses*) hereof.

“**Construction Schedule**” has, for each Project, the meaning provided in Section 1 (*Definitions*) of the applicable WIFIA Loan Agreement.

“**Contracted Services**” means services rendered or facilities provided to the Borrower for the performance for or on behalf of the Borrower of functions similar to those performed by the Borrower from a specific project, projects or systems, pursuant to a contract, whether a financing lease, a service agreement or another arrangement.

“**Control**” means, when used with respect to any particular Person, the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities or partnership or other ownership

interests, by contract or otherwise, and the term “**Controlled by**” has the meaning correlative to the foregoing.

“**CPI**” means the Consumer Price Index for All Urban Consumers (CPI-U) for the U.S. City Average for All Items, 1982-84=100 (not seasonally adjusted) or its successor, published by the Bureau of Labor Statistics and located at <https://www.bls.gov/news.release/cpi.t01.htm>.

“**Credit Facility**” means a line of credit, letter of credit, standby bond purchase agreement or similar credit enhancement or liquidity facility, including self-liquidity provided by the Borrower, established to provide credit or liquidity support for Indebtedness.

“**Debt Service Component of Contracted Services**” means that part of the payment for Contracted Services for which the Borrower is obligated to pay that the chief financial officer of the Borrower shall have determined in writing in an Officer’s Certificate at the time the Borrower commits to receive such Contracted Services to be for the purpose of paying a fixed charge or the principal of and interest on obligations, directly or indirectly associated with rendering the Contracted Services, of the person providing the Contracted Services.

“**Debt Service Reserve Fund**” means the Hampton Roads Sanitation District (Virginia) Debt Service Reserve Fund created and so designated by Section 501 (*Establishment of Funds*) of the Trust Agreement.

“**Default**” means any event or condition that, with the giving of notice, the passage of time, or both, would be an Event of Default.

“**Default Rate**” means, with respect to each WIFIA Loan, an interest rate equal to the sum of (a) the applicable WIFIA Interest Rate plus (b) two hundred (200) basis points, but in no event greater than the maximum interest rate permitted by law.

“**Development Default**” means, with respect to any Project, (a) the Borrower abandons work related to a Project or fails, in the reasonable judgment of the WIFIA Lender, to diligently prosecute the work related to such Project or (b) the Borrower fails to achieve Substantial Completion of such Project within two (2) years following the Projected Substantial Completion Date set forth in the relevant WIFIA Loan Agreement as of the applicable WIFIA Loan Agreement Effective Date, unless such failure shall occur by reason of Uncontrollable Force that is not due to the fault of the Borrower.

“**District Representative**” has the meaning provided in the Trust Agreement.

“**Dollars**” and “**\$**” means the lawful currency of the United States of America.

“**Effective Date**” means the date of the Original Agreement.

“**Eighth Supplemental Trust Agreement**” has the meaning provided in Schedule 15(a)(ii) (*Additional Bonds Test*).

“**Eligible Project Costs**” means, with respect to each Project, amounts in the Project Budget relating to such Project that have been approved by the WIFIA Lender and which are paid

by or for the account of the Borrower in connection with such Project (including, as applicable, Project expenditures incurred prior to the receipt of WIFIA credit assistance), which shall arise from the following:

- (a) development-phase activities, including planning, feasibility analysis (including any related analysis necessary to carry out an eligible project), revenue forecasting, environmental review, permitting, preliminary engineering and design work and other preconstruction activities;
- (b) construction, reconstruction, rehabilitation, and replacement activities;
- (c) the acquisition of real property or an interest in real property (including water rights, land relating to such Project and improvements to land), environmental mitigation (including acquisitions pursuant to Section 3905(8) of Title 33 of the United States Code), construction contingencies, and acquisition of equipment; or
- (d) capitalized interest necessary to meet market requirements, reasonably required reserve funds, capital issuance expenses, and other carrying costs during construction;

provided that such Eligible Project Costs must be consistent with all other applicable federal law, including the Act.

**“Eligible Project Costs Documentation”** has the meaning provided in Section 1 of Exhibit C (*Requisition Procedures and Form of Requisition – General Requirements*).

**“EMMA”** means the Electronic Municipal Market Access system as described in 1934 Act Release No. 59062 and maintained by the Municipal Securities Rulemaking Board established pursuant to Section 15B(b)(1) of the Securities Exchange Act of 1934, as amended, and its successors.

**“Enabling Act”** means Chapter 66 of the Acts of Assembly of Virginia of 1960, as amended.

**“Environmental Laws”** has the meaning provided in Section 12(p) (*Representations and Warranties of Borrower – Environmental Matters*).

**“EPA”** means the United States Environmental Protection Agency.

**“Event of Default”** has the meaning provided in Section 17(a) (*Events of Default and Remedies*).

**“Existing Bonds”** means the Bonds outstanding under the Trust Agreement on the Amendment Effective Date, as shown on Schedule III (*Existing Indebtedness*).

**“Existing Construction Contracts”** means, with respect to any Project, each Construction Contract existing as of the applicable WIFIA Loan Agreement Effective Date, as set forth in Schedule 12(n) (*Construction Contracts*) to the applicable WIFIA Loan Agreement.

**“Federal Fiscal Year”** means the fiscal year of the Government, which is the twelve (12) month period that ends on September 30 of the specified calendar year and begins on October 1 of the preceding calendar year.

**“Final Disbursement Date”** means, with respect to each WIFIA Loan, the earliest of (a) the date on which such WIFIA Loan has been disbursed in full; (b) the last anticipated date of disbursement set forth in the then-current Anticipated WIFIA Loan Disbursement Schedule for such WIFIA Loan; (c) the date on which the Borrower has certified to the WIFIA Lender that it will not request any further disbursements under such WIFIA Loan; (d) the date on which the WIFIA Lender terminates its obligations relating to disbursements of any undisbursed amounts of such WIFIA Loan in accordance with Section 17 (*Events of Default and Remedies*); and (e) the date that is one (1) year after the Substantial Completion Date of the Project relating to such WIFIA Loan.

**“Final Maturity Date”** has, for each WIFIA Loan, the meaning provided in Section 1 (*Definitions*) of the applicable WIFIA Loan Agreement.

**“Financial Statements”** has the meaning provided in Section 12(t) (*Representations and Warranties of Borrower – Financial Statements*).

**“First Payment Date”** has, for each WIFIA Loan, the meaning provided in Section 1 (*Definitions*) of the applicable WIFIA Loan Agreement.

**“Flow of Funds”** means the requirements specified in Section 502 (*Payments and Funds Received*) of the Trust Agreement as of the Amendment Effective Date, a copy of which is attached hereto as Schedule 7(d) (*Flow of Funds*).

**“Funds and Accounts”** means the Bond Fund, the Debt Service Reserve Fund, the Issuance Fund and the Construction Fund.

**“GAAP”** means generally accepted accounting principles for U.S. state and local governments, as established by the Government Accounting Standards Board (or any successor entity with responsibility for establishing accounting rules for governmental entities), in effect from time to time in the United States of America.

**“Government”** means the United States of America and its departments and agencies.

**“Governmental Approvals”** means all authorizations, consents, approvals, waivers, exceptions, variances, filings, permits, orders, licenses, exemptions and declarations of or with any Governmental Authority.

**“Governmental Authority”** means any federal, state, provincial, county, city, town, village, municipal or other government or governmental department, commission, council, court, board, bureau, agency, authority or instrumentality (whether executive, legislative, judicial, administrative or regulatory), of or within the United States of America or its territories or possessions, including the Commonwealth and its counties and municipalities, and their respective courts, agencies, instrumentalities and regulatory bodies, or any entity that acts “on behalf of” any of the foregoing, whether as an agency or authority of such body.

**“Indebtedness”** means (a) all indebtedness of the Borrower for borrowed money, (b) all installment sales, conditional sales and capital lease obligations incurred or assumed by the Borrower, and (c) the Debt Service Component of Contracted Services.

**“Indemnatee”** has the meaning provided in Section 32 (*Indemnification*).

**“Initial Disbursement Date”** means, with respect to any WIFIA Loan, the date of the first disbursement thereof.

**“Insolvency Laws”** means the United States Bankruptcy Code, 11 U.S.C. § 101 *et seq.*, as from time to time amended and in effect, and any state bankruptcy, insolvency, receivership, conservatorship or similar law now or hereafter in effect.

**“Interest Payment Date”** has, for each WIFIA Loan, the meaning provided in Section 1 (*Definitions*) of the applicable WIFIA Loan Agreement.

**“Investment Grade Rating”** means a rating no lower than ‘BBB-’, ‘Baa3’, ‘bbb-’, ‘BBB (low)’ from a Nationally Recognized Rating Agency, and the term **“Investment Grade”** has the meaning correlative to the foregoing.

**“Issuance Costs”** has the meaning set forth in Section 401(c) (*Issuance Fund*) of the Trust Agreement.

**“Issuance Fund”** means the Hampton Roads Sanitation District (Virginia) Issuance Fund created and so designated by Section 401 (*Issuance Fund*) of the Trust Agreement.

**“Lien”** has the meaning provided in the Trust Agreement.

**“Loan Amortization Schedule”** has, for each WIFIA Loan, the meaning provided in Section 1 (*Definitions*) of the applicable WIFIA Loan Agreement.

**“Master Availability Period”** means the period from the Effective Date until the date that is ten (10) years following the Effective Date.

**“Master Program”** means the Borrower’s anticipated improvements to the Wastewater System through the development and construction of each Project component as set forth on Schedule I (*Master Program Schedule*).

**“Master Program Budget”** means the total estimated aggregate budget for the Project components attached to this Agreement as Schedule II (*Master Program Budget*), as updated from time to time to reflect updated Project Budgets as provided in Section 11(b)(vii)(B) (*Conditions Precedent – Conditions Precedent to Effectiveness of Each WIFIA Loan Agreement*), or as otherwise amended from time to time with approval of the WIFIA Lender in its sole discretion.

**“Material Adverse Effect”** means a material adverse effect on (a) the Wastewater System, the Master Program or the Pledged Collateral, (b) the business, operations, properties, condition (financial or otherwise) or prospects of the Borrower (other than any change that would not reasonably be expected to affect the ability of the Borrower to enter into or deliver, or perform or



comply with its obligations under, this Agreement or any other Related Document), (c) the legality, validity or enforceability of any material provision of any Related Document, (d) the ability of the Borrower to enter into, perform or comply with any of its material obligations under any Related Document, (e) the validity, enforceability or priority of the Liens provided under the Trust Agreement on the Pledged Collateral or (f) the WIFIA Lender's rights or remedies available under any Related Document.

**“Nationally Recognized Rating Agency”** means any nationally recognized statistical rating organization identified as such by the Securities and Exchange Commission.

**“NEPA”** means the National Environmental Policy Act of 1969, as amended, and any successor statute of similar import, and regulations thereunder, in each case as in effect from time to time.

**“NEPA Determination”** means, with respect to each Project, the final NEPA decision, in the form of a Finding of No Significant Impact, Categorical Exclusion, or Record of Decision, issued for such Project by EPA in accordance with NEPA.

**“Net Revenues”** means all revenues received by the District from the Wastewater System less Operating Expenses, provided that Net Revenues shall not include any Transition Charge.

**“Non-Debarment Certificate”** means a certificate, signed by the Borrower's Authorized Representative, as to the absence of debarment, suspension or voluntary exclusion from participation in Government contracts, procurement and non-procurement matters with respect to the Borrower and its principals (as defined in 2 C.F.R. § 180.995 and supplemented by 2 C.F.R. 1532.995), substantially in the form attached hereto as Exhibit B (*Form of Non-Debarment Certificate*).

**“Non-Lobbying Certificate”** means a certificate, signed by the Borrower's Authorized Representative, with respect to the prohibition on the use of appropriated funds for lobbying pursuant to 49 C.F.R. § 20.100(b), substantially in the form attached hereto as Exhibit D (*Form of Non-Lobbying Certificate*).

**“OFAC”** means the Office of Foreign Assets Control of the United States Department of the Treasury.

**“Officer's Certificate”** means a certificate signed by the Borrower's Authorized Representative. Each Officer's Certificate presented pursuant to the Trust Agreement shall state that it is being delivered pursuant to (and shall identify the section or subsection of), and shall incorporate by reference and use in all appropriate instances all terms defined in, the Trust Agreement. Each Officer's Certificate shall state (a) that the terms thereof are in compliance with the requirements of the section or subsection pursuant to which such Officer's Certificate is delivered or shall state in reasonable detail the nature of any non-compliance and the steps being taken to remedy such non-compliance and (b) that it is being delivered together with any opinions, schedules, statements or other documents required in connection therewith.

**“Operating Expenses”** means those current expenses paid by the Borrower that may be required to pay the cost of maintaining, repairing and operating the Wastewater System, including

reasonable and necessary usual expenses of administration, operation, maintenance and repair, costs for billing and collecting the rates, fees and other charges for the use of or the services furnished by the Wastewater System, insurance premiums, credit enhancement and liquidity support fees, legal, engineering, auditing and financial advisory expenses, expenses and compensation of the Trustee, and deposits into a self-insurance program. Operating Expenses shall exclude allowance for depreciation and amortization and expenditures for extraordinary maintenance or repair or improvements. Operating Expenses shall also exclude expenses for improvements that will not be owned by the Borrower but which will, in the reasonable determination of the Commission, as evidenced by a resolution thereof, maintain or improve the integrity of the Wastewater System.

**“Operating Period Servicing Fee”** has the meaning provided in Section 10(a)(iii) (*Fees and Expenses*).

**“Organizational Documents”** means the Enabling Act.

**“Original Agreement”** has the meaning provided in the preamble hereto.

**“Outstanding”** has the meaning provided in the Trust Agreement.

**“Outstanding WIFIA Loan Balance”** means, with respect to each WIFIA Loan, (a) the aggregate principal amount of such WIFIA Loan drawn by the Borrower minus (b) the aggregate principal amount of such WIFIA Loan repaid by the Borrower, as determined in accordance with Section 8(d) (*Payment of Principal and Interest – Adjustments to Loan Amortization Schedule*).

**“Patriot Act”** means the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, as amended, and all regulations promulgated thereunder.

**“Payment Date”** means each Interest Payment Date and each Principal Payment Date.

**“Payment Default”** has the meaning provided in Section 17(a)(i) (*Events of Default and Remedies – Payment Default*).

**“Permitted Liens”** has the meaning provided in the Trust Agreement.

**“Person”** means and includes an individual, a general or limited partnership, a joint venture, a corporation, a limited liability company, a trust, an unincorporated organization and any Governmental Authority.

**“Pledged Collateral”** means the Net Revenues, all money and securities held by the Trustee in the Bond Fund and in the Debt Service Reserve Fund and, if applicable to the relevant WIFIA Loan until applied in payment of any item of the Issuance Costs or Capital Improvement Program Costs in accordance with Section 403 (*Requisitions from Issuance Fund and Construction Fund*) of the Trust Agreement, all money and securities in the Issuance Fund and the Construction Fund.

**“Principal Payment Date”** has, for each Project, the meaning provided in Section 1 (*Definitions*) of the applicable WIFIA Loan Agreement.

**“Prior Trust Agreement”** means that certain trust agreement, between the Borrower and the Trustee, dated as of October 1, 2011, as amended and restated as of March 1, 2016, and as amended by the Amendment, effective as of November 20, 2019, and as further supplemented and amended, prior to the execution and delivery of the Trust Agreement.

**“Project”** has, for each WIFIA Loan Agreement, the meaning provided in Section 1 (*Definitions*) thereof.

**“Project Budget”** has, for each Project, the meaning provided in Section 1 (*Definitions*) of the applicable WIFIA Loan Agreement.

**“Project Closing Certificate”** has the meaning provided in Section 11(b)(viii) (*Conditions Precedent – Conditions Precedent to Effectiveness of Each WIFIA Loan Agreement*).

**“Project Term Sheet”** means a term sheet substantially in the form attached hereto as Exhibit K (*Form of WIFIA Project Term Sheet*) entered into by the Borrower and the WIFIA Lender in respect of each WIFIA Loan.

**“Projected Substantial Completion Date”** has, for each WIFIA Loan, the meaning provided in Section 1 (*Definitions*) of the applicable WIFIA Loan Agreement.

**“Property”** has the meaning provided in the Trust Agreement.

**“Public Benefits Report”** has the meaning provided in Section 16(e) (*Reporting Requirements – Public Benefits Report*).

**“Rate Covenant”** has the meaning provided in Section 14(a) (*Affirmative Covenants – Rate Covenant*).

**“Related Documents”** means the WIFIA Loan Documents and the Trust Documents.

**“Requisition”** has the meaning provided in Section 4(b) (*Disbursement Conditions*).

**“Sanctioned Person”** means, at any time, (a) any Person listed in any Sanctions-related list of designated Persons maintained by OFAC or the U.S. Department of State, (b) any Person operating, organized or resident in a country or territory that is itself the subject or target of any Sanctions, or (c) any Person owned or Controlled by any such Person or Persons.

**“Sanctions”** means economic or financial sanctions or trade embargoes imposed, administered, or enforced from time to time by the Government, including those administered by OFAC or the U.S. Department of State.

**“Senior Management”** means one or more of the following senior management employees of the Borrower: General Manager and Chief Executive Officer, Deputy General Manager and Chief Financial Officer, Chief Engineer, Chief Operating Officer, Chief Technology Officer, Chief

of Water Quality, Chief Communications Officer, Chief Information Officer and Chief People Officer. If any titles of such senior management employees change, “**Senior Management**” shall include such senior management employees of the Borrower holding positions with different titles but exercising similar functions as those previously named.

“**Senior Obligations**” means Bonds and VRA Obligations.

“**Series Agreement**” means a supplemental trust agreement entered into or the resolution adopted by the Commission providing for the issuance of Senior Obligations pursuant to Section 209 (*Terms and Conditions for Incurrence of Additional Senior Obligations*) of the Trust Agreement. A Series Agreement shall include any Officer’s Certificate delivered by the Borrower’s Authorized Representative to whom authority has been delegated by the terms of the Series Agreement to provide the details of such Senior Obligations and, for purposes of additional VRA Obligations, a Series Agreement shall include such resolutions adopted by the Commission or financing agreements authorized thereby specifying the details of such additional VRA Obligations. The term “Series Agreement” includes (a) all Series Agreements entered into pursuant to Section 209 (*Terms and Conditions for Incurrence of Additional Parity Obligations*) of the Prior Trust Agreement and (b) all WIFIA Series Agreements.

“**Servicer**” means such entity or entities as the WIFIA Lender shall designate from time to time to perform, or assist the WIFIA Lender in performing, certain duties hereunder.

“**Servicing Fee**” means any Servicing Set-Up Fee, any Construction Period Servicing Fee or the Operating Period Servicing Fee.

“**Servicing Set-Up Fee**” has the meaning provided in Section 10(a)(i) (*Fees and Expenses*) and, for each WIFIA Loan, shall be in the amount provided in Section 10(a)(i) (*Fees and Expenses*) of the applicable WIFIA Loan Agreement and paid in accordance with Section 10(a)(i) (*Fees and Expenses*) hereof.

“**Subordinate Obligations**” has the meaning provided in the Trust Agreement.

“**Substantial Completion**” means, with respect to each Project, the stage at which such Project is able to perform the functions for which it was designed.

“**Substantial Completion Date**” means, with respect to each Project, the date on which the Borrower certifies to the WIFIA Lender, with evidence satisfactory to the WIFIA Lender, that Substantial Completion for such Project has occurred.

“**Supplement**” means an agreement, including a Series Agreement, supplemental to, and authorized and executed pursuant to the terms of, the Trust Agreement or the Prior Trust Agreement.

“**Total Project Costs**” means, with respect to each Project, (a) the costs paid or incurred or to be paid or incurred by the Borrower in connection with or incidental to the acquisition, design, construction and equipping of such Project, including legal, administrative, engineering, planning, design, insurance and financing (including costs of issuance); (b) amounts, if any, required by the WIFIA Loan Documents or the Trust Documents to be paid into any fund or account upon the

incurrence of the WIFIA Loan or any other Indebtedness, in each case in respect of such Project; (c) payments when due (whether at the maturity of principal, the due date of interest, or upon prepayment) in respect of any Indebtedness of the Borrower or any Credit Facility maintained by the Borrower, in each case in connection with such Project (other than the WIFIA Loan); and (d) costs of equipment and supplies and initial working capital and reserves required by the Borrower for the commencement of operation of such Project, including general administrative expenses and overhead of the Borrower.

**“Transition Charge”** means any rates, fees, charges or surcharges relating to the Wastewater System or the customers thereof established by irrevocable rate order or other action or instrument, and applicable to or by the Borrower, in conjunction with the issuance of debt or other securities under a separate resolution, indenture or similar instrument (other than the Trust Agreement or other instrument securing Indebtedness secured by revenues of the Wastewater System) to the extent such rates, fees, charges or surcharges are pledged or otherwise encumbered or conveyed as security for such debt or other securities.

**“Trust Agreement”** means that certain trust agreement, between the Borrower and the Trustee, dated as of October 1, 2011, as amended and restated as of March 1, 2016, and as amended by the Amendment, effective as of November 20, 2019, as further supplemented, as amended and restated as of July 1, 2024, and effective on July 16, 2024, and as further amended and supplemented from time to time in accordance with the terms thereof and hereof.

**“Trust Documents”** means the Trust Agreement, the Supplements, the VRA Agreements and the VRA Intercreditor Agreement.

**“Trustee”** means The Bank of New York Mellon Trust Company, N.A. and any bank or trust company becoming successor trustee under the Trust Agreement.

**“Twelfth Supplemental Trust Agreement”** has the meaning provided in Schedule 15(a)(ii) (*Additional Bonds Test*).

**“UCC”** means the Uniform Commercial Code, as in effect from time to time in the Commonwealth.

**“Uncontrollable Force”** means any cause beyond the control of the Borrower, including: (a) a hurricane, tornado, flood or similar occurrence, landslide, earthquake, fire or other casualty, strike or labor disturbance, freight embargo, act of a public enemy, explosion, war, blockade, terrorist act, insurrection, riot, general arrest or restraint of government and people, civil disturbance or similar occurrence, sabotage, pandemic, or act of God (provided that the Borrower shall not be required to settle any strike or labor disturbance in which it may be involved) or (b) the order or judgment of any federal, state or local court, administrative agency or governmental officer or body, if it is not also the result of willful or negligent action or a lack of reasonable diligence of the Borrower and the Borrower does not control the administrative agency or governmental officer or body; provided that the diligent contest in good faith of any such order or judgment shall not constitute or be construed as a willful or negligent action or a lack of reasonable diligence of the Borrower.

**“Unique Entity Identifier”** means, with respect to any Person, the unique entity identifier issued by the Government through SAM.gov for such Person.

**“Updated Financial Model”** means the Borrower’s annual rate and financial planning model, demonstrating to the satisfaction of the WIFIA Lender that the Borrower has developed and identified adequate revenues to implement a plan for operating, maintaining and repairing the Master Program over its useful life, and including (a) the Borrower’s capital improvement plan, major maintenance plan, projected rates and charges, projected Net Revenues and Operating Expenses for a reasonable projection period consistent with the Borrower’s operating and financial planning, and projected debt outstanding and annual debt service, and (b) evidence of compliance with the Rate Covenant for the most recent Borrower Fiscal Year for which Financial Statements are available and the projected Rate Covenant coverages for such reasonable projection period consistent with the Borrower’s operating and financial planning.

**“VRA”** means the Virginia Resources Authority, as Administrator of the Virginia Water Facilities Revolving Fund.

**“VRA Agreement”** means any financing agreement, indenture, bond, credit agreement, note, reimbursement agreement, letter of credit, guarantee or other agreement, instrument or document pursuant to which any VRA Obligation is incurred or secured by the Borrower.

**“VRA Intercreditor Agreement”** means that certain Intercreditor Agreement, dated as of September 28, 2020, by and among the Borrower, the Trustee and the VRA, as the same may be amended or modified to reflect the execution and delivery of the Trust Agreement and this Agreement.

**“VRA Obligations”** means the Indebtedness of the Borrower set forth on Exhibit A (VRA Obligations) to the Trust Agreement and Schedule III (Existing Indebtedness) to this Agreement and any Indebtedness issued to VRA pursuant to the Trust Agreement payable on a parity therewith.

**“Wastewater System”** means the wastewater treatment system of the Borrower as it may at any time exist, and includes all improvements and expansions thereof and additions thereto except as may otherwise be provided by resolution of the Commission.

**“Weighted Average Life”** means, with respect to any WIFIA Loan, as of any date of determination, the number of years (rounded to the nearest one-twelfth (1/12<sup>th</sup>)) obtained by dividing (a) the sum of the Weighted Payments with respect to such WIFIA Loan by (b) the Outstanding WIFIA Loan Balance with respect to such WIFIA Loan.

**“Weighted Payment”** means, with respect to any WIFIA Loan, as of any date of determination, each product obtained by multiplying (a) the amount of principal with respect to such WIFIA Loan payable as of any Principal Payment Date under the applicable WIFIA Loan Agreement by (b) the number of years (rounded to the nearest one-twelfth (1/12<sup>th</sup>)) that will elapse between such date of determination and such Principal Payment Date.

**“WIFIA”** has the meaning provided in the recitals hereto.

**“WIFIA Bonds”** means, collectively, each “WIFIA Bond” as defined in Section 1 (*Definitions*) of each WIFIA Loan Agreement.

**“WIFIA CUSIP Number”** has the meaning provided in Section 11(b)(viii)(G) (*Conditions Precedent – Conditions Precedent to Effectiveness of this Agreement*).

**“WIFIA Debt Service”** means, with respect to each WIFIA Loan, for any Payment Date occurring on or after the First Payment Date for such WIFIA Loan, the principal portion of the Outstanding WIFIA Loan Balance and any interest payable thereon (including interest accruing after the date of any filing by the Borrower of any petition in bankruptcy or the commencement of any bankruptcy, insolvency or similar proceeding with respect to the Borrower and interest accruing at the Default Rate during the continuance of an Event of Default), in each case (a) as set forth on Exhibit B (*WIFIA Debt Service*) of the applicable WIFIA Loan Agreement and (b) due and payable on such Payment Date in accordance with the provisions of Section 8(a) (*Payment of Principal and Interest – Payment of WIFIA Debt Service*).

**“WIFIA Interest Rate”** means, for each WIFIA Loan, the rate specified in Section 6 (*Interest Rate*) of the applicable WIFIA Loan Agreement, which shall be computed in accordance with Section 6 (*Interest Rate*) hereof.

**“WIFIA Lender”** has the meaning provided in the preamble hereto.

**“WIFIA Lender’s Authorized Representative”** means the Administrator and any other Person who shall be designated as such pursuant to Section 22 (*WIFIA Lender’s Authorized Representative*).

**“WIFIA Loan”** has, for each WIFIA Loan Agreement, the meaning provided in Section 1 (*Definitions*) thereof.

**“WIFIA Loan Agreement”** means, for each WIFIA Loan, a loan agreement substantially in the form attached hereto as Exhibit L (*Form of WIFIA Loan Agreement*) entered into by the Borrower and the WIFIA Lender in respect of the relevant Project.

**“WIFIA Loan Agreement Effective Date”** has, for each WIFIA Loan Agreement, the meaning provided in Section 1 (*Definitions*) thereof.

**“WIFIA Loan Commitment Amount”** has the meaning provided in Section 3(a) (*WIFIA Loans Under the Master Program*).

**“WIFIA Loan Documents”** means this Agreement, the WIFIA Bonds, the WIFIA Loan Agreements, the WIFIA Resolutions, and the WIFIA Series Agreements.

**“WIFIA Loan Request”** has the meaning provided in Section 4(a) (*Disbursement Conditions*).

**“WIFIA Resolutions”** means, collectively, the resolutions adopted by the Commission authorizing the execution and delivery of this Agreement, the WIFIA Loan Agreements and

corresponding WIFIA Bonds, and certain related actions by the Borrower in connection with the issuance of the WIFIA Loans.

“**WIFIA Series Agreement**” has, for each WIFIA Loan Agreement, the meaning provided in Section 1 (*Definitions*) thereof.

Section 2      Interpretation.

(a) Unless the context shall otherwise require, the words “hereto,” “herein,” “hereof” and other words of similar import refer to this Agreement as a whole.

(b) Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders and vice versa.

(c) Words importing the singular number shall include the plural number and vice versa unless the context shall otherwise require.

(d) The words “include,” “includes” and “including” shall be deemed to be followed by the phrase “without limitation.”

(e) Whenever the Borrower’s knowledge is implicated in this Agreement or the phrase “to the Borrower’s knowledge” or a similar phrase is used in this Agreement, the Borrower’s knowledge or such phrase(s) shall be interpreted to mean to the best of the Borrower’s knowledge after reasonable and diligent inquiry. Unless the context shall otherwise require, references to any Person shall be deemed to include such Person’s successors and permitted assigns.

(f) Unless the context shall otherwise require, references to the preamble, recitals, sections, subsections, clauses, schedules, exhibits, appendices and provisions are to the preamble to, or the applicable recitals, sections, subsections, clauses, schedules, exhibits, appendices and provisions of, this Agreement.

(g) The schedules and exhibits to this Agreement, and the appendices and schedules to such exhibits, are hereby incorporated by reference and made an integral part of this Agreement.

(h) The headings or titles of this Agreement and its sections, schedules or exhibits, as well as any table of contents, are for convenience of reference only and shall not define or limit its provisions.

(i) Unless the context shall otherwise require, all references to any resolution, contract, agreement, lease or other document shall be deemed to include any amendments or supplements to, or modifications or restatements or replacements of, such documents that are approved from time to time in accordance with the terms thereof and hereof.

(j) Every request, order, demand, application, appointment, notice, statement, certificate, consent or similar communication or action hereunder by any party shall, unless



otherwise specifically provided, be delivered in writing in accordance with Section 31 (Notices) and signed by a duly authorized representative of such party.

(k) References to “disbursements of WIFIA Loan proceeds” or similar phrasing shall be construed as meaning the same thing as “paying a portion of the purchase price of the WIFIA Bonds.”

(l) Whenever this Agreement requires a change in principal amount, interest rate or amortization schedule of any WIFIA Loan, it is intended that such change be reflected in the corresponding WIFIA Bond. Whenever there is a prepayment of any WIFIA Loan, it is intended that such prepayment be implemented through a prepayment of the corresponding WIFIA Bond.

(m) If any provision of this Agreement (or any other WIFIA Loan Document) conflicts with any provision of a WIFIA Loan Agreement, the provisions of such WIFIA Loan Agreement shall prevail.

## **ARTICLE II THE WIFIA LOAN**

### Section 3      WIFIA Loans Under the Master Program.

(a) Subject to the terms and conditions set forth in this Agreement and, with respect to each WIFIA Loan requested pursuant to the terms hereof, the terms and conditions set forth in the relevant WIFIA Loan Agreement (and Project Term Sheet related thereto), the Borrower may request WIFIA Loans for the Projects under the Master Program from time to time during the Master Availability Period in an aggregate principal amount for (i) the Master Program, not to exceed the Aggregate Master Program Amount and (ii) each Project component, not to exceed the principal amount set forth in Schedule II (Master Program Budget) for such Project component (such principal amount, the “**WIFIA Loan Commitment Amount**”); provided that (x) the aggregate WIFIA Loan Commitment Amount at any time shall not exceed the Aggregate Master Program Amount and (y) the availability of the WIFIA Loan for each Project shall be subject to the availability of budgetary authority at the time the WIFIA Loan Request is made, such availability of budgetary authority shall be determined by the WIFIA Lender in accordance with the Act and applicable law. WIFIA Loan proceeds to be drawn shall be disbursed from time to time to pay for Eligible Project Costs for the applicable Project in accordance with Section 4 (Disbursement Conditions), Section 11(c) (Conditions Precedent – Conditions Precedent to Disbursements), and the terms of the applicable WIFIA Loan Agreement related thereto.

(b) Prior to the execution of the relevant WIFIA Loan Agreement, (i) any Project component included in Schedule I (Master Program Schedule) and Schedule II (Master Program Budget) may be replaced with one or more other Project components and (ii) any WIFIA Loan Commitment Amount included in Schedule II (Master Program Budget) may be adjusted as necessary, so long as, following such adjustment, (x) the maximum principal amount of the relevant WIFIA Loan, together with the amount of any other credit assistance provided under the Act to the Borrower, would not exceed forty-nine percent (49%) of reasonably anticipated Eligible Project Costs for such Project and (y) the aggregate WIFIA Loan Commitment Amount does not

exceed the Aggregate Master Program Amount. In connection with any such modification, the Borrower shall amend Schedule I (Master Program Schedule) and Schedule II (Master Program Budget) by submitting a revised version thereof to the WIFIA Lender no later than thirty (30) days prior to the proposed effective date of such modification, together with a detailed explanation of the reasons therefor. Each such revised schedule shall become effective upon the WIFIA Lender's approval thereof, which approval shall be granted in the WIFIA Lender's sole discretion.

#### Section 4      Disbursement Conditions.

(a) From time to time after the Effective Date but in any event (x) not more than once every sixty (60) days and (y) no later than one hundred eighty (180) days prior to the end of the Master Availability Period, the Borrower may, with respect to each Project, request that the WIFIA Lender enter into a WIFIA Loan Agreement and related WIFIA Loan Documents in respect of such Project by delivering to the WIFIA Lender a written notice in the form of Exhibit F (Form of WIFIA Loan Request) (a "**WIFIA Loan Request**"), which shall specify the Project to which such WIFIA Loan Request relates, together with (i) a description of the Project, (ii) the most recent Updated Financial Model or financial plan delivered to the WIFIA Lender in accordance with Section 16(a) (Reporting Requirements – Updated Financial Model; Financial Plan), and (iii) such additional information relating to the Project as may be requested by the WIFIA Lender; provided that a WIFIA Loan Request shall not be required in connection with the initial WIFIA Loan Agreement; provided further that no more than five (5) WIFIA Loan Requests shall be delivered during the Master Availability Period. For each Project, the WIFIA Lender and the Borrower shall, subject to the terms and conditions set forth herein and the applicable WIFIA Loan Agreement, promptly and in good faith, negotiate, finalize and enter into the Project Term Sheet, WIFIA Loan Agreement and the other WIFIA Loan Documents related to such Project.

(b) WIFIA Loan proceeds shall be disbursed solely in respect of Eligible Project Costs (i) paid or incurred and approved for payment by or on behalf of the Borrower in connection with the applicable Project and (ii) consistent with the provisions of Section 401 (*Issuance Fund*) of the Trust Agreement with respect to Issuance Costs and Section 402 (*Construction Fund*) of the Trust Agreement with respect to Capital Improvement Program Costs. If the Borrower intends to utilize WIFIA Loan proceeds to make progress payments for construction work with respect to such Project, the Borrower shall demonstrate to the satisfaction of the WIFIA Lender that such progress payments are commensurate with the cost of the work that has been completed. Each disbursement of any WIFIA Loan shall be made pursuant to a requisition and certification (a "**Requisition**") in the form set forth in Appendix One (Form of Requisition) to Exhibit C (Requisition Procedures and Form of Requisition), along with all documentation and other information required thereby, submitted by the Borrower to, and approved by, the WIFIA Lender, all in accordance with the procedures of Exhibit C (Requisition Procedures and Form of Requisition) and subject to the requirements of this Section 4 and the conditions set forth in Section 11(c) (*Conditions Precedent – Conditions Precedent to Disbursements*) and Section 11(b) (*Conditions Precedent – Conditions Precedent to Disbursements*) of the applicable WIFIA Loan Agreement; provided that no disbursement of WIFIA Loan proceeds shall be made after the Final Disbursement Date with respect to such WIFIA Loan. Each Requisition shall include a certification by the Borrower certifying that the amount for which reimbursement or payment is being requested has not been reimbursed or paid by any previous disbursement of WIFIA Loan proceeds.

(c) The Borrower shall deliver copies of each Requisition to the WIFIA Lender and the Servicer (if any) on or before the first (1<sup>st</sup>) Business Day of each month for which a disbursement is requested. If the WIFIA Lender shall expressly approve a Requisition or shall not expressly deny a Requisition, disbursements of funds shall be made on the fifteenth (15<sup>th</sup>) day of the month for which a disbursement has been requested, or on the next succeeding Business Day if such fifteenth (15<sup>th</sup>) day is not a Business Day. Express WIFIA Lender approval or denial shall be substantially in the form annexed hereto as Appendix Two (*[Approval]/[Disapproval] of the WIFIA Lender*) to Exhibit C (*Requisition Procedures and Form of Requisition*). In no event shall disbursements be made more than once each month.

(d) Subject to this Section 4 (*Disbursement Conditions*), any scheduled disbursement (as reflected in the applicable Anticipated WIFIA Loan Disbursement Schedule) that remains undrawn as of its scheduled date shall automatically be available for succeeding scheduled disbursement dates, up to the Final Disbursement Date for the relevant WIFIA Loan, with the effect of automatically updating such Anticipated WIFIA Loan Disbursement Schedule without the need for the WIFIA Lender's approval. The Borrower may amend the Anticipated WIFIA Loan Disbursement Schedule by submitting a revised version thereof to the WIFIA Lender no later than thirty (30) days prior to the proposed effective date of such amendment, together with a detailed explanation of the reasons for such revisions. Such revised Anticipated WIFIA Loan Disbursement Schedule shall become effective upon the WIFIA Lender's approval thereof, which approval shall be granted in the WIFIA Lender's sole discretion.

Section 5 Term. The term of each WIFIA Loan shall extend from the applicable WIFIA Loan Agreement Effective Date to the Final Maturity Date of such WIFIA Loan or to such earlier date as all amounts due or to become due to the WIFIA Lender under such WIFIA Loan Agreement have been irrevocably paid in full in immediately available funds.

Section 6 Interest Rate. With respect to each WIFIA Loan, interest will accrue and be computed on each Outstanding WIFIA Loan Balance from time to time at the relevant WIFIA Interest Rate on the basis of a three hundred sixty (360) day year of twelve (12) thirty (30)-day months; provided that upon the occurrence of (a) any Payment Default, the Borrower shall pay interest on the Outstanding WIFIA Loan Balance at the Default Rate from (and including) its due date to (but excluding) the date of actual payment and (b) any Event of Default other than pursuant to Section 17(a)(i) (*Events of Default and Remedies – Payment Default*), the Borrower shall pay interest on the Outstanding WIFIA Loan Balance at the Default Rate from (and including) the date of such occurrence to (but excluding) the earlier of the date on which (i) such Event of Default has been cured or waived (if applicable) in accordance with the terms of this Agreement and the relevant WIFIA Loan Agreement and (ii) such Outstanding WIFIA Loan Balance has been irrevocably paid in full in immediately available funds. Interest on each WIFIA Loan shall accrue and be payable only on those amounts for which a Requisition has been submitted and funds (or such portion of funds as have been approved by the WIFIA Lender) have been disbursed to the Borrower for use on the relevant Project in accordance with Section 4 (*Disbursement Conditions*).

Section 7 Security and Priority; Flow of Funds.

(a) Each WIFIA Loan shall be evidenced by a WIFIA Bond registered in the name of the WIFIA Lender. Each WIFIA Bond shall constitute a special obligation of the

Borrower, secured by a Lien on the Pledged Collateral in accordance with the provisions of the Trust Agreement and the WIFIA Series Agreement. The Lien on the Pledged Collateral securing the obligations under the Trust Agreement and the WIFIA Loan Documents with respect to each WIFIA Loan shall be (i) *pari passu* in right of payment and right of security to the Lien in favor of the other Senior Obligations and (ii) senior in right of payment and right of security to the Lien in favor of the Subordinate Obligations. Each WIFIA Bond shall constitute a Bond under the Trust Agreement.

(b) Except for Permitted Liens, the Pledged Collateral will be free and clear of any pledge, Lien, charge or encumbrance thereon or with respect thereto that is of equal rank with or senior to the pledge of the Borrower created under the Trust Documents for the benefit of the holders of Senior Obligations (including the WIFIA Lender). All organizational, regulatory or other necessary action on the part of the Borrower with respect to the foregoing has been duly and validly taken.

(c) The Borrower shall not use Net Revenues to make any payments or satisfy any obligations other than in accordance with the provisions of this Section 7 and the Trust Documents (including the right to use Net Revenues to make payments on Senior Obligations and Subordinate Obligations) and shall not apply any portion of the Net Revenues in contravention of this Agreement or the Trust Documents.

(d) Net Revenues received by the Trustee shall be applied in the order of priority described and in accordance with the Flow of Funds.

(e) The creation and enforcement of the security interests created under the Trust Agreement shall be governed by, and subject to the limitations imposed by, the internal laws of the Commonwealth (including the Enabling Act and Virginia Code Section 2.2-4902.1), without regard to any conflict of law principles.

## Section 8      Payment of Principal and Interest.

### (a)      Payment of WIFIA Debt Service.

(i) For each WIFIA Loan, on each Payment Date with respect to such WIFIA Loan occurring on or after the applicable First Payment Date, the Borrower shall pay the applicable WIFIA Debt Service by making (A) semi-annual payments of interest on each Interest Payment Date, (B) annual or semi-annual payments (as required pursuant to the terms of the applicable WIFIA Loan Agreement) of principal on each Principal Payment Date, and (C) payments of any other amounts on each other date on which payment thereof is required to be made hereunder or under the applicable WIFIA Loan Agreement (including the applicable Final Maturity Date and any other date on which payment is due hereunder or thereunder or under the applicable WIFIA Bond by reason of the mandatory prepayment or the acceleration of the maturity of such WIFIA Loan or otherwise) (in each case on such dates specified in the applicable WIFIA Loan Agreement); provided that if any such date is not a Business Day, payment shall be made on the next Business Day following such date. Payments of WIFIA Debt Service shall be made in the amounts and on the Payment Dates as set forth in Exhibit B (*WIFIA Debt Service*) attached

to the applicable WIFIA Loan Agreement, as the same may be revised pursuant to Section 8(d) (Payment of Principal and Interest – Adjustments to Loan Amortization Schedule). Each principal payment shall equal the product of the Outstanding WIFIA Loan Balance of the applicable WIFIA Loan as of the Final Disbursement Date thereof multiplied by the percentage set forth for such corresponding Principal Payment Date in Exhibit B (WIFIA Debt Service) attached to the applicable WIFIA Loan Agreement, and shall be calculated in such a manner that the applicable Outstanding WIFIA Loan Balance shall be reduced to \$0 on the Final Maturity Date with respect to such WIFIA Loan.

(ii) Notwithstanding anything herein to the contrary, each Outstanding WIFIA Loan Balance and any accrued interest thereon shall be due and payable in full on the earlier of the Final Maturity Date of the related WIFIA Loan and, to the extent applicable, the date such WIFIA Loan is required to be prepaid pursuant to Section 9(a) (Prepayment – Mandatory Prepayment) or accelerated pursuant to Section 803 (*Acceleration of Maturities*) of the Trust Agreement.

(iii) No payment of the principal of or interest on any WIFIA Loan is required to be made during any Capitalized Interest Period (if applicable as set forth in the relevant WIFIA Loan Agreement). On each Payment Date occurring during the applicable Capitalized Interest Period, and on the day immediately following the end of such Capitalized Interest Period, interest accrued on the applicable WIFIA Loan in the six (6) month period ending immediately prior to such date (or such shorter period if such Capitalized Interest Period ends on a date other than the date immediately prior to an Interest Payment Date) shall be capitalized and added to the relevant Outstanding WIFIA Loan Balance. The accrual of interest on amounts capitalized during the applicable Capitalized Interest Period pursuant to this Section 8(a)(iii) shall commence on the date such amounts are added to the relevant Outstanding WIFIA Loan Balance. Within thirty (30) days after the end of the applicable Capitalized Interest Period, the WIFIA Lender shall give written notice to the Borrower stating the Outstanding WIFIA Loan Balance of the related WIFIA Loan as of the close of business on the last day of such Capitalized Interest Period, which statement thereof shall be deemed conclusive absent manifest error; provided that no failure to give or delay in giving such notice shall affect any payment obligation or other obligation of the Borrower hereunder or under any other WIFIA Loan Document to which the Borrower is a party. Notwithstanding the foregoing, the applicable Capitalized Interest Period shall end immediately upon written notification to the Borrower by the WIFIA Lender that an Event of Default under the relevant WIFIA Loan Agreement has occurred, in which case the provisions of this Section 8(a)(iii) shall no longer apply and payments of principal and interest shall be currently due and payable in accordance with the terms hereof and of such WIFIA Loan Agreement and interest shall no longer be capitalized.

(b) WIFIA Bond. As evidence of the Borrower's obligation to repay each WIFIA Loan, the Borrower shall issue and deliver to the WIFIA Lender, on or prior to the applicable WIFIA Loan Agreement Effective Date, a WIFIA Bond substantially in the form of Exhibit A (Form of WIFIA Bond), having the maximum principal amount specified in the WIFIA Loan Agreement for such WIFIA Loan, bearing interest at the applicable WIFIA Interest Rate and having principal and interest payable on the same dates as those set forth in such WIFIA Loan



Agreement. Any payment in respect of any WIFIA Bond shall be treated as a payment in respect of the corresponding WIFIA Loan, and any prepayment of principal in respect of any WIFIA Loan shall be treated as a redemption in respect of the corresponding WIFIA Bond.

(c) Manner of Payment. Payments under the WIFIA Loan Agreements (and the corresponding WIFIA Bonds, which payments shall not be duplicative) shall be made by wire transfer on or before each applicable Payment Date in Dollars and in immediately available funds (without counterclaim, offset or deduction) in accordance with the payment instructions provided by the WIFIA Lender prior to the relevant payment, as may be modified in writing from time to time by the WIFIA Lender; provided that the failure to provide updated payment instructions shall not affect in any manner the Borrower's obligations hereunder or under any other WIFIA Loan Document. Payments shall be made by the Borrower or the Trustee with funds then on deposit in the Bond Fund in accordance with Section 503 (*Application of Money in Bond Fund*) and, if applicable, Section 504 (*Application of Money in Debt Service Reserve Fund; Qualified Reserve Fund Substitute*) in each case of the Trust Agreement.

(d) Adjustments to Loan Amortization Schedule.

(i) The Borrower shall have the right to (i) propose the parameters of the Loan Amortization Schedule with respect to any WIFIA Loan prior to the execution and delivery of the relevant WIFIA Loan Agreement and (ii) propose modifications to the Loan Amortization Schedule with respect to any WIFIA Loan exercisable once on or prior to the date that is forty-five (45) days preceding the First Payment Date with respect to such WIFIA Loan, such modifications to be submitted by the Borrower to the WIFIA Lender and the Trustee in an updated Exhibit B to the relevant WIFIA Loan Agreement with adjustments to the column titled "Principal Payment as a % of Aggregate Amount of All Disbursements"; provided that (x) the form of and any modification to the Loan Amortization Schedule shall be reasonably acceptable to the WIFIA Lender, (y) the Weighted Average Life of such WIFIA Loan shall not exceed thirty-four (34) years measured as of the Initial Disbursement Date of such WIFIA Loan and (z) each Loan Amortization Schedule shall comply with all applicable requirements under this Agreement, the relevant WIFIA Loan Agreement, the Trust Agreement and law.

(ii) Each Outstanding WIFIA Loan Balance will be (A) increased on each occasion on which the WIFIA Lender disburses proceeds of the applicable WIFIA Loan under the applicable WIFIA Loan Agreement by the amount of such disbursement of loan proceeds and (B) decreased upon each payment or prepayment of the Outstanding WIFIA Loan Balance for the applicable WIFIA Loan by the amount of principal so paid. The WIFIA Lender may in its discretion at any time and from time to time, or when so requested by the Borrower, advise the Borrower and the Trustee by written notice of the amount of such Outstanding WIFIA Loan Balance as of the date of such notice, and its determination of such amount in any such notice shall be deemed conclusive absent manifest error. Amounts borrowed and repaid may not be reborrowed.

(iii) The WIFIA Lender is hereby authorized to modify each Loan Amortization Schedule from time to time, in accordance with the principles set forth below in this Section 8(d), to reflect (A) any change to the Outstanding WIFIA Loan Balance for

the applicable WIFIA Loan, (B) any change to the date and amount of any principal or interest due and payable or to become due and payable by the Borrower under this Agreement or the corresponding WIFIA Loan Agreement, and (C) such other information as the WIFIA Lender may determine is necessary for administering such WIFIA Loan or such WIFIA Loan Agreement. Any calculations described above shall be rounded up to the nearest whole cent. Any adjustments or revisions to such Loan Amortization Schedule as a result of changes in such Outstanding WIFIA Loan Balance shall be applied to reduce future payments due on the corresponding WIFIA Loan in any order of maturity as directed by written notice given by the Borrower to the WIFIA Lender prior to such adjustment or revision (and in the absence of any such written direction from the Borrower, in the inverse order of maturity). Absent manifest error, the WIFIA Lender's determination of such matters as set forth on Exhibit B (WIFIA Debt Service) attached to each WIFIA Loan Agreement shall be conclusive evidence thereof; provided that neither the failure to make any such recordation nor any error in such recordation shall affect in any manner the Borrower's obligations hereunder or under any other WIFIA Loan Document. The WIFIA Lender shall provide the Borrower and the Trustee with a copy of such Exhibit B (WIFIA Debt Service) as revised pursuant to this Section 8(d)(iii), but no failure to provide or delay in providing the Borrower or the Trustee with such copy shall affect any of the obligations of the Borrower under this Agreement or the other WIFIA Loan Documents. Any adjustments or revisions to a Loan Amortization Schedule shall be deemed to update the amortization schedule attached as Schedule A to the corresponding WIFIA Bond *mutatis mutandis*.

## Section 9      Prepayment.

(a)      Mandatory Prepayment. Any proceeds received by the Trustee from the VRA pursuant to the terms of the VRA Intercreditor Agreement shall be applied, on a *pro rata* basis with any other Bonds (based on the then outstanding principal balance thereof), to the payment or prepayment of such Bonds (including the WIFIA Bonds) in immediately available funds. The proceeds of any such partial prepayment of the WIFIA Bonds shall be applied in accordance with Section 9(d) (*Prepayment – General Prepayment Instructions*).

(b)      Optional Prepayments. The Borrower may optionally prepay any WIFIA Loan in whole or in part (and, if in part, the amounts thereof to be prepaid shall be determined by the Borrower; provided that such prepayments shall be in principal amounts of at least \$1,000,000 or any integral multiple of \$1.00 in excess thereof), from time to time, but not more than once during any Borrower Fiscal Year, without penalty or premium, by paying to the WIFIA Lender the principal amount of the WIFIA Loan to be prepaid, together with the unpaid interest accrued on the amount of principal so prepaid to the date of such prepayment, which shall be a Payment Date under the applicable WIFIA Loan Agreement unless otherwise agreed by the WIFIA Lender; provided further that any WIFIA Loan may be prepaid in full at any time without penalty. Each prepayment of a WIFIA Loan pursuant to this Section 9(a) shall be made in such principal amount as shall be specified by the Borrower in a written notice delivered to the WIFIA Lender not less than ten (10) days or more than thirty (30) days prior to the date set for prepayment, unless otherwise agreed by the WIFIA Lender. At any time between delivery of such written notice and the applicable optional prepayment, the Borrower may, without penalty or premium, rescind its announced optional prepayment by further written notice to the WIFIA Lender. Anything in this

Section 9(a) to the contrary notwithstanding, the failure by the Borrower to make any optional prepayment shall not constitute a breach or default under this Agreement or the applicable WIFIA Loan Agreement.

(c) Borrower's Certificate. Each prepayment pursuant to this Section 9 shall be accompanied by a certificate signed by the Borrower's Authorized Representative identifying the provision of this Agreement pursuant to which such prepayment is being made and containing a statement of the principal amount being repaid and a calculation in reasonable detail of the amount of interest due in connection with such prepayment.

(d) General Prepayment Instructions. Upon the WIFIA Lender's receipt of confirmation that payment in full in immediately available funds of the entire Outstanding WIFIA Loan Balance with respect to any WIFIA Loan and any unpaid interest, fees and expenses with respect thereto has occurred as a result of a prepayment, the WIFIA Lender shall surrender the corresponding WIFIA Bond to the Trustee or its representative at the principal corporate office of the Trustee. If the Borrower prepays only part of the unpaid balance of principal of any WIFIA Loan, the WIFIA Lender may make a notation on Exhibit B (WIFIA Debt Service) attached to the applicable WIFIA Loan Agreement, indicating the amount of principal of and interest on such WIFIA Loan then being prepaid. Absent manifest error, the WIFIA Lender's determination of such matters as set forth on such Exhibit B (WIFIA Debt Service) shall be conclusive evidence thereof; provided that neither the failure to make any such recordation nor any error in such recordation shall affect in any manner the Borrower's obligations hereunder or under any other WIFIA Loan Document. All partial prepayments of principal shall be applied to reduce future payments due on the applicable WIFIA Loan in any order of maturity as directed by written notice given by the Borrower to the WIFIA Lender at or prior to such prepayment (and in the absence of any such written direction from the Borrower, in the inverse order of maturity). If such funds have not been so paid on the prepayment date, such principal amount of such WIFIA Loan shall continue to bear interest until payment thereof at the rate provided in the applicable WIFIA Loan Agreement.

#### Section 10 Fees and Expenses.

(a) The Borrower shall pay to the WIFIA Lender for each WIFIA Loan:

(i) a servicing set-up fee equal to the amount specified in clause (a) of Section 10 (*Fees and Expenses*) of the applicable WIFIA Loan Agreement (the "**Servicing Set-Up Fee**"), which shall be due and payable within thirty (30) days after receipt of an invoice from the WIFIA Lender with respect thereto (or, if earlier, the Initial Disbursement Date of the related WIFIA Loan);

(ii) an annual construction period servicing fee equal to the amount specified in clause (b) of Section 10 (*Fees and Expenses*) of the applicable WIFIA Loan Agreement (the "**Construction Period Servicing Fee**"), which shall accrue on the first Business Day of the then-current Federal Fiscal Year and shall be due and payable on or prior to each November 15 during the Construction Period under the applicable WIFIA Loan Agreement (including the Federal Fiscal Year during which the applicable Substantial Completion Date occurs); provided that the initial Construction Period



Servicing Fee shall be due and payable within thirty (30) days after receipt of an invoice from the WIFIA Lender with respect thereto (or, if earlier, the Initial Disbursement Date of the related WIFIA Loan), in an amount pro-rated from the applicable WIFIA Loan Agreement Effective Date through the last day of the then-applicable Federal Fiscal Year; and

(iii) an annual operating period servicing fee equal to the amount specified in clause (c) of Section 10 (*Fees and Expenses*) of the applicable WIFIA Loan Agreement (the “**Operating Period Servicing Fee**”), which shall accrue on the first Business Day of the then-current Federal Fiscal Year and shall be due and payable on or prior to each November 15, beginning with the first November 15 following the end of the Federal Fiscal Year during which the applicable Substantial Completion Date occurs until (and including) the applicable Final Maturity Date; provided that any Operating Period Servicing Fee due and payable with respect to any Federal Fiscal Year during which such Final Maturity Date occurs shall be equal to the pro-rata monthly portion of the then applicable Operating Period Servicing Fee multiplied by the number of partial or whole months remaining between October 1 and such Final Maturity Date.

(b) The amount of each Construction Period Servicing Fee (other than the initial Construction Period Servicing Fee) and each Operating Period Servicing Fee shall be adjusted in proportion to the percentage change in CPI for the calendar year immediately preceding the calendar year during which such fee is due. The WIFIA Lender shall notify the Borrower of the amount of each such fee at least thirty (30) days before payment is due, which determination shall be conclusive absent manifest error.

(c) Expenses. The Borrower agrees, whether or not the transactions hereby contemplated shall be consummated, to reimburse the WIFIA Lender on demand from time to time, within thirty (30) days after receipt of any invoice from the WIFIA Lender, for any and all fees, costs, charges, and expenses incurred by it (including the fees, costs, and expenses of its legal counsel, financial advisors, auditors and other consultants and advisors) in connection with the negotiation, preparation, execution, delivery, and performance of this Agreement and the other WIFIA Loan Documents and the transactions hereby and thereby contemplated, including attorneys’, and engineers’ fees and professional costs, including all such fees, costs, and expenses incurred as a result of or in connection with:

(i) the review of each WIFIA Loan Request and the negotiation, preparation, execution, delivery, and performance of each Project Term Sheet, WIFIA Loan Agreement, and the other WIFIA Loan Documents related to the relevant Project;

(ii) the enforcement of or attempt to enforce, or the protection or preservation of any right or claim under, the Liens on the Pledged Collateral or any provision of this Agreement or any of the other WIFIA Loan Documents or the rights of the WIFIA Lender thereunder;

(iii) any amendment, modification, waiver, or consent with respect to this Agreement or any other Related Document; and

(iv) any work-out, restructuring, or similar arrangement of the obligations of the Borrower under this Agreement or the other WIFIA Loan Documents, including during the pendency of any Event of Default.

(d) The obligations of the Borrower under this Section 10 shall survive the payment or prepayment in full or transfer of any WIFIA Loan, the enforcement of any provision of this Agreement or the other WIFIA Loan Documents, any amendments, waivers or consents with respect thereto, any Event of Default, and any such workout, restructuring, or similar arrangement.

### **ARTICLE III CONDITIONS PRECEDENT**

#### **Section 11     Conditions Precedent.**

(a) Conditions Precedent to Effectiveness of this Agreement. Notwithstanding anything in this Agreement to the contrary, this Agreement shall not become effective until each of the following conditions precedent has been satisfied or waived in writing by the WIFIA Lender in its sole discretion (which the WIFIA Lender acknowledges were satisfied or waived prior to the Effective Date):

(i) The Borrower shall have duly executed and delivered to the WIFIA Lender this Agreement and the applicable WIFIA Resolution, each in form and substance satisfactory to the WIFIA Lender.

(ii) The Borrower shall have delivered to the WIFIA Lender complete and fully executed copies of each Trust Document, together with any amendments, supplements, waivers or modifications thereto, that has been entered into on or prior to the Effective Date, along with a certification in the Closing Certificate that each such document is complete, fully executed and in full force and effect, and that all conditions contained in such documents that are necessary to the closing of the WIFIA transactions contemplated hereby have been fulfilled.

(iii) The Borrower shall have delivered to the WIFIA Lender a copy of its Organizational Documents as in effect on the Effective Date, along with a certification in the Closing Certificate that such Organizational Documents are in full force and effect.

(iv) The Borrower shall have delivered to the WIFIA Lender all further instruments and documents (including any resolutions, ordinances, and supplements) other than the WIFIA Loan Documents as are necessary for the Borrower to execute and deliver, and to perform its obligations under, this Agreement and to consummate and implement the transactions contemplated by this Agreement.

(v) Counsel to the Borrower shall have delivered to the WIFIA Lender legal opinions satisfactory to the WIFIA Lender in its sole discretion (including those opinions set forth in Exhibit E-1 (*Opinions Required from Counsel to Borrower*)) and bond counsel to the Borrower shall have delivered to the WIFIA Lender legal opinions

satisfactory to the WIFIA Lender in its sole discretion (including those opinions set forth in Exhibit E-2 (*Opinions Required from Bond Counsel*)).

(vi) The Borrower shall have delivered to the WIFIA Lender the Non-Debarment Certificate.

(vii) The Borrower shall have delivered to the WIFIA Lender the Non-Lobbying Certificate.

(viii) The Borrower shall have delivered to the WIFIA Lender a certificate, signed by the Borrower's Authorized Representative, substantially in the form attached hereto as Exhibit G-1 (*Form of Closing Certificate*) (the "**Closing Certificate**") (x) designating the Borrower's Authorized Representative, (y) confirming such person's position and incumbency and (z) certifying as to the satisfaction of the following conditions precedent:

(A) the aggregate of all funds committed to the development and construction of the Projects under the Master Program as set forth in the Base Case Financial Model and in the Master Program Budget is sufficient to carry out the Master Program, pay all Total Project Costs anticipated for the Master Program and achieve substantial completion for each Project component by its projected substantial completion date (as set forth on Schedule I (*Master Program Schedule*) under the column titled "Substantial Completion");

(B) the Borrower has developed, and identified adequate revenues to implement, a plan for operating, maintaining and repairing the Projects during their useful lives;

(C) the Borrower has (x) obtained a Federal Employer Identification Number, (y) obtained a DUNS Number, and (z) registered with, and obtained confirmation of active registration status from, the federal System for Award Management ([www.SAM.gov](http://www.SAM.gov));

(D) the representations and warranties of the Borrower set forth in this Agreement and in each other Related Document to which the Borrower is a party are true and correct in all material respects on and as of the date hereof, except to the extent that such representations and warranties expressly relate to an earlier date, in which case such representations and warranties were true and correct in all material respects as of such earlier date; and

(E) other than the events and conditions disclosed in the Voluntary Notice of the Borrower dated and posted to EMMA on May 26, 2020, no Material Adverse Effect, or any event or condition that could reasonably be expected to have a Material Adverse Effect, has occurred or arisen since March 27, 2020.

(ix) The Borrower shall have delivered to the WIFIA Lender a Base Case Financial Model in form and substance acceptable to the WIFIA Lender, along with a

certification in the Closing Certificate that such Base Case Financial Model, based on the assumptions and limitations set forth therein, (A) demonstrates that projected Net Revenues are sufficient to meet the Loan Amortization Schedules, (B) demonstrates compliance with the Rate Covenant for each Borrower Fiscal Year through each Final Maturity Date, (C) reflects principal amortization and interest payment schedules acceptable to the WIFIA Lender and (D) demonstrates that the Borrower has developed, and identified adequate revenues to implement, a plan for operating, maintaining and repairing each Project over its useful life.

(x) The Borrower shall have delivered to the WIFIA Lender (A) certificates of insurance along with a certification in the Closing Certificate that such insurance certificates are true and correct and demonstrate compliance with the requirements of Section 14(f) (Affirmative Covenants – Insurance) and (B) at the WIFIA Lender's request, copies of such insurance policies and/or, if applicable, documents pertaining to the Borrower's self-insurance program.

(xi) The Borrower shall have delivered to the WIFIA Lender the Borrower's Financial Statements for the most recent Borrower Fiscal Year for which such Financial Statements are available.

(xii) The Borrower shall have paid in full all invoices delivered by the WIFIA Lender to the Borrower as of the Effective Date for the fees and expenses of the WIFIA Lender's counsel and financial advisors and any auditors or other consultants retained by the WIFIA Lender for the purposes hereof.

(xiii) The Borrower shall have delivered to the WIFIA Lender a complete and fully executed copy of the VRA Intercreditor Agreement in form and substance satisfactory to the WIFIA Lender.

(xiv) The Borrower shall have delivered such other agreements, documents, instruments, opinions and other items required by the WIFIA Lender, all in form and substance satisfactory to the WIFIA Lender.

