

**AGREEMENT FOR CONSTRUCTION AND RELOCATION OF
BRIDGE STREET VENT AND REHABILITATION OF BRIDGE STREET SIPHONS**

THIS AGREEMENT FOR CONSTRUCTION AND RELOCATION OF BRIDGE STREET VENT AND REHABILITATION OF BRIDGE STREET SIPHONS (this "Agreement"), between the **CITY OF HAMPTON, VIRGINIA**, a municipal corporation of the Commonwealth of Virginia (the "CITY"), and the **HAMPTON ROADS SANITATION DISTRICT**, a political subdivision of the Commonwealth of Virginia ("HRSD"), is entered into this ___ day of _____, 2016.

WITNESSETH:

WHEREAS, the HRSD Bridge Street Air Vent Pipe and Bridge Street Wastewater Siphons, together with all connections, manholes, and related appurtenances thereto (the "Facilities") are located in whole or in part within the right of way of Bridge Street in the City of Hampton;

WHEREAS, the CITY is proposing to construct a replacement bridge on Bridge Street (the "Replacement Bridge") as part of the Capital Improvement Project, City Project # 07-010, VDOT Project #000-114-199, UPC: 93081 (the "Project");

WHEREAS, the proposed Replacement Bridge creates a conflict with the existing Facilities, which will necessitate Temporary Relocation of part of the Facilities and Permanent Relocation and Permanent Improvements of part of the Facilities, as each is described and defined below (collectively referred to as the "Facilities Work" and incorporated into the term "Facilities");

WHEREAS, HRSD and the CITY agree it is in the best interest of the parties to have the Facilities Work included in the Project; and

WHEREAS, the CITY agrees to have such Temporary Relocations, Permanent Relocation and Permanent Improvements constructed in accordance with the description of the Facilities stated and referred to herein, and under the terms and conditions of this Agreement.

NOW, THEREFORE, it is mutually agreed between the parties hereto as follows:

I. DESCRIPTION OF FACILITIES WORK

The following relocations, repairs, and rehabilitations constitute the Facilities Work and shall be constructed as part of the Project:

- A. Temporary Relocations -The installation of temporary utility support system, temporary bypass of the existing wastewater siphons, installation of the temporary air vent pipe, and Closed-Circuit Television ("CCTV") inspection of the wastewater siphons prior to the bridge construction pile driving work.

- B. Permanent Relocation - The installation of the permanent air vent pipe on the Replacement Bridge.
- C. Permanent Improvements – The rehabilitation of the existing wastewater siphons and vaults, installation of one sanitary sewer manhole, and pre- and post-lining CCTV inspection of the rehabilitated wastewater siphons and vaults.
- D. The Facilities Work described in Sections I(A), (B), and (C) above are all as shown and described in the Plans and Specifications labeled “BID PROPOSAL AND CONTRACT – REPLACEMENT OF BRIDGE STREET BRIDGE – BRIDGE STREET OVER SALTERS CREEK VA STR. 8009, City of Hampton, Virginia”, originally dated August 24, 2014 and which may be revised subsequently (the “Plans and Specifications”).

II. CONSTRUCTION OF FACILITIES WORK

A. Cost of Construction and Schedule of Construction:

The construction cost of the Facilities Work described above, as specifically defined by the Plans and Specifications for the work, prepared by HRSD to be included in the Project and to be approved by HRSD and the CITY, shall include, but is not limited to, the following:

1. The construction costs for the Temporary Relocations, Permanent Relocation, and Permanent Improvements;
2. The cost of HRSD contract administration;
3. The cost of HRSD construction inspections; and
4. Any related miscellaneous essential expense.

These costs shall hereinafter be collectively referred to as the “Facilities Costs.”

B. Maintenance of Records:

The records of these Facilities Costs shall be available for review by HRSD at any mutually convenient time. Upon completion of the Facilities Work, the total costs as defined will be forwarded to HRSD and a statement of payment to the contractor indicating that the Facilities Costs have been paid in full by the CITY.

