

SEWER FACILITY OPERATION AND MAINTENANCE AGREEMENT

The body of this document was prepared by: *Chesapeake City Attorney's Office
City Hall Building, 6th Floor 306
Cedar Road
Chesapeake, VA 23322
(757) 382-6586*

This Agreement is entered this _____ day of _____, 20___, by and between _____ ("Owner"), and the CITY OF CHESAPEAKE, ("City"), a municipal corporation of the Commonwealth of Virginia. Owner and City shall be collectively referred to as the "parties."

WHEREAS, Owner is the record owner of certain real property located at _____ in Chesapeake, Virginia, identified as Chesapeake Tax Map Parcel(s) No. _____ (the "Property"); and

WHEREAS, Owner desires to install a private pump station, a private sewer force main, private gravity sewer and all appurtenances thereto on the aforesaid Property (collectively known as "Private Sewer Facilities") to provide for the discharge of the effluent from the aforesaid premises to:

the City's force main valve connected to the (____ inch) Hampton Roads Sanitary District (HRSD) force main

or

the City's force main

or

the City's manhole

located in the right-of-way at _____ in the City of Chesapeake, Virginia; and

RETURN DOCUMENT TO: *UTILITY ENGINEER, PUBLIC UTILITIES DEPARTMENT, CITY OF CHESAPEAKE
306 Cedar Road, 2nd Floor
CHESAPEAKE, VA 23322 (757) 382-6671*

Sewer Facility Operation and Maintenance Agreement
Owner _____
Tax Map Number _____
Dated _____, 20 _____

WHEREAS, the City and Owner wish to set forth the agreed upon terms and conditions in this Agreement, which concerns the installation, operation and maintenance of the Private Sewer Facilities.

NOW, THEREFORE, for and in consideration of the mutual promises contained herein and for other good and valuable consideration, the sufficiency of which is acknowledged, the parties agree as follows:

1. TERM:

The City shall allow the Owner to discharge effluent through the Owner’s Private Sewer Facilities and into the City’s force main connected to the Hampton Roads Sanitation District (“HRSD”) force main or the City’s manhole, as long as the following conditions are satisfied: (i) City and HRSD facilities remain in service and available; (ii) City and HRSD facilities have sufficient capacity to convey the discharge of effluent from Owner’s Private Sewer Facilities; (iii) the Owner has not caused or allowed any other connections of a private sewer force main, pump station or private gravity sewer to City and HRSD Facilities without the prior express written consent of the City; and (iv) Owner has not breached any term in this Agreement.

The commencement date upon which such right is granted shall be the date of the last authorized signature (the “Term”).

2. OWNER’S RESPONSIBILITIES:

(i) Owner, its successors, heirs, and assigns shall, at its own cost and at no cost to the City or HRSD, assume all responsibility and liability for the installation, operation, maintenance, design, repair and replacement of the Private Sewer Facilities, including, but not limited to, those placed in the

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City's right-of-way;

(ii) Owner shall cause the plans and specifications for its private utility improvements, including, but not limited to, the Private Sewer Facilities, which it intends to be placed within the City's rights-of-way, to be reviewed and approved by the Departments of Development & Permits and Public Utilities. Owner shall further meet the requirements set forth in the Public Facilities Manual prior to any work being performed. Additionally, Owner shall, prior to the start of any work, apply for a permit for any and all work that will affect the City's right-of-way. The City's approval of right-of-way permit (the "Permit") will not be unreasonably withheld, conditioned or delayed.

Owner further agrees that it is familiar with, accepts, and is bound by all requirements, conditions and provisions of the Permit, as well as the following conditions:

- a. The Owner agrees to later relocate or alter all installations interfering with future construction of the right-of-way or other publicly owned facilities without cost to the City. In such event, the relocation or alteration will be made by the City at the Property Owner's expense.
- b. All underground utilities installed pursuant to a right-of-way permit, which cannot accurately be located by ground level visual markers or by magnetic detectors, must be marked by trace wire and a magnetic responsive tape installed directly over such Private Sewer Facilities, which must be a minimum of eighteen (18) inches under the permanent ground level.
- c. The Owner accepts responsibility for the determination of the location and protection of any pre-existing public or private underground utilities and drainage systems. The Owner shall further accept full responsibility for any damage to such underground

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utilities and systems and shall hold the City harmless by accepting liability for the full cost incurred in repair of any damages caused by the Owner's Facilities, and the installation, repair and maintenance thereof.

d. Owner, before the sale of the Property, shall provide a copy of this Agreement to any prospective purchaser of the Property. The City shall require evidence that Owner has provided said copy before it will authorize activation of the Private Sewer Facilities.

(iii) Owner shall timely obtain all necessary approvals, including any approvals required by the Virginia Department of Health and the Department of Environmental Quality, for construction and operation of the Private Sewer Facilities. Owner shall also meet all applicable local, state and federal laws and regulations pertaining to construction, maintenance and/or operation of the Private Sewer Facilities.

(iv) Owner shall, prior to plan approval, obtain HRSD flow certification and written confirmation from HRSD that HRSD will accept the flows from the Private Sewer Facilities. Owner shall provide the City with a copy of the flow certification and written confirmation from HRSD immediately upon its receipt of the same.