(b) Conditions Precedent to Effectiveness of Each WIFIA Loan Agreement. Notwithstanding anything in this Agreement to the contrary, no WIFIA Loan Agreement shall become effective until each of the following conditions precedent has been satisfied or waived in writing by the WIFIA Lender in its sole discretion:

(i) The Borrower shall have duly executed and delivered to the WIFIA Lender (A) except with respect to the initial WIFIA Loan Agreement, a WIFIA Loan Request that complies with the provisions of Section 4(a) (Disbursement Conditions), (B) a Project Term Sheet with respect to the applicable Project and (C) the WIFIA Loan Agreement and each other WIFIA Loan Document with respect to such Project, in each case in form and substance satisfactory to the WIFIA Lender.

(ii) The Borrower shall have delivered to the WIFIA Lender complete and fully executed copies of each Existing Construction Contract with respect to the applicable Project, together with any amendments, waivers or modifications thereto, along

with a certification in the applicable Project Closing Certificate that each such document is complete, fully executed and in full force and effect.

(iii) To the extent not previously delivered to the WIFIA Lender, the Borrower shall have delivered to the WIFIA Lender copies of any Trust Document entered into after the Effective Date, along with a certification in the Closing Certificate that each such document is complete, fully executed and in full force and effect.

(iv) Counsel to the Borrower shall have delivered to the WIFIA Lender legal opinions satisfactory to the WIFIA Lender in its sole discretion (including those opinions set forth in Exhibit E-1 (*Opinions Required from Counsel to Borrower*)) and bond counsel to the Borrower shall have delivered to the WIFIA Lender legal opinions satisfactory to the WIFIA Lender in its sole discretion (including those opinions set forth in Exhibit E-2 (*Opinions Required from Bond Counsel*)), in each case for the relevant Project.

(v) The Borrower shall have delivered to the WIFIA Lender the Non-Debarment Certificate for the relevant Project.

(vi) The Borrower shall have delivered to the WIFIA Lender the Non-Lobbying Certificate for the relevant Project.

(vii) The Borrower shall have delivered to the WIFIA Lender (A) a Project Budget for the relevant Project and (B) a revised Master Program Budget reflecting such Project Budget.

(viii) The Borrower shall have delivered to the WIFIA Lender a Project Closing Certificate with respect to the relevant Project, signed by the Borrower's Authorized Representative, substantially in the form attached hereto as Exhibit G-2 (*Form of Project Closing Certificate*) (x) confirming that the Borrower's Authorized Representative previously designated and such person's position and incumbency as previously provided to the WIFIA Lender remain unchanged and in full force and effect (or if changed, designating such new Borrower's Authorized Representative and confirming such person's position and incumbency, in form and substance satisfactory to the WIFIA Lender) and (y) certifying as to the satisfaction of the following conditions precedent (and, if requested by the WIFIA Lender, shall have provided evidence satisfactory to the WIFIA Lender of such satisfaction):

(A) the aggregate of all funds committed to the development and construction of such Project as set forth in the applicable Project Budget and the related revised Master Budget, as applicable, are sufficient to carry out such Project, pay all Total Project Costs anticipated for such Project and achieve Substantial Completion for such Project by the applicable Projected Substantial Completion Date;

(B) the Borrower has obtained all Governmental Approvals required to have been obtained as of the WIFIA Loan Agreement Effective Date (x) in connection with such Project and (y) to execute and deliver, and perform its

obligations under the WIFIA Loan Documents, and all such Governmental Approvals are final, non-appealable, and in full force and effect (and are not subject to any notice of violation, breach, or revocation);

(C) as of the applicable WIFIA Loan Agreement Effective Date, (x) the maximum principal amount of the relevant WIFIA Loan, together with the amount of any other credit assistance provided under the Act to the Borrower, does not exceed forty-nine percent (49%) of the reasonably anticipated Eligible Project Costs for such Project and (y) the total federal assistance provided to such Project, including the maximum principal amount of the relevant WIFIA Loan, does not exceed eighty percent (80%) of Total Project Costs for such Project;

(D) the Borrower is in compliance with NEPA and any applicable federal, state or local environmental review and approval requirements with respect to such Project, and, if requested by the WIFIA Lender, has provided evidence satisfactory to the WIFIA Lender of such compliance, including true, accurate and complete copies of the relevant NEPA Determination and any supplements thereto, which shall be in full force and effect and shall not have been withdrawn or materially amended;

(E) the Borrower has developed, and identified adequate revenues to implement, a plan for operating, maintaining and repairing such Project during its useful life;

(F) the Borrower has maintained (1) the Federal Employer Identification Number provided to the WIFIA Lender as a condition precedent to the Effective Date, (2) a Unique Entity Identifier and provided the same to the WIFIA Lender and (3) an active registration status with the federal System for Award Management ([www.SAM.gov](http://www.SAM.gov));

(G) (1) with respect to the initial WIFIA Loan Agreement, the Borrower has obtained a CUSIP number for the initial WIFIA Loan (the “**WIFIA CUSIP Number**”) for purposes of monitoring through EMMA, and (2) with respect to each other WIFIA Loan Agreement, the Borrower has (x) maintained such WIFIA CUSIP Number and (y) confirmed that the expiration date of such WIFIA CUSIP Number is no earlier than the Final Maturity Date of the relevant WIFIA Loan or extended the expiration date of the WIFIA CUSIP Number to be no earlier than the Final Maturity Date of the relevant WIFIA Loan;

(H) the representations and warranties of the Borrower set forth in the relevant WIFIA Loan Agreement and in each other Related Document to which the Borrower is a party are true and correct in all material respects on and as of the WIFIA Loan Agreement Effective Date, except to the extent that such representations and warranties expressly relate to an earlier date, in which case such representations and warranties were true and correct in all material respects as of such earlier date; provided that, to the extent necessary to make the corresponding representation and warranty true and complete as of the relevant WIFIA Loan



Agreement Effective Date, the Borrower shall have delivered an updated version of Schedule 12(f) (Litigation) and/or Schedule 12(p) (Environmental Matters) **[NOTE TO HRSD: Please update each of these schedules to be accurate as of the Amendment Effective Date]** in form and substance satisfactory to the WIFIA Lender in its sole discretion;

(I) the Borrower's Organizational Documents remain in full force and effect, and no amendments or modifications have been made to the Organizational Documents since the Effective Date that have not been delivered to the WIFIA Lender;

(J) no Material Adverse Effect, or any event or condition that could reasonably be expected to have a Material Adverse Effect, has occurred or arisen since the Effective Date; and

(K) as of the relevant WIFIA Loan Agreement Effective Date, no Default or Event of Default and no event of default under any other Related Document shall have occurred and be continuing.

(ix) The Borrower shall have provided evidence to the WIFIA Lender's satisfaction of the assignment by at least one (1) Nationally Recognized Rating Agency of a public Investment Grade Rating on the applicable WIFIA Loan, along with a certification in the Project Closing Certificate that no such rating has been reduced to a rating below Investment Grade, revoked, withdrawn or suspended as of the applicable WIFIA Loan Agreement Effective Date.

(x) The Borrower shall have delivered to the WIFIA Lender the most recent Updated Financial Model or financial plan in compliance with the requirements of Section 16(a) (Reporting Requirements – Updated Financial Model; Financial Plan).

(xi) The Borrower shall have delivered to the WIFIA Lender a Public Benefits Report.

(xii) The Borrower shall have delivered to the WIFIA Lender the Borrower's Financial Statements for the most recent Borrower Fiscal Year for which such Financial Statements are available.

(xiii) The Borrower shall have provided the WIFIA Lender records of any Eligible Project Costs with respect to the relevant Project incurred prior to the relevant WIFIA Loan Agreement Effective Date in form and substance satisfactory to the WIFIA Lender.

(xiv) To the extent not previously paid, the Borrower shall have paid in full (A) any outstanding Servicing Fees due and payable under Section 10 (Fees and Expenses) and (B) all invoices delivered by the WIFIA Lender to the Borrower on or prior to the relevant WIFIA Loan Agreement Effective Date for the fees and expenses of the WIFIA Lender's counsel and financial advisors and any auditors or other consultants retained by the WIFIA Lender for the purposes of the WIFIA Loan Documents.

(xv) The Borrower shall have delivered to the WIFIA Lender the Civil Rights Pre-Award Compliance Review Report: EPA Form 4700-4 with respect to the relevant Project.

(xvi) The Borrower shall have delivered such other agreements, documents, instruments, opinions and other items reasonably required by the WIFIA Lender, all in form and substance satisfactory to the WIFIA Lender.

(c) Conditions Precedent to Disbursements. Notwithstanding anything in this Agreement to the contrary, the WIFIA Lender shall have no obligation to make any disbursement of any proceeds with respect to any WIFIA Loan to the Borrower until each of the following conditions precedent with respect to such WIFIA Loan has been satisfied or waived in writing by the WIFIA Lender in its sole discretion:

(i) The Borrower shall have provided to the WIFIA Lender evidence satisfactory to the WIFIA Lender that (A) the aggregate amount of all disbursements of such WIFIA Loan (including the requested disbursement) will not exceed (1) the maximum principal amount of such WIFIA Loan, (2) the amount of the Eligible Project Costs with respect to the applicable Project paid or incurred by the Borrower, and (3) the cumulative disbursements through the end of the current Federal Fiscal Year as set forth in the applicable Anticipated WIFIA Loan Disbursement Schedule; (B) the Borrower has sufficient available funds committed to such Project, which together with funds that remain available and not yet drawn under such WIFIA Loan, will be sufficient to pay the reasonably anticipated remaining Total Project Costs with respect to such Project; and (C) the total federal assistance provided to such Project, including the maximum principal amount of such WIFIA Loan, does not exceed eighty percent (80%) of such Total Project Costs.

(ii) The Borrower shall have delivered to the WIFIA Lender the most recent Updated Financial Model or financial plan in compliance with the requirements of Section 16(a) (*Reporting Requirements – Updated Financial Model*).

(iii) The Borrower shall have delivered to the WIFIA Lender a Requisition that complies with the provisions of Section 4 (*Disbursement Conditions*) (including satisfactory Eligible Project Costs Documentation relating to such Requisition), and the WIFIA Lender shall have approved (or be deemed to have approved in accordance with Section 4(b) (*Disbursement Conditions*)) such Requisition. The Borrower's Authorized Representative shall also certify in such Requisition that:

(A) all Governmental Approvals required to have been obtained as of the time of such disbursement for the development, construction, operation and maintenance of the relevant Project have been issued and are in full force and effect (and are not subject to any notice of violation, breach or revocation);

(B) each of the insurance policies obtained by the Borrower and by any applicable Construction Contractor in satisfaction of the requirements in Section 14(f) (*Affirmative Covenants – Insurance*) is in full force and effect, and no



notice of termination thereof has been issued by the applicable insurance provider and received by the Borrower;

(C) at the time of, and immediately after giving effect to, any disbursement of WIFIA Loan proceeds then currently requested, (1) no Default or Event of Default hereunder and no event of default under any other Related Document shall have occurred and be continuing and (2) no event that, with the giving of notice or the passage of time or both, would constitute an event of default under any other Related Document shall have occurred and be continuing;

(D) no Material Adverse Effect, or any event or condition that could reasonably be expected to result in a Material Adverse Effect, shall have occurred since the Effective Date;

(E) the Borrower, and to the best of its knowledge, each of its contractors and subcontractors at all tiers with respect to the relevant Project, has complied with all applicable laws, rules, regulations and requirements, including 40 U.S.C. §§3141-3144, 3146, and 3147 (relating to Davis-Bacon Act requirements) (and regulations relating thereto) and 33 U.S.C. §3914 (relating to American iron and steel products). Each Construction Contract requires that supporting documentation, such as certified payroll records and certifications for all iron and steel products used for the relevant Project, be maintained by such contractors and subcontractors and available for review upon request by the WIFIA Lender; and

(F) the representations and warranties of the Borrower set forth in this Agreement (including Section 12 (*Representations and Warranties of Borrower*)) and in each other Related Document shall be true and correct as of each date on which any disbursement of the applicable WIFIA Loan is made, except to the extent such representations and warranties expressly relate to an earlier date (in which case, such representations and warranties shall be true and correct as of such earlier date).

(iv) To the extent not previously delivered to the WIFIA Lender, the Borrower shall have provided copies of any Construction Contracts with respect to the applicable Project (including any amendments, modifications or supplements thereto) entered into after the applicable WIFIA Loan Agreement Effective Date, along with a certification in the applicable Requisition that each such document is complete, fully executed and in full force and effect.

(v) To the extent not previously delivered to the WIFIA Lender, the Borrower shall have delivered to the WIFIA Lender copies of any Trust Documents entered into after the applicable WIFIA Loan Agreement Effective Date, along with a certification in the applicable Requisition that each such document is complete, fully executed and in full force and effect.

(vi) The Borrower shall have paid in full (A) any outstanding Servicing Fees due and payable under Section 10 (Fees and Expenses) and (B) all invoices received from the WIFIA Lender as of the date of disbursement of the relevant WIFIA Loan for the fees and expenses of the WIFIA Lender's counsel and financial advisors and any auditors or other consultants retained by the WIFIA Lender for the purposes of the WIFIA Loan Documents.

#### **ARTICLE IV REPRESENTATIONS AND WARRANTIES**

Section 12 Representations and Warranties of Borrower. The Borrower hereby represents and warrants that, as of the Effective Date (other than with respect to the representations and warranties contained in Section 12(k) (Representations and Warranties of Borrower – Credit Ratings) and Section 12(n) (Representations and Warranties of Borrower – Construction Contracts)) and as of each WIFIA Loan Agreement Effective Date and, as to each of the representations and warranties below other than those contained in Section 12(b) (Representations and Warranties of Borrower – Officers' Authorization), the first sentence of Section 12(f) (Representations and Warranties of Borrower – Litigation), Section 12(k) (Representations and Warranties of Borrower – Credit Ratings), and Section 12(n) (Representations and Warranties of Borrower – Construction Contracts), as of each date on which any disbursement of a WIFIA Loan is requested or made:

(a) Organization; Power and Authority. The Borrower is a political subdivision created and validly existing under the laws of the Commonwealth, has full legal right, power and authority to enter into the Related Documents then in existence, to execute and deliver this Agreement and the other Related Documents, and to carry out and consummate all transactions contemplated hereby and thereby, and has duly authorized the execution, delivery and performance of this Agreement and the other Related Documents (it being understood that the authorization and powers of the Borrower are governed by, and subject to the limitations imposed by, the internal laws of the Commonwealth (including the Enabling Act), without regard to any conflict of law principles).

(b) Officers' Authorization. As of the Effective Date and as of each WIFIA Loan Agreement Effective Date, the officers of the Borrower executing (or that previously executed) the Related Documents, and any certifications or instruments related thereto, are (or were at the time of such execution) duly and properly in office and fully authorized to execute the same.

(c) Due Execution; Enforceability. Each of the Related Documents in effect as of any date on which this representation and warranty is made, and to which the Borrower is a party has been duly authorized, executed and delivered by the Borrower and constitutes the legal, valid and binding agreement of the Borrower enforceable against the Borrower in accordance with its terms, except as such enforceability (i) may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the rights of creditors generally and (ii) is subject to general principles of equity (regardless of whether enforceability is considered in equity or at law).

(d) Non-Contravention. The execution and delivery of the Related Documents to which the Borrower is a party, the consummation of the transactions contemplated by the Related Documents, and the fulfillment of or compliance with the terms and conditions of all of the Related Documents, will not (i) conflict with the Borrower's Organizational Documents, (ii) conflict in any material respect with, or constitute a violation, breach or default (whether immediately or after notice or the passage of time or both) by the Borrower of or under, any applicable law, administrative rule or regulation, any applicable court or administrative decree or order, or any indenture, mortgage, deed of trust, loan agreement, lease, contract or other agreement or instrument to which the Borrower is a party or by which it or its properties or assets are otherwise subject or bound, or (iii) result in the creation or imposition of any Lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of the Borrower, other than Permitted Liens.

(e) Consents and Approvals. No consent or approval of any trustee, holder of any indebtedness of the Borrower or any other Person, and no consent, permission, authorization, order or license of, or filing or registration with, any Governmental Authority is necessary in connection with (i) the execution and delivery by the Borrower of the Related Documents, except as have been obtained or made and as are in full force and effect or (ii) (A) the consummation of any transaction contemplated by any of the Related Documents or (B) the fulfillment of or compliance by the Borrower with the terms and conditions of any of the Related Documents, except as have been obtained or made and as are in full force and effect or, if not required to be obtained or made as of the date this representation and warranty is made, as can reasonably be expected to be obtained or made in the ordinary course on commercially reasonable terms and conditions when needed.

(f) Litigation. As of the Effective Date and as of each WIFIA Loan Agreement Effective Date, except as set forth in Schedule 12(f) (Litigation), to the knowledge of the Borrower, there is no action, suit, proceeding, inquiry or investigation in any case before or by any court or other Governmental Authority pending or threatened against or affecting the Wastewater System (including the Master Program) or the ability of the Borrower to execute, deliver and perform its obligations under the Related Documents. To the knowledge of the Borrower, there is no action, suit, proceeding, inquiry or investigation before or by any court or other Governmental Authority pending or threatened against or affecting the Wastewater System, the Master Program, the Borrower or the assets, properties or operations of the Borrower, that in any case could reasonably be expected to result in a Material Adverse Effect.

(g) Security Interests. (i) The Trust Agreement, the WIFIA Series Agreement, the Enabling Act and Virginia Code Section 2.2-4902.1 establish, and (ii) the Borrower has taken all necessary action to pledge, assign, and grant, in each case in favor of the Trustee for the benefit of all holders of Senior Obligations (including the WIFIA Lender), legal, valid, binding and enforceable Liens on the Pledged Collateral purported to be created, pledged, assigned, and granted pursuant to and in accordance with the Trust Documents, irrespective of whether any Person has notice of the pledge and without the need for any physical delivery, recordation, filing, or further act. Such Liens are in full force and effect, are *pari passu* with the Lien on the Pledged Collateral in favor of the other Senior Obligations and are senior to the Lien on the Pledged Collateral in favor of the Subordinate Obligations. The Borrower is not in breach of any covenants set forth in this Agreement, including Section 14(b) (Affirmative Covenants – Securing Liens) or

in the Trust Documents with respect to the matters described in Section 14(b) (*Affirmative Covenants – Securing Liens*). All documents and instruments have been recorded or filed for record in such manner and in such places as are required and all other action as is necessary or desirable has been taken to establish a legal, valid, binding, and enforceable Lien on the Pledged Collateral in favor of the Trustee for the benefit of all holders of Senior Obligations (including the WIFIA Lender), and all taxes and filing fees that are due and payable in connection with the execution, delivery or recordation of any Trust Documents or any instruments, certificates or financing statements in connection with the foregoing, have been paid. Article 9 of the UCC does not govern the attachment, validity, enforceability or priority of the security interest in the Pledged Collateral granted pursuant to the Trust Agreement and the WIFIA Series Agreement.

(h) No Debarment. The Borrower has fully complied with its verification obligations under 2 C.F.R. § 180.320 and confirms, based on such verification, that, to its knowledge, neither the Borrower nor any of its principals (as defined in 2 C.F.R. § 180.995 and supplemented by 2 C.F.R. § 1532.995) is debarred, suspended or voluntarily excluded from participation in Government contracts, procurement or non-procurement matters or delinquent on a Government debt as more fully set forth in the certificate delivered pursuant to Section 11(a)(vi) (*Conditions Precedent – Conditions Precedent to Effectiveness of this Agreement*) or Section 11(b)(v) (*Conditions Precedent – Conditions Precedent to Effectiveness of Each WIFIA Loan Agreement*).

(i) Accuracy of Representations and Warranties. The representations, warranties and certifications of the Borrower set forth in this Agreement and the other Related Documents are, in all material respects, true and correct, except to the extent such representations and warranties expressly relate to an earlier date (in which case, such representations and warranties were, in all material respects, true and correct as of such earlier date).

(j) Compliance with Laws.

(i) The Borrower, and to the best of its knowledge, each of its contractors and subcontractors at all tiers with respect to the Master Program, has complied with all applicable laws, rules, regulations and requirements, including 40 U.S.C. §§3141-3144, 3146, and 3147 (relating to Davis-Bacon Act requirements) (and regulations relating thereto) and 33 U.S.C. §3914 (relating to American iron and steel products).

(ii) To further such compliance, the Borrower has included in all contracts with respect to the Master Program (A) the contract clauses relating to the Davis-Bacon Act requirements that are set forth in the Code of Federal Regulations, Title 29 Part 5.5 and (B) requirements that its contractors shall (1) comply with all applicable laws, rules, regulations, and requirements set forth in this Section 12(j) and follow applicable federal guidance and (2) incorporate in all subcontracts (and cause all subcontractors to include in lower tier subcontracts) such terms and conditions as are required to be incorporated therein by any applicable laws, rules, regulations and requirements set forth in this Section 12(j) (including with respect to the Davis-Bacon Act requirements).

(iii) No notices of violation of any applicable law have been issued, entered or received by the Borrower or, to the Borrower's knowledge and solely with

respect to the Master Program, by any contractor or subcontractor with respect to the Master Program, other than, in each case, notices of violations that are immaterial.

(iv) The Borrower is not (A) a Sanctioned Person or (B) in violation of or, since the date that is five (5) years prior to the Effective Date, has violated: (1) any applicable Anti-Money Laundering Laws; (2) any applicable Sanctions; (3) any applicable Anti-Corruption Laws; or (4) any applicable anti-drug trafficking, anti-terrorism, or anti-corruption laws, civil or criminal. To the knowledge of the Borrower, there are no pending or threatened claims or investigations by any Governmental Authority against, or any internal investigations conducted by, the Borrower with respect to any possible or alleged violations of any Sanctions, Anti-Money Laundering Laws, Anti-Corruption Laws, or any anti-drug trafficking or anti-terrorism laws. No use of proceeds of any WIFIA Loan or any other transaction contemplated by this Agreement or any other Related Document will violate any applicable Sanctions, Anti-Money Laundering Laws, or Anti-Corruption Laws, or any applicable anti-drug trafficking or anti-terrorism laws.

(k) Credit Ratings. As of any WIFIA Loan Agreement Effective Date, (i) the corresponding WIFIA Loan has received a public Investment Grade Rating from at least one (1) Nationally Recognized Rating Agency, (ii) written evidence of such rating has been provided to the WIFIA Lender, and (iii) no such rating has been reduced to a rating below Investment Grade, revoked, withdrawn or suspended.

(l) No Defaults. No Default or Event of Default, and no default or event of default by the Borrower under any other Related Document, has occurred and is continuing.

(m) Governmental Approvals. All Governmental Approvals required to have been obtained as of the Effective Date and required to have been obtained as of any subsequent date on which this representation is made (or deemed made) for the undertaking and completion by the Borrower of the Master Program, and for the operation and management thereof, have been obtained or effected and are in full force and effect and there is no basis for, nor proceeding that is pending or threatened that could reasonably be expected to result in, the revocation of any such Governmental Approval. The Borrower is not in default (and no event has occurred and is continuing that, with the giving of notice or the passage of time or both, could constitute a default) with respect to any such Governmental Approval, which default could reasonably be expected to result in a Material Adverse Effect.

(n) Construction Contracts. As of any WIFIA Loan Agreement Effective Date, attached as Schedule 12(n) (*Construction Contracts*) to the applicable WIFIA Loan Agreement is a list of the Existing Construction Contracts as of such WIFIA Loan Agreement Effective Date. With respect to each Construction Contract executed as of any date on which this representation and warranty is made, such Construction Contract is in full force and effect.

(o) Information. The information furnished by, or on behalf of, the Borrower to the WIFIA Lender, when taken as a whole, is true and correct in all material respects (other than for projections and other forward-looking statements contained in the Base Case Financial Model and any Updated Financial Model or financial plan which have been made in good faith and based on reasonable assumptions) and does not contain any untrue statement of a material fact or omit

to state any material fact necessary to make the statements contained therein not misleading as of the date made or furnished.

(p) Environmental Matters. Except as set forth in Schedule 12(p) (*Environmental Matters*), the Borrower is in compliance with all laws applicable to the Wastewater System (including the Master Program) relating to (i) air emissions, (ii) discharges to surface water or ground water, (iii) noise emissions, (iv) solid or liquid waste disposal, (v) the use, generation, storage, transportation or disposal of toxic or hazardous substances or wastes, (vi) biological resources (such as threatened and endangered species), and (vii) other environmental, health or safety matters, including all laws applicable to the Wastewater System (including the Master Program) (collectively, the “**Environmental Laws**”). All Governmental Approvals for the Master Program relating to Environmental Laws have been, or, when required, will be, obtained and are (or, as applicable, will be) in full force and effect. Except as set forth in Schedule 12(p) (*Environmental Matters*), the Borrower has not received any written communication or notice, whether from a Governmental Authority, employee, citizens group, or any other Person, that alleges that the Borrower is not in compliance with all Environmental Laws and Governmental Approvals relating thereto in connection with the Master Program and, to the Borrower’s knowledge, there are no circumstances that may prevent or interfere with compliance in the future by the Borrower with any such Environmental Law or Governmental Approval. The Borrower has provided to the WIFIA Lender all material assessments, reports, results of investigations or audits, and other material information in the possession of or reasonably available to the Borrower regarding the Borrower’s or each Project’s compliance with (A) Environmental Laws and (B) Governmental Approvals that are required for the Master Program and relate to Environmental Laws.

(q) Sufficient Rights. The Borrower possesses, or has a reasonable basis to conclude that it can obtain, either valid legal and beneficial title to, leasehold title in, or other valid legal or beneficial rights with respect to the real property relating to the Wastewater System (including the Master Program), in each case as is necessary and sufficient as of the date this representation is made for the construction, operation, maintenance and repair of the Wastewater System (including the Master Program). As of any date on which this representation and warranty is made, the Construction Contracts then in effect and the Governmental Approvals that have then been obtained are in full force and effect and create rights in the Borrower sufficient to enable the Borrower to own, construct, operate, maintain and repair the Wastewater System (including the Master Program) and to perform its obligations under the Construction Contracts.

(r) Insurance. The Borrower is in compliance with all insurance obligations required under the Related Documents as of any date on which this representation and warranty is made. To the extent the Borrower self-insures, the Borrower’s self-insurance program is actuarially sound.

(s) No Liens. Except for Permitted Liens, the Borrower has not created, and is not under any obligation to create, and has not entered into any transaction or agreement that would result in the imposition of, any Lien on the Pledged Collateral, the Wastewater System, the Master Program, the properties or assets in relation to the Master Program, or the Borrower’s rights in any of the foregoing.



(t) Financial Statements. Each income statement, balance sheet and statement of operations and cash flows delivered to the WIFIA Lender pursuant to Section 11(a)(xi) (Conditions Precedent – Conditions Precedent to Effectiveness of this Agreement), Section 11(b)(xii) (Conditions Precedent – Conditions Precedent to Effectiveness of Each WIFIA Loan Agreement) and Section 16(b) (Reporting Requirements – Annual Financial Statements) (collectively, “**Financial Statements**”) has been prepared in accordance with GAAP and presents fairly, in all material respects, the financial condition of the Borrower as of the respective dates of the balance sheets included therein and the results of operations of the Borrower for the respective periods covered by the statements of income included therein. Except as reflected in such Financial Statements, there are no liabilities or obligations of the Borrower of any nature whatsoever for the periods to which such Financial Statements relate that are required to be disclosed in accordance with GAAP.

(u) Securities Laws. Under existing law, the WIFIA Bonds may be issued and sold without registration under the Securities Act of 1933, as amended, and any Commonwealth blue sky laws, and the Trust Agreement is exempt from qualification pursuant to the Trust Indenture Act of 1939, as amended.

(v) Taxes. The Borrower is not required to file tax returns with any Governmental Authority.

(w) Sufficient Funds. In the reasonable opinion of the Borrower, the amount of the WIFIA Loans, when combined with all other funds committed for the development and construction of the Projects as set forth under the various sources of funds in the Base Case Financial Model will be sufficient to carry out the Master Program, pay all Total Project Costs anticipated for the development and construction of the Projects and achieve Substantial Completion with respect to each Project by the Projected Substantial Completion Date with respect to such Project.

(x) Sovereign Immunity. The Borrower either has no immunity from the jurisdiction of any court of competent jurisdiction or from any legal process therein which could be asserted in any action to enforce the obligations of the Borrower under any of the Related Documents to which it is a party or the transactions contemplated hereby or thereby, including the obligations of the Borrower hereunder and thereunder, or, to the extent that the Borrower has such immunity, the Borrower has waived such immunity to the extent permitted by applicable law pursuant to Section 14(n) (Affirmative Covenants – Immunity) (which the Borrower represents and the WIFIA Lender acknowledges applicable law does not permit as of the Effective Date).

(y) Patriot Act. To the extent that the Patriot Act is applicable to the Borrower, the Borrower has established an anti-money laundering compliance program pursuant to the Patriot Act.

(z) No Federal Debt. The Borrower has no delinquent federal debt (including tax liabilities but excluding any delinquencies that have been resolved with the appropriate federal agency in accordance with the standards of the Debt Collection Improvement Act of 1996).

Section 13     Representations and Warranties of WIFIA Lender. The WIFIA Lender represents and warrants that:

(a)     Power and Authority. The WIFIA Lender has all requisite power and authority to make the WIFIA Loan and to perform all transactions contemplated by the Related Documents to which it is a party.

(b)     Due Execution; Enforceability. The Related Documents to which it is a party have been duly authorized, executed and delivered by the WIFIA Lender, and are legally valid and binding agreements of the WIFIA Lender, enforceable in accordance with their terms.

(c)     Officers' Authorization. The officers of the WIFIA Lender executing each of the Related Documents to which the WIFIA Lender is a party are duly and properly in office and fully authorized to execute the same on behalf of the WIFIA Lender.

## **ARTICLE V COVENANTS**

Section 14     Affirmative Covenants. The Borrower covenants and agrees as follows until the date each WIFIA Bond and all of the obligations of the Borrower under this Agreement and each WIFIA Loan Agreement (other than contingent indemnity obligations to the extent applicable) are irrevocably paid in full in immediately available funds and the WIFIA Lender no longer has any commitment to make disbursements to the Borrower, unless the WIFIA Lender waives compliance in writing:

(a)     Rate Covenant. The Borrower shall comply with the requirements specified in Section 705 (*Rate Covenant*) of the Trust Agreement (such requirements, the “**Rate Covenant**”), a copy of which Section as of the Amendment Effective Date is attached hereto as Schedule 14(a) (*Rate Covenant*).

(b)     Securing Liens. The Borrower shall at any and all times, to the extent permitted by law, pass, make, do, execute, acknowledge and deliver, all and every such further resolutions, acts, deeds, conveyances, assignments, transfers and assurances as may be necessary or desirable in connection with assuring, conveying, granting, assigning, securing and confirming the Liens on the Pledged Collateral (whether now existing or hereafter arising) granted to the Trustee for the benefit of the holders of all Senior Obligations (including the WIFIA Lender) pursuant to the Trust Agreement and the WIFIA Series Agreement, or intended so to be granted pursuant to the Trust Agreement and the WIFIA Series Agreement, or which the Borrower may become bound to grant, and the Borrower shall at all times, to the extent permitted by law, maintain the Pledged Collateral free and clear of any pledge, Lien, charge or encumbrance thereon or with respect thereto that has priority over, or equal rank with, the Liens created by the Trust Agreement and the WIFIA Series Agreement, other than as permitted by the Trust Documents and this Agreement, and duly take all organizational, regulatory or other necessary action on the part of the Borrower to that end. The Borrower shall at all times, to the extent permitted by law, defend, preserve and protect the Liens on the Pledged Collateral granted pursuant to the Trust Agreement and the WIFIA Series Agreement for the benefit of the WIFIA Lender against all claims and demands of all Persons whomsoever, subject to Permitted Liens.



(c) Use of Proceeds. The Borrower shall use the proceeds of the WIFIA Loans for purposes permitted by applicable law, this Agreement and the other Related Documents.

(d) Prosecution of Work; Verification Requirements.

(i) The Borrower shall diligently prosecute the work relating to the Master Program and complete each Project in accordance with the Construction Schedule, the Governmental Approvals in connection with such Project, and prudent utility practice.

(ii) The Borrower shall comply with Subpart C of 2 C.F.R. Part 180, as supplemented by Subpart C of 2 C.F.R. Part 1532 (relating to debarment), including the verification requirements set forth in 2 C.F.R. §§ 180.300 and 180.320, and shall include in its contracts with respect to the Project similar terms or requirements for compliance.

(e) Operations and Maintenance. The Borrower shall comply with the requirements specified in Section 707 (*Covenants as to Maintenance of Properties, Etc.*) of the Trust Agreement.

(f) Insurance.

(i) The Borrower shall comply with the requirements specified in Section 708 (*Insurance*) of the Trust Agreement.

(ii) The Borrower shall cause all liability insurance policies that it maintains (and, during each Construction Period, that are maintained by any Construction Contractor with respect to the applicable Project), other than workers' compensation insurance, to reflect the WIFIA Lender as an additional insured to the extent of its insurable interest.

(iii) Promptly upon request by the WIFIA Lender, the Borrower shall deliver to the WIFIA Lender copies of any underlying insurance policies obtained by or on behalf of the Borrower in respect of the Master Program. All such policies shall be available at all reasonable times for inspection by the WIFIA Lender, its agents and representatives.

(g) Maintain Legal Structure. To the extent permitted by law, the Borrower shall not take any action to adversely affect its existence as a political subdivision of the Commonwealth organized and existing under the laws of the Commonwealth.

(h) Investment of Money. The Borrower shall comply with the requirements set forth in Section 602 (*Investment of Money*) of the Trust Agreement.

(i) Compliance with Laws.

(i) The Borrower shall, and shall by written contract require its contractors and subcontractors at all tiers with respect to the Master Program, to comply with all applicable laws, rules, regulations and requirements, including: 40 U.S.C. §§3141-

3144, 3146, and 3147 (relating to Davis-Bacon Act requirements) (and regulations relating thereto) and 33 U.S.C. §3914 (relating to American iron and steel products).

(ii) To further such compliance, the Borrower shall include in all contracts with respect to the Master Program (A) the contract clauses relating to the Davis-Bacon Act requirements that are set forth in the Code of Federal Regulations, Title 29 Part 5.5 and (B) requirements that its contractors (1) shall comply with all applicable laws, rules, regulations, and requirements set forth in this Section 14(i) and follow applicable federal guidance and (2) incorporate in all subcontracts (and cause all subcontractors to include in lower tier subcontracts) such terms and conditions as are required to be incorporated therein by any applicable laws, rules, regulations and requirements set forth in this Section 14(i) (including with respect to the Davis-Bacon Act requirements).

(iii) No use of proceeds of any WIFIA Loan or any other transaction contemplated by this Agreement or any other Related Document shall violate any applicable Sanctions, Anti-Money Laundering Laws, or Anti-Corruption Laws, or any applicable anti-drug trafficking or anti-terrorism laws.

(j) Material Obligations. The Borrower shall pay its material obligations payable from revenues of the Wastewater System promptly and in accordance with their terms and pay and discharge promptly all taxes, assessments and governmental charges or levies imposed upon it or upon such revenues or other assets of the Wastewater System, before the same shall become delinquent or in default, as well as all lawful and material claims for labor, materials and supplies or other claims that, if unpaid, might give rise to a Lien upon the Wastewater System or any part thereof or on the Net Revenues or the other Pledged Collateral; provided that such payment and discharge shall not be required with respect to any such tax, assessment, charge, levy, claim or Lien so long as the validity or amount thereof shall be contested by the Borrower in good faith by appropriate proceedings, and so long as the Borrower shall have set aside adequate reserves with respect thereto in accordance with and to the extent required by GAAP, applied on a consistent basis.

(k) SAM Registration. The Borrower shall obtain prior to the Effective Date (and provide such registration information to the WIFIA Lender) and maintain through each Final Disbursement Date an active registration status with the federal System for Award Management ([www.SAM.gov](http://www.SAM.gov)) (or any successor system or registry).

(l) Unique Entity Identifier. The Borrower shall (i) obtain prior to the (A) Effective Date, a Data Universal Numbering System Number and (B) WIFIA Loan Effective Date with respect to the Tranche 3 WIFIA Loan referred to in Schedule II hereto (and provide to the WIFIA Lender), a Unique Entity Identifier and (ii) maintain the Unique Entity Identifier through the Final Maturity Date of each WIFIA Loan.

(m) Insurance and Condemnation Proceeds. The Borrower shall comply with the requirements set forth in Section 709 (*Insurance and Condemnation Proceeds*) of the Trust Agreement.

(n) Immunity. Solely to the extent the Borrower has authority to do so under applicable law (which the Borrower represents and the WIFIA Lender acknowledges it does not have as of the Effective Date), the Borrower agrees to waive any immunity it may have as a governmental entity from lawsuits, other actions and claims, and any judgments with respect to the enforcement of any of the obligations of the Borrower under this Agreement or any other WIFIA Loan Document, to the fullest extent permitted by applicable law.

(o) Accounting and Audit Procedures.

(i) The Borrower shall establish fiscal controls and accounting procedures sufficient to assure proper accounting for all (A) Net Revenues, Operating Expenses, capital expenses, depreciation, reserves, debt issued and outstanding and debt payments and (B) Project-related costs, WIFIA Loan requisitions submitted, WIFIA Loan proceeds received, payments made by the Borrower with regard to the Projects, and other sources of funding for the Projects (including amounts paid from such sources for Project costs so that audits may be performed to ensure compliance with and enforcement of this Agreement). The Borrower shall use accounting, audit and fiscal procedures conforming to GAAP, including, with respect to the WIFIA Loans, accounting of principal and interest payments, disbursements, prepayments and calculation of interest and principal amounts Outstanding.

(ii) The Borrower shall have a single or program-specific audit conducted in accordance with 2 C.F.R. Part 200 Subpart F and 31 U.S.C. § 7502 for 2020 and annually thereafter, except to the extent biennial audits are permitted for the Borrower pursuant to 2 C.F.R. § 200.504 and 31 U.S.C. § 7502(b). Upon reasonable notice, the Borrower shall cooperate fully in the conduct of any periodic or compliance audits conducted by the WIFIA Lender, or designees thereof, pursuant to 40 C.F.R. Part 35, 31 U.S.C. § 7503(b), or 31 U.S.C. § 6503(h) and shall provide full access to any books, documents, papers or other records that are pertinent to the Master Program or the WIFIA Loans to the WIFIA Lender, or the designee thereof, for any such project or programmatic audit.

(p) Access; Records.

(i) So long as any WIFIA Loan or any portion thereof shall remain outstanding and until five (5) years after such WIFIA Loan shall have been paid in full, the WIFIA Lender shall have the right, upon reasonable prior notice, to visit and inspect any portion of the relevant Project, to examine books of account and records of the Borrower relating to such Project, to make copies and extracts therefrom at the Borrower's expense, and to discuss the Borrower's affairs, finances and accounts relating to such Project with, and to be advised as to the same by, its officers and employees and its independent public accountants (and by this provision the Borrower irrevocably authorizes its independent public accountants to discuss with the WIFIA Lender the affairs, finances and accounts of the Borrower, whether or not any representative of the Borrower is present, it being understood that nothing contained in this Section 14(p) is intended to confer any right to exclude any such representative from such discussions), all at such reasonable times and intervals as the WIFIA Lender may request. The Borrower agrees to pay all out-of-pocket

expenses incurred by the WIFIA Lender in connection with the WIFIA Lender's exercise of its rights under this Section 14(p) at any time when an Event of Default shall have occurred and be continuing.

(ii) The Borrower shall maintain and retain all files relating to the Master Program and the WIFIA Loans until five (5) years after the later of the date on which (A) all rights and duties under this Agreement and under the WIFIA Loan Agreements and corresponding WIFIA Bonds (including payments) have been fulfilled and any required audits have been performed and (B) any litigation relating to Master Program, the WIFIA Loans, this Agreement or the WIFIA Loan Agreements is finally resolved or, if the WIFIA Lender has reasonable cause to extend such date, a date to be mutually agreed upon by the WIFIA Lender and the Borrower. The Borrower shall provide to the WIFIA Lender in a timely manner all records and documentation relating to the Master Program that the WIFIA Lender may reasonably request from time to time.

**Section 15 Negative Covenants.** The Borrower covenants and agrees as follows until the date each WIFIA Bond and all of the obligations of the Borrower under this Agreement and each WIFIA Loan Agreement (other than contingent indemnity obligations to the extent applicable) are irrevocably paid in full in immediately available funds and the WIFIA Lender no longer has any commitment to make disbursements to the Borrower, unless the WIFIA Lender waives compliance in writing:

(a) Indebtedness.

(i) The Borrower shall not create, incur or suffer to exist (A) any Indebtedness the payments of which are senior or prior in right to the payment by the Borrower of any Bond outstanding under the Trust Agreement (including the WIFIA Bonds) or (B) any Indebtedness with respect to the Master Program that is secured by a dedicated revenue source other than Net Revenues.

(ii) The Borrower shall not issue or incur any Additional Senior Obligations (including any WIFIA Bond) except in accordance with all requirements and conditions set forth in Section 704 (*Limitations on Indebtedness*) of the Trust Agreement and Section 5.2 (*Additional Restriction on the Incurrence of Additional Indebtedness*) of the Twelfth Supplemental Trust Agreement, a copy of which Sections as of the Amendment Effective Date is attached hereto as Schedule 15(a)(ii) (*Additional Bonds Test*).

(b) No Lien Extinguishment or Adverse Amendments. The Borrower shall not, and shall not permit any Person to, without the prior written consent of the WIFIA Lender, (i) extinguish or impair the Liens on the Pledged Collateral granted pursuant to the Trust Agreement and the WIFIA Series Agreement, (ii) amend, modify, replace or supplement any WIFIA Loan Document or the VRA Intercreditor Agreement or in each case permit a waiver of any provision thereof, (iii) amend, modify, replace, supplement, terminate or assign any VRA Agreement or permit a waiver of any provision thereof in each case in a manner that could reasonably be expected to materially adversely affect the WIFIA Lender in connection with the WIFIA Loans, the Pledged Collateral or the WIFIA Lender's rights or remedies under any Related Document or (iv) amend,

modify, replace, supplement, terminate or assign the Trust Agreement or any Supplement or permit a waiver of any provision thereof in each case in a manner that could reasonably be expected to materially adversely affect the WIFIA Lender in connection with the WIFIA Loans in a disproportionate manner compared to other holders of Senior Obligations; provided that this covenant shall not prohibit any Supplement permitted to be made without the consent of any holder of Senior Obligations pursuant to Section 1101 (*Supplemental Trust Agreements without Consent of Holders*) of the Trust Agreement.

(c) No Prohibited Liens. The Borrower shall not create or suffer to be created or permit the existence of any Lien on Property now owned or hereafter acquired by it or upon the Net Revenues other than Permitted Liens.

(d) Restricted Payments and Transfers. The Borrower shall not permit Net Revenues, or any funds in any of the Funds and Accounts, to be paid or transferred or otherwise applied for purposes that would violate the terms of the Trust Agreement or the Enabling Act.

(e) No Prohibited Sale, Lease or Assignment. The Borrower shall not sell, lease or assign its rights in and to the Wastewater System (including the Master Program) or a substantial portion of the assets included in the Wastewater System (including the Master Program) in each case unless such sale, lease or assignment is made in accordance with Section 707(a) (*Covenants as to Maintenance of Properties, Etc.*) of the Trust Agreement.

(f) Fiscal Year. The Borrower shall not at any time adopt any fiscal year other than the Borrower Fiscal Year, except with thirty (30) days' prior written notice to the WIFIA Lender.

(g) Mergers and Acquisitions. The Borrower shall not, and shall not agree to, reorganize, consolidate with or merge into another Person unless (i) such reorganization, merger or consolidation is with or into another entity created or established by Commonwealth law and such reorganization, merger or consolidation is mandated by Commonwealth law or (ii) such reorganization, merger or consolidation will not adversely affect or impair the sufficiency of Net Revenues for the payment of debt service on all Senior Obligations. In either case, the Borrower shall provide to the WIFIA Lender or post to EMMA under the WIFIA CUSIP Number, no later than sixty (60) days prior to the date of reorganization, consolidation or merger, prior written notice of such reorganization, consolidation or merger and the agreements and documents authorizing the reorganization, consolidation or merger. In addition, the Borrower shall provide all information concerning such reorganization, consolidation or merger as shall have been reasonably requested by the WIFIA Lender.

(h) No Defeasance. Notwithstanding anything to the contrary in any document, no WIFIA Loan shall be subject to defeasance and no amounts in respect of any WIFIA Loan shall be considered or deemed to have been paid until the WIFIA Lender shall have received irrevocable payment in immediately available funds in accordance with the requirements for payment set forth in this Agreement and the WIFIA Loan Agreements.

## Section 16 Reporting Requirements.

(a) Updated Financial Model; Financial Plan. The Borrower shall provide to the WIFIA Lender, not later than ninety (90) days after the beginning of each Borrower Fiscal Year, (i) an Updated Financial Model or (ii) a financial plan either (A) in the form of, and containing substantially similar information to, **Exhibit M** (*Form of Annual Budget*) or (B) demonstrating to the satisfaction of the WIFIA Lender that the Borrower has developed and identified adequate revenues to implement a plan for operating, maintaining and repairing the Master Program over its useful life, and including (x) the Borrower's capital improvement plan, major maintenance plan, projected rates and charges, projected Net Revenues and Operating Expenses for a reasonable projection period consistent with the Borrower's operating and financial planning, and projected debt outstanding and annual debt service, and (y) evidence of compliance with the Rate Covenant for the most recent Borrower Fiscal Year for which Financial Statements are available and the projected Rate Covenant coverages for such reasonable projection period consistent with the Borrower's operating and financial planning.

(b) Annual Financial Statements. The Borrower shall deliver to the WIFIA Lender or post to EMMA under the WIFIA CUSIP Number, on an annual basis as soon as available, but (x) if the applicable Borrower Fiscal Year ended on June 30, no later than December 27 of such year, and (y) if the applicable Borrower Fiscal Year ended on a date other than June 30, no later than one hundred eighty (180) days after the end of such Borrower Fiscal Year: a copy of the audited income statement and balance sheet of the Borrower as of the end of such Borrower Fiscal Year and the related audited statements of operations and of cash flow of the Borrower for such Borrower Fiscal Year: (i) setting forth in each case in comparative form the figures for the previous fiscal year, (ii) certified without qualification or exception, or qualification as to the scope of the audit, by an independent public accounting firm selected by the Borrower, and (iii) which shall be complete and correct in all material respects and shall be prepared in reasonable detail and in accordance with GAAP applied consistently throughout the periods reflected therein (except, with respect to the annual financial statements, for changes approved or required by the independent public accountants certifying such statements and disclosed therein).

(c) Construction Contracts and Specifications. The Borrower shall deliver to the WIFIA Lender, no later than thirty (30) days prior to (i) bid advertisement for each Project, a copy of the final specifications relating to the development and construction of such Project, demonstrating compliance with all applicable federal requirements and including a summary of the scope of work thereunder and (ii) any notice to proceed for such Project, a copy of the relevant portion of the related executed Construction Contract (including the cover page and executed signature pages) demonstrating compliance with all applicable federal requirements.

(d) Construction Reporting. The WIFIA Lender shall have the right in its sole discretion to monitor (or direct its agents to monitor) the development of the Master Program, including environmental compliance, design, and construction of the Projects. The Borrower shall be responsible for administering construction oversight of each Project in accordance with applicable federal, state and local governmental requirements. The Borrower agrees to cooperate in good faith with the WIFIA Lender in the conduct of such monitoring by promptly providing the WIFIA Lender with any Construction Contracts and such reports, documentation or other information in each case as shall be requested by the WIFIA Lender or its agents, including any independent engineer reports, documentation or information. During the period through Substantial Completion of each Project, the Borrower shall furnish to the WIFIA Lender, on a



quarterly basis, a report on the status of such Project, substantially in the form of Exhibit H (*Form of Quarterly Report*). The report shall be executed by the Borrower's Authorized Representative and, for any quarterly period, shall be delivered to the WIFIA Lender within thirty (30) days following the end of such quarterly period (or if such day is not a Business Day, on the next following Business Day). If the then-current projection for the Substantial Completion Date of any Project is a date later than the Projected Substantial Completion Date of such Project, the Borrower shall provide in such report a description in reasonable detail to the reasonable satisfaction of the WIFIA Lender of the reasons for such projected delay, an estimate of the impact of such delay on the capital and operating costs of the Wastewater System (if any), and a certification of the Borrower's Authorized Representative that the new date could not reasonably be expected to result in a Material Adverse Effect.

(e) Public Benefits Report. With respect to each Project, the Borrower shall deliver to the WIFIA Lender a report, in the form of Exhibit J (*Form of Public Benefits Report*) (the "**Public Benefits Report**"), (i) no later than the applicable WIFIA Loan Agreement Effective Date, (ii) within ninety (90) days following the applicable Substantial Completion Date and (iii) within ninety (90) days following the fifth (5<sup>th</sup>) anniversary of such Substantial Completion Date. The Borrower agrees that information described under this Section 16(e) may be made publicly available by the WIFIA Lender at its discretion.

(f) Modifications to Total Project Costs. With respect to each Project, for the period through the applicable Substantial Completion Date, the Borrower shall provide the WIFIA Lender with written notification at least thirty (30) days prior to instituting any increase to the Total Project Costs for such Project in an amount equal to or greater than fifteen percent (15%), which notification shall set forth the nature of the proposed increase. The Borrower's notice shall demonstrate that the proposed increase is consistent with the provisions of this Agreement and the applicable WIFIA Loan Agreement, is necessary or beneficial to such Project, does not materially impair the WIFIA Lender's security or the Borrower's ability to comply with its obligations under the Related Documents (including any financial ratios or covenants included therein), and could not reasonably be expected to result in a Material Adverse Effect.

(g) Operations and Maintenance. The WIFIA Lender shall have the right, in its sole discretion, to monitor (or direct its agents to monitor) each Project's operations and, as the WIFIA Lender may reasonably request from time to time, to receive reporting on the operation and management of each Project, and copies of any contracts relating to the operation and maintenance of each Project. The Borrower agrees to cooperate in good faith with the WIFIA Lender in the conduct of such monitoring by promptly providing the WIFIA Lender with such reports, documentation, or other information reasonably requested by the WIFIA Lender. The WIFIA Lender has the right, in its sole discretion, to retain such consultants or advisors, to carry out the provisions of this Section 16(g).

(h) Notices.

(i) The Borrower shall, within fifteen (15) Business Days (or such other time as specified below) after the Borrower learns of the occurrence, give the WIFIA Lender notice of any of the following events or receipt of any of the following notices, as applicable, setting forth details of such event:

(A) Substantial Completion: the occurrence of Substantial Completion of each Project, such notice to be provided in the form set forth in Exhibit I (*Form of Certificate of Substantial Completion*);

(B) Defaults; Events of Default: any Default or Event of Default;

(C) Litigation: (1) the filing of any litigation, suit or action, or the commencement of any proceeding, against the Borrower before any arbitrator, Governmental Authority, alternative dispute resolution body, or other neutral third-party, or the receipt by the Borrower in writing of any threat of litigation, suit, action, or proceeding, or of any written claim against the Borrower that, in each case, could reasonably be expected to have a Material Adverse Effect, and any material changes in the status of such litigation, suit, action or claim, and (2) any judgments against the Borrower that could reasonably be expected to have a Material Adverse Effect, either individually or in the aggregate;

(D) Delayed Governmental Approvals: any failure to receive or delay in receiving any Governmental Approval or making any required filing, notice, recordation or other demonstration to or with a Governmental Authority, in each case to the extent such failure or delay will or could reasonably be expected to result in a delay to any major milestone date (including any Projected Substantial Completion Date) set forth in any Construction Schedule, together with a written explanation of the reasons for such failure or delay and the Borrower's plans to remedy or mitigate the effects of such failure or delay;

(E) Environmental Notices: any material notice of violation or material change in finding under any Environmental Law related to the Master Program or any material changes to a NEPA Determination;

(F) Amendments: except as otherwise agreed by the WIFIA Lender in writing, copies of fully executed amendments, modifications, replacements or supplements to any Related Document within ten (10) days following execution thereof; provided that such notice can be accomplished through the posting of the relevant documents on EMMA under the WIFIA CUSIP Number;

(G) Related Document Defaults: any material breach or default or event of default on the part of the Borrower or any other party under any Related Document; provided that such notice can be accomplished through the posting of the relevant documents on EMMA under the WIFIA CUSIP Number;

(H) Uncontrollable Force: the occurrence of any Uncontrollable Force that could reasonably be expected to materially and adversely affect the Master Program;

(I) Ratings Changes: any change in the rating assigned to any WIFIA Loan or any other Indebtedness, in each case by any Nationally Recognized Rating Agency that has provided a public rating on such indebtedness, and any



notices, reports or other written materials (other than those that are ministerial in nature) received from any such rating agencies; provided that such notice can be accomplished through the posting of the relevant documents on EMMA under the WIFIA CUSIP Number;

(J) 2 C.F.R. § 180.350 Notices: any notification required pursuant to 2 C.F.R. § 180.350, whether attributable to a failure by the Borrower to disclose information previously required to have been disclosed or due to the Borrower or any of its principals meeting any of the criteria set forth in 2 C.F.R. § 180.335;

(K) Issuance of Indebtedness: copies of any final issuing instrument (together with any continuing disclosure documents, resolutions or official statements in connection therewith) prepared in connection with the incurrence of any Additional Senior Obligations; provided that such notice can be accomplished through the posting of the relevant documents on EMMA under the WIFIA CUSIP Number;

(L) Postings on EMMA: the posting of any document on EMMA in accordance with the requirements of any continuing disclosure agreement or similar document with respect to any outstanding Indebtedness relating to annual financial information and operating data and the reporting of significant events; provided that such notice can be accomplished through the posting of the relevant documents on EMMA under the WIFIA CUSIP Number; and

(M) Other Adverse Events: the occurrence of any other event or condition, including any notice of breach from a contract counterparty or any holder of any Indebtedness, that could reasonably be expected to result in a Material Adverse Effect or have a material and adverse effect on the Master Program.

(ii) Within thirty (30) calendar days after receipt of a request by the WIFIA Lender, the Borrower's Authorized Representative shall provide a statement setting forth the actions the Borrower proposes to take with respect to any of the matters described in clause (i) above. The Borrower shall also provide the WIFIA Lender with any further information reasonably requested by the WIFIA Lender from time to time concerning the matters described in clause (i) above.

(i) Requested Information. The Borrower shall, at any time while any WIFIA Loan remains outstanding, promptly deliver to the WIFIA Lender such additional information regarding the business, financial, legal or organizational affairs of the Borrower or regarding the Master Program or the Pledged Collateral as the WIFIA Lender may from time to time reasonably request.

## ARTICLE VI EVENTS OF DEFAULT

### Section 17     Events of Default and Remedies.

(a) An “**Event of Default**” shall exist under this Agreement and each WIFIA Loan Agreement if any of the following occurs; provided that any event described in Section 17(a)(iii) (*Events of Default and Remedies – Development Default*) or Section 17(a)(xi) (*Events of Default and Remedies – Additional Events of Default*) shall be an Event of Default solely under the WIFIA Loan Agreement for the relevant Project to which such event relates and not under this Agreement or any other WIFIA Loan Agreement:

(i) Payment Default. The Borrower shall fail to pay when due any principal of, or interest on, any WIFIA Loan when and as the payment thereof shall be required under this Agreement (including Section 8 (*Payment of Principal and Interest*)), any WIFIA Loan Agreement, any WIFIA Bond or on any Final Maturity Date (each such failure, a “**Payment Default**”) and such failure continues for a period of five (5) days.

(ii) Covenant Default. The Borrower shall fail to observe or perform any covenant, agreement or obligation of the Borrower under this Agreement, any WIFIA Loan Agreement or any other WIFIA Loan Document (other than in the case of any Payment Default or any Development Default), and such failure shall not be cured within thirty (30) days after the earlier to occur of (A) receipt by the Borrower from the WIFIA Lender of written notice thereof or (B) the date on which a member of the Senior Management of the Borrower acquires actual knowledge of such failure; provided that if such failure is capable of cure but cannot reasonably be cured within such thirty (30) day cure period, then no Event of Default shall be deemed to have occurred or be continuing under this Section 17(a)(ii), and such thirty (30) day cure period shall be extended by up to one hundred fifty (150) additional days, if and so long as (x) within such thirty (30) day cure period the Borrower shall commence actions reasonably designed to cure such failure and shall diligently pursue such actions until such failure is cured and (y) such failure is cured within one hundred eighty (180) days of the date specified in either (A) or (B) above, as applicable.

(iii) Development Default. A Development Default shall occur, and such failure continues for a period of ninety (90) days.

(iv) Misrepresentation Default. Any of the representations, warranties or certifications of the Borrower made in or delivered pursuant to the WIFIA Loan Documents (or in any certificates delivered by the Borrower in connection with the WIFIA Loan Documents) shall prove to have been false or misleading in any material respect when made or deemed made (or any representation and warranty or certification that is subject to a materiality qualifier shall prove to have been false or misleading in any respect); provided that no Event of Default shall be deemed to have occurred under this Section 17(a)(iv) if and so long as (A) such misrepresentation is not intentional, (B) such misrepresentation is not a misrepresentation in respect of Section 12(h) (*Representations and Warranties of Borrower – No Debarment*), Section 12(j) (*Representations and*

*Warranties of Borrower – Compliance with Laws*) or Section 12(y) (Representations and Warranties of Borrower – Patriot Act), (C) in the reasonable determination of the WIFIA Lender, such misrepresentation has not had, and would not reasonably be expected to result in, a Material Adverse Effect, (D) in the reasonable determination of the WIFIA Lender, the underlying issue giving rise to the misrepresentation is capable of being cured, (E) the underlying issue giving rise to the misrepresentation is cured by the Borrower within thirty (30) days after the date on which the Borrower first became aware (or reasonably should have become aware) of such misrepresentation, and (F) the Borrower diligently pursues such cure during such thirty (30) day period.

(v) Acceleration of Senior Obligations. Any acceleration shall occur of the maturity of any Senior Obligation, or any Senior Obligation due and payable on the final maturity date thereof shall not be paid in full.

(vi) Cross Default with Trust Documents. Any default shall occur in respect of the performance of any covenant, agreement or obligation of the Borrower under any Trust Document, and such default shall be continuing after the giving of any applicable notice and the expiration of any applicable grace period specified in such Trust Document (as the case may be) with respect to such default, and the Borrower shall have failed to cure such default or to obtain an effective written waiver thereof in accordance with the terms thereof.

(vii) Material Adverse Judgment. Any final, non-appealable judgment related to the Pledged Collateral, the Wastewater System or the Master Program shall be entered against the Borrower and the same shall remain undischarged for a period of thirty (30) consecutive days during which execution shall not be effectively stayed if such judgment has a Material Adverse Effect.

(viii) Occurrence of a Bankruptcy Related Event. A Bankruptcy Related Event shall occur.

(ix) Invalidity of WIFIA Loan Documents. (A) Any WIFIA Loan Document ceases to be in full force and effect (other than as a result of the termination thereof in accordance with its terms) or becomes void, voidable, illegal or unenforceable or the Borrower contests in any manner the validity or enforceability of any WIFIA Loan Document to which it is a party or denies it has any further liability under any WIFIA Loan Document to which it is a party, or purports to revoke, terminate or rescind any WIFIA Loan Document to which it is a party; (B) the Trust Agreement and the WIFIA Series Agreement cease (other than as expressly permitted thereunder) to grant a valid and binding lien on any material portion of the Pledged Collateral other than as a result of actions or a failure to act by, and within the control of, the WIFIA Lender, and with the priority purported to be created thereby; or (C) any event occurs that results in the material impairment in the priority of the WIFIA Lender's Lien on the Pledged Collateral or in the value of such Pledged Collateral.

(x) Cessation of System Operations. Following any Substantial Completion Date, operation of all, or substantially all, of the primary portions of the

Wastewater System shall cease for a continuous period of not less than one hundred eighty (180) days unless (A) such cessation of operations shall occur by reason of an Uncontrollable Force that is not due to the fault of the Borrower (and which the Borrower could not reasonably have avoided or mitigated) or (B) the Borrower shall either be self-insured in an amount sufficient to cover, or shall have in force an insurance policy or policies under which the Borrower is entitled to recover amounts sufficient to pay (and may use such amounts to pay), debt service for all Senior Obligations (including WIFIA Debt Service) and costs and expenses of the Borrower during such cessation of operations.

(xi) Additional Events of Default. Any additional Event of Default specified in a WIFIA Loan Agreement occurs.

(b) Upon the occurrence of any Bankruptcy Related Event, all obligations of the WIFIA Lender hereunder and under the WIFIA Loan Agreements with respect to the disbursement of any undisbursed amounts of any WIFIA Loan shall automatically be deemed terminated.

(c) Upon the occurrence of any Event of Default hereunder or under any WIFIA Loan Agreement, the WIFIA Lender, by written notice to the Borrower, may exercise any or all of the following remedies:

(i) the WIFIA Lender may suspend or terminate all of its obligations hereunder and under the relevant WIFIA Loan Agreement with respect to the disbursement of any undisbursed amounts of the relevant WIFIA Loan;

(ii) the WIFIA Lender may apply the Default Rate provisions of Section 6 (Interest Rate) hereunder with respect to the relevant WIFIA Loan;

(iii) the WIFIA Lender may suspend or debar the Borrower from further participation in any Government program administered by the WIFIA Lender and to notify other departments and agencies of such default; and/or

(iv) subject to any limitations, as applicable, on the exercise by holders of Senior Obligations of any remedies set forth in the Trust Agreement and the Enabling Act, the WIFIA Lender shall be entitled and empowered to institute any actions or proceedings at law or in equity for the collection of any sums due and unpaid under this Agreement, the relevant WIFIA Loan Agreement and corresponding WIFIA Bond, or the other applicable WIFIA Loan Documents, and may prosecute any such judgment or final decree against the Borrower and collect in the manner provided by law out of the property of the Borrower the moneys adjudged or decreed to be payable, and the WIFIA Lender shall have all of the rights and remedies of a creditor, and may take such other actions at law or in equity as may appear necessary or desirable to collect all amounts payable by the Borrower under this Agreement, the relevant WIFIA Loan Agreement and corresponding WIFIA Bond, or the other applicable WIFIA Loan Documents then due and thereafter to become due, or to enforce performance and observance of any obligation, agreement or covenant of the Borrower under this Agreement, the relevant WIFIA Loan Agreement and corresponding WIFIA Bond, or the other applicable WIFIA Loan Documents.