C. Approval of Plans and Specifications:

HRSD and the CITY agree that before any construction work is begun under this Agreement, the CITY will:

1. Submit to and secure approval from HRSD (in writing) of the final Plans and Specifications for the Temporary Relocations, Permanent Relocation, and Permanent Improvements.
2. Any change to the final Plans and Specifications shall be approved by HRSD and the CITY, and shall be done in accordance with HRSD Standards and Preferences for use in Engineered Construction Projects, latest edition, and the CITY's Utility Policy and Design and Construction Standards, latest editions.
3. The CITY and HRSD will review shop drawings and change orders as related to the Facilities Work. Those construction submittals and shops drawings shall include, but may not be limited, to:
 - a. Construction submittal and shop drawings for the temporary bypass system (including sizing calculations for the pumps and pipe, and material information for the pre-and post-lining CCTV inspection of the rehabilitated wastewater siphons and vaults pipe);
 - b. Construction submittal and shop drawing for the temporary and permanent air vent pipe;
 - c. Construction submittal and shop drawing for the siphons rehabilitation system (including liner sizing calculations, curing requirements, material information for the liner and resin); and
 - d. Pre-pile driving, pre-lining, and post-lining CCTV inspection videos.
4. The CITY will obtain and furnish HRSD with a copy of all permits and approvals necessary for the Facilities Work.
5. Obtain any easements needed for the Project, whether temporary or permanent.
6. Comply with the Virginia Public Procurement Act.

D. Payment of the Facilities Costs

1. HRSD will administer and be responsible for bearing one hundred percent (100%) of the cost for the wastewater siphons rehabilitation, wastewater siphons vaults rehabilitation, pre- and post-lining CCTV inspection of the rehabilitated wastewater siphons and vaults and installation of a sanitary sewer manhole undertaken as part of the Permanent Improvements.
2. The City will administer and be responsible for bearing eighty percent (80%) of the cost of the CCTV inspections undertaken as part of the Temporary Relocations. HRSD will be responsible for twenty percent (20%) of the cost of the same.
3. The CITY will administer and be responsible for bearing one hundred percent (100%) of the cost of the temporary utility support system undertaken as part of the Temporary Relocations.
4. The CITY will administer and be responsible for bearing eighty percent (80%) of the cost of the installation of the temporary air vent pipe and the

permanent air vent piping undertaken as part of the Temporary Relocations and Permanent Relocation. HRSD will be responsible for twenty percent (20%) of the cost of the same.

5. The City will administer and be responsible for bearing fifty percent (50%) of the costs associated with the installation of the temporary bypass system of the existing wastewater siphons undertaken as part of the Temporary Relocations. HRSD will be responsible for fifty percent (50%) the costs of the same.
6. For a summary of estimated costs and the cost sharing responsibility, refer to attached **Exhibit A**, "Replacement of Bridge Street Bridge – Bid Form - Items 93 through 109."
7. Costs associated with any change to the initial construction cost ("Change Order") shall be as follows:
 - a. HRSD will be solely responsible for costs due to a Change Order requested by HRSD;
 - b. CITY will be solely responsible for costs due to a Change Order requested by CITY; and
 - c. Both HRSD and City will equally fund fifty percent (50%) of costs due to a Change Order for an unknown or unforeseen condition.

