

INTERCREDITOR AGREEMENT

THIS INTERCREDITOR AGREEMENT, dated as of September 28, 2020 (this “Agreement”), 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**.

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 Available for Debt Service (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, and as further amended and supplemented from time to time, the “Trust Agreement”).

Section 704 of the Trust Agreement permits the District to incur Parity Obligations (as defined therein) secured by a pledge of Net Revenues Available for Debt Service 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 Available for Debt Service on a parity with the Bonds (which Local Bonds shall constitute “VRA Subordinate 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 Available for Debt Service with respect to the Bonds and the VRA Subordinate Obligations (collectively, the “Parity 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 Subordinate 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 Subordinate Obligations, as the case may be, to be immediately due and payable, then any Net Revenues Available for Debt Service and any other amounts received by such accelerating Secured Party on account of the Parity 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 Parity Obligations constituting accrued and unpaid interest on the Parity Obligations, ratably among the Secured Parties in accordance with the percentage that the aggregate principal amount of the Bonds or the VRA Subordinate 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 Parity Obligations constituting unpaid principal of the Parity Obligations, ratably among the Secured Parties in accordance with the Applicable Percentages; and

(d) Last, the balance, if any, after all of the Parity 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 Available for Debt Service 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 Available for Debt Service 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 Subordinate 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 Available for Debt Service 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: [REDACTED]

If to the Trustee:

The Bank of New York Mellon Trust Company, N.A.
500 Ross Street, 12th Floor
Pittsburgh, Pennsylvania 15262
Attention: Corporate Trust Department
E-mail: [REDACTED]

If to VRA:

Virginia Resources Authority
1111 East Main Street, Suite 1920
Richmond, Virginia 23219
Attention: Executive Director
E-mail: [REDACTED]

If to the VRA Trustee:

U.S. Bank National Association, as Trustee
Two James Center
1021 East Cary Street, 18th Floor
Richmond Virginia 23219
Email: [REDACTED]

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 Subordinate 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 Parity 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.

[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: Edward G. Henifin
Title: General Manager

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

By _____
Name: Michael Flickinger
Title: Vice President

**VIRGINIA RESOURCES AUTHORITY,
as Administrator of the Virginia Water Facilities
Revolving Fund**

By _____
Name: Stephanie L. Hamlett
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: William F. Michie , III
Title: Assistant Vice President