(d) Pursuant to Section 803 (*Acceleration of Maturities*) of the Trust Agreement, upon the happening and continuance of any Event of Default (as defined in the Trust Agreement), the Trustee may, and upon the written request of the holders of not less than a majority in aggregate principal amount of Bonds then Outstanding shall, declare the principal of all Bonds then Outstanding (if not then due and payable) to be due and payable immediately, and upon such declaration the Outstanding WIFIA Loan Balance with respect to each WIFIA Loan shall thereupon forthwith become immediately due and payable, together with the interest accrued thereon and all fees, costs, expenses, indemnities and other amounts payable under this Agreement and the other WIFIA Loan Documents, all without presentment, demand, notice, declaration, protest or other requirements of any kind, all of which are hereby expressly waived.

(e) No action taken pursuant to this Section 17 shall (i) relieve the Borrower from its obligations pursuant to this Agreement, the WIFIA Loan Agreements and corresponding WIFIA Bonds, or the other Related Documents, all of which shall survive any such action or (ii) limit the WIFIA Lender's rights under the Trust Documents, including Article VIII (*Events of Default and Remedies*) of the Trust Agreement.

(f) The authorization and enforcement of remedies against the Borrower under the Trust Agreement shall be governed by, and subject to the limitations imposed by, the internal laws of the Commonwealth (including the Enabling Act), without regard to any conflict of law principles.

## **ARTICLE VII MISCELLANEOUS**

Section 18 Disclaimer of Warranty. The WIFIA Lender makes no warranty or representation, either express or implied, as to the value, design, condition, merchantability or fitness for a particular purpose or fitness for use of any Project or any portion thereof or any other warranty with respect thereto. In no event shall the WIFIA Lender be liable for any incidental, indirect, special or consequential damages incidental to or arising out of this Agreement, the Master Program or any Project or the existence, furnishing, functioning or use of any Project or any item or products or services provided for in this Agreement.

Section 19 No Personal Recourse. No official, employee or agent of the WIFIA Lender or the Borrower or any Person executing this Agreement or any of the other WIFIA Loan Documents shall be personally liable under this Agreement or such other WIFIA Loan Documents by reason of the issuance, delivery or execution hereof or thereof.

Section 20 No Third Party Rights. The parties hereby agree that this Agreement creates no third party rights against the Borrower, the Government, or the WIFIA Lender, solely by virtue of the WIFIA Loans, and, solely to the extent the Borrower has authority to do so under applicable law, the Borrower agrees to indemnify and hold the WIFIA Lender, the Servicer (if any), the Administrator, and the Government harmless, in accordance with Section 32 (*Indemnification*), from any lawsuit or claim arising in law or equity solely by reason of any WIFIA Loan (it being understood that, as of the Effective Date, the Borrower represents and the WIFIA Lender acknowledges it does not have the authority under applicable law to provide any such indemnification or hold harmless any such Person), and that no third party creditor of the

Borrower shall have any right against the WIFIA Lender with respect to any WIFIA Loan made pursuant to this Agreement.

Section 21 Borrower's Authorized Representative. The Borrower shall at all times have appointed a Borrower's Authorized Representative by designating such Person or Persons from time to time to act on the Borrower's behalf pursuant to a written certificate furnished to the WIFIA Lender and the Servicer, if any, containing the specimen signature or signatures of such Person or Persons and signed by the Borrower.

Section 22 WIFIA Lender's Authorized Representative. The WIFIA Lender hereby appoints the Director of the WIFIA Program, whose notice details are set forth below in Section 31 (Notices), to serve as the WIFIA Lender's Authorized Representative under this Agreement until such time as a successor or successors shall have been appointed. Thereafter, the successor in office shall serve as the WIFIA Lender's Authorized Representative. The WIFIA Lender shall provide notice to the Borrower within a reasonable time period following the succession.

Section 23 Servicer. The WIFIA Lender may from time to time designate another entity or entities to perform, or assist the WIFIA Lender in performing, the duties of the Servicer or specified duties of the WIFIA Lender under this Agreement and the WIFIA Loan Agreements and corresponding WIFIA Bonds. The WIFIA Lender shall give the Borrower written notice of the appointment of any successor or additional Servicer and shall enumerate the duties or any change in duties to be performed by any Servicer. Any references in this Agreement to the WIFIA Lender shall be deemed to be a reference to the Servicer with respect to any duties which the WIFIA Lender shall have delegated to such Servicer. The WIFIA Lender may at any time assume the duties of any Servicer under this Agreement and the WIFIA Loan Agreements and corresponding WIFIA Bonds. The Borrower shall cooperate and respond to any reasonable request of the Servicer for information, documentation or other items reasonably necessary for the performance by the Servicer of its duties hereunder.

Section 24 Amendments and Waivers. No amendment, modification, termination, or waiver of any provision of this Agreement, the WIFIA Loan Agreements or the corresponding WIFIA Bonds shall in any event be effective without the prior written consent of each of the parties hereto and thereto.

Section 25 Governing Law. This Agreement and the WIFIA Loan Agreements shall be governed by the federal laws of the United States of America, if and to the extent such federal laws are applicable, and the internal laws of the Commonwealth of Virginia, if and to the extent such federal laws are not applicable.

Section 26 Severability. In case any provision in or obligation under this Agreement shall be invalid, illegal, or unenforceable in any jurisdiction, the validity, legality and enforceability of the remaining provisions or obligations, or of such provision or obligation in any other jurisdiction, shall not in any way be affected or impaired thereby.

Section 27 Successors and Assigns. This Agreement shall be binding upon the parties hereto and their respective permitted successors and assigns and shall inure to the benefit



of the parties hereto and their permitted successors and assigns. Neither the Borrower's rights or obligations under this Agreement, the WIFIA Loan Agreements or the corresponding WIFIA Bonds nor any interest herein or therein may be assigned or delegated by the Borrower without the prior written consent of the WIFIA Lender.

Section 28 Remedies Not Exclusive. No remedy conferred or reserved to the WIFIA Lender under this Agreement, the WIFIA Loan Agreements or the corresponding WIFIA Bonds is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or thereunder or now or hereafter existing at law or in equity or by statute.

Section 29 Delay or Omission Not Waiver. No delay or omission of the WIFIA Lender to exercise any right or remedy provided under this Agreement, the WIFIA Loan Agreements or the corresponding WIFIA Bonds upon a default of the Borrower (except a delay or omission pursuant to a written waiver) shall impair any such right or remedy or constitute a waiver of any such default or acquiescence herein or therein. Every right and remedy given by this Agreement, the WIFIA Loan Agreements, the corresponding WIFIA Bonds or by law to the WIFIA Lender may be exercised from time to time and as often as may be deemed expedient by the WIFIA Lender.

Section 30 Counterparts. This Agreement and any amendments, waivers, consents or supplements hereto in connection herewith may be executed in any number of counterparts and by the different parties hereto in separate counterparts, each of which when so executed and delivered shall be deemed an original, but all such counterparts together shall constitute one and the same instrument; signature pages may be detached from multiple separate counterparts and attached to a single counterpart so that all signature pages are physically attached to the same document. Electronic delivery of an executed counterpart of a signature page of this Agreement or of any document or instrument delivered in connection herewith in accordance with Section 31 (*Notices*) shall be effective as delivery of an original executed counterpart of this Agreement or such other document or instrument, as applicable.

Section 31 Notices. Notices hereunder shall be (a) in writing, (b) effective as provided below and (c) given by (i) nationally recognized courier service, (ii) hand delivery, or (iii) email, in each case to:

If to WIFIA Lender:	Environmental Protection Agency WJC-W 6201A 1200 Pennsylvania Avenue NW Washington, D.C. 20460 Attention: WIFIA Director Email: WIFIA_Portfolio@epa.gov
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If to Borrower:	Hampton Roads Sanitation District 1434 Air Rail Avenue Virginia Beach, VA 23455 Attention: Mr. Erin Girardi Email: egirardi@hrsdc.com
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Unless otherwise instructed by the WIFIA Lender's Authorized Representative, all notices to the WIFIA Lender should be made by email to the email address noted above for the WIFIA Lender. Notices required to be provided herein shall be provided to such different addresses or to such further parties as may be designated from time to time by a Borrower's Authorized Representative, with respect to notices to the Borrower, or by the WIFIA Lender's Authorized Representative, with respect to notices to the WIFIA Lender or the Servicer. Each such notice, request or communication shall be effective (x) if delivered by hand or by nationally recognized courier service, when delivered at the address specified in this Section 31 (or in accordance with the latest unrevoked written direction from the receiving party) and (y) if given by email, when such email is delivered to the address specified in this Section 31 (or in accordance with the latest unrevoked written direction from the receiving party); provided that notices received on a day that is not a Business Day or after 5:00 p.m. Eastern Time on a Business Day will be deemed to be effective on the next Business Day.

Section 32 Indemnification. Solely to the extent the Borrower has authority to do so under applicable law (which the Borrower represents and the WIFIA Lender acknowledges it does not have as of the Effective Date), the Borrower shall, to the extent permitted by law, indemnify the WIFIA Lender and any official, employee, agent, advisor or representative of the WIFIA Lender (each such Person being herein referred to as an "**Indemnatee**") against, and hold each Indemnatee harmless from, any and all losses, claims, damages, liabilities, fines, penalties, costs and expenses (including the fees, charges and disbursements of any counsel for any Indemnatee and the costs of environmental remediation), whether known, unknown, contingent or otherwise, incurred by or asserted against any Indemnatee arising out of, in connection with, or as a result of (a) the execution, delivery and performance of this Agreement or any of the other Related Documents, (b) the WIFIA Loans or the use of the proceeds thereof, or (c) the violation of any law, rule, regulation, order, decree, judgment or administrative decision relating to the environment, the preservation or reclamation of natural resources, the management, release or threatened release of any hazardous material or to health and safety matters; in each case arising out of or in direct relation to the Master Program; provided that such indemnity shall not, as to any Indemnatee, be available to the extent that such losses, claims, damages, liabilities, fines, penalties, costs or related expenses are determined by a court of competent jurisdiction by final and non-appealable judgment to have resulted from the gross negligence or willful misconduct of such Indemnatee. In case any action or proceeding is brought against an Indemnatee by reason of any claim with respect to which such Indemnatee is entitled to indemnification hereunder, the Borrower shall be entitled, at its expense, to participate in the defense thereof; provided that such Indemnatee has the right to retain its own counsel, at the Borrower's expense, and such participation by the Borrower in the defense thereof shall not release the Borrower of any liability that it may have to such Indemnatee. Any Indemnatee against whom any indemnity claim contemplated in this Section 32 is made shall be entitled, after consultation with the Borrower and upon consultation with legal counsel wherein such Indemnatee is advised that such indemnity claim is meritorious, to compromise or settle any such indemnity claim. Any such compromise or settlement shall be binding upon the Borrower for purposes of this Section 32. Nothing herein shall be construed as a waiver of any legal immunity that may be available to any Indemnatee. To the extent permitted by applicable law (which the Borrower represents and the WIFIA Lender acknowledges applicable law does not permit with respect to the Borrower as of the Effective Date), neither the Borrower nor the WIFIA Lender shall assert, and each of the Borrower and the WIFIA Lender hereby waives, any claim against any Indemnatee or the Borrower, respectively, on any theory of liability, for



special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement, any of the other Related Documents, the other transactions contemplated hereby and thereby, the WIFIA Loans or the use of the proceeds thereof, *provided* that nothing in this sentence shall limit the Borrower's indemnity obligations to the extent such damages are included in any third party claim in connection with which an Indemnitee is entitled to indemnification hereunder. All amounts due to any Indemnitee under this Section 32 shall be payable promptly upon demand therefor. The obligations of the Borrower under this Section 32 shall survive the payment or prepayment in full or transfer of any WIFIA Loan, the enforcement of any provision of this Agreement or the other Related Documents, any amendments, waivers (other than amendments or waivers in writing with respect to this Section 32) or consents in respect hereof or thereof, any Event of Default, and any workout, restructuring or similar arrangement of the obligations of the Borrower hereunder or thereunder.

Section 33 Sale of WIFIA Loans. The WIFIA Lender shall not sell any WIFIA Loan at any time prior to the Substantial Completion Date of the Project relating to such WIFIA Loan. After any such date, the WIFIA Lender may sell such WIFIA Loan to another entity or reoffer such WIFIA Loan into the capital markets only in accordance with the provisions of this Section 33. Such sale or reoffering shall be on such terms as the WIFIA Lender shall deem advisable. However, in making such sale or reoffering the WIFIA Lender shall not change the terms and conditions of such WIFIA Loan without the prior written consent of the Borrower in accordance with Section 24 (*Amendments and Waivers*). The WIFIA Lender shall provide, at least sixty (60) days prior to any sale or reoffering of such WIFIA Loan, written notice to the Borrower of the WIFIA Lender's intention to consummate such a sale or reoffering; *provided* that no such notice shall be required during the continuation of any Event of Default. The provision of any notice pursuant to this Section 33 shall neither (x) obligate the WIFIA Lender to sell nor (y) provide the Borrower with any rights or remedies in the event the WIFIA Lender, for any reason, does not sell such WIFIA Loan.

Section 34 Effectiveness. This Agreement shall be effective on the Amendment Effective Date.

Section 35 Termination. This Agreement shall terminate upon the irrevocable payment in full in immediately available funds by the Borrower of all Outstanding WIFIA Loan Balances, together with all accrued interest, fees and expenses with respect thereto; *provided* that the indemnification requirements of Section 32 (*Indemnification*) (as applicable), the reporting and record keeping requirements of Section 14(p) (*Affirmative Covenants – Access; Records*) and the payment requirements of Section 10 (*Fees and Expenses*) shall survive the termination of this Agreement as provided in such sections.

Section 36 Integration. This Agreement and the other WIFIA Loan Documents constitute the entire contract between the parties relating to the subject matter hereof and supersedes any and all previous agreements and understandings, oral or written, relating to the subject matter hereof.

Section 37 Amendment and Restatement; No Novation. It is the intent of the Borrower and the WIFIA Lender that this Agreement not constitute a novation of the obligations and liabilities existing under the Original Agreement or evidence repayment of any such

obligations and liabilities and that this Agreement amends and restates in its entirety the Original Agreement and re-evidences the obligations of the Borrower outstanding thereunder. On and after the Amendment Effective Date, each reference in any WIFIA Loan Document to the “WIFIA Loan Agreement”, “therein”, “thereof”, “thereunder” or words of similar import when referring to the Original Agreement shall mean, and shall hereafter be, a reference to the Original Agreement, as amended and restated by this Agreement. The Borrower hereby agrees, acknowledges and confirms that (a) the Pledged Collateral granted in favor of the WIFIA Lender pursuant to the WIFIA Loan Documents shall continue without any diminution thereof and shall remain in full force and effect on and after the Amendment Effective Date, except as specifically modified by the terms hereof and (b) each of the other WIFIA Loan Documents is and shall continue to be in full force and effect and each is hereby in all respects ratified and confirmed.

*[The remainder of this page intentionally left blank; signature pages immediately follow.]*

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and delivered by their respective officers thereunto duly authorized as of the date first written above.

**HAMPTON ROADS SANITATION DISTRICT,**  
by its authorized representative

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

**UNITED STATES ENVIRONMENTAL  
PROTECTION AGENCY**, acting by and through  
the Administrator of the Environmental Protection  
Agency

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

## **SCHEDULE I**

### **MASTER PROGRAM SCHEDULE**

The Master Program is the Borrower's Sustainable Water Initiative for Tomorrow (SWIFT), which includes project components to (a) upgrade existing treatment works and build wells to replenish the Potomac groundwater aquifer with highly treated water and (b) design and construct new facilities and other improvements to improve the water quality of the Chesapeake Bay and reduce surface water discharges of treated effluent. The Master Program includes project components such as the following:

- (1) SWIFT Facilities (James River, York River, Nansemond, Williamsburg, VIP SWIFT);
- (2) SWIFT Recharge and Monitoring Well Services (James River, York River, Nansemond, Williamsburg, VIP SWIFT);
- (3) Boat Harbor Treatment Plant Pump Station Conversion and Transmission Force Main (Sections 1 and 2);
- (4) Advanced Nutrient Reduction Improvements (James River, Nansemond);
- (5) Land Acquisition (James River SWIFT, VIP SWIFT, Boat Harbor);
- (6) VIP SWIFT Tertiary Site Work and Preliminary Engineering; and
- (7) Program Management of SWIFT Full-Scale Implementation.

## SCHEDULE II

### MASTER PROGRAM BUDGET

Project Component Name	Total Estimated Project Cost	WIFIA Loan Commitment Amount (≤49%)	Percentage of Aggregate Master Program Amount
Tranche 1 WIFIA Loan <ul style="list-style-type: none"> <li>James River SWIFT Facility</li> <li>James River Recharge Wells (On Site)</li> <li>James River Advanced Nutrient Reduction Improvements (“ANRI”)</li> <li>SWIFT Program Management</li> </ul>	\$460,950,303	\$225,865,648	17.1%
Tranche 2 WIFIA Loan <ul style="list-style-type: none"> <li>Boat Harbor Treatment Plant Pump Station Conversion</li> <li>Boat Harbor Transmission Force Main Sections 1-2</li> <li>James River Recharge Wells (Off Site)</li> <li>James River ANRI</li> <li>Nansemond ANRI Phases I-II</li> <li>Nansemond SWIFT Facility</li> <li>James River SWIFT Land Acquisition</li> <li>Boat Harbor Treatment Plant Pump Station Land Acquisition</li> <li>Boat Harbor Transmission Force Main Land Acquisition</li> </ul>	\$972,615,484	\$476,581,587	36.0%
Tranche 3 WIFIA Loan <ul style="list-style-type: none"> <li>James River SWIFT Facility</li> <li>James River Recharge Wells</li> <li>Boat Harbor Treatment Plant Pump Station Conversion</li> <li>Boat Harbor Transmission Force Main Sections 1-2</li> <li>James River ANRI</li> <li>Nansemond ANRI Phases I-II</li> <li>Nansemond SWIFT Facility</li> </ul>	\$739,412,802	\$268,087,870	20.3%

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<ul style="list-style-type: none"> <li>• Boat Harbor Treatment Plant Pump Station Land Acquisition</li> <li>• Boat Harbor Transmission Force Main Land Acquisition</li> </ul>			
Tranche 4 WIFIA Loan <ul style="list-style-type: none"> <li>• Nansemond Recharge Wells (Onsite and Offsite) and Integration</li> <li>• VIP SWIFT Tertiary Facility</li> <li>• VIP SWIFT Land Acquisition</li> <li>• VIP SWIFT Tertiary Preliminary Engineering</li> <li>• VIP SWIFT Tertiary Site Work</li> <li>• Program Contingency</li> </ul>	\$782,156,594	\$352,177,949	26.6%
<b>Total</b>	\$2,955,135,183	\$1,322,713,054	100%

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## SCHEDULE III

### EXISTING INDEBTEDNESS

#### A. Existing Senior Obligations

	Existing Bonds: Agreement/Series	Outstanding Principal (\$)
1.	Wastewater Revenue Bonds, Series 2016A issued pursuant to the Third Supplemental Trust Agreement, dated Mar 17 2016, maturing on Aug 1, 2043 <sup>1</sup>	\$77,040,000
2.	Wastewater Revenue Bonds, Series 2016B issued pursuant to the Fourth Supplemental Trust Agreement, dated April 1 2016, maturing on Aug 1, 2046	\$50,000,000
3.	Wastewater Revenue Bonds, Refunding Series 2017A issued pursuant to the Fifth Supplemental Trust Agreement, dated Dec 19, 2017, maturing on Oct 1, 2043	\$72,055,000
4.	Wastewater Revenue Bonds, Series 2018A issued pursuant to the Sixth Supplemental Trust Agreement, dated Feb 6, 2018, maturing on Oct 1, 2047 <sup>2</sup>	\$16,010,000
5.	Wastewater Revenue Bonds, Refunding Series 2019A (Federally Taxable) issued pursuant to the Seventh Supplemental Trust Agreement, dated Oct 2, 2019, maturing on Feb 1, 2039	\$192,855,000
6.	Wastewater Revenue Bond, Series 2020 (Federally Taxable) issued pursuant to the Eighth Supplemental Trust Agreement, dated September 28, 2020, maturing on April 1, 2060. <sup>3</sup>	\$225,865,648
7.	Wastewater Revenue Bond, Series 2021 (Federally Taxable) issued pursuant to the Ninth Supplemental Trust Agreement, dated September 9, 2021, maturing on June 1, 2060. <sup>4</sup>	\$476,581,587

<sup>1</sup> Maturity date represents the original final maturity date, which differs from the final maturity of currently outstanding debt.

<sup>2</sup> Maturity date represents the original final maturity date, which differs from the final maturity of currently outstanding debt.

<sup>3</sup> Funds are still being drawn. Outstanding principal reflects the full loan amount, not the amount drawn to date.

<sup>4</sup> Funds are still being drawn. Outstanding principal reflects the full loan amount, not the amount drawn to date.



8.	Wastewater Revenue Bonds, Series 2024A issued pursuant to the Tenth Supplemental Trust Agreement, dated May 23, 2024, maturing on November 1, 2039	\$115,585,000
9.	Wastewater Revenue Bonds, Series 2024B issued pursuant to the Tenth Supplemental Trust Agreement, dated August 8, 2024, maturing on July 1, 2054	\$240,775,000
<b>Existing VRA Obligations: SRF Loan Agreements between the Borrower and VRA</b>		

10.	\$40,330,298 Sewer Revenue Bond, dated February 26, 2004 (Chesapeake-Elizabeth Treatment Plant Project), as amended on January 9, 2013, and November 19, 2021, maturing on June 1, 2027	\$7,378,796
11.	\$1,235,000 Sewer Revenue Bond, dated July 29, 2005 (Army Base Treatment Plant Project), as amended on January 9, 2013, maturing on April 1, 2026	\$154,134
12.	\$7,339,600 Sewer Revenue Bond, dated June 22, 2006 (Atlantic Wastewater Treatment Plant Project), as amended on January 9, 2013, and November 19, 2021, maturing on February 1, 2027	\$1,128,208
13.	\$1,605,200 Sewer Revenue Bond, dated June 22, 2006 (Colonial Williamsburg Pump Station Project), as amended on January 9, 2013, and November 19, 2021, maturing on July 1, 2027	\$293,128
15.	\$30,000,000 Sewer Revenue Bond, dated December 17, 2008 (York River Wastewater Treatment Plant Project), as amended on January 15, 2015 maturing on Mar 1, 2031	\$11,750,876
16.	\$19,410,226 Wastewater Revenue Bond, Series 2009, dated May 28, 2009 (Nansemond Treatment Plant Project), as amended on September 11, 2015, February 17, 2022, and August 31, 2023, maturing on March 1, 2031	\$7,589,225
17.	\$13,718,671 Wastewater Revenue Bond, Series 2009, dated November 20, 2009 (James River Treatment Plant Project), as amended on September 11, 2015, February 17, 2022, and August 31, 2023, maturing on March 1, 2031 <sup>56</sup>	\$4,966,036

<sup>5</sup> The par amount in the description of the Series Agreement represents the initial authorization amount of the loan, which differs from the final loan amount. Maturity date represents the original final maturity date, which differs from the final maturity of currently outstanding debt.

<sup>6</sup> The par amount in the description of the Series Agreement represents the initial authorization amount of the loan, which differs from the final loan amount.

18.	\$11,418,372 Wastewater Revenue Bond, Series 2009, dated December 18, 2009 (Interceptor System Metering Project), as amended on September 11, 2015, February 17, 2022, and August 31, 2023, maturing on March 1, 2031 <sup>7</sup>	\$3,918,450
19.	\$5,924,715 Wastewater Revenue Bond, Series 2010, dated June 29, 2010 (Williamsburg Oxidation Towers Project), as amended on August 31, 2016, February 17, 2022, and August 31, 2023, maturing on September 1, 2031 <sup>89</sup>	\$2,237,802
20.	\$50,000,000 Wastewater Revenue Bond, Series 2010, dated June 29, 2010 (Army Base Wastewater Treatment Plant Project), as amended on August 31, 2016 and January 30, 2020 maturing on Sept 1, 2032	\$23,197,025
21.	\$7,583,771 Wastewater Revenue Bond, Series 2010, dated June 29, 2010 (Boat Harbor Treatment Project), as amended on August 31, 2016 and January 30, 2020, maturing on September 1, 2031	\$3,100,672
22.	\$6,318,000 Wastewater Revenue Bond, Series 2012, dated March 13, 2012 (Atlantic Treatment Plant: Digester Gas to Energy Project), as amended on January 30, 2020, and November 19, 2021, maturing on February 1, 2033	\$3,078,986
23.	\$57,273,700 Sanitation District Wastewater Revenue Bond (Atlantic Treatment Plant Project), dated August 10, 2017 maturing on March 1, 2046 <sup>10</sup>	\$51,689,514
24.	\$1,000,000 Wastewater Revenue Bond (Ferguson Park Interceptor Project), dated August 10, 2017 maturing on Mar 1, 2047 <sup>11</sup>	\$689,184
25.	\$3,205,554 Wastewater Revenue Bond (Lucas Creek Interceptor Project), dated October 26, 2017 maturing on October 1, 2047	\$2,500,499
26.	\$1,095,595 Wastewater Revenue Bond (Rodman Avenue Pump Station Project), dated November 29, 2017 maturing on June 1, 2043	\$885,415

<sup>7</sup> The par amount in the description of the Series Agreement represents the initial authorization amount of the loan, which differs from the final loan amount.

<sup>8</sup> Maturity date represents the original final maturity date, which differs from the final maturity of currently outstanding debt.

<sup>9</sup> The par amount in the description of the Series Agreement represents the initial authorization amount of the loan, which differs from the final loan amount.

<sup>10</sup> Funds are still being drawn. Outstanding principal reflects the full loan amount, not the amount drawn to date.

<sup>11</sup> Funds are still being drawn. Outstanding principal reflects the full loan amount, not the amount drawn to date.

27.	\$8,314,638 Wastewater Revenue Bond (Boat Harbor Treatment Plant Switchgear and Controls Replacements), dated March 20, 2019, maturing on December 1, 2040 <sup>12</sup>	\$6,486,237
28.	\$8,677,684 Wastewater Revenue Bond (Orcutt Avenue and Mercury Boulevard Gravity Sewer Improvements), dated March 20, 2019, maturing on February 1, 2049 <sup>13</sup>	\$7,029,445
25.	\$4,989,671 Wastewater Revenue Bond (Deep Creek Project), dated November 21, 2019, maturing on December 1, 2040 <sup>14</sup>	\$4,295,269
26.	\$3,896,616 Wastewater Revenue Bond (Huxley – Middle Ground Project), dated November 21, 2019, maturing on August 1, 2040 <sup>15</sup>	\$3,224,318
27.	\$3,500,000 Wastewater Revenue Bond (Treatment Plant Project), dated November 21, 2019, maturing on October 1, 2040 <sup>16</sup>	\$3,000,996
28.	\$100,000,000 Wastewater Revenue Bond (CIP Project), dated June 1, 2020, maturing on March 1, 2042 <sup>17</sup>	\$90,728,349
29.	\$100,000,000 Wastewater Revenue Bond (CIP Project), dated April 29, 2022, maturing on December 1, 2043	\$100,000,000
30.	\$26,063,013 Wastewater Revenue Bond (2022 Eastern Shore Project), dated April 29, 2022, maturing on October 1, 2043 <sup>18</sup>	\$26,063,013
31.	\$80,000,000 Wastewater Revenue Bond (CIP Project), dated May 30, 2024, maturing on October 1, 2045 <sup>19</sup>	\$80,000,000

## **B. Existing Subordinate Obligations**

	<b>Agreement/Series</b>	<b>Outstanding Principal (\$)</b>
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<sup>12</sup> Funds are still being drawn. Outstanding principal reflects the full loan amount, not the amount drawn to date.

<sup>13</sup> Funds are still being drawn. Outstanding principal reflects the full loan amount, not the amount drawn to date.

<sup>14</sup> Funds are still being drawn. Outstanding principal reflects the full loan amount, not the amount drawn to date.

<sup>15</sup> Funds are still being drawn. Outstanding principal reflects the full loan amount, not the amount drawn to date.

<sup>16</sup> Funds are still being drawn. Outstanding principal reflects the full loan amount, not the amount drawn to date.

<sup>17</sup> Funds are still being drawn. Outstanding principal reflects the full loan amount, not the amount drawn to date.

<sup>18</sup> Funds are still being drawn. Outstanding principal reflects the full loan amount, not the amount drawn to date.

<sup>19</sup> Funds are still being drawn. Outstanding principal reflects the full loan amount, not the amount drawn to date.

1.	Second Amended and Restated Credit Agreement between HRSD and Bank of America, N.A., dated June 30, 2022, as amended, maturing on June 30, 2025	\$99,999,700
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**SCHEDULE IV**

**[RESERVED]**

## SCHEDULE 7(d)

### FLOW OF FUNDS

Reference is made to Section 502 (*Payments and Funds Received*) of the Trust Agreement, and the requirements and conditions contained therein as in effect on the Amendment Effective Date are provided verbatim below and are hereby incorporated. Capitalized terms used in this Schedule 7(d) shall have the respective meanings assigned to such terms in the Trust Agreement.

“Section 502. Payments and Funds Received. The District shall make payments directly to the Trustee for deposit in the Bond Fund in amounts sufficient to pay in full, when due (whether by maturity, acceleration or otherwise), all Bonds issued under this Trust Agreement, together with the interest thereon. Such payments shall be due and payable as follows:

(a) to the credit of the Bond Fund, on the Business Day next preceding each Interest Payment Date, an amount equal to the interest payable on the Bonds on such Interest Payment Date;

(b) to the credit of the Bond Fund, on the Business Day next preceding each Principal Payment Date, an amount equal to the principal of the Bonds due on such Principal Payment Date; and

(c) any amount that may from time to time be required to enable the District to pay the principal of and interest due on Bonds upon acceleration.

Each payment shall be equal to the sum of the amounts specified above in paragraphs (a) to (c), inclusive.

On the Payment Date following a date on which the District shall have failed to pay to the Trustee the sum of the amounts specified in paragraphs (a) to (c) above or on which an investment loss shall have been charged to the Bond Fund in accordance with Section 602 of this Trust Agreement, the District shall pay, in addition to the payment then due, an amount equal to the deficiency in payment or the amount of such loss, unless such deficiency or loss shall have been remedied. To the extent that the investment earnings are transferred or credited to the Bond Fund in accordance with this Trust Agreement or amounts are transferred or credited to such Fund as a result of the application of Bond proceeds or a transfer of surplus funds from the Issuance Fund or otherwise, future payments shall be proportionately reduced by the amount so credited unless such transfer is made to cure deficiencies in such Fund to which the transfer is made.

Unless a Qualified Reserve Fund Substitute shall then be in effect, there shall be due and payable directly to the Trustee as a required payment from the District, on the twenty-fifth (25th) day of each month, (i) beginning in the month following the month in which money is transferred from the Debt Service Reserve Fund to the Bond Fund to cure a deficiency therein pursuant to Section 504 of this Trust Agreement, into the Debt Service Reserve Fund one-twelfth (1/12) of the amount or amounts so transferred until the amount then on deposit in the Debt Service Reserve Fund is equal to the Debt Service Reserve Fund Requirement and (ii) beginning in the month following a valuation made in accordance with Section 603 of this Trust Agreement in which the amount on deposit in the Debt Service Reserve Fund is less than the Debt Service Reserve Fund

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Requirement and a loss resulting from a decline in the value of Investment Obligations held for the credit of the Debt Service Reserve Fund is computed, into the Debt Service Reserve Fund, one-sixth (1/6) of the amount of such loss until the amount of such loss is reimbursed. Such payments shall be increased as may be necessary in any month to make up any previous deficiency in any of such monthly payments.

If, after giving effect to the credits specified below, any installment of payments made by the District should be insufficient to enable the Trustee to make the deposits required above, the Trustee shall give the District telephonic notice thereof, promptly confirmed in writing, and request that each future installment of payments due from the District be increased as may be necessary to make up any previous deficiency in any of the required payments and to make up any deficiency or loss in any of the above-mentioned funds.

To the extent that investment earnings are credited to the Bond Fund in accordance with Section 602 of this Trust Agreement or amounts are credited thereto as a result of the application of Bond proceeds or a transfer of investment earnings on any other fund or account held by the Trustee, or otherwise, future deposits to the Bond Fund shall be reduced by the amount so credited, and the payments due from the District in the months following the date upon which such amounts are credited shall be reduced by the amounts so credited.”

## **SCHEDULE 12(f)**

### **LITIGATION (as of the Effective Date)**

*(C. Robert Johnson, III, et al. v. City of Suffolk and Hampton Roads Sanitation District, Supreme Court of Virginia, Record Number 191563)* In 2018, oystermen leasing oyster beds in the Nansemond River filed a petition for declaratory judgment against the City of Suffolk and the Borrower alleging that they had intentionally designed and operated their storm water system (Suffolk) and sanitary sewers (both) to discharge contaminants onto the oystermen's oyster beds (leased from the Virginia Marine Resources Commission), resulting in condemnation of their oysters by the Virginia Department of Health. In September 2019, the Suffolk Circuit Court granted demurrers filed by Suffolk and the Borrower and dismissed the oystermen's petition. On May 18, 2020, the Supreme Court of Virginia agreed to hear the oystermen's appeal. Briefing was completed by late July, oral arguments are estimated to occur later this year.

*(Petition of the Hampton Roads Sanitation District to Add the County of Northampton to the District; Case No. CL20000073-00).* The Borrower filed a petition in the Circuit Court for the County of Northampton pursuant to Section 48 of the Enabling Act seeking the Court's approval to add the entire County of Northampton to the Borrower's territory. The Court has ordered a public hearing on October 2, 2020 to receive and hear any objections to the addition of such territory to the Borrower and may then or thereafter grant such petition with any such modifications as the Court may deem advisable and that do not enlarge the territory proposed to be added to the Borrower.

*(Petition of the Hampton Roads Sanitation District to Add the County of Accomack to the District; Case No. 20CL186).* The Borrower filed a petition in the Circuit Court for the County of Accomack pursuant to Section 48 of the Enabling Act seeking the Court's approval to add the entire County of Accomack to the Borrower's territory. The Court has ordered a public hearing on October 2, 2020 to receive and hear any objections to the addition of such territory to the Borrower and may then or thereafter grant such petition with any such modifications as the Court may deem advisable and that do not enlarge the territory proposed to be added to the Borrower.



## **SCHEDULE 12(p)**

### **ENVIRONMENTAL MATTERS (as of the Effective Date)**

The Borrower has agreed to a fifth amendment to its ongoing federal consent decree with the United States Environmental Protection Agency (“USEPA”) and the Commonwealth of Virginia (“Commonwealth”). That fifth amendment is expected to be lodged with the federal court in October 2020 and entered by the court by January 2021. The fifth amendment includes a schedule for wastewater system improvements that accommodates the Projects. That schedule requires that the Borrower implement \$200 million worth of sewer overflow control projects between 2020 and 2030 and then another \$200 million in sewer overflow control projects between 2030 and 2040. These two sets of projects reflect further priority system improvements that the Borrower is to implement along with the Projects. The fifth amendment gives the Borrower until 2032 to complete the Projects. Finally, the fifth amendment provides that, if the Borrower does not fully implement the Projects or delays full implementation past 2032, then EPA can require the Borrower to accelerate some or all of the second group of sewer overflow control projects (totaling approximately \$200 million) to offset the avoided investment in the Projects.

## **SCHEDULE 14(a)**

### **RATE COVENANT**

Reference is made to Section 705 (*Rate Covenant*) of the Trust Agreement, and the requirements and conditions contained therein as in effect on the Amendment Effective Date, which are set forth verbatim below. Capitalized terms used in this Schedule 14(a) shall have the respective meanings assigned to such terms in the Trust Agreement.

“Section 705. **Rate Covenant**. (a) The District covenants and agrees that it will fix and collect rates, fees and other charges for the use of and for services furnished or to be furnished by the Wastewater System, and will from time to time revise such rates, fees and other charges so that in each Fiscal Year the Net Revenues will equal at least 120% of the Principal and Interest Requirements. If, for any reason, the Net Revenues are insufficient to satisfy the foregoing covenant, the District shall within one hundred twenty (120) days adjust and increase its rates, fees and other charges (to the extent permitted by the Enabling Act), or reduce its operating and maintenance expenses so as to provide sufficient Net Revenues to satisfy such requirement.

(b) If at any time the District fails to comply with its Rate Covenant in subsection (a) of this Section 705, the District shall immediately notify the Trustee, such notice also containing an Officer’s Certificate of a District Representative as to (i) the amount of the deficiency in Net Revenues that existed for the applicable period and the rates, fees and other charges which must be established by the District to cure such deficiency, and (ii) during the Fiscal Year in which the certificate is delivered, the projected Net Revenues will satisfy the Rate Covenant made by the District in subsection (a) of this Section, or, if not, the rates, fees and other charges the District must establish to satisfy such rate covenant. In addition, the District shall, to the extent permitted by law, take appropriate action to increase its rates, fees and other charges or reduce its Operating Expenses to cure any deficiency.

(c) On or before the last day of each Fiscal Year, the District shall review the adequacy of its rates, fees and other charges for the next Fiscal Year, and, if such review indicates the District’s rates, fees and other charges are insufficient to satisfy the Rate Covenant in subsection (a) of this Section, the District shall promptly take appropriate action to increase its rates, fees and other charges or reduce its operating and maintenance expenses to cure any deficiency.”

## **SCHEDULE 15(a)(ii)**

### **ADDITIONAL BONDS TEST**

Reference is made to (a) Section 704 (*Limitations on Indebtedness*) of the Trust Agreement and the requirements and conditions contained therein as in effect on the Amendment Effective Date and (b) Section 5.2 (*Additional Restriction on the Incurrence of Additional Indebtedness*) of that certain Twelfth Supplemental Trust Agreement, dated as of the Amendment Effective Date, by and between the Borrower and the Trustee (the “**Twelfth Supplemental Trust Agreement**”) and the requirements and conditions contained therein, in each case which are set forth verbatim below. Capitalized terms used in this Schedule 15(a)(ii) shall have the respective meanings assigned to such terms in the Trust Agreement or in the Twelfth Supplemental Trust Agreement, as applicable.

“Section 704. **Limitations on Indebtedness.** The District covenants and agrees that it will not issue any Additional Bonds or incur any other Senior Obligations if, after giving effect to all other Indebtedness incurred by the District, such Indebtedness could not be incurred pursuant to this Section 704. Any Additional Senior Obligations and Subordinate Obligations may be incurred only in the manner and pursuant to the terms set forth in this Section 704.

(a) Long-Term Indebtedness may be incurred if prior to incurrence of the Long-Term Indebtedness there is delivered to the Trustee:

(i) an Officer’s Certificate of a District Representative certifying that the Long-Term Debt Service Coverage Ratio for the most recent period of twelve (12) full consecutive calendar months preceding the date of delivery of the certificate of the District Representative for which there are Financial Statements available, adjusted for revenues and expenses resulting from anticipated new customers and any planned program of rate increases that has been approved by the Commission, taking all Long-Term Indebtedness incurred after such period and the proposed Long-Term Indebtedness into account as if such Long-Term Indebtedness had been incurred at the beginning of such period, is not less than one hundred twenty percent (120%); or

(ii) an Officer’s Certificate of a District Representative certifying that the District is expected to comply with the Rate Covenant set forth in Section 705 of this Trust Agreement for the five Fiscal Years following the date of issuance of the proposed Long-Term Indebtedness. Such certificate shall be accompanied by a statement of the relevant assumptions upon which such pro forma Financial Statements for the District are based including, but not limited to, adjustments to revenues and expenses resulting from anticipated new customers and any planned program of rate increases that has been approved by the Commission; or

(iii) if the Long-Term Indebtedness is authorized for any purpose other than the refunding of the outstanding Senior Obligations, an Officer’s Certificate of a District Representative to the effect, and to the extent applicable, that in his or her opinion (a) the

improvements or property to which the proceeds from the issuance of the Long-Term Indebtedness are to be applied will be a part of the Wastewater System, (b) the proceeds of the Long-Term Indebtedness and other specified sources will be sufficient to pay the estimated cost of such improvements or property, (c) the period of time which will be required to complete such improvements or acquire such property, and (d)(1) the proceeds of the Long-Term Indebtedness are necessary to complete the project to be financed thereby, (2) the failure to make such improvements or acquire or construct such property will result in an interruption or reduction of Net Revenues, or (3) during the first two Fiscal Years following the completion of the improvements or the acquisition of the property, the projected Net Revenues will satisfy the Rate Covenant in Section 705 hereof. In providing this certificate, the District Representative may take into consideration future Wastewater System rate increases, provided that such rate increases have been duly approved by the Commission and any other person and entity required to give approval for the rate increase to become effective. In addition, he or she may take into consideration additional future revenues of the Wastewater System to be derived under then existing contractual agreements entered into by the District and from reasonable estimates of growth in the customer base of the District; or

(iv) an Officer's Certificate of a District Representative certifying compliance with the Rate Covenant set forth in Section 705 of this Trust Agreement for the most recent period of twelve (12) full consecutive calendar months for which there are Financial Statements available preceding the date of delivery of the certificate.

(b) Long-Term Indebtedness may be incurred for the purpose of refunding Outstanding Long-Term Indebtedness if either (i) a certificate of an independent financial advisor to the effect that, the Long-Term Indebtedness issued to refund Outstanding Senior Obligations will have, in the aggregate, a lower Long-Term Debt Service Requirement than the Long-Term Debt Service Requirement on the Senior Obligations to be refunded with the proceeds thereof, or (ii) an Officer's Certificate of a District Representative to the effect that during the first two complete Fiscal Years following the issuance of the refunding Long-Term Indebtedness, the projected Net Revenues will satisfy the Rate Covenant in Section 705 hereof. In providing the certificate described in this clause (b), the Officer's Certificate may take into account the factors described in the last two sentences of subsection (a)(iii) of this Section. In addition, the Trustee shall receive an Opinion of Counsel stating that upon the incurrence of such proposed Long-Term Indebtedness and application of the proceeds thereof (on the Cross-over Date, in the case of Cross-over Refunding Indebtedness), the Outstanding Long-Term Indebtedness to be refunded thereby will no longer be Outstanding.

(c) Short-Term Indebtedness may be incurred as a Senior Obligation subject to the same tests that apply to the incurrence of Senior Obligations generally; provided, however, that notwithstanding such limitation, the District may incur as a Senior Obligation from time to time and have outstanding at any one time Short-Term Indebtedness in an amount up to 10% of its Total Operating Revenues as reflected in the Financial Statements of the District for the most recent period of twelve consecutive months for which Financial Statements are available and provided, further, that the District may incur Short-Term Indebtedness secured by a Credit Facility without limitation. Short-Term Indebtedness may be incurred as Subordinate Obligations without compliance with the tests that apply to the incurrence of Senior Indebtedness.

(d) Additional VRA Obligations may be incurred by the District subject to the delivery of an Officer's Certificate of a District Representative demonstrating compliance with Sections 704(a) or (b) and 705(a) hereof, *provided, however*, anything in this Trust Agreement notwithstanding, the District may make such additional covenants in a supplemental resolution, financing agreement or other agreement authorizing and securing a VRA Obligation as may be required by VRA as a condition of purchasing such VRA Obligations.

(e) Subordinate Obligations may be incurred without limitation.

(f) For purposes of demonstrating compliance with the incurrence test set forth in subsection (a) of this Section 704, the District may (but is not required to) elect in the applicable Series Agreement to treat all or any Senior Obligations authorized in a Credit Facility (including, for example and without limitation, a self-liquidity arrangement provided by the District, a line of credit or a liquidity facility supporting a commercial paper program), but not immediately issued or incurred under such Credit Facility, as subject to such incurrence test as of a single date, notwithstanding that none, or less than all, of the authorized principal amount of such Senior Obligations shall have been issued or incurred as of such date.

(g) Notwithstanding the foregoing provisions of this Section 704, nothing herein contained shall preclude the District from incurring any obligation under a Credit Facility."

**"Section 5.2. Additional Restriction on the Incurrence of Additional Indebtedness.** The District covenants that, for purposes of demonstrating compliance with Section 704 of the Trust Agreement (Limitations on Indebtedness), clause (iv) of Section 704(a) of the Trust Agreement shall be deemed not to apply during the Master Availability Period (as defined in the WIFIA Master Agreement) or while there are Outstanding any Bonds (including the 2020 Bond) held by the WIFIA Lender."

## EXHIBIT A

### FORM OF WIFIA BOND

*Interest on this bond is not excludable from the gross income of the registered owner hereof for federal income tax purposes.*

No. R-[•]

**HAMPTON ROADS SANITATION DISTRICT  
(VIRGINIA)  
WASTEWATER REVENUE BOND,  
SERIES [•]  
(FEDERALLY TAXABLE)**

<b><u>Maturity Date</u></b>	<b><u>Interest Rate</u></b>	<b><u>Dated</u></b>	<b><u>CUSIP</u></b>
[•]	[•]	[•]	[•]

**Registered Owner: UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

**Maximum Principal Amount: [•] DOLLARS (\$[•])**

Hampton Roads Sanitation District (the “District”), a political subdivision of the Commonwealth of Virginia, by the Hampton Roads Sanitation District Commission (the “Commission”), the Commission of the District, for value received, promises to pay, but solely from the sources and in the manner hereinafter provided, to the registered owner named above, acting by and through the Administrator of the Environmental Protection Agency or its assigns (the “WIFIA Lender”), the lesser of (x) the Maximum Principal Amount set forth above and (y) the aggregate unpaid principal amount of all disbursements (the “Disbursements”) made by the WIFIA Lender (such lesser amount being hereinafter referred to as the “Outstanding Principal Sum”), together with accrued and unpaid interest (including, if applicable, interest at the Default Rate in accordance with that certain WIFIA Loan Agreement, dated [•], by and between the WIFIA Lender and the District (the “WIFIA [•] Loan Agreement”)), on the Outstanding Principal Sum and all fees, costs and other amounts payable in connection therewith, all as more fully described in the WIFIA [•] Loan Agreement. The principal hereof shall be payable in the manner and at the place provided in the WIFIA [•] Loan Agreement in accordance with Exhibit B (*WIFIA Debt Service*) to the WIFIA [•] Loan Agreement, as revised from time to time in accordance with the WIFIA [•] Loan Agreement and that certain WIFIA Master Agreement, dated September 28, 2020, as amended and restated as of \_\_\_\_\_, 2024, by and between the WIFIA Lender and the District (the “WIFIA Master Agreement”), until paid in full (which Exhibit B, as modified from time to time in accordance with the terms of the WIFIA [•] Loan Agreement and the WIFIA Master Agreement, is incorporated in and is a part of this Bond). The WIFIA Lender is hereby authorized to modify the loan amortization schedule included in Exhibit B to the WIFIA [•] Loan Agreement from time to time in accordance with the terms of the WIFIA Master Agreement and the WIFIA [•] Loan Agreement to reflect the amount of each disbursement made thereunder and

the date and amount of principal or interest paid by the District thereunder. Any adjustments or revisions to the loan amortization schedule included in Exhibit B to the WIFIA [●] Loan Agreement shall be deemed to update the amortization schedule attached as Schedule A hereto *mutatis mutandis*. Absent manifest error, the WIFIA Lender's determination of such matters as set forth on Exhibit B to the WIFIA [●] Loan Agreement shall be conclusive evidence thereof; provided, however, that neither the failure to make any such recordation nor any error in such recordation shall affect in any manner the District's obligations hereunder or under any other WIFIA Loan Document (as defined in the WIFIA Master Agreement).

Payments on this Bond are to be made in accordance with Section 8(c) (Payment of Principal and Interest – Manner of Payment) and Section 31 (Notices) of the WIFIA Master Agreement as the same become due. Principal of and interest on this Bond shall be paid in funds available on or before the due date and in any lawful coin or currency of the United States of America that at the date of payment is legal tender for the payment of public and private debts. If the Substantial Completion Date occurs on any date prior to [insert date that is 35 years before the Due Date], the due date of this Bond shall be deemed to be amended to the Principal Payment Date immediately preceding the date that is thirty-five (35) years following such Substantial Completion Date without any further action required on the part of the Borrower or the WIFIA Lender and such amendment shall in no way amend, modify or affect the other provisions of this Bond without the prior written agreement of the WIFIA Lender. Any such amendment shall be reflected in a revised Exhibit B to the WIFIA Loan Agreement.

Interest on this Bond shall accrue and be computed on the Outstanding WIFIA Loan Balance from time to time at the interest rate stated above, on the basis of a three hundred sixty (360) day year comprised of twelve (12) thirty (30) day months; provided that upon the occurrence of any event of default under Section 17(a) of the WIFIA Master Agreement, interest on this Bond shall be computed on the Outstanding WIFIA Loan Balance at the Default Rate in accordance with the provisions of Section 6 of the WIFIA Master Agreement.

This Bond is issued under a trust agreement, dated as of October 1, 2011, between the District and The Bank of New York Mellon Trust Company, N.A., Pittsburgh, Pennsylvania, as Trustee (said banking corporation and any bank or successor trustee under the Trust Agreement being hereinafter referred to as the "Trustee"), as amended and restated as of March 1, 2016, as amended, as further amended and restated as of July 1, 2024, and effective on July 16, 2024, and as the same may be amended and supplemented from time to time (the "Trust Agreement"), including pursuant to the [●] Supplemental Trust Agreement dated as of [●] (the "[●] Supplemental Agreement"). The Bond is being issued for the purpose of providing funds, together with other available funds, (i) to finance a portion of the eligible costs of the Project and (ii) to pay a portion of the expenses incurred in connection with the issuance of this Bond by the District. Reference is made to the WIFIA Master Agreement and the WIFIA [●] Loan Agreement for further terms and conditions relating to the obligations of the District hereunder and thereunder, which terms and conditions shall for all purposes have the same effect as if fully set forth herein. All capitalized terms used in this Bond and not defined herein shall have the meanings set forth in the [●] Supplemental Agreement, or if not defined therein, in the Trust Agreement.

This Bond may be prepaid at the option of the District in whole or in part (and, if in part, the principal installments and amounts thereof to be prepaid are to be determined in accordance with the WIFIA [●] Loan Agreement; provided that such prepayments shall be in principal amounts of at least \$1,000,000 or any integral multiple of \$1 in excess thereof), from time to time, but not more than once in any Fiscal Year, without penalty or premium, by paying to the WIFIA Lender all or part of the principal amount of this Bond in accordance with the [●] WIFIA Loan Agreement.

This Bond shall be subject to mandatory prepayment on the terms and conditions set forth in the WIFIA Master Agreement, the WIFIA [●] Loan Agreement and the Trust Agreement.

This Bond is issued and the Trust Agreement was made and entered into under and pursuant to the Constitution and laws of the Commonwealth of Virginia, and particularly in conformity with the provisions, restrictions and limitations of Chapter 66 of the Acts of Assembly of Virginia of 1960, as amended.

The District has agreed to perform, observe and comply with certain covenants, conditions and agreements set forth in the Trust Agreement. The District may incur additional indebtedness, including bonds and other indebtedness secured by the Trust Agreement on a pari passu basis (collectively, "Senior Obligations") for the purposes, under the terms and conditions and to the extent described therein and in the WIFIA Master Agreement.

This Bond is a special obligation of the District and is payable solely from Net Revenues derived by the District from its Wastewater System and the money attributable to proceeds of the Bond and the income from the investment thereof and not from any other fund or source. This Bond shall not be deemed to constitute a debt, or a pledge of the faith and credit, of the Commonwealth of Virginia or of any county, city, town or political subdivision thereof. The issuance of this Bond shall not directly or indirectly or contingently obligate the Commonwealth of Virginia or any county, city, town or political subdivision thereof to levy or to pledge any form of taxation whatever therefor.

This Bond is issued as a fully registered Bond. The transfer of this Bond is registrable by the registered owner hereof in person or by his attorney or legal representative at the corporate trust office of the Bond Registrar for the delivery of the Bond, but only in the manner and subject to the limitations and conditions provided in the Trust Agreement and upon surrender and cancellation of this Bond. Upon any such registration of transfer, the District shall execute and the Bond Registrar shall authenticate and deliver in exchange for this Bond a new Bond, registered in the name of the transferee, in a principal amount equal to the then outstanding principal amount of this Bond, of the same series and maturity and bearing interest at the same rate.

The Holder of this Bond shall have no right to enforce the provisions of the Trust Agreement or to institute action to enforce the covenants therein, or to take any action with respect to any event of default under the Trust Agreement, or to institute, appear in or defend any suit or other proceeding with respect thereto, except as provided in the Trust Agreement and except that the Holder of this Bond may institute action to enforce the payment of the principal of or the interest on this Bond. Any delay on the part of the Holder of this Bond in exercising any right



hereunder shall not operate as a waiver of any such right, and any waiver granted with respect to one default shall not operate as a waiver in the event of any subsequent default.

Upon the occurrence of certain events, and on the conditions, in the manner and with the effect set forth in the Trust Agreement, the Outstanding principal amount of this Bond may become or may be declared due and payable before the stated maturity thereof, together with the interest accrued thereon.

Modifications or alterations of the Trust Agreement or any trust agreement supplemental thereto may be made only to the extent and in the circumstances permitted by the Trust Agreement.

This Bond shall be governed by the laws of the Commonwealth of Virginia without regard to choice of law principles.

All acts, conditions and things required to happen, exist and be performed precedent to and in the issuance of this Bond have happened, exist and have been performed as so required.

Neither the members, officers or employees of the Commission or the District, nor any person executing this Bond, is liable personally hereon or subject to any personal liability or accountability by reason of issuance hereof.

This Bond shall not be valid or become obligatory for any purpose or be entitled to any benefit or security under the Trust Agreement until it shall have been authenticated by the execution by the Bond Registrar of the certificate of authentication endorsed hereon.

**IN WITNESS WHEREOF**, the Hampton Roads Sanitation District has caused this Bond to be executed in its name and on its behalf with the [facsimile] signatures of the Chair and the Secretary of the Hampton Roads Sanitation District Commission and [a facsimile of] the official seal of said Commission to be impressed hereon and this Bond to be dated the Dated Date.

**HAMPTON ROADS SANITATION DISTRICT**

By \_\_\_\_\_  
Chair  
Hampton Roads Sanitation District Commission

By \_\_\_\_\_  
Secretary  
Hampton Roads Sanitation District Commission

[Seal]

## **CERTIFICATE OF AUTHENTICATION**

Date of authentication: \_\_\_\_\_

This Bond is a Bond issued under the provisions of the within-mentioned Trust Agreement.

**THE BANK OF NEW YORK MELLON  
TRUST COMPANY, N.A.,**  
as Bond Registrar

By \_\_\_\_\_  
Authorized Signatory

**[FORM OF ASSIGNMENT]**

FOR VALUE RECEIVED the undersigned hereby sells, assigns and transfers unto

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[Please Print or Typewrite Name and Address of Transferee]

the within Bond and all rights thereunder, and hereby irrevocably constitutes and appoints \_\_\_\_\_ attorney to register the transfer of the within Bond on the books kept for registration thereof, with full power of substitution in the premises.

Date: \_\_\_\_\_

Signature Guaranteed:

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NOTICE: Signature(s) must be guaranteed by an institution which is a participant in the Securities Transfer Agent Medallion Program (STAMP) or similar program.

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NOTICE: The signature to this assignment must correspond with the name as it appears upon the face of the within Bond in every particular, without alteration or enlargement or any change whatever.

**SCHEDULE A**

**Disbursement and Payments Schedule**

Maximum Principal Amount: \$[●]

Payment Date [or Disbursement Date]	Amount Disbursed	Principal Amount Paid or Prepaid	Outstanding Principal Sum

## EXHIBIT B

### FORM OF NON-DEBARMENT CERTIFICATE

The undersigned, on behalf of Hampton Roads Sanitation District (the “**Borrower**”), hereby certifies that the Borrower has fully complied with its verification obligations under 2 C.F.R. § 180.320 and hereby further confirms, based on such verification, that, to its knowledge, the Borrower and its principals (as defined in 2 C.F.R. § 180.995 and supplemented by 2 C.F.R. 1532.995):

(a) are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any federal department or agency;

(b) have not within a three (3) year period preceding the WIFIA Loan Agreement Effective Date been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) transaction or contract under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state or local) with commission of any of the offenses enumerated in paragraph (b) of this certification; and

(d) have not within a three (3) year period preceding the WIFIA Loan Agreement Effective Date had one or more public transactions (federal, state or local) terminated for cause or default.

Capitalized terms used in this certificate and not defined shall have the respective meanings assigned to such terms in the WIFIA Master Agreement, dated as of September 28, 2020, as amended and restated as of \_\_\_\_\_, 2024, by and between the Borrower and the United States Environmental Protection Agency, acting by and through the Administrator of the Environmental Protection Agency.

Dated: \_\_\_\_\_

**HAMPTON ROADS SANITATION DISTRICT,**  
by its authorized representative

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

## EXHIBIT C

### REQUISITION PROCEDURES AND FORM OF REQUISITION

This Exhibit C sets out the procedures which the Borrower agrees to follow in submitting Requisitions for the disbursement of WIFIA Loan proceeds in respect of the Eligible Project Costs incurred in connection with each Project. Section 1 sets out the manner in which Requisitions are to be submitted and reviewed. Sections 2 through 4 set out the circumstances in which the WIFIA Lender may reject or correct Requisitions submitted by the Borrower or withhold a disbursement. The Borrower expressly agrees to the terms hereof, and further agrees that (i) the rights of the WIFIA Lender contained herein are in addition to (and not in lieu of) any other rights or remedies available to the WIFIA Lender under (x) that certain WIFIA Master Agreement, dated as of September 28, 2020, as amended and restated as of \_\_\_\_, 2024, by and between the WIFIA Lender and the Borrower (the “**WIFIA Master Agreement**”) and (y) the WIFIA Loan Agreement by and between the WIFIA Lender and the Borrower with respect to the applicable Project (the “**WIFIA Loan Agreement**”), and (ii) nothing contained herein shall be construed to limit the rights of the WIFIA Lender to take actions including administrative enforcement action and actions for breach of contract against the Borrower if it fails to perform its obligations under the WIFIA Loan Agreement during the term thereof. All capitalized terms used and not defined herein shall have the meanings set forth in the WIFIA Master Agreement and the WIFIA Loan Agreement.

Section 1. General Requirements. All requests by the Borrower for the disbursement of WIFIA Loan proceeds shall be made by electronic mail or overnight delivery service by submission to the WIFIA Lender, in accordance with Section 31 (Notices) of the WIFIA Master Agreement, of a Requisition, in form and substance satisfactory to the WIFIA Lender and completed and executed by the Borrower’s Authorized Representative. The form of Requisition is attached as Appendix One (Form of Requisition) to this Exhibit C.

Supporting documentation should be submitted with the Requisition. If the Borrower anticipates that it will draw down all or a portion of the proceeds of the WIFIA Loan to reimburse the Borrower for Eligible Project Costs paid by or on behalf of the Borrower prior to such disbursement of WIFIA Loan proceeds, whether paid from funds of the Borrower or proceeds of Indebtedness issued by the Borrower, including for the purpose of paying or redeeming such Indebtedness, the Borrower shall deliver appropriate documentation, including invoices and records, evidencing such incurred or paid Eligible Project Costs (the “**Eligible Project Costs Documentation**”). The Eligible Project Costs Documentation must provide sufficient detail to enable the WIFIA Lender to verify that such costs are Eligible Project Costs paid by the Borrower, in connection with the reimbursement of such Eligible Project Costs. The WIFIA Lender shall review the Eligible Project Costs Documentation for compliance with WIFIA disbursement requirements, and any amounts approved by the WIFIA Lender as Eligible Project Costs will be disbursed at such time as the Borrower submits a Requisition in respect of such approved amounts.

The WIFIA Lender agrees to promptly send to the Borrower in accordance with Section 31 (Notices) of the WIFIA Master Agreement, an acknowledgement of receipt of each Requisition in the form attached as Appendix Two ([Approval]/[Disapproval] of the WIFIA Lender) to this Exhibit C setting forth the date of receipt by the WIFIA Lender of such Requisition and setting forth the Business Day on which disbursement will be made absent denial by the WIFIA Lender.

All disbursement requests must be received by the WIFIA Lender at or before 5:00 P.M. Eastern Time on the first (1<sup>st</sup>) Business Day of a calendar month in order to obtain disbursement by the fifteenth (15<sup>th</sup>) day of such calendar month or, if either such day is not a Business Day, the next succeeding Business Day. If a Requisition is approved by the WIFIA Lender, the WIFIA Lender will notify the Borrower of such approval and of the amount so approved.

Section 2. Rejection. A Requisition may be rejected in whole or in part by the WIFIA Lender if it is: (a) submitted without signature; (b) submitted under signature of a Person other than the Borrower's Authorized Representative; (c) submitted after prior disbursement of all proceeds of the WIFIA Loan; (d) submitted without adequate Eligible Project Costs Documentation, including (i) copies of invoices and records evidencing the Eligible Project Costs, (ii) a summary of the progress of construction of the Project and a general description of the work done for which the funds being requisitioned are being applied (or a certification that no change has occurred since the date of the latest quarterly report provided pursuant to Section 16(d) (Reporting Requirements – Construction Reporting) of the WIFIA Master Agreement), and (iii) a copy of the most recent update to the Borrower's risk register, if requested by the WIFIA Lender.

The WIFIA Lender will notify the Borrower of any Requisition so rejected, and the reasons therefor. Any Requisition rejected for the reasons specified above (other than Section 2(c) above) must be resubmitted in proper form in order to be considered for approval. If a Requisition exceeds the balance of the WIFIA Loan proceeds remaining to be disbursed, the request will be treated as if submitted in the amount of the balance so remaining, and the WIFIA Lender will so notify the Borrower.

Section 3. Correction. A Requisition containing an apparent mathematical error will be corrected by the WIFIA Lender, after telephonic or email notification to the Borrower, and will thereafter be treated as if submitted in the corrected amount.