E. Ownership, Operation and Maintenance of Facilities

1. The Permanent Improvements and Permanent Relocation constructed hereunder shall be conveyed to and remain the property of HRSD. HRSD agrees to accept ownership of the Permanent Improvements and Permanent Relocation pursuant to Section III(D) below. HRSD agrees that, after accepting ownership of the Permanent Improvements and Permanent Relocation, it will operate and maintain the Facilities constructed under this Agreement at the expense of HRSD. No wastewater flow will be accepted through the Permanent Improvements and Permanent Relocation until such time as HRSD has accepted ownership of the Permanent Improvements and Permanent Relocation.
2. The Temporary Relocations will be the property of the CITY, until such time that the Permanent Improvements and Permanent Relocation are complete and the Temporary Relocations are no longer needed. The CITY's contractor will operate and maintain the Temporary Relocations including the temporary bypass pumping system while they are in use. No wastewater will be accepted through the Temporary Relocations until the Temporary Relocations are operationally tested by the CITY's contractor and approved by HRSD and the City.

F. Schedule for the Project

The Project is anticipated to begin by approximately March 2016 and be complete by approximately March 2017. If the Project dates aforementioned are deviated from substantially, HRSD reserves the right to terminate this Agreement.

III. OBLIGATIONS OF HRSD

A. Design

HRSD agrees to provide all design-related services for HRSD Facilities at HRSD's cost.

B. Inspection and Construction Administration

HRSD agrees to provide:

1. Full-time inspection by HRSD of the Facilities Work. The inspector(s) shall have the full authority to ensure that the Facilities Work is constructed in accordance with the approved Plans and Specifications.
2. HRSD or its consultant, AECOM, at no cost to the CITY, will be responsible for construction inspection and administration of the Facilities.
3. Construction Administration and inspection for the work done for the CITY will be performed and paid for by the CITY, and Construction Administration and inspection for work done for HRSD will be performed and paid for by HRSD. Each party will have prepared their own record drawings at no cost to the other.

C. Payment of Costs

HRSD shall pay the costs set forth in Section II(D) after execution of a construction contract.

D. Agreement to Accept Ownership

HRSD shall accept ownership of the Facilities described in Section II(E) when all conditions of the construction contract and this Agreement have been met.

IV. OBLIGATIONS OF THE CITY

A. Design

The design of the Project, excluding design of the HRSD Facilities, shall be the responsibility of the CITY.

B. Bidding of the Project

The CITY will receive competitive bids for construction of the Project, including the Facilities based on the Plans and Specifications provided by HRSD. All bids received will be reviewed and approved by the CITY and HRSD prior to award of the construction contract. The CITY and HRSD shall negotiate in good faith to resolve financial matters with regards to Bidding of the Project. The contractor and subcontractors selected shall be acceptable to CITY and HRSD.

C. Construction of Facilities

The CITY shall complete construction of the Facilities in accordance with the Plans and Specifications and terms set forth in this Agreement. The CITY and HRSD shall review and agree upon the contractors and subcontractors qualifications prior to the award of contract.

D. Correction of Construction Deficiencies

The CITY agrees to require the Contractor to provide the CITY with performance and payment bonds. The bonds are to remain in effect for one year following completion of the construction of the Project. This period will be a warranty period where any construction defects must be resolved in a timely fashion by the Contractor.

E. Conveyance of Facilities

The CITY agrees that upon completion of the construction of the Facilities Work, the CITY will make conveyance of the Facilities, as follows:

1. For those portions of the Facilities not within the public right-of-way, the CITY agrees to convey same together with adequate easements, right-of-ways, or title by special warranty deed, or by easement, or by right-of-way (as depicted on approved plans), in recordable form satisfactory to HRSD and its council.
2. All Facilities conveyed shall be accompanied by plats and drawings of the Facilities and rights conveyed.

F. Record Drawings

The CITY agrees to require the Contractor to provide field information to the HRSD inspector for use in documenting the construction and creating record drawings for the Facilities.

V. GOVERNING LAW

This Agreement shall be deemed to be a Virginia contract and shall be governed as to all matters whether or invalidity, interpretations, obligations, performance, or otherwise exclusively by the laws of the Commonwealth of Virginia, and all questions arising with respect thereto shall be determined in accordance with such laws.