(v) Owner represents and warrants that all utility improvements, including, the Private Sewer Facilities, will be constructed, designed and installed in accordance with the City's Master Utility Plan.

(vi) Owner shall timely pay all appropriate fees and service charges that are required by City Ordinance.

(vii) Owner shall reimburse the City for any and all reasonable costs, labor, charges, and expenses associated with the City's excavation and investigation of leaking private facilities located in the public right-of-way that are determined by the City to be owned, maintained and operated by Owner.

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(viii) Owner shall be liable to the City for all costs, fines, charges, fees and expenses associated with, arising out of or related to the City's response to any calls to the Department requesting the City to contain, remove, sanitize or clean-up any effluent discharged from leaks or damaged private force main or private facilities and Owner shall be liable to the City for any and all reasonable repairs made to Owner's private force main and/or private facilities, and shall indemnify the City, its departments, employees, representatives and officials from and against any and all claims based on any theory of liability, including, but not limited to, property damage, personal injury or death, reasonable attorney's fees, costs and expenses.

(ix) Owner shall abide by all terms and conditions in the City's Private Pump Station Policy No. 20.07, as amended from time to time by the Department at its sole and absolute discretion.

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3. CITY'S RESPONSIBILITIES:

The City's sole responsibility is that it shall, provided that all conditions precedent have been fully satisfied to the sole discretion of the City, allow the Private Sewer Facilities to discharge into

the City's force main valve connected to the (____inch) Hampton Roads Sanitary District (HRSD) force main

or

the City's force main

or

the City's manhole

located in the right-of-way at _____ in the City of Chesapeake, Virginia; and

It is expressly understood by the Parties, that the City shall not be responsible for any cost, fees, expenses, or parts thereof, for the design, construction, installation, maintenance, operation, use, damage or repair of any kind and for whatever reason of Owner's private sewer utility improvements, including, its Private Sewer Facilities.

4. INDEMNIFICATION:

Owner, its successors, heirs and assigns, agree to now and forever, save, indemnify, defend and hold harmless the City, its officials, employees and agents, from and against any and all claims based on any theory of liability, including, but not limited to, claims for damages, fees, charges, penalties, fines, costs, personal injury, death or arising from the design, operation, malfunction, stoppage, leakage, breakage, maintenance, relocation, replacement, removal or abandonment of HRSD's and/or the City's

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facilities.

Owner, its successors, heirs, and assigns further agree to now and forever save, indemnify, defend and hold harmless the City, its officials, employees and agents, from and against any and all claims, damages, fees, charges, penalties, fines, costs and liabilities arising from or related to this Agreement, or alleged to arise from, or in any way relating to, the design, installation, operation, malfunction, stoppage, leakage, breakage, maintenance, relocation, replacement, removal or abandonment of the Private Sewer Facilities, and from and against any and all claims for damages, penalties, fines, fees, costs and claims relating to environmental pollution and unlawful discharges of sewage resulting from or relating to the operation, malfunction, leakage or breakage of the Private Sewer Facilities.

5. UNAUTHORIZED CONNECTION STRICTLY PROHIBITED:

Owner understands and agrees that no other pump station or sewer line from any other parcel of land may connect to the Private Sewer Facilities without the prior written consent of the City's Department of Public Utilities. It is further understood and agreed that no subdivided or re-subdivided parcel, or any development that touches or concerns the Property, shall utilize the Private Sewer Facilities without the prior written consent of the City's Department of Public Utilities. Such prior written consent under this paragraph, if given, shall be within the sole discretion of the City's Department of Public Utilities.

6. MANDATORY CONNECTION TO CITY SEWER SYSTEM:

Owner shall cause the Property to be connected to the City's gravity sewer or force main and the

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City's sewer utility improvements when the same becomes available to the Property at the discretion of the Public Utilities Director or designee. Owner shall at that time be required to pay all applicable fees or charges related thereto, including, but not limited to, pro rata fees or charges for off-site utility improvements pursuant to Chesapeake City Code Section 70-123, as amended.

7. MISCELLANEOUS:

This Agreement shall be binding on Owner, its heirs, successors and assigns and shall run with the land currently identified as Chesapeake Tax Map Parcel No. _____, except for any portion(s) thereof which are dedicated to the City of Chesapeake.

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This Agreement constitutes the final understanding between the Parties. This Agreement shall be governed, interpreted and enforced by the laws of the Commonwealth of Virginia and any disputes arising out of or related hereto shall be heard in the courts in the Commonwealth of Virginia containing competent jurisdiction.

OWNER: _____

By: _____

Print Name: _____

Title: _____

COMMONWEALTH OF VIRGINIA

CITY OF _____, to-wit:

I, _____, a Notary Public, in and for the City aforesaid, in the Commonwealth of Virginia, do hereby certify that _____ whose name is signed to the foregoing and annexed writing, has acknowledged the same, and has produced satisfactory evidence of identity, before me in my city aforesaid.

Given under my hand this _____ day of _____, 20____.

Notary Public

My commission expires: _____ Registration No.: _____

Approved as to form:

Accepted by the City of Chesapeake:

By: _____

By: _____

C. Thomas James
Assistant City Attorney

David E. Jurgens, P.E.
Director, Public Utilities