Section 4. Withholding. The WIFIA Lender shall be entitled to withhold approval (in whole or in part) of any pending or subsequent requests for the disbursement of WIFIA Loan proceeds if: (a) a Default or an Event of Default shall have occurred and be continuing; (b) the Borrower (i) knowingly takes any action, or omits to take any action, amounting to fraud or violation of any applicable law, in connection with the transactions contemplated hereby; (ii) prevents or materially impairs the ability of the WIFIA Lender to monitor compliance by the Borrower with applicable law pertaining to the Project or with the terms and conditions of the WIFIA Loan Agreement; (iii) fails to observe or comply with any applicable law, or any term or condition of the WIFIA Loan Agreement; (iv) fails to satisfy the conditions set forth in Section 4 (Disbursement Conditions) and Section 11(b) (Conditions Precedent – Conditions Precedent to Effectiveness of Each WIFIA Loan Agreement) of the WIFIA Master Agreement; or (v) fails to deliver Eligible Project Costs Documentation satisfactory to the WIFIA Lender at the times and in the manner specified by the WIFIA Master Agreement and the WIFIA Loan Agreement; provided that in the case of clause (v), the WIFIA Lender may, in its sole discretion, partially approve a disbursement request in respect of any amounts for which adequate Eligible Project Costs has been provided and may, in its sole discretion, disburse in respect of such properly documented amounts.



## APPENDIX ONE TO EXHIBIT C

### FORM OF REQUISITION

United States Environmental Protection Agency<sup>20</sup>  
1200 Pennsylvania Avenue NW  
WJC-W 6201A  
Washington, D.C. 20460  
Attention: WIFIA Director

Re: [●] Project (WIFIA [insert loan number])

Ladies and Gentlemen:

Pursuant to Section 4 (*Disbursement Conditions*) of (i) that certain WIFIA Master Agreement by and between HAMPTON ROADS SANITATION DISTRICT (the “**Borrower**”) and the UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, acting by and through the Administrator of the Environmental Protection Agency (the “**WIFIA Lender**”), dated as of September 28, 2020, as amended and restated as of \_\_\_\_\_, 2024 (the “**WIFIA Master Agreement**”), and (ii) that certain WIFIA Loan Agreement by and between the Borrower and the WIFIA Lender, dated as of [●] (the “**WIFIA Loan Agreement**”), the Borrower hereby requests disbursement in the amount set forth below in respect of Eligible Project Costs paid or incurred by the Borrower. Capitalized terms used but not defined herein have the meaning set forth in the WIFIA Master Agreement and the WIFIA Loan Agreement.

In connection with this Requisition the undersigned, as the Borrower’s Authorized Representative, hereby represents and certifies the following:

1.	<b>Project name</b>	[ ]
2.	<b>Borrower name</b>	Hampton Roads Sanitation District
3.	<b>WIFIA reference number</b>	[ ]
4.	<b>Requisition number</b>	[ ]
5.	<b>Requested disbursement amount</b>	\$[ ]
6.	<b>Requested disbursement date (the “Disbursement Date”)</b>	[ ]
7.	<b>Total amounts previously disbursed under the WIFIA Loan Agreement</b>	\$[ ]
8.	<b>Wire instructions</b>	[ ]

9. The amounts hereby requisitioned have been paid or incurred and approved for payment by or on behalf of the Borrower for Eligible Project Costs and have not been paid for or reimbursed by any previous disbursement from WIFIA Loan proceeds. No portion of the amounts requisitioned will be applied to pay for Eligible Project Costs that have been

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<sup>20</sup> If there is a Servicer for the WIFIA Loan, provide a copy to the Servicer as well and include its notice details here.

previously paid, or are expected to be paid, with proceeds of debt of the Borrower that is not the WIFIA Loan.

10. The aggregate amount of all disbursements of the WIFIA Loan (including the amount requested under this Requisition) does not exceed (a) the maximum principal amount of the WIFIA Loan, (b) the amount of Eligible Project Costs paid or incurred by the Borrower, and (c) the cumulative disbursements through the end of the current Federal Fiscal Year as set forth in the Anticipated WIFIA Loan Disbursement Schedule.
11. The Borrower has sufficient available funds committed to the Project, which together with funds that remain available and not yet drawn under the WIFIA Loan, will be sufficient to pay the reasonably anticipated remaining Total Project Costs.
12. The total federal assistance provided to the Project, including the maximum principal amount of the WIFIA Loan, does not exceed eighty percent (80%) of Total Project Costs.
13. The Borrower has obtained all Governmental Approvals required to have been obtained as of the date hereof and as of the Disbursement Date (immediately after giving effect to the above-requested disbursement of WIFIA Loan proceeds), for the development, construction, operation and maintenance of the Project and each such Governmental Approval has been issued and is in full force and effect (and is not subject to any notice of violation, breach or revocation).
14. Each of the insurance policies maintained by the Borrower in satisfaction of Section 14(f) (Affirmative Covenants – Insurance) of the WIFIA Master Agreement is in full force and effect, and no notice of termination thereof has been issued by the applicable insurance provider and received by the Borrower.
15. As of the date hereof and on the Disbursement Date (immediately after giving effect to the above-requested disbursement of WIFIA Loan proceeds), (a) no Default or Event of Default, and no event of default under any other Related Document and (b) no event that, with the giving of notice or the passage of time or both, would constitute an event of default under any Related Document, in each case, has occurred and is continuing. No Material Adverse Effect, or any event or condition that could reasonably be expected to have a Material Adverse Effect, has occurred or arisen since the Effective Date.
16. The Borrower, and to the best of its knowledge, each of its contractors and subcontractors at all tiers with respect to the Project, has complied with all applicable laws, rules, regulations and requirements, including 40 U.S.C. §§3141-3144, 3146, and 3147 (relating to Davis-Bacon Act requirements) (and regulations relating thereto) and 33 U.S.C. §3914 (relating to American iron and steel products). Each Construction Contract requires that supporting documentation, such as certified payroll records and certifications for all iron and steel products used for the Project, be maintained by such contractors and subcontractors and available for review upon request by the WIFIA Lender.
17. The representations and warranties of the Borrower set forth in the WIFIA Master Agreement and in each other Related Document are true and correct as of the date hereof and as of the Disbursement Date, except to the extent such representations and warranties

expressly relate to an earlier date (in which case, such representations and warranties are true and correct as of such earlier date).

18. Each Construction Contract and Trust Document that has been delivered by the Borrower to the WIFIA Lender pursuant to Section 11(b)(ii) (*Conditions Precedent – Conditions Precedent to Effectiveness of Each WIFIA Loan Agreement*), Section 11(b)(iii) (*Conditions Precedent – Conditions Precedent to Effectiveness of Each WIFIA Loan Agreement*), Section 11(c)(iv) (*Conditions Precedent – Conditions Precedent to Disbursements*) and Section 11(c)(v) (*Conditions Precedent – Conditions Precedent to Disbursements*) is complete, fully executed and in full force and effect.
19. The current estimated percentage of physical completion of the Project is [ ]%. The Borrower is in compliance with Section 16(d) (*Reporting Requirements – Construction Reporting*) and no change has occurred since the date of the most recently delivered quarterly construction progress report that could reasonably be expected to cause a Material Adverse Effect.
20. All documentation evidencing the Eligible Project Costs to be reimbursed to the Borrower by the above-requested disbursement has been delivered by the Borrower to the WIFIA Lender at the times and in the manner specified by the WIFIA Master Agreement and the WIFIA Loan Agreement, including the details set forth below:

								WIFIA USE ONLY	
Vendor or Contractor Name <sup>21</sup>	Invoice Number <sup>22</sup>	Invoice Date	Payment Date	Invoice Amount	WIFIA Requested Amount <sup>23</sup>	Activity Type <sup>24</sup>	Description of Activity <sup>25</sup>	Approved Amount	Notes

The undersigned acknowledges that if the Borrower makes a false, fictitious, or fraudulent claim, statement, submission, or certification to the Government in connection with the Project, the

<sup>21</sup> If seeking reimbursement for internal costs, enter “Internally financed activities.”

<sup>22</sup> Vendor’s number indicated on the invoice sent to the Borrower.

<sup>23</sup> If the amount requested for reimbursement by the WIFIA Lender is less than the total amount of the invoice, include an explanation for the difference.

<sup>24</sup> Specify whether activity is: (a) **Development phase activity**, which includes planning, preliminary engineering, design, environmental review, revenue forecasting and other pre-construction activities; (b) **Construction**, which includes construction, reconstruction, rehabilitation and replacement activities; (c) **Acquisition of real property**, which includes acquiring an interest in real property, environmental mitigation, construction contingencies and acquisition of equipment; (d) **Carrying costs**, including capitalized interest, as necessary to meet market requirements, reasonably required reserve funds, capital issuance expenses and other carrying costs during construction; (e) **WIFIA fees**, including for application and credit processing; or (f) **Other**, with an explanation in the “Description of Activity” column.

<sup>25</sup> Provide a brief description of the activities included in the invoice for which WIFIA funds are being requested and any other notes that will aid in the review of the disbursement request.

Government reserves the right to impose on the Borrower the penalties of 18 U.S.C. § 1001, to the extent the Government deems appropriate.

*[Signature Page Follows]*

Date: \_\_\_\_\_

HAMPTON ROADS SANITATION  
DISTRICT, by its authorized representative

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

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

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

## APPENDIX TWO TO EXHIBIT C

### [APPROVAL] [DISAPPROVAL] OF THE WIFIA LENDER<sup>26</sup>

Requisition Number [ ] is [approved in the amount of \$[ ]]  
[approved in part in the amount of \$[ ]] [not approved, for the reasons set forth in Annex A attached hereto,] by the WIFIA Lender (as defined herein) pursuant to Section 4 (Disbursement Conditions) of (i) that certain WIFIA Master Agreement, dated as of September 28, 2020, as amended and restated as of \_\_\_\_\_, 2024, by and between Hampton Roads Sanitation District (the “**Borrower**”) and the United States Environmental Protection Agency, acting by and through the Administrator of the Environmental Protection Agency (the “**WIFIA Lender**”) and (ii) that certain WIFIA Loan Agreement, dated as of [●], by and between the Borrower and the WIFIA Lender.

Any determination, action or failure to act by the WIFIA Lender with respect to the Requisition set forth above, including any withholding of a disbursement, shall be at the WIFIA Lender’s sole discretion, and in no event shall the WIFIA Lender be responsible for or liable to the Borrower for any and/or all consequence(s) which are the result thereof.

**UNITED STATES ENVIRONMENTAL  
PROTECTION AGENCY**, acting by and through  
the Administrator of the Environmental Protection  
Agency

By: \_\_\_\_\_  
WIFIA Lender’s Authorized Representative

Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Dated: \_\_\_\_\_

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<sup>26</sup> To be delivered to the Borrower. If there is any partial or full denial of approval, the WIFIA Lender should provide a separate attachment setting forth the reasons for such partial or full denial of approval.

## EXHIBIT D

### FORM OF NON-LOBBYING CERTIFICATE

The undersigned, on behalf of HAMPTON ROADS SANITATION DISTRICT (the “**Borrower**”), hereby certifies, to the best of his or her knowledge and belief, that:

(a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the Borrower, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of the WIFIA Loan.

(b) If any funds other than proceeds of the WIFIA Loan have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the WIFIA Loan, the Borrower shall complete and submit Standard Form-LLL, “Disclosure Form to Report Lobbying,” in accordance with its instructions.

(c) The Borrower shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when the WIFIA Lender (as defined below) entered into (i) that certain WIFIA Master Agreement by and between the Borrower and the United States Environmental Protection Agency, acting by and through the Administrator of the Environmental Protection Agency (the “**WIFIA Lender**”), dated as of September 28, 2020, as amended and restated as of \_\_\_\_\_, 2024 (the “**WIFIA Master Agreement**”), and (ii) that certain WIFIA Loan Agreement by and between the Borrower and the WIFIA Lender, dated as of [●] (the “**WIFIA Loan Agreement**”). Submission of this certification is a prerequisite to the effectiveness of the WIFIA Master Agreement and the WIFIA Loan Agreement imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Capitalized terms used in this certificate and not defined shall have the respective meanings assigned to such terms in the WIFIA Master Agreement.

Date: [\_\_\_\_\_]

*[Signature Page Follows]*

**HAMPTON ROADS SANITATION DISTRICT,**  
by its authorized representative

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



## **EXHIBIT E-1**

### **OPINIONS REQUIRED FROM COUNSEL TO BORROWER**

[●], 20[●]

#### **Hampton Roads Sanitation District Wastewater Revenue Bond, Series [●] (Federally Taxable)**

United States Environmental Protection Agency  
Washington, D.C.

We have acted as counsel to the Hampton Roads Sanitation District (the “District”) in connection with the issuance and sale of the above-captioned bond (the “[●] Bond”). We have examined Chapter 66 of the Acts of Assembly of Virginia of 1960, as amended (the “Enabling Act”), and certified copies of proceedings of the Hampton Roads Sanitation District Commission (the “Commission”), the governing body of the District, authorizing the execution and delivery of a Trust Agreement, dated as of October 1, 2011, as amended and restated as of March 1, 2016, as amended and supplemented, as further amended and restated as of July 1, 2024, and effective as of July 16, 2024, and as the same has been amended and supplemented from time to time (the “Trust Agreement”), including pursuant to the [●] Supplemental Trust Agreement, dated as of [●] (the “[●] Supplemental Agreement”), each by and between the District and The Bank of New York Mellon Trust Company, N.A., as trustee (in such capacity, the “Trustee”), and documents relating to the issuance and sale by the District of its Wastewater Revenue Bond, Series [●] (Federally Taxable) (the “[●] Bond”). The [●] Bond is being purchased on the date hereof by the United States Environmental Protection Agency, acting by and through the Administrator of the Environmental Protection Agency (the “EPA”), pursuant to the terms of that certain WIFIA Master Agreement, dated as of September 28, 2020, as amended and restated as of \_\_\_\_\_, 2024 (the “WIFIA Master Agreement”), and that certain WIFIA Loan Agreement dated as of [●] (the “WIFIA [●] Loan Agreement”), each by and between the EPA and the District. Capitalized terms used but not otherwise defined herein shall have the same meanings assigned to them in the WIFIA Master Agreement.

Without undertaking to verify the same by independent investigation, we have relied on certifications by representatives of the District as to certain facts relevant to the opinions expressed herein. We do not purport to express an opinion on any laws of any jurisdiction other than those of the Commonwealth of Virginia (the “Commonwealth”) and the United States of America.

Pursuant to the Trust Agreement, as security for the payment of the amounts due on the [●] Bond, the District has pledged its Net Revenues to the Trustee.

For purposes of the opinions expressed below, we have assumed (a) the authenticity of all documents submitted to us as originals, (b) the conformity to the originals of all documents submitted as certified or photostatic copies and the authenticity of the originals thereof, (c) the genuineness of all signatures not witnessed by us, and (d) the due authorization, execution and delivery of all documents by all parties (other than the due authorization, execution and delivery

by the District) and the validity, binding effect and enforceability thereof (other than the binding effect and enforceability thereof upon the District).

Based upon such examination, we are of the opinion that:

1. The creation of the District has been ratified, validated and confirmed by the Enabling Act, and the District constitutes a valid and existing political subdivision of the Commonwealth.

2. The District has lawful authority to acquire, construct, improve, extend, enlarge, reconstruct, maintain, equip, repair, and operate its Wastewater System, to issue the [●] Bond to the EPA, and to enter into, and to perform its obligations under, the [●] Supplemental Agreement, the WIFIA Master Agreement, the WIFIA [●] Loan Agreement, and the VRA Intercreditor Agreement.

3. The WIFIA Master Agreement, the WIFIA [●] Loan Agreement, and the VRA Intercreditor Agreement have been duly authorized, executed and delivered by the District and constitute valid and binding agreements of the District enforceable against the District in accordance with their terms; provided the enforceability of the obligations of the District under the WIFIA Master Agreement, the WIFIA [●] Loan Agreement, and the VRA Intercreditor Agreement may be limited or otherwise affected by (a) bankruptcy, insolvency, reorganization, moratorium, fraudulent conveyance or other laws affecting the rights of creditors generally and (b) principles of equity, whether considered at law or in equity. In addition, the obligation of the District to make any payments on the WIFIA Loan (as defined in the WIFIA [●] Loan Agreement), as evidenced by the [●] Bond, is payable solely from the Net Revenues and other funds pledged as security therefor under the Trust Agreement, and does not constitute a debt of the Commonwealth or of any county, city, town or political subdivision thereof, nor a pledge of the faith and credit of the Commonwealth or of any county, city, town or political subdivision thereof. The issuance of the [●] Bond does not directly or indirectly or contingently obligate the Commonwealth or any county, city, town or political subdivision thereof to levy or to pledge any form of taxation whatever therefor.

4. No authorization, consent, or other approval of, or registration, declaration or other filing with any governmental authority of the United States of America or of the Commonwealth is required on the part of the District for the execution and delivery by the District of, and the performance of the District under, the [●] Supplemental Agreement, the Trust Agreement, the VRA Intercreditor Agreement, the WIFIA Master Agreement, the WIFIA [●] Loan Agreement, and the [●] Bond, other than authorizations, consents, approvals, registrations, declarations and filings that have already been obtained or made by or on behalf of the District.

5. The execution and delivery by the District of, and compliance with the provisions of, the [●] Supplemental Agreement, the WIFIA Master Agreement, the WIFIA [●] Loan Agreement, the Trust Agreement, the VRA Intercreditor Agreement, and the [●] Bond do not (i) violate the Enabling Act, (ii) violate the law of the United States of America or of the Commonwealth or (iii) conflict with or constitute a breach of or default under any Related Document or any other material agreement or other instrument known to us to which the District

is a party, or to our knowledge, after due inquiry, any court order, consent decree, statute, rule, regulation or any other law to which the District is subject.

6. The District is not an investment company required to register under the Investment Company Act of 1940, as amended.

7. To our knowledge, after due inquiry, except as set forth in Schedules 12(f) and 12(p) to the WIFIA Master Agreement, there are no actions, suits, proceedings or investigations against the Borrower by or before any court, arbitrator or any other governmental authority in connection with the WIFIA Master Agreement, the WIFIA [●] Loan Agreement, the [●] Bond, the Trust Agreement, the [●] Supplemental Agreement, the VRA Intercreditor Agreement, or the Wastewater System (including the Master Program) that are pending.

The foregoing opinions with respect to the WIFIA Master Agreement and the WIFIA [●] Loan Agreement are subject to the limitation that, notwithstanding the provisions of Section 2 of the WIFIA Master Agreement and the WIFIA [●] Loan Agreement, respectively, no opinion is given with respect to any amendments or supplements to, or modifications or restatements or replacements of, the WIFIA Master Agreement and the WIFIA [●] Loan Agreement made after the date hereof.

In addition to the assumptions, exclusions, conditions, qualifications and limitations set forth above and in the numbered opinion paragraphs herein, as well as those customary matters relevant hereto but not detailed herein, the opinions expressed herein are also subject to the following qualifications:

i. No opinion is given herein with respect to the enforceability of any provision requiring the payment of attorney's fees other than "reasonable" attorneys' fees under the circumstances for which payment or reimbursement is sought.

ii. No opinion is given herein with respect to (a) compliance with securities laws, environmental laws, labor laws, pension and employee benefit laws and regulations, privacy laws, insurance laws, intellectual property laws, antitrust laws or in respect of the viability or feasibility of the Project or the ability to construct or operate it as expected, (b) the title, status of encumbrances or any other real property aspect as to the Project, (c) local laws or laws relating to zoning, land use or subdivision of real property, (d) fiduciary duties, (e) foreign asset control, foreign investment in the United States, national security, terrorism, or money laundering (including, without limitation, the USA PATRIOT Act of 2001, as amended, and §721 of the Defense Production Act of 1950, as amended), (f) the effect of racketeering or criminal or civil forfeiture laws, (g) the Dodd-Frank Wall Street Reform and Consumer Protection Act and any rules and regulations promulgated thereunder, (h) commodities laws, including as regards swaps and other derivatives (except where specifically provided), (i) the effect of the law of any jurisdiction (other than the Commonwealth) that limits the rate(s) of interest that may be charged or collected, (j) any mandatory choice of law rule, and (k) whether the loans made under the WIFIA [●] Loan Agreement will comply with (1) any statutory, regulatory or other loan limits applicable to the EPA, (2) any laws, rules or regulations that prescribe permissible and lawful investments for the EPA, (3) any judicial or administrative decisions, orders, rulings, directives, policies or

other interpretations addressing any of the laws, rules and regulations listed in this paragraph, or (4) any filing or notice requirements relating to any of the matters mentioned in this paragraph.

iii. We have not made any investigation concerning the Project or other financial resources of the District, and no opinion is given herein with respect to the accuracy or completeness of any information that may have been relied upon by the EPA in making the decision to enter into the WIFIA Master Agreement, the WIFIA [●] Loan Agreement or any related contracts or arrangements.

iv. No opinion is expressed herein with respect to any provision that purports to permit the exercise of rights without notice or without providing an opportunity to cure failures to perform.

v. No opinion is expressed herein with respect to any provision in any document regarding severability.

vi. No opinion is expressed herein with respect to any provision that would alter the terms or rights and obligations of the parties based on course of dealing, course of performance or the like, or that provides that failure or delay in taking action may not constitute a waiver of rights.

vii. Whenever a statement herein is qualified by the phrase “to our knowledge,” it is intended to indicate that, during the course of our representation of the District in connection with the transactions described in this letter, no information that would give us current actual knowledge of the inaccuracy of such statement has come to the attention of those attorneys in this firm who have rendered legal services in connection with such representation. However, except where otherwise stated in this letter regarding reasonable investigations we have undertaken, we have not undertaken any independent investigation to determine the accuracy of any such statement, and any limited inquiry undertaken by us during the preparation of this letter should not be regarded as such an investigation; no inference as to our knowledge of any matters bearing on the accuracy of any such statement should be drawn from the fact of our representation of the District.

viii. Whenever a statement herein is qualified by the phrase “due inquiry,” it is intended to indicate our due diligence review conducted during the course of our representation of the District in connection with the transactions and documents described in this letter, including participation in conferences with representatives of the District during which the transactions or documents described in this letter related matters were discussed, our review of written statements and representations of the District, and records and certifications provided by the District.

This letter is furnished by us in our capacity as counsel to the District. No attorney-client relationship has existed or exists between our firm and the addressees hereof in connection with the [●] Supplemental Agreement, the WIFIA Master Agreement, the WIFIA [●] Loan Agreement and the [●] Bond or by virtue of this opinion.

This letter is furnished to the addressees in connection with the transaction described above and may not be relied upon by anyone other than the addressee. This letter may not be further circulated, quoted, or relied upon or otherwise referred to for any other purpose without our prior written consent, except that (1) you may furnish a copy of this letter for information (but not reliance) (a) to your auditors and professional advisors, (b) pursuant to lawful order or legal process

of any court or governmental agency, (c) to governmental regulatory agencies having jurisdiction over you, (d) to third parties in connection with their requests submitted under the Freedom of Information Act (5 U.S.C. §552), provided this letter is subject to disclosure thereunder unless determined to be exempt from disclosure in accordance with 5 U.S.C. §552(b) and 49 C.F.R. §§7.23 and 7.29, (e) in connection with any legal action to which you are a party arising out of your participation in the Project, and (f) to your permitted assignees in connection with an assignment (or proposed assignment) of your rights under the WIFIA Loan Documents to such assignees, and such assignees may rely on this opinion as if it were addressed and had been delivered to them on the date of this opinion, unless statements in this opinion would be affected by the status of such assignees, and (2) this letter may be included in any transcript of proceedings prepared in connection with the execution and delivery of the WIFIA [●] Loan Agreement.

Respectfully submitted,

## **EXHIBIT E-2**

### **OPINIONS REQUIRED FROM BOND COUNSEL**

[●], 20[●]

Hampton Roads Sanitation District Commission  
Virginia Beach, Virginia

#### **Hampton Roads Sanitation District Wastewater Revenue Bond, Series [●] (Federally Taxable)**

Ladies and Gentlemen:

We have examined Chapter 66 of the Acts of Assembly of Virginia of 1960, as amended (the “Enabling Act”), and certified copies of proceedings of the Hampton Roads Sanitation District Commission (the “Commission”), the governing body of Hampton Roads Sanitation District (a political subdivision of the Commonwealth of Virginia and herein sometimes called the “District”), authorizing the execution and delivery of a Trust Agreement dated as of October 1, 2011, as amended and restated as of March 1, 2016, as amended and supplemented, as further amended and restated as of July 1, 2024, and effective as of July 16, 2024, and as the same has been amended and supplemented from time to time (the “Trust Agreement”), including pursuant to the [●] Supplemental Trust Agreement dated as of [●] (the “[●] Supplemental Agreement”), each by and between the District and The Bank of New York Mellon Trust Company, N.A., as trustee (the “Trustee”), and documents relating to the issuance and sale by the District of its Wastewater Revenue Bond, Series [●] (Federally Taxable) (the “[●] Bond”). The [●] Bond is being purchased on the date hereof by the United States Environmental Protection Agency, acting by and through the Administrator of the Environmental Protection Agency (the “EPA”), pursuant to the terms of that certain WIFIA Master Agreement dated as of September 28, 2020, as amended and restated as of \_\_\_\_, 2024 (the “WIFIA Master Agreement”), and that certain WIFIA Loan Agreement dated as of [●] (the “WIFIA [●] Loan Agreement”), each by and between the EPA and the District. Reference is made to the form of the [●] Bond for information concerning its purposes and details, including payment and prepayment provisions. Capitalized terms used but not otherwise defined herein shall have the same meanings assigned to them in the Trust Agreement.

The District is issuing the [●] Bond secured on a parity with all outstanding Senior Obligations (consisting of Bonds and VRA Obligations) previously issued by the District. The District may hereafter issue additional Senior Obligations secured on a parity with the [●] Bond and any existing Senior Obligations in compliance with the terms of the Trust Agreement and the [●] Supplemental Agreement. The Trust Agreement also permits the issuance of Subordinate Obligations that are junior and subordinate in right of payment to the prior payment in full of the Senior Obligations.

Without undertaking to verify the same by independent investigation, we have relied on certifications by representatives of the District as to certain facts relevant to this Opinion.

Based on the foregoing and in accordance with customary opinion practice, we are of the opinion that:

(1) The [●] Supplemental Agreement is authorized and permitted by the Trust Agreement and complies with its terms. The [●] Supplemental Agreement has been duly authorized, executed and delivered by the District and, assuming its due authorization, execution and delivery by the Trustee, constitutes a valid and binding agreement of the District enforceable against the District in accordance with its terms.

(2) The Trust Agreement has been duly authorized, executed and delivered by the District, and, assuming the due authorization, execution and delivery by the Trustee, constitutes a valid and binding agreement of the District enforceable against the District in accordance with its terms. Pursuant to the Trust Agreement, the District has granted to the Trustee a valid security interest in the Net Revenues, irrespective of whether any party has notice of such security interest and without the need for any physical delivery, recordation, filing or further act. The District has taken all necessary actions to authorize the Net Revenues to be applied in the manner set forth in the Trust Agreement, the WIFIA Master Agreement and the WIFIA [●] Loan Agreement. The District has complied with the requirements of Commonwealth of Virginia law to pledge to the Trustee, and has so pledged, all money and securities held by the Trustee in the Bond Fund and the Debt Service Reserve Fund.

(3) The issuance of the [●] Bond is permitted under the terms of the Trust Agreement. The [●] Bond has been duly authorized and issued by the District in accordance with the Enabling Act, constitutes a valid and binding special obligation of the District payable as to principal and interest solely from the Net Revenues and other funds pledged as security therefor under the Trust Agreement. The [●] Bond ranks *pari passu* in right of payment and right of security with all other Senior Obligations and senior in right of payment and right of security to all Subordinate Obligations. The [●] Bond and the interest thereon do not constitute a debt of the Commonwealth of Virginia or of any county, city, town or political subdivision thereof, or a pledge of the faith and credit of the Commonwealth of Virginia or of any county, city, town or political subdivision thereof. The issuance of the [●] Bond does not directly or indirectly or contingently obligate the Commonwealth of Virginia or any county, city, town or political subdivision thereof to levy or to pledge any form of taxation whatever therefor.

(4) The District has covenanted to fix and collect rates, fees and other charges for the use of and for services furnished or to be furnished by the Wastewater System, and from time to time to revise such rates, fees and other charges so that in each Fiscal Year the Net Revenues will be equal to the Principal and Interest Requirements (as defined in the Trust Agreement) and will provide certain reserves therefor.

(5) The rights of the holder of the [●] Bond and the enforceability of such rights, including the enforcement by the Trustee of the obligations of the District under the Trust Agreement and the [●] Supplemental Agreement, may be limited or otherwise affected by (a) bankruptcy, insolvency, reorganization, moratorium, fraudulent conveyance and other laws affecting the rights of creditors generally and (b) principles of equity, whether considered at law or in equity.

(6) Interest on the [●] Bond is not excludable from gross income for federal income tax purposes under Section 103 of the Internal Revenue Code of 1986, as amended. We express no opinion regarding any federal tax consequences of the ownership of or receipt or accrual of interest on the [●] Bond.

Our services as bond counsel to the District have been limited to delivering the foregoing Opinion based on our review of such proceedings and documents as we deem necessary to approve the validity of the [●] Bond. We express no opinion herein as to the financial resources of the District, its ability to provide for payment of the [●] Bond or the accuracy or completeness of any information that may have been relied upon by the EPA in making its decision to purchase the [●] Bond.

Very truly yours,



[●], 20[●]

United States Environmental Protection Agency  
Washington, D.C.

**Hampton Roads Sanitation District  
Wastewater Revenue Bond, Series [●] (Federally Taxable)**

Ladies and Gentlemen:

We have examined Chapter 66 of the Acts of Assembly of Virginia of 1960, as amended (the “Enabling Act”), and certified copies of proceedings of the Hampton Roads Sanitation District Commission (the “Commission”), the governing body of Hampton Roads Sanitation District (a political subdivision of the Commonwealth of Virginia and herein sometimes called the “District”), authorizing the execution and delivery of a Trust Agreement dated as of October 1, 2011, as amended and restated as of March 1, 2016, as amended and supplemented, as further amended and restated as of July 1, 2024, and effective as of July 16, 2024, and as the same has been amended and supplemented from time to time (the “Trust Agreement”), including pursuant to the [●] Supplemental Trust Agreement dated as of [●] (the “[●] Supplemental Agreement”), each by and between the District and The Bank of New York Mellon Trust Company, N.A., as trustee (the “Trustee”), and documents relating to the issuance and sale by the District of its Wastewater Revenue Bond, Series [●] (Federally Taxable) (the “[●] Bond”). The [●] Bond is being purchased on the date hereof by the United States Environmental Protection Agency, acting by and through the Administrator of the Environmental Protection Agency (the “EPA”), pursuant to the terms of that certain WIFIA Master Agreement dated as of September 28, 2020, as amended and restated as of \_\_\_\_\_, 2024 (the “WIFIA Master Agreement”), and that certain WIFIA Loan Agreement dated as of [●] (the “WIFIA [●] Loan Agreement”), each by and between the EPA and the District. Capitalized terms used but not otherwise defined herein shall have the same meanings assigned to them in the WIFIA Master Agreement.

We understand that you separately are receiving the opinions of Norton Rose Fulbright USA LLP, special general counsel to the District, and AquaLaw, PLC, special environmental counsel to the District, both dated the date hereof and addressed to you, as to certain matters set forth therein, and we express no opinion thereon.

Without undertaking to verify the same by independent investigation, we have relied on certifications by representatives of the District as to certain facts relevant to this Opinion. We do not purport to express an opinion on any laws of any jurisdiction other than those of the Commonwealth of Virginia and the United States of America.

For purposes of the opinions expressed below, we have assumed (a) the authenticity of all documents submitted to us as originals, (b) the conformity to the originals of all documents submitted as certified or photostatic copies and the authenticity of the originals thereof, (c) the genuineness of all signatures not witnessed by us, and (d) the due authorization, execution and delivery of all documents by all parties (other than the due authorization, execution and delivery by the District) and the validity, binding effect and enforceability thereof (other than the binding effect and enforceability thereof upon the District).

Based on the foregoing and in accordance with customary opinion practice, we are of the opinion that:

(1) The creation of the District has been ratified, validated and confirmed by the Enabling Act, and the District constitutes a valid and existing political subdivision of the Commonwealth.

(2) The District has lawful authority to acquire, construct, improve, extend, enlarge, reconstruct, maintain, equip, repair and operate its Wastewater System, to issue the [●] Bond to the EPA, and to enter into the [●] Supplemental Agreement, the WIFIA Master Agreement and the WIFIA [●] Loan Agreement.

(3) The WIFIA Master Agreement and the WIFIA [●] Loan Agreement have been duly authorized, executed and delivered by the District and constitute valid and binding agreements of the District enforceable against the District in accordance with their terms; provided the enforceability of the obligations of the District under the WIFIA Master Agreement and the WIFIA [●] Loan Agreement may be limited or otherwise affected by (a) bankruptcy, insolvency, reorganization, moratorium, fraudulent conveyance or other laws affecting the rights of creditors generally and (b) principles of equity, whether considered at law or in equity. In addition, the obligation of the District to make any payments on the WIFIA Loan (as defined in the WIFIA [●] Loan Agreement), as evidenced by the [●] Bond, is payable solely from the Net Revenues and other funds pledged as security therefor under the Trust Agreement, and does not constitute a debt of the Commonwealth of Virginia or of any county, city, town or political subdivision thereof, nor a pledge of the faith and credit of the Commonwealth of Virginia or of any county, city, town or political subdivision thereof.

The foregoing opinions with respect to the WIFIA Master Agreement and the WIFIA [●] Loan Agreement are subject to the limitation that, notwithstanding the provisions of Section 2 of the WIFIA Master Agreement and the WIFIA [●] Loan Agreement, respectively, no opinion is given with respect to any amendments or supplements to, or modifications or restatements or replacements of, the WIFIA Master Agreement and the WIFIA [●] Loan Agreement made after the date hereof.

In addition to the assumptions, exclusions, conditions, qualifications and limitations set forth above and in the numbered opinion paragraphs herein, as well as those customary matters relevant hereto but not detailed herein, the opinions expressed herein are also subject to the following qualifications:

i. No opinion is given herein with respect to the enforceability of any provision requiring the payment of attorney's fees other than "reasonable" attorneys' fees under the circumstances for which payment or reimbursement is sought.

ii. No opinion is given herein with respect to (a) compliance with securities laws, environmental laws, labor laws, pension and employee benefit laws and regulations, privacy laws, insurance laws, intellectual property laws, antitrust laws or in respect of the viability or feasibility of the Project or the ability to construct or operate it as expected, (b) the title, status of encumbrances or any other real property aspect as to the Project, (c) local laws or laws relating to

zoning, land use or subdivision of real property, (d) fiduciary duties, (e) foreign asset control, foreign investment in the United States, national security, terrorism, or money laundering (including, without limitation, the USA PATRIOT Act of 2001, as amended, and §721 of the Defense Production Act of 1950, as amended), (f) the effect of racketeering or criminal or civil forfeiture laws, (g) the Dodd-Frank Wall Street Reform and Consumer Protection Act and any rules and regulations promulgated thereunder, (h) commodities laws, including as regards swaps and other derivatives (except where specifically provided), (i) the effect of the law of any jurisdiction (other than the Commonwealth of Virginia) that limits the rate(s) of interest that may be charged or collected, (j) any mandatory choice of law rule, and (k) whether the loans made under the WIFIA [●] Loan Agreement will comply with (1) any statutory, regulatory or other loan limits applicable to the EPA, (2) any laws, rules or regulations that prescribe permissible and lawful investments for the EPA, (3) any judicial or administrative decisions, orders, rulings, directives, policies or other interpretations addressing any of the laws, rules and regulations listed in this paragraph, or (4) any filing or notice requirements relating to any of the matters mentioned in this paragraph.

iii. We have not made any investigation concerning the Project or other financial resources of the District, and no opinion is given herein with respect to the accuracy or completeness of any information that may have been relied upon by EPA in making the decision to enter into the WIFIA Master Agreement, the WIFIA [●] Loan Agreement or any related contracts or arrangements.

iv. No opinion is expressed herein with respect to any provision that purports to permit the exercise of rights without notice or without providing an opportunity to cure failures to perform.

v. No opinion is expressed herein with respect to any provision in any document regarding severability.

vi. No opinion is expressed herein with respect to any provision that would alter the terms or rights and obligations of the parties based on course of dealing, course of performance or the like, or that provides that failure or delay in taking action may not constitute a waiver of rights.

This Opinion is furnished, at the request of our client the District, to the addressees in connection with the transaction described above and may not be relied upon by anyone other than the addressee. This Opinion may not be further circulated, quoted, or relied upon or otherwise referred to for any other purpose without our prior written consent, except that (1) you may furnish a copy of this letter for information (but not reliance) (a) to your auditors and professional advisors, (b) pursuant to lawful order or legal process of any court or governmental agency, (c) to governmental regulatory agencies having jurisdiction over you, (d) to third parties in connection with their requests submitted under the Freedom of Information Act (5 U.S.C. §552), provided this Opinion is subject to disclosure thereunder unless determined to be exempt from disclosure in accordance with 5 U.S.C. §552(b) and 49 C.F.R. §§7.23 and 7.29, (e) in connection with any legal action to which you are a party arising out of your participation in the Project; and (f) to your permitted assignees in connection with an assignment (or proposed assignment) of your rights under the WIFIA Loan Documents to such assignees, and such assignees may rely on this opinion as if it were addressed and had been delivered to them on the date of this opinion, unless statements

in this opinion would be affected by the status of such assignees; and (2) this Opinion may be included in any transcript of proceedings prepared in connection with the execution and delivery of the WIFIA [●] Loan Agreement.

The opinions expressed herein are given as of the date hereof under existing law, and we undertake no obligation to advise the addressee of any changes of applicable law or other matters that may come to our attention after the date hereof that may affect the opinions expressed herein.

Very truly yours,

[●], 20[●]

United States Environmental Protection Agency  
Washington, D.C.

**Hampton Roads Sanitation District  
Wastewater Revenue Bond, Series [●] (Federally Taxable)**

Ladies and Gentlemen:

Reference is made to our opinion delivered today as Bond Counsel (the “Bond Counsel Opinion”) to Hampton Roads Sanitation District (the “District”) relating to the issuance of the above-referenced Bond. We hereby advise you that we now deliver the Bond Counsel Opinion for your benefit as well as for the benefit of District and you are entitled to rely upon the Bond Counsel Opinion as if it were addressed to you.

We are furnishing this letter solely for your benefit at the request of our client, the District. It is not to be relied on by any other person or firm.

Very truly yours,

**EXHIBIT F**  
**FORM OF WIFIA LOAN REQUEST**

*[Letterhead of Borrower]*

[Date]<sup>27</sup>

United States Environmental Protection Agency  
WIFIA Director  
WJC-W 6201A  
1200 Pennsylvania Avenue NW  
Washington, DC 20460  
WIFIA\_Portfolio@epa.gov

**Project:** [●] Project (WIFIA *[insert loan number]*)

Dear Director:

This loan request is provided pursuant to Section 4(a) (*Disbursement Conditions*) of that certain WIFIA Master Agreement, dated as of September 28, 2020, as amended and restated as of \_\_\_\_\_, 2024 (the “**WIFIA Master Agreement**”), by and between Hampton Roads Sanitation District (the “**Borrower**”) and the United States Environmental Protection Agency, acting by and through the Administrator of the Environmental Protection Agency (the “**WIFIA Lender**”). Unless otherwise defined herein, all capitalized terms in this loan request have the meanings assigned to those terms in the WIFIA Master Agreement.

I, the undersigned, in my capacity as the Borrower’s Authorized Representative and not in my individual capacity, do hereby request that the WIFIA Lender, in accordance with, and subject to the terms and conditions of, the WIFIA Master Agreement, enter into a WIFIA Loan Agreement and related WIFIA Loan Documents with respect to [●] Project (the “**Project**”).

- (a) The Project consists of *[describe the Project]*.
- (b) Attached hereto as Annex A is the most recent [Updated Financial Model] [financial plan] delivered to the WIFIA Lender.
- (c) *[Such additional information relating to the Project as may be requested by the WIFIA Lender.]*

**HAMPTON ROADS SANITATION DISTRICT,**  
by its authorized representative

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<sup>27</sup> To be dated no later than 180 days prior to the end of the Master Availability Period.

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

**ANNEX A TO EXHIBIT F**  
**[UPDATED FINANCIAL MODEL] [FINANCIAL PLAN]**



## EXHIBIT G-1

### FORM OF CLOSING CERTIFICATE

September 28, 2020

Reference is made to that certain WIFIA Master Agreement, dated as of September 28, 2020 (the “WIFIA Master Agreement”), by and between Hampton Roads Sanitation District (the “Borrower”) and the United States Environmental Protection Agency, acting by and through the Administrator (the “WIFIA Lender”). Capitalized terms used in this certificate and not defined shall have the respective meanings ascribed to such terms in the WIFIA Master Agreement.

In connection with Section 11(a) (*Conditions Precedent – Conditions Precedent to Effectiveness of this Agreement*) of the WIFIA Master Agreement, the undersigned, [●], as Borrower’s Authorized Representative, does hereby certify on behalf of the Borrower and not in his/her personal capacity, as of the date hereof:

(a) pursuant to Section 11(a)(viii) of the WIFIA Master Agreement, attached hereto as Annex A is an incumbency certificate that lists all persons, together with their positions and specimen signatures, who are duly authorized by the Borrower to execute the Related Documents to which the Borrower is or will be a party, and who have been appointed as a Borrower’s Authorized Representative in accordance with Section 21 (*Borrower’s Authorized Representative*) of the WIFIA Loan Agreement;

(b) pursuant to Section 11(a)(ii) of the WIFIA Master Agreement, attached hereto as Annex B are copies of each Trust Document, together with any amendments, supplements, waivers or modifications thereto, that has been entered into on or prior to the Effective Date, and each such document is complete, fully executed, and in full force and effect, and all conditions contained in such documents that are necessary to the closing of the WIFIA transactions contemplated hereby have been fulfilled;

(c) pursuant to Section 11(a)(iii) of the WIFIA Master Agreement, attached hereto as Annex C is a copy of the Borrower’s Organizational Documents, as in effect on the Effective Date, which Organizational Documents are in full force and effect;

(d) pursuant to Section 11(a)(iv) of the WIFIA Master Agreement, the Borrower has delivered all instruments and documents (including any resolutions, ordinances, and supplements) other than the WIFIA Loan Documents as are necessary for the Borrower to execute and deliver, and to perform its obligations under, the WIFIA Master Agreement and to consummate and implement the transactions contemplated by the WIFIA Master Agreement;

(e) pursuant to Section 11(a)(viii)(A) of the WIFIA Master Agreement, the aggregate of all funds committed to the development and construction of the Projects under the Master Program as set forth in the Base Case Financial Model and in the Master Program Budget is sufficient to carry out the Master Program, pay all Total Project Costs anticipated for the Master Program and achieve substantial completion for each Project component by its projected substantial completion date (as set forth on Schedule I (*Master Program Schedule*) under the column titled “Substantial Completion”);

(f) pursuant to Section 11(a)(viii)(B) of the WIFIA Master Agreement, the Borrower has developed, and identified adequate revenues to implement, a plan for operating, maintaining and repairing the Projects during their useful lives;

(g) pursuant to Section 11(a)(viii)(C) of the WIFIA Master Agreement, (i) the Borrower's Federal Employer Identification Number is 54-6001749, (ii) the Borrower's Data Universal Numbering System number is 077932770, and (iii) the Borrower has registered with, and obtained confirmation of active registration status from, the federal System for Award Management (www.SAM.gov), which confirmation is attached hereto as Annex D;

(h) pursuant to Section 11(a)(viii)(D) of the WIFIA Master Agreement, the representations and warranties of the Borrower set forth in the WIFIA Master Agreement and in each other Related Document to which the Borrower is a party are true and correct in all material respects on and as of the date hereof, except to the extent that such representations and warranties expressly relate to an earlier date, in which case such representations and warranties were true and correct in all material respects as of such earlier date;

(i) pursuant to Section 11(a)(viii)(E) of the WIFIA Master Agreement, other than the events and conditions disclosed in the Voluntary Notice of the Borrower dated and posted to EMMA on May 26, 2020, no Material Adverse Effect, or any event or condition that could reasonably be expected to have a Material Adverse Effect, has occurred or arisen since March 27, 2020;

(j) pursuant to Section 11(a)(ix) of the WIFIA Master Agreement, attached hereto as Annex E is the Base Case Financial Model, which, based on the assumptions and limitations set forth therein, (i) demonstrates that projected Net Revenues are sufficient to meet the Loan Amortization Schedules, (ii) demonstrates compliance with the Rate Covenant for each Borrower Fiscal Year through each Final Maturity Date, (iii) reflects principal amortization and interest payment schedules acceptable to the WIFIA Lender, (iv) demonstrates that the Borrower has developed, and identified adequate revenues to implement, a plan for operating, maintaining and repairing each Project over its useful life and (v) otherwise meets the requirements of such Section 11(a)(ix); and

(k) pursuant to Section 11(a)(x) of the WIFIA Master Agreement, attached hereto as Annex F are certificates of insurance, and such insurance certificates are true and correct and demonstrate compliance with the requirements of Section 14(f) (*Affirmative Covenants – Insurance*) of the WIFIA Loan Agreement.

IN WITNESS WHEREOF, the undersigned has executed this certificate as of the date first mentioned above.

**HAMPTON ROADS SANITATION DISTRICT,**

by its authorized representative

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

## ANNEX A TO EXHIBIT G-1

### INCUMBENCY CERTIFICATE

The undersigned certifies that he/she is the [Secretary] of Hampton Roads Sanitation District, a political subdivision organized under the laws of the Commonwealth of Virginia (the “Borrower”), and as such he/she is authorized to execute this certificate and further certifies that the following persons have been elected or appointed, are qualified, and are now acting as officers or authorized persons of the Borrower in the capacity or capacities indicated below, and that the signatures set forth opposite their respective names are their true and genuine signatures. He/She further certifies that any of the officers listed below is authorized to sign agreements and give written instructions with regard to any matters pertaining to the WIFIA Loan Documents as the Borrower’s Authorized Representative (each as defined in that certain WIFIA Loan Agreement, dated as of the date hereof, between the Borrower and the United States Environmental Protection Agency, acting by and through the Administrator):

<u>Name</u>	<u>Title</u>	<u>Signature</u>
[_____]	[_____]	_____
[_____]	[_____]	_____
[_____]	[_____]	_____
[_____]	[_____]	_____
[_____]	[_____]	_____

IN WITNESS WHEREOF, the undersigned has executed this certificate as of this [●] day of [●], 2020.

**HAMPTON ROADS SANITATION DISTRICT,**

by its authorized representative

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

## EXHIBIT G-2

### FORM OF PROJECT CLOSING CERTIFICATE

[●], 202[●]

Reference is made to that certain WIFIA Master Agreement, dated as of September 28, 2020, as amended as of \_\_\_\_\_, 2024 (the “WIFIA Master Agreement”), by and between Hampton Roads Sanitation District (the “Borrower”) and the United States Environmental Protection Agency, acting by and through the Administrator (the “WIFIA Lender”) and that certain WIFIA Loan Agreement, dated as of [●] (the “WIFIA Loan Agreement”), by and between the Borrower and the WIFIA Lender. Capitalized terms used in this certificate and not defined shall have the respective meanings ascribed to such terms in the WIFIA Loan Agreement, or if not defined therein, the WIFIA Master Agreement.

In connection with Section 11(b) (*Conditions Precedent – Conditions Precedent to Effectiveness of Each WIFIA Loan Agreement*) of the WIFIA Master Agreement and Section 11(a) (*Conditions Precedent – Conditions Precedent to Effectiveness*) of the WIFIA Loan Agreement, the undersigned, [●], as Borrower’s Authorized Representative, does hereby certify on behalf of the Borrower and not in his/her personal capacity, as of the date hereof:

(a) pursuant to Section 11(b)(viii) of the WIFIA Master Agreement, [the Borrower’s Authorized Representative previously designated and such person’s position and incumbency previously provided to the WIFIA Lender remain unchanged and in full force and effect] [attached hereto as Annex [●] is an incumbency certificate that lists all persons, together with their positions and specimen signatures, who are duly authorized by the Borrower to execute the Related Documents to which the Borrower is or will be a party, and who have been appointed as a Borrower’s Authorized Representative in accordance with Section 21 (*Borrower’s Authorized Representative*) of the WIFIA Master Agreement];

(b) pursuant to Section 11(b)(ii) of the WIFIA Master Agreement, attached hereto as Annex [●] are copies of each Existing Construction Contract with respect to the Project, together with any amendments, waivers or modifications thereto, and each such document is complete, fully executed, and in full force and effect;

(c) pursuant to Section 11(b)(iii) of the WIFIA Master Agreement, [no Trust Document has been entered into after the Effective Date] [attached hereto as Annex [●] are copies of each Trust Document entered into after the Effective Date, and each such document is complete, fully executed and in full force and effect];

(d) pursuant to Section 11(b)(viii)(A) of the WIFIA Master Agreement, the aggregate of all funds committed to the development and construction of the Project as set forth in the Project Budget [and the related revised Master Budget] are sufficient to carry out the Project, pay all Total Project Costs anticipated for the Project and achieve Substantial Completion of the Project by the Projected Substantial Completion Date;

(e) pursuant to Section 11(b)(viii)(B) of the WIFIA Master Agreement, the Borrower has obtained all Governmental Approvals required to have been obtained as of the

WIFIA Loan Agreement Effective Date (i) in connection with the Project and (ii) to execute and deliver, and perform its obligations under the WIFIA Loan Documents, and each such Governmental Approval is final, non-appealable and in full force and effect (and is not subject to any notice of violation, breach or revocation);

(f) pursuant to Section 11(b)(viii)(C) of the WIFIA Master Agreement, (i) the maximum principal amount of the WIFIA Loan, together with the amount of any other credit assistance provided under the Act to the Borrower, does not exceed forty-nine percent (49%) of the reasonably anticipated Eligible Project Costs for the Project and (ii) the total federal assistance provided to the Project, including the maximum principal amount of the WIFIA Loan, does not exceed eighty percent (80%) of Total Project Costs for the Project;

(g) pursuant to Section 11(b)(viii)(D) of the WIFIA Master Agreement, the Borrower is in compliance with NEPA and any applicable federal, state or local environmental review and approval requirements with respect to the Project [and attached hereto as Annex [●] is a true, accurate and complete copy of the NEPA Determination with respect to the Project, which NEPA Determination is in full force and effect and has not been withdrawn or materially amended];

(h) pursuant to Section 11(b)(viii)(E) of the WIFIA Master Agreement, the Borrower has developed, and identified adequate revenues to implement, a plan for operating, maintaining and repairing the Project during its useful life;

(i) pursuant to Section 11(b)(viii)(F) of the WIFIA Master Agreement, the Borrower has maintained (i) the Borrower's Federal Employer Identification Number provided to the WIFIA Lender as a condition precedent to the Effective Date, (ii) the Borrower's Data Universal Numbering System number provided to the WIFIA Lender as a condition precedent to the Effective Date, and (iii) active registration status with the federal System for Award Management ([www.SAM.gov](http://www.SAM.gov));

(j) pursuant to Section 11(b)(viii)(G) of the WIFIA Master Agreement, [the WIFIA CUSIP Number is 409327 LR2] [the Borrower (i) has maintained the WIFIA CUSIP Number and (ii) [confirms that the expiration date of the WIFIA CUSIP Number is no earlier than the Final Maturity Date] [has extended the expiration date of the WIFIA CUSIP Number to be no earlier than the Final Maturity Date]];

(k) pursuant to Section 11(b)(viii)(H) of the WIFIA Master Agreement, the representations and warranties of the Borrower set forth in the WIFIA Loan Agreement and in each other Related Document to which the Borrower is a party are true and correct in all material respects on and as of the WIFIA Loan Agreement Effective Date, except to the extent that such representations and warranties expressly relate to an earlier date, in which case such representations and warranties were true and correct in all material respects as of such earlier date [and attached as Annex [●] is an updated version of Schedule 12(f) (*Litigation*) necessary to make the corresponding representation and warranty true and complete as of the WIFIA Loan Agreement Effective Date];

(l) pursuant to Section 11(b)(viii)(I) of the WIFIA Master Agreement, the Borrower's Organizational Documents remain in full force and effect, and no amendments or modifications have been made to the Organizational Documents since the Effective Date that have not been delivered to the WIFIA Lender;

(m) pursuant to Section 11(b)(viii)(J) of the WIFIA Master Agreement, no Material Adverse Effect, or any event or condition that could reasonably be expected to have a Material Adverse Effect, has occurred or arisen since the Effective Date;

(n) pursuant to Section 11(b)(viii)(K) of the WIFIA Master Agreement, no Default or Event of Default and no event of default under any Related Document shall have occurred and be continuing; [and]

(o) pursuant to Section 11(b)(ix) of the WIFIA Master Agreement, none of the rating letters delivered to the WIFIA Lender pursuant to such Section 11(b)(ix) has been reduced to a rating below Investment Grade, revoked, withdrawn or suspended as of the WIFIA Loan Agreement Effective Date; [and]

(p) [*any other attachments and provision as may apply to the WIFIA Loan Agreement*].

IN WITNESS WHEREOF, the undersigned has executed this certificate as of the date first mentioned above.

**HAMPTON ROADS SANITATION DISTRICT,**

by its authorized representative

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

## EXHIBIT H

### FORM OF QUARTERLY REPORT

United States Environmental Protection Agency  
WIFIA Director  
WJC-W 6201A  
1200 Pennsylvania Avenue NW  
Washington, DC 20460  
WIFIA\_Portfolio@epa.gov

Re: [●] Project (WIFIA [insert loan number])

This Quarterly Report for the period of [ ] is provided pursuant to Section 16(d) (Reporting Requirements – Construction Reporting) of that certain WIFIA Master Agreement by and between Hampton Roads Sanitation District (“**the Borrower**”) and the United States Environmental Protection Agency, acting by and through the Administrator of the Environmental Protection Agency (the “**WIFIA Lender**”), dated as of September 28, 2020, as amended as of \_\_\_\_\_, 2024 (the “**WIFIA Master Agreement**”). Unless otherwise defined herein, all capitalized terms in this Quarterly Report have the meanings assigned to those terms in the WIFIA Master Agreement.

#### (i) Amount Expended

Construction Contract	Original Contract Amount	Change Orders to Date	Total Estimated Costs	Estimated Costs to Complete	Costs Earned or Paid Through Previous Reporting period	Current Reporting Period Costs Earned or Paid	Total Costs Earned or Paid to date	% Costs Earned or Paid to Date
<b>TOTAL</b>								

#### (ii) Construction Progress, Governmental Approvals, Updated Schedule

Assessment of overall construction progress:

Notice of receipt of relevant Governmental Approvals since the Effective Date and since the prior Quarterly Report:



Assessment of construction progress compared to Construction Schedule provided in the prior Quarterly Report:

Construction Contract	NTP Effective Date	Original Time for Completion (days)	Original Contract Completion (date)	Time Added to Date (days)	Current Contract Completion (date)	Days Elapsed	% Contract Duration

**(iii) Substantial Completion Date**

**Current projection for the Substantial Completion Date:**

If the current projection for the substantial completion date is later than previously reported in the prior Quarterly Report, provide a description in reasonable detail for such projected delay:

--

**(iv) Material Problems (if any):**

Detailed description of all material problems (including actual and anticipated cost and/or schedule overruns, if any), encountered or anticipated in connection with the construction of the Project during the preceding quarter, together with an assessment of how such problems may impact the Construction Schedule and the meeting of critical dates thereunder and a detailed description of the proposed solutions to any such problems:

--

**(v) Proposed or pending change orders that exceed the threshold set out in Section 16(f) (*Reporting Requirements – Modifications to Total Project Costs*) of the WIFIA Master Agreement or could reasonably be expected to result in a Material Adverse Effect:**

--

**(vi) Other matters related to the Project:**

--

(vii) With respect to any Eligible Project Costs that have been incurred during this reporting period, the documentation evidencing such Eligible Project Costs are attached, with details set below, or have otherwise been submitted to the WIFIA Lender in a form satisfactory to the WIFIA Lender:

Vendor or Contractor Name <sup>28</sup>	Invoice Number <sup>29</sup>	Invoice Date	Payment Date	Invoice Amount	WIFIA Requested Amount <sup>30</sup>	Activity Type <sup>31</sup>	Description of Activity <sup>32</sup>	WIFIA USE ONLY	
								Approved Amount	Notes

[Signature Page Follows]

<sup>28</sup> If seeking reimbursement for internal costs, enter “Internally financed activities.”

<sup>29</sup> Vendor’s number indicated on the invoice sent to the Borrower.

<sup>30</sup> If the amount requested for reimbursement by the WIFIA Lender is less than the total amount of the invoice, include an explanation for the difference.

<sup>31</sup> Specify whether activity is: (a) **Development phase activity**, which includes planning, preliminary engineering, design, environmental review, revenue forecasting and other pre-construction activities; (b) **Construction**, which includes construction, reconstruction, rehabilitation and replacement activities; (c) **Acquisition of real property**, which includes acquiring an interest in real property, environmental mitigation, construction contingencies and acquisition of equipment; (d) **Carrying costs**, including capitalized interest, as necessary to meet market requirements, reasonably required reserve funds, capital issuance expenses and other carrying costs during construction; (e) **WIFIA fees**, including for application and credit processing; or (f) **Other**, with an explanation in the “Description of Activity” column.

<sup>32</sup> Provide a brief description of the activities included in the invoice for which WIFIA funds are being requested and any other notes that will aid in the review of the disbursement request.

Date: \_\_\_\_\_

**HAMPTON ROADS SANITATION DISTRICT,**  
by its authorized representative

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

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

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

## EXHIBIT I

### FORM OF CERTIFICATE OF SUBSTANTIAL COMPLETION

*[Letterhead of Borrower]*

*[Date]*

Environmental Protection Agency  
WIFIA Director  
WJC-W 6201A  
1200 Pennsylvania Avenue NW  
Washington, DC 20460

**Project:** [●] Project (WIFIA *[insert loan number]*)

Dear Director:

This certificate is provided pursuant to Section 16(h)(i)(A) (*Reporting Requirements – Notices – Substantial Completion*) of that certain WIFIA Master Agreement (the “**WIFIA Master Agreement**”), dated as of September 28, 2020, as amended as of \_\_\_\_\_, 2024, by and between Hampton Roads Sanitation District (the “**Borrower**”) and the United States Environmental Protection Agency, acting by and through the Administrator of the Environmental Protection Agency (the “**WIFIA Lender**”).

Unless otherwise defined herein, all capitalized terms in this certificate have the meanings assigned to those terms in the WIFIA Master Agreement.

I, the undersigned, in my capacity as the Borrower’s Authorized Representative and not in my individual capacity, do hereby certify to the WIFIA Lender that:

- (a) on *[insert date Substantial Completion requirements were satisfied]*, the Project satisfied each of the requirements for Substantial Completion set forth in the *[insert reference to the concession agreement, design-build or similar agreement for the Project]*;
- (b) Substantial Completion has been declared under each of the above-referenced agreements and copies of the notices of Substantial Completion under such agreements are attached to this certification; and
- (c) Substantial Completion, as defined in the WIFIA Loan Agreement, has been achieved.

**HAMPTON ROADS SANITATION DISTRICT,**  
by its authorized representative

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

## EXHIBIT J

### FORM OF PUBLIC BENEFITS REPORT

Reference is made to (i) that certain WIFIA Master Agreement by and between Hampton Roads Sanitation District (the “**Borrower**”) and the United States Environmental Protection Agency, acting by and through the Administrator of the Environmental Protection Agency (the “**WIFIA Lender**”), dated as of September 28, 2020, as amended as of \_\_\_\_, 2024 (the “**WIFIA Master Agreement**”), and (ii) that certain WIFIA Loan Agreement by and between the Borrower and the WIFIA Lender, dated as of [●] (the “**WIFIA Loan Agreement**”). Capitalized terms used and not defined herein shall have the meanings set forth in the WIFIA Loan Agreement.

Pursuant to Section 11(b)(xi) (*Conditions Precedent – Conditions Precedent to Effectiveness of Each WIFIA Loan Agreement*) and Section 16(e) (*Reporting Requirements – Public Benefits Report*) of the WIFIA Master Agreement, the Borrower is providing this Public Benefits Report in connection with the [●] Project (WIFIA [insert loan number]):

- (i) **The estimated interest savings the Borrower is realizing through the use of the WIFIA Loan compared to comparable market rate financing:**

The estimated interest savings from use of the WIFIA Loan compared to a comparable market rate financing is \$[ ] million on a gross savings basis and \$[ ] million on a present value basis.

- (ii) **With respect to the report delivered [no later than the WIFIA Loan Agreement Effective Date][within ninety (90) days following the Substantial Completion Date][within ninety (90) following the fifth (5<sup>th</sup>) anniversary of the Substantial Completion Date], the number of jobs projected to be created by the Project during the period described below:**

The Borrower projects [ ] jobs to be created by the Project during the period between [[(1)] the Effective Date and the Substantial Completion Date]<sup>33</sup> [and] [[(2)] the Substantial Completion Date and the fifth anniversary of the Substantial Completion Date].<sup>34</sup>

- (iii) **Whether the Project will assist the Borrower in complying with applicable regulatory requirements, and if so, a narrative description describing such enhancements:**

[ ].

- (iv) **The amount by which the Project will [assist the Borrower (measured by percent annually) in reducing levels of Nitrogen, Phosphorus, biochemical oxygen demand (BOD) and total suspended solids (TSS)][increase the volume of potable water produced (measured in MGD annually)][increase the volume of water recycled,**

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<sup>33</sup> Include for both the reports delivered (i) prior to the Effective Date and (ii) 90 days following the Substantial Completion Date.

<sup>34</sup> Include for both the reports delivered (i) prior to the Effective Date and (ii) 90 days following the fifth anniversary of the Substantial Completion Date.

recharged or redirected (measured in MGD annually)][increase Class [A][B]  
biosolids (measured in tons annually)]<sup>35</sup>:

[ ].

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<sup>35</sup> Include one of the bracketed items as applicable.

**EXHIBIT K**

**FORM OF WIFIA PROJECT TERM SHEET**

*[Attached.]*

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

[●], 20[●]

Hampton Roads Sanitation District  
1434 Air Rail Avenue  
Virginia Beach, VA 23455

RE: WIFIA Loan Term Sheet for the Sustainable Water Initiative for Tomorrow (SWIFT) –  
Tranche [●] Project with Hampton Roads Sanitation District (WIFIA Project No. [●]VA)

Ladies and Gentlemen:

This WIFIA Loan Term Sheet (this “**Term Sheet**”) constitutes (a) the approval of the United States Environmental Protection Agency, acting by and through the Administrator of the Environmental Protection Agency (hereinafter, the “**USEPA**”), of the application for credit assistance of the Borrower (as defined below) submitted on March 27, 2020 (the “**Application**”) and (b) the agreement of USEPA to provide financing for the above-referenced project (as further described below, the “**Project**”) in the form of a secured loan (the “**WIFIA Loan**”), pursuant to the Water Infrastructure Finance and Innovation Act (“**WIFIA**”), § 5021 *et seq.* of Public Law 113-121 (as amended by Public Law 114-94, Public Law 114-322 and Public Law 115-270) (the “**Act**”), codified as 33 U.S.C. §§ 3901-3914, subject in all respects to (i) the terms and conditions contained herein, (ii) the terms and conditions contained in that certain WIFIA Master Agreement, dated as of September 28, 2020, as amended as of [●], 2024, by and between the WIFIA Lender (as defined below) and the Borrower (the “**WIFIA Master Agreement**”), and (iii) the execution and delivery of the WIFIA loan agreement with respect to the Project to be entered into on or after the date hereof (the “**WIFIA Loan Agreement**”) on terms and conditions acceptable to USEPA contained therein. Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the WIFIA Loan Agreement or, if not defined therein, the WIFIA Master Agreement.