VI. TERMINATION

Anything herein or elsewhere to the contrary notwithstanding, this Agreement and the obligations of the parties hereunder may be terminated by the CITY or HRSD in the event that either party breaches or violates any material provision of this Agreement or fails to perform any material covenant or agreement to be performed by either party under the terms of this Agreement and such breach, violation, or failure is not cured prior to the commencement of the Project or by mutual agreement of the CITY and HRSD.

VII. INDEMNITY

The CITY shall ensure that the Contractor covenants and agrees that it will protect, save, and keep HRSD harmless and indemnified against any liability, obligation, penalty or damage, or charge imposed for any negligence or willful misconduct by the Contractor or for any violation of any laws or ordinances occasioned by the Contractor, its officers, employees, agents, subcontractors, independent contractors, licensees, or concessionaires.

VIII. NOTICE

Any notice, communication, or request under this Agreement shall be provided in writing by either (a) certified mail, return receipt requested, postage prepaid, or (b) a nationally recognized overnight delivery service (next business day service), or (c) hand-delivery, if the receipt of the same is evidenced by the signature of the addressee or authorized agent, and addressed to the following:

HRSD By U.S. Postal Service:
General Manager
HRSD
P. O. Box 5911
Virginia Beach, VA 23471-0911

By Overnight Mail:
General Manager
HRSD
1434 Air Rail Avenue
Virginia Beach, VA 23455

With copy to:
Conway H. Sheild, III, Esq.
Jones, Blechman, Woltz & Kelly, P.C.
701 Town Center Drive, Suite 800
Newport News, Virginia 23606

CITY:
City of Hampton
Attention: Mary Bunting, City Manager
22 Lincoln Street
Eighth Floor, City Hall
Hampton, Virginia 23669

With copy to:
Vanessa T. Valldejuli, City Attorney
22 Lincoln Street
Eighth Floor, City Hall
Hampton, Virginia 23669

IX. ASSIGNMENT

No party may assign its rights in this Agreement without the prior written consent of the other party.

X. AMENDMENT

This Agreement may be amended only by a written instrument duly executed by the parties.

XI. SEVERABILITY

If any provision of this Agreement or the application thereof to any circumstance shall be determined to be invalid, illegal, or unenforceable to any extent, the remainder of this Agreement and the application thereof shall not be affected and shall continue to be valid, in effect, and enforceable to the fullest extent permitted by law.

XII. DAMAGES

If by omission that constitutes negligence or willful misconduct or failure to abide by engineering standards or failure to abide by the Plans and Specifications described herein, the negligent party shall be responsible for the payments for damages to any other party to this Agreement.

XIII. INSURANCE

HRSD has the right to review and approve insurance coverage in the various insurance categories that HRSD deems necessary to be carried by the Contractor or any other parties to this Agreement. Proof of insurance shall be provided at the request of HRSD, and the insurance coverage shall be maintained during the term of this Agreement.

XIV. TERM of AGREEMENT

The term of the Agreement will commence on the date the Agreement is entered into and be completed when each party has completely performed its obligations hereunder.

XV. FORCE MAJEURE

In the event of enforced delay in the performance of such obligations due to unforeseeable causes beyond the control of the CITY or HRSD or the Contractor and without their fault or negligence, including, but not restricted to, acts of God, or of the public enemy, fires, floods, epidemics, quarantine restrictions, strikes, freight embargos, and unusually severe weather or delays of subcontractors due to such causes, it being the purpose and intent of this provision that in the event of the occurrence of any such enforced delay, the time or times for performance of the obligations of the parties shall be extended for the period of the enforced delay.

XVI. SUBCONTRACTORS AND INDEPENDENT CONTRACTORS

If a Contractor hires subcontractors or independent contractors, HRSD has the right to approve them by reviewing their requisite experience and knowledge to complete the work assigned.

XVII. CONTRACTOR AND SUBCONTRACTORS

If any Contractor or subcontractors are selected by the CITY for completion of the work contemplated herein, HRSD has the right to approve the same.