USEPA’s agreement to provide WIFIA credit assistance to the Project is based upon the Application and the supplemental information and documents, including the base case financial model, provided to USEPA. This Term Sheet is an agreement of USEPA only to the terms specified herein, which may be modified or supplemented by USEPA in its discretion at any time and from time to time during the course of its due diligence and credit approval process.

By executing this Term Sheet, the Borrower confirms its agreement to reimburse USEPA for any and all fees and expenses that USEPA incurs for legal counsel, financial advice, and other consultants in connection with the evaluation of the Project and the negotiation and preparation of the WIFIA Loan Agreement and related documents (whether or not any such agreement is ultimately executed).

This Term Sheet shall be governed by the federal laws of the United States of America if and to the extent such federal laws are applicable, and the internal laws of the Commonwealth of Virginia, if and to the extent such federal laws are not applicable.



## INDICATIVE TERMS OF THE WIFIA LOAN

WIFIA LENDER	United States Environmental Protection Agency, an agency of the United States of America, acting by and through the Administrator of the Environmental Protection Agency (the “ <b>WIFIA Lender</b> ”).
BORROWER	Hampton Roads Sanitation District, a political subdivision of the Commonwealth of Virginia (the “ <b>Borrower</b> ”).
PROJECT	The “ <b>Project</b> ” means the Borrower’s Sustainable Water Initiative for Tomorrow (SWIFT) – Tranche [●] Project, located at [various locations within the Borrower’s service area], as further described in Schedule III ( <i>Project</i> ) to the WIFIA Loan Agreement.
WIFIA LOAN AMOUNT	A maximum principal amount (sum of disbursements) not to exceed \$[●]; <u>provided</u> that (a) the maximum principal amount of the WIFIA Loan, together with the amount of any other credit assistance provided under the Act, shall not exceed forty-nine percent (49%) of reasonably anticipated Eligible Project Costs for the Project and (b) the total federal assistance for the Project, including but not limited to the maximum principal amount of the WIFIA Loan and all federal grants, shall not exceed eighty percent (80%) of Total Project Costs for the Project.
INTEREST RATE	<p>The WIFIA Loan shall bear interest at a fixed rate, calculated by adding one basis point (0.01%) to the rate of securities of a similar maturity (based on the weighted-average life of the WIFIA Loan) as published, on the execution date of the WIFIA Loan Agreement, in the United States Treasury Bureau of Public Debt’s daily rate table for State and Local Government Series (SLGS) securities, currently located on the Internet at <a href="https://www.treasurydirect.gov/GA-SL/SLGS/selectSLGSDate.htm">https://www.treasurydirect.gov/GA-SL/SLGS/selectSLGSDate.htm</a>.</p> <p>Interest shall accrue and be computed on the Outstanding WIFIA Loan Balance on the basis of a 360-day year of twelve (12) thirty (30) day months.</p> <p>The WIFIA Loan shall also bear default interest at a rate of two hundred (200) basis points above the otherwise applicable interest rate, at such times and upon such terms as provided in the WIFIA Master Agreement.</p>
PAYMENT DATES	<p>Principal of the WIFIA Loan shall be repaid in semi-annual installments on [●] 1 and [●] 1 of each year, beginning on [●] 1, 20[●].</p> <p>Interest on the WIFIA Loan shall be paid in arrears on [●] 1 and [●] 1 of each year, beginning on the [●] 1 or [●] 1 immediately</p>

	<p>following the Initial Disbursement Date with respect to the WIFIA Loan.</p> <p>The debt service payment commencement date shall in no event be later than five (5) years after the Substantial Completion Date of the Project.</p>
FINAL MATURITY DATE	The earlier of (a) [●] 1, 20[●] and (b) the Principal Payment Date immediately preceding the date that is thirty-five (35) years following the Substantial Completion Date.
PROJECTED SUBSTANTIAL COMPLETION DATE	[●].
DEDICATED SOURCE OF REPAYMENT	<p>The dedicated source of repayment for the WIFIA Loan shall be Net Revenues (as defined below) in accordance with the terms of the Trust Agreement and the WIFIA Master Agreement.</p> <p><b>“Net Revenues”</b> means all revenues received by the Borrower from its Wastewater System less Operating Expenses, <u>provided</u> that Net Revenues shall not include any Transition Charge.</p> <p><b>“Operating Expenses”</b> means those current expenses paid by the Borrower that may be required to pay the cost of maintaining, repairing and operating the Wastewater System, including reasonable and necessary usual expenses of administration, operation, maintenance and repair, costs for billing and collecting the rates, fees and other charges for the use of or the services furnished by the Wastewater System, insurance premiums, credit enhancement and liquidity support fees, legal, engineering, auditing and financial advisory expenses, expenses and compensation of the Trustee, and deposits into a self-insurance program. Operating Expenses shall exclude allowance for depreciation and amortization and expenditures for extraordinary maintenance or repair or improvements. Operating Expenses shall also exclude expenses for improvements that will not be owned by the Borrower but which will, in the reasonable determination of the Commission, as evidenced by a resolution thereof, maintain or improve the integrity of the Wastewater System.</p>
SECURITY AND LIEN PRIORITY	<p>The Borrower’s obligation to repay the WIFIA Loan shall be evidenced by the WIFIA Bond, which shall constitute a “Bond” issued under and as defined in the Trust Agreement.</p> <p>The WIFIA Bond shall constitute a special obligation of the Borrower payable solely from the Net Revenues and other funds pledged to secure Bonds issued under the Trust Agreement. Such other funds shall consist of all money and securities held by the Trustee in the Bond Fund and in the Debt Service Reserve Fund</p>

	<p>(if and to the extent funded) and, if applicable to the WIFIA Loan until applied in payment of any item of the Issuance Costs or Capital Improvement Program Costs in accordance with Section 403 (<i>Requisitions from Issuance Fund and Construction Fund</i>) of the Trust Agreement, all money and securities in the Issuance Fund and the Construction Fund. Pursuant to the Trust Agreement, prompt payment of the principal of and interest on the Senior Obligations (including the WIFIA Bond) is secured by a lien on the Net Revenues and such other funds.</p> <p>The lien on revenues and funds securing Bonds issued under the Trust Agreement (including the WIFIA Bond) shall be (a) <i>pari passu</i> in right of payment and right of security to the lien in favor of the other Senior Obligations and (b) senior in right of payment and right of security to the lien in favor of the Subordinate Obligations.</p>
FLOW OF FUNDS	<p>For purposes of Bonds issued under the Trust Agreement (including the WIFIA Bond), the Trustee shall apply the amounts received as Net Revenues in accordance with the requirements specified in Section 502 (<i>Payments and Funds Received</i>) of the Trust Agreement (the “<b>Flow of Funds</b>”).</p> <p>As of the WIFIA Loan Agreement Effective Date, the Flow of Funds provides, <i>inter alia</i>, that payments shall be due and payable as follows:</p> <ul style="list-style-type: none"> <li>(a) to the credit of the Bond Fund, on the Business Day next preceding each Interest Payment Date, an amount equal to the interest payable on the Bonds on such Interest Payment Date;</li> <li>(b) to the credit of the Bond Fund, on the Business Day next preceding each Principal Payment Date, an amount equal to the principal of the Bonds due on such Principal Payment Date; and</li> <li>(c) any amount that may from time to time be required to enable the Borrower to pay the principal of and interest due on Bonds upon acceleration.</li> </ul> <p>Each payment shall be equal to the sum of the amounts specified above in paragraphs (a) to (c), inclusive.</p>
PREPAYMENT	<p>Any proceeds received by the Trustee from the VRA pursuant to the terms of the VRA Intercreditor Agreement shall be applied, on a <i>pro rata</i> basis with any other Bonds (based on the then outstanding principal balance thereof), to the payment or prepayment of such Bonds (including the WIFIA Bond) in immediately available funds. The proceeds of any such partial prepayment of the WIFIA Bond shall be applied in accordance with the WIFIA Master Agreement.</p>

	<p>The Borrower may optionally prepay the WIFIA Loan in whole or in part, from time to time, but not more than once during any Borrower Fiscal Year, without penalty or premium; <u>provided</u> that any such prepayment shall be made on a Payment Date unless otherwise agreed by the WIFIA Lender and in a minimum principal amount of \$1,000,000 or any integral multiple of \$1.00 in excess thereof, and otherwise in accordance with the WIFIA Loan Agreement; <u>provided further</u> that the WIFIA Loan may be prepaid in full at any time without penalty.</p>
RATE COVENANT	<p>The Borrower shall comply with the requirements specified in Section 705 (<i>Rate Covenant</i>) of the Trust Agreement (such requirements, the “<b>Rate Covenant</b>”).</p> <p>As of the WIFIA Loan Agreement Effective Date, the Rate Covenant provides, <i>inter alia</i>, that the Borrower shall fix and collect rates, fees and other charges for the use of and for services furnished or to be furnished by the Wastewater System, and will from time to time revise such rates, fees and other charges so that in each Borrower Fiscal Year the Net Revenues will equal at least one hundred twenty percent (120%) of the Principal and Interest Requirements (as defined in the Trust Agreement). If, for any reason, the Net Revenues are insufficient to satisfy the foregoing covenant, the Borrower shall within one hundred twenty (120) days adjust and increase its rates, fees and other charges (to the extent permitted by, and following the procedure required by, the Enabling Act (as defined in the Trust Agreement)), or reduce its operating and maintenance expenses so as to provide sufficient Net Revenues to satisfy such requirement.</p>
ADDITIONAL INDEBTEDNESS	<p>The Borrower shall not create, incur or suffer to exist (a) any Indebtedness the payments of which are senior or prior in right to the payment by the Borrower of any Bond outstanding under the Trust Agreement (including the WIFIA Bond) or (b) any Indebtedness with respect to the Master Program that is secured by a dedicated revenue source other than Net Revenues.</p> <p>The Borrower shall not issue or incur any Additional Senior Obligations (including the Obligations under each WIFIA loan agreement under the Master Program) except in accordance with all applicable requirements and conditions set forth in Section 704 (<i>Limitations on Indebtedness</i>) of the Trust Agreement; <u>provided</u> that clause (iv) of Section 704(a) of the Trust Agreement shall be deemed not to apply during the Master Availability Period or while there are Outstanding any Bonds (including the WIFIA Bond) held by the WIFIA Lender.</p>

RESTRICTED PAYMENTS AND TRANSFERS	The Borrower shall not permit Net Revenues, or any funds in any of the Funds and Accounts, to be paid or transferred or otherwise applied for purposes that would violate the terms of the Trust Agreement or the Enabling Act.
WIFIA LOAN DOCUMENTATION	The WIFIA Loan shall be subject to the preparation, execution and delivery of the WIFIA Loan Agreement, the WIFIA Bond and any other loan documentation required by the WIFIA Lender in connection therewith, in each case acceptable to the WIFIA Lender and the Borrower, which will contain certain conditions precedent, representations and warranties, affirmative and negative covenants, events of default, and other provisions as agreed between the WIFIA Lender and the Borrower, in each case in accordance with the terms of the WIFIA Master Agreement.
GOVERNING LAW	Federal laws of the United States of America, if and to the extent such federal laws are applicable, and the internal laws of the Commonwealth of Virginia, if and to the extent such federal laws are not applicable.
COUNTERPARTS	This Term Sheet, and any amendments, waivers, consents or supplements hereto may be executed in any number of counterparts and by the parties hereto in separate counterparts, each of which when so executed and delivered shall be deemed an original, but all such counterparts together shall constitute but one and the same instrument. Signature pages may be detached from multiple separate counterparts and attached to a single counterpart so that all signature pages are physically attached to the same document. Electronic delivery of an executed counterpart of a signature page shall be effective as delivery of an original executed counterpart.

*[Signature pages follow]*

If the foregoing terms are acceptable, please countersign this letter in the space indicated below.

Sincerely,

**UNITED STATES ENVIRONMENTAL  
PROTECTION AGENCY**, acting by and  
through the Administrator of the United States  
Environmental Protection Agency

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

Name:

Title: Administrator

ACKNOWLEDGED AND AGREED:

**HAMPTON ROADS SANITATION DISTRICT,**  
by its authorized representative

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

**EXHIBIT L**  
**FORM OF WIFIA LOAN AGREEMENT**

*[Attached.]*



**UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY**

**WIFIA LOAN AGREEMENT**

**for up to \$[●]**

**with**

**HAMPTON ROADS SANITATION DISTRICT**

**for the**

**[*INSERT PROJECT NAME*]  
(WIFIA – N[*insert loan number*])**

**Dated as of [●], 20[●]**

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## **SCHEDULES**

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**SCHEDULE II** – Construction Schedule

**[SCHEDULE III** – Project]<sup>36</sup>

**[SCHEDULE 12(f)** – Litigation]<sup>37</sup>

**SCHEDULE 12(n)** – Construction Contracts

## **EXHIBITS**

**EXHIBIT A** – Anticipated WIFIA Loan Disbursement Schedule

**EXHIBIT B** – WIFIA Debt Service

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<sup>36</sup> **Note to Form:** Include only if applicable.

<sup>37</sup> **Note to Form:** Include only if applicable.

## WIFIA LOAN AGREEMENT

**THIS WIFIA LOAN AGREEMENT** (this “**Agreement**”), dated as of [●], 20[●], is by and between **HAMPTON ROADS SANITATION DISTRICT**, a political subdivision of the Commonwealth of Virginia, with an address at 1434 Air Rail Avenue, Virginia Beach, VA 23455 (the “**Borrower**”), acting by and through the **HAMPTON ROADS SANITATION DISTRICT COMMISSION**, the governing body of the Borrower (the “**Commission**”), and the **UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**, an agency of the United States of America, acting by and through the Administrator of the Environmental Protection Agency, with an address at 1200 Pennsylvania Avenue NW, Washington, DC 20460 (the “**WIFIA Lender**”).

### RECITALS:

WHEREAS, the Congress of the United States of America enacted the Water Infrastructure Finance and Innovation Act, as amended by Section 1445 of the Fixing America’s Surface Transportation Act of 2015, as further amended by Section 5008 of the Water Infrastructure Improvements For the Nation Act of 2016 and by Section 4201 of America’s Water Infrastructure Act of 2018, which is codified as 33 U.S.C. §§ 3901-3914;

WHEREAS, the Act authorizes the WIFIA Lender to enter into agreements to provide financial assistance with one or more eligible entities to make secured loans with appropriate security features to finance a portion of the eligible costs of projects eligible for assistance;

WHEREAS, the Borrower and the WIFIA Lender entered into that certain WIFIA Master Agreement, dated as of September 28, 2020, as amended and restated as of \_\_\_\_, 2024 (as so amended, the “**WIFIA Master Agreement**”), pursuant to which the parties thereto have set forth certain common terms and conditions applicable to each WIFIA loan and project under the Master Program;

WHEREAS, the Borrower has submitted a WIFIA Loan Request, dated [●] (the “**Project WIFIA Loan Request**”), to the WIFIA Lender pursuant to the WIFIA Master Agreement and thereby requested that the WIFIA Lender make the WIFIA Loan (as defined below) in a principal amount not to exceed \$[●] to be used to pay a portion of the Eligible Project Costs related to the Project (as defined below);

WHEREAS, as of the date hereof, the Administrator has approved WIFIA financial assistance for the Project to be provided in the form of the WIFIA Loan, subject to the terms and conditions contained herein and in the WIFIA Master Agreement;

WHEREAS, based on the Project WIFIA Loan Request, the Application, the WIFIA Master Agreement and the representations, warranties and covenants set forth herein and therein, the WIFIA Lender proposes to make funding available to the Borrower through the purchase of the WIFIA Bond (as defined below) to be issued by the Borrower, upon the terms and conditions set forth herein and in the WIFIA Master Agreement;

WHEREAS, the Borrower agrees to repay any amount due pursuant to this Agreement and the WIFIA Bond in accordance with the terms and provisions of this Agreement, the WIFIA Master Agreement, the WIFIA Bond and the Trust Agreement; and

WHEREAS, the WIFIA Lender has entered into this Agreement in reliance upon, among other things, the information and representations of the Borrower set forth in the Project WIFIA Loan Request, the Application, the WIFIA Master Agreement, and the supporting information provided by the Borrower.

NOW, THEREFORE, the premises being as stated above, and for good and valuable consideration, the receipt and sufficiency of which are acknowledged to be adequate, and intending to be legally bound hereby, it is hereby mutually agreed by and between the Borrower and the WIFIA Lender as follows:

## ARTICLE I DEFINITIONS AND INTERPRETATION

Section 1. **Definitions.** Each capitalized term used in this Agreement (including in the recitals hereto) and not otherwise defined herein shall have the meaning assigned to such term in the WIFIA Master Agreement. Any term used in this Agreement (including in the recitals hereto) that is defined by reference to any other agreement shall continue to have the meaning specified in such agreement, whether or not such agreement remains in effect. In addition, as used in this Agreement (including in the recitals hereto), the following terms have the following meanings:

“**Agreement**” has the meaning provided in the preamble hereto.

“**Anticipated WIFIA Loan Disbursement Schedule**” means the schedule set forth in Exhibit A (*Anticipated WIFIA Loan Disbursement Schedule*), reflecting the anticipated disbursement of proceeds of the WIFIA Loan, as such schedule may be amended from time to time pursuant to Section 4 (*Disbursement Conditions*).

“**Construction Schedule**” means (a) the initial schedule or schedules on which the construction timetables for the Project are set forth, attached as Schedule II (*Construction Schedule*), and (b) any updates thereto included in the periodic reports submitted to the WIFIA Lender pursuant to Section 16(d) (*Reporting Requirements – Construction Reporting*) of the WIFIA Master Agreement most recently approved by the WIFIA Lender.

“**Final Maturity Date**” means the earlier of (a) [●] (or such earlier date as is set forth in an updated Exhibit B (*WIFIA Debt Service*) pursuant to Section 8(d) (*Payment of Principal and Interest – Adjustments to Loan Amortization Schedule*) of the WIFIA Master Agreement); and (b) the Principal Payment Date immediately preceding the date that is thirty-five (35) years following the Substantial Completion Date.

“**First Payment Date**” means the earlier to occur of (a) [●] and (b) the Payment Date on or immediately preceding the fifth (5<sup>th</sup>) anniversary of the Substantial Completion Date.

“**Interest Payment Date**” means each [●] and [●].

“**Loan Amortization Schedule**” means the loan amortization schedule reflected in the applicable column of Exhibit B (WIFIA Debt Service), as amended from time to time in accordance with Section 8(d) (Payment of Principal and Interest – Adjustments to Loan Amortization Schedule) of the WIFIA Master Agreement.

“**Principal Payment Date**” means each [●] [and [●]<sup>38</sup>].

“**Project**” means [insert short description of project][, as described in further detail in Schedule III (Project)].<sup>39</sup>

“**Project Budget**” means the budget for the Project attached to this Agreement as Schedule I (Project Budget) showing a summary of Total Project Costs with a breakdown of all Eligible Project Costs and the estimated sources and uses of funds for the Project.

“**Project WIFIA Loan Request**” has the meaning provided in the recitals hereto.

“**Projected Substantial Completion Date**” means [●], as such date may be adjusted in accordance with Section 16(d) (Reporting Requirements – Construction Reporting) of the WIFIA Master Agreement.

“**WIFIA Bond**” means the Bond issued and delivered by the Borrower in substantially the form of Exhibit A (Form of WIFIA Bond) to the WIFIA Master Agreement.

“**WIFIA Loan**” means the secured loan made by the WIFIA Lender to the Borrower on the terms and conditions set forth herein, in the WIFIA Master Agreement and in the WIFIA Bond, pursuant to the Act, in a principal amount not to exceed \$[●], to be used in respect of Eligible Project Costs with respect to the Project.

“**WIFIA Loan Agreement Effective Date**” means the date of this Agreement.

“**WIFIA Master Agreement**” has the meaning provided in the recitals hereto.

“**WIFIA Resolution**” means that certain [Resolution Authorizing the Issuance and Award of a Hampton Roads Sanitation District Wastewater Revenue Bond], adopted by the Commission on [●], 20[●], authorizing the execution and delivery of this Agreement and the WIFIA Bond and certain related actions by the Borrower in connection with the issuance of the WIFIA Loan.

“**WIFIA Series Agreement**” means that certain [●] Supplemental Trust Agreement, dated as of [●], 20[●], by and between the Borrower and the Trustee.

## Section 2. Interpretation.

(a) Except as otherwise expressly provided herein, the rules of interpretation set forth in Section 2 of the WIFIA Master Agreement shall apply herein, *mutatis mutandis*, as if

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<sup>38</sup> **Note to Form:** Include second Principal Payment Date only if semi-annual payments of principal will be made.

<sup>39</sup> **Note to Form:** Schedule to be included if the WIFIA Lender determines additional details describing the Project are necessary.

set out in this Agreement in full (and as if each reference therein to “this Agreement” were a reference to this Agreement, and each reference to any “WIFIA Loan” or any “WIFIA Bond” were a reference, respectively, to the WIFIA Loan or the WIFIA Bond as such terms are defined in this Agreement).

(b) This Agreement is one of the WIFIA Loan Agreements referenced in the WIFIA Master Agreement.

## **ARTICLE II THE WIFIA LOAN**

Section 3. WIFIA Loan Amount. The principal amount of the WIFIA Loan shall not exceed \$[●]. WIFIA Loan proceeds available to be drawn shall be disbursed from time to time in accordance with Section 4 (Disbursement Conditions) hereof and Section 11(c) (Conditions Precedent – Conditions Precedent to Disbursements) of the WIFIA Master Agreement.

Section 4. Disbursement Conditions. The WIFIA Loan shall be disbursed in accordance with Section 4 (Disbursement Conditions) of the WIFIA Master Agreement.

Section 5. [Reserved].

Section 6. Interest Rate. The interest rate with respect to the Outstanding WIFIA Loan Balance for the WIFIA Loan shall be [●] and [●] hundredths percent ([●]%) per annum.<sup>40</sup> Interest will accrue and be computed on the Outstanding WIFIA Loan Balance from time to time pursuant to, and otherwise in accordance with, with Section 6 (Interest Rate) of the WIFIA Master Agreement.

Section 7. [Reserved].

Section 8. Payment of Principal and Interest.

(a) Payment of WIFIA Debt Service. Payments of WIFIA Debt Service shall be made by the Borrower on each Payment Date occurring on or after the First Payment Date as provided in Section 8(a) (Payment of Principal and Interest – Payment of WIFIA Debt Service) of the WIFIA Master Agreement.

(b) WIFIA Bond. As evidence of the Borrower’s obligation to repay the WIFIA Loan, the Borrower shall issue and deliver to the WIFIA Lender, on or prior to the WIFIA Loan Agreement Effective Date, the WIFIA Bond substantially in the form of Exhibit A (Form of WIFIA Bond) to the Master Agreement, having a maximum principal amount of \$[●].

Section 9. Prepayment. The WIFIA Bond shall be prepaid in accordance with Section 9(a) (Prepayment – Mandatory Prepayment) of the WIFIA Master Agreement. The Borrower may

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<sup>40</sup> **Note to Form:** The WIFIA Interest Rate shall be calculated by adding one (1) basis point (0.01%) to the rate of securities of a similar maturity (based on the weighted-average life of the WIFIA Loan) as published, on the WIFIA Loan Agreement Effective Date, in the United States Treasury Bureau of Public Debt’s daily rate table for State and Local Government Series (SLGS) securities, currently located on the Internet at <https://www.treasurydirect.gov/GA-SL/SLGS/selectSLGSDate.htm>.

prepay the WIFIA Loan in accordance with Section 9(b) (*Prepayment – Optional Prepayments*) of the WIFIA Master Agreement.

Section 10. Fees and Expenses. The Borrower shall pay to the WIFIA Lender, in each case pursuant to and in accordance with Section 10 (*Fees and Expenses*) of the WIFIA Master Agreement:

- (a) a one-time Servicing Set-Up Fee equal to \$[●];
- (b) an annual Construction Period Servicing Fee equal to \$[●] per annum; provided that the initial Construction Period Servicing Fee shall be in a pro-rated amount equal to \$[●] in accordance with Section 10(a)(ii) (*Fees and Expenses*) of the WIFIA Master Agreement; and
- (c) an Operating Period Servicing Fee equal to \$[●] per annum; and
- (d) any other applicable fees, costs, charges and expenses pursuant to, and otherwise in accordance with, Section 10 (*Fees and Expenses*) of the WIFIA Master Agreement.

### **ARTICLE III CONDITIONS PRECEDENT**

Section 11. Conditions Precedent.

(a) Conditions Precedent to Effectiveness. The effectiveness of this Agreement is subject to the satisfaction, or the WIFIA Lender's written waiver, as determined by the WIFIA Lender in its sole discretion, of each of the conditions precedent to the effectiveness of this Agreement set forth in Section 11(b) (*Conditions Precedent – Conditions Precedent to Effectiveness of Each WIFIA Loan Agreement*) of the WIFIA Master Agreement (each of which is incorporated by reference herein, *mutatis mutandis*, as if set out in this Agreement in full and as if each reference therein to any "Project," any "WIFIA Loan," any "WIFIA Bond," or any "WIFIA Loan Agreement" were a reference, respectively, to the Project, the WIFIA Loan, the WIFIA Bond, or this Agreement (as such terms are defined in this Agreement)).

(b) Conditions Precedent to Disbursements. Notwithstanding anything in this Agreement to the contrary, the WIFIA Lender's obligation to make any disbursement of the WIFIA Loan to the Borrower (including the initial disbursement hereunder) is subject to the satisfaction or the WIFIA Lender's written waiver, as determined by the WIFIA Lender in its sole discretion, of each of the conditions precedent to disbursements set forth in Section 11(c) (*Conditions Precedent – Conditions Precedent to Disbursements*) of the WIFIA Master Agreement (each of which is incorporated by reference herein, *mutatis mutandis*, as if set out in this Agreement in full and as if each reference therein to any "WIFIA Loan" or any "WIFIA Loan Agreement" were a reference, respectively, to the WIFIA Loan or this Agreement (as such terms are defined in this Agreement)).

### **ARTICLE IV REPRESENTATIONS AND WARRANTIES**



Section 12. Representations and Warranties of Borrower. The representations and warranties set out in Section 12 (*Representations and Warranties of Borrower*) of the WIFIA Master Agreement shall be made on the WIFIA Loan Agreement Effective Date and as of each date on which any disbursement of the WIFIA Loan is requested or made, except as otherwise expressly provided in Section 12 of the WIFIA Master Agreement. Each such representation and warranty is incorporated by reference herein, *mutatis mutandis*, for the benefit of the WIFIA Lender as if set out in this Agreement in full (and as if each reference therein to “this Agreement” were a reference to this Agreement and as if each reference therein to (a) any “Project” or the “Master Program”, (b) any “WIFIA Loan” or (c) any “WIFIA Bond” were a reference, respectively, to (i) the Project, (ii) the WIFIA Loan or (iii) the WIFIA Bond (as such terms are defined in this Agreement)). The Borrower acknowledges that it makes such representations and warranties with the intention of inducing the WIFIA Lender to enter into this Agreement and the other WIFIA Loan Documents and to advance the WIFIA Loan to the Borrower, and that the WIFIA Lender has entered into this Agreement and the other WIFIA Loan Documents on the basis of, and in full reliance on, each such representation and warranty.

Section 13. Representations and Warranties of WIFIA Lender. The representations and warranties set out in Section 13 (*Representations and Warranties of WIFIA Lender*) of the WIFIA Master Agreement shall be made on the WIFIA Loan Agreement Effective Date, *mutatis mutandis*, for the benefit of the Borrower as if set out in this Agreement in full (and as if each reference therein to any “WIFIA Loan” were a reference to the WIFIA Loan (as such term is defined in this Agreement)).

## **ARTICLE V COVENANTS**

Section 14. Covenants. The Borrower covenants and agrees, until the date the WIFIA Loan and all of the obligations of the Borrower under the WIFIA Loan Documents with respect to the WIFIA Loan or the Project (other than contingent indemnity obligations) have been irrevocably paid in full in immediately available funds and the WIFIA Lender no longer has any commitment to make disbursements under this Agreement to the Borrower, unless the WIFIA Lender waives compliance in writing, to comply with each of the covenants set forth in the WIFIA Master Agreement, including Section 14 (*Affirmative Covenants*), Section 15 (*Negative Covenants*) and Section 16 (*Reporting Requirements*) of the WIFIA Master Agreement, which covenants are incorporated by reference herein *mutatis mutandis* as if fully set forth herein (and as if each reference therein to “this Agreement” were a reference to this Agreement and as if each reference therein to (a) any “Project” or the “Master Program,” (b) any “WIFIA Loan” or (c) any “WIFIA Bond” were a reference, respectively, to (i) the Project, (ii) the WIFIA Loan or (iii) the WIFIA Bond (as such terms are defined in this Agreement)).

Section 15. [Reserved].

Section 16. [Reserved].

## **ARTICLE VI EVENTS OF DEFAULT**

Section 17. Events of Default and Remedies.

(a) Each Event of Default set out in Section 17 (Events of Default and Remedies) of the WIFIA Master Agreement shall constitute an Event of Default under this Agreement, except as otherwise expressly provided in Section 17 (Events of Default and Remedies) of the WIFIA Master Agreement. [In addition, it shall be an Event of Default under this Agreement if any of the following occur:

(i) *[insert additional Events of Default specific to the Project].*<sup>41</sup>

(b) Upon the occurrence and during the continuation of any Event of Default hereunder, the WIFIA Lender shall have each of the rights and remedies to which it is entitled as provided in and with the same effect as described in Section 17 (Events of Default and Remedies) of the WIFIA Master Agreement.

**ARTICLE VII  
MISCELLANEOUS**

Section 18. Governing Law. This Agreement shall be governed by the federal laws of the United States of America, if and to the extent such federal laws are applicable, and the internal laws of the Commonwealth, if and to the extent such federal laws are not applicable.

Section 19. Effectiveness. This Agreement shall be effective on the WIFIA Loan Agreement Effective Date.

Section 20. Termination. This Agreement shall terminate upon the irrevocable payment in full in immediately available funds by the Borrower of the Outstanding WIFIA Loan Balance, together with all accrued interest, fees and expenses with respect thereto; provided that the indemnification requirements of Section 32 (Indemnification) of the Master WIFIA Agreement, as incorporated herein, the reporting and record keeping requirements of Section 14(p) (Affirmative Covenants – Access; Records) of the WIFIA Master Agreement, as incorporated herein, and the payment requirements of Section 10 (Fees and Expenses) shall survive the termination of this Agreement as provided in such sections.

Section 21. Miscellaneous. Article VII (Miscellaneous) of the WIFIA Master Agreement (other than Sections 25 (Governing Law), 34 (Effectiveness) and 35 (Termination) of the WIFIA Master Agreement) shall be incorporated in this Agreement, *mutatis mutandis*, as if set out in this Agreement in full (and as if each reference therein to “this Agreement” were a reference to this Agreement and as if each reference therein to (a) any “Project” or the “Master Program”, (b) any “WIFIA Loan” or (c) any “WIFIA Bond” were a reference, respectively, to (i) the Project, (ii) the WIFIA Loan or (iii) the WIFIA Bond (as such terms are defined in this Agreement)).

*[The remainder of this page intentionally left blank; signature pages immediately follow.]*

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<sup>41</sup> **Note to Form:** WIFIA Lender to include additional Events of Default if applicable.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and delivered by their respective officers thereunto duly authorized as of the date first written above.

**HAMPTON ROADS SANITATION DISTRICT,**  
by its authorized representative

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

**UNITED STATES ENVIRONMENTAL  
PROTECTION AGENCY**, acting by and through  
the Administrator of the Environmental Protection  
Agency

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

**SCHEDULE I**  
**PROJECT BUDGET**

<b>SOURCES OF FUNDS</b>	<b>AMOUNT (\$ USD)</b>	<b>PERCENTAGE (%)</b>
[ ]		
<b>Total Sources of Funds</b>		
<b>USES OF FUNDS</b>	<b>AMOUNT (\$ USD)</b>	<b>PERCENTAGE (%)</b>
[ ]		
<b>Total Uses of Funds</b>		
<b>Total Eligible Project Costs</b>		
<b>Total Project Costs</b>		

**SCHEDULE II**  
**CONSTRUCTION SCHEDULE**

*[To be provided by Borrower]*

**[SCHEDULE III]<sup>42</sup>**

**[PROJECT]**

*[Insert description of Project]*

---

<sup>42</sup> **Note to Form:** Include only if applicable.

**[SCHEDULE 12(f)**  
**LITIGATION]<sup>43</sup>**

No.	Parties	Date Initiated	Description	Venue

---

<sup>43</sup> **Note to Form:** Include only if applicable.



**SCHEDULE 12(n)**

**CONSTRUCTION CONTRACTS**

<b>Contract Name</b>	<b>Effective Date</b>	<b>Construction Contractor</b>	<b>Amount</b>	<b>Description</b>

**EXHIBIT A**

**ANTICIPATED WIFIA LOAN DISBURSEMENT SCHEDULE**

Federal Fiscal Year

Amount

---

**Total**

**\$[●]**

**EXHIBIT B**  
**WIFIA DEBT SERVICE<sup>44</sup>**

*[See attached]*

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<sup>44</sup> **Note to Form:** WIFIA Lender to provide on the WIFIA Loan Agreement Effective Date.

**EXHIBIT M**  
**FORM OF ANNUAL BUDGET**

*[Attached.]*

**UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
WIFIA LOAN AGREEMENT  
for up to \$268,087,870  
with  
HAMPTON ROADS SANITATION DISTRICT  
for the  
SUSTAINABLE WATER INITIATIVE FOR TOMORROW  
(SWIFT) – TRANCHE 3 PROJECT  
(WIFIA – N19153VA)  
Dated as of [●], 2024**

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## **SCHEDULES**

**SCHEDULE I** – Project Budget

**SCHEDULE II** – Construction Schedule

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**SCHEDULE 12(n)** – Construction Contracts

## **EXHIBITS**

**EXHIBIT A** – [Reserved]

**EXHIBIT B** – WIFIA Debt Service

## WIFIA LOAN AGREEMENT

**THIS WIFIA LOAN AGREEMENT** (this “**Agreement**”), dated as of [●], 2024, is by and between **HAMPTON ROADS SANITATION DISTRICT**, a political subdivision of the Commonwealth of Virginia, with an address at 1434 Air Rail Avenue, Virginia Beach, VA 23455 (the “**Borrower**”), acting by and through the **HAMPTON ROADS SANITATION DISTRICT COMMISSION**, the governing body of the Borrower (the “**Commission**”), and the **UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**, an agency of the United States of America, acting by and through the Administrator of the Environmental Protection Agency, with an address at 1200 Pennsylvania Avenue NW, Washington, DC 20460 (the “**WIFIA Lender**”).

### RECITALS:

WHEREAS, the Congress of the United States of America enacted the Water Infrastructure Finance and Innovation Act, as amended by Section 1445 of the Fixing America’s Surface Transportation Act of 2015, as further amended by Section 5008 of the Water Infrastructure Improvements For the Nation Act of 2016 and by Section 4201 of America’s Water Infrastructure Act of 2018, which is codified as 33 U.S.C. §§ 3901-3915;

WHEREAS, the Act authorizes the WIFIA Lender to enter into agreements to provide financial assistance with one or more eligible entities to make secured loans with appropriate security features to finance a portion of the eligible costs of projects eligible for assistance;

WHEREAS, the Borrower submitted an application for WIFIA financial assistance on March 27, 2020, and supplemented such application on May 20, 2024, and the Borrower and the WIFIA Lender entered into that certain WIFIA Master Agreement, dated as of September 28, 2020 and amended and restated as of [●], 2024 (as so amended, the “**WIFIA Master Agreement**”), pursuant to which the parties thereto have set forth certain common terms and conditions applicable to each WIFIA loan and project under the Master Program;

WHEREAS, the Borrower has submitted a WIFIA Loan Request, received [●], 2024 (the “**Project WIFIA Loan Request**”), to the WIFIA Lender pursuant to the WIFIA Master Agreement and thereby requested that the WIFIA Lender make the WIFIA Loan (as defined below) in a principal amount not to exceed \$268,087,870 (excluding capitalized interest) to be used to pay a portion of the Eligible Project Costs related to the Project (as defined below);

WHEREAS, as of the date hereof, the Administrator has approved WIFIA financial assistance for the Project to be provided in the form of the WIFIA Loan, subject to the terms and conditions contained herein and in the WIFIA Master Agreement;

WHEREAS, based on the Project WIFIA Loan Request, the Application, the WIFIA Master Agreement and the representations, warranties and covenants set forth herein and therein, the WIFIA Lender proposes to make funding available to the Borrower through the purchase of the WIFIA Bond (as defined below) to be issued by the Borrower, upon the terms and conditions set forth herein and in the WIFIA Master Agreement;



WHEREAS, the Borrower agrees to repay any amount due pursuant to this Agreement and the WIFIA Bond in accordance with the terms and provisions of this Agreement, the WIFIA Master Agreement, the WIFIA Bond and the Trust Agreement; and

WHEREAS, the WIFIA Lender has entered into this Agreement in reliance upon, among other things, the information and representations of the Borrower set forth in the Project WIFIA Loan Request, the Application, the WIFIA Master Agreement, and the supporting information provided by the Borrower.

NOW, THEREFORE, the premises being as stated above, and for good and valuable consideration, the receipt and sufficiency of which are acknowledged to be adequate, and intending to be legally bound hereby, it is hereby mutually agreed by and between the Borrower and the WIFIA Lender as follows:

## ARTICLE I DEFINITIONS AND INTERPRETATION

Section 1. **Definitions.** Each capitalized term used in this Agreement (including in the recitals hereto) and not otherwise defined herein shall have the meaning assigned to such term in the WIFIA Master Agreement. Any term used in this Agreement (including in the recitals hereto) that is defined by reference to any other agreement shall continue to have the meaning specified in such agreement, whether or not such agreement remains in effect. In addition, as used in this Agreement (including in the recitals hereto), the following terms have the following meanings:

“**Agreement**” has the meaning provided in the preamble hereto.

“**Anticipated WIFIA Loan Disbursement Schedule**” means the anticipated disbursement schedule reflected in the applicable column of Exhibit B (*WIFIA Debt Service*), setting forth the anticipated disbursement of proceeds of the WIFIA Loan, as such schedule may be amended from time to time pursuant to Section 4 (*Disbursement Conditions*).

“**Construction Schedule**” means (a) the initial schedule or schedules on which the construction timetables for the Project are set forth, attached as Schedule II (*Construction Schedule*), and (b) any updates thereto included in the periodic reports submitted to the WIFIA Lender pursuant to Section 16(d) (*Reporting Requirements – Construction Reporting*) of the WIFIA Master Agreement most recently approved by the WIFIA Lender.

“**Final Maturity Date**” means the earlier of (a) January 1, 2059 (or such earlier date as is set forth in an updated Exhibit B (*WIFIA Debt Service*) pursuant to Section 8(d) (*Payment of Principal and Interest – Adjustments to Loan Amortization Schedule*) of the WIFIA Master Agreement); and (b) the Principal Payment Date immediately preceding the date that is thirty-five (35) years following the Substantial Completion Date.

“**First Payment Date**” means the earlier to occur of (a) the January 1 or July 1 immediately following the Initial Disbursement Date and (b) the Payment Date on or immediately preceding the fifth (5<sup>th</sup>) anniversary of the Substantial Completion Date.

“**Interest Payment Date**” means each January 1 and July 1.

**“Loan Amortization Schedule”** means the loan amortization schedule reflected in the applicable column of Exhibit B (*WIFIA Debt Service*), as amended from time to time in accordance with Section 8(d) (*Payment of Principal and Interest – Adjustments to Loan Amortization Schedule*) of the WIFIA Master Agreement.

**“Principal Payment Date”** means each January 1 and July 1, beginning on the date set forth as the “Initial Principal Payment Date” on the Loan Amortization Schedule.

**“Project”** means the Borrower’s Sustainable Water Initiative for Tomorrow (SWIFT) – Tranche 3 Project, located at various locations within the Borrower’s service area, as described in further detail in Schedule III (*Project*).

**“Project Budget”** means the budget for the Project attached to this Agreement as Schedule I (*Project Budget*) showing a summary of Total Project Costs with a breakdown of all Eligible Project Costs and the estimated sources and uses of funds for the Project.

**“Project WIFIA Loan Request”** has the meaning provided in the recitals hereto.

**“Projected Substantial Completion Date”** means March 30, 2029, as such date may be adjusted in accordance with Section 16(d) (*Reporting Requirements – Construction Reporting*) of the WIFIA Master Agreement.

**“WIFIA Bond”** means the Bond issued and delivered by the Borrower in substantially the form of Exhibit A (*Form of WIFIA Bond*) to the WIFIA Master Agreement.

**“WIFIA Loan”** means the secured loan made by the WIFIA Lender to the Borrower on the terms and conditions set forth herein, in the WIFIA Master Agreement and in the WIFIA Bond, pursuant to the Act, in a principal amount not to exceed \$268,087,870 (excluding capitalized interest), to be used in respect of Eligible Project Costs with respect to the Project.

**“WIFIA Loan Agreement Effective Date”** means the date of this Agreement.

**“WIFIA Master Agreement”** has the meaning provided in the recitals hereto.

**“WIFIA Resolution”** means that certain Resolution Authorizing the Issuance and Award of a Hampton Roads Sanitation District Wastewater Revenue Bond, adopted by the Commission on [●], 2024, authorizing the execution and delivery of this Agreement and the WIFIA Bond and certain related actions by the Borrower in connection with the issuance of the WIFIA Loan.

**“WIFIA Series Agreement”** means that certain Twelfth Supplemental Trust Agreement, dated as of [●], 2024, by and between the Borrower and the Trustee.

## Section 2. Interpretation.

(a) Except as otherwise expressly provided herein, the rules of interpretation set forth in Section 2 of the WIFIA Master Agreement shall apply herein, *mutatis mutandis*, as if set out in this Agreement in full (and as if each reference therein to “this Agreement” were a reference to this Agreement, and each reference to any “WIFIA Loan” or any “WIFIA Bond” were

a reference, respectively, to the WIFIA Loan or the WIFIA Bond as such terms are defined in this Agreement).

(b) This Agreement is one of the WIFIA Loan Agreements referenced in the WIFIA Master Agreement.

## **ARTICLE II THE WIFIA LOAN**

Section 3. WIFIA Loan Amount. The principal amount of the WIFIA Loan shall not exceed \$268,087,870 (excluding capitalized interest). WIFIA Loan proceeds available to be drawn shall be disbursed from time to time in accordance with Section 4 (Disbursement Conditions) hereof and Section 11(c) (Conditions Precedent – Conditions Precedent to Disbursements) of the WIFIA Master Agreement.

Section 4. Disbursement Conditions. The WIFIA Loan shall be disbursed in accordance with Section 4 (Disbursement Conditions) of the WIFIA Master Agreement.

Section 5. [Reserved].

Section 6. Interest Rate. The interest rate with respect to the Outstanding WIFIA Loan Balance for the WIFIA Loan shall be [●] percent ([●]%) per annum. Interest will accrue and be computed on the Outstanding WIFIA Loan Balance from time to time pursuant to, and otherwise in accordance with, with Section 6 (Interest Rate) of the WIFIA Master Agreement.

Section 7. [Reserved].

Section 8. Payment of Principal and Interest.

(a) Payment of WIFIA Debt Service. Payments of WIFIA Debt Service shall be made by the Borrower on each Payment Date occurring on or after the First Payment Date as provided in Section 8(a) (Payment of Principal and Interest – Payment of WIFIA Debt Service) of the WIFIA Master Agreement.

(b) WIFIA Bond. As evidence of the Borrower's obligation to repay the WIFIA Loan, the Borrower shall issue and deliver to the WIFIA Lender, on or prior to the WIFIA Loan Agreement Effective Date, the WIFIA Bond substantially in the form of Exhibit A (Form of WIFIA Bond) to the Master Agreement, having a maximum principal amount of \$268,087,870 (excluding capitalized interest).

Section 9. Prepayment. The WIFIA Bond shall be prepaid in accordance with Section 9(a) (Prepayment – Mandatory Prepayment) of the WIFIA Master Agreement. The Borrower may prepay the WIFIA Loan in accordance with Section 9(b) (Prepayment – Optional Prepayments) of the WIFIA Master Agreement.

Section 10. Fees and Expenses. The Borrower shall pay to the WIFIA Lender, in each case pursuant to and in accordance with Section 10 (Fees and Expenses) of the WIFIA Master Agreement:

- (a) a one-time Servicing Set-Up Fee equal to \$30,740;
- (b) an annual Construction Period Servicing Fee equal to \$30,740 per annum; provided that the initial Construction Period Servicing Fee shall be in a pro-rated amount equal to \$[0]<sup>1</sup> in accordance with Section 10(a)(ii) (Fees and Expenses) of the WIFIA Master Agreement; and
- (c) an Operating Period Servicing Fee equal to \$9,220 per annum; and
- (d) any other applicable fees, costs, charges and expenses pursuant to, and otherwise in accordance with, Section 10 (Fees and Expenses) of the WIFIA Master Agreement.

### ARTICLE III CONDITIONS PRECEDENT

#### Section 11. Conditions Precedent.

(a) Conditions Precedent to Effectiveness. The effectiveness of this Agreement is subject to the satisfaction, or the WIFIA Lender's written waiver, as determined by the WIFIA Lender in its sole discretion, of each of the conditions precedent to the effectiveness of this Agreement set forth in Section 11(b) (Conditions Precedent – Conditions Precedent to Effectiveness of Each WIFIA Loan Agreement) of the WIFIA Master Agreement (each of which is incorporated by reference herein, *mutatis mutandis*, as if set out in this Agreement in full and as if each reference therein to any "Project," any "WIFIA Loan," any "WIFIA Bond," or any "WIFIA Loan Agreement" were a reference, respectively, to the Project, the WIFIA Loan, the WIFIA Bond, or this Agreement (as such terms are defined in this Agreement)).

(b) Conditions Precedent to Disbursements. Notwithstanding anything in this Agreement to the contrary, the WIFIA Lender's obligation to make any disbursement of the WIFIA Loan to the Borrower (including the initial disbursement hereunder) is subject to the satisfaction or the WIFIA Lender's written waiver, as determined by the WIFIA Lender in its sole discretion, of each of the conditions precedent to disbursements set forth in Section 11(c) (Conditions Precedent – Conditions Precedent to Disbursements) of the WIFIA Master Agreement (each of which is incorporated by reference herein, *mutatis mutandis*, as if set out in this Agreement in full and as if each reference therein to any "WIFIA Loan" or any "WIFIA Loan Agreement" were a reference, respectively, to the WIFIA Loan or this Agreement (as such terms are defined in this Agreement)).

### ARTICLE IV REPRESENTATIONS AND WARRANTIES

Section 12. Representations and Warranties of Borrower. The representations and warranties set out in Section 12 (Representations and Warranties of Borrower) of the WIFIA Master Agreement shall be made on the WIFIA Loan Agreement Effective Date and as of each date on which any disbursement of the WIFIA Loan is requested or made, except as otherwise expressly provided in Section 12 of the WIFIA Master Agreement. Each such representation and

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<sup>1</sup> **Note to Borrower:** The pro-rated construction servicing fee amount assumes a closing in September 2024.

warranty is incorporated by reference herein, *mutatis mutandis*, for the benefit of the WIFIA Lender as if set out in this Agreement in full (and as if each reference therein to “this Agreement” were a reference to this Agreement and as if each reference therein to (a) any “Project” or the “Master Program”, (b) any “WIFIA Loan” or (c) any “WIFIA Bond” were a reference, respectively, to (i) the Project, (ii) the WIFIA Loan or (iii) the WIFIA Bond (as such terms are defined in this Agreement)). The Borrower acknowledges that it makes such representations and warranties with the intention of inducing the WIFIA Lender to enter into this Agreement and the other WIFIA Loan Documents and to advance the WIFIA Loan to the Borrower, and that the WIFIA Lender has entered into this Agreement and the other WIFIA Loan Documents on the basis of, and in full reliance on, each such representation and warranty.

Section 13. Representations and Warranties of WIFIA Lender. The representations and warranties set out in Section 13 (*Representations and Warranties of WIFIA Lender*) of the WIFIA Master Agreement shall be made on the WIFIA Loan Agreement Effective Date, *mutatis mutandis*, for the benefit of the Borrower as if set out in this Agreement in full (and as if each reference therein to any “WIFIA Loan” were a reference to the WIFIA Loan (as such term is defined in this Agreement)).

## **ARTICLE V COVENANTS**

Section 14. Covenants. The Borrower covenants and agrees, until the date the WIFIA Loan and all of the obligations of the Borrower under the WIFIA Loan Documents with respect to the WIFIA Loan or the Project (other than contingent indemnity obligations) have been irrevocably paid in full in immediately available funds and the WIFIA Lender no longer has any commitment to make disbursements under this Agreement to the Borrower, unless the WIFIA Lender waives compliance in writing, to comply with each of the covenants set forth in the WIFIA Master Agreement, including Section 14 (*Affirmative Covenants*), Section 15 (*Negative Covenants*) and Section 16 (*Reporting Requirements*) of the WIFIA Master Agreement, which covenants are incorporated by reference herein *mutatis mutandis* as if fully set forth herein (and as if each reference therein to “this Agreement” were a reference to this Agreement and as if each reference therein to (a) any “Project” or the “Master Program,” (b) any “WIFIA Loan” or (c) any “WIFIA Bond” were a reference, respectively, to (i) the Project, (ii) the WIFIA Loan or (iii) the WIFIA Bond (as such terms are defined in this Agreement)).

Section 15. [Reserved].

Section 16. [Reserved].

## **ARTICLE VI EVENTS OF DEFAULT**

Section 17. Events of Default and Remedies.

(a) Each Event of Default set out in Section 17 (*Events of Default and Remedies*) of the WIFIA Master Agreement shall constitute an Event of Default under this Agreement, except as otherwise expressly provided in Section 17 (*Events of Default and Remedies*) of the WIFIA Master Agreement.

(b) Upon the occurrence and during the continuation of any Event of Default hereunder, the WIFIA Lender shall have each of the rights and remedies to which it is entitled as provided in and with the same effect as described in Section 17 (*Events of Default and Remedies*) of the WIFIA Master Agreement.

## **ARTICLE VII MISCELLANEOUS**

Section 18. Governing Law. This Agreement shall be governed by the federal laws of the United States of America, if and to the extent such federal laws are applicable, and the internal laws of the Commonwealth, if and to the extent such federal laws are not applicable.

Section 19. Effectiveness. This Agreement shall be effective on the WIFIA Loan Agreement Effective Date.

Section 20. Termination. This Agreement shall terminate upon the irrevocable payment in full in immediately available funds by the Borrower of the Outstanding WIFIA Loan Balance, together with all accrued interest, fees and expenses with respect thereto; provided that the indemnification requirements of Section 32 (*Indemnification*) of the Master WIFIA Agreement, as incorporated herein, the reporting and record keeping requirements of Section 14(p) (*Affirmative Covenants – Access; Records*) of the WIFIA Master Agreement, as incorporated herein, and the payment requirements of Section 10 (*Fees and Expenses*) shall survive the termination of this Agreement as provided in such sections.

Section 21. Miscellaneous. Article VII (*Miscellaneous*) of the WIFIA Master Agreement (other than Sections 25 (*Governing Law*), 34 (*Effectiveness*) and 35 (*Termination*) of the WIFIA Master Agreement) shall be incorporated in this Agreement, *mutatis mutandis*, as if set out in this Agreement in full (and as if each reference therein to “this Agreement” were a reference to this Agreement and as if each reference therein to (a) any “Project” or the “Master Program”, (b) any “WIFIA Loan” or (c) any “WIFIA Bond” were a reference, respectively, to (i) the Project, (ii) the WIFIA Loan or (iii) the WIFIA Bond (as such terms are defined in this Agreement)).

*[The remainder of this page intentionally left blank; signature pages immediately follow.]*

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and delivered by their respective officers thereunto duly authorized as of the date first written above.

**HAMPTON ROADS SANITATION DISTRICT,**  
by its authorized representative

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

**UNITED STATES ENVIRONMENTAL  
PROTECTION AGENCY**, acting by and through  
the Administrator of the Environmental Protection  
Agency

By: \_\_\_\_\_  
Name: Michael S. Regan  
Title: Administrator



**SCHEDULE I**  
**PROJECT BUDGET**

<b>SOURCES OF FUNDS</b>		
WIFIA Loan	268,087,870	36%
Clean Water SRF	73,600,000	10%
Revenue Bonds	268,087,870	36%
Cash	129,637,062	18%
<b>Total Sources</b>	<b>\$739,412,802</b>	<b>100%</b>

<b>USES OF FUNDS</b>		
<b>Project Element</b>	<b>Construction</b>	<b>Total</b>
James River SWIFT (GN016360)	\$112,268,181	\$112,268,181
James River Onsite Recharge Wells (GN016361)	\$6,395,122	\$6,395,122
BH015700 Boat Harbor Treatment Plant Pump Station Conversion	\$159,030,866	\$159,030,866
BH015710 Boat Harbor Treatment Plant Transmission Force Main Section 1	\$85,668,325	\$85,668,325
BH015720 Boat Harbor Treatment Plant Transmission Force Main Section 2	\$22,256,000	\$22,256,000
GN016362 James River Recharge Wells	\$7,778,000	\$7,778,000
JR013400 James River Advanced Nutrient Reduction Improvements	\$26,755,715	\$26,755,715
NP013820 Nansemond Advanced Nutrient Reduction Improvements Phase II	\$55,052,854	\$55,052,854
GN016380 Nansemond SWIFT Facility	\$258,181,900	\$258,181,900
GN016345 Boat Harbor Treatment Plant Pump Station Conversion Land Acquisition	\$3,025,839	\$3,025,839
GN016346 Boat Harbor Transmission Force Main Land Acquisition	\$3,000,000	\$3,000,000
<b>Total Eligible Project Costs</b>	<b>\$739,412,802</b>	<b>\$739,412,802</b>
<b>Total Project Costs</b>	<b>\$739,412,802</b>	<b>\$739,412,802</b>

## SCHEDULE II

### CONSTRUCTION SCHEDULE

Project Component Name	Design Completion	Construction Start	Substantial Completion
James River SWIFT (GN016360)	1/31/2023	2/07/2022	04/13/2026
James River Onsite Recharge Wells (GN016361)	12/31/2021	12/31/2021	10/10/2023
SWIFT Program Management (GN016320)	6/30/2033	N/A	N/A
Boat Harbor Treatment Plant Pump Station Conversion (BH015700)	6/20/2023	5/15/2023	10/26/2026
Boat Harbor Treatment Plant Transmission Force Main Section 1 (BH015710)	7/03/2023	5/23/2023	6/30/2025
Boat Harbor Treatment Plant Transmission Force Main Section 2 (BH015720)	2/28/2024	7/18/2024	1/09/2026
James River Offsite Recharge Wells (GN016362)	12/21/2021	11/14/2022	6/29/2025
James River Advanced Nutrient Reduction Improvements (JR013400)	1/31/2023	1/04/2022	4/13/2026
Nansemond Advanced Nutrient Reduction Improvements Phase I (NP013810)	7/31/2021	8/31/202	7/07/2021
Nansemond Advanced Nutrient Reduction Improvements Phase II (NP013820)	12/31/2023	3/01/2023	12/15/2025
Nansemond SWIFT Facility (GN016380)	9/30/2025	6/30/2025	3/30/2029
James River SWIFT Land Acquisition (GN016343)	3/31/2022	3/31/2022	3/31/2022
Boat Harbor Treatment Plant Pump Station Conversion Land Acquisition (GN016345)	12/30/2022	12/30/2022	12/30/2022
Boat Harbor Transmission Force Main Land Acquisition (GN016346)	8/26/2024	8/27/2024	8/27/2024

## **SCHEDULE III**

### **PROJECT**

The Project, the Borrower's Sustainable Water Initiative for Tomorrow (SWIFT) – Tranche 3 Project, consists of the design and construction of new facilities and other improvements to improve the water quality of the Chesapeake Bay. The Project includes the following components:

- (1) James River SWIFT Facility, which includes the design, supply, construction, and commissioning of new facilities that will apply advanced water treatment to highly treated wastewater from the James River Treatment Plant ("JRTP"), with the resulting water meeting drinking water quality standards and compatible with the Potomac Aquifer;
- (2) SWIFT Recharge and Monitoring Well Services, which includes the construction and development of three recharge wells and one on-site monitoring well within the boundaries of the JRTP site; and
- (3) Program Management of SWIFT Full-Scale Implementation, which includes the management of (a) the delivery of the advanced water treatment facilities, recharge wells, monitoring wells, associated pumping and piping systems to support groundwater augmentation, (b) the delivery of the wastewater treatment plant improvements and outfall modifications as necessary to ensure successful SWIFT implementation at proposed facilities, (c) the implementation of the processes, procedures, and systems needed to design, procure, construct, permit, manage, and integrate the new SWIFT related assets into the Borrower's existing systems, and (d) the transaction of the new SWIFT assets to the Borrower's operations and life cycle asset management.
- (4) Boat Harbor Treatment Plant Pump Station Conversion and Transmission Force Main Sections 1 and 2, which includes the conversion of the Boat Harbor Treatment Plant ("BHTP") into a pumping station (including equalization and headworks facilities), the subaqueous crossing of the James River to convey flow to the Nansemond Treatment Plant ("NTP"), and the on-land connection of Section 1 to the NTP;
- (5) James River Advanced Nutrient Reduction Improvements, which includes the design, supply, construction, and commissioning of improvements (including nutrient reduction measures) to the secondary treatment process at the JRTP, in order to provide stable source water quality that meets the influent requirements of the full scale SWIFT facility at the JRTP, and may include demolition of existing facilities as needed to complete this work;
- (6) James River Recharge Wells, which includes the construction and development of seven (7) off-site recharge wells and services for the development, logging, testing and conditioning of the well associated with SWIFT at the JRTP site;

- (7) Nansemond SWIFT Facility, which includes the design and construction of advanced water treatment facilities needed to produce SWIFT water at the NTP;
- (8) Nansemond Advanced Nutrient Reduction Improvements Phases 1 and 2, which includes the planning, design and construction of improvements to the NTP to support reliable treatment of raw, screened wastewater from the BHTP service area and raw influent from the NTP service area; and
- (9) Land Acquisition, which includes the purchase and acquisition of land (a) from the City of Newport News to accommodate the construction of infrastructure for the James River SWIFT project, (b) for the BHTP pump station conversion, and (c) to accommodate the Boat Harbor transmission force main of seven recharge wells and one monitoring well.

**SCHEDULE 12(n)****CONSTRUCTION CONTRACTS**

<b>Contract Name</b>	<b>Effective Date</b>	<b>Construction Contractor</b>	<b>Amount</b>	<b>Description</b>
BH015700 Boat Harbor Treatment Plant Pump Station Conversion	May 23, 2023	MEB General Contractors Inc.	\$169,447,000.00	Construction contract
BH015710 Boat Harbor Treatment Plant Transmission Force Main Section 1(Subaqueous)	April 26, 2022	Garney Companies, Inc.	\$141,862,736.72	Construction contract
BH015720 Boat Harbor Treatment Plant Transmission Force Main Section 2 (Land)	June 25, 2024	Garney Companies, Inc.	\$49,360,500.00	Construction contract
GN016360 James River SWIFT Facility	January 26, 2021	Ulliman Schutte – Alberici Joint Venture	\$285,377,300.00	Construction contract
GN016362 James River Recharge Wells (Off Site)	May 24, 2022	A.C. Schultes of Md., Inc.	\$42,998,200.00	Construction contract
GN016380 Nansemond SWIFT Facility	April 23, 2024	Garney Companies, Inc.	\$574,278,000.00	Construction contract
JR013400 James River Treatment Plant Advanced Nutrient Reduction Improvements	January 26, 2021	Ulliman Schutte – Alberici Joint Venture	\$249,122,998.00	Construction contract
NP013820 Nansemond Treatment Plant Advanced Nutrient Reduction Improvements Phase II	February 22, 2022	Garney Companies, Inc.	\$309,330,229.00	Construction contract

**EXHIBIT A**  
**[RESERVED]**

**EXHIBIT B**  
**WIFIA DEBT SERVICE**

*[See attached]*

## INTERCREDITOR AGREEMENT

**THIS INTERCREDITOR AGREEMENT**, dated as of \_\_\_\_\_, 2024 (this “Agreement”), (i) is entered into by and among **HAMPTON ROADS SANITATION DISTRICT**, a political subdivision of the Commonwealth of Virginia (the “District”), acting by and through the **HAMPTON ROADS SANITATION DISTRICT COMMISSION** (the “Commission”), **THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A.**, as trustee (the “Trustee”), and the **VIRGINIA RESOURCES AUTHORITY**, a public body corporate and a political subdivision of the Commonwealth of Virginia (“VRA”), as administrator of the **VIRGINIA WATER FACILITIES REVOLVING FUND**, and (ii) amends and restates the Intercreditor Agreement, dated as of September 28, 2020 (the “Original Agreement”), by and among the District, the Trustee, and VRA.

## RECITALS

The District executed and delivered a Trust Agreement, dated as of October 1, 2011 (the “Original Trust Agreement”), between the District and the Trustee, to provide for the issuance of Bonds (as defined therein) payable solely from the Net Revenues (as defined therein) derived by the District from its Wastewater System and other funds pledged as security therefor under the Original Trust Agreement.

The District amended and restated the Original Trust Agreement as of March 1, 2016 (the “Amended and Restated Trust Agreement”) (the Amended and Restated Trust Agreement, as amended by the Amendment effective as of November 20, 2019, as supplemented, and as further amended and restated as of July 1, 2024, and effective on July 16, 2024, and as further amended and supplemented from time to time, the “Trust Agreement”).

Section 704 of the Trust Agreement permits the District to incur Senior Obligations (as defined therein) secured by a pledge of Net Revenues on a parity with the pledge securing the Bonds issued under the Trust Agreement.

The District executed and delivered a Master Financing Agreement dated as of February 1, 2016, as supplemented and amended (the “VRA Agreement”), between VRA and the District, to provide for the issuance of certain Local Bonds (as defined therein) payable solely from the Net Revenues on a parity with the Bonds (which Local Bonds shall constitute “VRA Obligations” within the meaning of the Trust Agreement).

VRA has entered into a Second Amended and Restated Master Trust Indenture dated as of September 1, 2020, as previously supplemented and amended (the “VRA Master Indenture”), between VRA and U.S. Bank National Association (successor to SunTrust Bank), as trustee (the “VRA Trustee”), under which VRA has provided for the issuance from time to time of bonds of the VRA (the “VRA Bonds”), for the purpose of purchasing and acquiring local obligations issued by local governments (including some of the Local Bonds), which have either been issued and sold to (a) VRA and assigned to the VRA Trustee or (b) the VRA Trustee on behalf of VRA pursuant to the VRA Master Indenture, as security for the VRA Bonds.



Terms defined in the Trust Agreement shall have the same defined meanings when such terms are used herein.

The Trustee and VRA (together, the “Secured Parties” and individually, a “Secured Party”) desire to agree on the ratable sharing of any collections of Net Revenues with respect to the Bonds and the VRA Obligations (collectively, the “Senior Obligations”).

**NOW THEREFORE**, in consideration of the foregoing premises and of the mutual agreements contained in this Agreement and other good and valuable consideration, the receipt of which is hereby acknowledged, the parties hereto hereby agree as follows:

## **ARTICLE I**

### **SHARING OF SECURITY AND COLLECTIONS**

Section 1.01. Ratably Sharing After Default. The District and the Secured Parties agree that if (i) an Event of Default has occurred and is continuing under the Trust Agreement or an Event of Default (as defined in the VRA Agreement) has occurred and is continuing under the VRA Agreement, (ii) either Secured Party declares the principal of the then Outstanding Bonds or the VRA Obligations, as the case may be, to be immediately due and payable and (iii) the other Secured Party has not declared the principal of the then Outstanding Bonds or the VRA Obligations, as the case may be, to be immediately due and payable, then any Net Revenues and any other amounts received by such accelerating Secured Party on account of the Senior Obligations shall be applied in the following order:

(a) First, to payment of fees, charges, disbursements and other amounts payable to such accelerating Secured Party in connection with the exercise of its remedies upon an event of default;

(b) Second, to payment of that portion of the Senior Obligations constituting accrued and unpaid interest on the Senior Obligations, ratably among the Secured Parties in accordance with the percentage that the aggregate principal amount of the Bonds or the VRA Obligations then Outstanding, as applicable, represents of the sum of such aggregate principal amounts (the “Applicable Percentages”);

(c) Third, to payment of that portion of the Senior Obligations constituting unpaid principal of the Senior Obligations, ratably among the Secured Parties in accordance with the Applicable Percentages; and

(d) Last, the balance, if any, after all of the Senior Obligations have been indefeasibly paid in full in cash, to the District or as otherwise required by applicable law.

Notwithstanding the foregoing, if a Secured Party is legally required to return all or any portion of a payment shared with the other Secured Party in accordance with the provisions of this Section 1.01, then such Secured Party shall return the amount received without interest.

Until the Net Revenues or any other amounts received by the accelerating Secured Party are so applied, the accelerating Secured Party shall hold the same in trust for the ratable benefit of

the other Secured Party in accordance with the terms of this Agreement and in its custody in accordance with its regular procedures for handling deposited funds.

Any Net Revenues or other amounts received by the accelerating Secured Party shall be promptly distributed to the other Secured Party in accordance with this Section 1.01 in amounts so that each Secured Party receives its appropriate allocation thereof as set forth herein.

The priorities of allocation set forth herein shall apply in all circumstances, including with respect to any distribution made in any case or proceeding under any bankruptcy law or insolvency law.

Section 1.02. Information. Each Secured Party agrees to provide promptly to the other Secured Party such information (including the applicable Outstanding principal amount under the Bonds or the VRA Obligations, as applicable, and evidence in support thereof) as such other Secured Party shall reasonably request in order to implement the allocation of the Net Revenues or other amounts received in accordance with the terms hereof.

## **ARTICLE II**

### **MISCELLANEOUS**

Section 2.01. Assignees. The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

Section 2.02. Notices. Notices, requests, demands and other communications provided for in this Agreement shall be in writing and shall be (a) delivered by hand, (b) sent prepaid by a nationally recognized courier service, (c) sent by United States mail (certified, postage prepaid, return receipt requested), or (d) sent by e-mail, to the parties at their respective addresses set forth below or at such other addresses as may be designated by such party from time to time in a writing forwarded in a like manner. Each such notice, request, demand or other communication delivered or sent in the manner aforesaid shall be effective (x) if delivered by hand, by nationally recognized courier service or by United States mail (certified, postage prepaid, return receipt requested), when delivered at the address specified in this Section 2.02 (or in accordance with the latest unrevoked written direction from the receiving party), and (y) if given by email, when such email is delivered to the address specified in this Section 2.02 (or in accordance with the latest unrevoked written direction from the receiving party); provided that notices received on a day that is not a Business Day or after 5:00 p.m. prevailing Eastern Time on a Business Day will be deemed to be effective on the next Business Day.

#### If to District:

Hampton Roads Sanitation District  
1434 Air Rail Avenue  
Virginia Beach, Virginia 23455  
Attention: General Manager  
E-mail: JBernas@hrsdc.com

If to the Trustee:

The Bank of New York Mellon Trust Company, N.A.  
500 Ross Street, 12<sup>th</sup> Floor  
Pittsburgh, Pennsylvania 15262  
Attention: Corporate Trust Department  
E-mail: Michael.Flickinger@bnymellon.com

If to VRA:

Virginia Resources Authority  
1111 East Main Street, Suite 1920  
Richmond, Virginia 23219  
Attention: Executive Director  
E-mail: scrumlish@VirginiaResources.org

If to the VRA Trustee:

[U.S. Bank Trust Company, National Association, as Trustee  
1051 East Cary Street, Suite 600  
Richmond Virginia 23219  
Attention: Corporate Trust Administration]  
Email: \_\_\_\_\_

Section 2.03. Entire Agreement; Amendments and Waivers. This Agreement and the other documents referred to herein embody the final, entire agreement among the parties hereto and supersede any and all prior commitments, agreements, representations, and understandings, whether written or oral, relating to the subject matter hereof and may not be contradicted or varied by evidence of prior, contemporaneous, or subsequent oral agreements or discussions of the parties hereto. Any provision of this Agreement may be amended or waived if, and only if, such amendment or waiver is in writing and signed by each of the parties hereto.

Section 2.04. Counterparts; Effectiveness. This Agreement may be signed in any number of counterparts, each of which shall be an original, and all of which taken together shall constitute a single agreement, with the same effect as if the signatures thereto and hereto were upon the same instrument. This Agreement shall become effective when all parties shall have received counterparts hereof (which may be electronic mail or other electronically reproduced or transmitted counterparts) executed by each of the parties listed on the signature pages hereof. Delivery of an executed counterpart of a signature page of this Agreement by electronic communication shall be effective as delivery of a manually executed counterpart of this Agreement.

Section 2.05. No Waiver; Cumulative Remedies. No failure on the part of either Secured Party to exercise and no delay in exercising, and no course of dealing with respect to, any right, power, or privilege under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power, or privilege under this Agreement preclude any other or further

exercise thereof or the exercise of any other right, power or privilege. The rights and remedies provided for in this Agreement are cumulative and not exclusive of any rights and remedies provided by law.

Section 2.06. Term. This Agreement shall terminate upon the earlier of (a) indefeasible payment in full in cash of all of the Bonds or (b) indefeasible payment in full in cash of the VRA Obligations. This Agreement shall continue to be effective or be reinstated, as the case may be, if at any time any payment of any of the applicable Senior Obligations is rescinded or must otherwise be returned by the applicable Secured Party (or the Holders in the case of the Bonds) upon the insolvency, bankruptcy or reorganization of the District or otherwise, all as though such payments had not been made.

Section 2.07. Governing Law. This Agreement shall be construed and enforced in accordance with, and the rights of the parties shall be governed by, the laws of the Commonwealth of Virginia, without regard to choice of law principles.

Section 2.08. Severability. Any provision of this Agreement held by a court of competent jurisdiction to be invalid or unenforceable shall not impair or invalidate the remainder of this Agreement and the effect thereof shall be confined to the provision held to be invalid or illegal.

Section 2.09. Amendment and Restatement. It is the intent of the parties that this Agreement not constitute a novation of the obligations existing under the Original Agreement and that this Agreement amends and restates in its entirety the Original Agreement and re-evidences the obligations of the parties thereunder. On and after the date hereof, each reference in any document relating to the Trust Agreement or the VRA Agreement which includes a reference to the “Intercreditor Agreement”, “therein”, “thereof”, “thereunder” or words of similar import when referring to the Original Agreement shall mean, and shall hereafter be, a reference to the Original Agreement, as amended and restated by this Agreement.

[SIGNATURES APPEAR ON FOLLOWING PAGES]

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be duly executed as of the date first above written.

**HAMPTON ROADS SANITATION DISTRICT**

By \_\_\_\_\_  
Name: Steven G. de Mik  
Title: Deputy General Manager and Chief Financial Officer

**THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A.**

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

**VIRGINIA RESOURCES AUTHORITY,  
as Administrator of the Virginia Water Facilities  
Revolving Fund**

By \_\_\_\_\_  
Name: Shawn B. Crumlish  
Title: Executive Director

The VRA Trustee, by the execution hereof, accepts the duties imposed by this Agreement to the extent that it is the holder or assignee of any Local Bonds pursuant to the terms of the VRA Master Indenture.

**U.S. BANK NATIONAL ASSOCIATION,  
as Trustee**

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

## AGENDA ITEM 6. – September 24, 2024

**Subject:** Atlantic Treatment Plant (ATP) Odor and Solids Improvements 2023  
Contract Award (>\$200,000) and Combination of CIP Projects

**Recommended Actions:**

- a. Award a contract to Crowder Construction in the amount of \$1,044,000.
- b. Reduce the scopes and appropriations of the following CIP projects and transfer the remaining appropriations to AT016000:
  1. ATP Liquid Side Odor Evaluation and Improvements (AT015800)
  2. ATP Gravity Belt Thickener and Pre-Dewatering Polymer Improvements (ATP15900)
  3. ATP Solids Curing Facility and Pad Improvements (AT016100)
  4. ATP Digester Improvements (AT016500)

**CIP Project: AT016000****Regulatory Requirement:** None

Budget	\$55,103,000
Previous Expenditures and Encumbrances	(\$16,054,710)
Available Balance	\$39,048,290

**Type of Procurement:** RFQ/RFP

The use of the Construction Manager (CM) project delivery method was approved by the Commission at the November 28, 2023 meeting. A Public Notice for the Request for Qualifications was issued on June 20, 2024. Three teams submitted Statements of Qualifications on July 11, 2024, and all teams were considered to be responsive and deemed fully qualified, responsible, and suitable to the requirements in the Request for Qualifications. Three firms were short-listed. A Request for Proposals was issued on July 18, 2024, to the short-listed teams. All short-listed teams submitted Technical Proposals on August 1, 2024, and interviews were held on August 21, 2024. Price Proposals were submitted on August 28, 2024. The points received and the final ranking for each of the short-listed teams is listed below:

Proposers	SOQ	Technical Proposal	Price Proposal	Total Ranking	Recommended Selection Ranking
Crowder Construction Company	22.56	22.04	48.39	92.99	1
MEB General Contractors, Inc.	20.89	22.09	50.00	92.98	2
Ulliman Schutte Construction, LLC	19.99	17.63	48.95	86.57	3

The Selection Committee recommends award to the top ranked team, Crowder Construction Company, whose combination of professional qualifications, proposed services and price best serve the interest of HRSD.

**Project Description:** This project will provide for improvements to the Atlantic Treatment Plant to increase treatment reliability and minimize offsite odors for the surrounding community.

**Project Justification:** There has been an increase in odor complaints around the Atlantic Treatment Plant in calendar year 2022 and 2023 since the implementation of the new solids handling process and the diversion of all Chesapeake-Elizabeth Treatment Plant flow. These projects include design and construction to perform needed solids handling and odor control upgrades at the Atlantic Treatment Plant.

**Contract Description and Analysis of Cost:** This selection is for a Construction Manager to enter into a contract for pre-construction services for this project. Construction and post-construction phase services will be added to this contract by amendment following negotiation of the guaranteed maximum price (GMP) at the final design phase.

<b><u>Schedule:</u></b>	Design	August 2024
	Project Completion	December 2031



## AGENDA ITEM 7. – September 24, 2024

**Subject:** Development Plan 2025  
Initial Appropriation and Task Order (>\$200,000)

### **Recommended Actions:**

- a. Appropriate total project funding in the amount of \$500,000.
- b. Approve a task order with Hazen and Sawyer, Inc. in the amount of \$500,000.

**CIP Project:** GN020600

**Regulatory Requirement:** None

**Project Description:** This project calls for professional engineering services to develop a long range comprehensive sanitary sewer master plan for the metro communities through 2050. The Plan will serve as a roadmap to guide HRSD to plan, design, and construct future CIP projects in a proactive and phased approach in response to development trends and in coordination with each jurisdiction's comprehensive plan. This initiative will include a comprehensive analysis of population projections, zoning densities, and land uses in conformance with existing locality comprehensive plans and development activity trends. The Development Plan will identify future corridors for new interceptors and pertinent supporting infrastructure (Pressure Reducing Stations (PRS) and wet weather storage tanks) to convey new flow to an existing HRSD treatment plant or to a new facility if it is cost effective and in alignment with HRSD's long term treatment capacity needs. The deliverable(s) will incorporate dynamic dashboards using configured "commercial off-the-shelf (COTS) Environmental Systems Research Institute tools such as Web Maps, Story Maps, as well as PowerBI in addition to a comprehensive report.

**Project Justification:** This project is needed for HRSD to meet the challenges of the future in a cohesive, consistent, and comprehensive manner and to ensure HRSD's interceptor networks, treatment plants, and outfalls can accommodate future needs. Since the last HRSD Development Plan was published in 2000, the HRSD territory has expanded to include Surry County and the Towns of Surry and Dendron. Furthermore, many system improvements have been and continue to be implemented under various regulatory and non-regulatory HRSD program initiatives: the Consent Decree and Wet Weather management Plan, Chesapeake-Elizabeth and Boat Harbor Treatment Plant decommissions, the SWIFT program, Inflow and Infiltration Reduction program, and Nutrient Compliance. Most of these initiatives were the result of regulatory requirements and compliance under the EPA Consent Decree and DEQ Consent Order; however, strategic planning with a focus on regional development was not the main driver. The main drivers in developing the portfolio of projects in CIP for the past 10-15 years were twofold: (a) to reduce the frequency and severity of sanitary sewer overflows (SSOs), and (b) to comply with nutrient (nitrogen, phosphorus) loads discharge regulations set forth by EPA and VA DEQ agencies.

**Task Order Description:** Based on the agreed scope of services between HRSD and Hazen and Sawyer (Hazen), this project will provide a study including Data Collection and compilation, Sewer Flow Projections (existing, future horizons, build-out), Master Planning Development, and Digital Deliverables.

**Analysis of Cost:** The total cost for this study is estimated at \$500,000 based on preliminary estimates prepared by Hazen. The cost for this task order is based on the number of hours

anticipated to complete this effort and the hourly rates agreed upon in the General Engineering Services annual services contract. The task order amount is reasonable for effort and complexity anticipated to prepare this plan.

<b><u>Schedule:</u></b>	NTP	October 1, 2024
	Project Completion	January 31, 2026

## AGENDA ITEM 8. – September 24, 2024

**Subject:** James River Treatment Plant Primary Clarifier Pipes (1 and 2)  
Initial Appropriation – Non-Regulatory

**Recommended Action:** Appropriate total project funding in the amount of \$700,000.

**CIP Project:** JR014410

**Regulatory Requirement:** None

**Project Description:** This project will replace the #1 and #2 primary clarifier pipes and one section of drain piping that have been determined to be in imminent risk of failure. The primary clarifier influent and effluent pipe sections to be replaced is approximately 60 linear feet of 24-inch diameter reinforced concrete pipe. The drain piping to be replaces is approximately 100 linear feet of 6-inch ductile iron drain system piping.

**Project Justification:** The primary clarifier influent and effluent pipes were installed in 1967, as part of the treatment plant's original construction and in 1973, when the treatment plant was expanded from 5 to 15 million gallons per day (MGD). The drain piping was installed in 1978 when the treatment plant was expanded from 15 to 20 MGD. In May 2023, a plant operator fell through a section of primary clarifier effluent piping while making their rounds. This prompted an emergency repair and a condition assessment of all primary clarifier influent and effluent piping which discovered severe corrosion in other sections of piping and the likelihood of another failure within the next year. An inspection of the drainpipe, which terminates in the primary treatment section of the treatment plant, found a section of pipe missing in the bottom of the pipe due to corrosion.

**Task Order Description:** This task order will provide Design services for the replacement of the severely corroded sections of #1 and #2 primary clarifier pipes and the one section of severely corroded drain pipe.

**Analysis of Cost:** The estimated total project cost is based on \$50,000 for design, \$500,000 for construction and \$150,000 for contingency. Engineering services will be provided by Rummel Klepper and Kahl LLP (RK&K) under the Linear Infrastructure Projects Annual Services Contract. The preliminary work and associated task order with RK&K is projected to be less than the \$200,000 required for Commission action.

<b><u>Schedule:</u></b>	Design	October 2024
	Bid	April 2025
	Construction	June 2025
	Project Completion	December 2025

## AGENDA ITEM 9. – September 24, 2024

**Subject:** Lee Avenue-Wesley Street Horizontal Valve Replacement  
Additional Appropriation, Contract Award (>\$200,000), and Task Order (>\$200,000)

**Recommended Actions:**

- a. Appropriate additional funding in the amount of \$3,721,209.
- b. Award a contract to Bridgeman Civil, Inc. (BCI) in the amount of \$6,280,000.
- c. Approve a task order with Rummel, Klepper & Kahl, LLP (RK&K) in the amount of \$343,279.

**CIP Project: VP014800****Regulatory Requirement:** Rehab Action Plan Phase 2 (5/5/2025 Completion)

Budget	\$4,081,470
Previous Expenditures and Encumbrances	(\$551,401)
Available Balance	\$3,530,070
Proposed Contract Award to Bridgeman Civil, Inc.	(\$6,280,000)
Proposed Task Order to Rummel, Klepper & Kahl, LLP	(\$343,279)
Proposed Contingency	(\$628,000)
Project Shortage/Requested Additional Funding	(\$3,721,209)
Revised Total Project Authorized Funding	\$7,802,679

<b>Contract Status with Task Orders:</b>	<b>Amount</b>
Original Contract with Engineer	\$64,291
Total Value of Previous Task Orders	\$196,164
Requested Task Order	\$343,279
Total Value of All Task Orders	\$539,443
Revised Contract Value	\$603,734
Engineering Services as % of Construction	10%

**Type of Procurement:** Competitive Bid

In accordance with HRSD's competitive sealed bidding procedures, the Engineering Division advertised and solicited bids directly from potential bidders. The project was advertised on August 1, 2024, and two bids were received on August 27, 2024, as listed below:

<b>Bidder</b>	<b>Bid Amount</b>
Bridgeman Civil, Inc.	\$6,280,000
Tidewater Utility Construction, Inc.	\$7,478,000

**Engineer Estimate:** \$5,300,706

The design engineer, Rummel, Klepper & Kahl, LLP, evaluated the bids based upon the requirements in the invitation for bid and recommends award to the lowest responsive and responsible bidder Bridgeman Civil, Inc. in the amount of \$6,280,000.

**Project Description:** This project will replace the inoperable 36-inch horizontal gate valve and install a new 48-inch valve at the intersection of Lee Avenue and Wesley Street in the City of Portsmouth. A Preliminary Engineering Report was completed in November 2007 making these recommendations.

The attached [map](#) depicts the project location.

**Project Justification:** The 36-inch horizontal gate valve is currently stuck in the open position and, due to the configuration of the valve, will not close to allow flow isolation of force main line number SF-220 in case of a failure. Line SF-220 is a 36-inch reinforced concrete pipe (RCP) force main that was constructed in 1946. The installation of a new 48-inch valve on force main line number SF-221 where SF-221 intersects with SF-220 will allow flow isolation of SF-221 to the north and south of the intersection. Line SF-221 is a 48-inch RCP force main, approximately 15,000 linear feet (LF), and constructed in 1946 with isolation valves only located at each end. The two new valves will ensure proper operation in the event of a failure on these force mains.

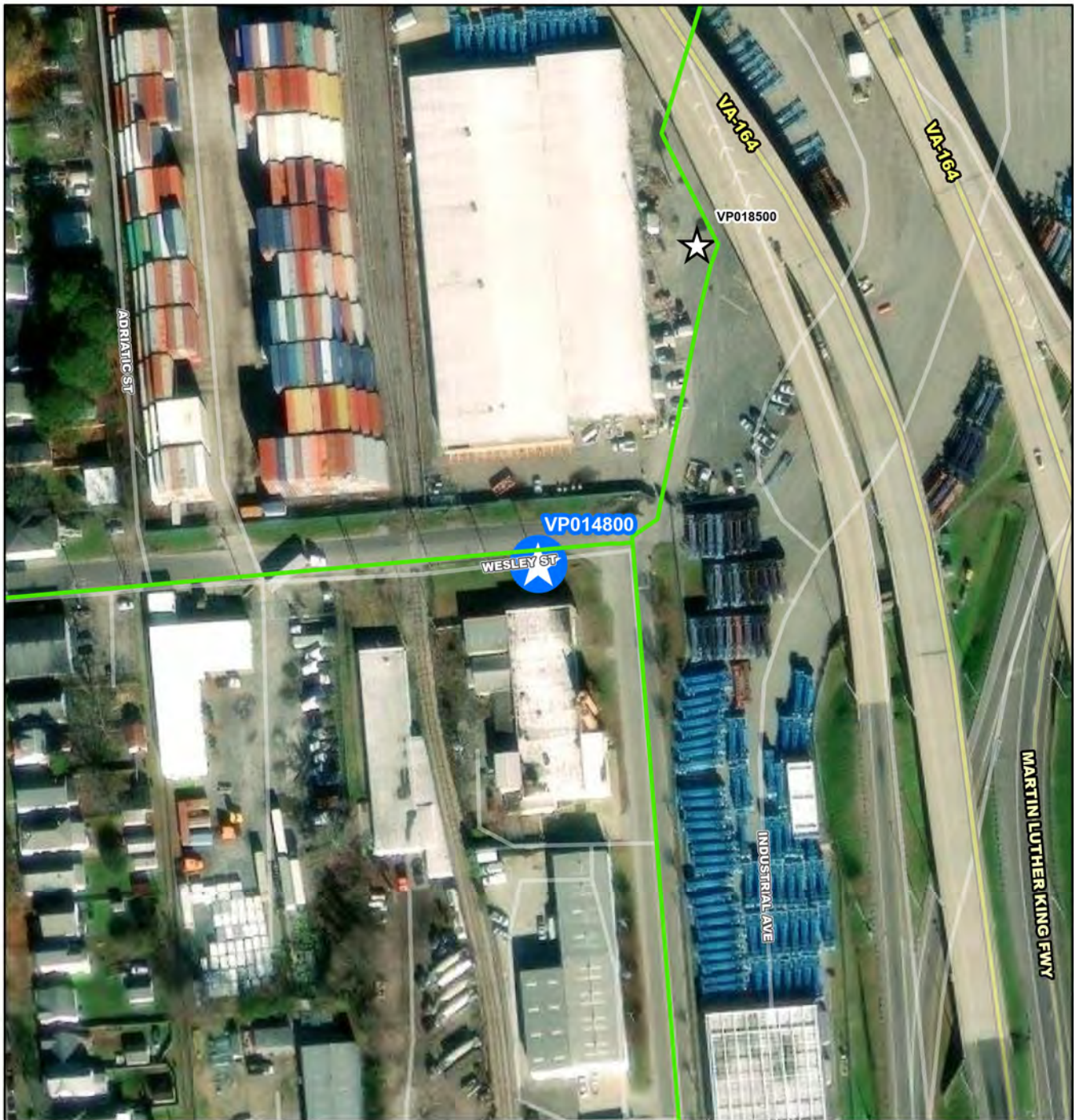
**Contract Description:** This contract is for construction services with Bridgeman Civil, Inc.

**Task Order Description:** This task order will provide construction administration and construction inspection from Rummel, Klepper & Kahl, LLP.





**Analysis of Cost:** This contract is for construction services with Bridgeman Civil, Inc. The bid amount of \$6,280,000 is 18% higher than the engineer's estimate of \$5,300,706. While the pricing differences substantially relate to two bid items, the higher bid result is primarily attributed to the saturated local and regional infrastructure market conditions for this type of highly specialized work and limited contractors willing to attempt work involving complex maintenance of service efforts and large diameter piping and valves. The engineer's estimate is based on plan material quantities, estimated labor requirements, supplier/vendor costs, average unit prices bid on recent similar projects and published cost data. The estimate does not attempt to forecast or represent the dynamic and extraordinary challenges of the current construction market conditions including a saturated construction environment and limited bidders for this type of specialized work. The bid results confirm an increasing trend in construction costs for projects of this nature which may be attributed to an abundance of local infrastructure-related construction work and construction labor pool limitations experienced in the current construction economy, known regulatory completion dates, and other domestic and international socio-economic drivers. The cost for this construction contract has been reviewed by RK&K and has been found to be reasonable. The proposed task order for RK&K has been reviewed and is reasonable. The fee for construction administration is 3.0% of the construction cost, and the construction inspection is 1.6% of the construction cost which agrees with similar efforts for comparable projects. The construction bid amount of \$6,280,000 and the fee for the construction-related engineering services of \$343,279 exceed the current balance available for this CIP project. A 10% construction contingency is also being requested. Therefore, the project requires \$3,721,209 in additional funding.

<b><u>Schedule:</u></b>	Construction	October 2025
	Project Completion	April 2025





VP014800

-  Project Interceptor Line
-  Project Interceptor Point
-  Project Pump Station Point
-  Project Area

**Legend**

-  CIP Interceptor Point
-  CIP Pump Station Point
-  CIP Interceptor Line
-  CIP Abandonment
-  CIP Project Area
-  HRSD Interceptor Force Main
-  HRSD Interceptor Gravity Main
-  HRSD Treatment Plant
-  HRSD Pressure Reducing Station
-  HRSD Pump Station

0 45 90 180 270 360 Feet

**VP014800**

**Lee Avenue-Wesley Street Horizontal Valve Replacement**



CIP Location



## AGENDA ITEM 10. – September 24, 2024

**Subject:** Williamsburg Treatment Plant Influent and Effluent Pipe Rehabilitation  
Initial Appropriation – Non-Regulatory

**Recommended Action:** Appropriate total project funding in the amount of \$3,652,000.

**CIP Project:** WB013400

**Project Description:** This project will include work to be completed at four locations upstream from the Williamsburg Treatment Plant headworks. The first location is on Ron Springs Road, near the intersection of Ron Springs Road and Magruder Avenue. The work to be completed at this location will include removing six valves, installing six new valves, and reconfiguring the alignment of the existing piping. The second location for this project will replace a non-operational main line valve at the Williamsburg Treatment Plant control valve vault (WB1001A-3). The third location will replace a section (approximately 350 linear feet) of the 30-inch prestressed concrete pressure pipe (PCCP) force main (NF-006) between the Kingsmill control valve vault and the Williamsburg Treatment Plant headworks. The fourth location will be the addition of six (6) 36-inch plug valves, two (2) 36-inch tees, and piping for two new emergency pump connections on each influent pipes just upstream the headworks building. The attached [map](#) depicts the project location.

**Project Justification:**

**Location 1:** This phase will facilitate system feasibility for sending flow between the Williamsburg Treatment Plant and James River Treatment Plant service areas by reconstructing the interconnect for the force mains located at the intersection of Ron Springs Road and Magruder Avenue.

**Location 2:** The mainline valve, the bypass for the Williamsburg Treatment Plant control valve vault, is non-operational. This is the only valve that could be used to avoid a catastrophic situation if a failure occurs at the control valve vault.

**Location 3:** The replacement of approximately 350 linear feet of 36-inch PCCP is necessary due to potential conditional issues. This pipeline was installed in the 1970s and there was a period of time when the Williamsburg Treatment Plant injected chemicals into this section of piping. The interior condition of the piping is unknown, but the entirety of the upstream pipe was replaced in 2016.

**Location 4:** In September 2020, the York River Treatment Plant experienced a catastrophic failure on the gravity pipeline that discharges from the grit removal building to the primary clarifiers. If an emergency pump connection were present at this location, the emergency repair would have been greatly simplified, less costly, and would have reduced the amount of sewage not recovered.

These new emergency connections at the Williamsburg Treatment Plant could also be used for condition assessment work at the headworks and provide cost savings for future projects.

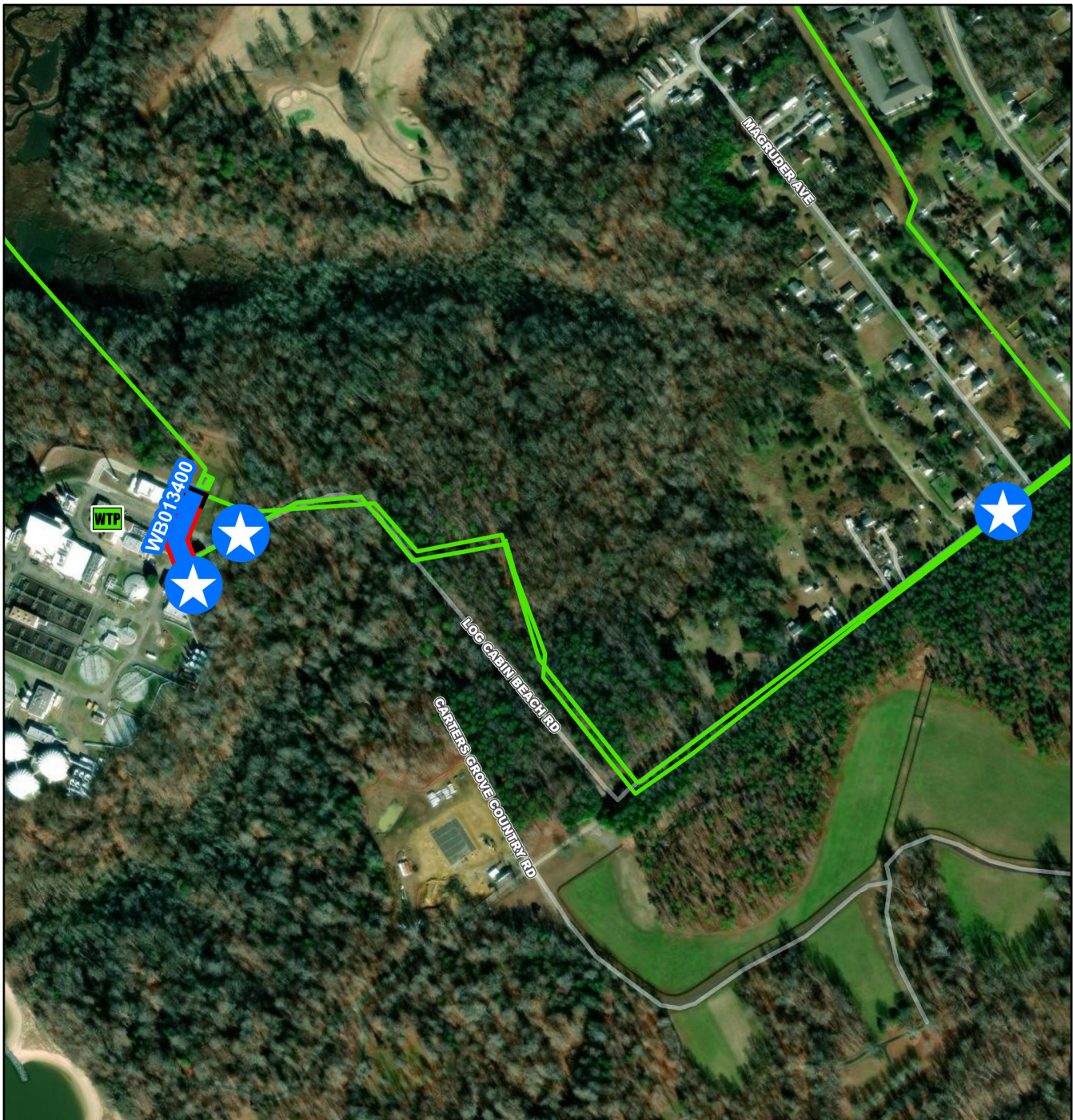
**Task Order Description:** This task order will provide necessary preliminary engineering phase services (PER) for the subject project.

**Analysis of Cost and Funding Description:** Through the use of HRSD's General Engineering Services Agreement, Rummel, Klepper and Kahl, LLP (RK&K), will be utilized to complete this effort in the amount of \$143,000. The preliminary work and associated task order with RK&K is less than the \$200,000 required for Commission action. The cost is based on a combination of actual, known

cost for the PER phase amount and estimates provided by HRSD. Funding for this project will include \$143,180 for the PER phase, \$400,000 for the Design phase, \$5,000 for the Pre-Construction Phase, \$2,590,000 for the Construction phase and \$513,000 for Contingency. Since the work area limits are known at this time, HRSD approved including the topographical survey for the project in the PER fee to complete the effort along with the PER effort.

<b><u>Schedule:</u></b>	PER	September 2024
	Design	April 2025
	Bid	October 2025
	Construction	January 2026
	Project Completion	June 2027





**WB013400**

- Project Interceptor Line
- Project Interceptor Point
- Project Location Point
- Project Area

**Legend**

- ★ CIP Interceptor Point
- ☆ CIP Pump Station Point
- Orange line CIP Interceptor Line
- Red line CIP Abandonment
- Red area CIP Project Area
- Green line HRSD Interceptor Force Main
- Black line HRSD Interceptor Gravity Main
- WTP HRSD Treatment Plant
- PRS HRSD Pressure Reducing Station
- PS HRSD Pump Station

0 165 330 660 990 1,320 Feet

## WB013400

### Williamsburg Treatment Plant Headworks Influent and Effluent Pipe Rehabilitation

N  
W E  
S  
CIP Location

AGENDA ITEM 11. – September 24, 2024

**Subject:** Commission Governance Guidelines  
Revision

**Recommended Action:** Adopt the revised Commission Governance Guidelines.

**Brief:** Staff recommends the following clarification in Section 3.B *Commission Meeting Format* in the attached [Commission Governance Guidelines](#)

Item	Regular Agenda	Consent Agenda	No Action Required/ Informational/ Recognition
Change Orders		>25% of original contract value or \$50,000, <i>or whichever is greater</i>	

## **HRSD Commission Governance Guidelines**

**Adopted May 22, 2007**

**Revised ~~July 23, 2024~~ September 24, 2024**

The Commission is charged with managing and controlling the functions and affairs of Hampton Roads Sanitation District (HRSD). HRSD's operations are accomplished by its employees under the supervision of the General Manager/CEO.

These governance guidelines are intended to support the Commission in its oversight role, which is set forth in the Acts of Assembly 1960, as amended (the Enabling Act). Some additional Commission responsibilities are specified in HRSD's Trust Agreements or required by federal or state laws.

The Commission and HRSD's management recognize that the interests of HRSD are advanced by responsibly addressing the concerns of constituencies, including employees, customers and the communities in which HRSD provides services. The Commission will review these Guidelines regularly in its continuing effort to achieve this goal.

### **SECTION 1. ROLE AND FUNCTION OF THE COMMISSION**

#### **A. Composition**

1. The Commission consists of eight members appointed by the Governor of Virginia to four-year terms.
2. At the time of their appointment and throughout their term of appointment, Commissioners must reside in the territory within the District from which they were appointed. Moving from this territory terminates that Commissioner's appointment.
3. Unless otherwise terminated in accordance with the Enabling Act, a Commissioner's term continues until the successor is appointed. Any person appointed to fill a vacancy shall serve for the unexpired term.
4. Commissioners are eligible for reappointment without limitation to the number of terms. Members may be suspended or removed at the Governor's pleasure.
5. Commissioners receive no salary but are compensated for travel and expenses associated with meeting attendance or while otherwise engaged in the discharge of their duties at the rate paid to members of the Commonwealth Transportation Board.
6. Each Commissioner shall be covered by a public official's liability policy paid for by HRSD.



## **HRSD Commission Governance Guidelines**

**Adopted May 22, 2007**

**Revised ~~July 23, 2024~~ September 24, 2024**

### **B. Commissioner Principles**

1. Commissioners are expected to devote as much time and attention as necessary to discharge their duties. This includes attending monthly Commission meetings and the meetings of any committees on which they may serve. Commissioners should notify the Commission Secretary whenever they are unable to attend a scheduled meeting. Commissioners may participate remotely in accordance with the Remote Participation Policy. Commissioners must notify the Chair of their desire to participate remotely prior to the meeting. Commissioners also may be asked to participate in special events and to represent HRSD at public meetings.
2. Commissioners shall be mindful of the best interest of the HRSD service area at large as opposed to those of the localities in which they reside.
3. Individual Commissioners may serve as liaisons to officials in the communities in which they reside or other localities within HRSD's service area.
4. Commissioners are expected to recuse themselves from discussion and abstain from voting on matters in which they may have a personal or professional conflict, and to announce the recusal or abstention in advance.

### **C. Structure**

1. The Commission shall annually elect one of its members as Chair and another as Vice-Chair.
2. The Commission's advisory committees are (1) Finance and (2) Operations and Nominations (O&N). These committees report to the Commission as needed. The Commission may elect to form a new standing or special committee or to disband an existing committee. The Commission Chair annually appoints the members and chairs of these committees. Committees are composed of three Commissioners and two are required for a quorum. All Commissioners are invited to participate in Committee meetings.
3. Committee meetings shall be scheduled as needed. The Commission Chair shall be an ex-officio member of all committees, with voice and vote. However, the Commission Chair shall not be counted in determining the number required for a Committee quorum or in determining whether or not a quorum is present.

## HRSD Commission Governance Guidelines

Adopted May 22, 2007

Revised ~~July 23, 2024~~ September 24, 2024

a. The Finance Committee shall:

- Review the financial forecast, annual operating and capital budgets, and rate schedules and report to the Commission prior to adoption
- Select both internal and external auditors
- Review the work plan and receive reports from the internal auditor
- Ensure the audit of the financial statements is completed and receive the audit report from the external auditor
- Receive the Annual Comprehensive Financial Report; and
- Review other financial related matters as may be referred to the Finance Committee by the Commission Chair.

b. The O&N Committee shall:

- Nominate officers for consideration annually and
- Review Commission policies as required or directed by the Commission, including, but not limited to:
  - (1) Commission Governance Guidelines
  - (2) Ethics Policy
  - (3) Virginia Freedom of Information Act Policy
  - (4) Remote Participation Policy

### D. Operation

1. The Commission has the authority to adopt bylaws and to make rules and regulations for the management of its affairs and the conduct of its business.
2. Unless otherwise announced, the Commission meets on the fourth Tuesday of each month January through October and on the third Tuesday of November and December. Special meetings are held when necessary. The General Manager/CEO sets the meeting agendas with advice from the Division Chiefs and the Chair. Agendas, with any relevant accompanying information or reports, are distributed to the Commissioners prior to meetings for review. When circumstances require, items may be added to the agenda after it has been distributed.
3. Four members shall constitute a quorum and the affirmative vote of four members shall be necessary for any action taken by the Commission. No vacancy in the membership of the Commission shall impair the right of a quorum to exercise all the rights and perform all the duties of the Commission.

## HRSD Commission Governance Guidelines

Adopted May 22, 2007

Revised ~~July 23, 2024~~ September 24, 2024

4. The rules contained in the current edition of ***Rosenberg's Rules of Order*** shall govern the Commission in all cases to which they are applicable and in which they are not inconsistent with state law or any special rules of order the Commission may adopt.
5. All meetings of the Commission, including Committee Meetings and Workshops, are public meetings and shall be held in conformance with the Virginia Freedom of Information Act. Remote participation in meetings shall be in accordance with the Remote Participation policy.
6. Workshops shall be scheduled as needed to allow informal dialogue on a topic or narrow range of topics. Appropriate staff shall be available to brief and facilitate as well as provide subject matter expertise. No official actions shall be taken during workshops.

### E. Enabling Act Authorizations

The Acts of Assembly authorize and empower the Commission to perform a variety of specified acts by means of its own officers, agents and employees or by contracts with any persons. Some of the most significant authorizations are:

1. To construct, improve, extend, enlarge, reconstruct, maintain, equip, repair and operate a sewage disposal system or systems, with or without associated water systems.
2. To issue revenue bonds, notes or other obligations.
3. To fix and collect rates, fees and other charges for HRSD services and facilities.
4. To acquire land, structures, property, rights, rights-of-way, easements, and other property interests by purchase, lease, grant or the exercise of the right of eminent domain in connection with sewage disposal systems or associated water systems.
5. To employ, at its discretion, consulting engineers, attorneys, accountants, construction and financial experts, managers and other such officers, employees and agents as may be necessary, and to fix their compensation.
6. To sue and to be sued.

## HRSD Commission Governance Guidelines

Adopted May 22, 2007

Revised ~~July 23, 2024~~ September 24, 2024

7. To prevent any person, jurisdiction or corporation from discharging into District waters any sewage, industrial wastes or other refuse that would pollute these waters.
8. To seek civil penalties or civil charges against owners in violation of pretreatment standards in permits or other requirements of HRSD's approved industrial waste control program.
9. To make and enter into all contracts and agreements necessary or incidental to the performance of its duties and execution of its powers.
10. The Commission does not have the power to mortgage, pledge, encumber or otherwise dispose of any part of the sewerage system or associated water systems except that which may no longer be necessary or useful for the Commission's purposes.

### SECTION 2. HRSD MANAGEMENT AND THE COMMISSION

Newly appointed Commissioners will receive a briefing from the General Manager/CEO and Division Chiefs regarding matters related to HRSD's mission and core services. At a minimum, Commissioners are briefed on Commission adopted policies, operations, financial matters and strategic directions. The Commission Secretary will provide information related to the Virginia [Freedom of Information Act](#) and Commission membership. In addition, new Commissioners may tour HRSD facilities as their schedules permit and be introduced to the chief elected officials of their localities as appropriate and practical to facilitate effective working relationships.

Commissioners have complete access to the General Manager/CEO and the Deputy General Manager, who each may refer them to Division Chiefs or other appropriate resources for assistance. The Secretary and Assistant Secretary of the Commission shall assist Commissioners with matters related to scheduling, expense reimbursement, access to information and meeting attendance.

#### A. Staff Relations

1. The Commission appoints a General Manager/CEO, who serves at the pleasure of the Commission. As the chief executive officer, the Commission delegates day-to-day operations to the General Manager/CEO within the broad framework of Commission established policies, budget and strategies. The Commission shall review the General Manager/CEO's performance and set compensation at least annually.

## HRSD Commission Governance Guidelines

Adopted May 22, 2007

Revised ~~July 23, 2024~~ September 24, 2024

2. The Commission appoints a Secretary, Assistant Secretary and a Treasurer who serve in these roles at the pleasure of the Commission. These appointments are made from existing staff positions. The Commission fixes their compensation through the annual budget process as these positions are in the HRSD position classification and compensation system.
3. The Commission periodically reviews and assesses the compensation paid to all HRSD employees as part of the annual budget process.
4. The Commission has delegated to the General Manager/CEO the responsibility to establish and maintain appropriate human resource policies.

### **B. Financial Oversight**

1. The Commission approves HRSD's Financial Policy.
2. The Commission approves the Annual Operating and Capital Budgets, Capital Improvement Program (CIP), Financial Forecast and Rate Schedules. HRSD's CIP is the result of significant work by all the departments in evaluating and recommending Capital Improvement Projects that ensure regulatory compliance, provide for adequate infrastructure reinvestment and meet the future growth needs of Hamptons Roads.
3. The Finance Committee meets as required to perform their financial oversight duties, including overseeing its auditors, and reports to the Commission regarding these activities.

### **C. Signatory Authorization**

Documents requiring the signature of HRSD shall be signed by such officer or officers as the Commission may from time to time designate. If signature is authorized by a vote of the Commission, the authorization should also include the identification of the officer, or officers permitted to sign the approved document on behalf of HRSD. The General Manager/CEO and the Deputy General Manager/CFO are authorized to sign on behalf of HRSD in the ordinary course of business any and all documents not requiring specific Commission approval. Additionally, the Commission has authorized the General Manager/CEO to delegate formal signatory authority to Senior Management and their staff as necessary for the effective operations of HRSD.

The Commission Secretary shall maintain a record of all specific signatory authorizations.



## HRSD Commission Governance Guidelines

Adopted May 22, 2007

Revised ~~July 23, 2024~~ September 24, 2024

### SECTION 3. COMMISSION MEETINGS

#### A. Commission Meeting Agenda

1. The Commission shall approve policies that govern HRSD business processes, significant financial practices, or service to localities except for those policies specifically delegated to the General Manager/CEO.
2. The Commission Meeting agenda shall be structured to ensure efficient and effective use of Commissioner's time and expertise.
3. The Commission Meeting agenda shall be prepared by the General Manager/CEO and distributed to the Commission typically five calendar days prior to the meeting date. Public notice of the meeting and posting of the agenda shall be in accordance with the Virginia Freedom of Information Act (§ 2.2-3700 et. Seq. of the Code of Virginia). The General Manager/CEO shall review the agenda with the Commission Chair prior to the meeting.
4. The Commission Meeting agenda is comprised of Regular Agenda, Consent Agenda and Informational Items.
  - Regular Agenda Items each require an individual vote by the Commission.
  - Consent Agenda Items generally reflect more routine business items and are grouped and may be voted on by the Commission in a singular vote. Consent Agenda items shall be limited to items meeting the requirements for Commission approval as detailed herein but not typically warranting a full briefing due to the nature of the action or previous communication with the Commission. Any item may be moved from the Consent Agenda to the Full Agenda when determined by the General Manager/CEO or any Commission member to be significant or warrant a discussion.
  - Informational Items are for information purposes and do not require an action by the Commission.

# HRSD Commission Governance Guidelines

Adopted May 22, 2007

Revised ~~July 23, 2024~~ September 24, 2024

## B. Commission Meeting Format

Item	Regular Agenda	Consent Agenda	No Action Required/ Informational/ Recognition
Agreements*	<ul style="list-style-type: none"> <li>• Design or Construction &gt;\$50,000</li> <li>• Real property - Permanent use of</li> <li>• Real property - Temporary use of &gt;1 year</li> <li>• HRSD Assets use of &gt;\$200,000</li> <li>• Multiple years and &gt;\$200,000</li> <li>• Obligates financial or personnel resources &gt;\$200,000</li> <li>• Cost Sharing or Reimbursement Agreements &gt; \$200,000</li> <li>• Intellectual Property Rights, Royalties and Licenses</li> <li>• Service Area Expansion</li> <li>• Sewer Service Agreements</li> <li>• Transfer of Assets to other entity</li> <li>• Transfer of Assets to HRSD</li> </ul>		
Agreements – Grants or contributions of value (Receipt and Award)*	>\$200,000	<\$200,000 if required by granting agency	
Agreements – Nutrient Trading Agreements*	>\$200,000 per year		
Agreements – Purchasing* <ul style="list-style-type: none"> <li>• Contract Awards</li> <li>• Purchase Orders</li> <li>• Task Orders</li> </ul>		>\$200,000 or initial award when future awards are expected to exceed \$200,000	
Change Orders		>25% of original contract value or \$50,000, <i>or whichever is greater</i>	
Alternative Project Delivery Methods	<ul style="list-style-type: none"> <li>• Use of Delivery Method</li> <li>• Comprehensive Agreement</li> <li>• Guaranteed Maximum Price</li> <li>• Stipulated Price</li> <li>• Vendor Proposal Compensation &gt;\$200,000 (Approval and Payment)</li> </ul>		
Audit Reports and Updates			✓
Awards and Recognition Earned or Granted			✓

# HRSD Commission Governance Guidelines

Adopted May 22, 2007

Revised ~~July 23, 2024~~ September 24, 2024

Item	Regular Agenda	Consent Agenda	No Action Required/ Informational/ Recognition
Budget	<ul style="list-style-type: none"> <li>• Operating Budget</li> <li>• Capital Budget</li> <li>• Capital Improvement Program – 10-year program without authorization of specific projects</li> <li>• Financial Forecast</li> <li>• Rate Schedule</li> </ul>		
Capital Improvement Project – <b>Non-Regulatory</b>	<ul style="list-style-type: none"> <li>• New CIP</li> <li>• Initial Appropriation</li> <li>• Additional Appropriation <math>\geq \\$1,000,000</math></li> <li>• Reduction in Scope and/or Appropriation <math>&gt;25\%</math></li> </ul>	Additional Appropriation $< \$1,000,000$	
Capital Improvement Project – <b>Regulatory</b>	<ul style="list-style-type: none"> <li>• New CIP</li> <li>• Initial Appropriation <math>\geq \\$10,000,000</math></li> <li>• Additional Appropriation <math>\geq \\$10,000,000</math></li> <li>• Reduction in Scope and/or Appropriation <math>&gt;25\%</math></li> </ul>	Initial or Additional Appropriation $< \$10,000,000$	
Debarment of a Vendor	✓		
Emergency Declaration			✓
Monthly Reports			✓
Personnel	<ul style="list-style-type: none"> <li>• Selection of General Manager/CEO, Secretary, Treasurer</li> </ul>		<ul style="list-style-type: none"> <li>• Employee length of service <math>\geq 20</math> years</li> <li>• Employee promotion (E1, L3, L4, P4, P5)</li> <li>• New employee (E1, L3, L4, P4, P5)</li> </ul>
Policies – New, Modified, Amended or Reissued	✓		
Real Property	<ul style="list-style-type: none"> <li>• Public Hearing for Acquisition by Condemnation or other means</li> <li>• Easement Acquisition, Dedication or Disposition <math>&gt; \\$50,000</math></li> </ul>	Vacation of Easement	
Real Property – Sale, Lease or Conveyance of HRSD property	✓		
Regulations	<ul style="list-style-type: none"> <li>• HRSD Enforcement Response Plan</li> <li>• HRSD Industrial Wastewater Discharge Regulations</li> </ul>		
Rejection of Bids	$> \$200,000$		
Selection of Commission Consultants	<ul style="list-style-type: none"> <li>• Auditors</li> <li>• Legal Counsel</li> </ul>		

**HRSD Commission Governance Guidelines**  
**Adopted May 22, 2007**  
Revised ~~July 23, 2024~~ **September 24, 2024**

\* Addendums or other changes where the Commission has authorized the General Manager/CEO to execute same, substantially as presented, together with such changes, modifications and deletions as the General Manager/CEO may deem necessary will not be presented for Commission approval unless recommended by legal counsel.

**SECTION 4. ANNUAL CALENDAR OF COMMISSION TOPICS**

Topic	Schedule	Frequency
EPA Consent Decree Update and Public Meeting	January	Annually
Capital Improvement Program Update	January	Quarterly
Evaluate General Manager/CEO's Performance	January	Annually
Commission Work Session to review Budget	February	Annually
Finance Committee Meeting to review CIP	March	Annually
Commission Work Session to review Budget	March	Annually
Capital Improvement Program Update	April	Quarterly
Finance Committee Meeting to review Budget	April	Annually
Receive Finance Committee report on Budget	April	Annually
Appoint Operations & Nominations (O&N) Committee	May	Annually
Approve Annual Operating and Capital Budgets, Capital Improvement Program, Financial Forecast and Rate Schedules	May	Annually
O&N Committee Meeting after Regular Meeting	May	Annually
O&N Committee Meeting before Regular Meeting	June	Annually
Election of Officers	June	Annually
Appoint Finance Committee	June-July	Annually
Capital Improvement Program Update	July	Quarterly
Commission Work Session – Ethics, FOIA and Governance Guidelines Training	August	Annually
Water Technology and Research Update	August	Annually
Finance Committee Meeting to Review Annual Comprehensive Financial Report (ACFR)	October	Annually
Capital Improvement Program Update	October	Quarterly
Diversity Procurement Report	October	Annually
Accept Finance Committee's Report on ACFR	October	Annually

## SECTION 5. ADVISORY ROLE OF FORMER COMMISSIONERS

So as not to lose the benefit of the insights gained during their years of service, former Commissioners may be asked to serve in an advisory role following the end of their term. Equipment required to facilitate communications with the General Manager/CEO and Commission officers may be provided to those serving in an advisory role.

Approved:

\_\_\_\_\_  
Willie Levenston, Jr.  
Commission Vice-Chair

\_\_\_\_\_  
Date

Attest:

\_\_\_\_\_  
Jennifer L. Cascio  
Commission Secretary

\_\_\_\_\_  
Date

Commission Seal

AGENDA ITEM 12. – September 24, 2024

**Subject:** Freedom of Information Act (FOIA) – Access to Public Records Policy Revisions

**Recommended Action:** Approve revised policy.

**Brief:** Staff recommends the following changes to the FOIA Policy:

- Clarification of policy title
- Section 3.3.6 updated fee schedule for FY-2025 rates
- Section 3.4 clarification of types of records maintained
- Section 3.5 clarification of commonly used exemptions

Staff is not aware of any additional changes to be made at this time. The revised [policy](#) has been reviewed by legal counsel.

**COMMISSION ADOPTED POLICY**  
***Freedom of Information Act – Access***  
***to Public Records***



Adopted:  
December 21, 2004

Revised: ~~August 22, 2023~~ September  
24, 2024

Page 1 of 12

**1.0 Purpose and Need**

HRSD is occasionally requested to provide records in accordance with the Virginia Freedom of Information Act (FOIA), found in §§ 2.2-3700 through 2.2-3715 of the Code of Virginia. FOIA guarantees the people of the Commonwealth, representatives of newspapers and magazines with circulation in the Commonwealth, and representatives of radio and television stations broadcasting in or into the Commonwealth access to public records held by public bodies, public officials and public employees. All public records are presumed open unless an exemption is invoked or otherwise prohibited by law.

**2.0 Definitions (See also Virginia Code § 2.2-3701)**

2.1 ***Information*** – as used in the exclusions established by Code of Virginia §§ 2.2-3705.1 through 2.2-3705.7, means the content within a public record that references a specifically identified subject matter, and shall not be interpreted to require the production of information that is not embodied in a public record.

2.2 ***Public Records*** (also referred to herein as “Records”) – all writings and recordings that consist of letters, words or numbers, or their equivalent, set down by handwriting, typewriting, printing, photostating, photography, magnetic impulse, optical or magneto-optical form, mechanical or electronic recording or other form of data compilation, however stored, and regardless of physical form or characteristics, prepared or owned by, or in the possession of a public body or its officers, employees or agents in the transaction of public business.

2.3 ***Records Held by Others*** – records consisting of studies, reports, plans, specifications and other project-related information prepared by consultants, contractors, suppliers and vendors working directly for HRSD as part of a specific project or service contract.

2.4 ***Working Papers*** – records prepared by or for the HRSD General Manager for their personal or deliberative use.

**3.0 FOIA Rights and Responsibilities**

In an effort to increase awareness of the public’s right to information, Virginia requires all public agencies to make their FOIA compliance doctrine “*FOIA Rights and Responsibilities: The Rights of the Requesters and the Responsibilities of HRSD*” available. This section includes:

**COMMISSION ADOPTED POLICY**  
***Freedom of Information Act – Access***  
***to Public Records***



**Adopted:**

**December 21, 2004**

**Revised:**

**~~August 22, 2023~~ September  
24, 2024**

**Page 2 of 12**

- A “plain language” explanation of the rights of the requester under FOIA, the procedure to obtain records, and the responsibilities of HRSD in complying with FOIA;
- Information on how to reach HRSD’s designated FOIA Officer;
- A general description of the types of public records maintained by HRSD and exemptions in law that permit or require such public records to be withheld from release; and
- HRSD’s policy on records it routinely withholds as permitted by FOIA.
- Policies complying with the following statement, which is provided herein in accordance with Virginia Code § 2.2-3704.1(A)(6).

“A public body may make reasonable charges not to exceed its actual cost incurred in accessing, duplicating, supplying, or searching for the requested records and shall make all reasonable efforts to supply the requested records at the lowest possible cost. No public body shall impose any extraneous, intermediary, or surplus fees or expenses to recoup the general costs associated with creating or maintaining records or transacting the general business of the public body. Any duplicating fee charged by a public body shall not exceed the actual cost of duplication. Prior to conducting a search for records, the public body shall notify the requester in writing that the public body may make reasonable charges not to exceed its actual cost incurred in accessing, duplicating, supplying, or searching for requested records and inquire of the requester whether he would like to request a cost estimate in advance of the supplying of the requested records as set forth in subsection F of § 2.2-3704 of the Code of Virginia.”

### **3.1 The Rights of Requesters**

- Requesters have the right to request to inspect or receive copies of public records, or both. Only HRSD employees will access information and public records stored electronically.
- HRSD may require the requester to provide their name and legal address.



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- Requesters have the right to request that any charges for the requested records be estimated in advance. HRSD must notify the requester in writing that it may make reasonable charges not to exceed its actual cost incurred in accessing, duplicating, supplying, or searching for the requested records and inquire if the requester would like to request a cost estimate in advance of supplying the requested records. If a cost estimate is requested, the period of time for HRSD's response to the records request does not begin until it receives a response regarding the estimate. If there is no response from the requester within 30 days following provision of the estimate, HRSD will consider the request withdrawn.
- Records may be requested by U.S. Mail, fax, email, in person, or over the phone. FOIA does not require the use of any particular method to convey the request. FOIA also does not require that the request be in writing, nor does the request need to state that the records being requested are pursuant to FOIA. From a practical perspective, it is helpful for all parties for requests to be submitted in writing to create a record of the request and provide HRSD with a clear statement of what records are being requested. This helps to prevent misunderstanding over a verbal request. However, HRSD cannot refuse to respond to a FOIA request if the requester elects not to submit it in writing.
- Requesters must identify the records they are seeking with reasonable specificity. This is a common-sense standard. It does not refer to or limit the volume or number of records requested; instead, it requires the requester to be specific enough to allow HRSD to identify and locate the records being sought.
- HRSD is only required to provide existing public records. FOIA gives requesters a right to inspect or receive a copy of records. It does not apply to a situation where general questions about the work of HRSD are asked, nor does it require HRSD to create a record that does not exist.
- Requesters may choose to receive electronic records in any format used by HRSD in the regular course of business. For example, requesters may elect to receive those records electronically, via email, on a computer disk or flash drive, or to receive a printed copy of those records.
- If HRSD has questions about a records request, please cooperate with staff's efforts to clarify the type of records being sought, or to attempt to reach a reasonable agreement about a response to a large or complex request.

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Making a FOIA request is not an adversarial process, but discussion may be needed to understand what records are being sought in the request.

- To request records from HRSD or ask questions about requesting records, please contact the designated FOIA officer:

Jennifer Cascio  
FOIA Officer  
HRSD  
PO Box 5911  
Virginia Beach, Virginia, 23471-0911  
757.460.7003  
[foia@hrsd.com](mailto:foia@hrsd.com)

- In addition, the Freedom of Information Advisory Council (FOIA Council) is available to answer any questions about FOIA. The Council was created in the legislative branch of state government to issue opinions on the operation and application of FOIA, to publish educational materials, and to provide training about FOIA. However, please be aware that the Council is not a records repository and does not process records requests on behalf of other public bodies, nor is the Council an investigative or enforcement agency. The Council may be contacted by or by phone at 804.698-1810 or toll free at 866.448.4100 or by email at [foiacouncil@dls.virginia.gov](mailto:foiacouncil@dls.virginia.gov).
- If the requester believes that their FOIA rights have been violated, they may file a petition in district or circuit court to compel compliance with FOIA. Alternatively, the requester may contact the FOIA Council for a nonbinding advisory opinion.
- The FOIA Council also accepts comments on the quality of assistance provided to the requester by HRSD. The comment form is available online at <http://foiacouncil.dls.virginia.gov/sample%20letters/welcome.htm>.

### **3.2 The Responsibilities of HRSD in Responding to Requests**

- HRSD must respond within five working days of receiving a request. "Day One" is considered the working day after a request is received. The five-day period does not include weekends, state holidays, or when HRSD is closed for business.

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- The reason for the request for public records is irrelevant, and the requester is not obligated to state why they want the records.
- FOIA requires HRSD to make one of the following responses to a request within the five working day time period:
  - (1) The requested records are provided in their entirety.
  - (2) The requested records are withheld in their entirety because they are subject to a specific statutory exemption. If all of the records are being withheld, HRSD must send a written response identifying the volume and subject matter of the records being withheld and stating the specific section of the Code of Virginia that authorizes withholding the records.
  - (3) The requested records are provided in part but are withheld in part. HRSD cannot withhold an entire record if only a portion of it is subject to an exemption. In this instance, HRSD will redact the portion of the record that may be withheld and provide the remainder of the record. HRSD must provide a written response stating, with reasonable particularity, the subject matter of the withheld portions and the specific section of the Code of Virginia that authorizes the withholding of the records.
  - (4) That the requested records cannot be found or do not exist. Only documents that exist will be made available for inspection or produced. It is not the responsibility of HRSD to create any documents to respond to a request. However, if HRSD knows that another public body has the requested records, contact information for the other public body will be included in the response.
  - (5) If it is not practically possible for HRSD to provide the requested records or to determine whether they are available within the five work-day period, including an explanation of the conditions that make the response impossible. Thereafter, HRSD shall have seven additional workdays, for a total of 12 working days, to respond to the request.
- If the request is for a very large number of records, or the request is complex, and HRSD believes that we cannot provide the records within 12 working days without disrupting our other operational responsibilities, HRSD may

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petition the circuit court for additional time to respond to the request. However, HRSD will make a reasonable effort to reach an agreement with the requester concerning the production or the records before petitioning the court for additional time.

- The time periods and responses described above may be tolled or adjusted consistent with the cost-related provisions of FOIA and this Policy.
- The FOIA Officer shall take all necessary precautions for preservation and safekeeping of the records.
- If HRSD receives a request for records related to public safety that are excluded under clauses (a) or (b) of Code of Virginia § 2.2-3705.2(14), HRSD shall notify the Secretary of Public Safety and Homeland Security, or their designee of such request and the response made by HRSD to the request.