XVIII. WAIVER

No waiver of breach of any term or provision of this Agreement shall be construed to be, or shall constitute, a waiver of any other breach of this Agreement. No waiver shall be binding unless in writing and signed by the party waiving the breach.

The failure of either party to seek redress for violation of or to insist upon the strict performance of any covenant or condition of this Agreement shall not prevent a subsequent act, which would have originally constituted a violation, from having the effect of an original violation.

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

No provision in this Agreement shall constitute or be deemed to constitute a waiver of the City's rights of sovereign immunity or any defenses available to municipal corporations of the Commonwealth of Virginia.

XIX. INTEGRATION

This Agreement constitutes the entire understanding among the parties. No provision of this Agreement may be waived, modified, or amended except by an instrument signed by the party against whom the enforcement of such waiver, modification, or amendment is sought. No waiver by either party of any failure or refusal by the other party to comply with its obligations hereunder shall be deemed a waiver of any other or subsequent failure or refusal to comply.

IN WITNESS WHEREOF, the City of Hampton has caused this Agreement to be signed by the City Manager on its behalf pursuant to Resolution adopted by the City Council on _____, 2016, and the Hampton Roads Sanitation District Commission has caused this Agreement to be signed on its behalf by its General Manager in accordance with authorization granted at its regular meeting held on December 16, 2014.

[SIGNATURES APPEAR ON FOLLOWING PAGES]

This signature page is part of the Agreement for the CONSTRUCTION AND RELOCATION OF BRIDGE STREET VENT AND REHABILITATION OF BRIDGE STREET SIPHONS between the City of Hampton, Virginia and Hampton Roads Sanitation District (HRSD).

HAMPTON ROADS SANITATION DISTRICT,

a political subdivision of the Commonwealth of Virginia

By: 
EDWARD G. HENIFIN, P.E.
General Manager

ATTEST:


Jennifer L. Cascio, Secretary

AYANNA R. WILLIAMS
Notary Public
Commonwealth of Virginia
My Commission Expires January 31, 2017
Commission ID# 240380

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

The foregoing instrument was acknowledged before me this 29th day of January, 2016, by Edward G. Henifin, P.E., General Manager for Hampton Roads Sanitation District. He is known to me personally.

My commission expires: Jan. 31, 2017.


Notary Public
Registration Number: 240380

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

The foregoing instrument was acknowledged before me this 29th day of January, 2016, by Jennifer L. Cascio, Secretary for Hampton Roads Sanitation District. She is known to me personally.

My commission expires: Jan. 31, 2017.


Notary Public
Registration Number: 240380

AYANNA R. WILLIAMS
Notary Public
Commonwealth of Virginia
My Commission Expires January 31, 2017
Commission ID# 240380

This signature page is part of the Agreement for the CONSTRUCTION AND RELOCATION OF BRIDGE STREET VENT AND REHABILITATION OF BRIDGE STREET SIPHONS between the City of Hampton, Virginia and Hampton Roads Sanitation District (HRSD)

CITY OF HAMPTON

By: _____
City Manager / Authorized Designee

ATTEST:

Clerk of Council

COMMONWEALTH OF VIRGINIA
CITY OF HAMPTON, to-wit:

The foregoing instrument was acknowledged before me this _____ day of _____, 2016 by _____, City Manager or Authorized Designee for the City of Hampton, Virginia. She is known to me personally.
My commission expires: _____.

Notary Public
Registration Number: _____

COMMONWEALTH OF VIRGINIA
CITY OF HAMPTON, to-wit:

The foregoing instrument was acknowledged before me this _____ day of _____, 2016, by _____, Clerk of Council for the City of Hampton, Virginia. She is known to me personally.
My commission expires: _____.