### **3.3 Costs**

FOIA allows HRSD to charge for the actual costs of responding to FOIA requests. This would include items like staff time spent searching for the requested records, copying costs, or any other costs directly related to supplying the requested records. No charges will include general overhead costs and HRSD will not impose any extraneous, intermediary, or surplus fees or expenses to recoup the general costs associated with creating or maintaining records or transacting the general business of HRSD. Any duplicating fee charged by HRSD shall not exceed the actual cost of duplication.

If HRSD estimates that it will cost more than \$200 to respond to a request, a deposit, not to exceed the amount of the estimate, shall be required before proceeding with the request. The period for providing a response to the request does not include the time between when a deposit is requested and when a requester responds.

All deposits shall be paid by credit card, check or money order payable to HRSD and mailed or delivered to HRSD's office at 1434 Air Rail Avenue, Virginia Beach, Virginia 23455. Any outstanding balance will be immediately due and payable by the requester upon providing the requested records. Any balance remaining from the deposit shall be returned to the requester.

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If a requester owes HRSD money from a previous FOIA request that has remained unpaid for more than 30 days, HRSD may require payment of the past-due bill before responding to a new FOIA request.

- 3.3.1 Labor Costs: Time necessary to respond to the request, including to locate, retrieve, and/or reproduce records will be charged at the hourly rate for the staff person responding to the request as listed in the fee schedule below.
- 3.3.2 Paper Copies: Cost for providing paper copies will be based on prices established in HRSD's copier (machine usage fee) and paper supply contracts as listed in the fee schedule below. Larger drawings and blueprints will be copied by outside contractors and charged at their usual rate. Postage and other material fees will be charged at their actual costs.
- 3.3.3 Electronic Records: Costs for providing electronic records will be charged at the hourly rate as listed in the fee schedule below. Any materials such as flash drives provided to the requester will be charged at their actual costs.
- 3.3.4 There will be no mark-up or profit charged to the above-mentioned costs nor shall HRSD charge any extraneous, intermediary, or surplus fees or expenses to recoup the general costs associated with creating or maintaining records or transacting the business of HRSD. HRSD will make all reasonable efforts to supply the requested records at the lowest possible cost, including utilizing the appropriate staff person to respond to the request.
- 3.3.5 Charges may be waived if the request is specific and limited such that responsive electronic records can be found and produced for less than \$200. However, HRSD maintains the right to recover all costs incurred consistent with FOIA.
- 3.3.6 Fee Schedule

- Paper Copies:

Size	Cost per Page
8 ½" x 11"	\$0.13
8 ½" x 14"	\$0.14
11" x 17"	\$0.15

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- Hourly rate of person searching for records:

<u>Grade</u>	<u>Hourly Rate</u>	<u>Title</u>
4	\$22	Administrative Assistant
5	\$25	Accounts Payable Coordinator Accounts Receivable Technician
6	\$27	Accounts Receivable Specialist Coordinator Technician
7	\$31	ProCard and Contract Administrator Procurement Specialist Public Information Specialist
8	\$36	Accounts Payable Supervisor Commission Secretary/FOIA Officer Contract Specialist Data Analyst Specialist Real Estate Manager Senior Procurement Specialist
9	\$41	Analyst Chief Systems Operator Chief Maintenance Management Occupational Health & Safety Professional Supervising Specialist Planning Engineer Senior Programmer Analyst
10	\$47	Administrator Engineer Human Resources Business Partner Programmer Senior Data Analyst Senior Real Estate Manager Superintendent
11	\$54	Cybersecurity Analyst Hydrogeologist Manager Procurement Analyst Scientist Senior Systems Engineer
12	\$63	Process Engineers Senior Project Manager
13	\$72	Director Oracle Developer Programming Development Manager Security Manager
14	\$87	Chief

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<u>Grade</u>	<u>Hourly Rate</u>	<u>Title</u>
4	\$24.93	Coordinators
5	\$27.17	GIS CAD & Safety Technician
6	\$30.91	Public Information Specialists/Procurement Specialist/Contract Specialists
7	\$35.18	FOIA Officer/Supervisor/Specialists/Chief Systems Operators/Engineering Analysts
8	\$41.80	Analysts/Safety Professionals/Ops Superintendents/Supervising Specialists
9	\$47.57	Managers/Scientists
10	\$51.86	Process Engineers
11	\$59.01	Chiefs
12	\$73.17	Directors

**IT Staff:**

<u>Grade</u>	<u>Hourly Rate</u>	<u>Title</u>
4	\$26.17	Admin Coordinator
5	\$28.52	Telecom Coordinator
6	\$32.46	Systems Analyst/Web portal programmer
7	\$36.94	IT Helpdesk supervisor
8	\$43.89	Analysts/Developers/Administrators
9	\$49.95	Managers and Engineers
11	\$61.96	Chiefs
12	\$76.83	Director

### 3.4 Types of Records

Records maintained by HRSD include, for example, ~~minutes of~~ HRSD Commission meeting ~~minutes~~, ~~personnel records~~, record drawings, and contracts into which HRSD has entered. If unsure as to whether HRSD has the record(s) being sought, please contact the HRSD FOIA Officer directly.

### 3.5 Commonly Used Exemptions

The Code of Virginia allows any public body to withhold certain records from public disclosure in its discretion. For a full list of exemptions, see the Code of

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Virginia § 2.2-3705.1 *et seq.* Exemptions HRSD may use include, but are not limited to, the following:

- Personnel records § 2.2-3705.1 (1)
- Records subject to attorney-client privilege § 2.2-3705.1 (2)
- *Records compiled exclusively for use in closed meetings § 2.2-3705.1 (5)*
- Vendor proprietary information *software* § 2.2-3705.1 (6)
- Appraisals and cost estimates of real property subject to a proposed purchase, sale or lease, prior to the completion of such purchase, sale or lease § 2.2-3705.1 (8)
- Information relating to the negotiation and award of a contract, prior to a contract being awarded § 2.2-3705.1 (12)
- The portions of records that contain account numbers or routing information for any credit card, debit card or any other account with a financial institution of any person or public body § 2.2-3705.1 (13)
- *Documentation that describes the design, function, operation or access control features of any security system § 2.2-3705.2 (14)*
- *Proprietary records and trade secrets § 2.2-3705.6*
- General Manager's correspondence and working papers § 2.2-3705.7 (2)
- Customer account information § 2.2-3705.7 (7)
- Information and records containing written advice of counsel, information protected by attorney-client privilege, and legal memoranda and other work product for litigation or administrative investigations § 2.2-3705.1 (2), (3)
- Information, such as social security numbers, made confidential under other laws.



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### **3.6 Policy Regarding the Use of Exemptions**

HRSD reserves the right to withhold, exempt or redact any and all records that are allowed or required to be withheld, exempted, redacted, or excluded from production by law. It is HRSD's policy to withhold any information and records to protect:

- the privacy of HRSD personnel and officials,
- the property and pecuniary interests of HRSD,
- the privacy of customers,
- legal advice, work product, or attorney-client privilege,
- HRSD's interests related to administrative investigations and litigation,
- matters for discussion in closed meeting of the HRSD Commission, and
- the safety of HRSD systems and facilities, and the public generally.

### **3.7 Resources available to the public:**

- [Chapter 37 of Title 2.2](#) of the Code of Virginia, as amended, also known as [The Virginia Freedom of Information Act](#);
- the [FOIA Council](#); and
- the [Virginia Coalition for Open Government](#).

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**4.0 HRSD's Procedures**

- 4.1 Any requests for public records should be immediately forwarded to the FOIA Officer, who will log when and by whom the request was received. The FOIA Officer will provide the General Manager with a copy of each request and seek their guidance on obtaining legal advice, if necessary, and determining who should respond. The FOIA Officer will coordinate the response and assure the request is acted upon in the prescribed amount of time, logging the response date. The Chief Communications Officer will serve as backup FOIA Officer when necessary.
- 4.2 The FOIA Officer shall be trained by legal counsel, the FOIA Council, or through an online course offered by the FOIA Council. Training shall be completed as required by the Code of Virginia.

Approved:

\_\_\_\_\_  
Willie Levenston, Jr.  
Commission Vice-Chair

\_\_\_\_\_  
Date

Attest:

\_\_\_\_\_  
Jennifer L. Cascio  
Commission Secretary

\_\_\_\_\_  
Date

Commission Seal

AGENDA ITEM 13. – September 24, 2024

**Subject:** Conflict of Interest, Ethics and FOIA Training

**Recommended Action:** No action is required.

**Brief:** Commission General Counsel, Robyn Hansen, of Sands Anderson will provide an overview of ethics and conflict of interest for the Commission, which will meet the periodic training requirement per the Ethics Policy for Commission members.

In addition, she will provide an overview of the Freedom of Information Act (FOIA) laws related to meetings that must be followed by public servants. The presentation will include an explanation of what constitutes a meeting and the appropriate use of emails by Commission members.

AGENDA ITEM 14. – September 24, 2024

**Subject:** New Business

AGENDA ITEM 15. – September 24, 2024

**Subject:** Unfinished Business

AGENDA ITEM 16. – September 24, 2024

**Subject:** Commissioner Comments

AGENDA ITEM 17. – September 24, 2024

**Subject:** Informational Items

**Recommended Action:** No action is required.

**Brief:** The following items listed below are presented for information.

- a. Management Reports
  - (1) [General Manager](#)
  - (2) [Communications](#)
  - (3) [Engineering](#)
  - (4) [Finance](#)
  - (5) [Information Technology](#)
  - (6) [Operations](#)
  - (7) [Talent Management](#)
  - (8) [Water Quality](#)
  - (9) [Report of Internal Audit Activities](#)
- b. [Strategic Measures Summary](#)

September 13, 2024

Re: General Manager's Report



## Environmental Responsibility

With the world-record directional drill completed, work has begun on the portion of the James River Crossing force main connecting Boat Harbor and Nansemond via marine open trench method.

At the Atlantic Treatment Plant, minimizing off-site odors remains one of the highest priorities. One of the sources, Odor Control System (OCS) D, which was damaged in a fire over a year ago, is now fully optimized and performing well.

With the amazing help of our contractor, Bridgeman Civil, our staff, and consultant Hazen and Sawyer, working around the clock, the bulldozer that damaged our large-diameter force main in Virginia Beach was safely removed without incident, and 20-feet of new pipe was installed.

The Chief Operations Officer and I met with Black & Veatch's executive team to discuss the importance of the Atlantic Treatment Plant design and impact to the surrounding community.

**Treatment Compliance and System Operations:** There were multiple events reported this month. Additional details are available in the Air and Effluent Summary in the Water Quality monthly report.

- From Fiscal Year (FY) 2025 to date, there have been zero Permit Exceedances out of 9,421 Total Possible Exceedances.
- Pounds of Pollutants Removed in FY 2025 to date: 39.4 million pounds.

**Water Quality:** No civil penalties were issued in August.



## Financial Stewardship

Staff are working closely with the Department of Environmental Quality (DEQ) to finalize the Chesapeake-Elizabeth Offline Program Water Quality Improvement Fund (WQIF) grant. The agreement is slated for the September Commission meeting.

Staff are working on another Environmental Protection Agency (EPA) Water Infrastructure Finance & Innovation Act (WIFIA) loan closing and will be presenting this to the Commission in September.



The Debt Solutions team continues their outbound call program to proactively promote available financial assistance and pay plans to prevent disconnections. Approximately \$700,000 in past due payments was collected in August.



## **Talent**

Jacob Hoagland, VIP Lead Operator, developed a ratio/guide that the operators could use to bring down polymer flow and natural gas usage when solids blend changes. This will result in annual savings of \$136,000.

As recommended by our internal auditor, SC&H, Human Resources will be working with our vendor Business Document Solutions (BDS) to scan all our active personnel and safety files.

Learning & Development will be implementing a new Learning Management System (LMS) called Cornerstone. This software will help us manage, track and monitor compliance training among other things.

SPARC sessions have begun. They are internal strategic planning/idea generating sessions at the department level using “Design Thinking” concepts as taught in William & Mary’s MBA program. This information will help develop roadmaps and action plans that align with the Strategic Plan.

For Fiscal Year 2024, staff performed over 90 technical presentations around the country on a variety of topics. This highlights HRSD’s expertise and willingness to share ideas to spur continued innovation.

I participated in the following meetings/activities with HRSD personnel:

1. Chief Operation Officer presented their 5-year roadmap.
2. Chief People Officer presented their 5-year roadmap.
3. Deputy General Manager presented their 5-year roadmap.
4. Chief of Water Quality presented their 5-year roadmap.



## **Community Engagement**

On August 1, staff provided a SWIFT Research Center tour to Regional Business entities including staff from the Hampton Roads Executive Roundtable and Hampton Roads Alliance.

On August 2, staff provided a boat tour to Jennifer Walle, Deputy Secretary of Historic and Natural Resources, Department of Environmental Quality (DEQ) and Virginia Marine

Resources Commission (VMRC) staff. Our Design Build contractor provided an overview of the world record horizontal directional drill and an update on our boat harbor pump station.

On August 5, Congresswoman Kiggans toured our Onancock plant and presented HRSD with a \$1.25 million Congressionally-Directed Spending check for Eastern Shore wastewater improvements.

On August 23, staff provide a SWIFT Research Center tour as part of the Spotlight Peninsula series. Over thirty people from local businesses attended.

On August 30, staff provided a boat tour to Stefanie Taillon, Deputy Secretary of Historic and Natural Resources, VMRC Commissioner Jamie Green, and Chris Moore Chesapeake Bay Foundation Virginia President. Our Design-Build contractor provided an overview of the world-record horizontal directional drill and an update on our boat harbor pump station.

Staff attended the quarterly Aquifer Recharge Oversight Committee meeting virtually.



## Innovation

There has been increasing cyber threat activity on our networks from other countries. This ties to the national alerts we've been receiving about threats to the water sector. Our Cyber team is taking steps to strengthen our defenses.

Work continues on the deployment of our new billing and payment solution and our phased implementation schedule remains intact.

Staff are working on a radar level measurement device for the West Point Treatment Plant storage pond so that it can be used as influent flow equalization.

**I look forward to seeing you in Virginia Beach at 9:00 a.m. on Tuesday, September 24, 2024.**

Respectfully submitted,

Jay Bernas, P.E.  
General Manager

TO: General Manager

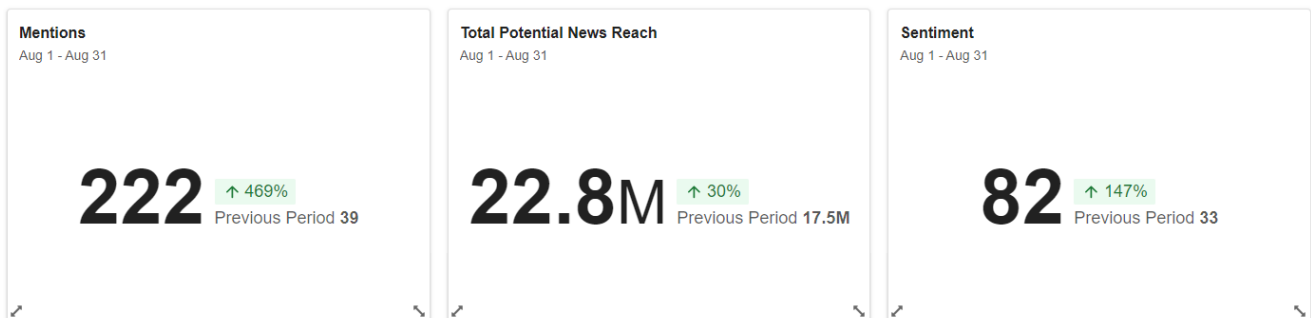
FROM: Chief Communications Officer

SUBJECT: Monthly Report for August 2024

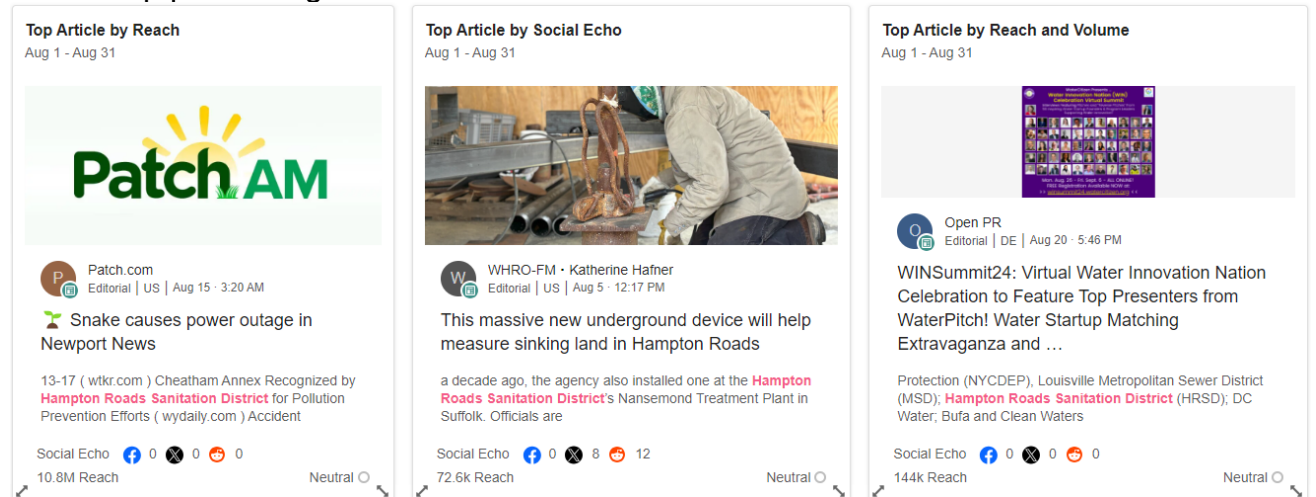
DATE: September 12, 2024

A. Publicity and Promotion

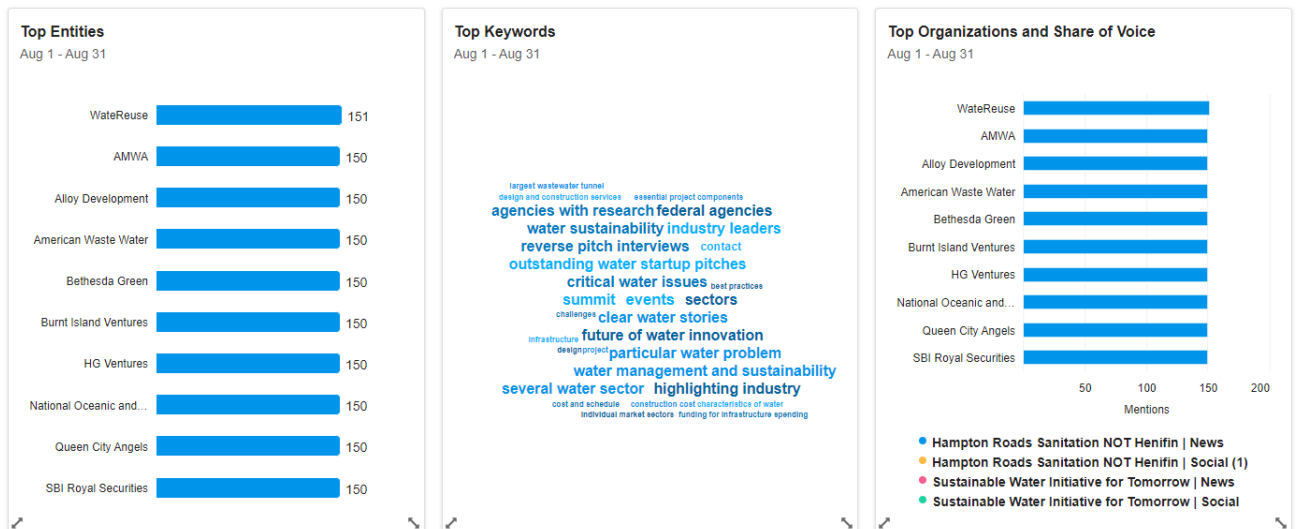
1. HRSD and Sustainable Water Initiative For Tomorrow (SWIFT) were mentioned or featured in 11 stories this month. Topics included:
  - a. WHRO story about the USGS Extensometer at the Nansemond Treatment Plant (NTP)
  - b. Garney selection for Nansemond SWIFT Facility
  - c. Water & Wastes Digest story about Water reuse
  - d. Congresswoman Jen Kiggans' visit to HRSD's Onancock Treatment Plant
  - e. COVID tracking and surveillance update story reveals uptick in COVID cases
2. Analysis of Media Coverage
  - a. Key results for August



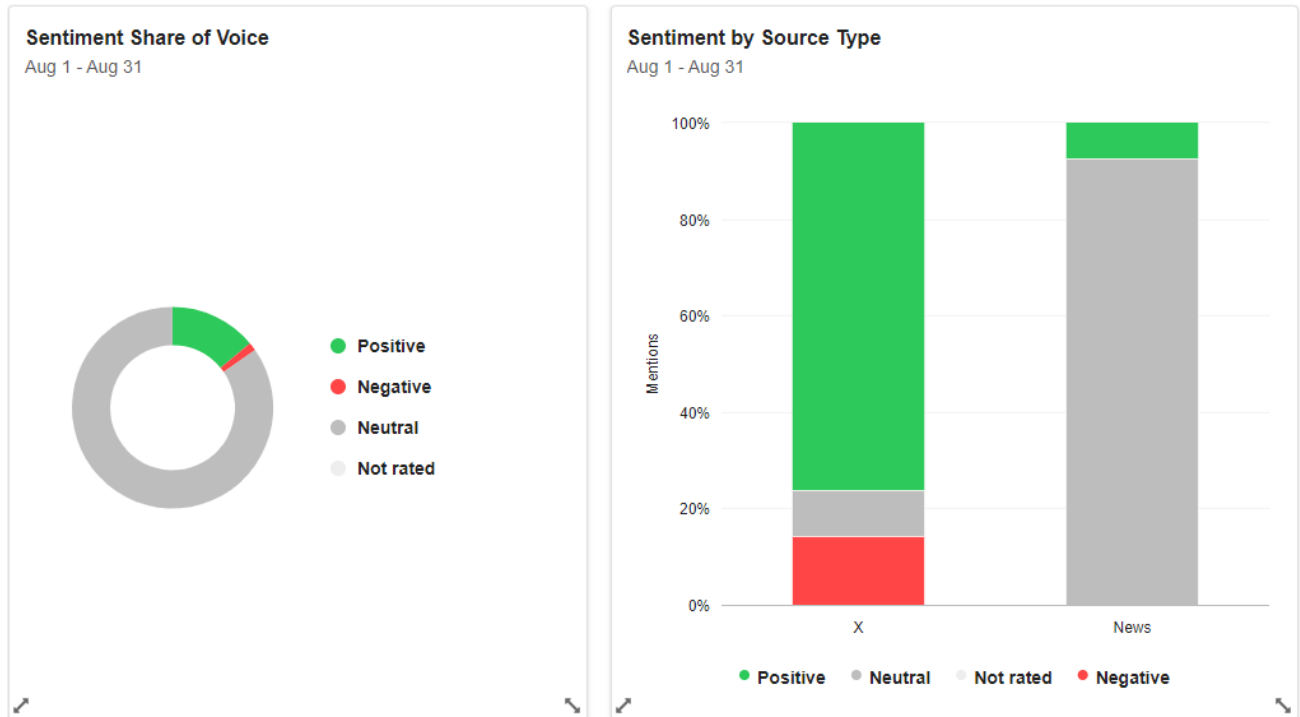
## b. Top performing news content



## c. Top entities and keywords

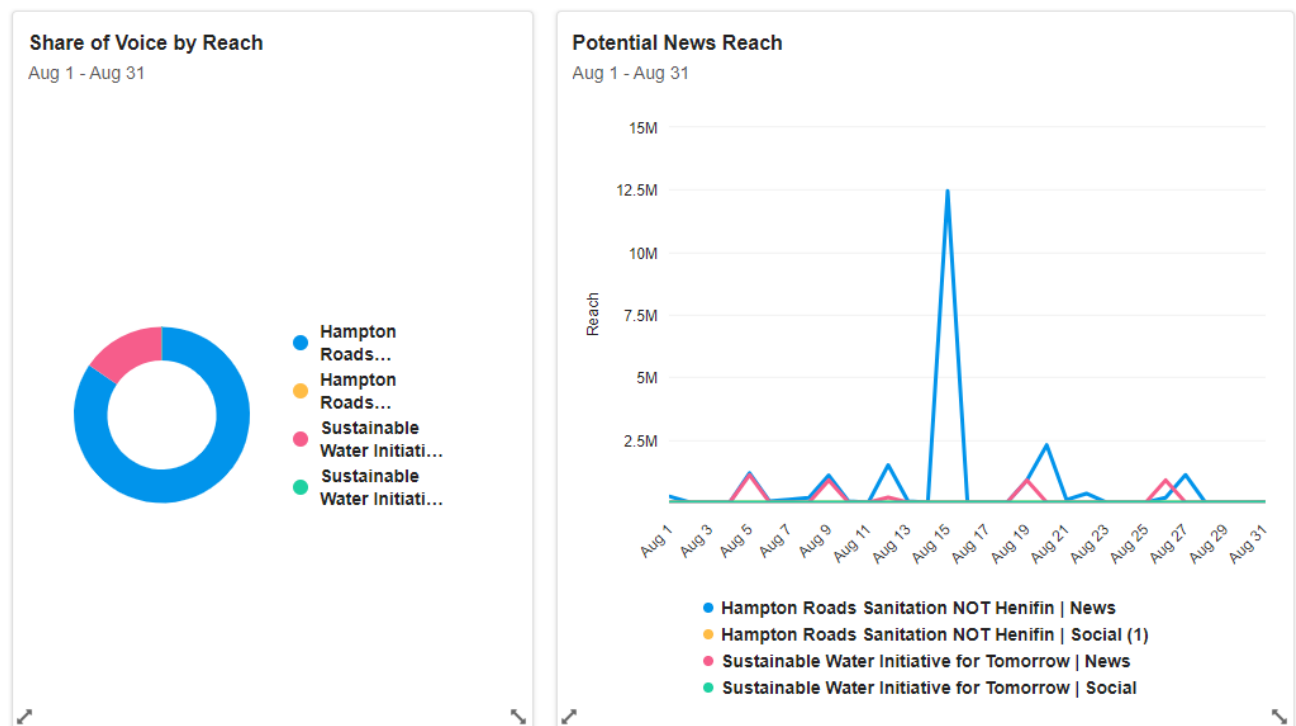


d. How favorable is the content?

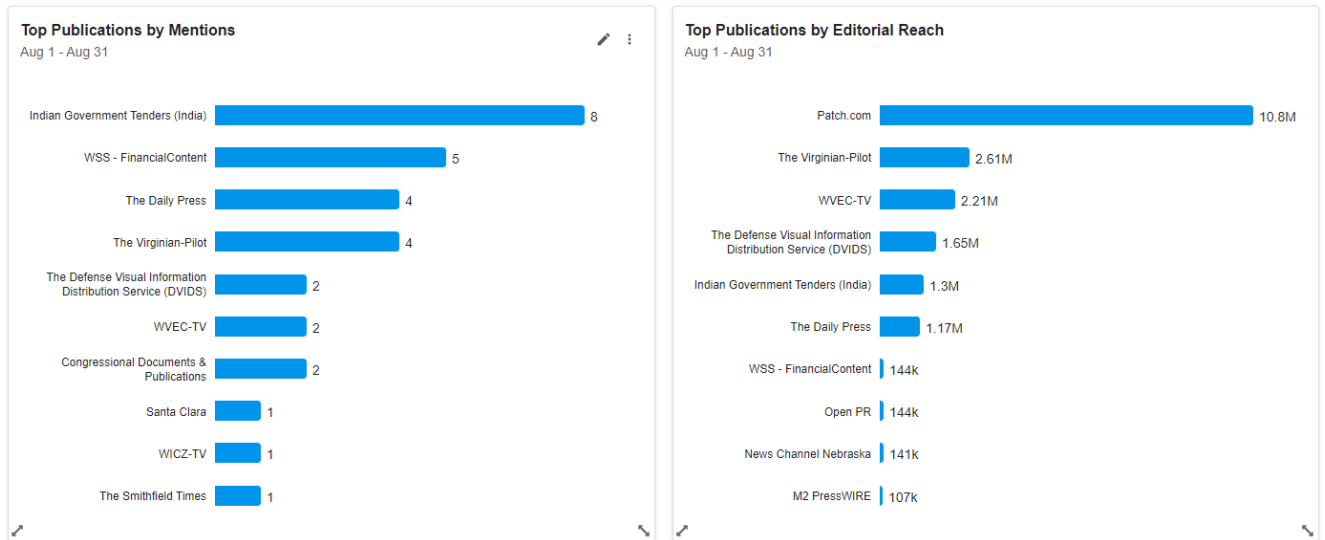


(Negative sentiment attributed to tweets about land subsidence and balloons released into the environment – additional content was positive within the tweets)

e. What is the potential reach?



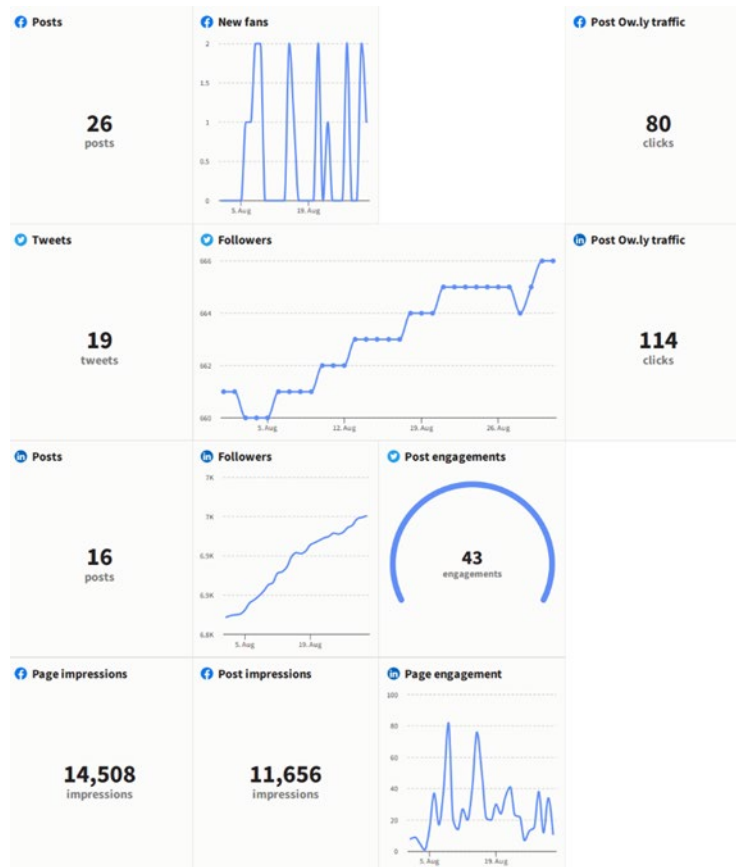
## f. Top publishers



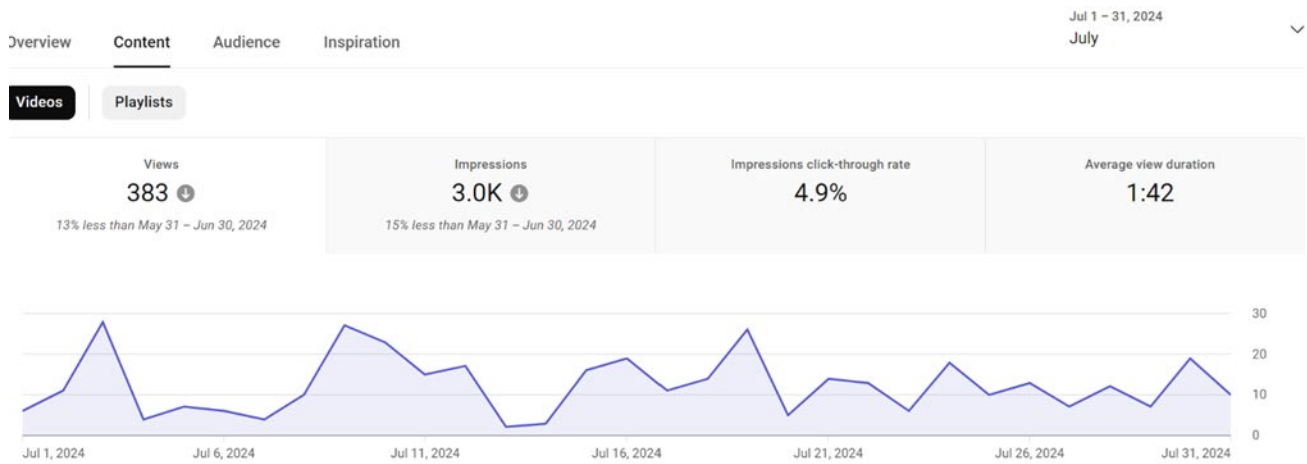
## Community Engagement

### B. Social Media and Online Engagement

#### 1. Metrics – Facebook, X and LinkedIn



## 2. YouTube

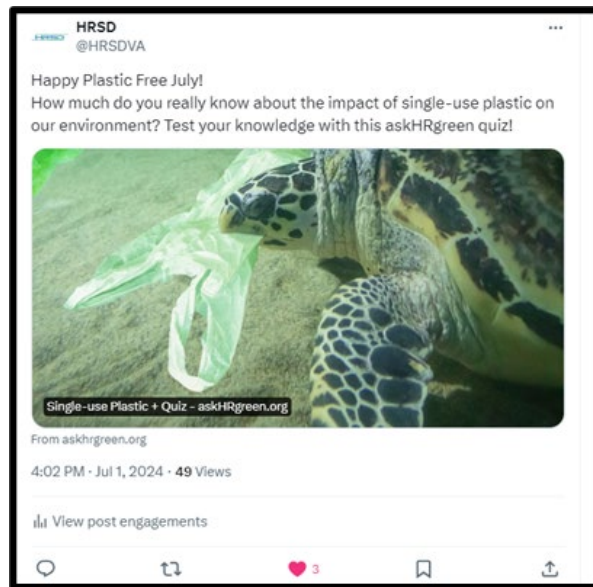


## 3. Top posts on Facebook, Twitter, and YouTube

### a. Top Facebook post



b. Top X Post



c. Top YouTube Videos (based on views in the month)

- (1) [The Wastewater Treatment Process](#)
- (2) [Why SWIFT Matters](#)
- (3) [HRSD Atlantic Treatment Plant Cambi THP Tour](#)
- (4) [HRSD Employee Testimonials - Robert](#)
- (5) [SWIFT Research Center: What Is the Potomac Aquifer](#)

4. Website and Social Media Impressions and Visits

a. Facebook:

- (1) 14,508 page impressions
- (2) 11,656 post impressions reaching 10,819 users.
- (3) Facebook Engagement of 476 (408 reactions, 50 shares, and 18 comments)

b. X: 5.79% engagement rate

c. HRSD.com/SWIFTVA.com: 1,022 page visits

d. LinkedIn Impressions:

- (1) 31,990 page impressions
- (2) 30,291 post impressions



- e. YouTube: 437 views
- f. Next Door unique impressions: 158,202 post impressions from 21 targeted neighborhood postings and two region-wide postings.
- g. Blog Posts (0):
- h. Construction Project Page Visits – 4,856 total visits (not including direct visits from home page, broken down as follows:
  - (1) 2,320 visits to individual pages
  - (2) 2,536 to the status page

C. Education and Outreach Activity Highlights

Community Outreach and Education Specialists and HRSD Ambassadors coordinated and participated in eight different outreach events this month. Community partners included the City of Portsmouth Clean Community Commission, The Colonial Beekeepers Association, Portsmouth Public Schools, CIVIC Leadership Institute, Hampton Roads Workforce Council, Urban League of Hampton Roads, Virginia Ship Repair Association, the Hampton Roads Planning District Commission, Hampton Roads Executive Roundtable, Hampton Roads Alliance, City of Hampton, Virginia Peninsula Chamber of Commerce, 757 Collab and the Virginia Maritime Association.

Chief Communications Officer (CCO) and staff worked with plant staff to host Congresswoman Jen Kiggans at the Onancock Treatment Plant for a meet and greet, plant tour and check presentation to commemorate the earmark funds received for HRSD Eastern Shore infrastructure improvements.

CCO coordinated an interview with HRSD Director of SWIFT garnering earned media coverage in Inside Business about SWIFT full-scale implementation and the economic and environmental benefits to the region.

CCO and communications staff supported and attended a SWIFT Tour for the Spotlight Peninsula group from the Virginia Peninsula Chamber of Commerce.

Project notices were distributed to 424 customers for eight different projects across the service area this month. The department distributed and posted 12 construction or work notices, one news release and one traffic advisory to the HRSD.com Newsroom.

D. Internal Communications

CCO participated in the following internal meetings and events:

- 1. Atlantic Treatment Plant (ATP) monthly communications check-in meeting
- 2. SWIFT Strategic Communications monthly meeting
- 3. Mentoring Oversight Committee meeting
- 4. SWIFT Community Commitment Plan steering committee meeting

5. ATP Odor taskforce check-in meeting
6. SWIFT Industry Day 2025 planning kick-off meeting
7. Potomac Aquifer Recharge Oversight Committee (PAROC) meeting (attended virtually)
8. Bi-weekly General Manager (GM) briefings
9. Discharge Monitoring Report (DMR), SWIFT Quality Steering Team (QST), and HRSD QST meetings
10. Check-in meetings with Deputy General Manager (DGM)
11. Monthly collaboration meeting with Chief People Office (CPO)
12. Director conducted biweekly Communications department status meetings and weekly one-on-one check-in meetings.
13. Staff participated in 22 project progress and/or construction meetings and communication planning meetings with various project managers, plant staff and external stakeholders.
14. Staff participated in WaterJam presentation planning meetings with colleagues from other HRSD Divisions.

Respectfully,

*Leila Rice, APR*

Chief Communications Officer

TO: General Manager

FROM: Chief Engineer

SUBJECT: Engineering Monthly Report for August 2024

DATE: September 12, 2024



## Environmental Responsibility

Construction efforts continue for the installation of the Boat Harbor Transmission Force Main across the Hampton Roads Harbor. Numerous environmental issues have been carefully considered to limit impacts during construction. The pipe alignment was chosen to limit impacts to existing shellfish beds in the region. In addition, contingency plans are in place to address any unplanned construction related impacts that could impact this sensitive environmental area. HRSD has worked very closely with all regulatory approving agencies to be sure the impacts caused by this project are minimized.

Most of the work is now complete for the Birdneck Road Trunk Force Main Emergency Mitigation and Repair project. This emergency work was caused by damage to the existing force main resulting from a bulldozer impacting and causing damage to the prestressed concrete cylinder pipe. Due to the potential of a catastrophic spill if this pipe failed, a decision was made to install a by-pass system prior to removing the bulldozer from the top of the damaged pipe. The by-pass system was successfully installed, and the pipe repaired without any loss of sewage from the system. The contractor tasked with assisting with this repair work, is now in the process of removing the temporary road installed to access the work area. HRSD was very fortunate that the pipe did not fail when it was damaged and that we were able to make the needed repairs in such a short period of time.



## Financial Stewardship

Capital Improvement Program (CIP) spending for the first month of FY2025 was significantly below the planned spending target. The first month of the fiscal year is typically lower than planned due to accounting adjustments for projects associated with the previous fiscal year.

CIP Spending (\$M):

	Current Period	FYTD
Actual	16.29	16.29
Plan	33.80	33.80

The HRSD CIP spending target for FY2025 is \$820M. This will require an average monthly expenditure of \$68M. This is a very ambitious goal since the previous FY target was \$580M (a 40% increase). This is by far HRSD's largest CIP spend in one fiscal year. Spending at this level is indicative of many large CIP projects in the construction phase when much of a project's costs are spent. Keeping these large projects on schedule is required to hit this spending target for the entire CIP. This high level of spending will continue for the next few years as the Sustainable Water Initiative for Tomorrow (SWIFT) Program continues to be delivered.



## Talent

Recruitment continues to be a focus of the Engineering Division. We currently have six (6) open positions that are critical to the success of the division. We have recently added Mr. Lucas Tasayco as our new Engineering Specialist. Unfortunately, Ms. Autumn Wiland will be leaving HRSD in September and we have begun the recruitment effort for her replacement. Recruitment is actively underway for each open position with a goal to have new hires on board in the next few months. Three open Project Manager positions need to be filled to keep the HRSD CIP moving forward as planned.

In addition to being fully staffed, it is equally important to have highly trained employees. One way we accomplish this is by active participation at the WaterJAM Conference in September. This conference is jointly sponsored by the Virginia Water Environment Association and the Virginia Section of the American Water Works Association. Staff members play a key role in this conference including the planning, presentations, networking and attendance at various learning activities. This conference is held in Virginia Beach which minimizes our cost to attend and limits time away from work.



## Community Engagement

HRSD's High Priority Infiltration and Inflow Reduction Phase I Program includes a critical engagement component with many of the localities in the region. Since much of the actual work will be done on the assets owned by the localities, it is important that we closely collaborate with them to meet the objectives of each organization. Much of the work will be done in developed neighborhoods which will add additional complexity. Meetings have been held with the localities in advance of the program and a Kick-Off Meeting is scheduled for September 19<sup>th</sup> to review items including:

- Program Overview
- Design-Builder's Project Approach
- How Do We Judge Success?
- Next Steps
- Open Question and Answer Period

Due to the aggressive program schedule, it will be very important that regular communication occurs and that issues are resolved as quickly as possible. They will be an exciting program with many unique challenges.

The James River Treatment Plant (JRTP) ANRI and SWIFT project includes numerous community engagement components due to the location of the plant adjacent to the Riverview Farm Park. One of these components is the public access trail being constructed throughout the park and behind the JRTP. Construction of a portion of this trail is nearing completion and a Ribbon Cutting Ceremony is being planned for later this Fall. The trail construction was part of the negotiated arrangement that allowed for expansion of the JRTP and acquisition of property to install the needed recharge wells and SWIFT facility.



## Innovation

Engineering Division staff have been researching the options for purchase of an aerial drone. Technology related to drones has been advancing quickly and the improved features and reduced costs makes this equipment more attractive. The prime purpose for the drone will be to assist with infrastructure assessment in hard to access areas. New features with drone technology include artificial intelligence (AI) and built-in obstacle avoidance. HRSD staff will have the needed certifications and licenses and additional insurance will be acquired for use of this equipment.

Efforts to repurposing of the Chesapeake-Elizabeth Treatment Plant (CETP) continued in August. This effort is known as the CETP Center for Excellence. A number of innovative programs are proposed at this location including a future grease handling facility, metallic pipe destructive testing, training location for the Apprenticeship Program, and study location for sewer collection system infiltration. Each of these study areas will help HRSD plan for the future. Initial steps to demolish certain facilities are underway including removal of buried storage tanks on the site. Coordination also continues with the U.S. Navy as we repurpose this facility.

*Bruce W. Husselbee*

Bruce W. Husselbee, PhD, P.E., BCEE, DBIA

TO: General Manager

FROM: Deputy General Manager and Chief Financial Officer

SUBJECT: Monthly Report for August 2024

DATE: September 12, 2024



## **Financial Stewardship**

The Chesapeake-Elizabeth Treatment Plant (CETP) Offline Program Water Quality Improvement Fund (WQIF) application is being reviewed once again by the Department of Environmental Quality (DEQ). Staff estimates that the grant agreement will be presented to the Commission for approval in September. Funds should be available to HRSD in October.

Staff continues to work with the Environmental Protection Agency (EPA) on the next Water Infrastructure Finance & Innovation Act (WIFIA) loan closing. The anticipated closing date has been moved to late September due to a lengthy EPA review of the Trust Agreement changes.

The Debt Solutions team has been actively conducting an outbound call program, advising customers of pending disconnection, promoting available financial assistance, and reviewing pay plan options. Staff is also reviewing the past-due account process flow and exploring collection options for non-severance accounts.

Effective July 1, Customer Care suspended residential account disconnection activities due to the legislative change prohibiting residential disconnection when the forecasted temperature is 92 degrees or higher within a 24-hour period of scheduled disconnection. Debt Solutions strategies include temporary work assignments, assisting Norfolk with past due business account disconnections, increasing outbound collections calls, arranging pay plans, leaving additional financial assistance information in the absence of a warning tag, and third-party collections for closed accounts. Outbound call efforts have recovered approximately \$700,000 in past-due payments during August 2024. Residential account service disconnection for non-payment will resume in September 2024.

HRSD closed on Series 2024B in August and invested the proceeds amounting to \$268,087,870 in the State Non-Arbitrage Program (SNAP) an investment fund specifically designed for managing bond proceeds.

The fiscal year 2024 Encumbrance Carryforward was completed in August; as a result, the fiscal year 2025 operating budget was increased by \$19.5 million.

A. Interim Financial Report

1. Operating Budget for the Period Ended August 31, 2024.

	Amended Budget	Current YTD	Current YTD as % of Budget (17% Budget to Date)	Prior YTD as % of Prior Year Budget
<b>Operating Revenues</b>				
Wastewater	\$ 442,031,000	\$ 77,609,286	18%	17%
Surcharge	1,400,000	281,653	20%	13%
Indirect Discharge	3,970,000	707,725	18%	18%
Fees	3,172,000	485,892	15%	20%
Municipal Assistance	837,000	99,662	12%	21%
Miscellaneous	1,982,000	131,503	7%	4%
Total Operating Revenue	453,392,000	79,315,721	17%	17%
<b>Non Operating Revenues</b>				
Facility Charge	6,170,000	1,480,535	24%	20%
Interest Income	7,300,000	3,262,511	45%	65%
Build America Bond Subsidy	-	-	0%	0%
Other	330,000	103,871	31%	10%
Total Non Operating Revenue	13,800,000	4,846,917	35%	28%
<b>Total Revenues</b>	467,192,000	84,162,638	18%	18%
Transfers from Reserves	19,475,990	3,245,998	17%	17%
<b>Total Revenues and Transfers</b>	\$ 486,667,990	\$ 87,408,636	18%	18%
<b>Operating Expenses</b>				
Personal Services	\$ 80,140,274	\$ 11,697,748	15%	15%
Fringe Benefits	30,767,169	4,278,493	14%	15%
Materials & Supplies	15,245,514	1,503,164	10%	9%
Transportation	2,382,779	228,526	10%	11%
Utilities	16,643,039	2,192,372	13%	14%
Chemical Purchases	16,974,110	2,191,443	13%	14%
Contractual Services	57,868,703	6,383,785	11%	11%
Major Repairs	16,778,801	446,163	3%	6%
Capital Assets	2,361,019	30,434	1%	8%
Miscellaneous Expense	4,171,177	1,495,638	36%	15%
<b>Total Operating Expenses</b>	243,332,585	30,447,766	13%	13%
<b>Debt Service and Transfers</b>				
Debt Service	87,700,000	9,153,966	10%	29%
Transfer to CIP	155,635,405	25,939,234	17%	17%
Transfer to Risk management	-	-	0%	17%
Total Debt Service and Transfers	243,335,405	35,093,200	14%	21%
<b>Total Expenses and Transfers</b>	\$ 486,667,990	\$ 65,540,966	13%	17%

## 2. Notes to Interim Financial Report

The Interim Financial Report summarizes the results of HRSD's operations on a basis of accounting that differs from generally accepted accounting principles. Revenues are recorded on an accrual basis, whereby they are recognized when billed, and expenses are generally recorded on a cash basis. No provision is made for non-cash items such as depreciation and bad debt expense.

This interim report does not reflect financial activity for capital projects contained in HRSD's Capital Improvement Project (CIP).

Transfers represent certain budgetary policy designations as follows:

- a. Transfer to CIP: represents the current period's cash and investments that are designated to partially fund HRSD's capital improvement program.
- b. Transfers to Reserves: represents the current period's cash and investments that have been set aside to meet HRSD's cash and investments policy objectives.

3. Reserves and Capital Resources (Cash and Investments Activity) for the Period Ended August 31, 2024.

HRSD - RESERVE AND CAPITAL ACTIVITY						August 31, 2024
	General Reserve		Capital			
	General	Debt Service	Risk Mgmt Reserve	Paygo	SNAP	CIP Proceeds
	Unrestricted	Restricted	Unrestricted	Unrestricted	Restricted	Restricted
Beginning - July 1, 2024	\$ 240,258,497	\$ 22,307,000	\$ 4,799,555	\$ 37,468,922	\$ -	\$ -
Current Year Sources of Funds						
Current Receipts	87,037,012					
Line of Credit						-
VRA Draws						3,914,939
WIFIA Draws						71,944,265
Grants						13,136,680
Series 2024B					268,087,870	
Transfers In			-	25,939,234		
Sources of Funds	87,037,012	-	-	25,939,234	268,087,870	88,995,884
Total Funds Available	\$ 327,295,509	\$ 22,307,000	\$ 4,799,555	\$ 63,408,156	\$ 268,087,870	\$ 88,995,884
Current Year Uses of Funds						
Cash Disbursements	50,178,021			-		74,573,620
Transfers Out	25,939,234					
Uses of Funds	76,117,255	-	-	-	-	74,573,620
End of Period - August 31, 2024	\$ 251,178,254	\$ 22,307,000	\$ 4,799,555	\$ 63,408,156	\$ 268,087,870	\$ 14,422,264
Unrestricted Funds	\$ 319,385,965					



4. Capital Improvements Budget and Activity Summary for Active Projects for the Period Ended August 31, 2024.

HRSD - PROJECT ANALYSIS

August 31, 2024

Classification/ Treatment Service Area	Appropriated Funds	Expenditures prior to 7/1/2024	Expenditures Year to Date FY2025	Total Project Expenditures	Encumbrances	Available Funds
Administration	\$ 76,193,950	\$ 32,801,479	\$ 703,715	\$ 33,505,194	\$ 4,591,628	\$ 38,097,128
Army Base	176,442,597	126,238,488	5,712	126,244,200	9,297,339	40,901,058
Atlantic	266,082,364	93,123,288	711,061	93,834,349	32,936,174	139,311,841
Boat Harbor	526,086,433	195,525,030	1,544,609	197,069,639	270,287,831	58,728,963
Ches-Eliz	90,389,467	35,622,765	274,640	35,897,405	4,795,185	49,696,877
Eastern Shore	65,012,749	41,673,621	843,154	42,516,775	3,593,638	18,902,336
James River	377,738,708	199,322,849	5,328,648	204,651,497	131,633,095	41,454,116
Middle Peninsula	96,429,769	28,624,658	434,077	29,058,735	4,577,655	62,793,379
Nansemond	488,559,100	212,128,008	3,625,753	215,753,761	205,612,193	67,193,146
Surry	60,391,465	45,528,213	209,925	45,738,138	6,968,958	7,684,369
VIP	271,226,629	68,101,536	4,691,145	72,792,681	76,635,285	121,798,663
Williamsburg	83,682,019	22,399,476	125,757	22,525,233	6,065,182	55,091,604
York River	116,418,863	46,258,282	3,231,962	49,490,244	37,226,946	29,701,673
General	1,642,322,174	347,908,831	10,170,669	358,079,500	852,654,348	431,588,326
	\$ 4,336,976,287	\$ 1,495,256,524	\$ 31,900,827	\$ 1,527,157,351	\$ 1,646,875,457	\$ 1,162,943,479

5. Active Capital Grants

Active Capital Grants Activities						
Grant Name	Funder	Project	CIP#	Application Submitted	Amount Requested	HRSD Award Amount
American Rescue Plan Act	VD EQ	Eastern Shore Infrastructure Improvements - Transmission Force Main Phase II (Accomac Sewer Collection)	ES010200	11/28/2022	\$ 8,367,000	\$ 4,183,500
American Rescue Plan Act	VD EQ	James River Treatment Plant Advanced Nutrient Reduction Improvements	JR013400	10/7/2022	\$ 50,000,000	\$ 36,124,859
American Rescue Plan Act	VD EQ	Nansemond Treatment Plant Advanced Nutrient Reduction Improvements Phase II	NP 013820	10/7/2022	\$ 50,000,000	\$ 31,693,207
FY2024 Congressionally Directed Funding Warner-Kaine	CDF FY24	Eastern Shore Wastewater Improvements	ES010100	3/9/2023	\$ 9,677,112	\$ 1,250,000
Water Quality Improvement Fund, Conveyance	VD EQ	Chesapeake-Elizabeth Treatment Plant Conveyance	Multiple	2/7/2023	\$ 100,647,746	\$ -
Water Quality Improvement Fund, Conveyance	VD EQ	Eastern Shore TFM Phase 1	ES010100	5/2/2022	\$ 4,900,000	\$ 4,936,538
Water Quality Improvement Fund, Nutrient Reduction	VD EQ	James River SWIFT - Advanced Nutrient Reduction Improvements	JR013400	3/23/2023	\$ 344,741,547	
Water Quality Improvement Fund, Nutrient Reduction	VD EQ	Boat Harbor Pump Station and Conveyance	BH015700, BH015710, BH015720 BH015730	3/4/2024	\$ 311,286,392	
Water Quality Improvement Fund, Nutrient Reduction	VD EQ	Nansemond Treatment Plant Advanced Nutrient Reduction Improvements Phase II	NP 013820	3/4/2024	\$ 127,657,505	
FY2025 Congressionally Directed Funding, Warner/Kaine, Kiggans	CDS	Onancock Treatment Plant Solids Handling Improvements	ES010800	3/21/2024	\$ 6,624,248	\$ 1,000,000
Climate Pollution Reduction Grant - Implementation	EPA	PdNA Implementation to Reduce GHG	AB011800	4/1/2024	\$ 59,540,142	
FY23 Building Resilient Infrastructure and Communities (BRIC), under Hazard Mitigation Grant Program	VD EM-FEMA	Dozier's Corner Pump Station and Washington District Pump Station Resiliency Improvements	AT013000, AT015400	2/6/2024	\$ 18,988,629	
FHWA Recreational Trails Program	VD CR	Flax Mill Creek Trail at James River Treatment Plant	GN016344	6/1/2021	\$ 300,000	\$ 300,000
					\$ 1,092,730,321	\$ 79,188,104

## 6. Debt Management Overview

### HRSD - Debt Outstanding (\$000's)

August 31, 2024

	Jul 2024	Aug 2024					
	Principal Balance	Principal Activity				Principal Balance	Interest Payments
		Bond Series 2024B	Payments	Draws	Capitalized Interest		
<b>Fixed Rate</b>	\$ 1,277,233	\$ 240,775	\$ (4,013)	\$ 43,210	\$ 331	\$ 1,557,536	\$ (4,047)
<b>Variable Rate</b>	50,000		-	-		50,000	(125)
<b>Line of Credit</b>	100,000		-	-		100,000	(402)
<b>Total</b>	\$ 1,427,233	\$ 240,775	\$ (4,013)	\$ 43,210	\$ 331	\$ 1,707,536	\$ (4,574)

### HRSD- Series 2016VR Bond Analysis

August 30, 2024

	SIFMA Index	HRSD Series 2016VR	Spread to SIFMA
Maximum	4.71%	4.95%	0.24%
Average	1.32%	0.90%	-0.42%
Minimum	0.01%	0.01%	0.00%
As of 8/30/24	2.92%	2.90%	-0.02%

Since October 20, 2011 HRSD has averaged 90 basis points on Variable Rate Debt

### Subsidised Debt Activity

Source	Funder	Loan Amount	Current Drawn Total	% Remain	Initial Draw Date - Projected
WIFIA Tranche 1	EPA	\$225,865,648	\$221,503,207	2%	Ongoing
WIFIA Tranche 2	EPA	\$476,581,587	\$249,211,618	48%	Ongoing
WIFIA Tranche 3	EPA	\$346,069,223	\$ -	100%	July 2025
Clean Water Program 2022	DEQ	\$100,000,000	\$100,000,000	0%	Closed
Clean Water Program 2024	DEQ	\$ 80,000,000	\$ 11,542,187	86%	Ongoing

## 7. Financial Performance Metrics for the Period Ended August 31, 2024.

### HRSD - UNRESTRICTED CASH

*Can be used for any purpose since it is not earmarked for a specific use and is extremely liquid*

		Days Cash on Hand	Adjusted Days Cash on Hand
<b>Total Unrestricted Cash</b>	<b>\$ 319,385,965</b>		<b>479</b>
Risk Management Reserve	\$ (4,799,555)	(7)	472
Capital (PAYGO only)	\$ (63,408,156)	(95)	377
<b>Adjusted Days Cash on Hand</b>	<b>\$ 251,178,254</b>		<b>377</b>

Risk Management Reserve as a % of Projected Claims Cost is 25% YTD compared to 25% Policy Minimum

Adjusted Days Cash on Hand Policy Minimum is 270-365 days.

### HRSD - SOURCES OF FUNDS

August 31, 2024

Primary Source	Beginning Market Value July 1, 2024	YTD Contributions	YTD Withdrawals	YTD Income Earned	Ending Market Value August 31, 2024	Allocation of Funds	Credit Quality	Current Mo Avg Yield
BOA Corp Disbursement Account	31,786,393	188,908,179	172,286,161	243,587	48,651,998	18.1%	N/A	0.55%
VIP Stable NAV Liquidity Pool	178,789,050	40,000,000	-	1,677,344	220,466,394	81.9%	AAAm	5.41%
<b>Total Primary Source</b>	<b>\$ 210,575,443</b>	<b>\$ 228,908,179</b>	<b>\$ 172,286,161</b>	<b>\$ 1,920,931</b>	<b>\$ 269,118,392</b>	<b>100.0%</b>		

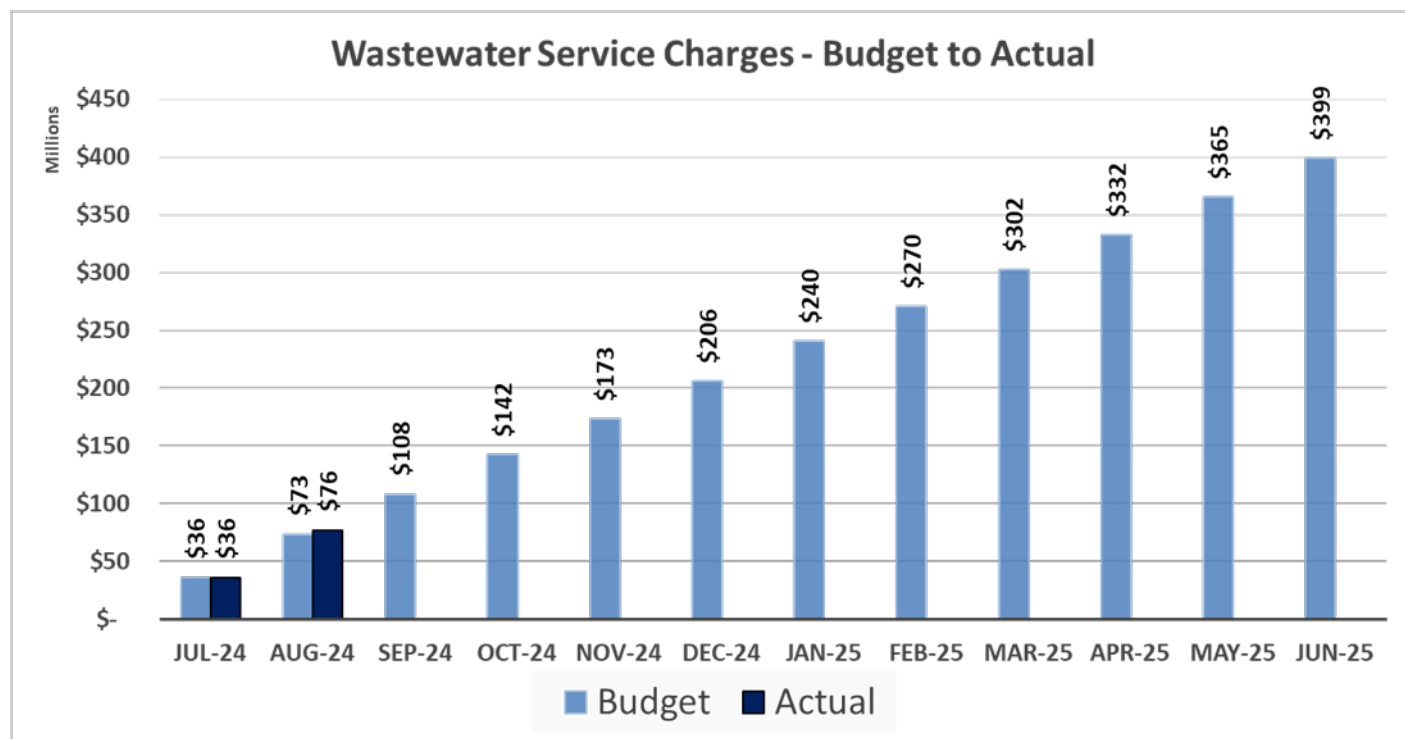
VIP Stable NAV Liquidity Pool performed 0.01% above Va Local Government Investment Pool's (the market benchmark) in the month of August 2024.

Secondary Source	Beginning Market Value July 1, 2024	YTD Contributions	YTD Withdrawals	YTD Income Earned & Realized G/L	Ending Market Value August 31, 2024	Ending Cost	LTD Mkt Adj	Yield to Maturity at Market
VIP 1-3 Year High Quality Bond Fund	65,915,924	-	2,198	480,174	67,242,470	67,784,101	(541,630)	4.00%
<b>Total Secondary Source</b>	<b>\$ 65,915,924</b>	<b>\$ -</b>	<b>\$ 2,198</b>	<b>\$ 480,174</b>	<b>\$ 67,242,470</b>	<b>\$ 67,784,101</b>	<b>\$ (541,630)</b>	

VIP 1-3 Year High Quality Bond Fund performed 0.05% below ICE BofA ML 1-3 yr AAA-AA Corp/Gov Index (the market benchmark) in August 2024.

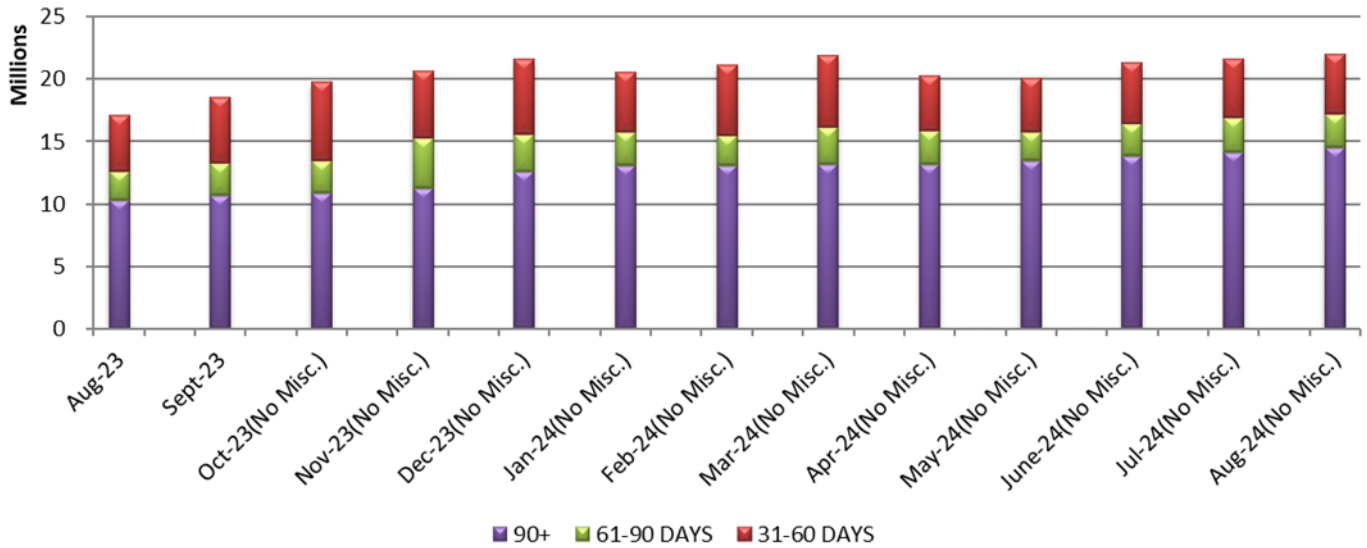
	Total	Fund Alloc
Total Primary Source	\$ 269,118,392	80.0%
Total Secondary Source	\$ 67,242,470	20.0%
<b>TOTAL SOURCES</b>	<b>\$ 336,360,862</b>	<b>100.0%</b>

## 8. Summary of Billed Consumption



Summary of Billed Consumption (,000s ccf)							
Month	% Difference			% Difference			% Difference
	FY2025 Cumulative Budget Estimate	FY2025 Cumulative Actual	From Budget	Cumulative FY2024 Actual	From FY2024	Cumulative 3 Year Average	From 3 Year Average
July	4,678	4,630	-1.0%	4,504	2.8%	4,721	-1.9%
Aug	9,644	9,518	-1.3%	9,432	0.9%	9,534	-0.2%
Sept	14,196	-	N/A	13,965	N/A	14,173	N/A
Oct	18,663	-	N/A	18,854	N/A	18,861	N/A
Nov	22,756	-	N/A	23,004	N/A	22,911	N/A
Dec	27,109	-	N/A	27,127	N/A	27,267	N/A
Jan	31,641	-	N/A	31,819	N/A	31,784	N/A
Feb	35,568	-	N/A	36,182	N/A	35,990	N/A
March	39,770	-	N/A	39,826	N/A	39,954	N/A
Apr	43,694	-	N/A	44,054	N/A	44,119	N/A
May	48,027	-	N/A	48,760	N/A	48,383	N/A
June	52,500	-	N/A	53,206	N/A	52,999	N/A

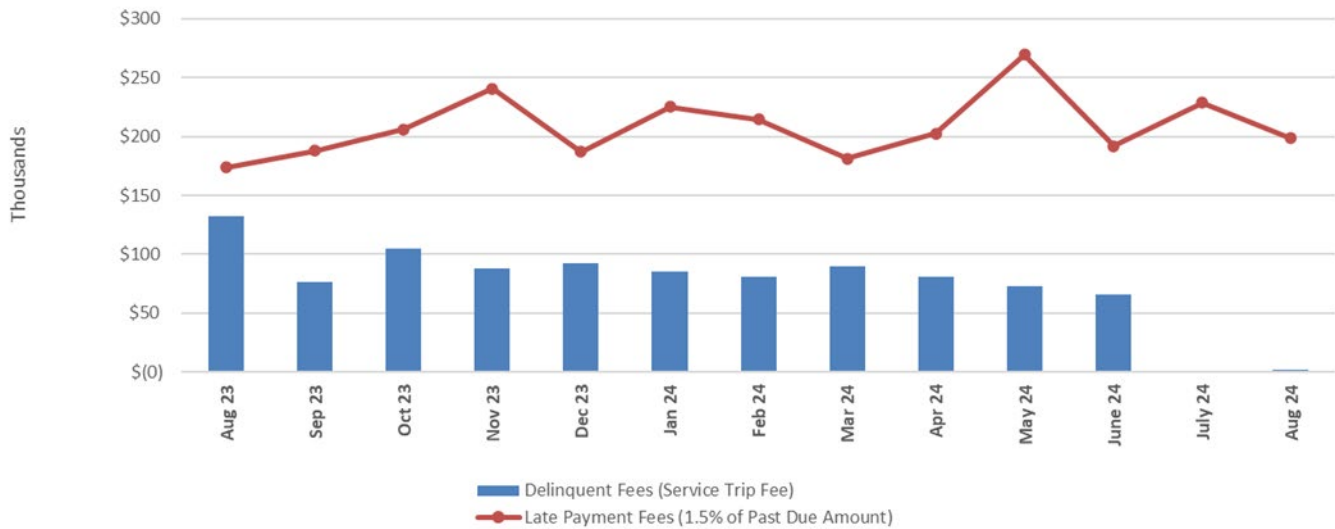
## HRSD Accounts Receivable Aging +30 Days



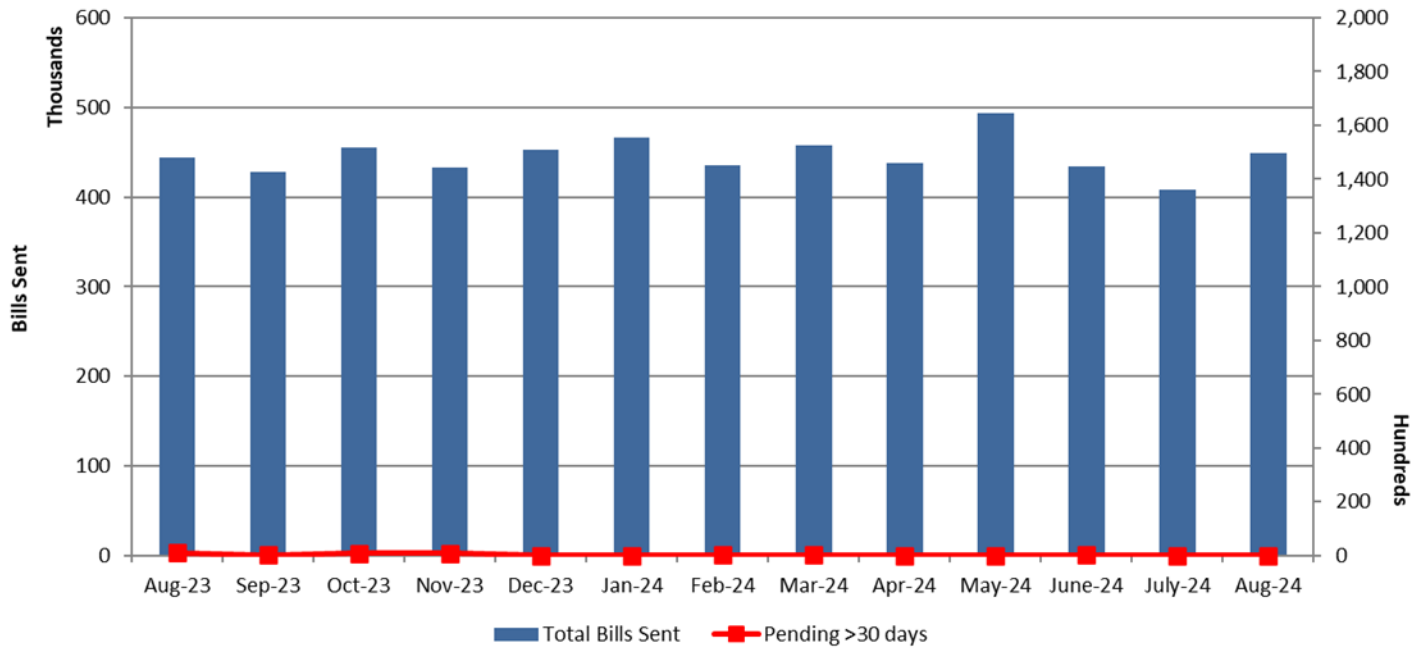
### B. Customer Care Center

#### 1. Accounts Receivable Overview

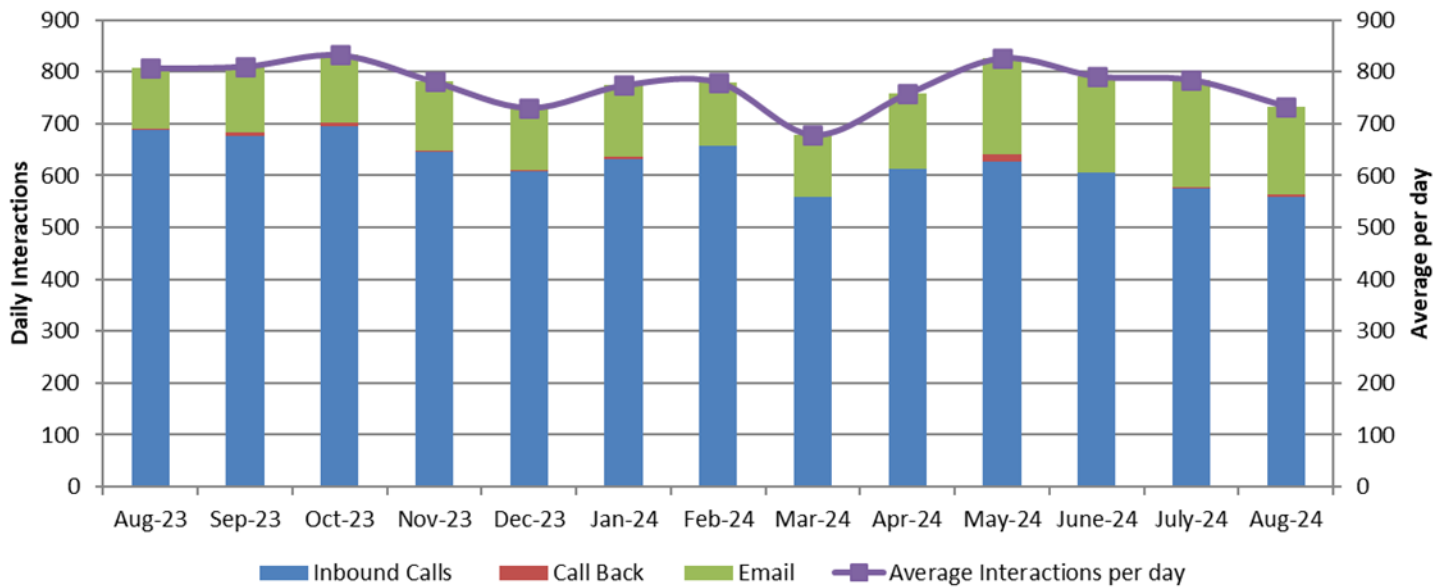
### Delinquent & Late Payment Fees



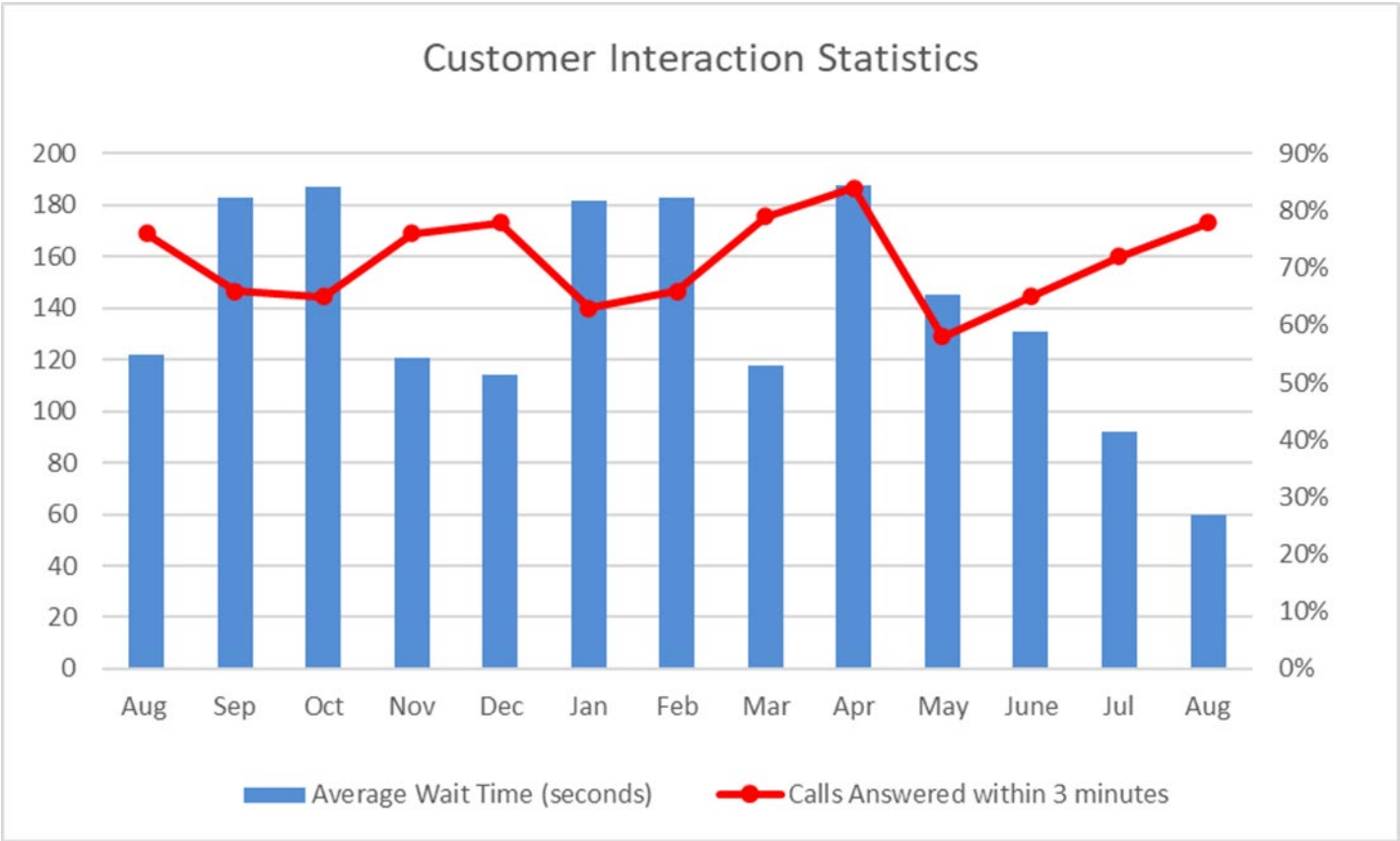
## Billing Summary



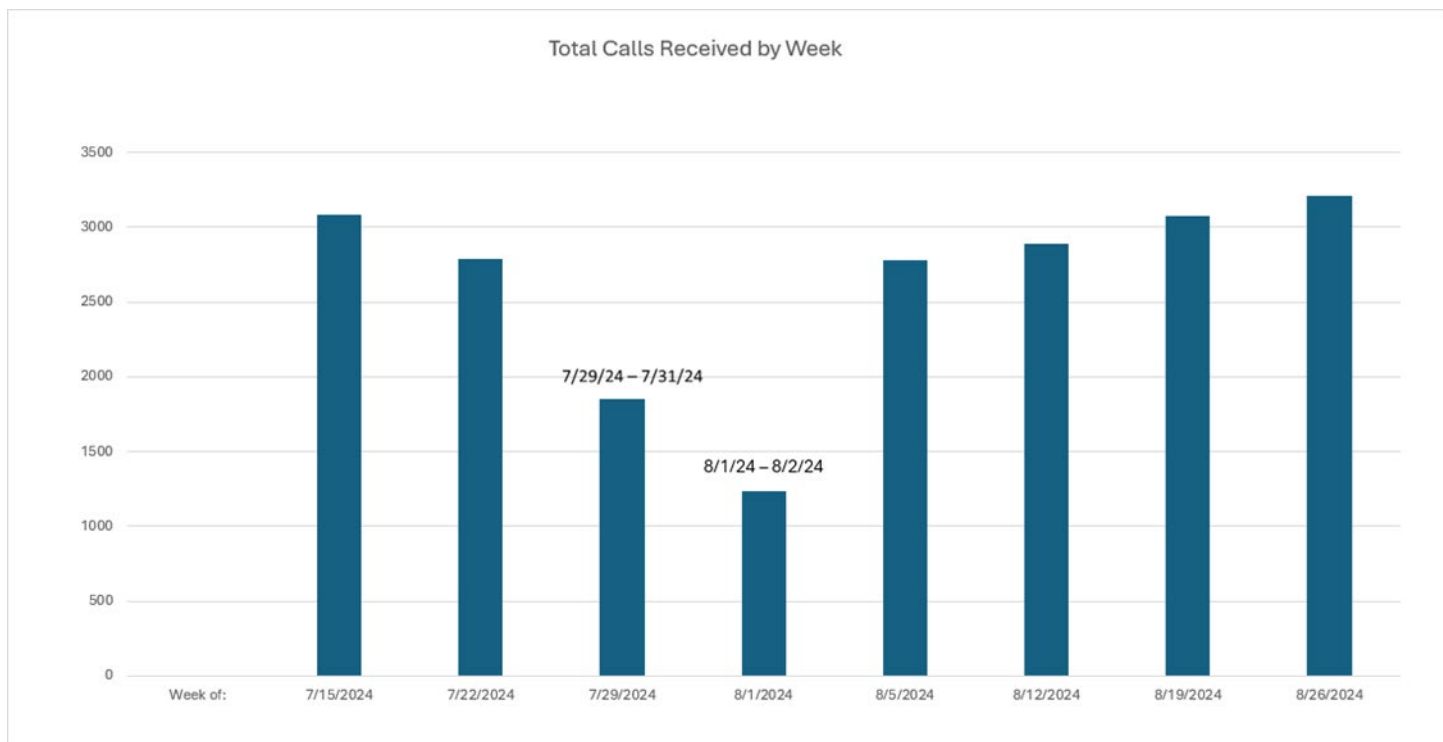
## Call Center Interactions (per day)



2. Customer Care Center Statistics



Customer Interaction Statistics	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	June	Jul	Aug
Calls Answered within 3 minutes	76%	66%	65%	76%	78%	63%	66%	79%	84%	58%	65%	72%	78%
Average Wait Time (seconds)	122	183	187	121	114	182	183	118	188	145	131	92	60
Calls Abandoned	8%	11%	12%	10%	9%	13%	12%	10%	8%	15%	11%	9%	6%



### C. Procurement Statistics

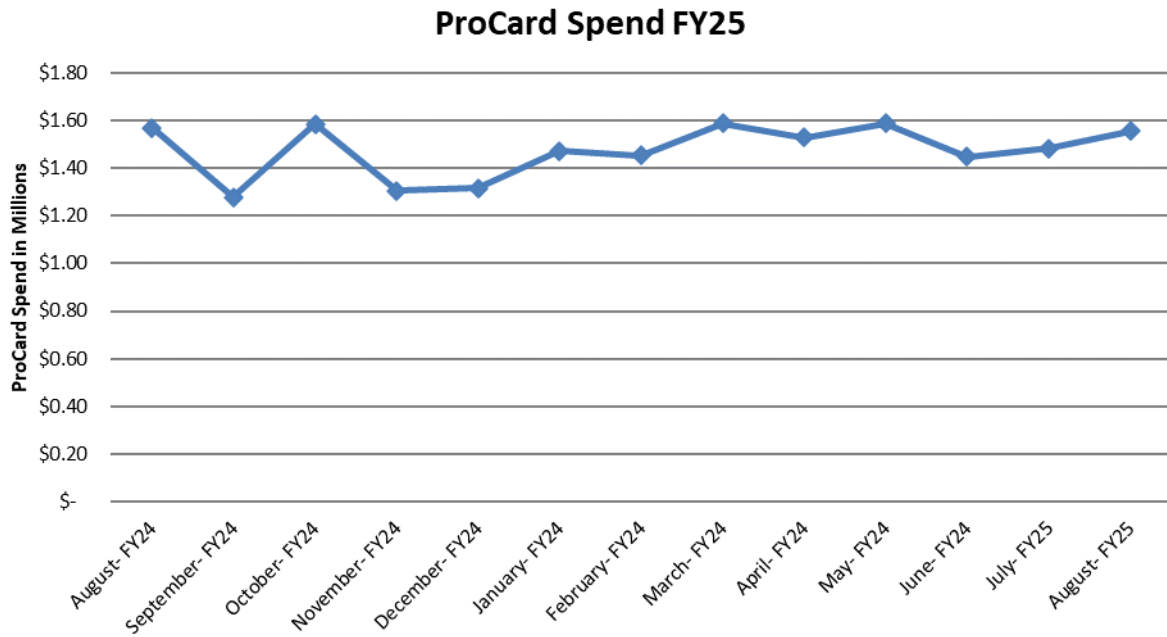
Savings	Current Period	FYTD
Competitive Savings <sup>1</sup>	\$76,290	\$147,869
Negotiated Savings <sup>2</sup>	\$825	\$825
Salvage Revenues	\$48,893	\$64,613
*Corporate VISA Card - Estimated Rebate	\$23,186	\$46,286

\* FYTD Corporate VISA Card - Estimated Rebate total has been increased by \$100 due to an error on the July 2024 report.

<sup>1</sup> Competitive savings are those savings obtained through the informal/formal bidding process. All bids received (except for the lowest responsive/responsible bid) added together and averaged. The average cost is subtracted from the apparent low responsive/responsible bidder.

<sup>2</sup> Negotiated savings are savings obtained during a Request for Proposal process, or if all bids received exceed the budgeted amount, or if only one bid is received.





Respectfully,

*Steven G. de Mik*

Steven G. de Mik  
Deputy General Manager/Chief Financial Officer

TO: General Manager

FROM: Chief Information Officer

SUBJECT: Information Technology Department (ITD) Report for July 2024

DATE: September 13, 2024



## **Innovation**

Staff is preparing for a major operating system upgrade and is in the process of performing data migrations on several software platforms, ensuring compatibility and data integrity are maintained throughout the upgrade process.

Recent network activity shows an uptick in potential cyber threats from other countries. In response, ITD is taking additional steps to further strengthen cybersecurity means, methods and measures. Many of the steps taken will be transparent to users of the HRSD network. Instances which involve changes to existing practices and procedures for end users are being coordinated with those impacted.

Initial preparations for the upgrade of the Pre-treatment Information Management System (PIMS) are underway, including requirements documentation and formulation of a master project management plan and accompanying timeline.

The IT Help Desk processed 382 work orders and requests for assistance in August, ensuring availability of computing resources to those working locally and remotely.



## **Community Engagement**

Work is progressing nicely on the upcoming rollout of the Customer Portal. Staff from multiple work centers continue user acceptance testing in preparation for an October go live.

Respectfully,

*Don Corrado*

TO: General Manager/Chief Executive Officer

FROM: Chief Operating Officer

SUBJECT: Operations Monthly Report for August 2024

DATE: September 11, 2024



## Community Engagement

Staff participated in several community events as follows:

1. South Shore (SS) Interceptor Operations staff held a series of locality collaboration meetings in August with the City of Norfolk, Portsmouth, Virginia Beach, and Chesapeake Public Utilities staff to discuss operational issues, initiatives, and projects.
2. Virginia Initiative Plant (VIP) Lead Operators, Mr. Jacob Hoagland and Mr. Rocky Taylor, led a tour for 20 incoming Old Dominion University engineering students on August 1.
3. Eastern Shore Staff met with Congresswoman Jen Kiggans and community members on August 5. Staff provided a plant tour and were presented a \$1.25 million dollar check from the congresswoman for the construction of the Wachapreague Collection System and Design costs for the new Chincoteague Treatment Plant.
4. Small Communities Division (SCD) and Technical Services Department (TSD) staff met several times in August with Surry County School staff regarding the new Surry School Complex Pump Station. Items of discussion included grease control devices, affordable solutions for the three school cafeterias on site to prevent grease accumulation in the collection system.



## Environmental Responsibility

### Treatment and Interceptor System Reportable Items:

There were multiple events reported this month. Additional details are available in the Air and Effluent Summary in the Water Quality monthly report.

### Internal Air and Odor Compliance:

There were multiple events reported this month. Additional details are available in the Air and Effluent Summary in the Water Quality monthly report.

1. There was one reportable event at VIP in August for hydrogen sulfide (H<sub>2</sub>S) exhaust readings greater than five parts per million at the headworks odor control station, resolved by routing odorous air to the main odor control station.
2. Army Base Treatment Plant (ABTP) had one reportable event in August for failing to record two valid Total Hydrocarbon (THC) readings in one hour. The issue was resolved with calibration gas changes and a manual recalibration.
3. ABTP had one reportable event for less "less than the minimum 12-hour average scrubber water flow". The caustic injection port was clogged.

4. ABTP had two reportable events for “shutdown of odor control scrubber for more than one hour”. The issue is still being investigated by plant and electrical and instrumentation (E&I) staff.
5. Atlantic Treatment Plant (ATP) continues to put a large focus on reducing off site odors. The dissolved solids storage tank (DSST) inlet air was found to be positive, which means that the air flow through Odor Control System (OCS) C had a blockage. This air pushing out of the tank, although the tank was empty, is still a potential odor source. Staff will replace the media on the odor scrubber OCS D work is nearly complete, and the system is performing well.
6. Williamsburg Treatment Plant (WBTP) had eleven incinerator deviations from a failure of the THC analyzer to record two valid readings in an hour due to an alarm malfunction and calibration issues.
7. E&I staff is in the process of replacing, all H<sub>2</sub>S sensors to improve the OCS D to mitigate odors at ATP.

#### **Additional Topics of Interest:**

1. On August 1, SS Interceptors Operations received a complaint from the Little Neck Swim and Racquetball Club off Little Neck Road in Virginia Beach about a problem with their private pump station (PS). A pipeline in the station had broken causing sewage from the private force main and the HRSD connecting force main to back flow into the station and the nearby ditch. Staff immediately responded and closed the HRSD branch valve at the force main connection. After the Club repaired their PS, staff attempted to open the HRSD valve and found it was broken in the closed position. Staff had to pump and haul the private PS to keep the club open particularly during a large swim meet. Due to the complexities of the valve location and the pump and haul operation, a contractor was called to replace the broken valve.
2. On August 5, SS Interceptors Operations received a call from a contractor working for the City of Virginia Beach reporting a stolen that was stuck in a swampy area near Birdneck Road. Staff immediately responded and found the bulldozer was stuck with one tread resting on the top of the HRSD 42-inch Prestressed Concrete Cylinder Pipe (PCCP). Staff immediately engaged the Bridgeman Civil (BC) and Hazen and Sawyer to assist and established an Emergency Declaration due to the complexity and potential risks. The contractor worked around the clock to build robust matting to transport heavy equipment to the site. On August 19, after several weeks of effort, the bulldozer was removed, extensive condition assessment was performed, and approximately 20-feet of damaged pipe was replaced.
3. Incinerator off-gas testing for MACT 129 permit compliance was performed at VIP on August 27. Preliminary results indicate full compliance.
4. Boat Habor Treatment Plant (BHTP) and E&I staff replaced all the conduit and wire for three burners and three thermocouples that were damaged when the emergency bypass damper failed to open on incinerator #1 back in June. The emergency bypass damper has been removed for testing and verification of movement. The emergency bypass damper will be replaced during the month of September.
5. On the Advanced Nutrient Removal Improvement (ANRI)/ Sustainable Water Initiative for Tomorrow (SWIFT) Project at the James River Treatment Plant (J RTP), sheet piles are being installed in preparation for constructing of the new #2 secondary clarifier and #3 secondary clarifier. In the new return activated solids building, the contractor worked on electrical items, installing doors and trim, and punch list items. Construction of the new final effluent sample building foundation was completed. On the SWIFT side, two plate settlers were installed in building #1, concrete work was performed on the upper decks of building #2, and the roof installed on the methanol building. Leak testing of the equalization tank was completed.
6. Incorrect packets for measuring chlorine residuals were received and used at WBTP on August 4 and 5, which was not aligned with standard testing methods. Fortunately, the packets used were for measuring free chlorine indicating adequate disinfection was maintained. The standard test method for chlorine

residual measures both free and combined chlorine. The correct packets were obtained from another HRSD facility.

7. Repair of the #3 primary effluent pipe at WBTP from the break that occurred in May was completed by a contractor. The repair required replacement of 135 feet of corroded, 36-inch ductile iron pipe.
8. The York River Treatment Plant (YRTP) lost sodium hypochlorite feed for disinfection for about sixteen minutes due to a valve not being open when switching sodium hypochlorite storage tanks. The valve was discovered closed by a plant operator and opened. Chemical feed returned to normal and there was minimal impact on the contact tank thirty-minute chlorine residual.
9. HRSD experienced a Motorola Supervisory Control and Data Acquisition (SCADA) Front End Processor communication failures due to the Microsoft Crowdstrike outage on July 19. All FEP sites were brought back online except for Urbanna Treatment Plant (UBTP). A new alarm computer was setup and installed at UBTP in August. The site is now operational.
10. Staff managed the conveyance and treatment of over 145 million gallons (MG) of wastewater this month.



## Financial Stewardship

1. ATP staff corrected an issue with septage receiving pumps, resulting in over \$11,000 in savings due to creative solutions. The main septage receiving pumps were not pumping to full capacity and they were extremely difficult to prime. Staff rebuilt pump #1 and after the rebuild the pump performance did not improve. Staff investigated further and found a corroded suction line and a hole in the suction piping. Staff had a contractor quote lining both suction lines and the cost came back at \$7,800 per suction line. This is a 12-inch suction line, so instead of lining the pipe, staff came up with idea to run a 10" PVC pipe inside the 12" line and then reconnect. The cost of PVC piping, and fittings came in at less than \$4,000, resulting in over a \$11,000.00 savings versus lining the pipe.
2. WBTP staff continued working with our engineering consultant to design a nonflammable carbon feed system needed to meet future nutrient requirements. Through this collaboration, the engineer developed a concept for reusing the existing piers and containment area of an ammonia storage tank no longer in use. The design significantly reduces design and construction cost and provides for the ability to keep chemical cost down by allowing for bulk delivery of carbon.
3. HRSD Project Team will be making liner repairs to the storage pond at the West Point Treatment Plant (WPTP). Performing this task in house will save HRSD hundreds of thousands of dollars and allow us to schedule the repairs around operational needs at the treatment plant.
4. The Machine Shop had 16 projects during the month of August. Some of the more notable jobs completed include three total pump rebuilds. Another completed project was pipe support stands for the Operations Challenge team to simulate competition events at HRSD's practice location.
5. The Carpenter Shop had a total of 15 projects the month of August. Projects included completing drywall repairs and painting 4 offices. Staff also repaired the podium in the VIP conference room and installed an eyewash station in the SS Automotive shop.



## Innovation

1. The SCADA program continues to make significant progress as more sites were finalized. Numerous variances and network issues were resolved at Coliseum Pressure Reducing Station; however, finalization of this site will not happen until September or October.

2. VIP staff and Mr. Aidan Blair, Research Intern, continues to operate and monitor a ballasted sedimentation and a cloth media filtration pilot for tertiary phosphorus removal. Plant staff have been extremely efficient and creative in assisting with optimization modifications such as mixer installations, piping adjustments, and set-up for various test scenarios.
3. The total volume of SWIFT Research Center recharge into the Potomac aquifer for the month of August was 18.03 million gallons (MG) (63.7% Recharge Time based on 650 gallons per minute).
4. SCD and E&I staff have been working on a system that will allow remote monitoring on the Mathews County Vacuum System. This remote monitoring effort will aid operations staff in troubleshooting the vacuum system and help minimize after hours alarm calls which require staff to respond immediately.
5. SCD and E&I staff have been working on a project to set up a radar level measurement device for the storage pond at WPTP. This will allow us to use the pond for influent flow equalization. Radar will be installed once pond liner repairs are completed.



## **Talent**

1. NS Interceptor Operations has two open positions, one Interceptor Assistant positions and one Interceptor Specialist position.
2. NS Interceptor Operations would like to congratulate Mr. Jacob Lee on his promotion to Heavy Equipment Operator.
3. Mr. Brandon Nangle and Mr. Andrew Harrington joined SS Interceptors Operations as Interceptor Technicians. Mr. Dylan Poland joined SS Interceptors Operations as an Interceptor Assistant.
4. Mr. Khamari France joined the Eastern Shore team as a Systems Operator. We currently only have one vacancy for a Maintenance Operator Assistant on the Eastern Shore.

Respectfully submitted,

Eddie M. Abisaab, PE, PMP, ENV SP  
Chief Operating Officer

[Attachment: MOM Reporting](#)

## MOM Reporting Numbers

[illegible]

TO: General Manager

FROM: Director of Talent Management

SUBJECT: Talent Management Monthly Report for August 2024

DATE: September 11, 2024



## Talent

Staff retention and recruitment remain significant priorities for the Talent Management (TM) Department. Human Resources has reopened the recruitment for the Talent Acquisition Specialist position and has started recruiting our new Human Resources Business Partner. The two other new positions are going through the C&C process before the recruiting efforts begin. The Talent Management Division presented five-year roadmaps to the General Manager and shared the vision for each department.

**Human Resources (HR):** HR staff continued to work through the remaining issues from our transition to the new benefit carriers. In addition, preparations were made to ensure the transfer of Health Savings Account funds to the new carrier is successful next month.

HR staff partnered with Safety to prepare for the second annual health, wellness and safety fair taking place next month.

HR staff worked with Business Document Solutions (BDS) to begin our scanning project for all active personnel and HR safety files.

**Learning and Development (L&D):** In August, L&D began work to implement an organizational learning management system to assist with work center and compliance training, began facilitating work group SPARC Sessions, and continued working with industry and community partners to develop and expand access to training.

**Cornerstone LMS:** L&D acquired Cornerstone LMS to assist work centers with tracking and monitoring compliance training. L&D staff are working to develop the LMS structure, reach out to work center trainers and representatives, and build resources to manage the transition to an online management system.

**SPARC Sessions:** L&D hosted the first SPARC Sessions in August and have received positive feedback related to the change in strategic planning sessions. Work centers will continue to schedule SPARC Sessions as needed, and SPARC Sessions will be held throughout the remainder of the calendar year.

**Industry and Community Partnerships:** L&D staff participated in the Apprenticeship Building America grant ceremony, which awarded the Hampton Roads Workforce Council (HRWC) \$6 million for their proposed regional apprenticeship hub program. As a sub-award winner, L&D will work with the HRWC to build and enhance apprenticeship



opportunities in the Hampton Roads area and introduce new candidate pools to jobs in the water, maritime, and utility sectors.

Lastly, L&D facilitators have continued routine and scheduled training, and the LAMA cohort has continued to work towards their capstone project, with intended graduation scheduled for November 2024.

**Safety:** Staff conducted required safety trainings and medical monitoring. Weekly, monthly, and quarterly safety inspections, and testing and monitoring were performed at various work centers and construction sites. There were four reported work-related injuries requiring medical attention and one auto/property damage accidents.

For the August Safety Campaign, Safety encouraged work centers to take part in OSHA's Safe and Sound Week held from August 12-18, 2024. Each work center was asked to complete one of OSHA's Find and Fix Challenges. These challenges included "Eyes on Safety" which involved conducting a safety walk; "Halt a Hazard" focused on identifying and controlling a workplace hazard; and "Safety Shuffle" where employees swapped jobs or job tasks with a co-worker.



## Community Engagement

Staff provided outreach at career events. This outreach was focused on the variety of career fields represented at HRSD. Information was shared about our open positions, the Apprenticeship Program, how we positively impact the local waterways and our generous benefits. Staff also explained how to apply for a position at HRSD and answered questions about what it's like to work at HRSD.

Respectfully submitted,

*Dorissa Pitts-Paige*

Chief People Officer

TO: General Manager/ Chief Executive Officer

FROM: Chief of Water Quality (CWQ)

SUBJECT: Monthly Report for August 2024

DATE: September 11, 2024



## Environmental Responsibility

### 1. HRSD's Regulatory Activities:

- a. Monthly Discharge Monitoring Report (DMR) Summary and Items of Interest: [Effluent and Air Emissions Summary](#).
- b. From Fiscal Year (FY) 2025 to date, there have been zero Permit Exceedances out of 9,421 Total Possible Exceedances.
- c. Pounds of Pollutants Removed in FY 2025 to date: 39.4 million pounds.
- d. The Boat Harbor VPDES permit was received on August 8 and is valid through July 31, 2029.
- e. Submitted the new 5<sup>th</sup> year and three planning years for nutrient compliance to the Virginia Nutrient Credit Exchange Association (2029 – 2032). The submission was largely consistent with the plan submitted the year prior. The most significant change was the modification to the plan for HRSD's Urbanna facility. With the anticipated delay on installing the force main necessary to close Urbanna, HRSD needed to submit a modification to request credits for the years up to 2029 and identified a need to continue the credit purchase for the 2029 – 2032 time frame.

### 2. Pretreatment and Pollution Prevention (P3) Program Highlights:

No civil penalties were issued in August.

### 3. Environmental and Regulatory Advocacy

Chief participated in the following advocacy and external activities:

- a. Co-chaired a meeting of the Chesapeake Bay Program Wastewater Treatment Workgroup meeting. This team is evaluating updates to nutrient loads in the Phase 7 Watershed Model: Combined Sanitary Overflows (CSOs), Gravity Line Exfiltration, Sanitary Sewer Overflows (SSOs), and Boater Pump-Out BMPs.

- b. Attended a meeting of the Potomac Aquifer Recharge Oversight Committee (PAROC). In addition to quarterly updates on the activities of the Potomac Aquifer Recharge Monitoring Laboratory (PARML), the group discussed logistics associated with engaging the National Water Research Institute (NWRI) to fulfill the independent third-party evaluation of the PARML activities.



## Financial Stewardship

1. Staff supported the generation of high-quality data for use in permitting and environmental management decisions through our Municipal Assistance Program (MAP), which offers services to other municipal and regional authorities throughout the state. HRSD costs for this program are reimbursed by the customer. Below are program highlights for the month.

HRSD provided sampling and analytical services to the following to support monitoring required for their respective Virginia Permit Discharge Elimination System (VPDES) permits:

- a. Hanover County
  - b. Northumberland County
  - c. Westmoreland County
2. Released the Request for Proposal (RFP) for Biosolids Marketing. This RFP is designed to identify market outlets and appropriate pricing as well as implementing distribution to the identified outlets for HRSD's Class A NutriGreen cured product.



## Community Engagement

1. Staff supported Microbial Source Tracking (MST) investigations in partnership with Hampton Roads localities. This work is required as part of HRSD's Integrated Plan. Sampling and analytical services were provided for the localities and projects identified below:
  - a. City of Chesapeake (Southern Branch)
  - b. City of Hampton (New Market Creek)
  - c. City of Newport News (Southeast Newport News)
  - d. City of Norfolk (Mason Creek)

- e. City of Suffolk (downtown)
  - f. City of Virginia Beach (Thalia Creek)
  - g. James City County
2. Chief participated in the following activities:
- a. Elizabeth River Project's River Restoration Advisory Committee meeting to review application guidelines for the 2025 River Star Business Awards.
  - b. Provided a briefing and tour on HRSD's SWIFT program to staff from the Virginia Institute of Marine Science and representatives from the Korean Research Institute of Ships and Ocean Engineering (KRISO).
  - c. Provided support for a SWIFT Research Center tour for Spotlight on the Peninsula for the Virginia Peninsula Chamber.
  - d. Provided a briefing on the HRSD SWIFT program, its current construction activities, and a tour of the James River Crossing to DEQ-Tidewater Regional Office staff, Virginia Marine Resources Commission (VMRC) staff, and Deputy Secretary Walle (Natural and Historic Resources) and her staff.
  - e. Provided a briefing on the HRSD SWIFT program, its current construction activities, and a tour of the James River Crossing to DEQ Central Office staff, the Commissioner of VMRC, Deputy Secretary Taillon (Natural and Historic Resources), Hampton Roads Planning District Commission staff, and the Virginia Executive Director of the Chesapeake Bay Foundation.



## Innovation

Chief participated in a meeting of the Norfolk Innovation Corridor (NIC) Environmental Subcommittee. The NIC is a state-designated technology zone and is focused on supporting resilience products, services, and technologies. The Environmental Subcommittee specifically focuses on opportunities to support and incentivize environmental resilience.

Respectfully submitted,

*Jamie Heisig-Mitchell*  
Chief of Water Quality

# EFFLUENT SUMMARY FOR AUGUST 2024

PLANT	FLOW mgd	% of Design	BOD mg/l	TSS mg/l	FC #/UBI	ENTERO #/UBI	TP mg/l	TP CY Avg	TN mg/l	TN CY Avg	CONTACT TANK EX
ARMY BASE	8.84	49%	0	1.9	1	<1	0.31	0.67	4.8	4.2	26
ATLANTIC	46.53	86%	15	9.2	7	2	NA	NA	NA	NA	12
BOAT HARBOR	11.01	44%	7	5.2	6	1	1.1	0.72	28	23	16
CENT. MIDDLESEX	0.013	53%	<2	1.6	2	<1	NA	NA	NA	NA	NA
JAMES RIVER	11.04	55%	6	6.4	<1	1	0.44	0.56	10	10	21
KING WILLIAM	0.094	94%	<2	<1.0	NA	1	0.085	0.16	1.7	2.2	NA
NANSEMOND	16.66	56%	3	3.8	3	<1	1.2	1.3	4.5	4.1	4
ONANCOCK	0.204	27%	0	<1.0	<1	1	0.28	0.24	3.2	3.3	NA
SUNSET BAY	0.022	55%	2	1.7	1	4	NA	NA	NA	NA	0
URBANNA	0.059	59%	5	18	4	3	6.3	3.3	25	16	NA
VIP	30.47	76%	2	3.1	3	1	0.88	0.44	3.3	3.7	3
WEST POINT	0.355	59%	12	4.4	2	5	3.4	2.7	18	14	0
WILLIAMSBURG	8.37	37%	3	2.4	3	2	0.80	0.95	2.9	2.8	14
YORK RIVER	11.08	74%	2	1.5	<1	5	0.21	0.23	3.6	4.9	20
	<u>144.75</u>										

% of  
Capacity

North Shore 50%  
South Shore 72%  
Small Communities 42%

AIR EMISSIONS SUMMARY FOR AUGUST 2024

	No. of Permit Deviations below 129 SSI Rule Minimum Operating Parameters								Part 503e Limits		
	Temp	Venturi(s) PD	Precooler Flow	Spray Flow	Venturi Flow	Tray/PBs Flow	Scrubber	Any	THC	THC	BZ Temp
	12 hr ave	12 hr ave	12 hr ave	12 hr ave	12 hr ave	12 hr ave	pH	Bypass	Mo. Ave	DC	Daily Ave
MHI PLANT	(F)	(in. WC)	(GPM)	(GPM)	(GPM)	(GPM)	3 hr ave	Stack Use	(PPM)	(%)	Days >Max
ARMY BASE	0	0	0	0	2	0	0	0	51	89	0
BOAT HARBOR	0	0	0	n/a	0	0	0	0	10	62	0
VIP	0	0	0	n/a	0	0	0	0	30	99	0
WILLIAMSBURG	0	0	0	n/a	0	0	0	0	28	26	0

## **Items of Interest – August 2024**

### **MULTIPLE HEARTH INCINERATION (MHI)**

Total Hydrocarbon (THC) monthly averages (not to exceed 100 ppm) were met by all four MHI plants (Army Base, Boat Harbor, Virginia Initiative, and Williamsburg). The THC continuous emissions monitoring (CEM) valid data capture was 62% or greater for three of the four MHIs, while Williamsburg had multiple CEMs systems issues that lead to a low percent data capture for the month.

The MHIs had two deviations from the required 129 SSI rule minimum operating parameters and no bypass events.

On August 5, DEQ sent HRSD the notice of termination letter for the 2020 consent order regarding the Army Base MHI hydrogen chloride (HCl) emissions.

VIP MHI #2 emissions limits stack testing was successfully completed on August 27.

Submitted to DEQ the Title V semiannual monitoring reports for the four MHI plants.

### **AIR PERMITS and ODOR CONTROL**

On August 15, submitted to DEQ an air permit application for the diesel engine emergency generators to be installed at James River in support of the SWIFT.

There was a total of twenty-two (22) odor control complaints this month.

Atlantic Plant received nineteen (19) odor complaints from Ocean Lakes and Lago Mar neighbors. Plant Staff responded to all complaints. In addition to the usual sources of the odors (curing and stored solids, digesters), a leaking valve was found on the THP on August 9. Plant staff took immediate corrective action in securing the THP reactor with the valve leak to mitigate this odor source and make needed repairs. TSD recorded all complaints in the air permit required complaint log.

James River received a complaint regarding odor that we concluded to be odors from a marsh in the Summerlake neighborhood that is more than a mile from the plant. No further complaints have been received.

Two other unidentified complaints were received. One appeared to be just a test of the Atlantic Outreach email for odor complaints and the second was from an undetermined location with no other data to support a source identification of any kind.

### **CENTRAL ENVIRONMENTAL LABORATORY**

An ordering error resulted in free chlorine DPD packets being used inadvertently to analyze chlorine residuals between Sunday, August 4 10:00 AM and Monday August 5 at 8:00 AM at the Williamsburg plant. Total chlorine measures free chlorine and combined chlorine, so maintaining residuals using free chlorine DPD packets indicates adequate disinfection was maintained.

## **TREATMENT**

DEQ was notified of the following reportable events:

### James River

On August 12 a contractor hit the gravity thickener (GT) supernatant line while excavating. HRSD staff immediately shut down the primary pumps and chlorinated effluent pump to stop the flow to the GT. Additionally, a sump pump was placed in the excavation, and the contents were pumped back into the treatment plants flow. Approximately 100 gallons of GT supernatant was unrecoverable from the ground in the excavation site.

### Nansemond

On August 5 a contractor rolled over a two inch non-potable water (NPW) line with heavy equipment causing the line to break. While digging to repair the line a second NPW line was hit and broken. Approximately 200 gallons of chlorinated NPW were released to the ground.

On August 20 contractors left a vent line cleanout open resulting in the primary clarifier to overflow onto the ground and into the storm drain. A vac truck recovered approximately 1,500 gallons of primary clarifier influent from the ground with the remaining 200 gallons being unrecoverable from the storm drain.

### Williamsburg

On August 15 a hose from the Sodium Hypochlorite tank fill line separated from the transfer pipe when a clamp valve failed. On call staff removed the contaminated soil from the area and the soil was placed in storage to be picked up by Potomac Environmental. Approximately 1 gallon of Sodium Hypochlorite was unrecoverable from the ground.

### York River

On August 4 a loss of chlorination occurred for approximately 16 minutes when the valve was closed after switching hypochlorite tanks. The Operator locally confirmed that the automated valve was open, but moved onto other duties before checking the manual valve / verifying flow to disinfection. Once they were aware of the flow alarm they immediately switched back to the previous tank and regained hypo flow to disinfection.

## **SYSTEM**

On August 6, during a site visit near 79 East College Place Hampton HRSD staff noticed a sink-hole in the ground. After further investigation, it was determined that the sink hole was over top of HRSD's 30 inch reinforced concrete pipe, and there was missing pipe wall on the top of the pipe observed. There was evidence on the ground around the sink-hole of a past spill but not one during or recent to the visit. The amount released could not be quantified. A temporary containment system was constructed to pump flow into a nearby manhole. HRSD has active construction activities via CIP projects in the area to remove this line from service.



## **SYSTEM/TREATMENT, SMALL COMMUNITIES, AND EASTERN SHORE**

### King William Collection System

On August 17 heavy rain (1.9") associated with a storm inundated the service area. The SCD team arrived following a high well alarm and observed an overflow at the low rim manhole KW-MH-C20. The SCD team verified that the station was running properly and removed solids and spread lime to the affected area. Approximately 510 gallons of raw wastewater were released to the ground and Moncuin Creek.

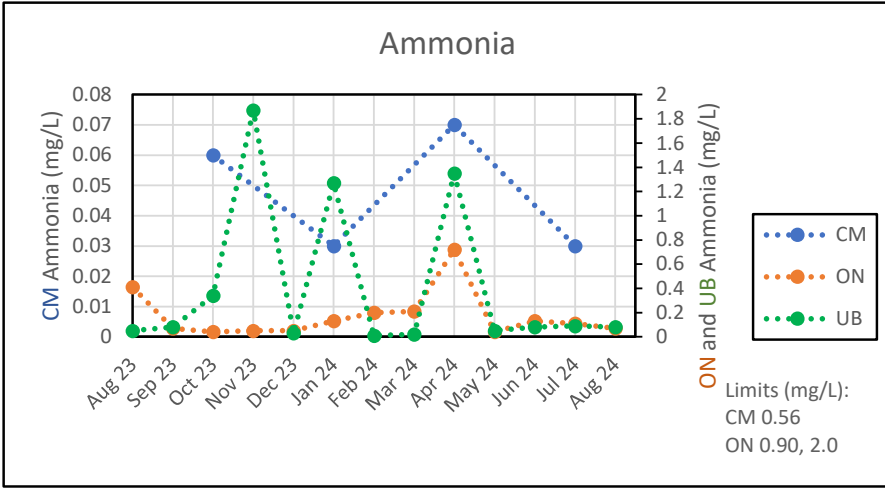
On August 30 on call staff responded to a high level overflow alarm at the Acquinton Church Rd pump station but did not observe an active spill upon their arrival and evidence of a spill is unknown due to the ground being wet from rain occurring that day. Staff believes a combination of alarm settings and an upstream pump station on bypass overwhelmed the Acquinton Church Rd pump station. Staff verified the pump station was operating properly and will check the alarm level set points and verify they are set at the correct levels to notify staff when the pump station high level is active. An estimated 300 gallons of raw wastewater were released to the ground and Moncuin Creek.

### West Point Collection System

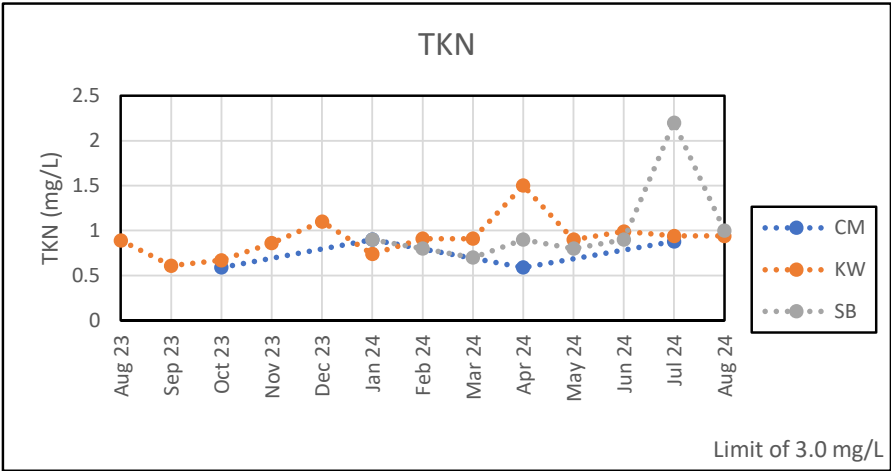
On August 20 an overflow occurred at WP-MH-0131 and WP-MH-0130 when the bypass pump was inoperable due to battery failure. West Point pump station 1 is being bypassed for electrical upgrades by a contractor, leaving the station without power. Approximately 3,010 gallons of raw wastewater were released to the ground and Pamunkey River.

Flow summaries, nutrient data, and rainfall information is located here:

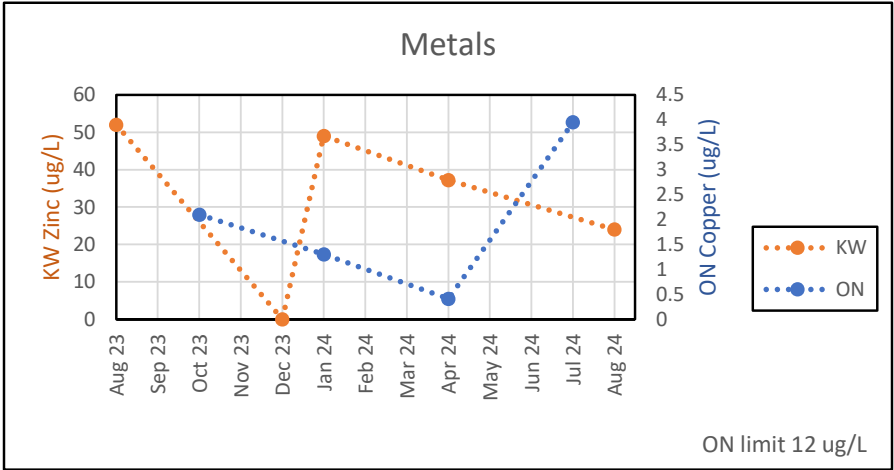
	Ammonia		
	CM	ON	UB
Aug 23		0.41	0.05
Sep 23		0.07	0.08
Oct 23	0.06	0.04	0.34
Nov 23		0.05	1.87
Dec 23		0.05	0.03
Jan 24	0.03	0.13	1.27
Feb 24		0.2	0.01
Mar 24		0.21	0.02
Apr 24	0.07	0.72	1.35
May 24		0.04	0.05
Jun 24		0.13	0.08
Jul 24	0.03	0.11	0.09
Aug 24		0.07	0.08



	TKN		
	CM	KW	SB
Aug 23		0.89	
Sep 23		0.61	
Oct 23	0.59	0.67	
Nov 23		0.86	
Dec 23		1.1	
Jan 24	0.90	0.74	0.90
Feb 24		0.91	0.80
Mar 24		0.91	0.70
Apr 24	0.59	1.5	0.90
May 24		0.90	0.80
Jun 24		0.99	0.90
Jul 24	0.88	0.94	2.2
Aug 24		0.94	1.0



	Zinc	Copper
	KW	ON
Aug 23	52	
Sep 23		
Oct 23		2.1
Nov 23		
Dec 23	<5.0	
Jan 24	49	1.3
Feb 24		
Mar 24		
Apr 24	37	0.41
May 24		
Jun 24		
Jul 24		4.0
Aug 24	24	





The following Internal Audit Status document has been prepared by SC&H for the HRSD Commission. Below is a summary of projects in process, upcoming projects, and the status of current management action plan monitoring.

## ***I. Projects in Process***

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### **Operational Technology Security and Resilience**

- **Completed Tasks (August 2024)**
  - Completed testing.
  - Started draft version of the report.
- **Upcoming Tasks (September 2024)**
  - Finalize and issue the final report.

### **Design and Construction Estimating**

- **Completed Tasks (August 2024)**
  - Received points of contact for benchmarking organizations' interviews.
  - Drafted the front end and observations of the report.
- **Upcoming Tasks (September 2024)**
  - Request interviews/responses to benchmarking questionnaire (9/3).
  - Meet with organizations for benchmarking interviews.
  - Continue to finalize report.

### **IT Governance**

- **Upcoming Tasks (September 2024)**
  - Commence internal audit.
  - Conduct planning procedures.

## ***II. Upcoming Projects***

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- Talent management investigations: October 2024
- Model 3: November 2024
- Risk assessment refresh: November/December 2024



### III. Management Action Plan Status

SC&H performs on-going management action plan (MAP) monitoring for completed internal audits/projects. SC&H begins MAP follow-up approximately one year following the completion of each audit and periodically follows up until conclusion.

For each recommendation noted in an audit report, SC&H gains an understanding of the steps performed to address the action plan and obtains evidence to confirm implementation, when available.

The following describes the current project monitoring status. This listing does not include audits which were determined by HRSD Management and the Commission to include confidential or sensitive information.

Audit / Project	Next Follow-up	Recommendations		
		Closed	Open	Total
Personally Identifiable Information	September 2024	0	3	3
Safety Division	October 2024	2	1	3
Freedom of Information Act	September 2024	0	1	1
Family Medical Leave Act (FMLA)	September 2024	3	1	4
Succession Planning	September 2024	2	2	4
AP, ProCard	July 2025	0	2	2
Closed Audit/Projects (x16)	Closed	127	0	127
Totals		134	10	144

Strategic Measures  
August 2024

Strategic Planning Measure	Jul-24	Aug-24	FY-25
Educational and Outreach Events	5	6	11
Number of Community Partners	4	10	14
Number of Technical Presentations	1	0	1
Revenue vs. Budget	9%	18%	14%
Wastewater Expenses vs. Budget	6%	13%	10%
Accounts Receivable (HRSD)	\$44,394,792	\$48,551,706	\$46,473,249
Aging Accounts Receivable	32.70%	29.90%	31.30%
Turnover Rate wo Retirements	0.46%	0.80%	1.27%
Turnover Rate w Retirements	0.46%	0.80%	1.27%
Avg Time to Hire	2 months 28 days	3 months 3 days	3 months 1 days
Number of Vacancies	86	82	374
Average number of applicants per position	9.1	13.1	11.1
Percentage of positions filled with internal applicants	28.6%	42.9%	35.7%
Recruitment source Return on Investment	*	*	*
Average time required (days) to onboard new employees, including from initial posting of position to candidates' first day	*	*	*
Customer Call Wait Time (mins)	1.32	1.00	1.16
Capacity Related Overflows with Stipulated Penalties (Reported Quarterly)	0	*	*
Non-Capacity Related Overflows with Stipulated Penalties (Reported Quarterly)	0	*	*
TONS OF CARBON: Tons of carbon produced per million gallons of wastewater treated Energy consumed (gas (scfm) and electricity (kWh)) per million gallons of wastewater treated.	*	*	*
GAS CONSUMPTION: Tons of carbon produced per million gallons of wastewater treated Energy consumed (gas (scfm) and electricity (kWh)) per million gallons of wastewater treated.	*	*	*
ELECTRICITY CONSUMPTION: Tons of carbon produced per million gallons of wastewater treated Energy consumed (gas (scfm) and electricity (kWh)) per million gallons of wastewater treated.	*	*	*
Monthly CIP Spending	\$453,806		\$453,806

\*Not currently tracking due to constraints collecting the data.

\*\* Updated after EPA Quarterly Report submittal.

\*\*\*Billing is one month behind

# Strategic Measures

August 2024

## Technical Presentations

Date	Department	Presenter	Presentation
08/07/2024	Operations	Riley Doyle	Masters Thesis Defense, Riley Doyle, "Optimizing Enhanced Biological Phosphorus Removal at WRRFs: Impact of Low DO Operation and Full-Scale Strategies"
08/12/2024	Operations	Lily McIntosh	International Water Association World Water Congress, Lily McIntosh, Poster Presenter, "Monitoring Microbial Adaptation To Low DO Biological Nutrient Removal"
08/12/2024	Operations	Megan Bachmann	International Water Association World Water Congress, Megan Bachmann, Podium Speaker, "HRSD's Journey From Pilot To Full-Scale Implementation Of Mainstream Partial Denitrification Anammox (PdNA) IFAS"
08/13/2024	Operations	Charles Bott	International Water Association World Water Congress, Charles Bott, Invited Speaker, "Intensifying, Optimizing, and Innovating: BNR Design and Operation @ HRSD"
08/14/2024	Operations	Charles Bott	International Water Association World Water Congress, Charles Bott, Invited Speaker, "HRSD SWIFT Innovation"

# Strategic Measures

August 2024

## Educational Outreach

Date	Department	Event	Community Partner
08/01/2024	Operations	Virginia Initiative Plant tour for Old Dominion University	ODU
08/01/2024	General Management	SWIFT RC Tour - Regional Entities/Business Chamber	CIVIC Leadership Institute (+ 10 others)
08/01/2024	Water Quality	SWIFT RC Tour - Regional Entities/Business Chamber	CIVIC Leadership Institute (+ 10 others)
08/01/2024	Water Technology & Research	SWIFT RC Tour - Regional Entities/Business Chamber	CIVIC Leadership Institute (+ 10 others)
08/01/2024	Communications	SWIFT RC Tour - Regional Entities/Business Chamber	CIVIC Leadership Institute (+ 10 others)
08/02/2024	Communications	SWIFT RC Tour and activity - Manor High School	Portsmouth Public Schools
08/07/2024	Communications	SWIFT RC Tour - HRSD employee friends and family	HRSD employees
08/23/2024	Engineering	SWIFT RC Tour - Spotlight Peninsula-Peninsula Chamber of Commerce	Virginia Peninsula Chamber of Commerce
08/23/2024	Water Technology & Research	SWIFT RC Tour - Spotlight Peninsula-Peninsula Chamber of Commerce	Virginia Peninsula Chamber of Commerce
08/23/2024	Communications	SWIFT RC Tour - Spotlight Peninsula-Peninsula Chamber of Commerce	Virginia Peninsula Chamber of Commerce
08/27/2024	Communications	SWIFT Presentation to City of Portsmouth Clean City Community Commission	City of Portsmouth Clean City Commission

## Community Partners

Date	Department	Event
08/01/2024	Operations	ODU
08/01/2024	Operations	Waste Management
08/01/2024	Communications	Hampton Roads Workforce Council
08/01/2024	Communications	Urban League of Hampton Roads
08/01/2024	Communications	Virginia Ship Repair Association
08/01/2024	Communications	HRPDC
08/01/2024	Communications	Hampton Roads Executive Roundtable
08/01/2024	Communications	Hampton Roads Alliance
08/01/2024	Communications	City of Hampton
08/01/2024	Communications	Virginia Peninsula Chamber of Commerce
08/01/2024	Communications	757 Collab
08/01/2024	Communications	Virginia Maritime Association

AGENDA ITEM 18. – September 24, 2024

**Subject:** Closed Meeting

**Recommended Action:** Approve a motion to go into closed meeting to consider legal matters concerning probable litigation as provided for in Code of Virginia §2.2-3711.A7.

**Exemption Description:** Consultation with legal counsel and briefings by staff members or consultants pertaining to actual or probable litigation, where such consultation or briefing in open meeting would adversely affect the negotiating or litigating posture of the public body. For the purposes of this subdivision, "probable litigation" means litigation that has been specifically threatened or on which the public body or its legal counsel has a reasonable basis to believe will be commenced by or against a known party. Nothing in this subdivision shall be construed to permit the closure of a meeting merely because an attorney representing the public body is in attendance or is consulted on a matter.



AGENDA ITEM 19. – September 24, 2024

**Subject:** Reconvened Meeting

**Recommended Action:** Pursuant to Section 2.2-3712.D of the Code of Virginia, we will now have a roll call vote to certify that to the best of each Commission member's knowledge: (i) only public business matters lawfully exempted from open meeting requirements under this chapter, and (ii) only such public business matters as were identified in the motion by which the closed meeting was convened were heard, discussed or considered. Any Commissioner who believes there was a departure from these two requirements shall so state prior to the vote, indicating the substance of the departure.