Notary Public
Registration Number: _____

APPROVED AS TO FORM:

City Attorney

EXHIBIT A

Replacement of Bridge Street Bridge – Bid Form - Items 93 through 109

| <u>Item No.</u> | <u>Item</u> | <u>Qty</u> | <u>Unit</u> | <u>Cost Per Unit</u> | <u>Extended Price</u> | <u>Assigned Cost Responsibility</u> | <u>City Cost</u> | <u>HRSD Cost</u> |
|--------------------------------|--|------------|-------------|----------------------|-----------------------|-------------------------------------|---------------------|---------------------|
| 93 | 24" Sanitary Sewer Rehabilitation (CIPP) | 425 | LF | \$150.00 | \$63,750.00 | 100% HRSD | | \$63,750.00 |
| 94 | 30" Sanitary Sewer Rehabilitation (CIPP) | 425 | LF | \$198.00 | \$84,150.00 | 100% HRSD | | \$84,150.00 |
| 95 | Temporary Bypass | 1 | LS | \$315,936.00 | \$315,936.00 | 50% City and 50% HRSD | \$157,968.00 | \$157,968.00 |
| 96 | Temporary Vent Piping | 425 | LF | \$96.00 | \$40,800.00 | 80% City and 20% HRSD | \$32,640.00 | \$8,160.00 |
| 97 | 28" Fiberglass Vent Piping | 140 | LF | \$365.20 | \$51,128.00 | 80% City and 20% HRSD | \$40,902.40 | \$10,225.60 |
| 98 | 14" Fiberglass Vent Piping (2 Runs of the 14") | 560 | LF | \$288.00 | \$161,280.00 | 80% City and 20% HRSD | \$129,024.00 | \$32,256.00 |
| 99 | 14" Fiberglass Vent Pipe Expansion Coupling | 2 | EA | \$12,183.00 | \$24,366.00 | 80% City and 20% HRSD | \$19,492.80 | \$4,873.20 |
| 100 | HRSD Siphon Vaults Rehabilitation | 1 | LS | \$67,338.00 | \$67,338.00 | 100% HRSD | | \$67,338.00 |
| 101 | 6' HRSD Sanitary Sewer Manhole | 1 | EA | \$13,264.00 | \$13,264.00 | 100% HRSD | | \$13,264.00 |
| 102 | CCTV Inspection, Pre Pile Driving Activities | 850 | LF | \$18.00 | \$15,300.00 | 80% City and 20% HRSD | \$12,240.00 | \$3,060.00 |
| 103 | Flexible Pavement Planing (2" Depth) | 180 | SY | \$15.75 | \$2,835.00 | 80% City and 20% HRSD | \$2,268.00 | \$567.00 |
| 104 | Saw-Cut, Asphalt Pavement(Up to 20" Depth) | 190 | LF | \$9.25 | \$1,757.50 | 80% City and 20% HRSD | \$1,406.00 | \$351.50 |
| 105 | 2" Asphalt Concrete Surface Course, SM-9.5A | 25 | Ton | \$146.08 | \$3,652.00 | 80% City and 20% HRSD | \$2,921.60 | \$730.40 |
| 106 | 6" Asphalt Concrete, Base Course, BM-25.0A | 30 | Ton | \$158.50 | \$4,755.00 | 80% City and 20% HRSD | \$3,804.00 | \$951.00 |
| 107 | 8" Aggregate Base Material, Type 1, 21A or 21B | 105 | SY | \$43.00 | \$4,515.00 | 80% City and 20% HRSD | \$3,612.00 | \$903.00 |
| 108 | Remove and Dispose of Guardrail | 13 | LF | \$27.75 | \$360.75 | 80% City and 20% HRSD | \$288.60 | \$72.15 |
| 109 | Guardrail, GR-2 | 13 | LF | \$36.50 | \$474.50 | 80% City and 20% HRSD | \$379.60 | \$94.90 |
| TOTAL CONSTRUCTION COST | | | | | \$855,661.75 | | \$406,947.00 | \$448,714.75 |